

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

3/4/2019

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

6:00 P.M.

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

Please silence or turn off all electronic devices in Jody Smith Hall

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. Proclamation for the Denton County Master Gardener Association's 30th Anniversary
2. State of the Cities video presentation

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
3. Legislative updates
4. Limited Residential in the Lakeside Business District

H. FUTURE AGENDA ITEMS

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

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I. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, March 18.

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 2/18- Consider approval of the minutes from a regular meeting of the Town Council held on February 18, 2019.
2. Trinity River Authority Disclosure- Consider approval of a resolution authorizing the execution and delivery of a continuing disclosure agreement with the Trinity River Authority of Texas.
3. Park Renaming- Consider approval of renaming Helen and Leonard John Community Park to Leonard and Helen Johns Community Park.
4. Bruton Orand ESTChloramine Design Award- Consider approval of a Professional Services Agreement with Freese and Nichols, Inc. for the design and construction phase services associated with the Bruton-Orand EST Chloramine System project in the amount of \$65,000.00; and authorization for the Mayor to execute same on behalf of the Town.
5. FM 2499 @ Waketon Design Award- Consider approval of a Professional Services Agreement with Halff Associates, Inc. for the design phase services associated with the FM2499 at Waketon Road Intersection Improvements project in the amount of \$173,450.00; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

- Applicant request to postpone**
6. ZPD - Lisanti Cell Tower- Public Hearing to consider a request for rezoning (ZPD18-0012 - Lisanti Cell Tower) to amend Planned Development-135 (PD-135) with Campus Industrial (CI) uses to allow development of a communication tower, to modify the development standards, and request certain modifications and exceptions to the Code of Ordinances as related to the subject property. The property is generally located south of Spinks Road and east of Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 25, 2019, meeting.)
 7. MISC - Edison Coffee Co- Public Hearing to consider a request for a variance (MISC19-0002 - Edison Coffee Co Alcohol Variance) to permit the sale of alcoholic beverages by a restaurant within 300 feet of a public school. The property is located at 420 Parker Square.
 8. Duke Realty -Chapter 380- Public Hearing to consider approval of Chapter 380 Agreement between the Town of Flower Mound and Duke Realty Limited Partnership (Lakeside Ranch #21)

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9. Rippy Road Ph II Design- Consider approval of a Professional Services Agreement with CP&Y, Inc. for design phase services associated with the Rippy Road Phase II project in the amount of \$298,645.75; and authorization for the Mayor to execute same on behalf of the Town.
10. TIRZ District Consultant Agreement- Consider approval of a Consulting Agreement with Hawes Hill & Associates, LLP to conduct implementation activities for creation of a Tax Increment Reinvestment Zone (TIRZ), in the amount of \$50,000; and authorization for the Mayor to execute same on behalf of the Town.
11. Fine Arts/Performing Arts Centers- Presentation and discussion of findings regarding area Fine Arts/Performing Arts Centers.

L. 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 and Cause No. DC-18-17756 Town of Flower Mound, Texas vs. Eagleridge Operating, LLC
2. Cause No. CV-2019-00241 Elaine Wells v. Town of Flower Mound et al.

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 economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.

M. 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.

N. ADJOURN MEETING

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: March 1, 2019, at 2:30 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: March 4, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on February 18, 2019.

BACKGROUND INFORMATION: The Town Council held a regular meeting on February 18, 2019.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

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

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 18TH DAY OF FEBRUARY 2019, 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
Lexin Murphy	Director of Planning Services
Tiffany Bruce	Executive Director of Public Works
Kendall Leonard	CID Captain

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

Mayor Dixon recited the Proclamation and presented it to Julie Kluthe.

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.

	Speaker names and address	Subject (as written on the form)
1.	Paul Stone, 4100 Broadway	Cabin
2.	Laura Dillon, 6013 Rock Cove	Candidacy for Town Council, Place 1
3.	Al Picardi, 1525 Lindby	Cabin

4.	Peggy Riddle, Denton County Office of History and Culture, 110 West Hickory St, Denton, Texas	Cabin
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F. ANNOUNCEMENTS

Deputy Mayor Pro Tem Forest and Councilmember Webb announced a Summit Club fundraising event scheduled for March 2nd (Western Saloon and Casino Night).

Councilmember Bryant reported on the recent ground breaking event for Fire Station # 7.

Mayor Dixon had the following announcements:

- Appreciation for the Bridlewood 2nd grade class postcard project
- February 27th is Flower Mound's 58th Anniversary

G. TOWN MANAGER'S REPORT

Mr. Stathatos reported on the following projects:

1. Capital improvement projects:
 - Fire Station 7 groundbreaking
 - Skillern Road update
 - Town-wide traffic count study underway
2. Economic Development projects:
 - Business openings, expansions, and kudos
 - New permit activity
3. Legislative updates:

Ms. Wallace provided the following information:

 - Status of Senate Bill 2/House Bill 2 and next steps
 - Denton County Days
4. Minimum housing standards

Mr. Dalton provided the following information:

 - Background information and next steps
 - Objective related to minimum housing standards

There was Council consensus to have a work session on the topic.

H. FUTURE AGENDA ITEMS

1. Councilmember Sharma requested Council reconsider naming Helen and Leonard John's Park to Leonard and Helen John's Park based on the family's wishes.

There was Council consensus to proceed in bringing forward a future agenda item for that purpose.

I. COORDINATION OF CALENDARS

Mayor Dixon announced that the next Town Council regular meeting is scheduled for Monday, March 4, 2019.

J. CONSENT ITEMS

1. Consider approval of the minutes from a special work session held on January 31, 2019.
2. Consider approval of the minutes from a regular meeting of the Town Council held on February 4, 2019.
3. Consider approval of the purchase of one (1) 2019 Chevrolet Tahoe RWD 9C1 Police Pursuit Vehicle per Town of Flower Mound Specifications and Quote from Holiday Ford and Holiday Chevrolet dba Johnson Grayson Automotive, Inc.
4. Consider approval of the purchase of three (3) 2019 Ford F350 Cab and Chassis, Dual Wheel with Dumpbed per Town of Flower Mound Specifications and Quote from Sam Pack's Five Star Ford.
5. Consider approval of the purchase of two (2) 2019 Ford F250 Extended Cab Pickup Trucks with options per Town of Flower Mound Specifications and Quote from Sam Pack's Five Star Ford.
6. Consider approval of Change Order No. 2 for construction of the Skillern Road project, amending the contract with Pavecon Public Works, L.P., to provide for an increase to the contract in the amount of \$35,650.98; and authorization for the Mayor to execute same on behalf of the Town
7. Consider approval of the Professional Services Agreement with Wade Trim, Inc., to provide professional engineering services, for the Peters Colony Road Roundabout, and Garden Ridge Boulevard Through Lane (at FM 3040) projects for an amount not to exceed \$155,985.00; and authorization for the Mayor to execute same on behalf of the Town.
8. Consider Approval of the purchase of traffic signal poles, in the estimated annual amount of \$400,000.00, from Consolidated Traffic Control, through the Houston-Galveston Area Council (H-GAC) contract.
9. Consider approval of the Third Amended Interlocal Agreement with the Town of Copper Canyon to provide sewer/wastewater services to areas within the Town of Copper Canyon; and authorization for the Mayor to execute same on behalf of the Town.

Mayor Pro Tem Webb moved to approve by consent Items 1 – 9, 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: SHARMA, FOREST, WEBB, ENGEL, BRYANT****NAYS: NONE****K. REGULAR ITEMS**

10. Public Hearing to consider a request for rezoning (ZPD18-0007 - Watermere at Flower Mound) from Agricultural District (A) to Planned Development District-167 (PD-167) with age-restricted, high-density residential and Office District (O) uses, and with certain modifications and exceptions to the Code of Ordinances, and consider adopting an ordinance providing for said amendment, subject to the terms and conditions in the attached Development Agreement, and authorization for Mayor to execute same on behalf of the Town. The property is generally located south of Dixon Lane and east of

Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 11, 2019, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Photo of the site
- Conceptual site plan – Tract 1 and 2
- Conceptual landscape plan – Tract 1 and 2
- Amenity areas – Tract 2
- Modifications request
- Exceptions request
- Conceptual elevations – Tract 1 and 2
- Senior housing overlay

and she, Ms. Bruce, Mr. Dalton, or Mr. Stathatos responded to questions from Council regarding:

- Reason for the 45' height request
- Clarification regarding the setback exception
- The property owner is the same for the adjacent lot
- Traffic concerns, particularly at the Dixon Ln and Morriss Rd intersection, and the area of the Waterford neighborhood near FM 407
- Is there a Town trail near the church
- The overlay expiration date
- The findings of the TIA, as well as the scope
- If a resident is wanting to be proactively involved try to find a way to get them more engaged in the process

There was Council discussion regarding:

- How seniors stay on major thoroughfares and don't cut through neighborhoods
- Appreciation for senior housing developments coming to Flower Mound as a result of the efforts Council put in place to make that happen
- How traffic issues will be minimal and they can be dealt with as needed at the appropriate time
- How the location is ideal for the senior project given the use of the four lane road of Dixon
- The project can't be held up based on the unknown of the remaining acres
- How senior housing has been a thought and concern for a long time
- How a senior community is different than typical apartments
- Visited the facility in Frisco and liked what they had and belief it's something that is needed for Flower Mound and something we can be proud of
- Appreciation for residents who came and spoke about the traffic concerns, as well as their thoughts regarding solutions
- The senior housing project will add value to the Town
- This development is a piece of the puzzle for the Town that allows housing options

Applicant Presentation

Paul Milosevich, Vice President of Senior Housing Development & Operations, Integrated Real Estate Group, 3110 West Southlake Blvd, Southlake, Texas

Mr. Milosevich gave a presentation identifying or noting:

- Background information about the company, including senior independent living communities in the region
- Map of the site
- Summary of discussion at P & Z
- Project summary
- Elevator locations
- Single story villas
- Typical interior courtyard
- Watermere:
 - o service model
 - o dining program
 - o activities calendar
 - o wellness program
 - o indoor pool
 - o Daily activities program

and he responded to the following questions from Council, and some of which were after the public hearing:

- Clarification that the same quality building in Frisco is what is planned here
- Clarification that the entire community is a rent only option and no ownership opportunities
- Will there be access to the church from the development
- What type of transportation vehicles will be used to serve the residents
- What is the feedback from the neighboring community
- What is the average age of the residents who live in the community
- When would Whyburn Drive be complete

Mayor Dixon opened the Public Hearing at 6:45 p.m.

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

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/ Comments Only
Denis Toth, 2620 Skelton	Ben Bumgarner, 5150 Kensington Ct	None
Carol Kohankie, 4312 Lauren Way	Adam Schiestel, 2205 Waterford Dr with donated time from: Mike Zierath, 2212 Waterford Dr	
Diane Wetherbee, 8813 Honeysuckle Dr	Jeffrey Blasko, 1720 Milford Dr	
Bryan Webb, 4112 High Rd	*Melissa Mayberry, 2537 Russwood Dr	
Mary Kay Walker, 3229 Oak Meadow		
Patsy Mizeur, 1821 Castle Ct		

Mike Wallace, 2913 Trailwood Ln		
Douglas Brown, 1721 Ingleside Dr		
Kenneth Krawczyk, 5108 Brownstone		
*Dorothy Krawczyk, 5108 Brownstone		
*Al Kavan, 5200 Timber Lane		
*Donna Toth, 2020 Skelton St		
*Earl Blair, 2712 Stonehenge Ln		
*Chuck Worden, 1805 Strait Ln		
*Janeen Hock, 1805 Strait Lane		

**submitted a Public Comment card; however, indicated did not wish to speak*

Mayor Dixon closed the Public Hearing at 7:28 p.m.

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

ORDINANCE NO. 04-19

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 15.7527 ACRES OF LAND SITUATED IN THE EDWIN MARSH SURVEY, ABSTRACT NO. 834, FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT DISTRICT NO. 167 (PD-167) WITH AGE-RESTRICTED, HIGH-DENSITY RESIDENTIAL USES AND OFFICE DISTRICT (O) 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:

AYES: BRYANT, ENGEL, WEBB, FOREST, SHARMA

NAYS: NONE

Motion passed

Town Council recessed at 8:03 p.m. and reconvened at 8:10 p.m.

11. The second of two Public Hearings to review Chapter 50, Article III, "Offenses regarding Minors," Division 2, "Curfew" and to consider adopting an ordinance continuing the current Juvenile Curfew Ordinance in effect.

Staff Presentation

Captain Leonard gave a presentation identifying or noting:

- Statute requirements
- Curfew citations issued
- After citation is issued

and he responded to the following questions from Council:

- Clarification that the recommendation is to continue as is

Mayor Dixon opened the Public Hearing at 8:12 p.m. No one spoke in support or opposition. Mayor Dixon closed the Public Hearing at 8:12 p.m.

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

ORDINANCE NO. 05-19

AN ORDINANCE CONTINUING THE TOWN'S JUVENILE CURFEW REGULATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: SHARMA, FOREST, WEBB, ENGEL, BRYANT

NAYS: NONE

12. Public Hearing to consider a request for an exception to Section 90-423, "Underground utilities," of the Code of Ordinances to permit a guy-wire to remain outside of the ROW to provide overhead power service along Long Prairie Road for the Lakeside Crossing development (MISC19-0001).

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Aerial photo
- Proposed overhead power exhibit

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

- Does the staff see any problem with what is proposed
- Clarification that it is just the guy wire

Mayor Dixon opened the Public Hearing at 8:16 p.m. No one spoke in support or opposition. Mayor Dixon closed the Public Hearing at 8:16 p.m.

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

VOTE ON MOTION:

Motion passed

AYES: BRYANT, ENGEL, WEBB, FOREST, SHARMA

NAYS: NONE

13. Consider approval of a Professional Services Agreement for design services for the restoration of the Gibson Grant Log Cabin Phase I with McCoy Collaborative Preservation Architecture, PLLC., for \$88,020 and authorization for the Mayor to execute the same on behalf of the Town.

Staff Presentation

Ms. Wallace did not have a formal presentation; however, she responded to questions or comments made by Council or during the public comment portion of the meeting as follows:

- Advisory Committee and reporting
- Goal of Phase I
- Why initially pulled off of consent and interest in getting a full update about the direction the Town is going
- Is the total in Phase I the design and construction
- Does the PSA address who gets the construction award

There was Council discussion regarding:

- How this Phase will kick start the ability to create grants
- Opportunity to look at the designs before a construction agreement is awarded

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

VOTE ON MOTION:

AYES: SHARMA, FOREST, WEBB, ENGEL, BRYANT

NAYS: NONE

Motion passed.

L./M. CLOSED/OPEN MEETING

The Town Council did not convene into a closed meeting. Therefore, no action was taken on the following items:

- a. Consultation with Attorney.
- 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, hospitality projects, and performance related to certain incentive agreements.

N. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 8:23 p.m. on Monday, February 18, 2019, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: March 4, 2019
FROM: Julie Taylor, Director of Treasury Operations
ITEM: **Consider approval of a resolution authorizing the execution and delivery of a continuing disclosure agreement with the Trinity River Authority of Texas.**

BACKGROUND INFORMATION: The Town became a member of the Denton Creek Wastewater Treatment System in February 2000, in which the Town pays an annual amount to the Trinity River Authority of Texas (TRA) for the Town's portion of operation and debt service of the treatment plant to serve the western part of Flower Mound.

Each TRA contracting party is an obligated party of Trinity River Authority (Authority) bonds and has committed to investors to provide a Disclosure Report containing financial and operating information throughout the life of the bonds of each system. Each customer is also required to file certain event notices in order to stay in compliance with Securities and Exchange Commission (SEC) Rule 15c2-12.

To meet this requirement, the Authority has had Continuing Disclosure Agreements (CDA) as a part of each bond resolution, as well as with each customer entity, since the rule has been in effect. The Authority and the customer have responsibilities related to this SEC rule. As obligated persons on Authority bonds, the customer is the main credit source for repayment of the obligations for the Authority bonds.

Required continuing disclosure consists of important information that reflects the financial health and operating condition of the customer entity as long as the customer is obligated for Authority revenue bonds.

Because of revisions to the Rule 15c2-12 over the years and most recently in 2018, the Authority is in the process of updating CDA's with each customer. The updated agreements clarify the information to be provided by each customer, as it relates to only that customer.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, reviewed the proposed agreement and resolution. Cara White of Taylor, Olson, Adkins, Sralla, & Elam L.L.P reviewed the proposed agreement and resolution as to form.

ATTACHMENTS:

1. Resolution
2. Continuing Disclosure Agreement

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

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

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, ("TOWN"), AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT WITH THE TRINITY RIVER AUTHORITY OF TEXAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound, Texas (the "Town") and the Trinity River Authority of Texas (the "Issuer") have heretofore entered into, and may in the future enter into, contracts relating to the provision of facilities and/or services by the Issuer for the benefit of the Town; and

WHEREAS, in connection with the financing of the facilities and/or services provided by the Issuer for the benefit of the Town, the Issuer has, and/or will, from time to time authorize, issue and deliver bonds (the "Bonds") of the Issuer supported by payments to be made by the Town pursuant to such contracts; and

WHEREAS, the United States Securities and Exchange Commission has adopted Rule 15c2-12, as amended from time to time (the "Rule"); and

WHEREAS, the Rule provides that a broker, dealer or municipal securities dealer of Bonds issued after the effective dates set forth in the Rule, may not purchase or sell Bonds in connection with an offering thereof unless, prior to the purchase or sale thereof, "obligated persons", or entities acting on behalf of "obligated persons", have undertaken to provide certain updated financial information and operating data annually, and timely notice of specified material events, to certain information vendors; and

WHEREAS, the Issuer and the Town heretofore entered into a Continuing Disclosure Agreement, as amended, in conformance with the Rule (the "Original CDA"); and

WHEREAS, in order to reflect the Rule, as recently amended, and provide adequate flexibility to accommodate any subsequent amendments to the Rule, it is deemed appropriate and necessary to enter into a new Continuing Disclosure Agreement (the "CDA"), which supercedes the Original CDA; and

WHEREAS, it is the intent of both the Issuer and the Town that any and all obligations and/or duties of the respective party under the Original CDA with respect to any heretofore issued series of Bonds shall continue to be observed as carried forward into the CDA; and

WHEREAS, in order to comply with the Rule and facilitate the future issuance of Bonds, the Town and the Issuer have agreed that it is deemed appropriate and necessary to enter into the CDA hereinafter authorized to be executed and delivered.

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

SECTION 1

That the recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this Section.

SECTION 2

That the Mayor or the Mayor Pro Tem of the Town Council or the Town Manager of the Town is hereby authorized and directed to execute and deliver, and the Town Secretary of the Town is authorized and directed to attest, the CDA substantially in the form and substance attached hereto.

SECTION 3

That the Mayor or the Mayor Pro Tem of the Town Council or the Town Manager of the Town is hereby authorized and directed to execute and deliver, and the Town Secretary of the Town is authorized and directed to attest, any amendment or supplement to the CDA hereinafter required or appropriate in response to further amendment of the Rule in order to maintain compliance with the requirements of the Rule.

SECTION 4

That the CDA, and any amendment or supplement thereof, shall become effective and enforceable in accordance with its terms immediately upon execution and delivery thereof for all intents and purposes.

SECTION 5

That each of the officers and members of the Town Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the meeting at which this Resolution was introduced, and that said Resolution would be introduced and considered for passage at said meeting, and each of said officers and members consented, in advance, to the holding of said meeting for such purpose, and that said meeting was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by the Texas Government Code, Chapter 551.

SECTION 6

This resolution shall take effect immediately from and after the date of its passage.

RESOLUTION NO. _____

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**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, ON THIS THE 4TH DAY OF MARCH, 2019.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Agreement"), dated as of March 4, 2019 is executed and delivered by the Trinity River Authority of Texas (the "Authority") and the Town of Flower Mound, Texas (the "Town") in connection with the issuance, from time to time, of the Authority's bonds ("Bonds") with respect to which the Town is an "obligated person" (defined below). The information to be provided consists of: (i) certain annual financial and operating information and audited financial statements, if available; (ii) timely notices of the occurrence of certain events and (iii) timely notices of the failure of the Authority or Town to provide required annual financial information on or before the date specified herein. Terms not defined herein have the meaning assigned in the Rule (defined below).

SECTION 1. Definitions.

As used in this Agreement, the following terms have the meanings ascribed to such terms below:

"*Financial Obligation*" has the meaning assigned in the Rule. For convenience, such definition means (a) a debt obligation; (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) a guarantee of (a) or (b) above. Pursuant to the Rule, the term Financial Obligation does not include municipal securities for which a final official statement has been provided to the MSRB consistent with the Rule.

"MSRB" means the Municipal Securities Rulemaking Board and any successor to its duties.

"*Obligated Person*" means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities). With respect to the Authority's Bonds, the Town is an "obligated person."

"Rule" means SEC Rule 15c2-12, as amended from time to time.

"SEC" means the United States Securities and Exchange Commission and any successor to its duties.

SECTION 2. Annual Reporting; Obligations of Town.

(a) *Information Specified in the Authority's Official Statements.* The Town shall provide to the MSRB via its Electronic Municipal Market Access System ("EMMA"), on an annual basis, financial information and operating data pertaining to the Town as specified and included in Appendix B of any final official statement relating to the Authority's Bonds. Such information shall be (i) filed with the MSRB within six months after the end of each of its fiscal years ending on or after 2019 and (ii) in an electronic format that is prescribed by the MSRB. The Town may provide such information through an agent designated by the Town, if the Town has designated such agent, or through an agent designated by the Authority.

(b) *Annual Financial Statements.* The Town shall provide to the MSRB its audited financial statements when and if available, and in any event, within twelve months after the end of each fiscal year ending in or after 2019. If the audit of the Town's financial statements is not complete within twelve months after any such fiscal year end, then the Town shall file unaudited financial statements within such twelve month period and audited financial statements for the applicable fiscal year, when and if the audit report on such statements becomes available. Any financial statements to be provided shall be (1) prepared in accordance with the accounting principles described in the notes to the financial

statements or such other accounting principles as the Town may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the Town commissions an audit of such statements and the audit is completed within the period during which it must be provided.

(c) If the Town changes its fiscal year, it will notify the MSRB in writing of the change (and of the date of the new fiscal year end) prior to the next date by which the Town otherwise would be required to provide financial information and operating data pursuant to this Section.

(d) The financial information and operating data to be provided pursuant to this Section (i) shall be filed either directly by the Town or through an authorized agent and (ii) may be set forth in full in one or more documents or may be incorporated by specific reference to any document or specific part thereof (including an official statement or other offering document, if it is available from the MSRB) that has been provided to the MSRB.

(e) The Town shall provide, in a timely manner, notice of any failure by the Town to provide annual financial statements and operating data in accordance with this Section to the MSRB and the Authority.

(f) All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB and shall be linked to all CUSIPs for all of the Authority's Bonds for which the Town is an obligated person. The Authority agrees to provide the Town with all CUSIP numbers to Bonds for which the Town is an obligated person within ten business days after this Agreement has been executed by both parties and, in the case of future Bond issues, within ten days of closing on such Bonds.

SECTION 3. Notice of Certain Events.

(a) The Town shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten Business Days after the occurrence of the event) of any of the following events that relate to the Town and with respect to the Authority's Bonds:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modifications to rights of security holders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material;

(11) Rating changes;

(12) Bankruptcy, insolvency, receivership or similar event of the Town;

(13) The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of the assets of the Town, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;

(15) Incurrence of a Financial Obligation of the Town, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Town, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Town, any of which reflect financial difficulties.

(b) For the purposes of the event identified in (a)(12) above, the event is considered to occur when any of the following occur: The appointment of a receiver, fiscal agent or similar officer for the Town in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Town, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Town.

(c) All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB and shall be linked to all CUSIPs for all of the Authority's Bonds. The Authority agrees to provide the Town with all CUSIP numbers to Bonds for which the Town is an obligated person within ten business days after this Agreement has been executed by both parties and, in the case of future Bond issues, within ten days of closing on such Bonds.

(d) For purposes of this Section, and particularly with the events described in (a)(15) and (a)(16), the Town shall make filings for only those events which relate to or impact the credit of the Authority's Bonds. For example, the Authority's Bonds are secured by payments by the Town under the contract between the Authority and the Town; such payments constitute an operating expense of the Town's water and sewer system. Therefore, notice of events which impact the Town's water and sewer system may require a filing to be made if the Town concludes that it is material under the Rule. Events affecting the Town's general obligation or tax-supported debt obligations would not require a filing to be made because they do not relate to or impact the credit of the Authority's Bonds. The Authority will defer to the Town to make its own determination of materiality with respect to the events listed above.

(e) The Town will also notify the Authority at the time of the filing of any event disclosures filed with the MSRB.

SECTION 4. Limitations, Disclaimers, and Amendments.

The Authority shall ensure each of its bond resolutions contains an agreement requiring the Authority to comply with the Rule. The Authority and the Town shall be obligated to observe and perform the covenants specified in this Agreement for so long as, but only for so long as, the Town remains an "obligated person" with respect to Bonds within the meaning of the Rule, except that the Authority in any event will give notice to the Town of any deposit made that causes Bonds no longer to be outstanding.

The provisions of this Agreement are for the sole benefit of (and may be enforced by) the bondholders and beneficial owners of Bonds and the parties to this Agreement, and nothing in this Agreement, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The Authority and the Town undertake to provide only the financial information, operating data, financial statements, and notices which each has expressly agreed to provide pursuant to this Agreement and do not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the Authority's or the Town's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Agreement or otherwise, except as expressly provided herein. Neither the Authority nor the Town make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE AUTHORITY OR THE TOWN, BE LIABLE TO THE BONDHOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE AUTHORITY OR THE TOWN, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

No default by the Authority or the Town in observing or performing their respective obligations under this Agreement shall comprise a breach of or default under any resolution of the Authority authorizing the issuance of Bonds, or any contract relating thereto, for purposes of any other provision of this Agreement. Nothing in this Agreement is intended or shall act to disclaim, waive, or otherwise limit the duties of the Authority or the Town under federal and state securities laws.

With the consent of the other party, the provisions of this Agreement may be amended by the Authority or the Town from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the Authority or the Town, but only if (1) the provisions of this Agreement, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the bondholders or beneficial owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Agreement that authorizes such an amendment) of outstanding Bonds consent to such amendment or (b) an entity that is unaffiliated with the Authority or the Town (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interest of the bondholders and beneficial owners of Bonds and is permitted by the terms of the Agreement. If the Authority or the Town so amend the provisions of this Agreement in connection with the financial or operating data which it is required to disclose under Section 2 hereof, the Town shall provide a notice of such amendment to be filed together with an explanation, in narrative form, of the reason for the amendment and the impact of any change in the type of financial information or operating data to be so provided. The Authority or the Town may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals

the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of Bonds.

SECTION 4. Miscellaneous.

(a) *Representations.* Each of the parties hereto represents and warrants to each other party that it has (i) duly authorized the execution and delivery of this Agreement by the officers of such party whose signatures appear on the execution pages hereto, (ii) that it has all requisite power and authority to execute, deliver and perform this Agreement under applicable law and any resolutions or other actions of such party now in effect, (iii) that the execution and delivery of this Agreement, and performance of the terms hereof, does not and will not violate any law, regulation, ruling, decision, order, indenture, decree, agreement or instrument by which such party is bound, and (iv) such party is not aware of any litigation or proceeding pending, or, to the best of such party's knowledge, threatened, contesting or questioning its existence, or its power and authority to enter into this Agreement, or its due authorization, execution and delivery of this Agreement, or otherwise contesting or questioning the issuance of Bonds.

(b) *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas and applicable federal law.

(c) *Severability.* If any provision hereof shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall survive and continue in full force and effect.

(d) *Counterparts.* This Agreement may be executed in one or more counterparts, each and all of which shall constitute one and the same instrument.

(e) *Supersedes Previous Agreements.* This Agreement supersedes and replaces all previous oral or written agreements, memoranda, correspondence or other communications between the parties hereto relating to the subject matter hereof.

IN WITNESS WHEREOF, the Authority and the Town have each caused their duly authorized officers to execute this Agreement as of the day and year first above written.

TRINITY RIVER AUTHORITY OF TEXAS

President, Board of Directors

ATTEST:

Secretary, Board of Directors

TOWN OF FLOWER MOUND, TEXAS

By: _____

Title: _____

ATTEST:

By: _____

Title: _____



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: March 4, 2019

FROM: Chuck Jennings, Director of Parks and Recreation

ITEM: Consider approval of renaming Helen and Leonard Johns Community Park to Leonard and Helen Johns Community Park.

BACKGROUND INFORMATION: This item was first brought to the Town Council for their consideration on January 7, 2019. The park name was approved by the Town Council as Helen and Leonard Johns Community Park. Following the meeting, Town staff was approached by the family requesting that their father's name be listed first. Ms. Cathy Johns attended the February 4, 2019, Town Council meeting and during the public comment section requested that the council reconsider the order of the names at the family's request. At the February 18, 2019, regular meeting, the Town Council directed staff to bring the item back for consideration.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval of the original renaming request by a vote of 6 to 0 at its December 6, 2018, regular meeting. The Parks Board also indicated they would let the Town Council decide if the naming order needed to be adjusted.

ALTERNATIVES/OPTIONS: The Town Council can decide to deny the request, modify the proposed park name, or send the item back to the Parks Board for additional options.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. January 7, 2019 Town Council Agenda Staff Report

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



TOWN COUNCIL AGENDA ITEM NO. 18

CONSENT ITEM

DATE: January 7, 2019
FROM: Chuck Jennings, Director of Parks and Recreation
ITEM: Consider approval of renaming Leonard Johns Community Park to Helen and Leonard Johns Community Park.

BACKGROUND INFORMATION: The naming or renaming of Town parks is the responsibility of the Parks Board. The process for determination of a name for recommendation to the Town Council is specified in Town Ordinance Sec. 54-1. The 31.15 acre park was acquired in 1985 as Community Center Park and was renamed in 1990 after Leonard Johns who served as Chairman of the Parks Board and as a Town Council member. At the October 1, 2018, regular meeting, Angie Cox requested that the Board consider renaming the park to include Leonard's wife Helen in the name.

Ms. Johns was an active member in Flower Mound and was well known for helping start the Women of Flower Mound back in 1975. Additionally, she helped start the Easter Sunrise Service at the Mound, assisted with the Sweet Flower Mound historical book, participated in the presentation for a new library in February of 2000, and has volunteered numerous hours with Keep Flower Mound Beautiful.

At the November 1, 2018, Parks Board regular meeting, the Chair appointed a committee that was tasked with considering the request and developing a recommendation for the Board to consider. The committee consisted of board members Gloria Jones, Andrew Cummings, and Dale Olsen. The committee met on November 28, 2018, at the O&M Building to discuss the request. After carefully considering all of the information provided, the committee recommended the Board consider renaming the park to Helen and Leonard Johns Community Park.

The item was brought to the [December 6, 2018](#), Parks Board meeting for discussion and consideration. The Board was in agreement that Mrs. Johns should be added to the park's name, but had a lengthy discussion about whether or not her husband's name should be listed first. The Board ultimately decided to recommend approval as presented in the caption and let the Town Council decide if the name needed to be adjusted.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval of the renaming request by a vote of 6 to 0 at its December 6, 2018, regular meeting.

ALTERNATIVES/OPTIONS: The Town Council can decide to deny the request, modify the proposed park name, or send the item back to the Parks Board for additional options.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Recommendation letter from Angie Cox

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

Attachment 1

November 26, 2018

To Whom It May Concern;

I apologize I cannot be there in person tonight but wanted to send this letter regarding your consideration for a park name change from Leonard Johns Park to Helen and Leonard Johns Park. Both Helen and Leonard were very active members in Flower Mound.

Helen helped start the Easter Sunrise Service on the Mound in conjunction with the Mound Association. She assisted with the book Sweet Flower Mound Land by conducting many interviews and recordings for the historical book. She participated in the presentation for the new Flower Mound Library in February 2000. She also volunteered for many clean ups with Keep Flower Mound Beautiful.

She is well known for her involvement and starting the Women of Flower Mound back in 1975. The Women of Flower Mound is a strong organization that does many activities with the Town and helps provide scholarships for graduating seniors.

You can see that Helen was very active and involved in her community and would be so deserving and fitting for the Town to have both Leonard and Helen recognized at the Park together. Helen has a bench there that was recently purchased by the Women of Flower Mound and Keep Flower Mound Beautiful to memorialize Helen and her contribution to the Town of Flower Mound.

Thank you for your consideration.

Sincerely;

Angie Cox

Resident

7616 Emerson Lane

Flower Mound TX 75022



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: March 4, 2019

FROM: Steve P. Allen, Utility Services Manager

ITEM: Consider approval of a Professional Services Agreement with Freese and Nichols, Inc. for the design and construction phase services associated with the Bruton-Orand EST Chloramine System project in the amount of \$65,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This project will provide for design and installation of a system to be installed at the Bruton-Orand Elevated Storage Tank site which will effectively boost disinfectant levels as conditions dictate. This will also cover ensuring regulatory compliance as required by Texas Commission on Environmental Quality (TCEQ) Chapter 290 – Public Drinking Water.

The scope of the Professional Services Agreement includes an evaluation of sodium hypochlorite delivery methods, development of documents for Texas Commission on Environmental Quality (TCEQ) plan and specification review, TCEQ Exceptions request, and the review and inspection of equipment installation.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$65,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$65,000.00	630-960-98847-6070

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

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

ATTACHMENTS:

1. 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
FREESE AND NICHOLS, INC.**

This contract is entered into on this 4th day of March, 2019, 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 **Freese and Nichols, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 4055 International Plaza, Suite 200, Fort Worth, Texas 76109.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to design and providing construction documents for the Bruton-Orand Elevated Storage Tank Chloramine System 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 Bruton-Orand Elevated Storage Tank Chloramine System project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”). Attachment “A” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III. Payment for Services

Total payment for services described herein shall be a sum not to exceed Sixty-Five Thousand No/100 Dollars (\$65,000.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

amounts billed, TOWN shall make payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted in compliance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

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

IV. Revisions of the Scope of Services

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

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

V. Term

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

VI. Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

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

Steve P. Allen,
Utility Services Manager

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6406 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:

Steve P Allen
Utility Services Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6606 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:

Nick Landes, P.E.
Process Engineer
Freese and Nichols, Inc.
4055 International Plaza
Suite 200
Fort Worth, Texas 76109
817-735-7300 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:
Freese and Nichols, Inc.

CONSULTANT:
Freese and Nichols, Inc.

By: [Signature]
Name: WILL ALLANACH
Title: RISK MANAGER

Date Signed: 1-24-2019

State of Texas §
 §
County of Tarrant §

This instrument was acknowledged before me on the 24th day of January, 2019, by WILL ALLANACH in his capacity as Vice President of Freese and Nichols, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **Freese and Nichols, Inc.**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 24th DAY OF Jan, 2019.

My Commission Expires 01/08/2023



[Signature]
Notary Public, State of Texas

ATTACHMENT A
SCOPE OF SERVICES
Distribution System Residual Control Improvements

Freese and Nichols, Inc. (FNI) agrees to render services necessary for the development and completion of the Project as outlined herein.

ARTICLE I

PROJECT UNDERSTANDING

Freese and Nichols, Inc. (FNI) understands that the Town of Flower Mound (Town) is seeking design and construction phase services for residual control system improvements at the Town's Bruton-Orand Elevated Storage Tank (EST) to increase and maintain chloramine residuals in the tank's bowl and nearby vicinity. The improvements will include chemical storage and containment systems; chemical metering pumps; and a residual control system inclusive of instrumentation and SCADA connectivity. A UGSI/PAX mixing system was previously installed in the EST. To maintain compatibility between the existing mixing system and the proposed residual control system, the Town has decided to utilize UGSI/PAX to provide a turnkey installation of the proposed residual control improvements. Chloramine residual boosting will be accomplished using liquid sodium hypochlorite as the chlorine agent and liquid ammonium sulfate (LAS) (38%) as the ammonia agent, both of which will be stored inside the EST's pedestal.

FNI will develop a technical memorandum (TM) describing the basis of design and comparing two options for liquid sodium hypochlorite provision: (1) onsite generation of 0.8% hypochlorite and (2) 12.5% hypochlorite bulk storage in either totes or permanent storage tanks. The TM will include an evaluation of capital, operating and life-cycle costs as well as non-monetary factors such as safety and ease-of-operation.

Upon selection of the sodium hypochlorite provision method, FNI will develop documents for TCEQ plan and specifications review including performance specifications for the necessary equipment as well as plan and section drawings.

FNI will develop an exceptions request packet for submittal to TCEQ, which will include the necessary exceptions requests, the Basis of Design TM, performance specifications and drawings. Once the exceptions request is approved, FNI will submit the plans and specifications to TCEQ for approval to construct.

FNI will provide construction phase services including general representation to review shop drawings and inspect the installation.

Basic services assume that 12.5% bulk sodium hypochlorite was selected and that the project will be sole-sourced with UGSI/PAX providing a turnkey installation with no components of the project being competitively bid. The scope and fee for this project is based on the understanding that the Town will negotiate pricing and coordinate contract execution directly with UGSI/PAX. The Special Services section of the scope details three levels of engineering services should onsite generation of 0.8% sodium hypochlorite be selected instead of bulk sodium hypochlorite.

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

Task A: General Meetings and Project Management

- A1. General project management and coordination: FNI will perform general administrative duties associated with the project including progress monitoring, scheduling, general correspondence, office administration and invoicing for the scope items identified below. These duties include maintaining routine contact with the Town to help meet the needs of the Town in a timely manner and executing the work in accordance with the scope, budget, and schedule.
- A2. Kick-off meeting: A kick-off meeting will be conducted to review the scope of work, schedule, project goals, and data requirements. A site visit to the Bruton-Orand EST will be conducted in conjunction with the kick-off meeting.

Task B: Design Phase Services

- B1. Develop Draft Basis of Design TM: FNI will develop a Basis of Design TM that documents the minimum, average and maximum chlorine/ammonium dosing rates; sizes equipment based on dosing rates, compares onsite hypochlorite generation versus bulk delivery and storage; describes the residual control system; and provides recommendations. The comparison of hypochlorite options (onsite generation and bulk delivery) will include an evaluation of capital, operating and life-cycle costs as well as non-monetary factors such as equipment footprint, equipment siting, product stability, safety and ease-of-operation.
- B2. Draft Basis of Design TM submittal and draft review meeting: FNI will submit three (3) hard copies and an electronic PDF of the draft Basis of Design TM to the Town for comment and review. FNI will conduct a draft review meeting of the TM with the Town.
- B3. Drawing development: FNI will develop plan and section views of the EST with the proposed mechanical equipment. It is assumed that record drawings for the Bruton-Orand EST will be provided by the Town, and FNI will develop no electrical drawings. Basic services will assume that bulk storage of 12.5% sodium hypochlorite is selected.
- B4. Specification development: FNI will develop a performance specification for the UGSI/PAX Residual Control System (RCS) and mixing system that is proposed for installation. Additionally, specifications for chlorine and ammonia storage will be developed. Basic services will assume that bulk storage of 12.5% sodium hypochlorite is selected.
- B5. Draft plans and specification submittal to the Town: Before submitting to TCEQ, FNI will submit three (3) hard copies and an electronic PDF of the plans and specifications to the Town for comment. Hard copies of the plans will be submitted as half-size drawings (11"x17"). No meeting will be held to discuss the draft plans and specifications.
- B6. TCEQ Exceptions Request submittal: FNI will develop an Exceptions Request packet to cover the absence of day storage tanks, the lack of an intermediate sample port between chlorine and ammonia injection, and if necessary, a bottom penetration of double-walled containment

chemical storage tanks. FNI will submit one (1) hard copy of the Exceptions Request packet to TCEQ and an electronic PDF to the Town.

- B7. TCEQ plans and specifications submittal and follow-up: FNI will submit the sealed plans and specifications to TCEQ, notify TCEQ of construction initiation and notify TCEQ of substantial completion. FNI will submit one (1) hard copy of the plans and specifications to TCEQ and three (3) hard copies and an electronic PDF to the Town. Hard copies of the plans will be submitted as half-size drawings (11"x17").

Task C: Construction Phase Services

- C1. General Representation: FNI will review shop drawings and conduct installation inspection. FNI will endeavor to protect Owner in providing these services however, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.
- C1. Site Visits: FNI will conduct one (1) site visit during construction and one (1) site visit will be conducted to confirm construction was completed in substantial accordance with the TCEQ approved plans and specifications.

SPECIAL SERVICES: Special Services to be performed by FNI, if authorized by OWNER, which are not included in the above described basic services, are described as follows:

- A. Additional effort required for the development of drawings and specifications for onsite hypochlorite generation beyond that required for drawings and specifications associated with 12.5% hypochlorite storage as described in the basic services.
- B. Additional effort required to develop full contract documents and bid phase services for competitively bidding the construction and installation services beyond that described in basic services and Special Services Task D.

ARTICLE II

ADDITIONAL SERVICES: Additional Services to be performed by FNI, if authorized by OWNER, which are not included in the above described basic services, are described as follows:

- A. Field surveying required for the preparation of designs and drawings.
- B. Making property, boundary and right of way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.

- C. Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Owner or 2) due to other causes not solely within the control of FNI.
- D. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- E. Preparing Operation and Maintenance Manuals or conducting operator training.
- F. Preparing data and reports for assistance to Owner in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- G. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- H. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- I. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Owner.
- J. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- K. Provide Geotechnical investigations, studies and reports.
- L. Provide Electrical or Instrumentation design services.

ARTICLE III

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services within the following schedule:

Task B2: Draft Basis of Design TM	4 weeks from Notice to Proceed
Task B5: Submit Plans and Specifications to Town	4 weeks from finalizing Basis of Design TM
Task B6: Submit Exceptions Request to TCEQ	2 weeks from finalizing plans and specifications
Task B7: Submit Plans and Specifications to TCEQ	1 week from receiving TCEQ approval for the Exceptions Request

COMPENSATION

Compensation to FNI for Basic Services in Attachment A shall be computed on the basis of the Schedule of Charges, but shall not exceed Sixty-Five Thousand Dollars (\$65,000.00). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment A, FNI will notify TOWN for TOWN's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

<u>Position</u>	<u>Min</u>	<u>Max</u>
Professional 1	79	125
Professional 2	102	150
Professional 3	130	208
Professional 4	141	246
Professional 5	196	305
Professional 6	206	374
Construction Manager 1	83	164
Construction Manager 2	113	170
Construction Manager 3	161	192
Construction Manager 4	172	259
CAD Technician/Designer 1	62	121
CAD Technician/Designer 2	98	142
CAD Technician/Designer 3	115	188
Corporate Project Support 1	46	110
Corporate Project Support 2	66	155
Corporate Project Support 3	89	242
Intern / Coop	42	73

Rates for In-House Services**Technology Charge**

\$8.50 per hour

Travel

Standard IRS Rates

Bulk Printing and Reproduction

	<u>B&W</u>	<u>Color</u>
Small Format (per copy)	\$0.10	\$0.25
Large Format (per sq. ft.)		
Bond	\$0.25	\$0.75
Glossy / Mylar	\$0.75	\$1.25
Vinyl / Adhesive	\$1.50	\$2.00
Mounting (per sq. ft.)	\$2.00	
Binding (per binding)	\$0.25	

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and rates will be adjusted annually in February. Last updated February 2018.



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: March 4, 2019

FROM: Blake Hummel, PE, Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with Halff Associates, Inc. for the design phase services associated with the FM2499 at Waketon Road Intersection Improvements project in the amount of \$173,450.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The FM2499 at Waketon Road Intersection Improvements project includes the installation of four right turn lanes located at the northbound, southbound, eastbound and westbound sections of the FM2499 and Waketon Road intersection. The northbound and southbound right turn lanes will be 265' in total length each, meeting the Town's Access Management Policy and Criteria. The eastbound and westbound right turn lanes will be 160' in total length each, again conforming to the Town's Access Management Policy and Criteria. The reconstructed pedestrian curb ramps will be installed at 8' widths for the east side of FM2499 and north side of Waketon Road for future extension of the Town's Master Planned 8' Multi-Use Trail. Intersection traffic signaling will need to be reconstructed with the construction of the new right turn lanes and is included within the proposal. Sections of work within the TxDot ROW will obtain all proper permitting prior to construction.

The scope of the professional services agreement includes the preparation of design surveys, subsurface utility engineering, design plans, contract specifications, and record drawings.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$173,450.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$173,450.00	308-220-20240

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 Service Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
HALFF ASSOCIATES, INC.**

This contract is entered into on this 4th day of March, 2019, 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 **Halff Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 4000 Fossil Creek Blvd., Fort Worth, TX 76137.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the FM2499 at Waketon Road Intersection Improvements 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 FM2499 at Waketon Road Intersection Improvements project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”). Attachment “A” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred Seventy-Three Thousand Four Hundred Fifty and No/100 Dollars (\$173,450.00). 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

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:

Blake Hummel, P.E.,
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6301 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:

Blake Hummel, P.E.,
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6301 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:

Ben L. McGahey, P.E.
Director of Public Works, Fort Worth
Halff Associates, Inc.
4000 Fossil Creek Boulevard
Fort Worth, Texas 76137
817-764-7471 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.

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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:
Halff Associates, Inc.

By: B. L. McGahey
Name: BENJAMIN L. MCGAHEY
Title: DIRECTOR OF PUBLIC WORKS, FORT WORTH OFFICE

Date Signed: FEBRUARY 11, 2019

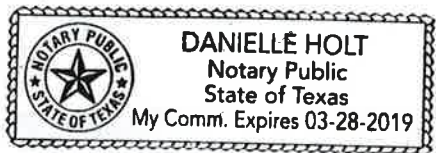
State of Texas §
 §
County of Tarrant §

This instrument was acknowledged before me on the 11th day of February, 2019, by Benjamin L. McGahey in his capacity as Director of Public Works, Fort Worth Office of Halff Associates, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Halff Associates, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 11TH DAY OF FEBRUARY 2019.

Danielle Holt
Notary Public, State of Texas

My Commission Expires:
March 28, 2019



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: FM 2499 and Waketon Road Intersection Improvements

PROJECT UNDERSTANDING

The objective of this project is to provide additional capacity at the intersection of FM 2499 and Waketon Road. To achieve this goal the Town intends to design, and construct dedicated right-turn lanes on each leg of the intersection. Improvements include pavement, drainage, water and wastewater adjustments, accessible ramps, traffic signal, retaining wall, pavement markings and signage.

ASSUMPTIONS

- No State (TxDOT) or Federal funding is being utilized. Construction of the project will be managed and inspected by the Town of Flower Mound. Neither Flower Mound nor Halff will be required to follow TxDOT's Local Government Project Procedures.
- A TxDOT permit will be required for FM 2499 improvements. It is assumed Form 1058 - Permit to Construct Access Driveway Facilities on Highway Right-of-Way will be acceptable for the proposed improvements.
- Although TxDOT must approve the proposed design, Flower Mound's turn lane design criteria is assumed to be acceptable to TxDOT and will be utilized. If not acceptable to TxDOT, additional survey and engineering fees may be necessary to accommodate the longer turn lanes.
- The Town of Flower Mound's Parks & Trails Master Plan identifies future 8-foot wide multi-use trails along the east side of FM 2499 and north side of Waketon Road. Accessible ramps at the intersection shall be designed to allow these trail connections to be made in the future. Embankment will also be provided along the east side of FM 2499 south of Waketon Road.
- No right-of-way documents are included in this Scope of Work. As directed by the Town, existing right-of-way will be utilized on the southeast corner. The Town is in the process of acquiring additional right-of-way on the northeast corner from Kenneth G. Whyburn. Additional right-of-way is planned to be dedicated by the Developers of both the northwest and southwest corners.
- It appears that approximately 22 feet of parkway exists on the southeast quadrant. A 12-foot wide travel lane and future 8-foot wide multi-use trail will reduce the parkway width to 2 feet requiring a retaining wall to be constructed. There are existing 12-inch wastewater and 8-inch water lines located within the parkway. It appears the 8-inch water line will require relocation to avoid conflicting with the retaining wall footing. The relocation of the water line is included in this Scope of Work. Since the water line is less than 12 inches in

diameter, a profile is not included in this Scope of Work. Wastewater line relocations are not included with this Scope of Work.

- Except for the 8-inch water line along the southeast quadrant, only water valve, fire hydrant and sanitary sewer manhole adjustments are necessary for the project. No new water or wastewater improvements are included with this Scope of Work.
- As discussed with the Town, the retaining wall located on the northwest corner can be removed where the proposed right-turn lane is to be located. Embankment may be sloped down to existing at a 4:1 slope. It is anticipated the proposed development will accept this solution.
- Geotechnical soil boring logs from the construction of FM 2499 will be utilized for this project. No additional soil borings are included in this Scope of Work.
- No temporary traffic signal design is included in this Scope of Work.
- A Drainage Area Map is not included in this proposal. The Drainage Area Maps from FM 2499 (CSJ 2681-01-016) will be provided for reference only.
- The sizes of curb inlets and storm drain lines being relocated will match existing.

SCOPE OF PROFESSIONAL SERVICES

TASK 1: DESIGN SURVEYS

Halff shall provide surveying services, which, in general, may be defined as normal services applicable to a project of this type. The following particulars apply.

- A. Vertical benchmarks shall be established such that all points of construction shall be within 500 feet of a benchmark. Benchmarks should not be subject to loss during construction. Fire hydrants and similar appurtenances are not to be used for benchmarks. The surveyor shall establish temporary benchmarks throughout the length of the project.
- B. Topographic features will be surveyed along with any other features needed for design, review, permitting, construction, and inspection of the project. Coverage will extend beyond the proposed improvements far enough to integrate the design with the adjacent properties. This scope of work includes a complete topographic survey of the FM 2499 and Waketon Road intersection extending approximately 500 LF in each direction.
- C. Existing property corners, iron pins, etc. shall be tied to establish existing property boundaries and rights-of-way. Prior to surveying on private property, the surveyor shall secure written permission from the property owners and/or tenant and shall provide the Town a copy of said written permission. Should only oral permission be

granted, the surveyor shall document the permission granted by letter to the property owner/tenant, with a copy to the Town. If permission cannot be obtained, the Town may assist, or other arrangements will be worked out.

TASK 2: SUBSURFACE UTILITY ENGINEERING

Halff shall provide subsurface utility engineering services, (SUE) in accordance with ASCE CI/ASCE 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data." Halff's services will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances. The following particulars will apply.

- A. Records Research (Level D) - Available Records for Town of Flower Mound will be provided to Halff by the Town of Flower Mound.
- B. Surveying (Level C) - The designating work (paint marks, pin flags, and all above ground utility appurtenances) and locating work (iron rod with cap or "x-cut") will be surveyed and tied to the project survey control as part of the Design Scope.
- C. Designating (Level B) - Halff will designate tonable subsurface utilities using geophysical prospecting equipment and mark with paint and/or pin flags within the limits of the proposed FM 2499 and Waketon Road intersection improvements. We anticipate designating gas, traffic signal, electric and communication lines. Designating irrigation lines, asbestos concrete and/or PVC lines, as well as PVC lines without tracer wire or access is not included in this proposal.
- D. Locating (Vacuum Excavation) (Level A) - Up to five (5) test holes will be performed at locations to be determined later by the Town of Flower Mound and/or Halff's Design Engineer. Halff will dig a 12" x 12" test hole, record the depth, backfill and compact the hole, and restore the surface to its original condition. An iron rod with cap or "x-cut" will be set to mark the location of the test hole. If additional test holes are required, Halff will perform the work and bill at the unit rate shown in Exhibit B. Additional test holes will not be performed without prior approval. Halff will make a good faith effort to locate all utilities but shall be compensated for work performed even if the utility is not located.
- E. SUE Deliverables - A hand drawn Test Hole Data Form will be completed for each hole performed indicating depth, size, condition, and material of the utility. Test holes will be surveyed as part of the design survey task.
- F. Traffic Control - Halff will provide routine/ordinary traffic control consisting of cones and free-standing signage for this project. It does not include lane closure(s), flag person(s), arrow board(s) and changeable message board(s).

TASK 3: DESIGN PHASE SERVICES

A. Project Management and Coordination

Halff's project management activities shall include task leadership and direction, telephone and written communication, project update meetings, presentation of process and findings, and personnel and data management among other general project management activities. Specific project management and coordination tasks are detailed below:

- Conduct one (1) project kick-off meeting with the Town of Flower Mound to confirm and clarify project scope, schedule, Town objectives, and expected project delivery.
- Conduct one (1) project kick-off meeting with TxDOT to discuss turn lane design criteria and permit application.
- Communicate regularly with the Town regarding project progress.
- Attend project update meetings, as needed, with the Town's Project Manager.
- Attend review meetings with the Town at the end of each design phase.
- Ensure Quality Control/Quality Assurance (QA/QC) is practiced in performance of the work.

B. Data Collection and Field Reconnaissance

- Perform field assessment of the proposed corridor and prepare a photographic record of major features.
- Obtain master plans, record drawings and other records from the Town and TxDOT.

C. Preparation of Contract Documents

Halff shall develop construction plans for review, permitting, bidding, construction, inspection and record keeping. In general, construction plans shall be consistent with normal practice for projects of this nature. The construction plans will consist of sheets generally ordered as follows:

- Title Sheet – The title sheet shall include a location map. It shall also include a sheet index with drawings numbered consecutively and without subscripts. Additionally, the title sheet shall show the project name, project number, date, Town logo, Consultant's name, address, and telephone number and other items as may be specified.
- Project General Notes and Legend – These sheets will include a listing of abbreviations, legend, and general notes.

- Project Layout Sheet – The purpose of the project layout is to depict the project in a simplified view. Major items of work will be shown without excessive detail. This sheet(s) will include a listing of abbreviations, legend, general notes, and key map.
- Typical Sections – At a minimum, typical sections will be drawn showing the relationship of the existing streets and proposed right-turn lanes. Typical sections will include right-of-way lines, fences, utilities, and all proposed improvements.
- Paving Plan Sheets – Paving plan sheets will be arranged from with the north arrow up or to the right on the sheet. Plan sheets will be drawn having a scale of 1" = 20'. Stationing will match FM 2499 stationing (CSJ 2681-01-016). Each plan sheet will include no more than 500 feet street; thus, leaving ample margins both left and right. Plan sheets shall depict all existing and proposed items pertinent to the project.
- Grading Plan Sheets – Grading plan sheets will follow the same layout as the Paving Sheets. Plan sheets will be drawn having a scale of 1" = 20'. One-foot contours and adequate spot elevations will be provided to allow a contractor to grade the project.
- Accessible Ramp Grading Plan Sheets – Additional grading plan sheets will be provided detailing the accessible ramp grading at each corner of the intersection.
- Traffic Signal Plan Sheets – Sheets will include existing signal layout, proposed signal layout, and signal phasing and charts.
- Utility Layout Sheets – Town-owned utility adjustments to existing water and sanitary sewer systems will be provided.
- Detail Sheets – TxDOT and the Town of Flower Mound's standard drawings will be used as a beginning point in developing standard details for this project. They will be reviewed and modified as necessary for this project.
- Miscellaneous – Construction plans will also address retaining walls, temporary and permanent erosion control, traffic control, pavement markings, signage and demolition.
- Generic Sheet List – Following is a general list of plan sheets required for the construction package.
 - o Cover Sheet
 - o Sheet Index and Legend
 - o Project General Notes
 - o Project Layout and Survey Control Sheet
 - o FM 2499 Typical Sections
 - o Waketon Road Typical Sections
 - o Demolition Plans

- o Paving Plans
 - o Paving Details (Town & TxDOT)
 - o Grading Plans
 - o Grading Plans (Accessible Ramp Detailed Grading)
 - o Retaining Wall Plan and Profile
 - o Retaining Wall Sections and General Notes
 - o Retaining Wall Details (Special and TxDOT)
 - o FM 2499 Drainage Area Maps (for reference only)
 - o FM 2499 Design Computations (for reference only)
 - o Storm Drain Plan & Profiles (FM 2499 Laterals E2, E3, E4, E4A, E5, E7 and E8)
 - o Storm Drain Details (TxDOT)
 - o Water and Wastewater Adjustment Plans
 - o Water and Wastewater Details (Town)
 - o Signal General Notes and Quantity Summary
 - o Existing Signal Layout and Removals
 - o Proposed Signal Layout
 - o Signal Phasing and Charts
 - o Signal Layout Details (NW, SW, NE and NW corners)
 - o Signal Details (TxDOT)
 - o Pavement Marking Plan
 - o Pavement Marking Details (Town & TxDOT)
 - o Signage Plan
 - o Signage Details (Town & TxDOT)
 - o Erosion Control Plans
 - o Erosion Control Details (Town & TxDOT)
 - o Traffic Control Plans
 - o Traffic Control Details (TxDOT)
- Submittals – Plans shall be prepared and submitted at the 30%, 60% and 90% milestones, respectively. Final plans shall then be prepared and submitted at the 100% milestone. Also, Halff may submit plan sheets or working drawings to the Town for review and comment to reduce the number of revisions that otherwise would be required. During development of the plans, Halff shall attend meetings as needed. Halff shall, in company with the Town, perform at least one plans-in-hand review. Halff shall submit construction plans and permit application to TxDOT for approval to allow improvements in TxDOT right-of-way.
 - Design – The design of the project shall be in general accordance with the Town of Flower Mound ordinances, standard details, and good engineering practices. During the design phase, Halff shall contact various utility companies and obtain

information relating to existing utility lines. The design should avoid major utility relocations, where practical. When required, proposed relocations or replacements will be shown in plan and profile.

- Specifications – Halff shall prepare a project manual and technical specifications required for bidding and constructing the project. The project manual will be provided in the Town's standard format. Only TxDOT specifications and specifications amending or supplementing North Central Texas Council of Governments (NCTCOG) specifications need be furnished. Project manual, specifications, bid items and quantities shall be furnished on hard copy and by electronic file.
- Estimates – An opinion of probable construction cost (OPCC) will be developed at each milestone submittal.
- TxDOT and Franchise Utility Coordination – Halff will attend all meetings necessary to complete the project. This includes meeting with individual franchise utility companies and TxDOT to support coordination efforts and resolve issues, if necessary.
- Prints – Electronic files in PDF format and up to five (5) sets of half-size (11"x17") plans will be submitted to the Town at each milestone.

TASK 4: BIDDING PHASE SERVICES

- A. Bid Contract Documents and Specifications – Five (5) sets of final construction plans (11"x17") and specifications will be provided for bidding purposes.
- B. Issue Addenda – Prepare addendums for clarifications to the contract documents and answer Contractors' questions.
- C. Prebid Meeting – Attend and prepare for prebid meeting.
- D. Construction Contract Documents and Specifications – Prepare final construction contract documents for selected Contractor. Provide five (5) half-size (11"x17") sets of conformed plans, one (1) full-size (22"x34") set of conformed plans and a PDF file.

TASK 5: RECORD DRAWINGS

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

- B. Provide to the Town one (1) CD containing AutoCAD (*.DWG) and PDF (entire set) files.

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 Halff can provide include, but are not limited to, the following:

- TxDOT LGPP services for State or Federally funded projects
- Landscaping and irrigation design
- Construction staking
- Preparation of easement documents or other surveying services not identified in the above Scope of Services
- Easement acquisition services
- Design of franchise utility relocations
- Water or wastewater design not identified in the above Scope of Services
- Attending public meetings
- Professional services associated with the construction phase of the project
- Attending the bid opening
- Preparation of bid tabulation or recommendation letter
- Reviewing contractor references
- Environmental assessments
- Traffic studies
- Any services not listed in the Scope of Services

ATTACHMENT B**COMPENSATION**

Halff Associates, Inc. will provide the Scope of Services for a lump sum fee.

TASK 1 – Design Surveys	\$ 7,000
TASK 2a – Subsurface Utility Engineering (Level B)	\$ 9,900
TASK 2b – Subsurface Utility Engineering (Level A – \$1,350/EA)	\$ 6,750
Task 2c – Traffic Control for SUE	\$ 4,800
TASK 3 – Design Phase Services	\$140,000
TASK 4 – Bidding Phase Services	\$ 3,000
TASK 5 – Record Drawings	\$ 2,000
<u>TOTAL</u>	<u>\$173,450</u>

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

ATTACHMENT C

SCHEDULE

- A. Completion of Data Collection, Survey and SUE Level "B": 45 calendar days from date of written authorization to begin work.
- B. Completion/furnishing 30% conceptual design plans and construction cost estimate: 120 calendar days from date of written authorization to begin.
- C. Completion/furnishing 60% preliminary plans and construction cost estimate: 180 calendar days from date of written authorization to begin, excluding Town review time.
- D. Completion/furnishing 90% final plans, specifications, bid quantities, and construction cost estimate: 240 calendar days from date of written authorization to begin, excluding Town review time.
- E. Completion/furnishing 100% final plans, specifications, bid quantities, and construction cost estimate: 270 calendar days from date of written authorization to begin, excluding Town review time.
- F. Bidding Services: In accordance with the Town's bidding schedule.
- G. Record Drawings: 30 calendar days from receipt of contractor's marks.

ATTACHMENT "D"
(SUPPLEMENT TO ATTACHMENT "B")
FM 2499 AND WAKETON ROAD INTERSECTION IMPROVEMENTS
TOWN OF FLOWER MOUND
ESTIMATED EFFORT

Project Phases and Tasks	Director	Sr. Project Manager	Project Manager	Engineer in Training	Sr. Sr. Engineer	Sr. Engineer	RPLS	2-Man Survey Crew	Survey Technician	CADD Technician	Designating 1-Man Crew	Designating 2-Man Crew	SUE Manager	SUE Field Manager	Clerical/ Administrative Support	Effort Subtotal	Fee Subtotal	Direct Costs	Project Total
Special Services																			
Design Surveys				2			2	32	16							52	\$7,000		\$7,000
SUE Level "A" (\$1,350 / Each)																72	\$6,750		\$6,750
SUE Level "B"			2				1	10	2	8	10	27	4	8			\$9,900		\$9,900
Traffic Control for SUE																	\$4,800		\$4,800
Subtotal Special Services			2	2			3	42	18	8	10	27	4	8		124	\$28,450		\$28,450
Basic Services																			
Project Kick-off Meeting (Town)			3	3												6	\$800		\$800
Project Kick-off Meeting (TxDOT)			3	3												6	\$800		\$800
Review Meetings (30%, 60% & 90%)			9	9												18	\$2,300		\$2,300
QA/QC (30%, 60% & 90%)																24	\$6,200		\$6,200
Field Assessment			4	4												8	\$1,000		\$1,000
Cover Sheet (1)		0.25	0.5	2						1						3.75	\$500		\$500
Sheet Index and Legend (1)		0.5	2	4						1						7.5	\$1,000		\$1,000
Project General Notes (1)		0.5	2	4						1						7.5	\$1,000		\$1,000
Project Layout and Survey Control Sheet (1)		1	4	12						2						19	\$2,500		\$2,500
FM 2499 Typical Sections (1)		1	4	12						2						19	\$2,500		\$2,500
Waketon Road Typical Sections (1)		1	4	12						2						19	\$2,500		\$2,500
Demolition Plans (4)		2	8	24						5						39	\$5,000		\$5,000
Paving Plans (4)		4	16	32						10						62	\$8,000		\$8,000
Paving Details (TxDOT and Town)		0.5	2	4						1						7.5	\$1,000		\$1,000
Grading Plans (4)		4	16	32						10						62	\$8,000		\$8,000
Grading Plans - Accessible Ramp Detailed Grading (4)		2	8	16						5						31	\$4,000		\$4,000
Retaining Wall Plan & Profile (1)		0.5	2		2	12				12						28.5	\$4,000		\$4,000
Retaining Wall Sections & General Notes		0.5	0.5		1	12				12						26	\$3,500		\$3,500
Retaining Wall Details (Special & TxDOT)		0.5	0.5		1	10				10						22	\$3,000		\$3,000
FM 2499 Drainage Area Maps (for reference only)(4)		0.25	0.5	2						1						3.75	\$500		\$500
FM 2499 Design Computations (for reference only)(1)		0.25	0.5	2						1						3.75	\$500		\$500
Storm Drain Plan & Profiles (3)		4.5	18	36						11						69.5	\$9,000		\$9,000
Water and Wastewater Adjustment Plans (4)		2	8	16						5						31	\$4,000		\$4,000
Water and Wastewater Details		0.25	0.5	2						1						3.75	\$500		\$500
Signal General Notes and Quantity Summary (1)		2	8	16						5						31	\$4,000		\$4,000
Existing Signal Layout and Removals (1)		2	8	16						5						31	\$4,000		\$4,000
Proposed Signal Layout (1)		2	8	16						5						31	\$4,000		\$4,000
Signal Phasing and Charts (1)		2	8	16						5						31	\$4,000		\$4,000
Signal Layout Details (4)		2	8	24						5						39	\$5,000		\$5,000
Signal Details (TxDOT)		0.5	2	4						1						7.5	\$1,000		\$1,000
Pavement Marking Plan		2	8	16						5						31	\$4,000		\$4,000
Pavement Marking Details (TxDOT and Town)		0.5	2	4						1						7.5	\$1,000		\$1,000
Signage Plan		2	8	16						5						31	\$4,000		\$4,000
Signage Details		0.5	2	4						1						7.5	\$1,000		\$1,000
Erosion Control Plans		2	8	16						5						31	\$4,000		\$4,000
Erosion Control Details		0.25	0.5	2						1						3.75	\$500		\$500
Traffic Control Plans		2	8	24						5						39	\$5,000		\$5,000
Traffic Control Details (TxDOT)		0.5	2	4						1						7.5	\$1,000		\$1,000
30%, 60% & 90% Plan Review Comment Log			2	6												8	\$1,000		\$1,000
Quantities and Cost Estimates		2	4	12												18	\$2,400		\$2,400
Specifications / Project Manual		12	16	8											4	40	\$5,700		\$5,700
Utility Coordination		4	16	32												52	\$6,900		\$6,900
TxDOT Coordination and Permit		4	16	32												52	\$6,900		\$6,900
Reimbursable Expenses (mileage, printing & deliveries, etc.)																		\$2,500.00	\$2,500
Subtotal Basic Services	24	67.75	250.5	499	4	34				143					4	1026.25	\$137,500	\$2,500.00	\$140,000
Bidding and Construction Services																			
Issue Addenda			8	6											2	16	\$2,000		\$2,000
Attend Prebid Meeting			4	4												8	\$1,000		\$1,000
Record Drawings				8						8					1	17	\$2,000		\$2,000
Subtotal Bidding and Construction Services			12	18						8					3	41	\$5,000		\$5,000
PROJECT TOTALS	24	67.75	264.5	519	4	34	3	42	18	159	10	27	4	8	7	1191.25	\$170,950	\$2,500	\$173,450



TOWN COUNCIL AGENDA ITEM NO. 6

REGULAR ITEM

DATE: March 4, 2019

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD18-0012 - Lisanti Cell Tower) to amend Planned Development-135 (PD-135) with Campus Industrial (CI) uses to allow development of a communication tower, to modify the development standards, and request certain modifications and exceptions to the Code of Ordinances as related to the subject property. The property is generally located south of Spinks Road and east of Long Prairie Road. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 25, 2019, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. After the P&Z meeting, staff was informed that the property owner and the applicant are in the process of modifying the final location of the proposed tower and associated equipment compound on the subject property. **Therefore, staff is requesting that this item be tabled for two weeks to allow the two parties to finalize their proposed modification.**

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report

LEGAL REVIEW: N/A

DRAFT MOTION: Move to postpone to March 18, 2019.



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 3 REGULAR ITEM

DATE: February 25, 2019

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for rezoning (ZPD18-0012 - Lisanti Cell Tower) to amend Planned Development-135 (PD-135) with Campus Industrial (CI) uses to allow development of a communication tower, to modify the development standards, and request certain modifications and exceptions to the Code of Ordinances as related to the subject property. The property is generally located south of Spinks Road and east of Long Prairie Road.

I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission. There are no outstanding issues.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this application is to request approval of amendments to Planned Development District No. 135 (PD-135) Specific Use Permit (SUP-451) to allow the construction of a 120-foot-tall communication tower on a 1,600-square-foot internal parcel (land lease from property owner). The subject property contains a total of 24.05 acres. Ordinance No. 46-14 for PD-135 was approved by Town Council on August 4, 2014. PD-135 allows Campus Industrial (CI) District uses and is controlled by a conceptual site plan depicting two warehouse/distribution buildings with a total of 350,000 square feet of floor area. Both buildings have been constructed and are occupied along with associated parking and landscaping.

The concept plan for PD-135 has been updated with this request to depict the 120-foot-tall, self-support tower, associated equipment cabinet, and an eight-foot-tall masonry enclosure and landscaping to be constructed within the above referenced internal parcel. The tower compound is located near the northwest corner of PD-135 and is currently developed with truck trailer parking spaces.

As depicted on the attached elevations, the design is a standard metal monopole with space for three wireless carriers. The conceptual landscape plan provides for required screening for the proposed use. The conceptual elevations will provide for a masonry enclosure with materials to match those on the main buildings.

Section 98-977 of the Code of Ordinances contains additional provisions for the construction of commercial communication towers (see below). All 13 requirements either have been met or will be met through the permitting processes of the Town, the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), and any other governing agencies.

Sec. 98-977. - Communication tower, commercial.

A commercial communication tower shall comply with the following standards:

- (1) Height. The height of commercial communication towers shall be measured from the average grade of the ground adjacent to the base to the highest point on the structure. If located on a building, the height of the tower shall include the height of the building. Commercial communication towers shall not be subject to the height regulations of the district in which they are located, provided that they shall not encroach into or through any established public or private airport approach path as established by the Federal Aviation Administration.
- (2) Setbacks. The principal support structure of all commercial communication towers shall conform to the minimum setback standards of the district in which the use is located. In addition, the following setback standards shall apply to all commercial communication towers:
 - a. Commercial communication towers shall be located so as to provide a minimum distance from the tower to all property lines equal to 20 percent of the height of the tower.
 - b. Commercial communication towers shall be set back a minimum of 50 feet from any existing or planned street right-of-way line.
 - c. Commercial communication towers shall be set back a minimum of 50 feet from any property line adjacent to a residential district.
- (3) Residential districts. When a commercial communication tower is proposed in or adjacent to a residential district, it shall be demonstrated that existing or approved commercial communication towers within the proposed service area cannot accommodate the equipment planned to be located on the proposed commercial communications tower. Factors to be considered in evaluating the practicality of siting a tower would include structural capacity, RF interference, geographic service area requirements, and cost (if fees and costs for sharing would exceed the cost of the new tower).
- (4) Anchor location. Commercial communication tower peripheral supports and guy anchors may be located within required yard setbacks, provided that they shall be located entirely within the boundaries of the property on which the tower is located and shall be located no closer than five feet from any property line and no closer than 20 feet from a property line if the tower is adjacent to a single-family residential district or residential uses. All commercial communication tower supports and peripheral anchors shall be set back a minimum of 50 feet from any existing or planned street right-of-way line.
- (5) Location of accessory structures. All structures accessory to a commercial communication tower, other than peripheral guy anchors, shall conform to the setback standards for the district in which the use is located.
- (6) Fencing. A solid fence or wall of brick, stone or approved masonry construction not less than eight feet in height from finished grade shall be constructed around each commercial communication tower and around each guy anchor, if used. Access to the tower shall be through a locked gate. Barbed wire shall be used

along the top of the fence or wall if it is necessary to preclude unauthorized access to the tower.

- (7) High voltage signs. If high voltage is necessary for the operation of the commercial communication tower and, it is present in a ground grid or in the tower, signs located every 20 feet and attached to the fence or wall shall display in large bold letters the following: "HIGH VOLTAGE - DANGER."
- (8) Landscaping and screening. Commercial communication towers shall comply with the screening requirements of section 82-301 of this Code, residential compatibility standards, subject to the following provisions:
 - a. The landscape screen or wall shall be placed around the perimeter of the tower and any accessory structures, including guy anchors, provided that the screening requirement shall be waived when the base of the tower is not visible from adjacent lots or rights-of-way. Landscaping shall be placed on the outside of fences.
 - b. The requirements of section 82-303 of this Code, compatibility setback, shall not apply to commercial communication towers.
- (9) Additional uses permitted on lot. Commercial communication towers may be located on lots containing another principal use, and may occupy a leased parcel on a lot meeting the minimum lot size requirement of the district in which it is located. Towers and their associated equipment shall be separated from other structures on the lot by a minimum distance of 50 feet.
- (10) Aircraft hazard. Commercial communication towers shall not encroach into or through any established public or private airport approach path as established by the Federal Aviation Administration.
- (11) Shared use. To encourage shared use, all applicants for commercial communication towers shall issue and advertise for a two-week period a request for information (RFI) to obtain information from potential lessors.
- (12) Removal of obsolete facilities. All obsolete or unused commercial communication towers shall be removed within 12 months of cessation of use.
- (13) Radiation standards. A commercial communication tower shall comply with current Federal Communications Commission standards for nonionizing electromagnetic radiation (NIER).

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all Specific Use Permit requests. At the time this report was written, staff had not received any correspondence regarding the request.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent

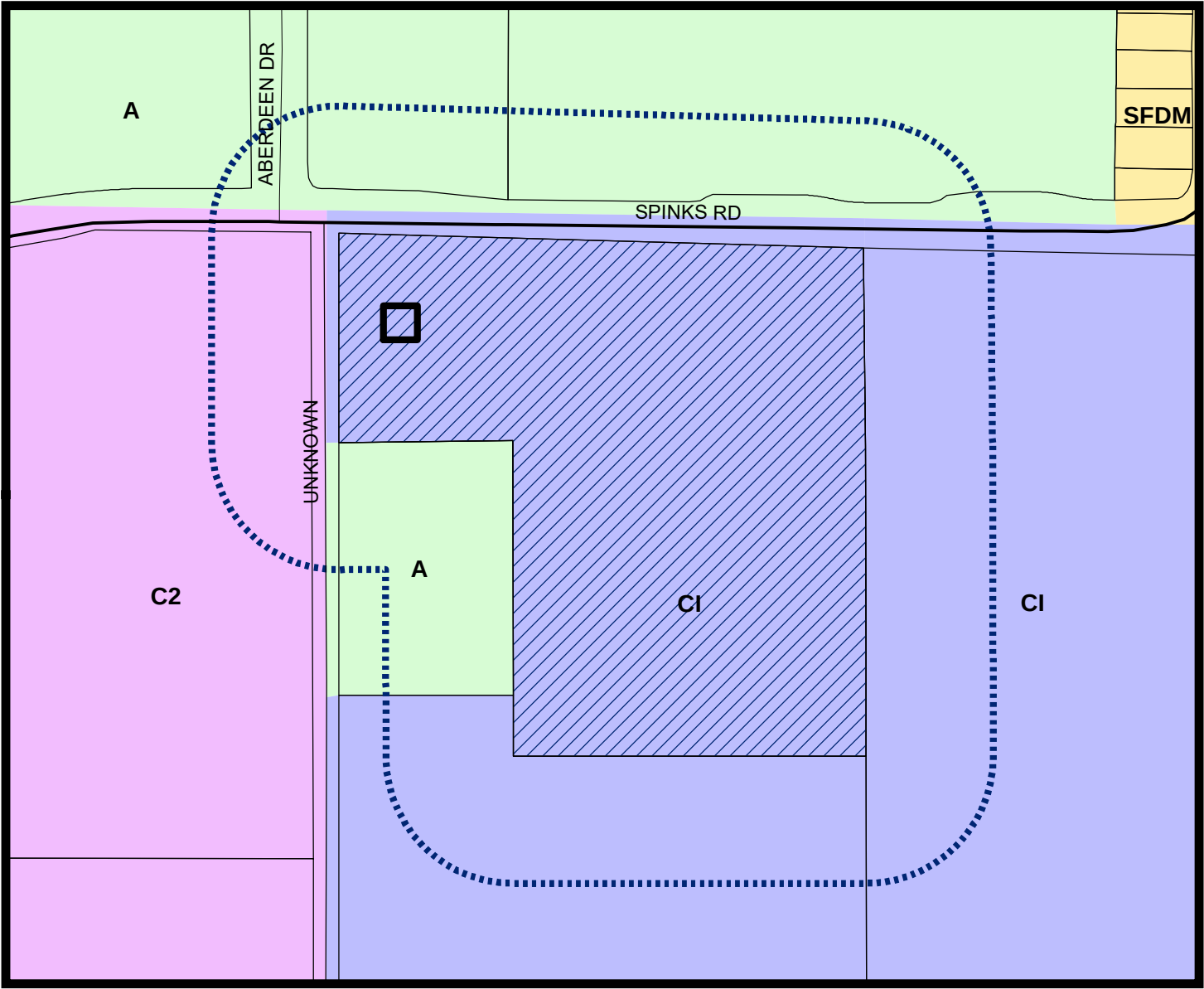
B. Application Details

1. Planned Development Package



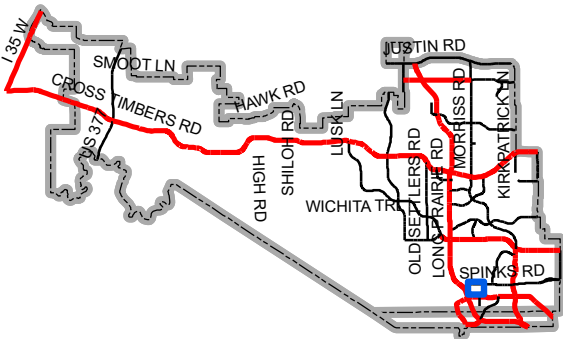
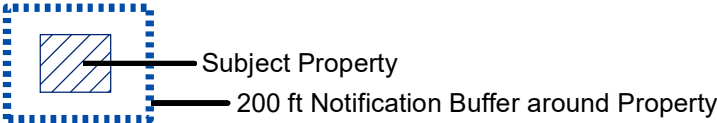
Vicinity Map

Reference Project: ZPD18-0012



LEGEND

- Agriculture
- Campus Industrial
- Commercial 2
- Single Family Density Medium



Map Location



January 29, 2019

The Honorable Members of
The Flower Mound Town Council and The Flower Mound Planning and Zoning Commission
2121 Cross Timbers Road
Flower Mound, TX 75028

RE: ZPD18-0012 Letter of Intent
Amendment of PD135 to allow development of a communication tower at 2010 Lakeside

Dear Members of the Town Council and Planning and Zoning Commission:

American Towers LLC represented by Crafton Communications, Inc, is pleased to submit this Application for Amendment of PD135 to allow development of a 120 FT Monopole Communication Tower with a 40 FT by 40 FT screened and landscaped equipment compound at 2010 Lakeside Parkway. The proposed site is part of a 12.08 Acre Planned Development in PD 135. The parent parcel has a base zoning of CI, Campus Industrial, and is currently developed as a food distribution center. The initial tenant on the communication tower will be Verizon.

The subject study area for this facility is generally bounded by Grapevine Lake on the west and south, Lexington Avenue on the east and Red Oak Lane on the north. Recently, there has been a significant increase in wireless service demand for the very limited capacity in this part of Flower Mound, centering primarily on the intersection of Lakeside Parkway and Long Prairie Road. This proposal is aimed at addressing the concern for better wireless coverage before there is a problem for general purpose calls and emergency calls. One of the attached exhibits, titled "as is", illustrates current signal coverage in the area. Please note the need for improvement in signal coverage, indicated by yellow and purple shading. The second of the signal coverage maps, titled "as improved", shows significant improvement to coverage in the Lakeside commercial area and surrounding neighborhoods made possible by placing the proposed telecommunications site into operation.

This site, being just 500 feet from the original search center is considered a central location, and does a very good job of improving coverage within the entire area. Each new wireless platform in the receiving area will make 911 call location modeling a bit more precise by reducing the size of the geometric areas such models use.

The search for a site was thorough, and it should be noted that there were no opportunities for collocating on existing structures, an option that is much preferred whenever possible. With approval of this site, the Town will be encouraging other telecom carriers to collocate on the American Towers LLC structure.

Finally, American Towers LLC is happy to address the project's land use compatibility. In the area immediately surrounding the site there are light industrial buildings with stucco, rock and other masonry facades, situated on landscaped lots with paved parking. There is also an Oncor Electrical Substation

located just a few feet south of the proposed site. The land use intensity of the Oncor site is significantly greater than the proposed American Towers LLC site. The proposed site will be compatible with this industrial neighborhood. The compound will be surrounded by a stucco covered screening wall matching the color of the primary building on the property and other wall surfaces in the industrial park. Landscaping, matching the quality of the landscaping on the primary building lot, will also surround the wall, softening the overall look of the site and helping to buffer the northern view of the Oncor site.

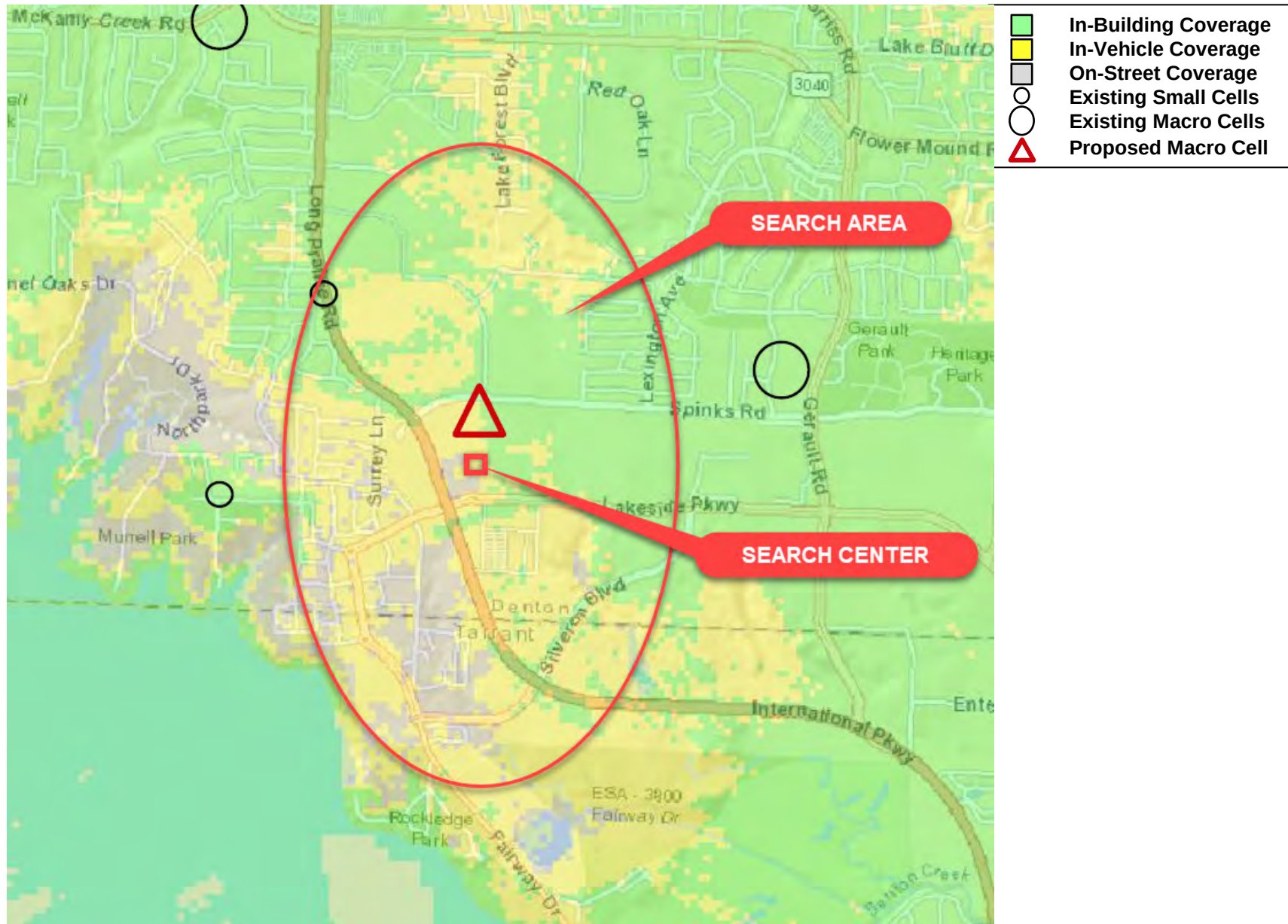
American Towers LLC and Verizon are proud to be of service to the people who call Flower Mound home. This un-manned site will work hard to serve the community without placing any service demand on drainage, water, sewer, schools, parks or roads.

We look forward to visiting with you regarding this project.
Thank you for your thoughtful consideration.

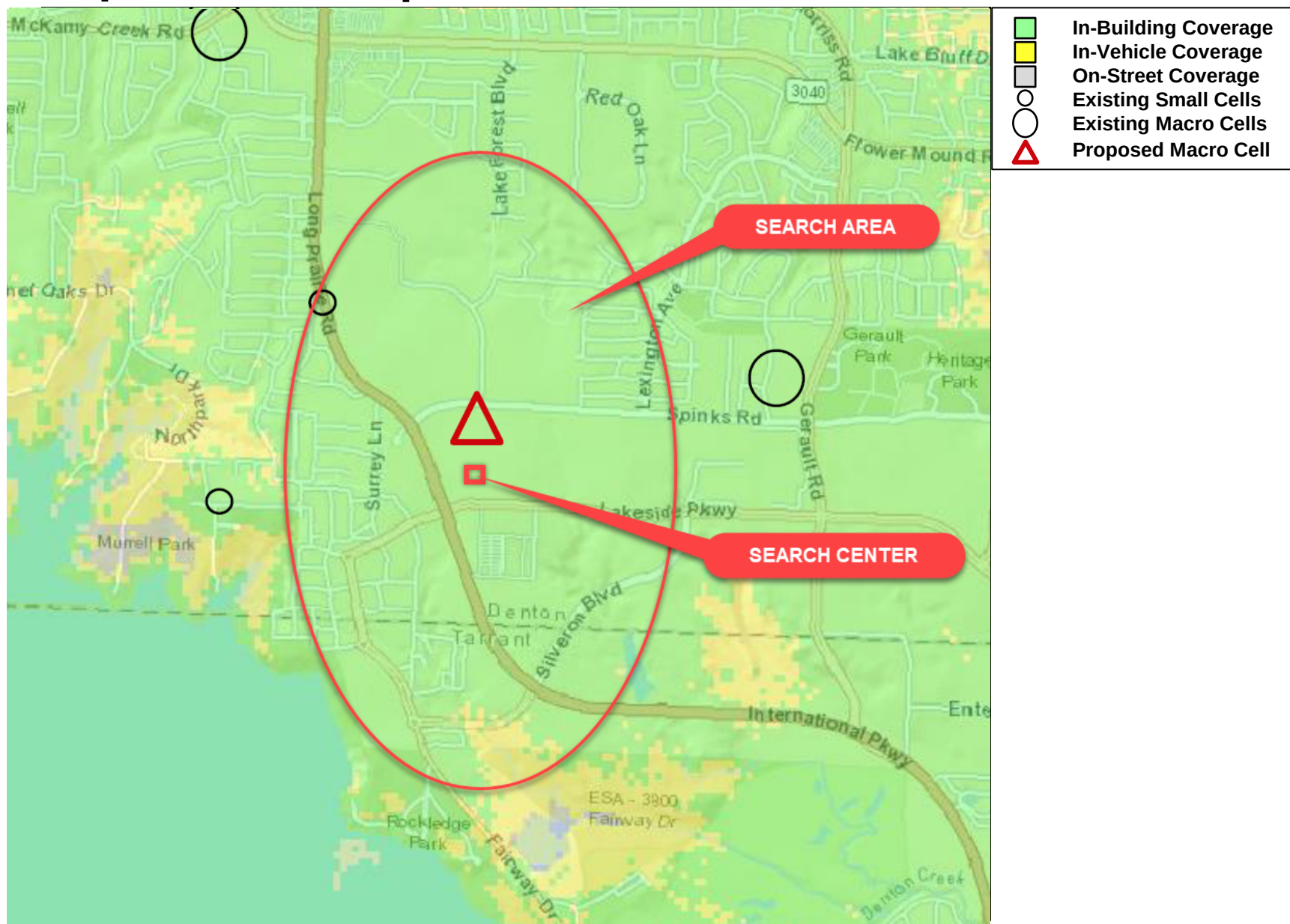
Doug Henderson, AICP
Site Acquisition Contractor
Crafton Communications, Inc.
1870 Crown Drive, Suite 1500
Dallas, TX 75234
817-729-7006

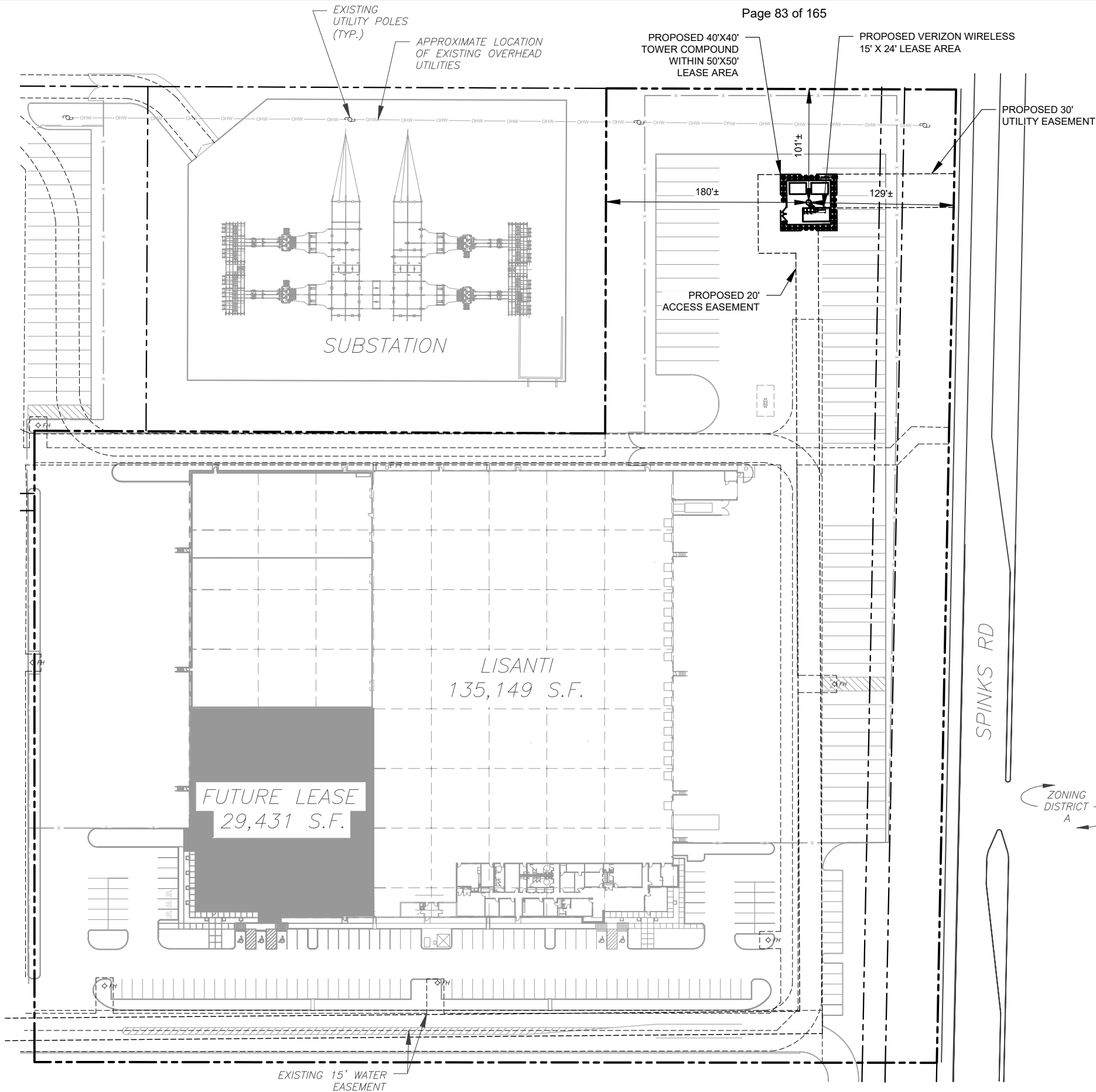
“As Is” Footprint

Page 81 of 165



“As Improved” Footprint





- NOTES:
- BOUNDARY LINES OBTAINED FROM SURVEY PROVIDED BY POINT-TO-POINT LAND SURVEYORS, DATED 08-15-18.
 - ZONING INFORMATION OBTAINED FROM THE TOWN OF FLOWER MOUND ZONING ORDINANCE.

ZONING INFORMATION		
DISTRICT: LAKESIDE BUSINESS DISTRICT / PD135CI		
	REQ'D:	PROP.:
MAX HEIGHT	**	120'
MIN FRONT YARD SETBACK:	50'	129'±
MIN SIDE YARD SETBACK:	50'	101'±
MIN REAR YARD SETBACK:	50'	180'±

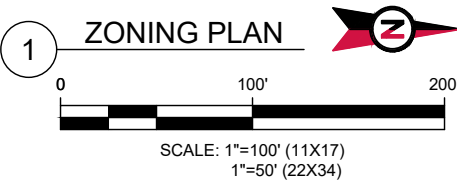
****SEC 98-977 (2) (a) - COMMERCIAL COMMUNICATION TOWERS SHALL BE LOCATED SO AS TO PROVIDE A MINIMUM DISTANCE FROM THE TOWER TO ALL PROPERTY LINES EQUAL TO 20 PERCENT OF THE HEIGHT OF THE TOWER.**

SURVEY LEGEND	
	EXISTING PROPERTY
	EXISTING ADJ. PROPERTY
	EXISTING EASEMENT
	EXISTING CONTOUR (MAJOR)
	EXISTING CONTOUR (MINOR)
	EXISTING TREELINE
	EXISTING CHAINLINK FENCE
	EXISTING BUILDING
	EXISTING STORM DRAIN
	EXISTING ROAD (DIRT)
	EXISTING ROAD (STONE)
	EXISTING ROAD (PAVED)
	EXISTING CONCRETE
	EXISTING LEASE AREA
	EXISTING FIRE HYDRANT
	EXISTING UTILITY POLE

CIVIL LEGEND	
	PROPOSED LEASE AREA
	PROPOSED EASEMENT

PARKING REDUCTION: 6 TRAILER STALLS
EXISTING TRAILER STALLS: 60 -6 = 54 TRAILER STALLS

CASE NUMBER: ZPD18-0012



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REV.	DESCRIPTION	BY	DATE
	FOR CONSTRUCTION	SRF	10/22/18
	UPDATED OVERALL SKETCH	KL	01/24/19

ATC SITE NUMBER:
204065
ATC SITE NAME:
LAKESIDE VILLAGE

SITE ADDRESS:
2010 LAKESIDE PARKWAY
FLOWER MOUND, TX 75028

SEAL:

DRAWN BY:	SRF
APPROVED BY:	KRF
DATE DRAWN:	10/22/18
ATC JOB NO:	12607385

ZONING EXHIBIT PLAN

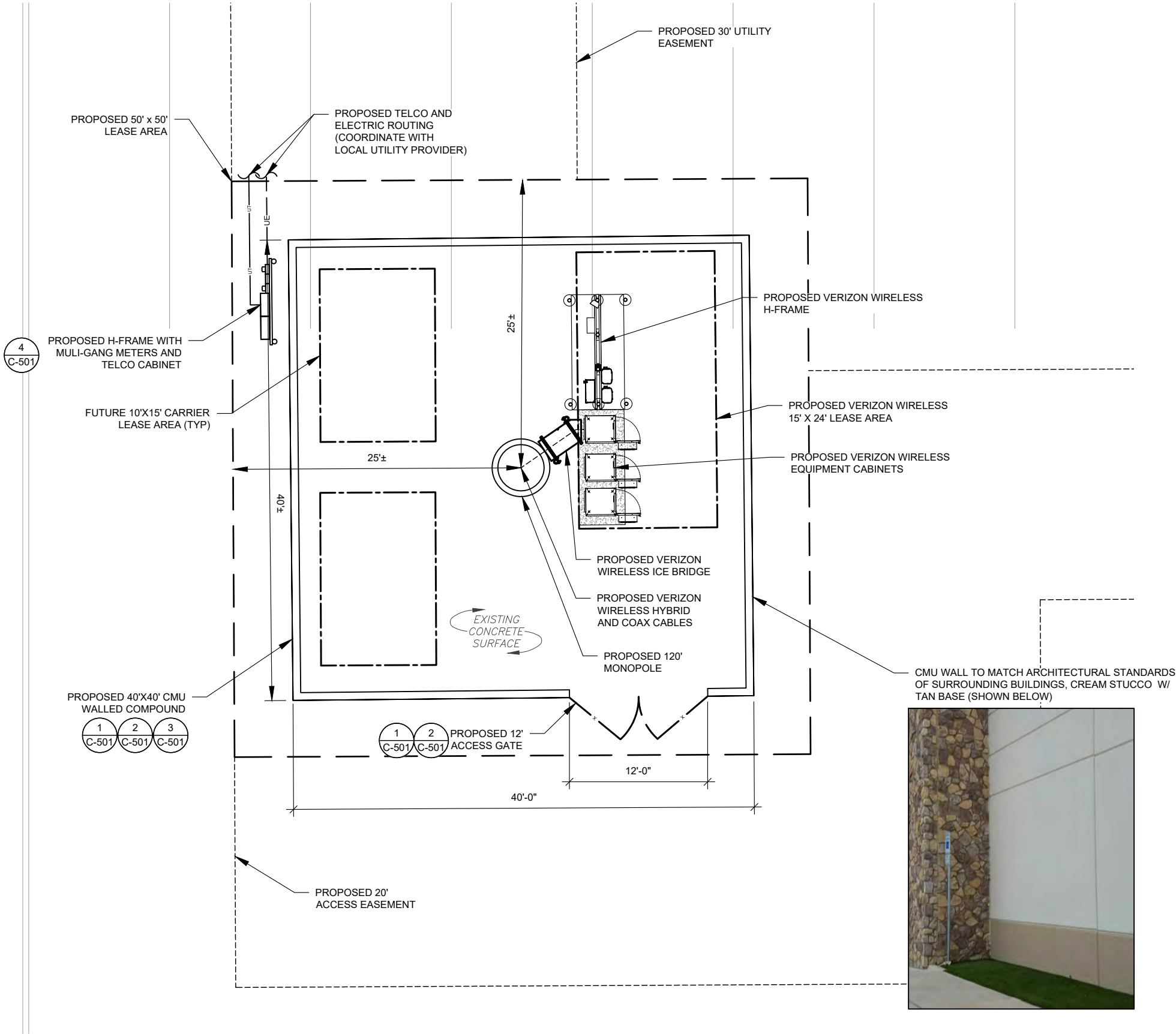
SHEET NUMBER:	REVISION:
C-101	1

SITE PLAN NOTES:

1. THIS SITE PLAN REPRESENTS THE BEST PRESENT KNOWLEDGE AVAILABLE TO THE ENGINEER AT THE TIME OF THIS DESIGN. THE CONTRACTOR SHALL VISIT THE SITE PRIOR TO CONSTRUCTION AND VERIFY ALL EXISTING CONDITIONS RELATED TO THE SCOPE OF WORK FOR THIS PROJECT.
2. ICE BRIDGE, CABLE LADDER, COAX PORT, AND COAX CABLE ARE SHOWN FOR REFERENCE ONLY. CONTRACTOR SHALL CONFIRM THE EXACT LOCATION OF ALL PROPOSED AND EXISTING EQUIPMENT AND STRUCTURES DEPICTED ON THIS PLAN. BEFORE UTILIZING EXISTING CABLE SUPPORTS, COAX PORTS, INSTALLING NEW PORTS OR ANY OTHER EQUIPMENT, CONTRACTOR SHALL VERIFY ALL ASPECTS OF THE COMPONENTS MEET THE ATC SPECIFICATIONS.

PARKING REDUCTION: 6 TRAILER STALLS
EXISTING TRAILER STALLS: 60 -6 = 54 TRAILER STALLS

- CIVIL LEGEND
- PROPOSED LEASE AREA
 - PROPOSED EASEMENT
 - PROPOSED CARRIER LEASE AREA
 - x - x - PROPOSED FENCE



1 DETAILED SITE PLAN

0 10' 20'

SCALE: 1"=10' (11X17)
1"=5' (22X34)



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204065

ATC SITE NAME:
LAKESIDE VILLAGE

SITE ADDRESS:
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FLOWER MOUND, TX 75028

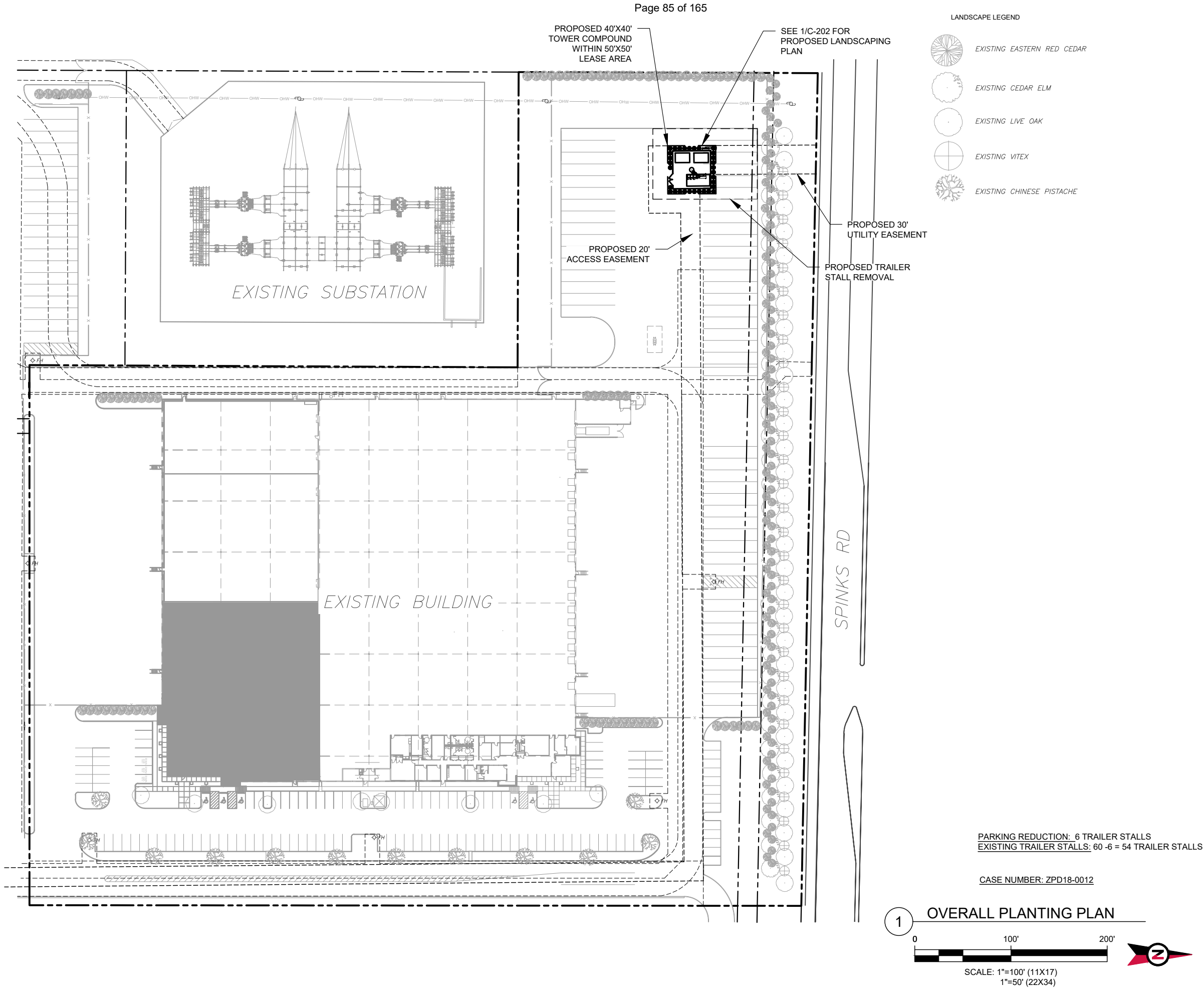
SEAL:

DRAWN BY:	SRF
APPROVED BY:	KRF
DATE DRAWN:	10/22/18
ATC JOB NO:	12607385

CONCEPTUAL SITE PLAN

SHEET NUMBER:
C-102

REVISION:
1




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FLOWER MOUND, TX 75028

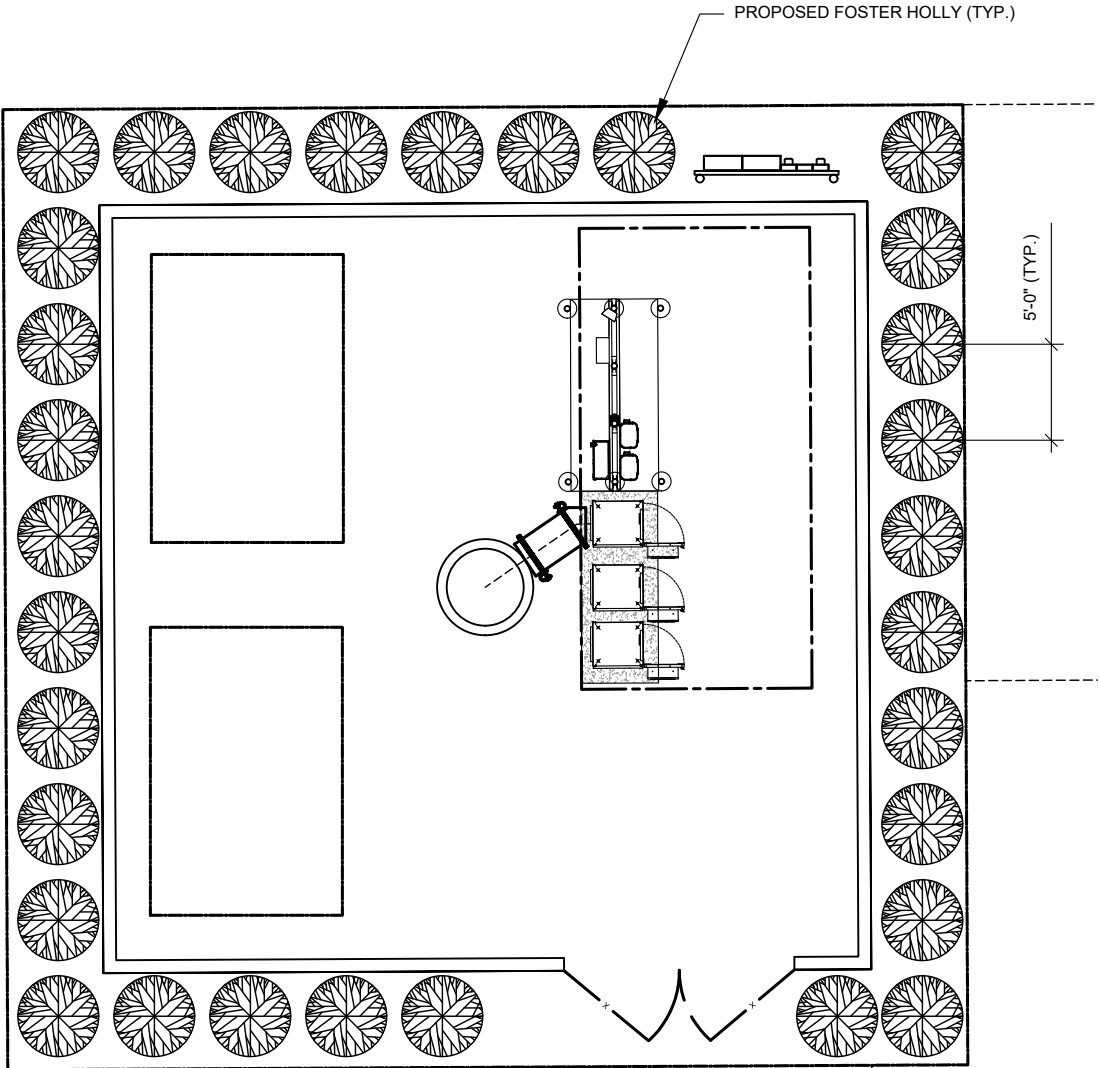
SEAL:

DRAWN BY:	SRF
APPROVED BY:	KRF
DATE DRAWN:	10/22/18
ATC JOB NO:	12607385

**OVERALL PLANTING
PLAN**

SHEET NUMBER:	REVISION:
C-201	1

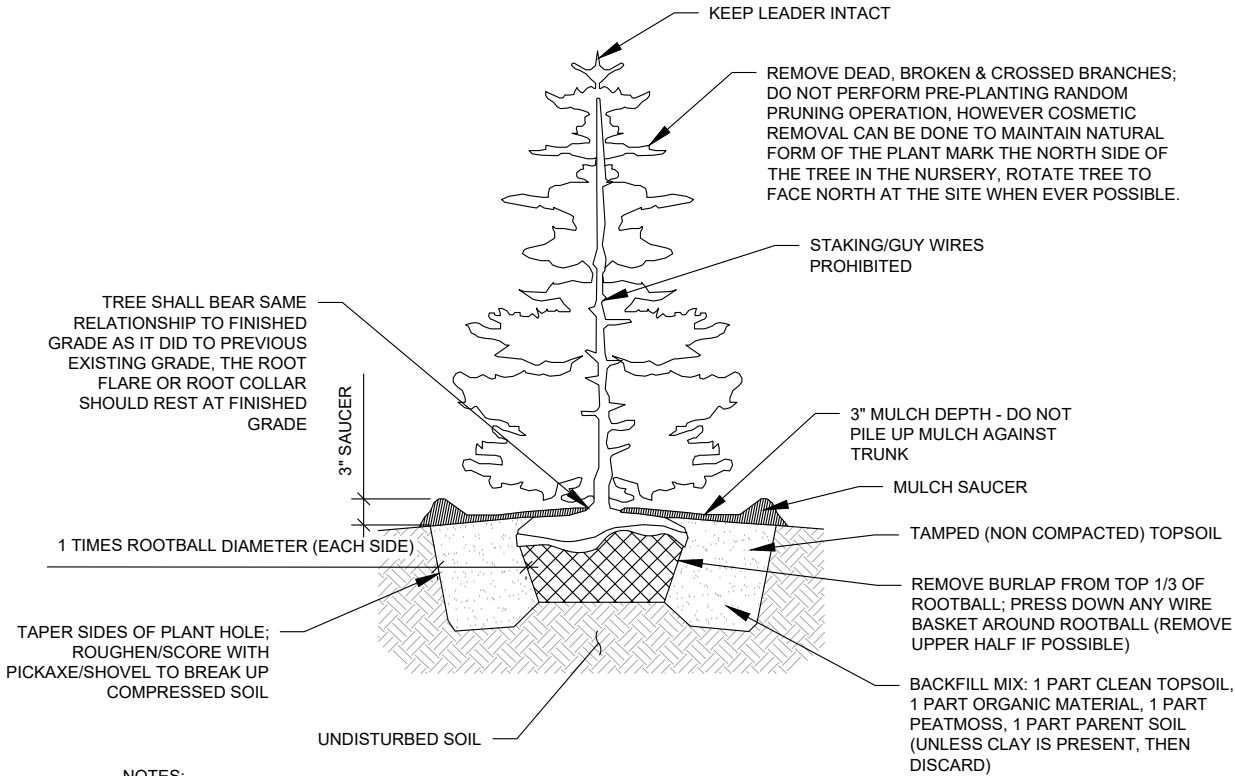
PLANT SCHEDULE					
COMMON NAME / BOTANICAL NAME	SIZE	HEIGHT	SPREAD	SPACING	COMMENTS
(31) FOSTER HOLLY / ILEX X ATTENUATA 'FOSTERI'	3 GAL.	15'-25'	8' - 12'	72" O.C.	HEDGE, SHADE TREE



1 LANDSCAPING PLAN

0 10' 20'

SCALE: 1"=10' (11X17)
1"=5' (22X34)



- NOTES:
- CONTRACTOR TO VERIFY THAT ADEQUATE DRAINAGE EXISTS PRIOR TO PLANTING.
 - DO NOT WRAP TRUNK OF TREE.
 - STAKING OF TREES IN NOT RECOMMENDED, EXCEPT ON WINDY SITE OR FOR LARGE EVERGREEN TREES. IF STAKING IS DONE, FLEXIBLE STRAPS - NOT HOSE AND WIRE - SHOULD BE USED AND MUST BE REMOVED AT APPROPRIATE TIME. ATC IS RESPONSIBLE FOR THE REPLACEMENT OF DESTROYED OR DAMAGED TREES.
 - ALL TREES SHALL CONFORM TO THE STANDARDS SET FORTH IN THE MOST RECENT AMERICAN STANDARDS FOR NURSERY STOCK PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN (A.A.N.).
 - TREE WITH ROOT FLARE COVERED BY MORE THAT 1.5" OF SOIL WILL BE REJECTED PRIOR TO INSTALLATION.

2 TYPICAL TREE PLANTING DETAIL

SCALE: NOT TO SCALE



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LAKESIDE VILLAGE

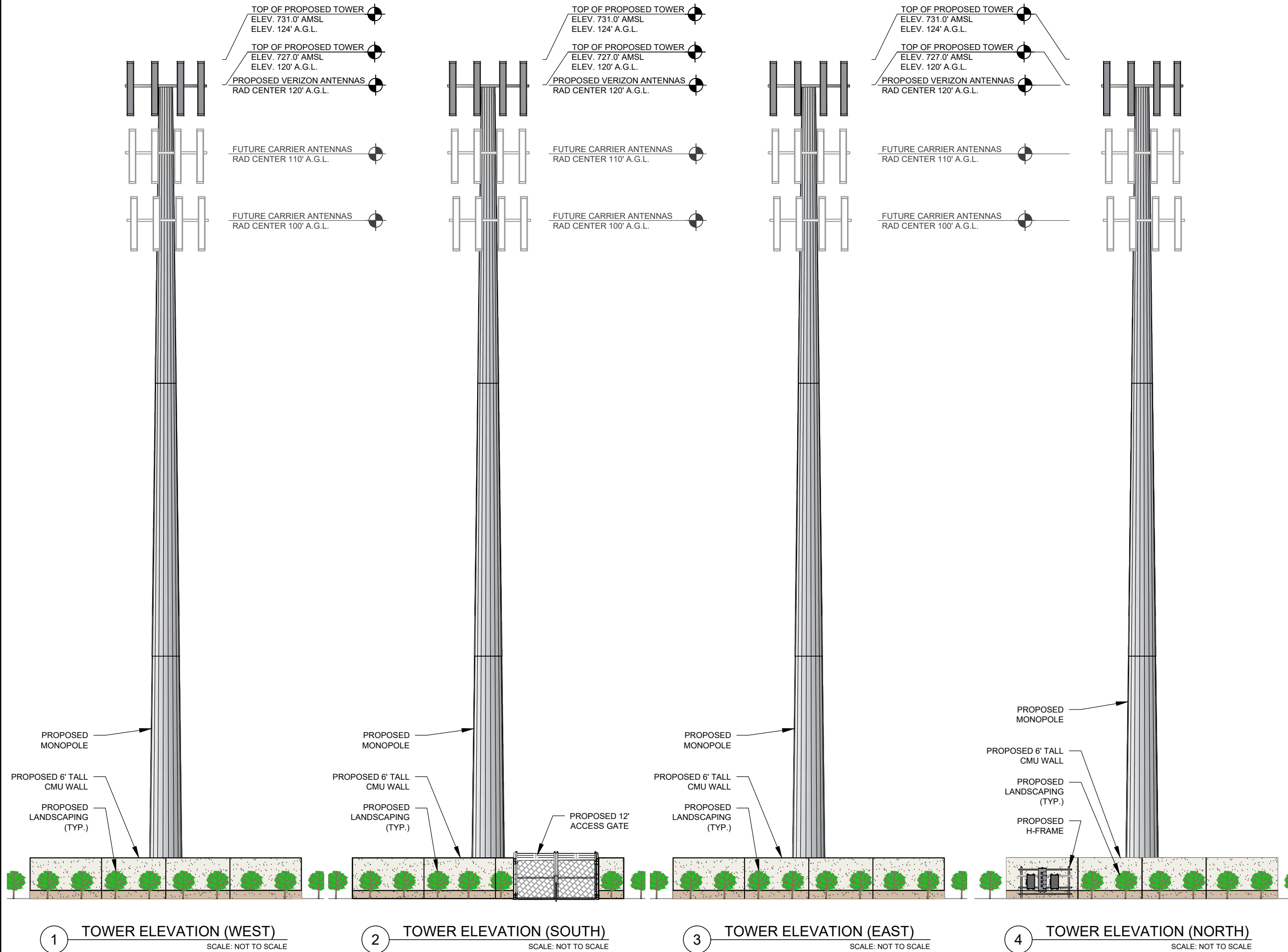
SITE ADDRESS:
2010 LAKESIDE PARKWAY
FLOWER MOUND, TX 75028

SEAL:

DRAWN BY:	SRF
APPROVED BY:	KRF
DATE DRAWN:	10/22/18
ATC JOB NO:	12607385

PLANTING PLAN

SHEET NUMBER:	REVISION:
C-202	1





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REV.	DESCRIPTION	BY	DATE
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1	UPDATED CMU	KL	01/24/19

ATC SITE NUMBER:
204065

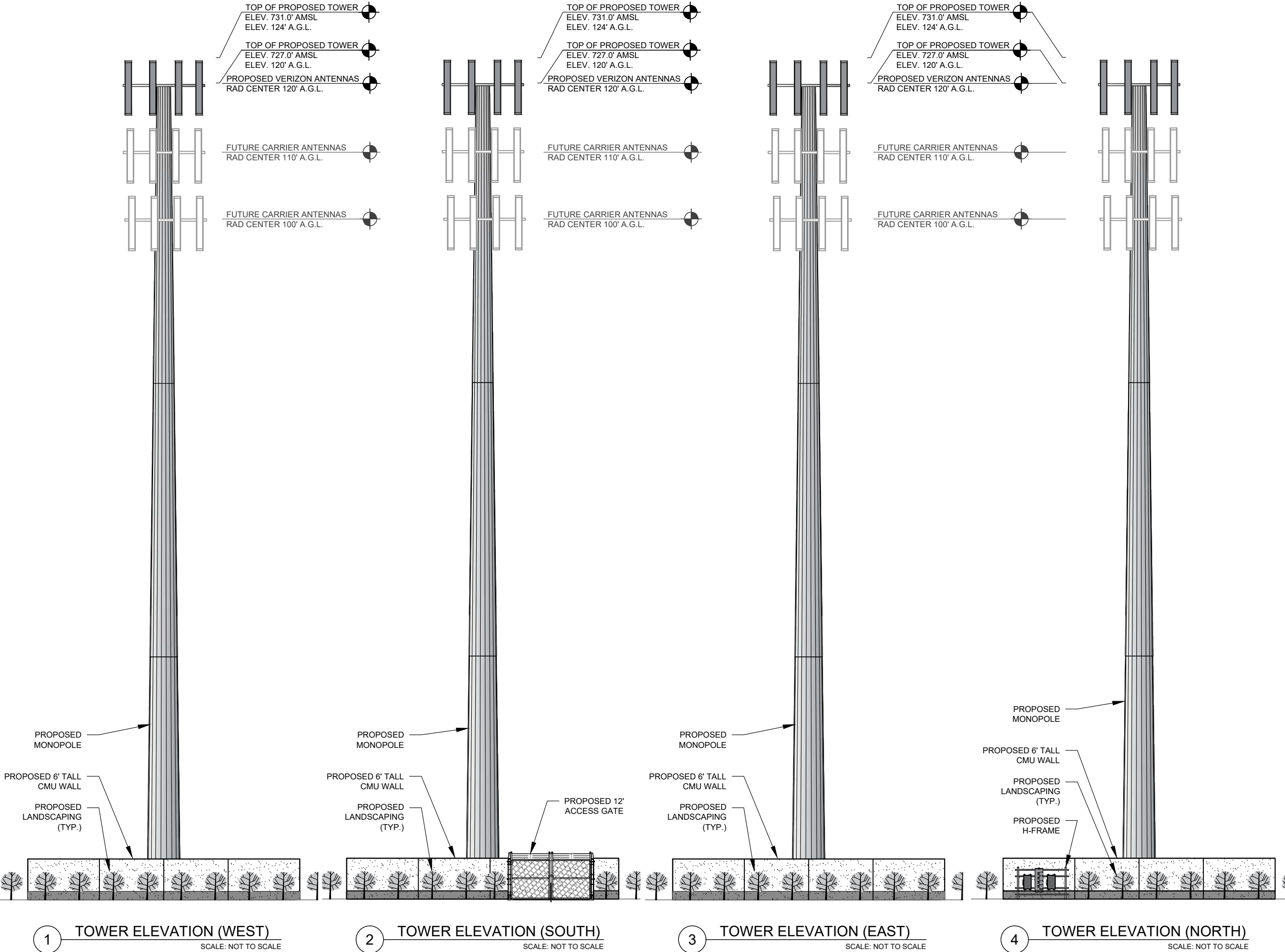
ATC SITE NAME:
LAKESIDE VILLAGE

SITE ADDRESS:
2010 LAKESIDE PARKWAY
FLOWER MOUND, TX 75028

SEAL:

DRAWN BY:	SRF
APPROVED BY:	KRF
DATE DRAWN:	10/22/18
ATC JOB NO:	12607385

COLOR ELEVATIONS	
SHEET NUMBER: C-301	REVISION: 1





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LAKESIDE VILLAGE

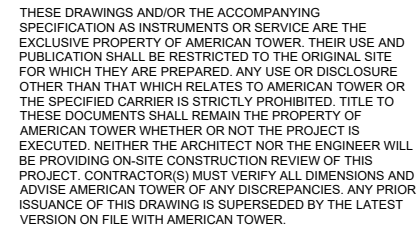
SITE ADDRESS:
2010 LAKESIDE PARKWAY
FLOWER MOUND, TX 75028

SEAL:

DRAWN BY:	SRF
APPROVED BY:	KRF
DATE DRAWN:	10/22/18
ATC JOB NO:	12607385

**BLACK AND WHITE
ELEVATIONS**

SHEET NUMBER: C-302	REVISION: 1
-------------------------------	-----------------------

ATC SITE NUMBER:

ATC SITE NAME:

SITE ADDRESS:

SEAL:

ENGINEERING /
CONSTRUCTION
DETAILS

C-501

1

GATE OPENING 12'-0"
(VERIFY WITH SITE PLAN)

— PROPOSED 6' CMU WALL

- 2-1/2" GATE
POST (TYP.)

1-1/4" GATE —

APPROVED
LOCKING
DEVICE

5/8" DIAM.
LATCH ROD

12"Ø CONCRETE
FOOTING IN SOIL
FOR GATE AND
CORNER POSTS

— CMU WALL TO MATCH ARCHITECTURAL
STANDARDS OF SURROUNDING
BUILDINGS, CREAM STUCCO W/ TAN
BASE

FENCE NOTES:

1. ATTACH EACH GATE WITH 1-1/2 PAIR OF NON-LIFT-OFF TYPE, MALLEABLE IRON OR FORGING, PIN-TYPE HINGES. ASSEMBLIES SHALL ALLOW FOR 180° OF GATE TRAVEL. TACK WELD GATE HINGE TO POST FOR SECURITY.
2. POSTS NOT TO EXCEED A MAXIMUM SEPARATION OF 10 FEET.

AMERICAN TOWER MASTER SPECIFICATION:

1. DIVISION 32 EXTERIOR IMPROVEMENTS SECTION 0323113 FOR CHAIN LINK FENCE AND GATES

SCALE: N.T.S.

SCALE: NOT TO SCALE

— 2-#5 CONT.

6" CMU WALL SOLID GROUTED WITH #5
HORIZONTAL BARS AT 24" O.C. & #5 VERTICAL
BARS AT 16" O.C. LAP PER MASONRY GENERAL
NOTES. LEAVE HEAD JOINTS OUT OF BOTTOM
COURSE WHERE REQUIRED FOR DRAINAGE.

✓ #5 BARS @ 8" O.C.

PROVIDE 6" GAP BETWEEN EQUIPMENT
PAD AND WALL IF REQUIRED

5-#5 CONT.

SCALE: NOT TO SCALE

Diagram illustrating the proposed meter assembly components and dimensions:

- PIPE CAP
- TELCO BOX
- TAP BOX
- METER CENTER
- UNISTRUT (TO BE FIELD LOCATED)
- 2-1/2" STD GALVANIZED PIPE
- 7'-0"
- 6'-0"
- EXISTING CONCRETE PARKING LOT SURF.
- PROPOSED PL 6"x6"x3/8" BASE PLATE SECURED WITH (4) 1/2" x 4-1/2" HILTI KBV EXPANSION ANCHORS. 1-1/4" MINIMUM EDGE ON BASEPLATE (TYP.)

2-1/2" STD
GALVANIZED
PIPE

UNISTRUT
PIPE/CONDUIT
CLAMP P1119 OR
P2558-35 (GALV.)
(TYP.) FOLLOW
MANUFACTURER
RECOMMENDATIONS
FOR BOLT TORQUE

SECTION A-A

SCALE: N.T.S.

H-FRAME NOTES:

1. IF IT IS NECESSARY TO EXTEND THE H-FRAME, AN ADDITIONAL POST WILL ALWAYS BE REQUIRED.
2. PROPOSED UNISTRUTS TO BE FIELD CUT AND SHOULD NOT EXTEND MORE THAN 6 INCHES BEYOND THE LAST POST.
3. SPRAY ENDS OF UNISTRUT WITH COLD GALVANIZING SPRAY PAINT, ALLOW TO DRY, THEN COVER WITH RUBBER PROTECTIVE CAPS FOR SAFETY.
4. UNISTRUT TO BE CUT FLUSH WITH NO SHARP OR JAGGED EDGES.
5. ALL PROPOSED HARDWARE TO BE MOUNTED PER MANUFACTURERS SPECS



TOWN COUNCIL AGENDA ITEM NO. 7

REGULAR ITEM

DATE: March 4, 2019

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider a request for a variance (MISC19-0002 - Edison Coffee Co Alcohol Variance) to permit the sale of alcoholic beverages by a restaurant within 300 feet of a public school. The property is located at 420 Parker Square.**

BACKGROUND INFORMATION: On March 2, 2015, the Town Council amended Section 18-527 of Article IX of the Town's Code of Ordinances to clarify that a variance to the setback requirement for alcohol sales to certain uses can be granted by the Town Council in accordance with the TABC regulations. The provision allows the Town Council to hold a public hearing to determine if a variance is warranted for a particular use. Because this variance does not involve zoning, it does not require a recommendation by the Planning and Zoning Commission. This is the second such variance request to be considered by the Town Council. The first one was approved at this same location in 2016. The location map and setback distances are shown in Attachment 1.

The text in Section 18-527, which addresses the setback requirements and variance procedure, reads as follows:

Section 18-527. Development Standards.

- (e) The sale of alcoholic beverages within 300 feet of a church, public school or public hospital is hereby prohibited. No permit for the sale, serving and/or consumption of alcoholic beverages shall be granted by the town council within 300 feet of any church, public school or public hospital. The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door and in a direct line across intersections. The measurement of distance between the place of business where alcoholic beverages are sold and the public school shall be:
 - 1. in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections; or
 - 2. if the permit or license holder is located on or above the fifth story of a multistory building, in a direct line from the property line of the public school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the permit or license holder is located.
- (f) As authorized by Section 109.33 of the Texas Alcoholic Beverage Code, the town council may allow a variance to the provisions of subsection 18-527(h) if it determines that the enforcement of the regulations in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land and resources, creates an undue hardship on the applicant for a license or permit, does not serve its intended purpose, is not effective or necessary, or for any other reason the town council determines, after consideration of the health, safety and welfare of the public and the equities of the situation, that the variance is in the best interest of the community.

1. No variance may be granted hereunder except after a public hearing for which notice has been given to any church, public school or public hospital within three hundred feet (300') of the location of the place of business seeking a variance. The notice must be provided, not less than ten (10) days before the date set for hearing.

As anticipated with the adoption of the variance regulations, the Parker Square development is well suited for such consideration. It is a mixed-use development, envisioned to have multiple types of uses within close proximity to each other. The letter of intent from the application (Attachment 2) provides a description of the use being proposed. The space has been designed and used as a restaurant in the past.

As required by the regulations, notice was given to the adjacent school. At the time of this report being drafted, staff had received no correspondence regarding this request.

ATTACHMENTS:

1. Location Map
2. Letter of Intent

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





Edison Coffee Co
420 Parker Square
Flower Mound, TX 75028

February 13, 2019

City of Flower Mound

ATTN: Development Services

RE: 420 Parker Square

This letter shall serve as notice of our intent to file an Alcohol Sales Variance Application pursuant to Ordinance No. 13-15 amending Section 18 -527 of Article IX of Chapter 18 of the Code of Ordinances of the Town of Flower Mound prohibiting the sale of alcohol within 300 feet of schools, churches and hospitals.

Property Address: Proposed Use: Request:

420 Parker Square

Edison Coffee Company, a café and coffeehouse.

Waiver of the restriction against alcohol sales within 300 feet of a private school (daycare center and charter school) .

The property is located in the Parker Square Shopping Center in the space previously occupied by Manchale and Decanter Restaurant and Wine Bar. The space is located within 300 feet of Adventure Kids Play Care (a private daycare center) and Founder's Academy (a private charter school)

Although the space was previously occupied by a restaurant and bar as recently as 2017, the charter school is located within 300 feet of the restaurant. We feel our proposed use of the space as a café with alcohol will not conflict with the mission of the school as there was already a restaurant and bar operating in this space while the charter school center was open within 300 feet of it. Likewise, another restaurant and bar has been operating within 300 feet of the day care center since its inception without adverse effect. Additionally, the bulk of alcohol consumption at our proposed cafe takes place in the evening when the charter school and day care centers are closed.



TOWN COUNCIL AGENDA ITEM NO. 8

REGULAR ITEM

DATE: March 4, 2019

FROM: Andrea Roy, Economic Development Director

ITEM: **Public Hearing to consider approval of a Chapter 380 Agreement between the Town of Flower Mound and Duke Realty Limited Partnership (Lakeside Ranch #21).**

BACKGROUND INFORMATION: The subject request relates to the proposed Chapter 380 Agreement between the Town and Duke Realty Limited Partnership, an Indiana-based industrial development company. Duke Realty proposes to make an \$11.5 million capital investment for the construction of an approximate 275,000 square foot speculative industrial building on 18 acres at 350 Lakeside Parkway. The subject site is known as Lakeside Ranch #21 and is Duke Realty's last development site in Flower Mound. The site is situated between HD Supply & Owens & Minor to the west and Mohawk Industries & Kehe Food Distribution to the east.

Duke Realty has requested incentive assistance in order to move forward with the project on a speculative basis, as they do not want to put the building's construction off until a tenant is identified in this competitive market. The incentive will also allow the developer to construct the project in advance of other slated projects within their own corporate pipeline.

The proposed Chapter 380 Agreement provides for a 5-year, 50% real property rebate (total estimated savings \$100,512), a grant equal to 75% of impact fees (\$75,525), and a building permit fee waiver (\$45,800). A 10-year cost-benefit analysis indicates a total cost to the Town of \$221,837, providing a minimum net benefit of over \$490,429 million. The payback period to the Town is just under six years.

Lastly, the benefits of the real property rebate will not commence until the first tenant receives a Certificate of Occupancy and occupies space in the building. This will allow the developer to pass the full benefit of the incentive on to a potential tenant, further assisting in Duke's recruitment efforts.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: One time grant equal to 75% of impact fees, estimated at \$75,525.

Proposed Expenditure/(Revenue):

Account Number:

\$75,525

100-600-57000-5320

Finance Review by: Caryn Riggs, Director of Financial Services. *CR*

LEGAL REVIEW: Drew Larkin of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Chapter 380 Incentive Agreement as to form and legality.

ATTACHMENTS:

1. Duke Realty Chapter 380 Agreement
2. Cost-Benefit Analysis

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

**CHAPTER 380 AGREEMENT
BETWEEN THE TOWN OF FLOWER MOUND
AND
DUKE REALTY LIMITED PARTNERSHIP**

This Chapter 380 Agreement (“**Agreement**”) is made and entered into by and between the Town of Flower Mound, Texas (“**Town**”), and Duke Realty Limited Partnership, an Indiana limited partnership (“**Company**”), for the purposes and considerations stated below. Town and Company may sometimes hereafter be referred to individually as a “**Party**” or collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, Company’s affiliate, Duke Realty Land, LLC, owns an approximate 18.23-acre tract located within the Town; and

WHEREAS, Company intends to construct an approximate 275,000 square foot warehouse distribution facility on that tract within the Town; and

WHEREAS, the Town seeks to incentivize the development; and

WHEREAS, the Town possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to create programs to promote local economic development and to stimulate business and commercial activity within the Town; and

WHEREAS, the Town has determined that the incentives set forth in this Agreement will serve the public purpose of promoting local economic development, will diversify the economy of the State and Town, will eliminate unemployment and underemployment in the State and Town, and will enhance business and commercial activity within the Town; and

WHEREAS, the Town has concluded and hereby finds that this Agreement promotes economic development in the Town of Flower Mound, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

NOW THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

The following words shall have the following meanings when used in this Agreement:

The terms “Agreement”, “Town”, “Company”, “Parties”, and “Party”, shall have the meanings provided above.

“Base Year Taxes” means the Town ad valorem taxes assessed against the Real Property and collected by Town for Tax Year 2019.

“Building Final” means the approval of the final inspection issued by the Town certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in condition suitable for further construction of interior finish out for a specific tenant.

“Certificate of Occupancy” means the document issued by the Town certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

“CO Date” means the date the tenant of the Facility receives a Certificate of Occupancy for its tenant finish out.

“Commencement of Construction” means that: (i) the construction plans for the Facility have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits permitting construction of the Facility have been issued by all applicable governmental authorities; and (iii) mobilization and grading or excavation of the Real Property has begun.

“Company Records” has the meaning as described in Section 3.5.

“Completion of Construction” means that the Town has issued the Building Final for the Facility.

“Development” means the development as shown on the attached Exhibits “B” and “C”.

“Effective Date” shall mean the last date this Agreement is executed by the Parties.

“Expiration Date” shall mean the date of payment of the last of the Grants, unless sooner terminated as provided herein.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Facility” means an approximate 275,000 square foot warehouse distribution facility to be built on the Real Property by Company in accordance with Exhibits “B” and “C”.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally

wrongful acts or omissions of the Party), fires, explosions, floods, strikes, slowdowns or work stoppages.

“Grant Year Taxes” means the ad valorem taxes assessed by Town against the Real Property and collected by Town for the applicable Tax Year.

“Grants” shall collectively mean the Real Property Grants and Impact Fee Grant.

“Impact Fee Grant” means the grant from Town in an amount equal to 75% of the Town impact fees (water, wastewater, and road) paid by Company and received by Town, which are attributable to the construction of the Facility within the Development.

“Impositions” means all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on the Company or any property or any business owned by the Company within the Town.

“Improvements” means the Facility identified on Exhibits “B” and “C”, and the infrastructure, driveways, parking, landscaping and other improvements reasonably required to be constructed on the Real Property.

“Payment Request” means a written request from Company to Town for payment of the Real Property Grants and Impact Fee Grant, as the case may be, which request shall be accompanied by evidence reasonably satisfactory to Town to establish that Company is in compliance with this Agreement. The Payment Request must be submitted in accordance with the notice provisions of this Agreement.

“Real Property” means the real property more particularly described on the attached Exhibit “A”.

“Real Property Grants” shall mean five (5) consecutive annual economic development grants to be provided by Town to Company, each in an amount equal to fifty percent (50%) of the Grant Year Taxes for the applicable Grant Year in excess of the Base Year Taxes calculated as follows: $(\text{Grant Year Taxes} - \text{Base Year Taxes}) \times (50\%)$, to be paid as set forth herein. Each individual annual payment shall be referred to as a “Real Property Grant.”

“Related Agreement” means any agreement (other than this Agreement) by and between Town and Company.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Taxable Value” shall mean the appraised value as certified by the Denton County Appraisal District, or its successor, for a given year.

“Term” means the term as defined in Section 2.2.

ARTICLE 2 PROGRAM AND TERM

2.1 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Development to the Town. The terms of this Agreement shall implement the Program.

2.2 Term. The Term of this Agreement (“**Term**”) will commence on the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 COMPANY OBLIGATIONS

The obligation of the Town to pay the Grants shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article 3.

3.1 Construction of Improvements. Company agrees to design and construct, or cause to be designed and constructed, the Improvements. Company must (i) receive all necessary permits permitting construction of the Facility from all applicable governmental authorities no later than December 31, 2019; and (ii) subject to events of Force Majeure, achieve Completion of Construction on or before June 30, 2021.

3.2 Taxable Value. Upon the first January 1st to occur after Completion of Construction, the Improvements must have a minimum Taxable Value of \$5,000,000.

3.3 Compliance with Laws. Company agrees to construct the Development and the Improvements in accordance with the site plan attached hereto as Exhibit “B”, the elevations and materials shown on the attached Exhibit “C”, and all applicable federal, state and local laws, codes, and regulations (or valid waiver thereof).

3.4 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

3.5 Audit. Company shall grant access to Town, or such other persons or entities designated by Town for the purposes of inspecting, at Company’s office, during Company’s normal business hours, paper and electronic records, books, documents, tangible accounting procedures, tangible practices or any other items related to Company’s performance of this Agreement (“**Company Records**”), provided that Town has provided five (5) business days prior notice, and Town or its representatives shall not unduly disrupt Company’s operations. The foregoing notwithstanding, all records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by Town, or such other persons or entities designated by Town in accordance with state and federal laws, regulations or

directives applicable to Company's performance of this Agreement. Town agrees, to the extent allowed by law, to maintain the confidentiality of the Company Records.

ARTICLE 4

TOWN OBLIGATIONS

Subject to Company's continued satisfaction of its obligations as required by this Agreement, and subject to the provisions of this section, Town will be obligated to do the following:

4.1 Real Property Grants. For a period of five (5) years commencing on January 1 following the CO Date, the Town will provide an annual Real Property Grant to Company. Each annual Real Property Grant is due and payable by the Town forty-five (45) days after the Town receives the latter of (i) payment of the Grant Year Taxes; and (ii) a Payment Request.

4.2 Impact Fee Grant. The Town agrees to pay Company an Impact Fee Grant for the Development within forty-five (45) days after: (i) issuance of the Building Final; and (ii) the Town's receipt of a Payment Request.

4.3 Permit Fee Waiver. The Town agrees to waive the following permit and related fees for initial construction of the Development: building permit fees, electrical permit fees, mechanical permit fees, plumbing permit fees, plan review fees, and lighting plan review fees. Any fees not referenced herein as being waived are specifically deemed not to be waived by the Town.

ARTICLE 5

TERMINATION; REPAYMENT; OFFSET

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by Town, if any Impositions owed to Town or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) upon written notice by Town, if Company suffers an event of Bankruptcy or Insolvency;
- (e) upon written notice by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event this Agreement is terminated by Town pursuant to Section 5.1 (b), (c), or (d), Company shall immediately refund to Town an amount equal to the amount of all of the Grants that have been provided by Town to Company prior to the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Town) as its prime or base commercial lending rate, from the Effective Date until paid. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination of this Agreement.

5.3 Offsets. Town may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to Town from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due Town has been reduced to judgment by a court.

ARTICLE 6 MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Company, in satisfying the conditions of this Agreement, is deemed to have acted independently, and Town assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter if sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Town, to:

Town of Flower Mound, Texas
Attn: Economic Development Director
2121 Cross Timbers Rd.

Flower Mound, TX 75028

With a copy to:

Flower Mound Town Attorney
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

If intended for Company, to:

Duke Realty Limited Partnership
600 E 96th Street, Suite 100
Indianapolis, IN 46240
RE: Lakeside Ranch Bldg. 21

6.6 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any exhibits attached hereto.

6.7 Governing Law. This Agreement shall be governed by the laws of the State of Texas, and exclusive venue for any action concerning this Agreement shall be in a State District Court of Denton County, Texas.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.12 Successors and Assigns. This Agreement may not be assigned without the prior written consent of the Town.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.14 Limitation of Damages. The Parties agree that no Party will be liable to the other under this Agreement for consequential damages (including lost profits) or exemplary damages.

6.15 Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts Town's ability to pay the Grants or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such payments will cease as of the effective date of such limitation or restriction and be of no further force, effect, or consequence in which event Town shall be under no further obligation to Company as of the effective date of such limitation or restriction.

6.16 Undocumented Workers. Company certifies that Company, and its branches, divisions and departments, do not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Company or any of its branches, divisions or departments is convicted of a violation under 8 U.S.C. § 1324a(f), Company shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of six percent (6%), not later than the 120th day after the date Town notifies Company of the violation.

6.17 Governmental Function. The Parties agree that this Agreement serves the public purpose of assisting in the development and diversification of the economy of the Town and the State of Texas, eliminating unemployment or underemployment of the State, and developing and expanding commerce in the State, and is for all purposes a governmental function of Town for the benefit of the citizens of Town and the State of Texas. The Parties further agree that this Agreement is entered into for the purpose of carrying out governmental functions which are enjoined on the Town by law and given to it by the State of Texas as part of the State's sovereignty.

[Signatures on following page]

EXHIBIT "A"

The Real Property

Lot 2, Block B of Lakeside Ranch Business Park Addition, Plat filed in the Office of the Denton County Clerk on June 22, 2007, as Instrument No. 74181.

DESCRIPTION, of a 18.234 acre tract of land situated in the J. Knight Survey, Abstract No. 722, Town of Flower Mound, Denton County, Texas; said tract being all of Lot 2, Block B of the Lakeside Ranch Business Park Addition, an addition to the Town of Flower Mound, Denton County, Texas according to the plat thereof recorded in Cabinet X, Page 314 of the Map Records of Denton County, Texas; said 18.234 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod found for corner; said point being the southeast corner of said Lot 2 and the southwest corner of a tract of land described in Deed to Robert S. Beall recorded in Volume 96103, Page 2465 of the Deed Records of Denton County, Texas; said point being in the northeast right-of-way line of Lakeside Parkway (a variable width right-of-way);

THENCE, along the said northeast right-of-way line of Lakeside Parkway the following three (3) calls:

North 49 degrees, 09 minutes, 45 seconds West, a distance of 680.62 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 40 degrees, 50 minutes, 15 seconds East, a distance of 10.00 feet to a reentrant 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 49 degrees, 09 minutes, 45 seconds West, a distance of 375.00 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner; said point being the most southerly corner of Lot 1, Block B of said Lakeside Ranch Business Park Addition;

THENCE, departing the said northeast right-of-way line of Lakeside Parkway, along the east line of said Lot 1, Block B the following five (5) calls:

North 40 degrees, 50 minutes, 15 seconds East, a distance of 25.81 feet to an angle 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 55 degrees, 57 minutes, 16 seconds East, a distance of 330.42 feet to an angle 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 00 degrees, 29 minutes, 36 seconds West, a distance of 635.06 feet to 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 89 degrees, 30 minutes, 24 seconds East, a distance of 50.00 feet to a reentrant 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

North 00 degrees, 29 minutes, 36 seconds West, a distance of 121.00 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner;

THENCE, North 89 degrees, 30 minutes, 24 seconds East, passing at a distance of 128.00 feet the most easterly southeast corner of said Lot 1, Block and the southwest corner of Lot 3X, Block B of said Lakeside Ranch Business Park Addition, continuing along the south line of said Lot 3X, Block B a total distance of 465.61 feet to a 5/8-inch iron rod with "PACHECO KOCH" cap set for corner; said point being the northeast corner of said Lot 2, Block B and the southeast corner of said Lot 3X, Block B; said point being in the west line of said Beall tract;

THENCE, South 00 degrees, 15 minutes, 46 seconds East, a distance of 1,662.85 feet along the west line of said Beall tract to the POINT OF BEGINNING;

CONTAINING: 794,278 square feet or 18.234 acres of land, more or less.

EXHIBIT “B”

The Development



Scale: 1"=120' (17X11")

Date: NOV 8, 2018

CONCEPTUAL SITE PLAN

LAKESIDE RANCH BUILDING 21

Flower Mound, Texas

EXHIBIT “C”

Building Elevations and Materials

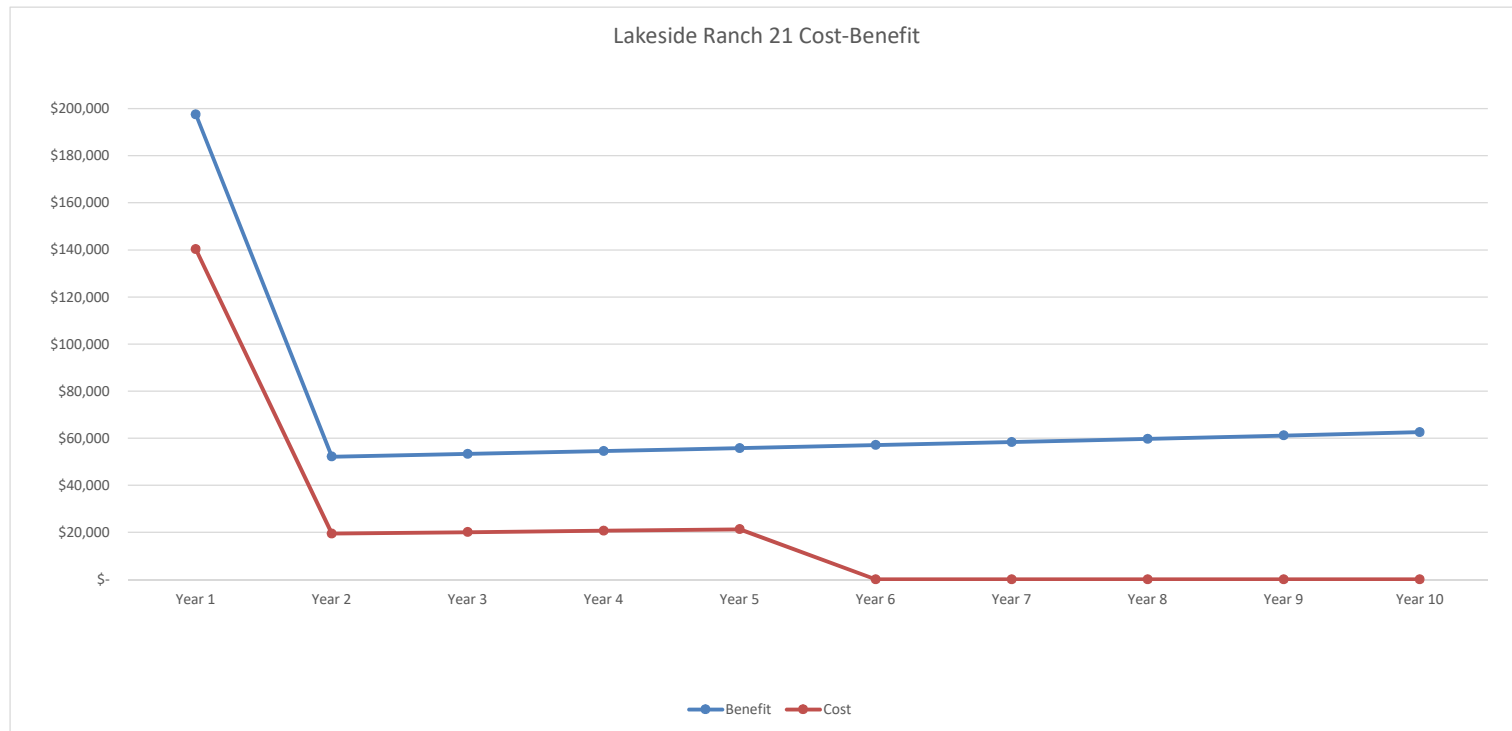




Duke Realty Lakeside Ranch 21 Cost-Benefit Analysis

Attachment #2-Duke Ch 380 Cost-Benefit Analysis

Benefit		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+3% rate	Real Property Value (75% of cap inv.)	\$ 8,625,000	\$ 8,883,750	\$ 9,150,263	\$ 9,424,770	\$ 9,707,513	\$ 9,998,739	\$ 10,298,701	\$ 10,607,662	\$ 10,925,892	\$ 11,253,669	
	Real Property Tax Revenue	\$ 37,864	\$ 39,000	\$ 40,170	\$ 41,375	\$ 42,616	\$ 43,894	\$ 45,211	\$ 46,568	\$ 47,965	\$ 49,404	\$ 434,065
Flat Rate	Business Personal Property Value	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	
	Business Personal Property Tax Revenue	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 13,170	\$ 131,700
	Building Permit Fees	\$ 45,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 45,800
	Impact Fees	\$ 100,700	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,700
Cost		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
50%	Real Property Rebate	\$ 18,932	\$ 19,500	\$ 20,085	\$ 20,687	\$ 21,308	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,512
75%	Impact Fee Rebate	\$ 75,525	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,525
100%	Building Permit Fee Waiver	\$ 45,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 45,800
Analysis		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
	Benefit	\$ 197,534	\$ 52,170	\$ 53,340	\$ 54,545	\$ 55,786	\$ 57,064	\$ 58,381	\$ 59,738	\$ 61,135	\$ 62,574	\$ 712,265
	Cost	\$ 140,257	\$ 19,500	\$ 20,085	\$ 20,687	\$ 21,308	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 221,837
	Net Benefit	\$ 57,277	\$ 32,670	\$ 33,255	\$ 33,857	\$ 34,478	\$ 57,064	\$ 58,381	\$ 59,738	\$ 61,135	\$ 62,574	\$ 490,429





TOWN COUNCIL AGENDA ITEM NO. 9

REGULAR ITEM

DATE: March 4, 2019

FROM: Brian Waltenburg, PE, Assistant Director of Engineering

ITEM: Consider approval of a Professional Services Agreement with CP&Y, Inc. for design phase services associated with the Rippy Road Phase II project in the amount of \$298,645.75; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The project consists of improving Rippy Road, from Pecan Meadow to Speyside Drive, from a two-lane rural asphalt section to a two-lane concrete urban collector section, including curb and gutter storm water collection, sidewalk, and ramps. Due to recent flooding in the area, the project also includes evaluation of the existing drainage system on Cottonwood Drive and Cedar Street, a recommended design to improve storm water conveyance from that area, floodplain storage analysis, and a Hydraulic Analysis of Timber Creek to ensure that loss of floodplain area due to construction of the proposed roadway does not impact adjacent properties through increased water surface elevations or increased channel velocities.

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

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$298,645.75

Proposed Expenditure/(Revenue):	Account Number(s):
\$298,645.75	308-220-70629

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

LEGAL REVIEW: The Town's standard professional services agreement form documents, prepared by of 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 CP&Y, INC.

This contract is entered into on this 18th day of February, 2019, 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 **CP&Y, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 1820 Regal Row, Dallas, TX 75235.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Rippy Road Phase II 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 Rippy Road Phase II 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 Two Hundred Ninety-Eight Thousand Six Hundred Forty-Five and 75/100 Dollars (\$298,645.75). 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 "D"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "D" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

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

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

Brian Waltenburg, P.E.
Assistant Director of Engineering
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6234 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

IX.
Right to Inspect Records

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

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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 OCCURRING

DIRECTLY AS A RESULT OF 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, 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:

Brian Waltenburg, P.E.
Assistant Director of Engineering
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6234

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:

Tomas Cochill, P.E.
Vice President
CP&Y, Inc.
1820 Regal Row
Dallas, Texas 75235
214-638-0500

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of

the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

By: _____
The Honorable Steve Dixon
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
CP&Y, Inc.

By: [Signature]

Name: Robin Handel, P.E.

Title: Senior Vice President

Date Signed: 2/6/19

State of Texas §
 §
County of Dallas §

This instrument was acknowledged before me on the 6th day of February, 2019, by Robin Handel in his capacity as Sr. Vice President of CP+Y, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of consultant.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 6th DAY OF February, 2019.

My Commission Expires

July 1, 2019



[Signature]
Notary Public, State of Texas

EXHIBIT A
SCOPE OF SERVICES
FOR
RIPPY ROAD RECONSTRUCTION AND STORM DRAIN PROJECT
FLOWER MOUND, TEXAS

The scope of work for engineering provided by CP&Y, Inc. (the “Engineer”) services involves: field surveying, geotechnical investigation, engineering design, environmental, preparation of plans and specifications, computing of construction quantities, and preparation of an opinion of probable cost. All design work shall be in accordance with the Town of Flower Mound, Texas (the “Owner”) standard requirements. The standard drawings and specifications published by the Owner will be utilized on the project and supplemented where necessary by standard drawings and specifications from the North Central Texas Council of Governments (NCTCOG) and/or the Texas Department of Transportation (TxDOT).

The project involves new construction of approximately 2,600 LF of two-lane concrete roadway (36’ face of curb to face of curb) with curb and gutter and 4’ sidewalks along the west and south side of Rippy Road. The Engineer will maintain the existing sidewalk along the east and north side but will extend the existing sidewalk east of Speyside drive to Long Prairie Road.

It is the intent of the Owner to eliminate the ditches adjacent to Rippy Road and replace with an underground storm drain system. The outfall of the storm sewer system will be located downstream of the pedestrian bridge on Mesquite Street.

Water Utility design is not included in this scope of work as it is being performed by others. Engineer will coordinate the design and will include and incorporate the waterline design and specs into the roadway plans and bid documents.

Consultant services for this project shall include all aspects of the work as set forth in the following scope of services (Exhibit A), and in coordination with Exhibit B (Services to be provided by the Town). Any of the items identified herein that are specifically excluded from this scope of work and/or any items not listed below that are desired by the Town to be included in the scope of work may be added at any time via a duly executed Supplemental Agreement defining the scope of those items and the related adjustment to the agreed upon fee.

The parameters for the design of the improvements shall include the following:

- A detailed field survey of a portion of the project area will be performed to establish the existing conditions and topography of the project site, along with verifying the existing right-of-way. A majority of Rippy Road was surveyed by a prior company for a waterline project. The Engineer will utilize this survey, verifying it’s control, and augmenting the survey;

- A geotechnical investigation will be performed prior to commencement of design to establish the general strata, bearing capacity and other soil characteristic relevant to engineering design;
- Enclosure of the Rippy Road bar ditches into storm sewer system and discharge the additional stormwater runoff into Timber Creek near Mesquite Street Improvements will be designed for no rise and no increase in velocity for the 100-year storm event in Timber Creek. The storm sewer will be designed for the 100-year event such that the HGL will not cause overflows out of the system or affect upstream contributing drainage channels.
- New concrete pavement with curb and gutter will be designed for this corridor. The pavement section will have a width of 36' (face of curb to face of curb);
- Construction of 4' wide sidewalk along the west and south side of Rippy Road. The existing sidewalk along the east and north side will remain (if possible). The sidewalk on the north side will be extended from Speyside drive to Long Prairie Road.
- Erosion control plans for use during construction, and post construction erosion control to include streambank protection, sodding and/or seeding as necessary to re-establish vegetation;
- Submittals to the City of work-in-progress shall be made at 30%, 60%, 90% and 100% stages of completion, as more fully defined in Exhibit C. Each submittal will include three (3) sets of half size (11" x 17") drawings;
- All plan sheets for review and construction shall be printed on 11"x17" bond paper and provided electronically in PDF format if requested;
- All design work shall be prepared in CAD with electronic files in MicroStation V8 format which will be provided to the Town upon completion of the record drawings;
- Standard and typical details of the Town, NCTCOG and/or TxDOT selected for use will be included in the final plans and specifications;
- Special details not available as a standard drawing by the Town, NCTCOG or TxDOT will be prepared, as necessary;

The Engineer will perform the necessary engineering and technical services for the Design, Bid, and Construction Phases, including any Additional Services for the development of this project in accordance with the following sections of this agreement.

PROJECT MANAGEMENT & ADMINISTRATIVE TASKS

1. Project Management, Administration and Coordination

The Engineer will establish and maintain project schedules and budgets, develop monthly progress reports, prepare invoices, and attend design meetings with the Owner and other entities on an as-needed basis during the project design.

2. Franchise Utility Coordination

The Engineer will not be responsible for direct coordination with the various utility companies.

3. Agency Coordination: Army Corps of Engineers and the Texas Parks and Wildlife.

TASK 1 SURVEY

A majority of Rippy Road was surveyed by a prior company for a waterline project. The Engineer will utilize this survey, verifying its control, and augmenting the survey where discussed below. Engineer will provide detailed field survey as necessary to facilitate said design including:

- a. Town of Flower Mound will obtain Right-of-Entry as needed.
- b. Recover and or establish horizontal and vertical control based on Town of Flower Mound or other applicable datum approved by the Town.
- c. Establish the horizontal and vertical project control per Town of Flower Mound, locate existing utilities, obtain cross section data and locate other topographical features in the project necessary for design. The general field surveying requirements are as follows:
 - (i) Establish the horizontal control points using any Town control points if readily available. The project base line will be coincidental with or parallel to the stationed design centerline. The ROW will be established by using existing property corners found and tied. If insufficient or conflicting property data is found, a right-of-way survey shall be prepared as an additional service as directed by Town. Any traverse related to the project will be performed with appropriate modified second order procedures by closed loop into the project control. Closures will be one part in 20,000 or better.
 - (ii) The vertical control survey shall include ties into any readily available Town benchmark for correlation. A Town approved benchmark will be established at the limits of the project and tied to the project baseline. Benchmarks shall be located outside of the anticipated construction area so they are not disturbed during construction.
 - (iii) Provide drawing of cross-sections of the ROW at 50 foot intervals. This will also include work to detail all grade breaks.
 - (iv) Provide drawing of all trees greater than 4" in caliper, paving, and all surface and overhead features within the project limits including: all visible surface appurtenances such as power poles, guy anchors, overhead electric line crossings, telephone pedestals and cabinets, pipeline signs and vents, valves, manholes, roadway signs (size and photographs), mailboxes, private driveways,

turnouts, fences. All existing drainage structures will be shown, to include: Flow line, rip-rap, headwall and wingwall elevations for drainage structures. The culvert dimensions, number of barrels, material type and photographs shall be noted for each drainage structure.

(v) Design survey area includes:

Rippy Road: Right of Way (ROW) to ROW from 50' North of Pecan Meadows Drive to Long Prairie Road. Surveyor will obtain shots 10' outside ROW on both sides of Rippy Road.

Mesquite Street: ROW to ROW from Cedar Street south to Timber Creek. Surveyor will locate the pedestrian bridge and pick up the abutment limits and direction of bridge. Surveyor will capture design survey 100' downstream of pedestrian bridge and 50' each side of the centerline of the creek channel.

Cedar Street: ROW to ROW from Cottonwood Drive to Mesquite Street plus 5' outside ROW on each side.

Cottonwood Drive: ROW to ROW beginning at Rippy Road and 600' to the west plus 5' outside ROW on each side.

Existing outfall: From eastern most property line of 4861 Rippy Road to 150' west. The will begin at Rippy Road and extend to 50' past the flow line of Timber Creek.

d. Information Submittal

All fieldwork will be documented and made available to Town for review if requested. Format of field data submittals will be a computer output listing of data collector information which includes x, y, & z coordinates and a description of each point; coordinate geometry computer output of traverses and level loops; field books if produced; or other acceptable formats. Survey files will be provided in ASCII format where applicable. A Digital Terrain Model shall be created and the MicroStation 3-D file including, but not limited to, break lines, elevation points, triangles and contours, on separate levels. Field Survey Data Collection

TASK 2 50% DESIGN PHASE

1. Project Title Sheet

A project title sheet will be prepared as required for use in the construction plans in accordance with the sample provided by the Owner.

2. Project Layout Sheets

Project layout sheets will be prepared at a minimum of 1"=100' (half-size), which clearly

indicates the limits of the entire project. These layout sheets will indicate the major structures contained within the project, the names of all intersecting roadways and waterways, and other items relevant to creating an overall perspective of the entire project.

3. Roadway Plans/Profiles

Preliminary horizontal & vertical alignments will be displayed on, plan sheets. These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain topographic information, roadway baselines, pavement edges, roadway pavement contours where necessary, limits of structures, limits of retaining walls, drainage structures excluding pipes, limits of sidewalks, limits of barriers and any other information necessary for pavement construction. On approval of the preliminary vertical alignments, profile sheets will be prepared to depict these alignments. These profiles will contain existing ground lines at the proposed profile grade line, limits of structures, and proposed elevations at a minimum of 50-foot intervals.

4. Cross Sections

The Engineer will prepare cross sections of the project during the design phase to facilitate the development of the appropriate vertical profile of the roadway. These cross sections will be developed to a sufficient level to aid the Engineer in this effort and to approximate the cut/fill quantities required for the project. The Engineer will not prepare cross section sheets. If requested this information may be provided after the award, to the selected contractor and/or Town, in electronic format for informational purposes only. This information will not be further detailed and/or manipulated into plan sheet format unless specifically requested as an Additional Service item as defined in Section V below.

5. Typical Sections

Roadway typical sections will be prepared for various paving sections along the project. These sections will be developed in accordance with the Town of Flower Mound design standards.

6. Drainage Area Maps

Drainage area maps will be prepared at a minimum scale of 1"=100' (11"x17"), using available contour maps. Inlets will be located and sub-drainage areas determined. The runoff to each inlet will be calculated in accordance with the Town of Flower Mound hydraulic design criteria and shown on run-off and inlet computation sheets.

7. Drainage Computation Sheets

In accordance with standard practice, sheets will be prepared for Runoff and Inlet Computations, Storm Sewer Computations and Lateral Computations. These sheets will tabulate all relevant data used in design for easy verification of the design methods and for future improvements to be coordinated with this project. Calculations from adjacent

development projects will be reviewed and updated if necessary to provide a consistent set of hydrology for the basin.

8. Cross Culvert Plan/Profile Sheets and Hydraulic Calculations

Culvert plan/profile sheets and cross-sections will be provided for new culvert construction. TxDOT Standards will be used whenever possible for these culverts.

9. Storm Sewer Design

Plan/profile sheets will be prepared at a minimum 1"=40' (11"x17"). These sheets will show the location of inlets, manholes, storm sewers, slotted drains, culverts, and open channel improvements in relation to the project roadways. Drainage profile sheets will also be prepared which show profile information for the proposed storm sewer trunk lines, proposed ground above the storm sewers, existing ground above the storm sewers, and locations of lateral junctions. The existing bar ditch along Rippy Road will be enclosed and outfalled to Timber Creek along Mesquite Road. Appropriate discharge velocities will be maintained to minimize silting of the storm sewer. The possibility of enclosing portions of bar ditches along Pecan Meadows and Cottonwood Drives and incorporating the runoff into the Rippy Road storm sewer will be investigated.

10. Traffic Control

A layout showing sequencing will be provided to the City for review and approval of phasing.

11. Quantities and Construction Cost

Project quantities will be calculated and tabulated in a bid schedule. The pay items will be in accordance with previous Town projects and supplemented where necessary with special specifications prepared by the Engineer. The bid schedule will be included in the Bid Documents and may be reproduced in the plan set.

An Engineer's Opinion of Probable Construction Cost will be prepared for the project using current unit cost data from recent bid information.

TASK 3 90% DESIGN PHASE

1. Project Title Sheet

A project title sheet will be prepared as required for use in the construction plans in accordance with the sample provided by the Owner.

2. Project Layout Sheets

Project layout sheets will be prepared at a minimum of 1"=100' (half-size), which clearly indicates the limits of the entire project. These layout sheets will indicate the major structures contained within the project, the names of all intersecting roadways and

waterways, and other items relevant to creating an overall perspective of the entire project.

3. Removal Layouts

These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain major bid items that are to be removed from the project site. Examples include but are not limited to the following: pavement, driveways, sidewalks, trees, storm systems, etc.

4. Roadway Plans/Profiles

These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain topographic information, roadway baselines, pavement edges, roadway pavement contours where necessary, limits of structures, limits of retaining walls, drainage structures excluding pipes, limits of sidewalks, limits of barriers and any other information necessary for pavement construction. On approval of the preliminary vertical alignments, profile sheets will be prepared to depict these alignments. These profiles will contain existing ground lines at the proposed profile grade line, limits of structures, and proposed elevations at a minimum of 50-foot intervals.

5. Cross Sections

The Engineer will prepare cross sections of the project during the design phase to facilitate the development of the appropriate vertical profile of the roadway. These cross sections will be developed to a sufficient level to aid the Engineer in this effort and to approximate the cut/fill quantities required for the project. The Engineer will not prepare cross section sheets. If requested this information may be provided after the award, to the selected contractor and/or Town, in electronic format for informational purposes only. This information will not be further detailed and/or manipulated into plan sheet format unless specifically requested as an Additional Service item as defined in Section V below.

6. Typical Sections

Roadway typical sections will be prepared for various paving sections along the project. These sections will be developed in accordance with the Town of Flower Mound design standards.

7. Traffic Control

Plan sheets will be prepared at a minimum 1"=40' (11"x17") double-stacked. These sheets will show the phasing, temporary detours, typical sections, and construction sequencing. It is assumed for scoping purposes that the project will be sequenced as follows:

- Phase 1 – Waterline construction;
- Phase 2 – Storm drain and roadway reconstruction on Mesquite Street and Cedar Street;

- Phase 3 – Roadway and storm drain construction from Cedar Street to Peacon Meadows. Constructed in half sections with one way traffic;
- Phase 4 – Roadway and storm drain construction from Cedar Street to Long Prairie Road. Constructed in half sections with one way traffic.

8. Drainage Area Maps

Drainage area maps will be prepared at a minimum scale of 1"=100' (11"x17"), using available contour maps. Inlets will be located and sub-drainage areas determined. The runoff to each inlet will be calculated in accordance with the Town of Flower Mound hydraulic design criteria and shown on run-off and inlet computation sheets.

9. Drainage Computation Sheets

In accordance with standard practice, sheets will be prepared for Runoff and Inlet Computations, Storm Sewer Computations and Lateral Computations. These sheets will tabulate all relevant data used in design for easy verification of the design methods and for future improvements to be coordinated with this project. Calculations from adjacent development projects will be reviewed and updated if necessary to provide a consistent set of hydrology for the basin.

10. Cross Culvert Plan/Profile Sheets and Hydraulic Calculations

Culvert plan/profile sheets and cross-sections will be provided for new culvert construction. TxDOT Standards will be used whenever possible for these culverts.

11. Storm System Design

Plan/profile sheets will be prepared at a minimum 1"-40' (11"x17"). These sheets will show the location of inlets, manholes, storm sewers, slotted drains, culverts, and open channel improvements in relation to the project roadways. Drainage profile sheets will also be prepared which show profile information for the proposed storm sewer trunk lines, proposed ground above the storm sewers, existing ground above the storm sewers, and locations of lateral junctions. The existing bar ditch along Rippy Road will be enclosed and outfalled to Timber Creek along Mesquite Road. Appropriate discharge velocities will be maintained to minimize silting of the storm sewer. The possibility of enclosing portions of bar ditches along Pecan Meadows and Cottonwood Drives and incorporating the runoff into the Rippy Road storm sewer will be investigated.

12. Streambank stabilization

Improvements downstream of Rippy Road into Timber Creek such as grading or channel enlargements may require streambank stabilization efforts. The storm sewer point of discharge into Timber Creek near the Mesquite Street pedestrian bridge will be designed such that erosive velocities are minimized and degradation to Timber Creek is mitigated. Coordination with City staff and biologists concerning Waters of the US and Section 404 permit will be performed to ensure the most stable design matches well with habitat preservation. Grading plans and specifications will be included with the project sheets.

13. Erosion Control Plans and Details

Erosion Control Plans will be prepared and will illustrate the implementation of elements to be used to reduce the pollutants to storm water discharges associated with the construction site. The intent of these plans will be to show the ultimate configuration of these elements, not the intermediate phasing of the necessary elements.

14. Grading Sheets

Where necessary, grading sheets will be prepared to properly show the relationship between the existing topography and proposed features of the project. These sheets will contain spot elevations and/or contours to guide the construction in these areas.

15. Signing and Striping

The Engineer will prepare Signing and Striping plans at a scale similar to the roadway paving sheets. The plans will be in accordance with the Texas Manual on Uniform Traffic Control Devices (TxMUTCD).

16. Quantities and Construction Cost

Project quantities will be calculated and tabulated in a bid schedule. The pay items will be in accordance with previous Town projects and supplemented where necessary with special specifications prepared by the Engineer. The bid schedule will be included in the Bid Documents and may be reproduced in the plan set.

An Engineer's Opinion of Probable Construction Cost will be prepared for the project using current unit cost data from recent bid information.

17. Bid/Construction Administration Documents

The Engineer will assemble project documents governing the bidding and construction administration of the project including but not limited to the following: advertisement for bids, instructions to bidders, construction contract, bid schedule, bonds, general conditions of the contract, supplementary conditions and other documents related to the performance of work for the project.

18. Technical Specifications

A list of specifications necessary for construction of the various elements designed on the project will be compiled by the Engineer. Any special specifications will also be provided.

19. Assemble and Incorporate Standard Drawings

The Engineer shall assemble, collect, and incorporate the necessary standard drawings needed for the plan set.

TASK 4 100% DESIGN PHASE/BID PHASE

Includes everything in the 90% design plus the following: The Engineer to include any comments and/or revisions from the Town and to provide final documents governing the bidding and construction administration of the project including but not limited to the following: advertisement for bids, instructions to bidders, construction contract, bid schedule, bonds, general conditions of the contract, supplementary conditions and other documents related to the performance of work for the project.

TASK 5 CONSTRUCTION PHASE

1. Administrative Services

The Engineer will not provide Construction Administration services under this contract.

2. Field Engineering

The Engineer will not perform any Field Engineering to design additional features as part of this contract. However, any redesign of a planned improvement that is required as a result of an incompatibility of Engineer's original design will be addressed by the Engineer.

3. Construction Contract Documents (Conformed Set)

After the project is awarded to a contractor, the Engineer will revise the plans to include any addenda published prior to award and update the project specifications documents to reflect the bid information as awarded. These revisions will constitute the final construction documents and will be provided to the Town for execution by the contractor and Town.

4. Shop Drawing Reviews

The Engineer will not provide any shop drawing reviews.

5. As-Built Drawings

The Engineer will prepare a reproducible complete set of As-Built drawings based on any field changes made during construction and any field notes or marked up plans provided by the contractor/Town upon completion of construction.

6. Change Orders

The Engineer will not assist the Owner in preparing any Change Orders required during the construction phase.

7. Pay Requests

The Engineer will not assist the Owner in the review of construction Pay Requests under this contract.

8. Requests for Information

The Engineer will not respond to Requests for Information during the construction phase of the Project. Should the requests arise, a supplemental agreement may be required.

TASK 6 ENVIRONMENTAL

1) Threatened and Endangered Species Habitat Assessment

A habitat assessment and preliminary survey for federally-listed threatened and endangered species will be performed in the project area. Specific tasks include the following:

- Perform a review of data from the U.S. Fish and Wildlife Service (USFWS), Texas Parks and Wildlife Department Natural Diversity Database, topographic maps, soil data, project aeriels, and other additional resources that may indicate the presence of potentially suitable threatened and endangered species habitat.
- Perform a field investigation to identify potentially suitable threatened and endangered species habitat within the project area. Site conditions will be documented with regards to vegetation, soils, geology, and any observations of species or evidence of species in the vicinity of the project.
- Prepare a brief memorandum detailing the methods and results of the threatened and endangered species habitat assessment and preliminary survey. The memo will include an effect determination for all federally-listed species with potential to occur in the area.

Note: If it is determined that presence-absence surveys or preparation of a Biological Assessment or Biological Evaluation and Section 10 consultation with USFWS would be required, these tasks would be completed under a supplemental agreement.

2) Waters of the U.S. Determination and Wetlands Delineation

Wetlands, waterbodies, regulated special aquatic sites, and other waters of the U.S. will be investigated in the project area. Specific tasks include the following:

- Obtain and review pertinent data to identify potential waters of the U.S. within the project area. Sources include, but are not limited to aerial photographs, soil surveys, USFWS National Wetlands Inventory maps, U.S. Geological Survey topographic maps, and Federal Emergency Management Agency floodplain maps.

- Perform a field investigation to identify potential wetlands and other waters of the U.S. in the project area. Delineations will be conducted in accordance with the *1987 Corps of Engineers Wetland Delineation Manual* along with the 2010 Regional Supplement for the Great Plains Region. Ordinary high water marks and wetland boundaries, if present, will be mapped using a Global Positioning System (GPS) unit with sub-meter accuracy. If wetlands are encountered, a minimum of one soil station inside and outside the wetland boundary will be taken. Maps will be provided of all pertinent information collected during the desktop review and field visit.
- Conduct a baseline aquatic resource analysis documenting existing conditions with the Texas Rapid Assessment Method (TxRAM), which is a wetland and stream conditional assessment model. This shall include preparation of TxRAM Stream Data Sheets, Scoring Sheets, associated exhibits, and the Aquatic Resource Compensation Calculator. Should wetland areas be encountered, TxRAM Wetland Data Sheets, Wetland Scoring Sheets, associated exhibits, and Wetland Final Scoring Sheet for Evaluating Proposed Mitigation/Impact Activities Sheet would be completed. The output from TxRAM will be used to calculate adverse impacts and if necessary, compensatory mitigation required by USACE.
- Prepare a brief water resources report detailing the methods and results of the wetlands and other waters of the U.S. delineation, providing proposed project impacts to the waters of the U.S., identifying Section 404 permitting requirements, and providing results of the TxRAM Functional Assessment.

3) Cultural Resources Assessment *(to be performed by Horizon Environmental Services, Inc.)*

The proposed undertaking would be sponsored by the town of Flower Mound, a political subdivision of the state of Texas; as such, the project would fall under the jurisdiction of the Antiquities Code of Texas. In addition, the project may require usage of a NWP issued by the USACE to construct the outfall on Timber Creek. As NWPs are federal permits, the portion of the overall project subject to the NWP would also fall under the jurisdiction of the National Historic Preservation Act (NHPA). As the proposed project represents a publicly sponsored undertaking, the project sponsor is required to provide the USACE, which would serve as the lead federal agency, and the Texas Historical Commission (THC), which serves as the State Historic Preservation Office (SHPO) for the state of Texas, with an opportunity to review and comment on the project's potential to adversely affect historic properties listed on or considered eligible for listing on the National Register of Historic Places (NRHP) and/or for designation as State Antiquities Landmarks (SAL). At this time, no other federal or state jurisdiction has been identified for the project. In the event that any additional regulatory triggers are identified as the project moves forward, Horizon will evaluate whether or not any additional, out-of-scope cultural studies or agency coordination may be required.

The cultural resources study would consist of desktop archival research, an intensive archeological field survey, and production of a report suitable for review by the SHPO

in accordance with the THC's Rules of Practice and Procedure, Chapter 26, Section 27, and the Council of Texas Archeologists' (CTA) Guidelines for Cultural Resources Management Reports.

a) Archival Research and Permitting

- Prior to performing field work, perform basic archival research at the THC, the Texas Archeological Research Laboratory (TARL), the General Land Office (GLO), the National Park Service's (NPS) online National Register Information System (NRIS), and/or other relevant archives for information on previous cultural resources investigations conducted in the vicinity of the project area and previously recorded archeological sites and historic properties within and in the vicinity of the project area. Desktop archival studies will examine a 1.0-mile radius surrounding the project area.
- Review the abovementioned archives; historic, geological, and soil maps; and aerial surveys and photographs prior to initiating fieldwork to evaluate the potential for encountering significant cultural resources within the project area.
- Apply for and obtain a Texas Antiquities Permit from the THC (required for any project that falls under the jurisdiction of the Antiquities Code of Texas). The application for a Texas Antiquities Permit requires the signature of the project sponsor and/or landowner, as appropriate, as well as the archeological Principal Investigator. The Texas Antiquities Permit must be issued by the THC prior to the initiation of any cultural resources field activities.

b) Archeological Survey Fieldwork

- Perform an intensive archeological survey, consisting of pedestrian walkover with surface inspection and systematic shovel testing at a level of intensity sufficient to meet or exceed the Texas State Minimum Archeological Survey Standards (TSMAS) and guidelines established by the CTA unless field conditions warrant excavation of more or fewer shovel tests.
- Document any cultural resources encountered to a sufficient degree to make preliminary determinations of the significance of the resources in terms of their eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.
- Inspect the locales of any previously recorded archeological sites within the project area, assess their current condition, and document the sites to a sufficient degree to make preliminary determinations of the significance of the resources in terms of their eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.

c) Technical Report

- Complete and submit State of Texas Archeological Site Data Forms (for new archeological sites) or State of Texas Archeological Site Update Forms (for

- previously recorded archeological sites) to TARL. Permanent site trinomials will be obtained from TARL for any new archeological sites documented within the project area during the survey.
- Assess the significance of any cultural resources within the project area in terms of their potential eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.
 - Develop a draft technical report detailing the project background, environmental and cultural setting of the project area, research goals and survey methods, survey results, recommendations for any cultural resources documented during the survey, and a bibliography of references cited suitable for review by the THC and any other applicable regulatory agencies.
 - Submit a preliminary review copy of the archeological draft report describing the results of the survey to the client or review. Following approval of the draft report by the client, Horizon will submit an electronic copy of the report to the THC and any other applicable regulatory agencies for review and comment. Horizon will coordinate review with the regulatory agencies unless the client would prefer to coordinate agency review directly.
 - Respond to any comments on the draft report offered by the THC and any other applicable regulatory agencies and produce a final report.
 - Submit the final report to the client and the THC.

d) Records Curation

- Prepare project records for curation at TARL per the requirements of the Antiquities Code of Texas and TARL's Stipulations and Procedures for the Preparation of Archeological Records and Photographs, Curation Supplies, and Sources and/or Stipulations and Procedures for the Preparation of Archeological Material Collections, as appropriate.

Overall Assumptions: The client will secure right-of-entry (ROE) for the project area to be surveyed.

e) Key Understandings/Assumptions

With regard to USACE Section 404 permitting, CPY assumes the following.

- The City or their contractor will implement water quality best management practices to comply with the conditions of the TCEQ Section 401 water quality certification for NWP 14.
- The project will be designed and constructed to meet the general and regional conditions of and be authorized by a NWP 14 at each single and complete crossing.
- If necessary, only a one PCN will be submitted to the USACE. If a PCN for temporary or permanent fill in waters of the U.S. is required, CPY assumes the level of effort for permit coordination with the USACE will only include providing the

information necessary to meet basic documentation requirements for NWP 14 compliance, and that extensive permit coordination will not be required.

- No agency site meetings will be required.
- Compensatory mitigation will not be required.

If following preliminary design and permitting evaluation tasks, it is determined that more extensive USACE coordination, permit application (e.g., Individual Permit), and/or preparation of a mitigation plan (e.g., compensatory mitigation necessary for project which is assumed to not be necessary at this time), then CPY will prepare a scope, schedule and budget for this additional service.

Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their actions on cultural resources that are eligible for inclusion in the National Register of Historic Places (NRHP). For example, when issuing a Section 404 permit, the USACE must consider the potential effect of a project on structures listed on, eligible for, or potentially eligible for the NRHP. The State Historic Preservation Officer (SHPO) determines whether a cultural resource meets the criteria for listing in the NRHP. The SHPO in Texas is the executive director of the Texas Historical Commission (THC). The project will require clearance from the THC under the Antiquities Code of Texas. The cultural resource survey and coordination requirements necessary for compliance with the Antiquities Code of Texas and Section 106 of the National Historic Preservation Act will vary depending on level of previous disturbance and construction footprint in native soils. Thus, the level of effort for cultural resource surveys may vary depending on coordination with the THC and USACE as well as the project design. For the purposes of this scope, CPY assumes a database search and limited pedestrian surveys will be necessary due to the anticipated limited amount of soil disturbance and fill activities. Additional pedestrian surveys and backhoe trenching would only be conducted upon request for additional information by the THC and/or USACE. Impacts to potentially historic structures are not anticipated; therefore, surveys and coordination related to historic structures is not included.

For permit identification and coordination, CPY assumes that designs will not be altered substantially following the 60% level, such that additional reviews and/or permits become necessary. Changes to the design which require additional reviews and/or permitting may require additional time and budget.

CPY has not included construction monitoring in this proposal, and assumes the City will submit the post-construction documentation when the project is complete.

As a locally funded project with no anticipated significant impacts to regulated resources, compliance and documentation for the National Environmental Policy Act (NEPA) are not anticipated. We assume that the project, through improved mobility, will not have adverse impacts to other environmental resources (e.g. air quality, noise, etc) and, therefore, would not require project-specific modeling and coordination with local, regional, state, or federal agencies for NEPA documentation. CPY assumes no

TxDOT coordination related to environmental clearances will be required. If required, these services can be performed under a supplemental agreement.

TASK 7 COTTONWOOD DRIVE AND CEDAR STREET

The drainage along Cottonwood Drive and Cedar Street occasionally exceed capacity of the existing ditches. The Engineer will evaluate the ditches and determine if improvements can be made to increase capacity. Engineer is to evaluate increasing slope, driveway pipe sizes, and augmentation of ditch by utilizing potential storm drain and inlets.

TASK 8 FLOODPLAIN MITIGATION

Floodplain storage will be analyzed and net losses to the existing floodplain storage capacity will be coordinated with City engineering staff and Parks Dept representatives. Hydraulic analyses of Timber Creek will be performed to ensure that loss of floodplain area due to construction of the proposed roadway do not impact adjacent properties through increased water surface elevations (WSELs) or increased channel velocities which may accelerate natural erosion processes. Summaries of floodplain changes will be incorporated into a Hydraulic Report. The effective FEMA model for Timber Creek will be obtained from the City or FEMA and evaluated for potential floodplain impacts. Water surface elevations will be determined for post-project conditions to ensure no impacts to the properties currently in the Timber Creek regulatory floodplain along Mesquite Street, Cedar Street, and the southern portion of Rippy Road.

TASK 9 GEOTECHNICAL INVESTIGATIONS

Sub-consultant – HVJ Associates

1. Scope of Work – Field Work

- a. Two borings totaling 55 feet of drilling are included in this scope of work. One boring at a depth of 15 feet is needed near the intersection of Cedar Street and Rippy Road. This boring will be utilized to determine if subsurface water is present and provide contractor with proper parameters for temporary shoring in installation of storm drain system.

The second boring will be at a depth of 40 feet and will be near the proposed outfall of the storm sewer system. This boring will be utilized to determine proper bank stabilization for outfall into the creek.

- b. Field personnel will drill the borings using truck-mounted equipment. Lane closures may be required. Cohesive and non-cohesive soil samples will be obtained using

three-inch diameter shelly tube samplers and two-inch diameter standard split-spoon samplers, respectively. If rock is encountered, TCP will be performed every 5 feet and augured rock sample will be collected.

- c. An engineering geologist or soils technician will extrude the samples in the field, check the samples for consistency with a hand penetrometer carefully wrap them to preserve their condition, and return them to the laboratory for testing. A log of each boring will be prepared to document field activities and results. The Geotech will stake the boring locations using normal taping procedures. Locations will be shown on the plan of borings. Precise surveying of boring locations and elevations is not included in the cost estimate. These services may be provided upon request, at additional cost. At the completion of drilling operations, bore holes will be backfilled and plugged with soil cuttings.

2. Scope of Work – Laboratory Investigation

- a. Laboratory tests will be required for classification purposes, to determine strength characteristics, and to evaluate both the short- and long-term deformation/stress properties of the materials encountered. Testing will be in accordance with standard procedures which include moisture content and soil identification, liquid and plastic limit determinations, strength tests on soil, and unit weight determinations. The specific types and quantities of tests will be determined based on soil conditions encountered in the borings.

3. Scope of Work – Engineering Services

- a. The engineering report will be prepared by a registered engineer and will present the results of the field and laboratory data together with our analyses of the results and recommendations. We will provide a digitally signed and sealed report in electronic pdf format. The report will address:
 - Soil and groundwater conditions encountered at the boring locations;
 - If required, slope stability recommendations will be provided near the outfall structure;
 - Earthwork recommendations, including material and compaction requirements; and
 - Construction considerations related to soil and ground water conditions at the borings.

TASK 10 PARCEL ACQUISITION

Right-of-Way Exhibits and Metes and Bounds descriptions is needed for up to three (3) parcels. The landowner(s) currently own the land to the Center of the street. The City desires to purchase the ROW from the property owners.

TASK 11 EXPENSES

The Engineer will necessarily incur reasonable expenses in conjunction with the design and administration of this project. Such expenses have been estimated from similar experiences and included as a line item on the Fee Summary (Exhibit D). These expenses include:

- Printing of specifications and plan sets for review, bidding and construction

These expenses will be limited to every extent possible and will be reimbursed by the Owner as part of this agreement. If the scope of the project changes or if the required number of submittals and/or copies changes appreciably from that indicated in Exhibit C, the Engineer reserves the right to seek additional compensation for the additional expenses.

ITEMS NOT IN SCOPE

The items listed below are not included in this scope of work. Should any of these items of work become necessary, the Town shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

- a. Irrigation Design
- b. Landscape Design
- c. Aerial Survey

ADDITIONAL SERVICES

1. Engineering Redesign

At various points during the design phase, the Engineer will submit work in progress plan sets for review by the Owner. Such sets should receive a thorough review by the Owner for compliance with the Owner's expectations for the Project. (Note: the Owner is not required to review such plan sets for design conformance, code compliance, or other requirements deemed to be the responsibility of the Engineer). Once these plans are reviewed and returned to the Engineer, they shall be considered accepted by the Owner except as noted in the review comments. **Subsequent changes requested by the Owner shall constitute Additional Services outside of the scope of this agreement. In such cases, the Engineer shall be granted a Supplemental Agreement for additional compensation in an amount sufficient to cover any and all costs incurred by the Engineer while completing the redesign effort.**

2. TDLR Review

A TDLR review is anticipated on this project based on the amount of applicable improvements. CP&Y will submit a final set of plans to a local TDLR review firm for review. Review fees are based on the construction cost of the project. CP&Y will submit an invoice to the Owner for the cost of the review. This fee is not included in the Fee Summary attached (Exhibit D). This work will be considered an expense item.

3. CLOMR and/or LOMR

Improvements to Rippy Road may change the effective Flood Insurance Rate Map (FIRM) floodplain boundaries. A CLOMR or LOMR may be required to update the proposed floodplain boundaries and Base Flood Elevations (BFEs) with FEMA. If such a service is required, this work will be added by supplemental.

EXHIBIT B

SERVICES TO BE PROVIDED BY THE OWNER

FOR RIPPY ROAD RECONSTRUCTION AND WATER LINE PROJECT FLOWER MOUND, TEXAS

The Owner will provide the following to the Engineer in the performance of the Project upon request:

- A. Provide any existing data the Owner has on file concerning the Project.
- B. Provide any available as-built plans for the existing facilities in and around the project site.
- C. Provide any available as-built plans for Town owned utility lines along and/or below the existing and proposed facility.
- D. Provide any plats and/or development plans for adjacent properties.
- E. Provide Town preferred project specifications and construction administration documents in electronic format or an example specification package from a prior project as a go-by.
- F. Assist the Engineer, as necessary, in obtaining any required data and information from the State, County, neighboring cities and/or other franchise utility companies.
- G. Assist the Engineer by requiring appropriate utility companies to expose underground utilities within the right-of-way, when required.
- H. Give prompt written notice to Engineer whenever the Owner observes or otherwise becomes aware of any development that affects the scope or timing of Engineer's services.
- I. Provide right-of-entry to properties along project for surveying and geotechnical investigation purposes.

EXHIBIT C

LIST OF SUBMITTALS

FOR RIPPY ROAD RECONSTRUCTION AND WATER LINE PROJECT FLOWER MOUND, TEXAS

During the course of this project the Engineer will make periodic submittals to the Owner for review and input. The timing of such submittals will be determined by the flow of work and responsiveness of the Owner in reviewing previously submitted information. Below is a list of the expected submittals for this project and the approximate preparation time required for each submittal.

- A. Preliminary Design (50%) — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. Three (3) sets of plans will be provided with one (1) to be returned with any review comments from the Owner. The plan set will also be provided in electronic format as PDF files. These review sets of plans will include:
 - 1. Title Sheet
 - 2. Typical Sections
 - 3. Project Layout Sheets
 - 4. Roadway Plan and Profile Sheets
 - 5. Drainage Area Maps and Preliminary Storm Sewer Plans
 - 6. Retaining Wall Layouts
- B. Pre-Final Design Plans (90%) — to be submitted in sheet format on 11"x17" pages, suitable for reproduction. The first draft of the project specifications will be included with the plans. Three (3) sets of plans and project specifications will be provided with one (1) to be returned with any review comments from the Owner. The plan set will also be provided in electronic format as PDF files. These review sets of plans will include all plan sheets required for construction of the project as well as all standard details for inclusion in the final bid documents.
- C. Bidding Plans (100%) - to be submitted in sheet format on 11"x17" pages, suitable for reproduction. The final draft of the project specifications will be included with the plans. Five (5) sets of plans and project specifications will be provided for the Owner's records. These final documents will be copies of the signed and sealed engineering plans to be used for the bidding the project. The plan set will also be provided in electronic format as PDF files.
- D. Construction Documents – plans and specifications revised after award to reflect changes made by addenda and update information supplied by the successful bidder. Engineer will provide the Town with five (5) half-size (11"x17") plan sets, two (2) full-size (22"x34") plan sets and five (5) project specification books for execution. The executed plan set will also be provided in electronic format as PDF files.

EXHIBIT C

- E. As-Built Plans - to be submitted in electronic format as PDF files. These plans will reflect any design changes made during construction. All electronic project design files will be submitted in MicroStation V8 and PDF.
- F. Construction Cost Analysis — at the 50%, 90%, and 100% plan stages the Engineer will submit an updated Opinion of Probable Construction Cost for review by the Owner. This cost analysis will be based on updated estimates of material quantities and unit cost data from recent bid openings within the project area. This information is provided to the Owner for informational purposes. The Engineer does not guarantee that the information provided in such analysis will reflect actual construction bid price or the final cost of the project.
- G. Permanent Right-of-Way Exhibits and Metes and Bounds Description for 3 Parcels.

EXHIBIT D
FEE SUMMARY
FOR
RIPPY ROAD RECONSTRUCTION AND STORM DRAIN PROJECT
FLOWER MOUND, TEXAS

	<u>Fee</u>
BASIC SERVICES	
TASK 1 - SURVEY	\$ 34,000.00
TASK 2 - 50% DESIGN PHASE	\$ 80,230.00
TASK 3 - 90% DESIGN PHASE	\$ 88,700.00
TASK 4 - 100% DESIGN PHASE	\$ 34,205.00
TASK 5 - CONSTRUCTION PHASE	\$ 7,620.00
TOTAL BASIC SERVICES	\$ 244,755.00
 Task 6 - ENVIRONMENTAL PHASE	 \$ 8,910.00
TASK 7 - COTTONWOOD DRIVE AND CEDAR STREET	\$ 22,090.00
TASK 8 - FLOODPLAIN MITIGATION	\$ 5,400.00
TASK 9 - GEOTECH	\$ 9,454.00
TASK 10 - PARCEL ACQUISITION	\$ 9,000.00
TOTAL OTHER SERVICES	\$ 45,854.00
 TASK 1 - EXPENSES	
- Environmental Expenses	\$ 6,178.00
 - Total Design/Construction Expenses	 \$ 1,858.75
TOTAL FEE	\$ 298,645.75

EXHIBIT E

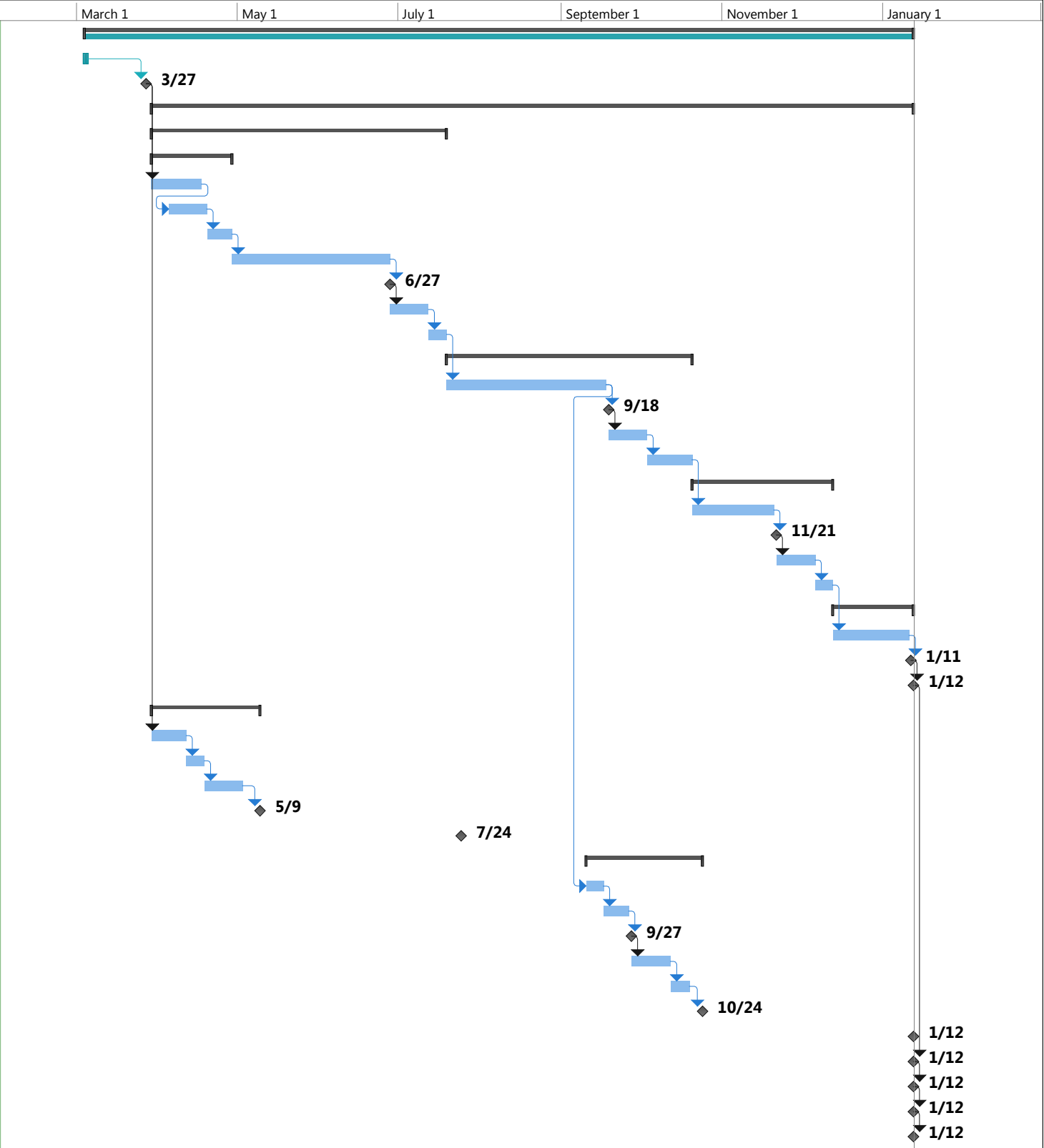
SCHEDULE

FOR RIPPY ROAD RECONSTRUCTION AND WATER LINE PROJECT FLOWER MOUND, TEXAS

The Engineer will work diligently to complete the design phase, prepare bid documents and provide any support services required during construction. The schedule of activities provided below is based on award of the design contract in January 2018. The remainder of the schedule is based on information provided by the Owner during the selection process and previous experience with the Town of Flower Mound. This information can be adjusted based on the actual award date.

See attached schedule

ID		Task Mode	Task Name	Duration	Start	Finish	January 1	March 1	May 1	July 1	September 1	November 1	January 1
1			Town of Flower Mound - Rippy Road	326 days	Mon 3/4/19	Sun 1/12/20							
2			'Town of Flower Mound - City Council Approval	1 day	Mon 3/4/19	Mon 3/4/19							
3			Kickoff Meeting - Town of Flower Mound and CP&Y	21 days	Thu 3/7/19	Wed 3/27/19							
4			Design Phase	300 days	Fri 3/29/19	Sun 1/12/20							
5			Conceptual Design	116 days	Fri 3/29/19	Fri 7/19/19							
6			Survey	32 days	Fri 3/29/19	Sun 4/28/19							
7			Right of Entry	20 days	Fri 3/29/19	Wed 4/17/19							
8			Field Survey	15 days	Fri 4/5/19	Fri 4/19/19							
9			Office Work	10 days	Fri 4/19/19	Sun 4/28/19							
10			Prepare 30% Conceptual Plans	62 days	Mon 4/29/19	Thu 6/27/19							
11			30% Plan Submittal	1 day	Thu 6/27/19	Thu 6/27/19							
12			Town of Flower Mound 30% plan review	15 days	Fri 6/28/19	Fri 7/12/19							
13			Project Meeting to Review 30% Conceptual Plans	7 days	Fri 7/12/19	Fri 7/19/19							
14			Preliminary Design	97 days	Fri 7/19/19	Sun 10/20/19							
15			Prepare 60% Conceptual Plans	63 days	Fri 7/19/19	Tue 9/17/19							
16			60% Plan Submittal	1 day	Wed 9/18/19	Wed 9/18/19							
17			Town of Flower Mound 60% plan review	15 days	Thu 9/19/19	Thu 10/3/19							
18			Project Meeting to Review 60% Conceptual Plans	18 days	Thu 10/3/19	Sun 10/20/19							
19			Final Design (90%)	55 days	Sun 10/20/19	Thu 12/12/19							
20			Prepare 90% Conceptual Plans	32 days	Sun 10/20/19	Wed 11/20/19							
21			90% Plan Submittal	1 day	Wed 11/20/19	Thu 11/21/19							
22			Town of Flower Mound 90% plan review	15 days	Thu 11/21/19	Fri 12/6/19							
23			Project Meeting to Review 90% Conceptual Plans	7 days	Fri 12/6/19	Thu 12/12/19							
24			Final Design (100%)	32 days	Fri 12/13/19	Sun 1/12/20							
25			Prepare 100% Final Plans and Specifications	30 days	Fri 12/13/19	Fri 1/10/20							
26			100% Plans and Specifications Submittal	1 day	Sat 1/11/20	Sat 1/11/20							
27			Design Complete	1 day	Sat 1/11/20	Sun 1/12/20							
28			Geotechnical Design	43 days	Fri 3/29/19	Thu 5/9/19							
29			Secure drill rig and obtain permits	14 days	Fri 3/29/19	Thu 4/11/19							
30			Field Exploration	7 days	Thu 4/11/19	Thu 4/18/19							
31			Laboratory Testing	15 days	Thu 4/18/19	Thu 5/2/19							
32			Engineering Analysis and Technical Memorandum Summary Report	7 days	Fri 5/3/19	Thu 5/9/19							
33			SUE Services	0 days	Wed 7/24/19	Wed 7/24/19							
38			Right of Way and Easement Documents	46 days	Tue 9/10/19	Thu 10/24/19							
39			Research and Deed sketch up	7 days	Tue 9/10/19	Mon 9/16/19							
40			Prepare Documents	10 days	Tue 9/17/19	Thu 9/26/19							
41			Submit Documents	1 day	Thu 9/26/19	Fri 9/27/19							
42			Review of Documents by Town of Flower Mound	15 days	Fri 9/27/19	Sat 10/12/19							
43			Finalize Documents	8 days	Sat 10/12/19	Sat 10/19/19							
44			Submit Right of Way and Easements Documents	5 days	Sat 10/19/19	Thu 10/24/19							
45			Bid Phase (TBD)	0 days	Sun 1/12/20	Sun 1/12/20							
46			Advertisement / Prebid Conference / Letting	0 days	Sun 1/12/20	Sun 1/12/20							
47			City Council Award	0 days	Sun 1/12/20	Sun 1/12/20							
48			Contract Execution	0 days	Sun 1/12/20	Sun 1/12/20							
49			Pre-Construction Meeting and Notice to Proceed	0 days	Sun 1/12/20	Sun 1/12/20							



Project: Collins Street Schedule
Date: Thu 1/31/19

Task

Split

Milestone

Summary

Project Summary

Inactive Task

Inactive Milestone

Inactive Summary

Manual Task

Duration-only

Manual Summary Rollup

Manual Summary

Manual Task

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TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: March 4, 2019

FROM: Andrea Roy, Economic Development Director

ITEM: Consider approval of a Consulting Agreement with Hawes Hill & Associates, LLP to conduct implementation activities for creation of a Tax Increment Reinvestment Zone (TIRZ), in the amount of \$50,000; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: In conjunction with the zoning application requested in fall 2017 for the Lakeside Village development (32-acre mixed-use development), Realty Capital requested the Town's consideration of the creation of a Tax Increment Reinvestment Zone (TIRZ) to assist in the acceleration of development of Lakeside Village, specifically related to the infrastructure. At that time, the Town did not wish to pursue the TIRZ discussion until a land use decision had been reached and a project definitively existed. On April 16, 2018, Town Council approved the zoning request, which paved the way for further TIRZ discussions with Council during their Strategic Planning Session in July, where the process, costs, benefits, etc. of a TIRZ, were evaluated.

Based on Council's direction from the Strategic Planning Session, the Town awarded a consulting contract to Hawes Hill for a TIRZ feasibility analysis on August 6, 2018. Most recently, on January 31, 2019, the final feasibility study was presented to Town Council, which indicated that total estimated revenues (between \$71 million - \$140 million) from the project would provide sufficient funds to support the requested \$20,550,727 in public infrastructure costs associated with the project.

Moving forward with the implementation of the TIRZ, Staff is requesting Council's consideration of a second consulting contract with Hawes Hill & Associates to create the Tax Increment Reinvestment Zone, including the development of the required Project & Financing Plan and associated administrative services.

Based on the original RFP (Request for Proposal) for TIRZ consulting services, Hawes Hill was the chosen firm to conduct both the feasibility analysis (Phase I) and creation of the TIRZ (Phase II); however, Staff did not pursue the Phase II contract until the development was deemed feasible. Hawes Hill was selected based on their approach, professionalism of response, qualifications, directly related experience in the area, overall experience of the firm and their key personnel assigned to this study, anticipated services, and estimated fees. A breakdown of Staff's analysis of the responses is attached for reference.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: A \$50,000 consulting fee, payable in three installments, will be charged for Hawes Hill & Associates' services related to the TIRZ creation. Once created, this amount would be considered administrative costs for the TIRZ and would be reimbursed. Additionally, the initial \$20,000 consulting fee for the feasibility analysis is also eligible for reimbursement by the TIRZ.

Proposed Expenditure/(Revenue):	Account Number(s):
\$50,000	100-600-57000-5320

Finance Review by: Caryn Riggs, Director of Financial Services. *CR*

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

ATTACHMENTS:

1. Request For Proposal (RFP) for TIRZ Consulting Services Evaluation Form
2. Consulting Agreement between the Town and Hawes Hill & Associates

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

Attach 1-TIRZ Consultant RFP Evaluation Form

Town of Flower Mound
Request for Proposals to provide TIRZ Consulting Services
EVALUATION FORM

FIRM	OVERALL ABILITY TO MEET OBJECTIVES (60%)							EXPERIENCE (40%)		TOTAL
	Approach (10%)	Professionalism of Response (10%)	Proposal Contents (as requested) (40%)					Direct Firm Experience (20%)	Principal Experience (20%)	
			Qualifications (10%)	List of Cities with which you’ve worked (5%)	Description of Experience of key personnel, ID Principal (5%)	Anticipated Services (10%)	Breakdown of Fee Schedule (10%)			
Hawes Hill & Assoc.	10	9	10	5	5	10 Ph I - \$20,000 (Completed) Ph II-\$50,000 Current Request	10 (\$70,000)	20	20	99
Consultant B	10	10	9	5	5	10 (Ph I-\$15-\$30,000) (Ph II-\$15-\$20,000) (Ph III-\$30-\$45,000)	10 (\$60-\$95,000)	20	15	94
Consultant C	10	10	10	5	5	10 (Ph I-\$32,500) (Ph II-\$15,000)	10 (\$47,500)	15	18	93
Consultant D	8	8	10	5	5	8 (Noted as needed)	8 (Hourly Rates quoted)	18	20	90

**CONSULTING AGREEMENT
BETWEEN THE TOWN OF FLOWER MOUND
AND
HAWES HILL & ASSOCIATES**

This Consulting Agreement ("Agreement") is made and entered into as of _____, 2019 (the "Effective Date") by and between The Town of Flower Mound, TX ("Flower Mound" and "Client") and Hawes Hill & Associates, LLP ("HHA" and "Consultant").

WHEREAS Client and HHA desire to enter into an agreement for Consultant's professional services in connection with the creation of a reinvestment zone, including the development of the required Project Plan and Reinvestment Zone Financing Plan ("Services") associated with the creation of a Tax Increment Reinvestment Zone ("TIRZ") for the approximately 32-acre tract generally depicted on the attached Exhibit "A," and known as Lakeside Village Mixed-Use development for the Town of Flower Mound, per the proposal submitted on March 28, 2018.

NOW, THEREFORE, in consideration of the premises and of the mutual promises herein, the parties hereby agree as follows:

1. Purpose: Consultant shall provide activities related to the creation of a reinvestment zone, including development of the required Project Plan and Reinvestment Zone Financing Plan, and associated administrative services to Flower Mound in order to fully establish a TIRZ for the Lakeside Village Mixed-Use development.
2. Term: This Agreement is effective as of the Effective Date and, unless terminated earlier, shall continue until satisfactory completion of the Services, anticipated to be completed on or before July 1, 2019.
3. Scope of Services: Consultant agrees to work with Client to create a TIRZ set forth as follows:
 - Conduct meetings with elected officials and staff from proposed participating jurisdictions regarding a zone creation and implementation strategy. The HHA Team will provide financial impact information to each jurisdiction and clarify how tax increment financing will impact the jurisdiction's tax base and further each jurisdiction's economic development goals and objectives.
 - Complete the Preliminary Project Plan and Preliminary Reinvestment Zone Financing Plan that is used in briefings on the proposed zone's creation, including costs of all proposed public improvements. The Preliminary Project Plan will, at a minimum, include the following: a) maps showing the existing uses and conditions or real property in the zone and maps showing proposed improvements to and use of that property; b) proposed changes to any zoning ordinance applicable to the area; c) a list of the estimated non-project costs; and d) a statement of the method of relocating any persons to be displaced as a result of the implementation of the project plan. The Preliminary Financing Plan will include: a) a detailed list of estimated project costs for the zone, including administrative expenses; b) a statement listing the kind, number and location of proposed capital improvements, projects or programs to be undertaken in the zone; c) the estimated amount of bonded indebtedness to be incurred; d) the time when related costs or monetary obligations are to be incurred; e) a description of the methods of financing all estimated project costs and the expected sources of revenue to finance or pay project costs, including the percentage of tax increment to be derived from the property taxes of each taxing unit that levies taxes on real property in the zone.
 - Develop and submit to the Town all documents needed to issue a notification to all area taxing jurisdictions regarding the proposed creation of the reinvestment zone. Notice must be placed in the area newspaper of general circulation in the Town.
 - Conduct a workshop (if needed) with the Town Council on the creation of the zone. Present the proposed development strategy, the process for creating the reinvestment zone, and the administrative issues associated with implementation of the project plan and reinvestment zone financing plan and serve as support staff to Town staff in their role as advisors to the elected leadership.
 - Make any recommended revisions to the Preliminary Project Plan and Preliminary Reinvestment Zone Financing Plan prior to the public hearing. Changes will include revisions to the proposed boundaries,

adjustments to related data sets associated with the area targeted for development, types and locations of proposed improvements, and any other changes required.

- Prepare and deliver to the Town and legal counsel a draft public notice of the hearing and provide copies of the Preliminary Project Plan and Preliminary Reinvestment Zone Financing Plan for distribution to all other taxing jurisdictions with the notice. In addition, the HHA team will serve as the point of contact for any questions or issues that arise related to the hearing before the hearing is held (or as support to the Town if that is determined to be more appropriate).
- Prepare presentations as needed regarding the creation of the reinvestment zone.
- Assist the Town with conducting a public hearing on the creation of the tax increment reinvestment zone. In doing so, the HHA team is happy to conduct the hearing on the Town's behalf, or be present to serve as technical advisor to the Town during the hearing.
- Prepare and deliver to the Town and legal counsel the creation ordinance for the reinvestment zone. The ordinance will follow all of the requirements of, and make all the required statutory findings required in Chapter 311 of the Property Tax Code.
- Work with the Town to nominate and appoint an initial Board of Directors for the TIRZ.
- Prepare a final Project Plan and Reinvestment Zone Financing Plan for presentation to the Board of Directors of the TIRZ. Should any changes to the plan be required based on the public hearing process, the HHA team will incorporate the necessary changes into the document and make it ready for presentation to the TIRZ Board of Directors for their consideration and approval.
- Prepare and submit to the Town and legal counsel an ordinance for consideration by the Town Council approving the Project Plan and Reinvestment Zone Financing Plan as adopted by the TIRZ Board.
- Transmit the approved plan to all taxing jurisdictions.
- Negotiate final participation agreements with taxing jurisdictions. Each agreement will delineate the rate of participation for the jurisdiction, the term of the agreement, and any special negotiated provisions required by the jurisdiction for their participation in the TIRZ.
- Present all participation agreements to the TIRZ Board of Directors for approval.
- Prepare ordinances to submit to the Town and legal counsel for consideration by the Town of Flower Mound Town Council to approve participation agreements for other taxing jurisdictions.

4. Payment: Client agrees to pay Consultant as follows:

Client will pay Consultant \$50,000 (plus pre-approved travel and reasonable out of pocket expenses) for all services and expenses related to the Services and this Agreement. Client will pay Consultant in three installments as follows:

- | | |
|--|-------------|
| • Upon completion of the draft Preliminary Project Plan & Financing Plan | \$25,000.00 |
| • Upon creation of the Zone by Town Council | \$20,000.00 |
| • Upon adoption of the Final Project Plan and Financing Plan by Town Council | \$ 5,000.00 |

The Client shall reimburse the Consultant for all reasonable and necessary travel and other expenses incurred or paid by the Consultant in connection with the performance of its duties under this Agreement upon presentation of expense statements or vouchers and such other supporting information as the Client may from time to time reasonably request. However, the amount available for such travel and other expenses shall not exceed 15% (\$3,000) of the contract amount. The Client will reimburse Consultant within forty-five (45) days after Client receives such supporting documentation.

5. Performance of Work: Consultant will perform its Services with care, skill, and diligence, and in accordance with currently-recognized professional standards. Consultant will also comply with all federal, state, and local laws, ordinances, codes, and regulations in performing its Services.
6. Prompt Performance of Work: Consultant shall perform all duties and services and make all decisions called for hereunder promptly and without unreasonable delay and will give these Services such priority in its office as is necessary to cause Consultant's services hereunder to be timely and properly performed.
7. Independent Contractor: Client and Consultant intend that an independent contractor relationship be created by this Agreement. While Client will not exercise supervision of Consultant in any way, Consultant is to report

regularly to Client on work in progress. The nature and frequency of these reports will be determined with the Client in establishing a work plan and project flow.

- a. Consultant is required to make appropriate filings with the taxing authorities to account for and make all payments required by the local, state, and federal authorities, including income tax, social security, and SDI payments.
- b. Consultant agrees to defend, indemnify and hold Client harmless from any and all claims made by any entity on account of an alleged failure by Consultant to satisfy any such tax or withholding obligations.

8. Assignment: This Agreement may not be assigned, in whole or in part, without mutual written consent between HHA and the Client.

9. Confidential Information: Consultant agrees to maintain in strict confidence Client's confidential information. This includes any non-public information Consultant receives directly or indirectly from the Client and their representatives or acquired or developed in the performance of the Services, including but not limited to trade secrets, reports, documents, plans, ideas, inventions, methods, designs, formulas, systems, improvements, business affairs, data and know-how and technical information of any kind whatsoever, unless such information has been publicly disclosed by the Client. Consultant further agrees that, without the prior written consent of Client, Consultant shall not, either directly or indirectly: (i) disclose any such information to anyone; (ii) use any such information for the benefit of anyone other than the owner-entity; or (iii) permit any information to be disclosed to or used by anyone other than the owner-entity.

10. Intellectual Property

a. Intellectual Property

- i. Consultant acknowledges and agrees that Client shall be the sole and exclusive owner of any and all rights to any works Consultant creates or develops, alone or in conjunction with any other person or entity, while providing the Services under this Agreement, including, but not limited to, trade secrets, discoveries, processes, reports, documents, plans, ideas, inventions, methods, designs, formulas, systems, improvements, business affairs, data and know-how and technical information ("Intellectual Property").

b. Background Intellectual Property

- i. Client and Consultant acknowledge and agree that each will retain any and all rights to any Intellectual Property that it owned pre-existing this Agreement or generated after this Agreement but independent of the Services ("Background Intellectual Property").
- ii. If Consultant incorporates any of its Background Intellectual Property into the Intellectual Property, Consultant hereby grants a royalty-free nonexclusive and irreversible license to Client to reproduce, publish, and use such Background Intellectual Property in whole or in part and to authorize others to do so.

- c. Consultant agrees that it will not use or disclose any Intellectual Property owned by Client to benefit a competitor, individual, or other entity without Client's prior written consent.

11. Conflict Resolution/Venue: In the event of a disagreement that cannot be resolved informally, the parties shall first turn to non-binding mediation. The mediation must be conducted by a mediator mutually selected by the parties and with offices in Tarrant County or Denton County. If the parties cannot agree to a mediator or satisfactory resolution of the dispute is not reached and one party insists on legal action, the exclusive jurisdiction of any lawsuits shall be limited to state courts of Denton County, Texas, or the United States District Court for the Eastern District of Texas, Sherman Division. The prevailing party shall be entitled to court costs and reasonable attorney's fees.

12. Insurance: Consultant shall maintain throughout the period of this Agreement and for a period of three years thereafter, the insurance coverage as set forth on the attached Exhibit "B", the provisions of which are expressly incorporated herein by reference. Consultant shall assure that any and all consultants, contractors, or subcontractors engaged or employed by Consultant carry and maintain similar insurance with reasonably prudent limits and coverage in light of the services to be rendered by such consultants, contractors, or subcontractors. The maintenance in full current force and effect of such form and amount of insurance, as

required by Exhibit "B", shall be a condition precedent to the Consultant's exercise or enforcement of any rights under this Agreement.

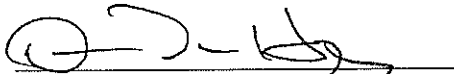
13. Indemnity: Consultant does hereby covenant and agree to release, indemnify and hold harmless TOWN and its officials, officers, agents, representatives, employees, and invitees, in their individual and official capacities, from and against any and all liability, claims, suits, demands, or causes of action, (including, but not limited to, attorney's fees and cost of litigation), for death or injury to property or persons arising out of the performance of this Agreement, but only to the extent occasioned by any error, omission or negligent act of CONSULTANT, its officials, officers, agents, employees, invitees, contractors, or subcontractors.
14. Termination: The Town may terminate this Agreement at any time, with or without cause, upon at least 30 days' written notice delivered in person or by certified mail return receipt requested. Upon receipt of such notice, Consultant shall immediately discontinue all services and work in connection with the performance of this Agreement and shall proceed to cancel promptly all existing contracts and orders insofar as they relate to this Agreement.

In the event of termination, Consultant shall deliver to the Town all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs, etc., prepared by Consultant under this Agreement. In the event of any termination hereunder, Consultant consents to Town's selection of another Consultant of professional services of Town's choice to assist the Town in any way in completing the Services. Provided that Consultant has been properly paid under this Agreement, Consultant further agrees to cooperate and provide any information requested by Town in connection with the completion of the Services. Consultant shall not be responsible or liable in any manner for Town's use of unfinished work product or documents listed above.

Consultant shall be compensated for services performed and expenses incurred for satisfactory work up to the termination date. Consultant shall receive a portion of fees and expenses permitted under this Agreement in direct proportion to percentage of work actually completed up to the termination date.

15. Consultant's Representations: Consultant hereby represents, promises and warrants to Town that Consultant is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder
16. Severability: If any provision of this Agreement is held to be invalid, such provision shall be deemed to be amended so that the intent of the parties is fulfilled to the greatest extent possible, and the remaining provisions will continue in full force and effect.
17. Governing Law: This Agreement shall be governed according to laws of the State of Texas, without regard to principles of conflicts of law.
18. Entire Agreement; Amendment: This Agreement supersedes all prior agreements, and it can only be changed by a written document signed by all parties.

For Hawes Hill & Associates, LLP:


David W. Hawes, Managing Partner

02.27.2019
Date Signed

For the Town of Flower Mound, TX:

Steve Dixon, Mayor

Date Signed

Exhibit A

Concept Plan

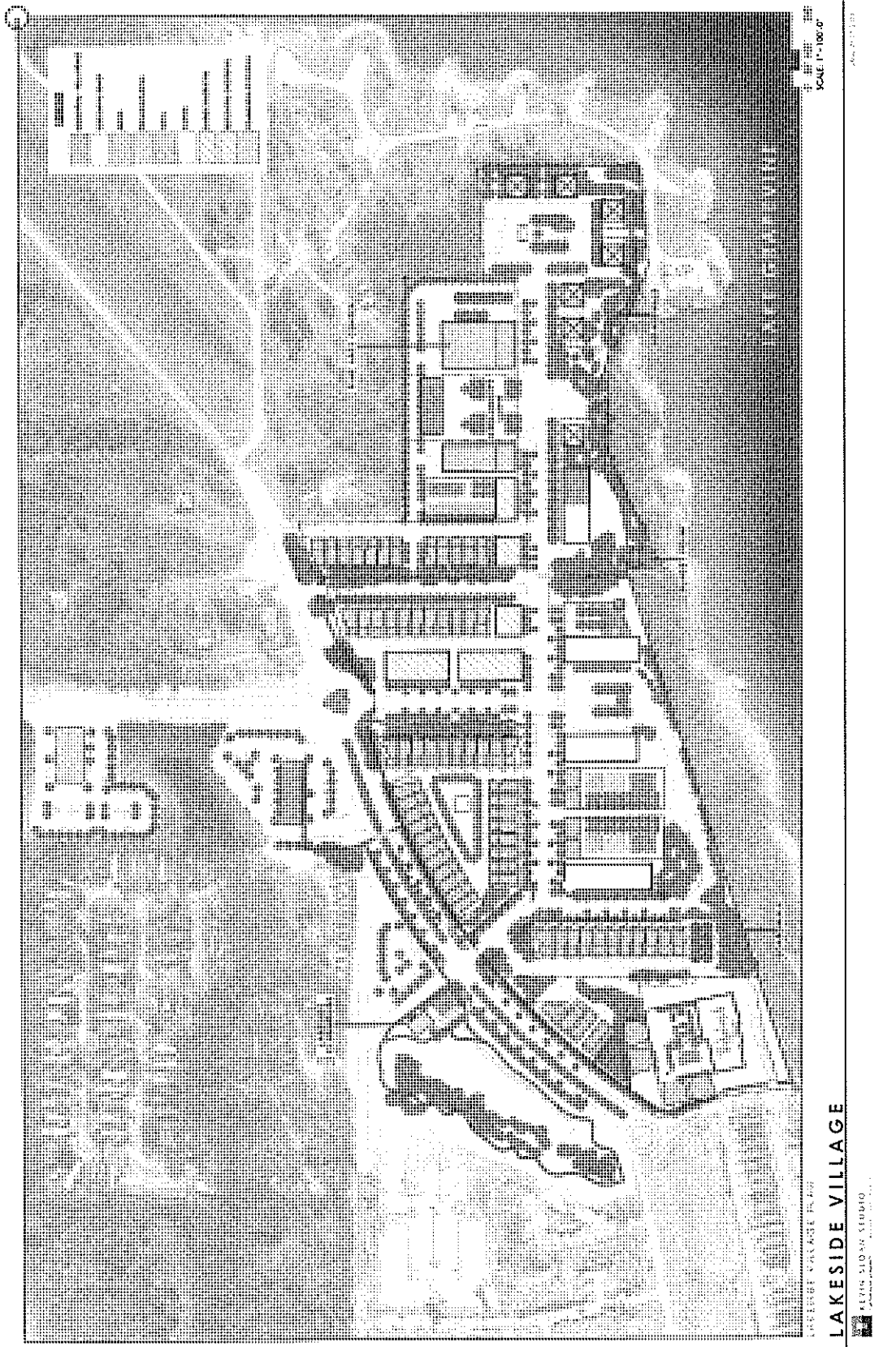


Exhibit B

Insurance Requirements

Policy Number:

Date Entered 8/22/2018



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/22/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Frank Willingham Insurance Agency, Inc. 26424 Lexington Road Spring, TX 77373	CONTACT NAME:		
	PHONE (A/C, No. Ext): (281) 353-4219	FAX (A/C, No): (281) 353-6097	
INSURED Hawes Hill Associates LLC Ms. Susan Hill PO Box 22167 Houston, TX 77227-9906	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: TEXAS MUTUAL INSURANCE		
	INSURER B:		
	INSURER C:		
	INSURER D:		
INSURER E:			
INSURER F:			

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR NSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	CLAIMS-MADE ☐ OCCUR ☐					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	POLICY ☐ PRO-JECT ☐ LOC ☐					PRODUCTS - COMP/OP AGG \$
	OTHER:					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO					BODILY INJURY (Per person) \$
	OWNED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY ☐					BODILY INJURY (Per accident) \$
	HIRED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB ☐ OCCUR ☐					EACH OCCURRENCE \$
	EXCESS LIAB ☐ CLAIMS-MADE ☐					AGGREGATE \$
	DED ☐ RETENTION \$					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A X 0001228967	09/21/2017	09/21/2018	PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
BLANKET WAIVER

CERTIFICATE HOLDER

CANCELLATION

TOWN OF FLOWER MOUND
2121 CROSS TIMBERS ROAD
FLOWER MOUND, TX 75028

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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TOWN COUNCIL AGENDA ITEM NO. 11

REGULAR ITEM

DATE: March 4, 2019

FROM: Andrea Roy, Economic Development Director

ITEM: **Presentation and discussion of findings regarding area Fine Arts/Performing Arts Centers.**

BACKGROUND INFORMATION: Along with the Town Council's approval of the Lakeside Village Zoning on April 16, 2018, the Town Council asked developer, Realty Capital, to consider potential placement of a fine arts/performing arts center within the Lakeside Village mixed-use development. The developer has done this and the Town agreed, within the approved Developer Agreement (approved on June 4, 2018) to do the following:

- (Town) Deliver a letter of commitment to the developer by April 17, 2019, indicating our intent to pursue construction of a Fine Arts/Performing Arts Center.
- If the intent of the Town to pursue the Fine Arts/Performing Arts Center is provided, the Town must commence construction by December 31, 2022.
- If the Town fails to act by these noted deadlines, the developer may pursue private development of the note "Arts Facility Location" within Lakeside Village.

At the direction of Town Council, Staff has researched a variety of fine arts/performing arts center within the DFW Metroplex to gain a deeper understanding of the general size, construction and operating costs, and financing mechanisms utilized. Fine Arts/Performing Arts Centers in the City of Lewisville, Grapevine, Plano, Dallas, Coppell, McKinney, and Addison were reviewed. Staff will present these finding to the Council.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. There are no attachments associated with this item. Staff will share the information in a presentation and provide for discussion and feedback from the Council.

DRAFT MOTION: Staff is seeking Council direction on the subject item.



SCHEDULED	3/18/2019	Presentation	Presentation of TMLDA Achievement of Excellence Award to Library
		Consent	Consider approval of Amendment No. 3 to the Fiscal Year 2018-2019 Capital Improvement Program.
		Consent	Consider approval of a Construction Agreement with 2L Construction, LLC., for the FM2499 at Lakeside Parkway Northbound Right-Turn Lane project, in the amount of \$348,143.25; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Pacheco Koch Consulting Engineers, Inc. for the design phase services associated with the Bruton Orand Boulevard at FM 1171 Right Turn Lane project, in the amount of \$61,294.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider authorization of the submission of the Town of Flower Mound Police Department Patrol Boat application for the 2020 DJ-Edward Byrne Memorial Justice Assistance Grant, acceptance of grant funds if awarded, agreeing to return all funds in the event of loss or misuse and designating the Town Manager as the grantee's authorized official.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on March 4, 2019.
		Regular	Consider approval of custodial bid 2019-50-A
		Regular	Public Hearing to consider a request for rezoning (ZPD18-0013 - Home Depot Silveron Addition) to amend Planned Development District-31 (PD-31) with Campus Commercial uses that is subject to Specific Use Permit 245 (SUP-245) to amend Specific Use Permit 245 (SUP-245) to allow for truck rental, trailer rental, and rental/sales of propane containers outdoors on site. The property is generally located east of Long Prairie Road and south of Lakeside Parkway.
		Regular	Consider approval of a Construction Agreement with Tiseo Paving Company for the Morriss Road and 20" Water Line Improvements project, in the amount of \$5,000,844.95; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of a Construction Agreement with Felix Construction Company for the Wastewater Treatment Plant Ultraviolet System Upgrade project, in the amount of \$2,065,700.00; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of a Construction Agreement with MSB Constructors, Inc., for the Flower Mound Storage Warehouse project, in the amount of \$1,395,000.00; and authorization for the Mayor to execute same on behalf of the Town.

SCHEDULED	3/18/2019	Regular	Public Hearing to consider a request to amend the Land Development Regulations (LDR19-0001 - Landscaping) by amending Chapter 82, Article V, Division 2, entitled "Landscaping," of the Town's Code of Ordinances to allow for the use of synthetic turf as a ground cover.
	4/1/2019	Consent	Bakerfield Park Restroom and Concrete Walkways Award
		Consent	Central Fire Sta 1 Remodel - Access Control Unit
		Consent	Flower Mound Storage Warehouse - Testing Award.
		Consent	Consider approval of the Comprehensive Annual Financial Report for the fiscal year ending September 30, 2018.
		Consent	Sidewalk Links
		Consent	Wastewater Treatment Plant Ultraviolet System Update - CCA
		Consent	Central Fire Sta 1 Remodel - HVAC Install
		Consent	Fire Sta 7 - NET Access Control
		Consent	Consider approval of an ordinance to reappoint Alternate Municipal Judge Stephanie Agnew for the period of April 17, 2019, through April 16, 2021.
		Consent	Wellington Phase VIII Speed Limit Change.
		Consent	Discuss and consider amendments to Chapter 6 (Animals) of the Town's Code of Ordinances.
		Consent	Consider approval of emergency expenditures for the repair of the Hanover sanitary sewer main in the amount of \$61,802.98.
	4/15/2019	Consent	Morriss Road & 20-Inch Water Line Phase I Improvements - Testing Award
		Consent	Windsor Roundabout Connection AND Valley Ridge Blvd @ Morriss Rd - Construction Award.
		Consent	Heritage Park Phase IV Change Order 4.
		Consent	Windsor Roundabout Connection AND Valley Ridge Blvd @ Morriss Rd - Testing Award.
		Consent	Consider approval of the 2019 US Army Corps of Engineer (USACE) Solicitation No. XXXXXXXX for Contract with the Town of Flower Mound for law enforcement services at Lake Grapevine; and authorize the Mayor to execute same on behalf of the Town.

SCHEDULED	4/15/2019	Consent	Consider approval of Construction Materials Testing (CMT) for the construction of the Library Expansion Project with ECS Southwest LLC. in the amount of \$54,735.00; and authorization for the Mayor to execute the same on behalf of the Town.
		Regular	Consider approval of the Guaranteed Maximum Price (GMP) for the construction of the Library Expansion Project with Steele and Freeman, Inc. in the amount of \$9,400,000.00; and authorization for the Mayor to execute the same on behalf of the Town.
	4/18/2019	Work Session	Joint work session with Town Council and Environmental Conservation Commission (ECC).
	5/6/2019	Consent	FM407 at Browning Signal Construction Award.
	5/14/2019	Regular	Placeholder: May 4, 2019 election canvass
	5/20/2019	Consent	FM 1171 @ Riverwalk Drive Intersection Improvements - Construction Award.
		Consent	FM 1171 @ Riverwalk Drive - Testing Award