

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

5/6/2019

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. Certificate of Achievement for Dillon Smith - Special Olympics World Games Medalist

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

H. **FUTURE AGENDA ITEMS**

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

I. COORDINATION OF CALENDARS

1. A special meeting is scheduled for Tuesday, May 14, 6:00 p.m., to canvass the election and will include a public reception for outgoing and incoming Councilmembers at 5:00 p.m.
2. A regular meeting is scheduled for Monday, May 20.

J. CONSENT ITEMS

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

1. Minutes 4/15- Consider approval of the minutes from a regular meeting of the Town Council held on April 15, 2019.
2. Minutes 4/18- Consider approval of the minutes from a Joint Town Council and Environmental Conservation Commission work session held on April 18, 2019.
3. DENCO nomination- Consider approval of a resolution nominating a candidate for appointment to the Denco Area 9-1-1 District Board of Managers.
4. Oncor Rate Case- Denial Resolution- Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by Oncor to deny Oncor Electric Delivery Company LLC's application for approval to amend its distribution cost recovery factor.
5. Senior Center Casino Night- Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Casino Night.
6. Peters Colony Memorial Park- Consider approval of the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the Peters Colony Memorial Park Master Plan project, in the amount of \$39,500.00; and authorization for the Mayor to execute same on behalf of the Town.
7. Wellington Speed Limit Change- Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound, Texas, relating to the prima facie speed limits for specific streets by lowering the prima facie speed limit on various streets with Wellington of Flower Mound Phase 8 and Phase 9 to 25 mph (The Transportation Commission recommended approval of the exception request for Wellington Phase 8/9 by a vote of 6 to 0 at its February 12, 2019, meeting.), and conversion of streets within Wellington Phase 5a, 6 and 7 to 25 mph, and adjustment of the School Zone on Bruton Orand Blvd. near Brittainy Drive
8. Library Expansion - Testing Award- Consider approval of a Professional Services Agreement with ECS Southwest LLC, to provide construction materials engineering and testing 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.
9. Fire #7 Network Access Control System- Consider approval of Proposal #19-332 for the I/NET Access Control System from Schneider Electric Buildings, a Sole Source Provider, for the Flower Mound Fire Station 7 project in the amount of \$46,695.00.
10. FM 407 @ Browning Signal Construction Award- Consider approval of a Construction Agreement with Bean Electrical, Inc, for the FM 407 at Browning Signal Reconstruction project, in the amount of \$169,060.25; and authorization for the Mayor to execute same on behalf of the Town.

11. Bakersfield Restroom & Walkways Award- Consider approval of the Construction Agreement with North Rock Construction LLC, for the Bakersfield Restroom and Concrete Walkway project, in the amount of \$409,968.02; and authorization for the Mayor to execute same on behalf of the Town.
12. UTRWD TOFM Representative- Consider approval of a resolution appointing Clay Riggs as the Town's representative, to serve on the Upper Trinity Regional Water District (UTRWD) Board of Directors for a four-year term ending May 19, 2023; and authorization for the Mayor to sign on behalf of the Town.

K. REGULAR ITEMS

13. Tax Increment Reinvestment Zone- **Public Hearing** to consider approval of an ordinance designating a contiguous geographic area within the Town of Flower Mound as Reinvestment Zone Number Two, Town of Flower Mound, Texas, for Tax Increment Financing Purposes pursuant to Chapter 311 of the Texas Tax Code; Creating a Board of Directors for such zone; containing findings and other provisions relating to the foregoing subject; and providing a severability clause.
14. Bella Lago Concept Master Plan- **Public Hearing** to consider approval of a Concept Master Plan for Bella Lago Park.
15. Library Expansion Construction Award- Consider approval of the Guaranteed Maximum Price (GMP) with Steele and Freeman, Inc., for the construction of the Library Expansion Project in the amount of \$10,399,482.11; and authorization for the Mayor to execute the same on behalf of the Town.
16. Tax Abatement Reinvest./Garden Ridge- **Public Hearing** to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial-warehouse tax abatement at 951 Garden Ridge Blvd.
17. Tax Abatement Thirty-One Gifts/Ch 380- **Public Hearing** to consider approval of a Tax Abatement and Chapter 380 Agreement with Thirty-One Gifts, LLC and Prologis, for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town.
18. Assignment of Ch 380 Agrmnt- Consider consent to a security agreement and collateral assignment of the Chapter 380 Agreement between the Town of Flower Mound and FM 2499 Office Venture, LLC, (converted to FM 2499 Office Venture, LP) to First United Bank and Trust Company, and authorization for the Mayor to execute same on behalf of the Town.

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, and 551.087 for consultation with attorney, and to discuss matters relating to real property, and economic development negotiations, as follows:

- a. Consultation with Attorney.

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: May 2, 2019, 2:10 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: May 6, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on April 15, 2019.

BACKGROUND INFORMATION: The Town Council held a regular meeting on April 15, 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 15TH DAY OF APRIL 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
JP Walton	Assistant to the Town Manager
Christine Hastings	Animal Services Manager
Bob Pegg	Assistant Director of Engineering
Shane Jennings	Police Captain
Andy Kancel	Police Chief

A. CALL REGULAR MEETING TO ORDER

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

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

Chaplain Mike Liles gave the invocation and Mayor Dixon led the pledges.

Mayor Dixon announced that Mr. Liles is soon to be retiring as an employee of the Town. He extended thanks for his many years of service to the Town.

D. 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.	Jeffrey Blasko, 1720 Milford Dr With donated time from: Mike Miner, 1513 Fuqua Dr Nick Blasko, 1720 Milford Aricia Blasko, 1720 Milford Carol Owens, 1720 Milford	Agenda item 14
2.	Paul Stone, 4100 Broadway	Consent Item #7
3.	Mike Wallace, 2913 Trailwood Ln	Election
4.	Lauri Pistole, 6399 Morningstar Dr, #1017, The Colony	Thanks
5.	Jim Pierson, 3209 High Rd	Limited Residential; Fine Arts Ctr
6.	Cathy Strathmann, 2612 Belmont Ct	Item 13 & 14 (opposition)
7.	Katy Grote, 165 Double Oaks, Double Oak	Item 13 (opposition)
8.	Lisa Watrous, 2624 Virginia Pkwy	Performing arts building (opposition)
9.	Ann Martin, 4700 Oak Springs Dr	Item 14 (opposition)
10.	David Johnson, 3617 San Paula	Item 14 (opposition)
11.	Patrick Martin, 4700 Oak Springs Dr	Item 14 (opposition)
12.	Jenice Pizzuto, 2629 Desco Dr	TIRZ Lakeside Village (support)
13.	Carol Kohankie, 4312 Lauren Way	Performing Arts Center (Mary Webb)
14.	Peter Schwartz, 2617 Desco Dr Speaking on behalf of Curtis Frisbie, 2717 Desco Dr	TIRZ Lakeside Village (support)
15.	Kathy Frisbie, 2717 Desco Dr	TIRZ Lakeside Village (support)
16.	Bryan Webb, 4112 High Rd	TIRZ
17.	Don McDaniel, 3801 Hideaway Ct	TIRZ
18.	Hank Reinsch, 4200 Thames Ct	Windsor Drive Connection
19.	Tami Shinedling, 2004 Walden Blvd*	Item 14 (opposition)
20.	Cecil Drewry, 2912 Windsor Dr*	Windsor Dr Connect (opposition)
21.	Pauline Drewry, 2912 Windsor Dr*	Windsor Dr Connection (opposition)
22.	Sandy Fambrough, 4105 Spring Meadow Ln*	Item 14 (opposition)
23.	Pauline Drewry, 2912 Windsor Dr*	Windsor Dr (opposition)

*submitted a comment form; however, indicated did not wish to speak

Mayor Dixon and/or Mr. Stathatos provided statements of fact in response to a public inquiry regarding next steps for the Windsor Drive connection road project.

E. ANNOUNCEMENTS

Councilmember Bryant reported having attended a Marcus/Flower Mound High School baseball game and fundraiser event, and he announced that the KFMB Trash Bash is scheduled for April 27th.

Councilmember Engel announced that Environmental Services will host an Earth Day event at the Flower Mound Library on April 22nd from 2 – 5pm

Mayor Pro Tem Webb announced the annual Easter Sunrise service on The Mound and encouraged everyone to come.

Councilmember Sharma announced upcoming election information, including the announcement of the new polling location of the CAC.

F. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update on the following projects:

1. Capital improvement projects
 - Morriss Road improvements (3040 to Firewheel)
 - Pedestrian safety plans for the area by The Hound Mound Dog Park
2. Economic Development projects
 - New businesses coming to Flower Mound
3. Legislative Update

Ms. Wallace reported on the status of various bills in circulation within the Texas legislature
4. Other

Ms. Wallace announced plans for public art at Town Hall.

G. FUTURE AGENDA ITEMS

1. Councilmember Bryant indicated interest in bringing back the discussion about the senior overlay for the purpose of clarifying the direction given the super majority component.

Mr. Stathatos responded to the following questions from Council:

- Are there any conceptual projects in the works

There was Council consensus to not make any changes and allow the item to continue with the current plan to have it heard by Council in May.

2. Mayor Pro Tem Webb pointed out there are Master Plan Amendments (MPAs) and zoning items scheduled for May 6th and whether it's prudent to push those items to mid-May or June given the May 4th election, since it will be the last meeting for two council members.

There was Council consensus to have large projects such as MPA's with companion zoning cases moved from May 6th to a future date.

H. COORDINATION OF CALENDARS

Mayor Dixon announced there is a joint work session with the Environmental Conservation Commission (ECC) on Thursday, April 18 and the next regular meeting is Monday, May 6.

I. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on April 1, 2019.
2. Consider approval of an ordinance to reappoint Alternate Municipal Judge Stephanie Askew for the period of April 17, 2019, through April 16, 2021.

ORDINANCE NO. 11-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS SETTING THE COMPENSATION FOR THE ALTERNATE JUDGE OF THE MUNICIPAL COURT OF RECORD IN THE TOWN OF FLOWER MOUND; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

3. Consider approval to fund replacement of virtual server hardware in the amount of \$49,804
4. Consider approval of Bid No. 2019-50-A Custodial Services to UBM Enterprise Inc. in the annual amount of \$203,060.00
5. *Moved from Consent to Regular*
6. Consider approval of Memo of Understanding between the Town of Flower Mound and the Town of Northlake to allow Flower Mound Animal Services to provide limited animal services for the Town of Northlake, and authorization for the Mayor to execute same on behalf of the Town.
7. *Moved from Consent to Regular*
8. Consider approval of Change Order No. 4, for the Heritage Park Phase IV project, in the amount of \$61,104.59; and authorization for the Mayor to execute same on behalf of the Town.
9. Consider approval of a Professional Services Agreement with ECS Southwest LLC, to provide construction materials engineering and testing, for the Morriss Road and 20" Water Line Improvements, in the amount of \$97,784.00; and authorization for the Mayor to execute same on behalf of the Town.

Councilmember Bryant moved to approve by consent Items 1-4; 6; 8-9, as presented in the agenda caption. Deputy Mayor Pro Tem Forest 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

J. REGULAR ITEMS

5. Consider approval of a contract with Sawko & Burroughs, P.C. for the collection of outstanding Class C misdemeanor capias warrants and delinquent municipal fines, utility bills and miscellaneous receivables, and authorization of Mayor to execute same on behalf of the Town.

Councilmember Bryant offered an explanation as to why he requested the item be pulled.

Ms. Wallace provided background information regarding this item, and responded to the following questions from Council:

- Success rate on recovery, and what is the standard in this industry
- Were there any other local organizations considered
- Clarification regarding the term of the contract
- How long has Sawko & Burroughs been doing these collections
- Why did the Town opt for the company with the lowest recovery rate

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

VOTE ON MOTION:

Motion passed

AYES: BRYANT, ENGEL, WEBB, FOREST, SHARMA

NAYS: NONE

7. Consider approval of an ordinance amending Chapter 6, Article I, "In General," to establish the definition of certain defined terms and amending Article V, "Dangerous Animals" in its entirety; providing this ordinance shall be cumulative of all ordinances; providing a penalty for violation of the code of ordinances of the Town of Flower Mound, Texas.

Mayor Pro Tem Webb offered an explanation as to why he requested the item be pulled.

Ms. Hastings gave a presentation identifying or noting:

- Article V – Dangerous animals
- Dangerous animal definitions
- Process
- Compliance requirements
- Summary

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

- Why wasn't there a recommendation from the Animal Services Board for this item, especially when you consider it's a process change at the shelter

and there was Council discussion regarding:

- Given the changes were legal in nature there wasn't a need to have the item come forward to the Animal Services Board

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

ORDINANCE NO. 12-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS BY AMENDING CHAPTER 6, "ANIMALS," ARTICLE I, "IN GENERAL," TO ESTABLISH THE DEFINITION OF CERTAIN DEFINED TERMS AND AMENDING ARTICLE V, "DANGEROUS ANIMALS," IN ITS ENTIRETY; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A

PENALTY FOR VIOLATION; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: SHARMA, FOREST, WEBB, ENGEL, BRYANT

NAYS: NONE

10. Public Hearing to consider approval of an ordinance amending Chapter 90 of the Town's Land Development Regulations (LDR19-0003 – Park Credit Option), adding minimum park land dedication requirements for multi-family and senior housing uses; clarifying park development fee requirements; providing options for privately maintained and publicly accessible parks and open space; clarifying park land dedication and park development fee requirements for the (MU) mixed use district and (PD) planned development district; and deleting existing provisions in conflict therewith, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its April 8, 2019, meeting.)

Staff Presentation

Mr. Dalton gave a presentation identifying or noting:

- Council Direction
- Background information
- Concerns
- Park Board input
- P & Z discussion points
- Ordinance elements: formula, applicability, open space
- Summary table

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

- Have the citizens out west been contacted about the ordinance change
- Clarification regarding:
 - What constitutes a major change
 - Calculations, such as language dictating up to 100%
 - non usable open space credit
 - administrative approvals
 - timing
 - eligibility

and there was Council discussion regarding:

- For years Council has been working to streamline, consolidate, and condense ordinances to create a valid direction
- This agenda item clarifies the ordinance regarding credits
- How setting a cap for the credits would not allow flexibility
- Concerns that a development community may have the expectation that they can get to 100% and the position that puts staff in
- Whether or not to set a maximum percentage amount for the credits or have the flexibility to take it to 100%
- Whether or not a super majority should be put in place for an amount greater than 90%, for example
- The option of putting a statement in the ordinance that defines the type of development that would be eligible for 100%

- Possibility of allowing for a lesser credit (25%) for open space instead of up to 50%

Mayor Dixon opened the Public Hearing at 7:55 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
Mark Mayer, 3612 Burlington Dr	None	Jim Pierson, 3209 High Rd

Mayor Dixon closed the Public Hearing at 8:00 p.m.

Councilmember Bryant moved to approve as presented, including the addition of language in the Ordinance that would characterize the type of development that would warrant consideration for the 100% credit. Deputy Mayor Pro Tem Forest seconded the motion.

ORDINANCE NO. 13-19

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 90-443(d) "CHARACTER AND MINIMUM DEDICATION" OF DIVISION 9, "PARK AND RECREATIONAL AREAS," OF ARTICLE VI, "STANDARDS," OF CHAPTER 90 OF THE TOWN'S CODE OF ORDINANCES BY ADDING MINIMUM PARK LAND DEDICATION REQUIRMENTS FOR MULTI-FAMILY AND SENIOR HOUSING USES; BY AMENDING SECTION 90-446(b) "PARK DEVELOPMENT FEES" OF DIVISION 9, "PARK AND RECREATIONAL AREAS," OF ARTICLE VI, "STANDARDS," OF CHAPTER 90 OF THE TOWN'S CODE OF ORDINANCES BY CLARIFYING THE PARK DEVELOPMENT FEE REQUIREMENT; BY ADDING A NEW SECTION 90-449 "PARK CREDIT OPTION" OF DIVISION 9, "PARK AND RECREATIONAL AREAS," OF ARTICLE VI, "STANDARDS," OF CHAPTER 90 OF THE TOWN'S CODE OF ORDINANCES TO PROVIDE OPTIONS FOR PRIVATELY MAINTAINED AND PUBLICLY ACCESSIBLE PARKS AND OPEN SPACE; BY AMENDING SECTION 98-902(c) "DEVELOPMENT STANDARDS" OF DIVISION 25, "MU MIXED USE DISTRICT," OF ARTICLE III, "DISTRICT REGULATIONS," OF CHAPTER 98 OF THE TOWN'S CODE OF ORDINANCES BY AMENDING THE NOTE CONTAINED IN SECTION 3.0 OF TABLE 3; BY AMENDING SECTION 98-905(b) "MODIFICATIONS" OF DIVISION 25, "MU MIXED USE DISTRICT," OF ARTICLE III, "DISTRICT REGULATIONS," OF CHAPTER 98 OF THE TOWN'S CODE OF ORDINANCES BY CLARIFYING THE PARK LAND DEDICATION AND PARK DEVELOPMENT FEE REQUIREMENTS FOR THE MU MIXED USE DISTRICT; BY AMENDING SECTION 98-905(b), SUBSECTIONS 1-3 "MODIFICATIONS" OF DIVISION 25, "MU MIXED USE DISTRICT," OF ARTICLE III, "DISTRICT REGULATIONS," OF CHAPTER 98 OF THE TOWN'S CODE OF ORDINANCES BY DELETING SAID SUBSECTIONS; BY ADDING A NEW SECTION 98-815, "PARK DEDICATION AND PARK DEVELOPMENT FEES" OF DIVISION 21, "PD PLANNED DEVELOPMENT DISTRICT," OF ARTICLE III, "DISTRICT REGULATIONS," OF CHAPTER 98 OF THE TOWN'S CODE OF ORDINANCES BY CLARIFYING THE PARK STANDARDS FOR PD PLANNED DEVELOPMENT DISTRICTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR

PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

Motion passed

AYES: BRYANT, ENGEL, WEBB, FOREST, SHARMA

NAYS: NONE

11. Public Hearing to consider a request for a Land Development Regulation Amendment (LDR19-0004 - Limited Residential Definition) to amend Chapter 98, Article III, Division 22, entitled "CC Campus Commercial District," of the Town's Code of Ordinances, to define the standards for Limited Residential development, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its April 8, 2019, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- Quick recap/background information
- Proposed location
- Residential development criteria
- Parking structures
- Open space
- Bonus provisions
- Planning & Zoning feedback

and she responded to the following questions from Council, some of which were as a result of the Public Hearing:

- Clarification regarding the open space calculations
- Building square foot calculations and parking garage equations
- Is there a building height limit
- Clarification of the "site" definition
- How is vertical density determined in high rises
- How the open space is determined

and there was Council discussion regarding:

- How the language has an "up to" amount so Council still has discretion
- Whether or not to leave the calculations for parking garages
- Public commercial use versus residential use/amenities
- Current development examples
- The original intent associated with having limited residential in Lakeside
- Because of the amount of residential in Lakeside, a reduction is worth considering
- How the market dictates the types of buildings
- How Parker Square is an example where limited residential over those businesses would have made it a gem of a property
- The objective of the limited residential definition and how it allows for a baseline to work with for applicants
- How ideally there would be no residential; however, there is also an understanding that some bending is needed
- How the new ordinance would be applicable to 50 or less acres remaining in Lakeside

- More residential equates to less commercial

Mayor Dixon opened the Public Hearing at 8:36 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
None	None	Jim Pierson, 3209 High Rd
		Bill Dahlstrom, 2323 Ross Ave, Ste 600, Dallas
		Jeffrey Blasko, 1720 Milford Dr
		Jim Wells, 14160 Dallas Pkwy, (represents Lakewood) (city name not provided)

Mayor Dixon closed the Public Hearing at 8:41 p.m.

Councilmember Bryant moved to approve as presented in the agenda caption, including the provisions for vested rights for existing applicants, and to add clarification language regarding leasing offices and exclusive amenities (meaning if the commercial is not open to the public that would be considered a residential use, along with an associated leasing office). Deputy Mayor Pro Tem Forest seconded the motion.

ORDINANCE NO. 14-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING, DIVISION 22, "CC CAMPUS COMMERCIAL DISTRICT" OF ARTICLE III, "DISTRICT REGULATIONS" OF CHAPTER 98, "ZONING" OF THE CODE OF ORDINANCES BY AMENDING SECTION 98-848, "COMPLIANCE WITH AREA PLAN COMPONENTS," TO DEFINE STANDARDS FOR LIMITED RESIDENTIAL DEVELOPMENT WITHIN THE LAKESIDE BUSINESS DISTRICT; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: FOREST, WEBB, ENGEL, BRYANT

NAYS: SHARMA

Motion passed

- Public Hearing to consider a request to amend the Land Development Regulations (LDR19-0002 – Drainage and Grading) by amending Chapter 32, entitled "Engineering Design Criteria and Construction Standards," of the Town's Code of Ordinances, and to consider adopting an ordinance providing for said amendment. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its April 8, 2019, meeting.)

Staff Presentation

Mr. Pegg gave a presentation identifying or noting:

- Agenda item outline
- Purpose
- 100 year event
- Issues identified
- Changes/staff recommendations
- P & Z Review/Feedback (March 25 work session and April 8 meeting)
- Survey results from benchmark cities (Does your city have standards for private drainage easements)
- Details (new requirements and exception process)

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

- Applicability (residential only)
- What kind of authority would the HOA have in a dispute situation
- How can past developments be addressed

Mayor Dixon opened the Public Hearing at 9:15 p.m. No one spoke in support or opposition. Mayor Dixon closed the Public Hearing at 9:15 p.m.

Councilmember Sharma moved to approve as presented in the agenda caption. Councilmember Engel seconded the motion.

ORDINANCE NO. 15-19

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE “ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS” ADOPTED PURSUANT TO CHAPTER 32 OF THE TOWN’S CODE OF ORDINANCES BY AMENDING CERTAIN PROVISIONS OF THE DESIGN CRITERIA AND CONSTRUCTION STANDARDS RELATED TO STORM WATER SYSTEM IMPROVEMENTS AND GENERAL SITE REQUIREMENTS; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: BRYANT, ENGEL, WEBB, FOREST, SHARMA

NAYS: NONE

Motion passed

13. Consider approval of a multi-year agreement with All City Management Services, and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Captain Jennings gave a presentation identifying or noting:

- Current year report
- Current school year update
- Program objectives
- Contract renewal components

and he, Chief Kancel, Mr. Stathatos, or Patricia Pole, Vice President of Operations, ACMS, responded to the following questions from Council regarding:

- Billing hours versus shifts
- Deficiencies in the number of guards at cross walks
- What is a “no guard” situation and how is that handled
- 60 days versus 90 days termination discrepancy in the contract
- Are crossing guards allowed to assist a child cross the road after their shift has ended (i.e. where a child would have stayed after school for a special program)
- Was an RFP conducted or is it a sole source situation
- Training period, including at what point can a guard be left alone at a site
- Was a survey conducted within ACMS and the guards
- How does the Town decide service levels (i.e. how many guards per crossing)
- What type of clothing is provided to the guards (i.e. uniforms, rain gear, etc.)
- Is there an anonymous employee hot line for the guards
- Communication options
- What are optional sites as referenced in the contract
- Clarification regarding the coverage charge for when police officers are used at crossing guard sites

There was Council discussion regarding:

- How there is room for improvement but believes the concerns brought up will be addressed
- Concerns regarding missing shifts, a report of a child injury at Vickery, and crossing guards being prohibited to speak to members of Council - because of these issues a multi-year contract extension should not be approved
- Interest in having the crossing guard program shifted back internally with the Police Dept.
- Interest in trusting the recommendation of the Police Department (the administrator of the program) as they’ve reviewed the numbers, received the calls, etc.
- Interest in the use of an app to check in at sites
- How it’s a matter of going by the data or subjective issues

Councilmember Bryant moved to approve as presented in the agenda caption, and for the revised agreement to include a penalty clause should the police department need to cover a site, and for a 90 day termination agreement. Deputy Mayor Pro Tem Forest seconded the motion.

Councilmember Sharma recommended an amendment to the motion for a one year term agreement. Councilmember Bryant declined the recommendation, as did Deputy Mayor Pro Tem Forest.

VOTE ON MOTION:

AYES: FOREST, WEBB, BRYANT

NAYS: SHARMA, ENGEL

Motion passed

Mayor Dixon reiterated that if any Flower Mound resident has an issue or concern with ACMS they need to contact the Police Department, and ACMS employees need to contact their employer. Additionally, members of Council need to report concerns to the Town Manager so the proper steps can be taken to resolve the issue.

He also pointed out that the Town has the option to cancel the contract at any time.

14. Discuss and consider authorizing the Mayor to issue a response to Sunset Legacy, LP and Lakeside Residences, LP regarding a Fine Arts Facility in Lakeside Village, in accordance with the terms outlined in the Third Amendment to Development Agreement for Lakeside DFW.

Staff Presentation

Ms. Roy gave a presentation identifying or noting:

- Developer agreement with Realty Capital and background information
- Town response as outlined in the letter addressed to the developer
- If a letter is given with a commitment date the right studies need to be done

There was Council discussion regarding:

- We're not saying no but not saying yes and the response allows Council time to do the studies
- Feedback from the community on the topic
- The Cultural Arts Master Plan dictates the interest in a Fine Arts Center
- Whether or not Lakeside is the correct location
- Whether or not a specific date needs to be included

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

VOTE ON MOTION:

AYES: BRYANT, ENGEL, WEBB, FOREST, SHARMA

NAYS: NONE

Motion passed

K./L. CLOSED/OPEN MEETING

The Town Council did not convene into 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 economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

M. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 11:20 p.m. on Monday, April 15, 2019, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

DRAFT



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: May 6, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a Joint Town Council and Environmental Conservation Commission work session held on April 18, 2019.

BACKGROUND INFORMATION: The Town Council held a joint work session with the Environmental Conservation Commission on April 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/ECC JOINT WORK SESSION MEETING HELD ON THE 18TH DAY OF APRIL, 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 and Environmental Conservation Commission (ECC) met in a work session with the following members present:

Town Council:

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

Environmental Conservation Commission:

Thomas Bailey	ECC Chair, Place 6
James Seastrom	ECC Vice Chair, Place 2
James Naylor	Place 1
Russell McNamer	Place 3
Marilyn Lawson	Place 4
Alton Bowman	Place 5
James Gerber	Place 7
Elaine Takacs	Place 8, Alternate
Kathryn Wells	Place 10, Alternate

And the following members absent:

Steve Dixon	Town Council, Mayor
Shery Layne (ECC)	ECC, Place 9, Alternate

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

Theresa Scott	Town Secretary
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Matthew Wood	Director of Environmental Services
Matt Green	Environmental Review Analyst
James Hoefert	Environmental Review Analyst

A. CALL WORK SESSION TO ORDER

Mayor Pro Tem Webb called the work session to order at 6:00 p.m.

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

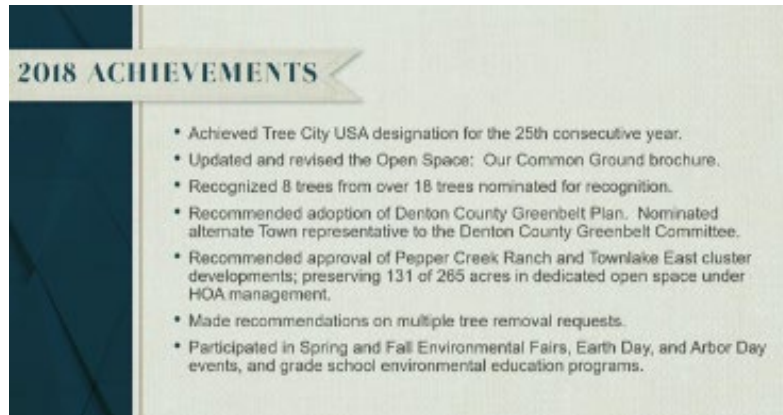
Chaplain McNamer gave the invocation and Mayor Pro Tem Webb led the pledges.

D. WORK SESSION ITEM

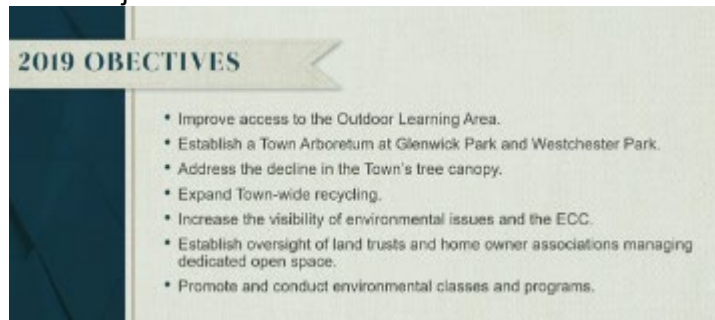
1. Joint work session with Town Council and Environmental Conservation Commission (ECC) to discuss accomplishments and objectives as presented in the 2018 ECC Annual update and within the scope of the [ECC powers and duties](#).

ECC Chair, Tom Bailey, gave a presentation identifying or noting:

- Introductions
- Purpose & vision statement
- Powers and Duties (handout)
- 2018 ECC achievements



- 2019 Objectives



- ECC subcommittees
- Oversight of land trusts and HOAs managing open space
- Establish a Town arboretum
- Address the decline in the town tree canopy
- Expand Town-wide recycling
- Improve access to the outdoor learning area
- Increase the visibility of environmental issues
- Promote and conduct environmental classes and programs

And there was discussion between Council and ECC members regarding:

- Open space management plans (as presented by ECC):
 - clarification regarding whether assessments are voluntary or mandatory, and enforcement options should there be a mandatory requirement
 - Density measured by lot size causes a loss of open space
- Arboretum
 - Whether the ECC thought about something a bit more grand than an arboretum that is more of a destination location
 - Importance of preserving or planting trees with the distant future in mind
- Tree canopy decline
 - Importance of encouraging residents to plant trees in their yards, and perhaps through the issuance of free trees for residents during Arbor Day
 - How the Town's tree ordinance provides an incentive for not destroying groves of trees
 - How other cities are maintaining their tree canopies
 - Importance of having ECC's recommendation for tree removal agenda items and encouraged members to vote their conscious and not what they think Council wants to hear
 - What flexibility does the Town's Tree Ordinance provide, such as negotiation opportunities with a developer in the area of credits
 - Balancing the legalities of zoning with tree preservation
- Town-wide recycling
 - Statistics and cost associated with green waste
 - What is being done in the area of educating youth or the public about environmental topics such as trees and recycling
 - What would be needed to add recycling at multi-family complexes
- Outdoor learning area
 - What would be the funding sources for the idea of a pedestrian bridge to connect the public to the area
 - Where does the money for the Tree Preservation Fund come from

There was Council/ECC discussion regarding:

- What are the deciding factors when making a decision about tree removal request by an applicant
- Interest in getting to a point where the Town is an example of native plantings and water conservation throughout the Town, and have the ECC work toward that goal
- Appreciation for the introduction of purple pipe
- Property tax waivers as tree preservation incentive

E. ADJOURN WORK SESSION

Mayor Pro Tem Webb adjourned the work session at 8:02 p.m. on Thursday, April 18 2019, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

JASON WEBB, MAYOR PRO TEM

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: May 6, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of a resolution nominating a candidate for appointment to the Denco Area 9-1-1 District Board of Managers.

BACKGROUND INFORMATION: [Denco Area 9-1-1](#) (District) serves as the coordinating agency for 9-1-1 emergency service throughout Denton County and the entire City of Carrollton. It is the organization which implemented and maintains the 9-1-1 system. The District is overseen by a locally elected or appointed six member Board of Managers.

The Texas Health and Safety Code provides for the District Board of Managers to have “two members appointed jointly by all the participating municipalities located in whole or part of the district”. Each year the term of one of the two members appointed by participating municipalities expires.

The purpose of this item is to present Council with the option of nominating a person to serve on the Denco Area 9-1-1 District Board. In June Denco staff will send the slate of nominees to each city/town with a request to vote for one of the nominees.

Mr. Barth has indicated he would be willing to serve in this role if selected.

ALTERNATIVES/OPTIONS:

If no action is taken in the way of submitting a nominee, Council will have the option to vote on the slate of nominees in June, as selected by the following municipal jurisdictions:

- | | | |
|-------------------------------|----------------|-------------------|
| •Argyle | •Aubrey | •Bartonville |
| •Carrollton | •Copper Canyon | •Corinth |
| •Corral City | •Cross Roads | •Denton |
| •Dish | •Double Oak | •Flower Mound |
| •Hackberry | •Hebron | •Hickory Creek |
| •Highland Village | •Justin | •Krugerville |
| •Krum | •Lake Dallas | •Lakewood Village |
| •Lewisville | •Little Elm | •Northlake |
| •Oak Point | •Pilot Point | •Ponder |
| •Providence Village | •Roanoke | •Sanger |
| •Shady Shores | •The Colony | •Trophy Club |
| •Unincorporated Denton County | | |

ATTACHMENTS:

1. Appointment letter
2. Brandon Barth's resume
3. Draft resolution

DRAFT MOTION: The Town of Flower Mound hereby nominates Brandon Barth, Emergency Management Officer, as a candidate for election to the Board of Managers of the Denco Area 9-1-1-District.



Denco Area 9-1-1 District

1075 Princeton Street • Lewisville, TX 75067 • Mailing: PO BOX 293058 • Lewisville, TX 75029-3058

Phone: 972-221-0911 • Fax: 972-420-0709

RECEIVED

TO: Denco Area 9-1-1 District Participating Municipal Jurisdictions

FROM: Mark Payne, Executive Director

A handwritten signature in blue ink, appearing to be 'MP' or 'Mark Payne'.

DATE: March 15, 2019

MAR 26 2019

Town of Flower Mound
Town Secretary's Office

RE: Nomination for the Denco Area 9-1-1 District Board of Managers

Chapter 772, Texas Health and Safety Code, provides for the Denco Area 9-1-1 District Board of Managers to have "two members appointed jointly by all the participating municipalities located in whole or part of the district." The enclosed resolution, approved by the district's board of managers on March 10, 2016, describes the appointment process of a municipal representative to the Denco Board of Managers.

Each year on September 30th, the term of one of the two members appointed by participating municipalities expires. This year it is the term of Mayor Sue Tejml. Members are eligible for consecutive terms and Mayor Tejml has expressed her desire to serve another term.

In order to coordinate the appointment among 33 participating municipalities, Denco requests the following actions by the governing bodies of each city/town:

1. **Immediate Action (Nominate):** If your city/town would like to nominate a candidate to represent the municipalities on the Denco Board of Managers, please send a letter of nomination, by way of council action, and résumé of the candidate to the Denco Area 9-1-1 District office. **For a nomination to be considered, written notification of council action must reach the Denco Area 9-1-1 District by 5:00 p.m. June 15, 2019.** No nominations shall be considered after that time.
2. **Future Action (Vote):** On June 16, 2019, Denco staff will send the slate of nominees to each city/town for consideration, requesting the city/town council vote by resolution for one of the nominees. Written notice of the council's selection must reach the Denco Area 9-1-1 District by 5:00 p.m. on September 15, 2019. No votes will be accepted after that time.
3. **Process Closure (Results):** The Denco Board of Managers and all municipal jurisdictions will be informed of the votes from responding cities/towns. The candidate with the most votes will be the municipalities' representative to the Denco Area 9-1-1 District Board of Managers for the two-year term beginning October 1, 2019.

Please send a copy of your council's official action and candidate résumé to the Denco Area 9-1-1 District, 1075 Princeton Street, Lewisville, TX 75067 or to Andrea Zepeda at andrea.zepeda@denco.org. Denco staff will acknowledge receipt and sufficiency of the submitted documents. If that acknowledgement is not received within one (1) business day, or you have any other questions, please contact Ms. Zepeda at 972-221-0911. As a courtesy, Denco will provide notification of your council's action to the nominee.

A sample nomination resolution has been enclosed for your convenience. Thank you for your support of the Denco Area 9-1-1 District.

c: Denco Area 9-1-1 District Board of Managers

Enclosures

Council Resolution No. _____

A RESOLUTION NOMINATING ONE CANDIDATE TO A SLATE OF NOMINEES FOR THE BOARD OF MANAGERS OF THE Denco AREA 9-1-1 DISTRICT.

WHEREAS, Section 772, Health and Safety Code, provides that two voting members of the Board of Managers of an Emergency Communications District shall be appointed jointly by all cities and towns lying wholly or partly within the District;

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY / TOWN OF _____, TEXAS:

Section 1

The City / Town of _____ hereby

NOMINATES _____ as a candidate for

appointment to the Board of Managers of the Denco Area 9-1-1 District.

Section 2

That this resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2019.

Mayor _____

City / Town of _____

ATTEST:

City / Town Secretary

2016.03.10.AI.08

DENCO AREA 9-1-1 DISTRICT

RESOLUTION

**DEFINING PROCEDURE FOR APPOINTMENT OF PARTICIPATING
MUNICIPALITIES' REPRESENTATIVE TO THE DISTRICT BOARD OF MANAGERS**

WHEREAS, this resolution shall take the place of Resolution 1999.02.04.R01 by the same title; and

WHEREAS, Chapter 772, Texas Health and Safety Code provides for the Denco Area 9-1-1 District Board of Managers to have "two members appointed jointly by all the participating municipalities located in whole or part of the district."; and

WHEREAS, each member serves a term of two years beginning on October 1st of the year member is appointed; and

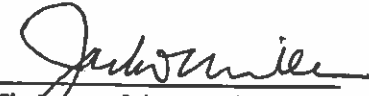
WHEREAS, one member representing participating municipalities is appointed each year.

NOW, THEREFORE BE IT RESOLVED BY THE DENCO AREA 9-1-1 DISTRICT BOARD OF MANAGERS:

The procedure for participating municipalities to appoint a representative to the Denco Area 9-1-1 District Board of Managers shall be the following:

1. **Nominate Candidate:** Prior to March 15th of each year, the executive director shall send a written notice to the mayor of each participating municipality advising that nominations are being accepted until June 15th of that same year, for one of the municipal representatives to the Denco Area 9-1-1 District Board of Managers. The notice shall advise the mayors that for a nomination to be considered, written notification of council action must be received at the Denco office prior to 5:00 p.m. on June 15th of that year. No nominations shall be considered after that time.
2. **Vote for Candidate:** On June 16th of each year, the executive director shall send written notice to the mayor of each participating municipality, providing the slate of nominees to be considered for appointment to the Denco Area 9-1-1 District Board of Managers for the term beginning October 1st. The notice shall advise the mayor that the city/town council shall vote, by resolution from such city/town, for one of the nominees. Written notice of the council's selection must be received at the district office by 5:00 p.m. on September 15th. No votes will be accepted after that time.
3. **Tally Votes:** The one nominee with the most votes received by the deadline will be the municipal representative appointed for the two-year term beginning October 1st.
4. **Tie Breaker:** If there is a tie between two candidates with the most votes, a runoff election will be held immediately with the candidate receiving the most votes serving the remainder of the term. The incumbent representative shall serve in that position until replaced.

APPROVED and ADOPTED on this 10th day of March 2016.


Chairman of the Board


Secretary of the Board

Council Resolution No. _____

A RESOLUTION NOMINATING ONE CANDIDATE TO A SLATE OF NOMINEES FOR THE BOARD OF MANAGERS OF THE Denco AREA 9-1-1 DISTRICT.

WHEREAS, Section 772, Health and Safety Code, provides that two voting members of the Board of Managers of an Emergency Communications District shall be appointed jointly by all cities and towns lying wholly or partly within the District;

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY / TOWN OF _____, TEXAS:

Section 1

The City / Town of _____ hereby

NOMINATES _____ as a candidate for

appointment to the Board of Managers of the Denco Area 9-1-1 District.

Section 2

That this resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2019.

Mayor _____

City / Town of _____

ATTEST:

APPROVED AS TO FORM:

City / Town Secretary

City / Town Attorney

Brandon Barth

PROFILE SUMMARY

Results-oriented, dependable self-starter who is knowledgeable of and experienced in media relations, customer service, safety, and hazardous materials work in a fast-paced, high-stress environment. Exhibits superior communication and multi-tasking skills with an acute attention to detail.

EDUCATION

Bachelor of Business Administration, International Business

Georgia College & State University, Milledgeville, GA, May 2007

PROFESSIONAL EXPERIENCE

Flower Mound Fire Department, Town of Flower Mound, TX

March 2014-Present

Emergency Management Officer

- Examines potential disaster events and evaluates the effect on the Town.
- Produces the Town's Emergency Operations Plan. Plans the Town's response to disasters and ensures that all entities are able to respond as outlined in the Emergency Operations Plan.
- Serves in the Town's Emergency Operation Center (EOC), if activated.
- Trains and coordinates activities in preparing for or responding to disaster situations with all Town departments, neighboring communities, schools, hospitals, and public and private agencies
- Responsible for designing, training, and evaluation of periodic exercises to test elements of emergency plan.
- Responsible for ensuring operability of outdoor warning and other Town emergency communication systems.
- Serves as liaison with community, state and federal authorities concerned with disaster planning and response.
- Serves as one of the fire department's Fire Investigators
- Maintains certification as a State of Texas Firefighter and National Registry Emergency Medical Technician
- Coordinates the fire department's Citizen Fire Academy
- Serves as a Public Information Officer

Allied International Emergency, Fort Worth, TX

September 2013-March 2014

Operations Manager

- Managed the daily operations of the company's Fort Worth/Corporate branch.
- Oversaw multiple hazardous materials and environmental remediation projects daily (500+ annually) in a rapid paced environment with multiple deadlines.
- Prepared bids and proposals to current and future customers.
- Ensured that all supplies and equipment at the facility are in a constant state of operational readiness.
- Provided response and laboratory reports to customers as well as state regulatory agencies regarding hazardous material/environmental incidents.
- Executed service agreements with new customers during an emergency response.

Brandon Barth

Allied International Emergency, Fort Worth, TX

May 2011-September 2013

Project Manager

- Managed personnel at various types of hazardous materials and environmental incidents ranging from tractor-trailer accidents to chemical plant fires per OSHA 1910.120 and requiring travel to various cities and states on a moment's notice.
- Supervised projects through the emergency response, mitigation, remediation, and closure phases.
- Oversaw the decontamination of Naturally Occurring Radioactive Materials (NORM) as a Radiation Safety Officer.
- Performed confined space entry and confined space rescue standby as outlined by OSHA 1910.146.
- Interacted with customers as well as state regulatory agencies such as the Texas Railroad Commission and the Texas Commission on Environmental Quality during hazardous materials incidents as well as environmental emergencies.
- Responsible for the profiling and disposal of hazardous, non-hazardous, and RCRA E&P exempt waste streams.
- Maintained an up-to-date survey that tracks employees' training, certifications, fit tests, and physical exams to ensure conformance with OSHA regulations.
- Conducted sampling of water, air, and soil to determine potential contamination.
- Conducted training classes for employees and customers on subjects such as hazardous materials, confined space entry, and fall protection.
- Wrote policies for new hires to the company.

Baldwin County Fire Rescue, Milledgeville, GA

January 2007-March 2011

Full-time Firefighter/Public Information Officer

As the department's Public Information Officer, responsibilities include:

- Presented a marketing/communications plan to the department's executive staff, thus creating the position of a PIO as well as creating the department's social media accounts.
- Conducted interviews with local media outlets: newspaper, radio, and TV.
- Wrote news releases and operated the department's social media site.
- Redesigned the department's report writing system and making a quick reference guide to assist those writing reports.
- Interacted with members of the community in both emergency and non-emergency settings; requiring a unique set of customer service skills.
- Worked in conjunction with the Executive Staff of the fire department in projecting their message to the public.
- Assisted in the development of presentations to the County Commissioners as well as the County Manager on behalf of the Fire Chief.
- Provided public service announcements to the public through the use of various media platforms.
- Assisted with grant and compliance research on behalf of the executive staff.

Brandon Barth

As a Firefighter, responsibilities include:

- Worked 24 hour shifts; responding to various types of emergency incidents including emergency medical calls, vehicle accidents, and fires.
- Served as the acting-officer in charge; certified through the National Professional Qualifications Pro Board as a Fire Officer 1; overseeing the day-to-day tasks and emergency operations of the on-duty personnel when the shift officer was absent.
- Served as part of the regional Hazardous Materials Team; certified through the National Professional Qualifications Pro Board as a Hazardous Materials Technician
- Assisted in the training of firefighters; certified through the National Professional Qualifications Pro Board as a Fire Instructor 1
- Provided fire safety demonstrations and classes to children in the local school system.
- Wrote detailed incident reports based on the National Fire Incident Reporting System format.
- Conducted pre-incident/safety inspections of commercial properties to assess dangers and to determine proper mitigation procedures based on building layout, hazards, and building construction.
- Drove and operated fire apparatus to include engines, tankers, aerials, and rescue trucks.

Recognition: Awarded Firefighter of the Year for 2008-2009.

Baldwin County Fire Rescue, Milledgeville, GA

January 2005-January 2007

Part-time/Volunteer Firefighter

While pursuing bachelor's degree, worked part-time covering shifts for full-time personnel who were on leave. Was entrusted to work alone at stations in rural parts of the county that only had one person on-duty during a shift. Maintained attendance in excess of 80% of emergency calls and training drills and responded to emergencies via notification by pager.

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. -19

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, NOMINATING ONE CANDIDATE TO A SLATE OF NOMINEES FOR THE BOARD OF MANAGERS OF THE Denco AREA 9-1-1 DISTRICT.

WHEREAS, Section 772, Health and Safety Code, provides that two voting members of the Board of Managers of an Emergency Communications District shall be appointed jointly by all cities and towns lying wholly or partly within the District.

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

SECTION 1

The Town of Flower Mound hereby nominates Brandon Barth as a candidate for appointment to the Board of Managers of the Denco Area 9-1-1 Emergency Communication District.

SECTION 2

This Resolution shall become effective immediately upon its passage and approval.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____ ON THIS 6th DAY OF MAY, 2019.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 04

CONSENT ITEM

DATE: May 6, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by Oncor to deny Oncor Electric Delivery Company LLC's application for approval to amend its distribution cost recovery factor.

BACKGROUND INFORMATION: On April 8, 2019, Oncor Electric Delivery Company LLC ("Oncor" or "Company") filed an Application for Approval to Amend its Distribution Cost Recover Factor ("DCRF") to Increase Distribution Rates with each of the cities in their service area. In the filing, the Company asserts that it is seeking an increase in distribution revenues of \$29,433,804.

The resolution authorizes the Town to join with the Steering Committee of Cities Served by Oncor ("OCSC") to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):	Account Number(s):
\$0	

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

LEGAL REVIEW: Bryn D. Meredith of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the resolution as to form and legality.

ATTACHMENTS:

1. Resolution

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

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY LLC'S APPLICATION FOR APPROVAL TO AMEND ITS DISTRIBUTION COST RECOVERY FACTOR PURSUANT TO 16 TEX. ADMIN. CODE § 25.243 TO INCREASE DISTRIBUTION RATES WITHIN THE TOWN SHOULD BE DENIED; FINDING THAT THE TOWN'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the Town of Flower Mound, Texas ("Town") is an electric utility customer of Oncor Electric Delivery Company LLC ("Oncor" or "Company"), and a regulatory authority with an interest in the rates and charges of Oncor; and

WHEREAS, the Town is a member of the Steering Committee of Cities Served by Oncor ("OCSC" or "Cities"), a membership of similarly situated cities served by Oncor that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in Oncor's service area; and

WHEREAS, on or about April 8, 2019 Oncor filed with the Town an Application for Approval to Amend its Distribution Cost Recovery Factor ("DCRF"), PUC Docket No. 49427, seeking to increase electric distribution rates by approximately \$29,433,804; and

WHEREAS, all electric utility customers residing in the Town will be impacted by this ratemaking proceeding if it is granted; and

WHEREAS, Cities are coordinating its review of Oncor's DCRF filing with designated attorneys and consultants to resolve issues in the Company's application; and

WHEREAS, Cities' members and attorneys recommend that members deny the DCRF.

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

Section 1. That the Town is authorized to participate with OCSC in PUC Docket No. 49427.

Section 2. That subject to the right to terminate employment at any time, the Town of Flower Mound hereby authorizes the hiring of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C. and consultants to negotiate with the Company, make recommendations to the Town regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

Section 3. That the rates proposed by Oncor to be recovered through its DCRF charged to customers located within the Town limits, are hereby found to be unreasonable and shall be denied.

Section 4. That the Company shall continue to charge its existing rates to customers within the Town.

Section 5. That the Town's reasonable rate case expenses shall be reimbursed in full by Oncor within 30 days of presentation of an invoice to Oncor.

Section 6. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 7. That a copy of this Resolution shall be sent to Matthew C. Henry, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Legal Counsel to OCSC, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

PASSED AND APPROVED this 6th day of May, 2019.

Mayor

ATTEST:

Town Secretary



TOWN COUNCIL AGENDA ITEM NO. 05

CONSENT ITEM

DATE: May 6, 2019

FROM: Jaime Jaco-Cooper, Senior Center Manager

ITEM: **Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Casino Night.**

BACKGROUND INFORMATION: Mary Kay Walker with the SIM Auxiliary, Inc. is requesting approval from the Town Council to serve beer and wine at their Casino Night fundraiser on Saturday, June 1, 2019, from 6:00 – 10:00 p.m. at the Flower Mound Senior Center.

The SIM Auxiliary (SIMA) was formed in 2009 as a 501(c)3 to support Flower Mound seniors and the Town's Seniors In Motion Program. SIMA has raised and contributed over \$100,000, which has been used to purchase equipment and furniture for the Town's senior program.

The Casino Night Fundraiser is a lively event with games, live music, refreshments, and prizes put on each year by SIMA to raise funds for the Flower Mound Seniors In Motion program. Gaming tables will be set up throughout the Flower Mound Senior Center for participants to gamble with play money. Participants will be given an allotment of chips with their admission tickets and can purchase more for a donation. At the end of the night, attendees can bid for donated prizes with their winnings. The event will also include a wide assortment of appetizers and refreshments donated by local businesses. Attendees can also bid on a variety of silent auction items during the fundraiser. This will be the seventh Casino Night Fundraiser presented by SIMA. Previous Casino Night fundraisers have raised over \$50,000 for the Flower Mound Seniors In Motion Program. In 2016 and 2018, SIMA held Casino Night Fundraisers at the Flower Mound Senior Center and received approval from the Town Council to serve alcohol at the event.

During the fundraiser, a TABC licensed server will be onsite to serve wine and beer, as well as monitor participant consumption to ensure that no one is overserved. There will be enough wine and beer for two servings per person registered for the event. SIMA will take on the risk and liability of providing the alcohol at the event. The Town will be named as an additional insured on their liability insurance. No one under 21 will be admitted access to the event.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The Town Council can deny the request and the SIM Auxiliary can work with Town staff to host their event without offering alcoholic beverages.

FISCAL IMPACT: N/A

LEGAL REVIEW: The sale of beer or wine on Town property requires Town Council's approval.

ATTACHMENTS:

1. SIMA Casino Night Event Flyer
2. Insurance Certificate

RECOMMENDATION: Move to approve as presented in the agenda caption.

**Rosewood Assisted Living presents the
7th Annual SIMA**

CASINO NIGHT

**Saturday, June 1, 2019 | 6 - 10 p.m.
at the Flower Mound Senior Center**

\$35 per person



**Las Vegas style casino games with
\$1k in chips, food & drinks, live
music, silent auction, and prizes!**



**Tickets available at:
Flower Mound Senior Center
2701 W. Windsor Dr.
Flower Mound, TX 75028
P: 972.874.6110**





Page 38 of 264 CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/12/2019

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 East Main Street Insurance Services, Inc. Will Maddux PO Box 1298 Grass Valley CA 95945	CONTACT NAME: Will Maddux PHONE (A/C, No, Ext): (530) 477-6521 FAX (A/C, No): E-MAIL ADDRESS: info@theeventhelper.com <table style="width: 100%;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: Evanston Insurance Company</td> <td>35378</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Evanston Insurance Company	35378	INSURER B:		INSURER C:		INSURER D:		INSURER E:		INSURER F:	
INSURER(S) AFFORDING COVERAGE	NAIC #														
INSURER A: Evanston Insurance Company	35378														
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															
INSURED SIM Auxiliary Inc Mary Kay Walker 2701 W. Windsor Dr Flower Mound TX 75028															

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Host Liquor Liability ☐ Retail Liquor Liability GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	3DS5468-M1374027	06/01/2019 12:01 AM	06/02/2019 12:01 AM	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 1,000,000						
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 1,000,000
							Deductible \$ 1,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED \$ RETENTION \$						EACH OCCURRENCE \$
							AGGREGATE \$
							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						☐ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Certificate holder listed below is named as additional insured per attached MEGL 2217 01 19.

Attendance: 300, Event Type: Casino Night.

Waiver of Subrogation applies per attached CG 24 04 05 09.

Primary/Non-Contributory wording applies per attached CG 20 01 04 13.

CERTIFICATE HOLDER**CANCELLATION**

Town of Flower Mound 2701 W Windsor Dr 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 <i>Will Maddux</i>
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EVANSTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Town of Flower Mound
2701 W Windsor Dr
Flower Mound, TX 75028

- A.** Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule of this endorsement, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by the acts or omissions of any insured listed under Paragraph 1. or 2. of Section II – Who Is An Insured:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B.** With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions remain unchanged.

POLICY NUMBER: 3DS5468-M1374027

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Town of Flower Mound
2701 W Windsor Dr
Flower Mound, TX 75028

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

POLICY NUMBER: 3DS5468-M1374027

COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.



TOWN COUNCIL AGENDA ITEM NO. 06

CONSENT ITEM

DATE: May 6, 2019

FROM: Kari Biddix, Park Development Manager

ITEM: Consider approval of the Professional Services Agreement with Mesa Design Associates, Inc., for the design services associated with the Peters Colony Memorial Park Master Plan project, in the amount of \$39,500.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is to enter into a professional services agreement with Mesa Design Associates, Inc., to design the Master Plan for the 3.3 acre Peters Colony Memorial Park. This undeveloped park is located adjacent the Flower Mound Public Library.

FISCAL IMPACT: \$39,500.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$39,500.00	317-110-90731

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 these documents.

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
MESA DESIGN ASSOCIATES, INC.**

This contract is entered into on this 6th day of May, 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 **MESA Design Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 2001 North Lamar Street, Suite 100, Dallas, TX 75202.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to relative to design services for the Peters Colony Park Master Plan project; and

WHEREAS, CONSULTANT is a Landscape Architecture, Planning, and Urban Design firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Thirty-nine Thousand Five Hundred and No/100 Dollars (\$39,500.00). 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:

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

IX.

Right to Inspect Records

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

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or 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:

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

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

Fred Walters
Principal
MESA Design Associates, Inc.
2001 North Lamar Street, Suite 100
Dallas, Texas 75202
214-871-4411 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:
MESA Design Associates, Inc.

By: [Signature]
Name: Fred L. Walters
Title: Principal
Date Signed: 4-8-19

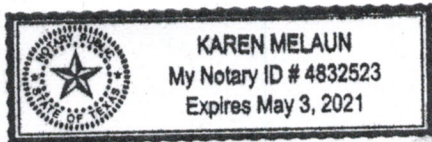
State of Texas §
 §
County of Dallas §

This instrument was acknowledged before me on the 8th day of April, 2019, by Fred Walters in his capacity as Principal of MESA Design Assoc., 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 Principal.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 8th DAY OF April 2019.

[Signature: Karen Melaun]
Notary Public, State of Texas

My Commission Expires:
5-3-2021



ATTACHMENT A – SCOPE OF SERVICES

April 2, 2019

Town of Flower Mound
Kari Biddix, Parks Development Manager
1200 Gerault Rd.
Flower Mound, TX 75028

Project: Peters Colony Memorial Park (3.3 Acres)
Flower Mound, Texas

Dear Kari,

This proposal and contract describes the landscape architectural services to be provided by MESA, the costs of these services and general terms and conditions under which these services would be executed.

SCOPE OF SERVICES

Task 1: Data Collection and Project Kickoff

Data Collection

MESA will collect from Client and other sources made available by the Client the following graphic materials necessary for preparation of the following described plan documents. MESA has the right to rely on this information. These materials include, but are not limited to:

- A. Identification of the geographic limits of the project area.
- B. Inventory of existing facilities, features, and utilities
- C. Easements, utility and other
- D. Topography
- E. Major tree groups
- F. Collection of final base data from the Client

Kickoff & Programming

MESA will attend a kickoff meeting with the Client to further define the scope, design program and intent, schedule and deliverable expectations.

Deliverables: Base map for use in the future design tasks.

Meetings: One (1) kickoff/coordination meeting with the Client. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 2: Conceptual Master Plan

After collection of base data, MESA will prepare two (2) site master plan alternatives that evaluate the relationships between the existing adjacent development, the Park site and the surrounding amenities. The master plan will address the following:

A. Programming

MESA will map the anticipated patterns of usage and circulation based upon Town feedback at the Kickoff Meeting (as well as positive and negative impacts of these activities) to gain an understanding of current and potential usage levels, and the inter-relationship between various programs. MESA will review the Flower Mound Parks Master Plan and compare with an analysis of recent trends or demographic shifts and their impact on what the community may consider based on future park facility trends, interest and participation levels for a variety of activities, and what is new in recreational facilities. The programming will graphically depict zones for each activity on site and serve to describe the relationships between each. Through the identification of various "programming" rooms, and the characteristics associated with those spaces, MESA will be able to develop a master plan responsive to site-specific

opportunities and constraints. The plan will include the minimum program desired by the Town, including: pavilions, trails, playground and parking.

B. Park Integration into surrounding urban context

- 1. Park Circulation** – MESA will review the surrounding neighborhood and urban streetscape in order to make recommendations for the incorporation of any future parking facilities, points of access, etc. The master plan will describe the list of structures and infrastructure that are necessary to provide and support the programs framework, also denoting circulation patterns, arrival sequences, and other patterns.
- 2. Park Hardscape Integration** – MESA will work with the existing park natural character and the surrounding Architectural vernacular (library, other Town of FM structures, and housing) to prepare a master plan that unifies it with the site and adjacent development.

C. Opinion of Probable Costs

Based on the park master plan, MESA will prepare an opinion of probable cost for review by the Client

Deliverables: MESA will prepare two (2) master plan alternatives (plan graphic) and opinion of probable cost that depicts the information outlined above. The master plan design will include a computer rendered plan graphic, images, sketches and/or diagrams.

Meetings: Two (2) coordination meetings. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 3: Refined Master Plan

MESA and the design team will refine the Conceptual Master Plan to incorporate comments received by the Town. This will be a descriptive level graphic plan, including sections and perspectives necessary to convey the design, which will graphically depict all park amenities at an appropriate scale – depicting forms, material concepts, habitat enhancements, and detailed connections.

Deliverables: MESA and the design team will prepare one (1) revised master plan graphic and report that depicts the information outlined above – specific area enlargements, sections, elevations, and sketches may be prepared as necessary.

Meetings: One (1) presentation/coordination meeting. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 4: Project Phasing/Prioritization

Based on the opinion of probable cost, MESA will work with the Town to finalize the program for inclusion in the Phase 1 detailed design. MESA will prepare revised opinions of probable cost and a corresponding cost estimate diagram delineating which elements are in each phase.

Deliverables: Cost projections and corresponding plan diagrams

Meetings: One (1) coordination meeting. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 5: Public Input Presentation

MESA will host a public input presentation with the Town staff to present the assessments, master plan, programming and design process to the public MESA will host an assessment and programming workshop for Town staff. The meeting is designed to take into account all assessments and assist in determining the public's perception and desires for the proposed park.

Deliverables: MESA will host an assessment and programming workshop for Town staff.

Meetings: One (1) ¼ day presentation meetings. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 6: PALS Board Presentation

MESA will attend the PALS board meeting and present the refined master plan design to the Board. Input and comment to the design from the PALS meeting will be addressed in Task 7.

Deliverables: One (1) PALS board meeting and potential site visit is included.

Meetings: One (1) meeting. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 7: Revised Master Plan

MESA and the design team will revise the Master Plan to incorporate comments received by the Town. This will be a descriptive level graphic plan, including sections and perspectives necessary to convey the design, which will graphically depict all park amenities at an appropriate scale – depicting forms, material concepts, habitat enhancements, and detailed connections. Comments that result in a wholesale revision/entirely new concept will be billed as an additional service.

Deliverables: MESA and the design team will prepare one (1) master plan graphic and report that depicts the information outlined above – specific area enlargements, sections, elevations, and sketches may be prepared as necessary.

Meetings: One (1) presentation/coordination meetings, *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 8: Town Council Presentation

MESA will attend one (1) Town Council meeting and present the refined master plan design to the Town Council. Minor design changes to incorporate Town Council comments will be addressed in Task 7.

Deliverables: One (1) Town Council meeting is included.

Meetings: One (1) meeting. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 9: Topo, Boundary, and Tree Survey (optional Service)

MESA will prepare a Topographical, Boundary (if needed), and tree survey for the site. MESA (via surveyor) will review the topographic survey provided by the Client and will field-tie above-ground visible improvements including trees on the subject property. We will incorporate the site plan and surveyed location coordinates generated by a Civil Engineer or Surveyor, into the overall tree survey plan.

A. Topographic Design Survey Verification

Topographic Design Survey Verification: The Firm will review the topographic survey provided by the Client and will field-tie above-ground visible improvements including trees on the subject property.

B. Boundary Verification

The Firm will field tie the monuments referenced on the boundary survey used for conveyance to the Client. The Firm will then analyze the found monumentation to determine the boundary to be utilized for final plat calculation. Adjoining deeds, easements (on and adjacent to the subject tract) and subject tract deeds shall be provided by the Client (or his title company).

Deliverables: Topographic, boundary, and tree survey.

Meetings: One (1) site visit to inspect and tag all trees. *Additional site visits/meetings shall be billed as additional services as per the attached hourly rate schedule.*

Task 10: Computer modeling, animated graphics, & presentations (optional service)

At the Town's request, MESA will prepare computer models of the major site and design elements to assist in evaluating the design and marketing the project. These models may be used to develop high quality "snapshots" of key views and further animated into walk through/fly through videos. The digital video file will be based off of the final conceptual design and will consist of one continuous path or a montage of short video clips, as well as still images. Digital video file will be transmitted as an .MP4 by default and still images as .jpg files. Media may be rendered and transmitted in additional digital format types as requested by the City.

Deliverables: Key views of computer modeled Master Plan components and design elements

Meetings: One (1) meeting. *Additional meetings shall be billed as additional services as per the attached hourly rate schedule.*

ATTACHMENT B – COST OF SERVICES

COST OF SERVICES

The below scope of services will be billed on a percentage completion basis or hourly not to exceed as applicable (in accordance with the fee schedule specified below) with the total cost of services not to exceed the amount specified for each without a written addendum to this contract. The below tasks shall be billed as follows:

Task	Base Fees	Optional Fees
Stage 1: Master Planning		
Task 1: Data Collection & Project Kickoff <i>Lump Sum</i>	\$ 1,500.00	
Task 2: Conceptual Master Plan <i>Lump Sum</i>	\$ 3,500.00	
Task 3: Refined Master Plan <i>Lump Sum</i>	\$ 5,000.00	
Task 4: Project Phasing/Prioritization <i>Lump Sum</i>	\$ 2,500.00	
Task 5: Public Input Presentation <i>Lump Sum</i>	\$ 4,000.00	
Task 6: PALS Board Presentation <i>Lump Sum</i>	\$ 3,000.00	
Task 7: Revised Master Plan <i>Lump Sum</i>	\$ 3,000.00	
Task 8: Town Council Presentation <i>Lump Sum</i>	\$ 1,000.00	
Task 9: Topo, Boundary, and Tree Survey <i>Lump Sum</i>	\$ 3,500.00	
Task 10: Conceptual modeling, graphics, and presentations <i>*Estimate. Actual cost of services to be determined based on complexity.</i>	\$12,500.00*	
Total Cost of Base Services:	\$ 39,500.00	\$ 0.00

REIMBURSABLE Expenses are included in the Fee. Estimated at \$3,000.00

We have not included any Sub-Consultant fees at this time. Fees for the survey (Task 9) are estimated, and will be amended if necessary upon quotation of by registered PLS. No other sub-consultants are anticipated at this time for the Master Plan phase of this project.

ADDITIONAL SERVICES/HOURLY FEE SCHEDULE

Services requested, but not specifically included in the scope of services listed above, will be considered additional services. Modifications to drawings, after approval by Owner, as a result of changes requested by Owner or other consultant will be considered additional services and billed at an hourly rate as follows:

Senior Principal	\$235.00
Principal	\$180.00
Associate	\$150.00
Senior Project Manager	\$120.00
Project Manager	\$100.00
Senior Designer	\$ 90.00
Designer	\$ 80.00
Marketing/Acct./Admin	\$ 75.00
Intern	\$ 65.00

1. The client will provide the following and MESA has the right to rely on this information and rely on any information provided by others:
 - a. Boundary and general survey locating structures, property lines, utilities that cross the property and interior lobby plans in AutoCAD format.
 - b. Soils Report (if required).
 - c. Budgetary Considerations.
2. Not included are the following:
 - a. Vehicular Paving Improvements
 - b. Utilities (water, sewer, storm, electrical, cable, telephone, etc.)
 - c. Architectural, Civil, Structural, Mechanical and Electrical Engineering
 - d. Hardscape and Flatwork Design
 - e. Landscape Lighting Electrical Plans
 - f. Project Signage and Graphics
 - g. Design of new or additional elements added to the scope of work or any related off-site improvements
 - h. Redesign of elements due to site plan changes (i.e., buildings relocated, site grading changes)
 - i. Geotechnical Information
 - j. Water features
 - k. Illustrative plans, models and drawings not specifically described in the Scope of Services
 - l. TDLR Submittal
 - m. As Built Drawings
 - n. On-Site Construction Management
 - o. Site Safety, Operations and Maintenance
 - p. Irrigation Design
3. MESA Design Associates may subcontract consultants in the performance of any services described in this agreement.
4. MESA Design Associates does not act as General Contractor in any way, or accept responsibility for poor craftsmanship.



TOWN COUNCIL AGENDA ITEM NO. 07

CONSENT ITEM

DATE: May 6, 2019

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

ITEM: Consider approval of an ordinance amending Chapter 66, Article V, Section 66-214 of the Code of Ordinances of the Town of Flower Mound, Texas, relating to the prima facie speed limits for specific streets by lowering the prima facie speed limit on various streets with Wellington of Flower Mound Phase 8 and Phase 9 to 25 mph (*The Transportation Commission recommended approval of the exception request for Wellington Phase 8/9 by a vote of 6 to 0 at its February 12, 2019, meeting.*), and conversion of streets within Wellington Phases 5a, 6 and 7 to 25 mph, and adjustment of the School Zone on Bruton Orand Blvd. near Brittany Drive.

BACKGROUND INFORMATION: Attached (Attachment 1) is the Transportation Commission (TRC) report and backup for the Wellington Subdivisions portion of this item. A small segment of the Wellington Phase 9 subdivision required an exception due to it being further than 1/4 mile from a school property. As such, this item went before the TRC as required for an exception request to lower the speed limit from 30 mph to 25 mph. During the 79th Texas Legislature, House Bill 87 was signed into legislation providing authority for municipalities to alter speed limits on residential streets. This legislation was amended during the 81st Texas Legislature with House Bill 2682. On December 4, 2006, the Town Council approved a policy for the implementation of 25 mph speed limits on certain residential streets. In addition to the requirements included in the State law, the policy establishes that streets are only eligible if all or part is located within 1/4 mile of a school property or 1/4 mile of a construction zone for a major or minor arterial street. On June 7, 2010, the Town Council amended the policy for implementation of 25 mph streets to include an exception process for those streets that are outside of the 1/4 mile boundaries.

With the approval of the exception request, the rest of this community, bounded by Quail Run road on the north and Bruton Orand on the west, is all within 1/4 mile of either Wellington Elementary School or Flower Mound High School. Therefore, the area proposed by staff to be included in the reduction to 25 mph is to include the entire community within this section of Wellington Subdivision (Phases 5a, 6 and 7). There are currently six streets within this area that have been converted to 25 mph. These six streets form the major roadways within this area. By converting the rest of these streets, it will reduce confusion on both the residents/visitors and the Police Department for enforcement of these streets. It will also simplify the posting of the speed limit by allowing for Neighborhood plaques to be added to each speed limit sign as one enters the neighborhood. Attached (Attachment 3) shows the breakdown in the exception request, the currently converted streets and the boundary of the area being requested. For the exception request area, those streets went before the Transportation Commission at the February 12, 2019, TRC meeting. The TRC discussion can be viewed as Item F2 at the following link <https://flowermoundtx.swagit.com/play/02122019-1724>.

In addition to the exception request, a change to the school zone located just outside of this Wellington neighborhood on Bruton Orand Boulevard is necessary. Recently a rapid flashing beacon was installed at the intersection of Bruton Orand and Brittainy/Sterling to provide safer crossing at this location. Because of the location of this new flasher, it has necessitated the relocation of the southbound school zone flasher further north on Bruton Orand. Therefore, the relocation of the school zone flasher requires an ordinance update.

BOARD REVIEW/CITIZEN FEEDBACK: The TRC heard the Wellington Phase 8/9 exception request item at their February 12, 2019, regular meeting. Discussion was held on the exception request. The neighborhood representative that conducted a survey of the neighborhood was present to answer questions. The neighborhood responded with a 58% in favor for Wellington Phase 9 in favor of the speed limit change.

After the survey was received, it was realized that a portion of Wellington Phase 8 was not asked to be surveyed. However, the engineering study indicated that a speed limit of 25 mph is appropriate. The TRC recommended approval of the exception by a vote of 6 to 0.

ALTERNATIVES/OPTIONS: Leave speed limits as the currently exist (30 mph).

FISCAL IMPACT: The cost of changing and adding speed limit signs will be covered by operations money. The cost of the relocation of the school zone flasher on Bruton Orand will be covered by the flashing beacon project.

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

ATTACHMENTS:

1. Excerpt from the 2/12/2019 Transportation Commission Meeting, Agenda Item 2
2. Draft Ordinance
3. Vicinity Map

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



TRANSPORTATION COMMISSION AGENDA ITEM NO. 2

REGULAR ITEM

DATE: February 12, 2019

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

ITEM: **Exception request for the Wellington of Flower Mound Phase 8 and a portion of the Wellington of Flower Mound Phase 9 Subdivisions to allow for a permanent speed limit change to 25 mph for areas outside of the ¼ mile boundary of a school or major construction project.**

BACKGROUND INFORMATION: This item is a regular item to allow the Transportation Commission the opportunity to provide input and recommendation to the Town Council regarding the exception request for the Appleton/Sutters Way portion of Wellington subdivision to allow for a permanent speed limit change to 25 mph for areas outside of the ¼ mile boundary of a school or major construction project. See vicinity map (Attachment 1) for streets affected by this request.

During the 79th Texas Legislature, House Bill 87 was signed into legislation providing authority to municipalities to alter speed limits on residential streets. This legislation was amended during the 81st Texas Legislature with House Bill 2682. On December 4, 2006, the Town Council approved a policy for the implementation of 25 mph speed limits on certain residential streets. In addition to the requirements included in the State law, the policy establishes that streets are only eligible if all or part is located within ¼ mile of a school property or ¼ mile of a construction zone for a major or minor arterial street. On March 9, 2010, a review of this policy was brought forward to the Transportation Commission for input and recommendation to Town Council. The recommendation to Town Council was to keep the existing policy, but institute an exception process without the need for an engineering study. On June 7, 2010, Town Council amended the policy for 25 mph streets with Resolution 12-10. Resolution 12-10 is included as Attachment 2. Resolution 12-10 added an exception process to the residential speed limit policy that requires an engineering study and a recommendation from the Transportation Commission.

The current practice is to post speed limit signs at the entrances to the subdivision. This has been verified with the Police Department as acceptable to them and they have confirmed that they are able to enforce the speed limit. A portion of this subdivision was done under the old practice of converting individual street by street. Therefore, the southern boundary of this section of Wellington, Sterling Parkway, has already been converted to 25 mph with supplemental speed limit signs due to its length.

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

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

The 85th percentile speed is the speed at which 85% of the traffic travels at or below. The speed limit for a particular street is generally set within +/- 5 mph of the 85th percentile speed. In general, the 85th percentile speed over the week long study within the subject area ranged between 25 and 27 mph. Side streets and cul-de-sacs were not studied. These locations are very likely to have much lower 85th percentile speeds.

Staff has determined the road characteristics, shoulder condition, grade, alignment and sight distance for the streets within the Wellington subdivision. All of the streets within the Wellington portion are typical residential concrete streets and are generally straight. There are a number of 90 degree turns where two internal streets intersect. None of the streets have a shoulder, and generally have good sight distance. None of the entries into the subdivision are controlled by an all way stop. All other intersections are controlled with either one or two way stop control.

The pace speed is the 10 mph range of speed which the largest majority of drivers are driving. The pace speed within the subject area was 16 mph – 25 mph (51%) along Sutters Way and Westminster Trail. Side streets and cul-de-sacs were not studied. These locations are very likely to have much lower pace speed.

The roadside development for the Wellington subdivision in the subject area is completely residential.

The parking practices and pedestrian activity for this area are primarily related to the residential homes, and the school in the area. Pedestrian activity is primarily related to residents walking within the neighborhood and children walking to school. For all streets within the Wellington subdivision, residents park along the curb line on both sides of the street.

Research of reported crash experience for the past 12 months for the entire subdivision reveals that 1 reported accidents had occurred at the entrance to this section of the subdivision at Falstaff and Quail Run.

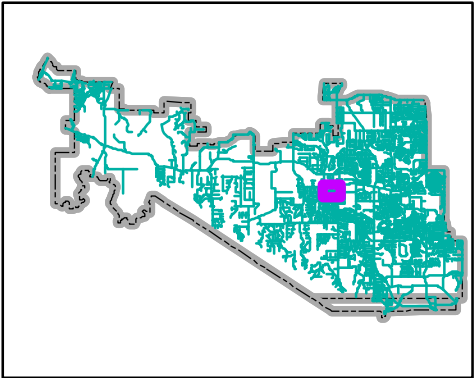
NEIGHBORHOOD SUPPORT: At previous Transportation Commission meetings, the neighborhood support has always been a question of the Commission. As such the Town has instituted a policy of receiving a 2/3 majority support for all exception cases prior to coming to the Transportation Commission for action. The Wellington of Flower Mound Phase 8 and a portion of the Wellington of Flower Mound Phase 9 Subdivisions have fallen just short of that requirement for the portion of Wellington Phase 9 with just over 58% of the neighborhood in support of the change. After receiving the survey back, it was realized that a portion of Wellington Phase 8 was not asked to be surveyed. However, since the engineering study indicates that a speed limit of 25 mph is appropriate, those portions of the subdivision were included in this request. The Wellington Homeowners Association has been made aware of this request.

ATTACHMENTS:

1. Vicinity Map of Affected Streets
2. Resolution 12-10
3. Neighborhood Survey

RECOMMENDATION: Move to recommend approval of the exception request for the Wellington of Flower Mound Phase 8 and a portion of the Wellington of Flower Mound Phase 9 to allow for a permanent speed limit change to 25 mph for areas outside of the ¼ mile boundary of a school or major construction project.

Vicinity Map - Portion of Wellington Subdivision Speed Limit Reducation Request



Vicinity Map

Project Location(s)

Legend

 WellingtonSpeedReductionFeb19

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. 12-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING RESOLUTION 35-06 BY REPEALING THE POLICY ON IMPLEMENTING REDUCED SPEED LIMITS ON CERTAIN RESIDENTIAL STREETS AND ADOPTING A NEW POLICY IMPLEMENTING REDUCED SPEED LIMITS ON CERTAIN RESIDENTIAL STREETS IN CERTAIN NEIGHBORHOODS IN THE TOWN OF FLOWER MOUND.

WHEREAS, the 79th Texas Legislature adopted House Bill 87 amending Section 545.356 of the Texas Transportation Code to allow municipalities to reduce the speed limit on certain types of streets to no less than twenty-five (25) miles per hour if the governing body determines that the prima facie speed limit on the road is unreasonable or unsafe; and

WHEREAS, the Town previously approved Resolution 35-06 which adopted a policy pertaining to establishing 25 mph speed limits on residential streets; and

WHEREAS, the Town desires to establish revised parameters or criteria that may be relied upon by the Town's residents and Town staff to identify the types of roads that may be eligible for a reduction in the prima facie speed limit; and

WHEREAS, the decision regarding whether the prima facie speed limit on a particular road or road segment is either unsafe or unreasonable and should be reduced to no less than twenty-five (25) miles per hour shall fall within the sound discretion of the Town Council, only, and shall be performed on an individual case by case analysis.

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

SECTION 1

All of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

Resolution 35-06 and the Town's Policy for Implementing Reduced Speed Limits in Certain Residential Neighborhoods is hereby amended by repealing the existing Policy for Implementing Reduced Residential Speed Limits and a new Policy

Town of Flower Mound
TOWN SECRETARY'S OFFICE
OFFICIAL FILE COPY

for Implementing Reduced Residential Speed Limits (the "Policy"), which Policy is attached hereto as Exhibit A and incorporated herein by reference for all purposes allowed by law, is hereby adopted as the Town's official statement regarding the eligibility criteria for consideration and the process through which neighborhoods may present certain roads to the Town Council for determination whether the thirty (30) mile per hour prima facie speed limit on a certain road is unreasonable or unsafe and declare a lower speed limit of not less than twenty-five (25) miles per hour.

SECTION 3

This Resolution shall take effect immediately from and after its adoption and is accordingly so resolved.

PASSED, APPROVED AND ADOPTED THIS THE 7TH DAY OF JUNE, 2010.

APPROVED:


Melissa D. Northern, MAYOR

ATTEST:


Paula Paschal, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:


Terrence S. Welch, TOWN ATTORNEY

TOWN OF NEW BRUNSWICK
TOWN SECRETARY'S OFFICE
JUN 10 2010

EXHIBIT A

Policy for Implementing Reduced Residential Speed Limits

Purpose and Need

This policy sets forth the process and eligibility criteria for the implementation of reduced speed limits on certain residential streets. This process focuses these implementations on areas near schools and major roadway construction zones. The policy also establishes an exception process should a particular street not conform to the eligibility criteria.

Introduction and Background

During the 79th Texas Legislature, House Bill 87 was signed into legislation providing authority to municipalities to alter speed limits on residential streets. This law allows municipalities to reduce the speed limit on streets with a width of 35' or less and where parking is not prohibited on one or both sides of the roadway. Further, a municipality would need to declare that the prima facie speed limit on that road is either unsafe or unreasonable. This law does not lower the basic prima facie speed limit which is currently 30 mph.

Responsibility

This policy will be implemented by the Town Manager or designee. Exception requests will be considered by the Transportation Commission for recommendation to the Town Council. Exception requests recommended by the Transportation Commission will be accompanied by an engineering study completed by the Town at the Town's cost. All reductions of neighborhood speed limits will require the approval of the Town Council.

Eligibility

For a street to be eligible for a reduction in speed limit to 25 mph, the street must be less than 35 feet in width, cannot have vehicle parking restrictions on either side of the street, and must meet one of the following location criteria:

- Located within one-quarter mile of a school site as depicted in the attached graphic
- Located within one-quarter mile of a construction zone associated with a major or minor arterial as defined on the Town of Flower Mound Thoroughfare Plan

Exceptions

Streets that do not meet the eligibility criteria can be considered on a case by case basis through the exception process. The request for an exception will include an engineering study to be completed by the Town, will be considered for recommendation by the Transportation Commission, and will be considered for adoption by the Town Council.

Implementation

Requests for reduced speed limits will be reviewed by Town staff for eligibility, or considered for an exception as described above. If the application is determined to meet the requirements, or an exception is recommended by the Transportation Commission, funding availability will be evaluated to determine if the speed limit signs can be installed during the current fiscal year. If funding is available, the request will be presented to the Town Council for consideration. If funding is not available, the neighborhood can choose to fund the cost of the sign materials and hardware or street(s) will be placed on a list of eligible streets to be included in a budget decision package during the next budget process.

Sign Design and Placement

All speed limit signs will meet the requirements contained in the Texas Manual on Uniform Traffic Control Devices. The placement of the speed limit signs will be reviewed determined by staff and coordinated with neighborhood representatives. Typical installations will only include one sign at each end of the neighborhood street, but mid-block signs will be considered on a case-by-case basis.

Town of Flower Mound
TOWN SECRETARY'S OFFICE
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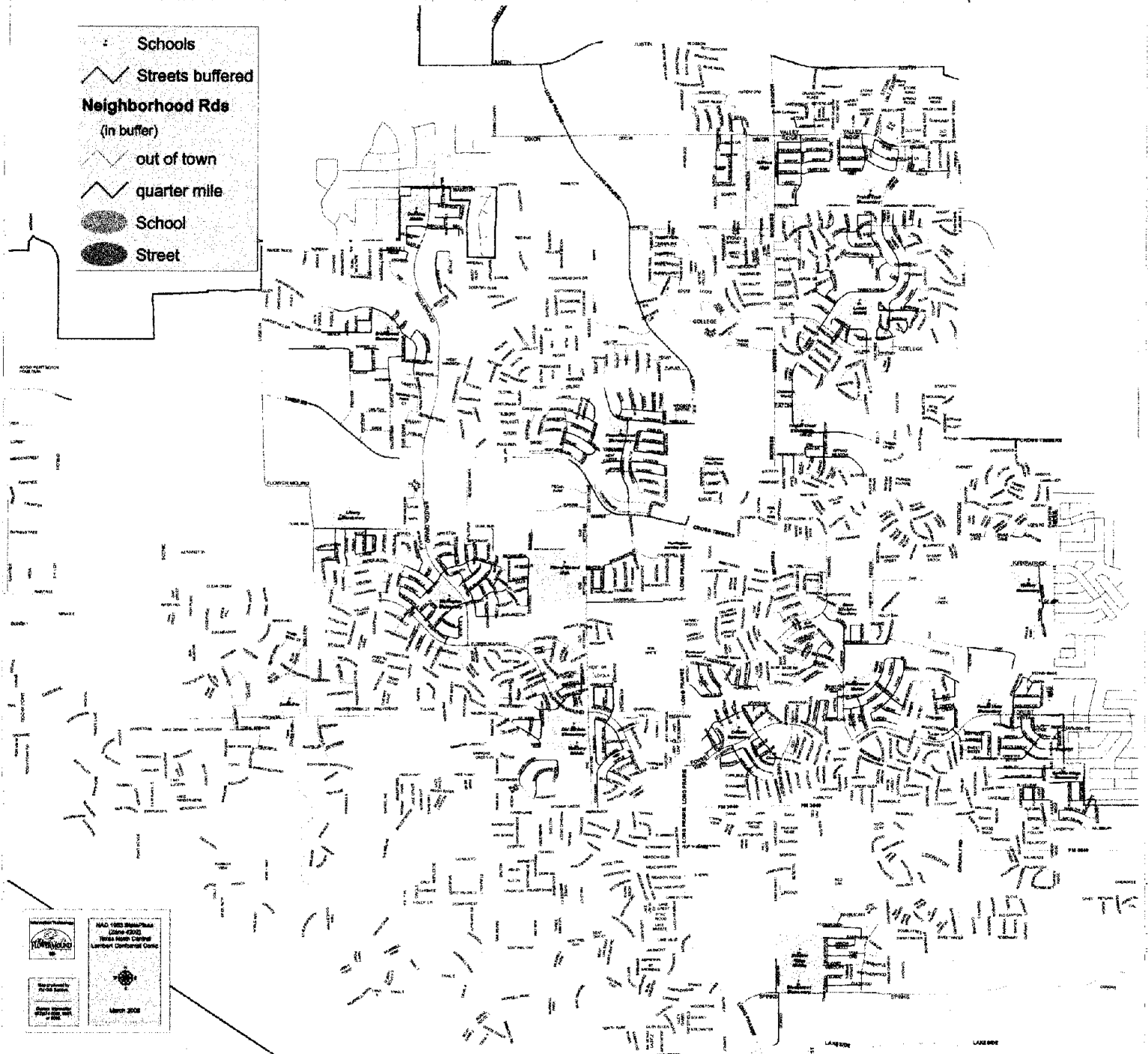
Process

The following provides a summary of the Process for Implementing Reduced Residential Speed Limits. The process is intended to be collaborative in nature, with the neighborhood representatives being stakeholders in the project.

1. Neighborhood contacts staff to request 25 mph speed limits
2. Staff establishes a point of contact for the request and project
3. Staff reviews the request and determines eligibility or directs request through exception process upon request
4. Staff reviews funding eligibility
 - a. If funding available, request is presented to Town Council
 - b. If funding not available:
 - i. Neighborhood funds cost of signs and hardware and request is presented to Town Council
 - ii. Staff submits request as a decision package during next budget process
5. Staff collects speed data prior to installation
6. Staff presents the request to the Town Council for required determination and action
7. If the Town Council declares a lower speed limit of not less than 25 mph for the roadway in question, Staff installs signs posting the speed limit at 25 mph
8. Staff collects speed data on a regular basis to determine effectiveness

Town of Flower Hill
TOWN SECRETARY'S OFFICE
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25 mph residential speed limit eligibility coverage



TOWN OF HOWARD, ILLINOIS
TOWN SECRETARY'S OFFICE
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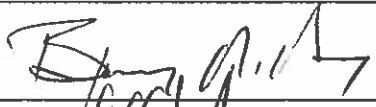
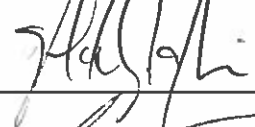
City	Flower Mound
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Neighborhood	Wellington
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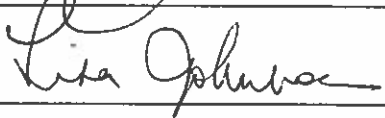
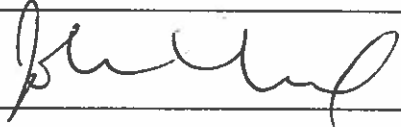
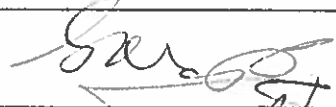
Streets Affected	Street Name	# of Homes
	Appleton Lane	37
	Tanyard Court	21
	Birchmont Drive	17
	Sutters Way	19
	Newcomer Lane	12

Survey Question

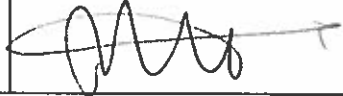
Are you in favor of lowering the Speed Limit to 25 MPH in our neighborhood
Please Print Your Name and Sign Below if you are in favor

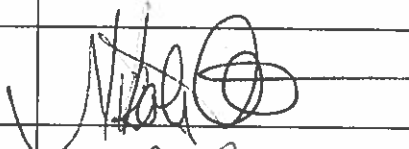
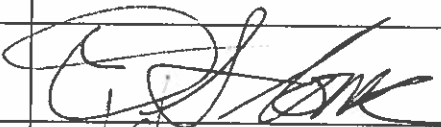
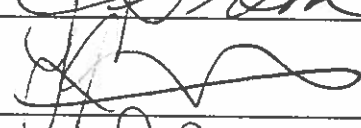
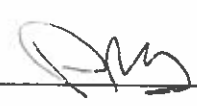
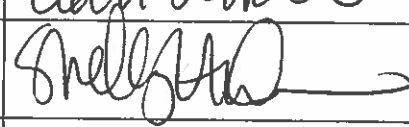
Address	Resident Name	Resident Signature
4112 Appleton Lane		
4108 Appleton Lane		
4104 Appleton Lane	Chris Gardner	
4100 Appleton Lane		
4024 Appleton Lane		
4020 Appleton Lane	Barry Haug	
4016 Appleton Lane	TADD TOBKIN	
4012 Appleton Lane	Joe Choic	
4008 Appleton Lane	DAE CHO	
4004 Appleton Lane	Chalyse Hall	Chalyse Hall
4000 Appleton Lane	Elie Tabbah	

3825 Appleton Lane	Holly Yane	Holly Yane
3821 Appleton Lane	Bel My	Brandon Macneus
3817 Appleton Lane	A. Hoane	APPA RAO HOARE
3813 Appleton Lane	Sony	Narayan S. N. N. N.
3809 Appleton Lane	Shannon Mackos	Shannon Mackos
3805 Appleton Lane		
3801 Appleton Lane		
3616 Tanyard Court	TONY SCHAPP	Yong J. S.
3612 Tanyard Court		Frank M.
3608 Tanyard Court		
3604 Tanyard Court		
3600 Tanyard Court	John A. M.	Ayha Molina
3512 Tanyard Court		
3508 Tanyard Court		
3504 Tanyard Court	Jacqueline LeClas	Jacqueline LeClas
3500 Tanyard Court		
3412 Tanyard Court	Brian Denicola	B. D.
3408 Tanyard Court		

3920 Appleton Lane	PAUL MADAC	
3916 Appleton Lane	Lisa Johnson	
3912 Appleton Lane	Torah Rasoi	
3908 Appleton Lane	Eugene Royak	
3904 Appleton Lane	Rolando Surra	
3900 Appleton Lane		
3828 Appleton Lane	John Hildebrand	
3824 Appleton Lane		
3820 Appleton Lane	Kent H	
3816 Appleton Lane	Seshu Rayu	
3812 Appleton Lane	Robert Dressell	
3808 Appleton Lane		
3804 Appleton Lane		
3800 Appleton Lane	Ernie Padayhag	
3909 Appleton Lane	Jessica Henne	
3905 Appleton Lane		
3901 Appleton Lane		
3833 Appleton Lane		
3829 Appleton Lane		

3404 Tanyard Court		
3517 Tanyard Court	VARA PRASAD TACARI	T.N. Vara Prasad
3513 Tanyard Court	Mandy Swirczynski	ms
3509 Tanyard Court		
3505 Tanyard Court	ARVIND KUMAR	Arvind
3501 Tanyard Court		
3413 Tanyard Court	Christine Barnes	Ch. M. Barnes
3409 Tanyard Court		
3405 Tanyard Court		
3824 Birchmont Drive	J. Liu	Liangzhong Zhou
3826 Birchmont Drive		
3827 Birchmont Drive		
3828 Birchmont Drive	Jennifer Gross	Jennifer Gross
3829 Birchmont Drive	Melissa Kiser	Melissa Kiser
3830 Birchmont Drive		
3831 Birchmont Drive		
3832 Birchmont Drive		
3833 Birchmont Drive	Amy Armstrong	Amy Armstrong
3820 Birchmont Drive	TONY JANG	Dr. Jang

3800 Birchmont Drive		
3804 Birchmont Drive		
3808 Birchmont Drive		
3812 Birchmont Drive		
3816 Birchmont Drive		
3820 Birchmont Drive	myth young jang	

3844 Birchmont Dr	BRONSON SORHAN	
3834 Birchmont Drive		
3835 Birchmont Drive		
3836 Birchmont Drive	Nikole Ackman	
3837 Birchmont Drive	Deepti Dontham	D. Deysi
3838 Birchmont Drive		
3839 Birchmont Drive		
3840 Birchmont Drive	Kayn Riekstins	K. Riekstins
3841 Birchmont Drive		
3520 Sutters Way	Thomas Connor	
3516 Sutters Way	James Twalen	
3514 Sutters Way	Marisa Solomon	M. Solomon
3510 Sutters Way		
3506 Sutters Way		
3617 Sutters Way	Narendra Pasuchuri	
3613 Sutters Way	Brenda Berry	Brenda Berry
3609 Sutters Way		
3605 Sutters Way	Clair Rivera	Clair Rivera
3601 Sutters Way	Shelly Hamilton	
3533 Sutters Way		

3529 Sutters Way	Holly Komenda	H Komenda
3525 Sutters Way	Daniel Shidenly	Shidenly
3521 Sutters Way	Linda Heredia	Heredia
3517 Sutters Way	Shaila Joshi	Shaila
3513 Sutters Way	Mamie M	Mamie
3509 Sutters Way		
3505 Sutters Way	Charles Franke	Franke
3501 Sutters Way	BRIAN CARR	CARR
3501 Newcomer Lane	Joe Russo	Russo
3505 Newcomer Lane		
3509 Newcomer Lane	Lena Galit	Galit
3513 Newcomer Lane		
3517 Newcomer Lane		
3500 Newcomer Lane	Sam Slater	Slater
3504 Newcomer Lane		
3508 Newcomer Lane		
3512 Newcomer Lane	Betty Finley	BETTY FINLEY
3516 Newcomer Lane	Brooke Adams Eliot Adams	KAD

3520 Newcomer Lane	Shelly Sanchez	Shelly Sanchez
3524 Newcomer Lane		

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 66-214, "ENUMERATION FOR SPECIFIC STREETS;" PROVIDING FOR THE ADDITION OF TWENTY-SIX STREETS TO THE LIST OF STREETS ENUMERATED THEREIN; IDENTIFYING A MAXIMUM PRIMA FACIE SPEED LIMIT FOR SAID STREETS AND CERTAIN STREETS AND PORTIONS OF CERTAIN STREETS WITHIN THE TOWN AT CERTAIN TIMES; PROVIDING A PENALTY NOT TO EXCEED \$200 FOR VIOLATIONS HEREOF; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 545.356 of the Texas Transportation Code authorizes a municipality to declare a reduction of speed limits on certain local streets to twenty-five miles per hour (25 mph), if the Council finds that the established speeds are unreasonable or unsafe and authorizes a municipality to establish prima facie maximum reasonable and prudent speeds for vehicles on streets and highways based upon an engineering and traffic study; and,

WHEREAS, the Town of Flower Mound has approved a policy for the reduction of the speed limit to 25 mph on certain residential streets within one-fourth ($\frac{1}{4}$) mile of a school property or within one-fourth ($\frac{1}{4}$) mile of a construction zone located on an arterial street; and,

WHEREAS, the Town Council has determined that the prima facie speed limits on roadways within one-fourth ($\frac{1}{4}$) mile of a school property or within one-fourth ($\frac{1}{4}$) mile of a construction zone located on an arterial street are unreasonable and unsafe; and,

WHEREAS, the Town Council established an exception process whereby residents on streets outside of one-fourth ($\frac{1}{4}$) mile of a school property or arterial construction zone may request an exception to the existing reduced speed limit policy to extend a reduced speed limit for the requested street; and,

WHEREAS, the Town Council of the Town of Flower Mound hereby finds and determines that the existing speed limit on portions of Appleton Lane, Birchmont Drive, Falstaff Lane, Newcomer Lane, and Tanyard Court are within one-fourth ($\frac{1}{4}$) mile of a school property, within one-fourth ($\frac{1}{4}$) mile of a construction zone located on an arterial street, or adequately meets the requirements for an exception to the reduction of speed policy and therefore the existing speed limit is unreasonable and unsafe; and

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

WHEREAS, the Town Council hereby finds and determines based upon said engineering and traffic investigation and study that the appropriate speed limit in this area should be twenty-five miles per hour (25 mph); and,

WHEREAS, the Town Council finds that an amendment to the speed limit on portions of Bruton Orand Boulevard is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public;

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

SECTION 1

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

SECTION 2

That Chapter 66, "Traffic and Vehicles," Article V, "Speed Limits," Section 66-214 "Enumeration for Specific Streets" of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by adopting the following maximum prima facie speed limit on the following additional streets in alphabetical order:

Location	Speed (mph)
Amador Court	25
Appleton Lane	25
Bainbridge Lane	25
Bancroft Way	25
Beringer Court	25
Birchmont Drive	25
Camara Court	25
Caruth Court	25
Copper Hill Court	25
Crandon Drive	25
Crownwood Court	25
Dwyer Ln	25
Falstaff Lane	25
Glenshannon Lane	25
Kiley Lane	25
Langley Court	25
Mattise Drive	25
Newcomer Lane	25
Rolling Oaks Drive	25
Sidney Lane	25
Sutters Way	25
Tanyard Court	25
Vicksberry Trail	25
Wembley Circle	25
Westminster Trail	25
Wicklowl Court	25

SECTION 3

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

SECTION 4

That Chapter 66, "Traffic and Vehicles," Article V, "Speed Limits," Section 66-214 "Enumeration for Specific Streets" of the Code of Ordinances, Town of Flower Mound, Texas is hereby amended by changing the start/end point for the location listed below to establish the following maximum prima facie speed limit on the following additional street in alphabetical order, leaving all other designations of speed limits in Section 66-214 unchanged

Location	Speed (mph)
Bruton Orand Boulevard from approximately 435 feet northwest of Brittany Drive/Sterling Parkway to approximately 270 feet south of Kenwood Drive when the school zone flasher is flashing or during times posted on reduced speed limit sign while school is in session	20
All other times is shall be	40

SECTION 5

The speed limits set forth in Section 4 above, are effective when the Town Manager, or his designee, erects signs giving notice of the new speed limits. The Town Manager is directed to take such action necessary to ensure that such new speed limit signs are erected and installed.

SECTION 6

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

SECTION 7

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

SECTION 8

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining

phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 9

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

SECTION 10

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 6TH DAY OF MAY, 2019.

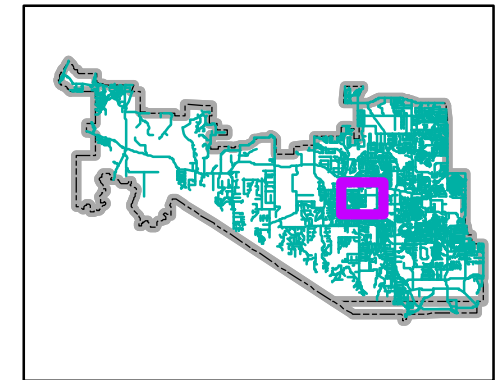
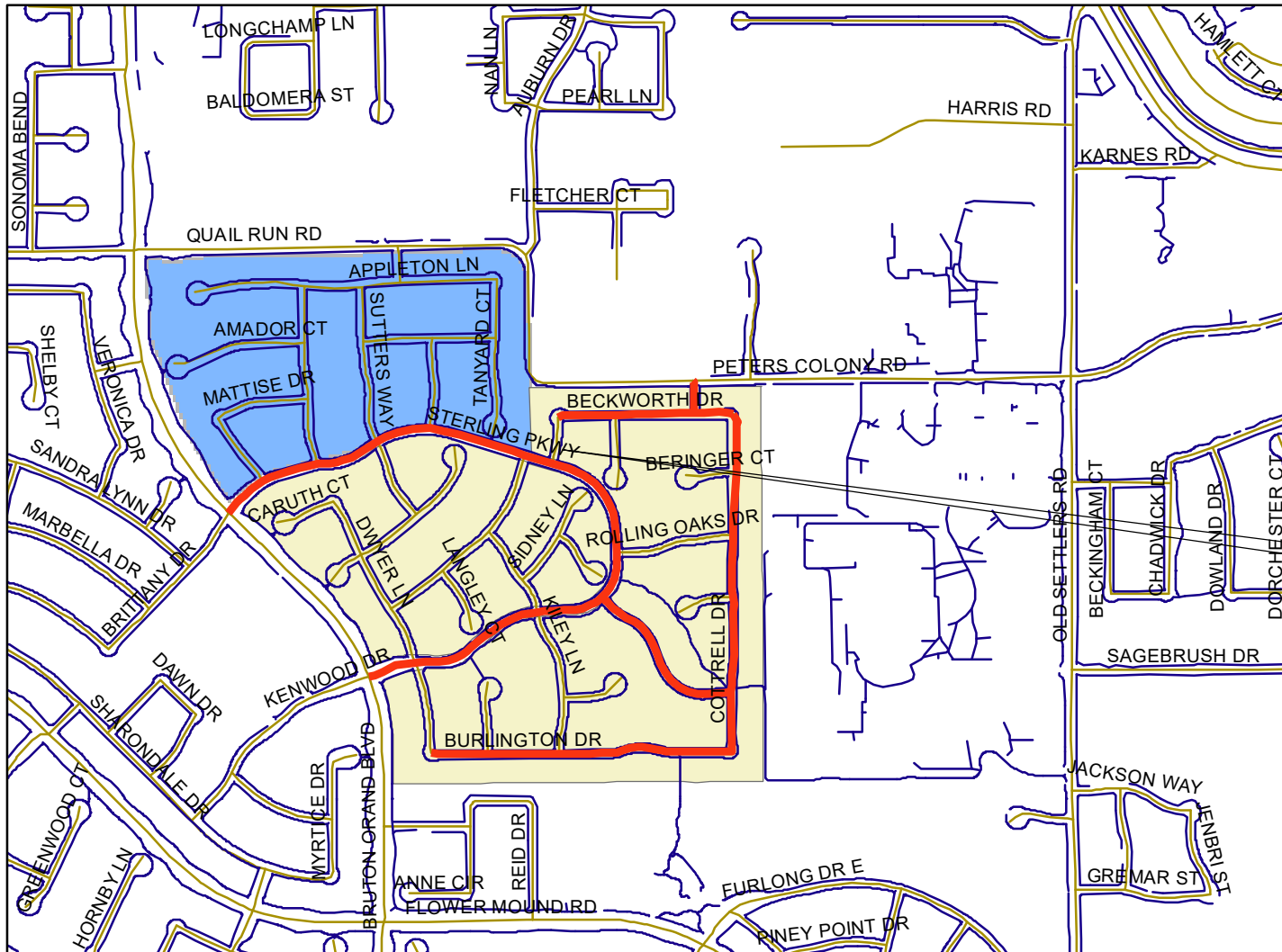
APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

Vicinity Map - Portion of Wellington Subdivision Speed Limit Reducation Request



Vicinity Map

Project Location(s)

Legend

- 25mph Streets
- Wellington Subdivision Added
- Wellington Speed Reduction Feb 19



TOWN COUNCIL AGENDA ITEM NO. 08

CONSENT ITEM

DATE: May 6, 2019

FROM: David Bauer, Construction Manager

ITEM: Consider approval of a Professional Services Agreement with ECS Southwest LLC, to provide construction materials engineering and testing 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.

BACKGROUND INFORMATION: The Professional Services Agreement includes construction materials engineering and testing for this project.

The Library Expansion construction project consists of an approximately 15,000 sq. foot expansion/renovation of a municipal multi-purpose building and associated site improvements on approximately 3 acres located at 3030 Broadmoor Lane. The project is using the Construction Manager at Risk (CMAR) delivery method.

The Architect for this project is Komatsu Architecture Inc., the original designer for the Library, and was approved by Town Council on December 4, 2017 to be the designer for the expansion.

The CMAR Steele Freeman was approved by Town Council on June 18, 2018, to be the Construction Manager at Risk to help in budgeting the project as it was being designed. The CMAR prepared a Guaranteed Maximum Price (GMP) proposal for the Town's review and acceptance. The GMP for this project is on the May 9, 2019 agenda as well.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$54,735.00

Proposed Expenditure/(Revenue):

Account Number(s):

\$54,735.00

533-111-32001

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. Contract Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
ECS SOUTHWEST, LLP**

This contract is entered into on this 6th day of May 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 **ECS SOUTHWEST, LLP**, ("hereinafter referred to as "CONSULTANT") whose address is 3033 Kellway Drive, Suite 110, Carrollton, TX 75006.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the Library Expansion Project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide the Library Expansion Construction Materials Engineering and Testing specifically

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

III. Payment for Services

Total payment for services described herein shall be a sum not to exceed Fifty Four Thousand Seven Hundred Thirty Five and 00/100 Dollars (\$54,735.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

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

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

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT’s approved monthly statements and other documentation submitted.

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

IV. Revisions of the Scope of Services

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

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

V. Term

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

VI. Contract Termination Provision

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of

CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;

3. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000.00 per occurrence; and
4. Professional Liability Insurance: CONSULTANT shall obtain and maintain at all times during the prosecution of the work under this Contract professional liability insurance, which may be written on a claims made form provided that "tail coverage" or continuation coverage is provided. Limits of liability shall be \$1,000,000.00 per claim, \$1,000,000.00 annual aggregate. The coverage under this policy shall include a contractual liability endorsement.

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

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

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

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

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

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

IX.

Right to Inspect Records

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

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

X.

Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

XIII.
Independent Contractor

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

XIV.
Default

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

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

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages in an amount not to exceed:

(1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained by CONSULTANT in excess or in addition to the coverage required under this Contract; plus

(2) The total dollar amount of this Contract.

XV.

Provisions Surviving Termination

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

XVI.

Changes

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

XVII.

Conflicts of Interest

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

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

XVIII.

Confidential Information

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

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

XIX.
Notice Information

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

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

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

Vince Elizarde, P.E.
ECS Southwest, LLP
3033 Kellway Drive, Suite 110
Carrollton, TX 75006
972-392-3222 Telephone

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract

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

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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:
ECS SOUTHWEST, LLP.**

By: Siddharth Neekhra

Name: Siddharth Neekhra

Title: Vice President

Date Signed: 2/18/2019

State of Texas §

County of Tarrant §

This instrument was acknowledged before me on the 18th day of February, 2019, by Siddharth Neekhra in his capacity as Vice President of ECS Southwest, a LLP 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 Vice President.

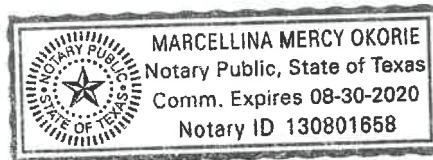
GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF 18th Feb., 2019.

Marcellina Okorie - Texas

Notary Public, State of Texas

My Commission Expires:

08/30/2020





ECS Southwest, LLP

ESTIMATED COST PROPOSAL FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING SERVICES

TOWN OF FLOWER MOUND PUBLIC LIBRARY ADDITION

3030 Broadmoor Lane
Flower Mound, Texas 75022

ECS Proposal Number **63:1076-CP**

ECS Southwest, LLP
4050 Sandshell Drive
Fort Worth, TX 76137
P: 682-350-2250

Vince Elizarde, PE
VELizarde@ECSLimited.com

February 15, 2019





February 15, 2019

David Bauer
Town of Flower Mound
1001 Cross Timbers Road
Flower Mound, Texas 75028

ECS Proposal No. 63:1076-CP

Reference: **Proposal for Construction Materials Engineering and Testing Services**
Town of Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022

Mr. Bauer,

We are pleased to submit our unit fee proposal for our **Construction Materials Engineering and Testing (CMT) Services** on the **Town of Flower Mound Public Library Addition** project located in Flower Mound, Texas. For this project we expect to primarily provide our project management and field staff out of our Fort Worth office while the principal engineering, client coordination, and overall project oversight will be provided from our Carrollton office.

As part of our services delivery for the town, we expect to provide experienced field staff with regular principal engineering supervision. In addition, our reports are expected to be processed, reviewed, finalized, and transmitted in 24 to 48 hours after the field services are performed.

If you have any questions or comments regarding our proposal, please do not hesitate to contact me any time at 214-952-9437. ***We thank you for the opportunity to provide our proposal and look forward to helping you and the Town on this project.***

Respectfully,
ECS Southwest, LLP

Timothy A. Tarbutton
Office Manager
TTarbutton@ECSLimited.com

Vincent J. Elizarde, P.E.
Principal Engineer
VELizarde@ECSLimited.com

APPENDICES:

- Appendix A: Scope of Services
- Appendix B: Estimated Fees & Standard Fee Schedule
- Appendix C: Proposal Acceptance
- Appendix D: Terms and Conditions of Service

[F:\(FT. WORTH CMT)\PROPOSALS\1000-1099\1076-CP ToFM Library Expansion (Flower Mound, TX)\01 Proposal\63-01076-CP 190215 ToFM Library Addition - CMT Proposal (ToFM, TX) ToFM PSA Format.doc]

The following sections include our available project information, and proposal information for our **Construction Materials Engineering & Testing Services** to be performed on the **Town of Flower Mound Public Library Addition** project located in the Town of Flower Mound, Texas.

PROJECT INFORMATION / OVERVIEW

After reviewing the provided project documents (noted below) provided by the client the proposed development will consist of the construction of the following generalized structures and site features:

- A ~12,036 square foot addition on the north side of the existing library.
- A ~4,126 square foot addition on the north side of the existing library.
- Structural steel.
- Storm-water utility lines and onsite detention pond
- Site and building utilities
- Site concrete pavement, flatwork, and sidewalks

Our understanding of the proposed structures is based upon the design documents provided as part of the bid request for this project including:

- Architectural drawings by Komatsu Architecture dated December 18, 2018.
- Structural Engineering drawings by RL Woods & Associates dated December 14, 2018.
- Civil Engineering drawings by Jaster-Quintanilla Dallas, LLP dated December 14, 2018.

PROPOSED PROJECT TEAM

In order to best execute the scope of services noted above we have assembled the proposed project team noted below. The project team will operate out of the office and ECS subsidiary also noted below.

ECS Subsidiary: **ECS Southwest, LLP**
Office Location: **Fort Worth, Texas**

Principal Engineer: **Vince Elizarde, PE**
Project Manager: **Tim Tarbutton**

Field / Lab Staff:	Perform all assigned field and laboratory testing and site observation functions (reports to Project Manager).
Project Manager:	Responsible for monitoring job progress, ECS performance, project status and budget, and reviews field and laboratory reports (reports to Principal Engineer).
Principal Engineer:	Provide project direction and technical expertise as needed. Reviews all field and laboratory reports and invoices. Coordinates with the Client.

SCOPE OF SERVICES

Our construction materials engineering and testing services scope is limited to our providing periodic or continuous testing and/or observations for the construction of the above-noted structures and features of this project. We anticipate that the project general contractor or their designated representative will be scheduling our services on an on-call, as-needed basis. The number of hours and level of effort that we based our proposal on should be considered approximate since it is not based upon a published construction schedule or expected material quantities. In addition, our actual number of hours and tests for this project will ultimately be determined by as-constructed magnitudes and frequencies of installation events as well as the proportion of concurrent events requiring our CMT services. If a construction schedule or material quantities become available, we can review them against our assumptions and be more definitive in our scope and presumed construction schedule. Our general assumptions utilized in the preparation of this proposal are provided in a later section.

Our scope for this project includes observation, sampling, and field/laboratory testing services for the following items:

- Earthwork
- Building Foundations
- Building and Site Reinforcing Steel & Concrete
- Building Structural Steel

In conjunction with and in support of the field and laboratory services noted above our scope also includes:

- Project Administration, Dispatching, and Reporting
- Project Management & Construction Meeting Attendance

Additional details and assumptions for each section above are provided in our “Scope of Services” in **Appendix A**.

REPORTING

Daily field reports and laboratory test reports will be distributed via electronic mail (email) as part of our service to the distribution list determined by the client for this project. We will not distribute reports to any parties without permission from the client. ***Our reporting systems are fully computerized and we are able to submit both field and laboratory results within 24-48 hours of when our actual observation / testing services are performed.*** Report distribution by facsimile can be performed if specifically requested.

Where deficiencies in procedures or materials are recognized in the field or the laboratory, the general contractor *and the town inspector or client’s representative* will be notified as soon as possible. Electronic copies of reports can be forwarded via email to additional parties designated by the client, at no extra charge, as part of our service.

COMPENSATION, ESTIMATED FEES, & BASIS OF CHARGES

Included on our “Estimated Fees & Standard Fee Schedule” tables in **Appendix B** are the unit rates that will be used to invoice this project for *the actual quantity of work performed*. Our services are expected to be typically scheduled on a part-time, as-needed, basis by the client or their designated representative. As such, the number of hours and level of effort necessary to complete our CMT services for this project will vary depending upon the frequency and duration of our scheduled service calls. At the time this proposal and estimate was prepared, a construction schedule was not available for use in refining our quantities and phasing.

Based on the general scope of work indicated above and our take-off quantities, presumed construction procedures, phasing, and schedule, we anticipate our fees for this project to be:

Construction Materials Engineering and Testing Services\$ 54,735.00

The number of hours and level of effort that we based our proposal on should be considered approximate since it is not based upon a published construction schedule or provided material quantities. In addition, our actual number of hours and tests for this project will ultimately be determined by as-constructed magnitudes and frequencies of installation events as well as the proportion of concurrent events requiring our CMT services. If a construction schedule or material quantities become available, we can review them against our assumptions and cost estimations.

A summary of the scope of services and our estimated fees for each is presented on our “Estimated Fees” table provided in Appendix B. The rates applied to this project and utilized in our fee estimation are provided on the “Standard Fee Schedule” table also provided in Appendix B. Our general assumptions for our cost estimations are also provided in Appendix B. Additions or deletions to our scope of work (estimated quantities) will be adjusted based on the established unit prices provided in this proposal for this project.

Unless otherwise directed by the client, items such as *service cancellations while our staff is in transit to the project site or once at the project site, onsite delays and standby time, and failed tests* as well as associated project management / principal engineering / administration time and trip charges are not factored into our scope and estimated fees and will be invoiced as additional services to be addressed by the Town of Flower Mound with the contractor. *These additional services will be invoiced as Task 2 charges.*

The estimated total will not be exceeded without prior approval. The Town of Flower Mound and ECS may subsequently agree in writing to provide additional services to be rendered under this agreement for additional, negotiated compensation.

BILLING

Invoices will be issued on a monthly basis and will typically provide a week by week breakdown of billing units, unless modified by request of the client to be broken down per trip to the project or another preferred format. **We understand that the Town of Flower Mound expects to receive invoices for processing by the 25th of each month.** Our invoices are normally processed on or around the 15th of each month and represent costs incurred during the previous (approximate) calendar month. Our typical monthly invoices will also display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring job expenses as they relate to job progress. We request that payment be rendered within 30 days of receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days. ECS also reserves the right to withhold final certifications until outstanding balances have been paid in full.

All services provided for this project will be billed in accordance with the established unit rate schedule. It is our belief that all required services have been included in our unit price list. Should supplemental services be deemed necessary at a later date, they would be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance. All unit prices listed herein shall remain as stated throughout the project.

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of ECS's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations (if any) will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. ECS makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided. Even with diligent monitoring, construction defects may occur. In all cases the contractor is solely responsible for the direction and the quality of the work, adherence to plans and specifications, and repair of defects.

This proposal is valid for a period of 60 days from the date of this proposal, unless a longer period is specifically required in which case that time frame will apply. This proposal was prepared specifically for the client and its designated representatives and may not be provided to others without ECS's expressed written permission.

PROPOSAL ACCEPTANCE / TERMS OF ENGAGEMENT

As is customary with the Town of Flower Mound, your approval of this proposal will be indicated by your providing us with a Professional Services Agreement (PSA) that will be signed and notarized by both parties. Any modifications of the attached language must be accepted by both parties, and may result in an increase in scope and compensation. Acceptance of the proposal indicates the client's review and understanding of our scope of services, budget, and terms and conditions.

Our standard "Proposal Acceptance" form is provided in **Appendix C** and can be used as well as the town's PSA. Provided in **Appendix D** are our standard "Terms and Conditions of Service".

CLOSURE

We appreciate the opportunity to provide you with this proposal, and look forward to working with the Town of Flower Mound on this project. If you have any questions or wish to discuss the contents of this proposal, please contact me (Vince Elizarde) anytime at 214.952.9437 or at VELizarde@ECSLimited.com.

APPENDICES

APPENDIX A: SCOPE OF SERVICES

APPENDIX B: ESTIMATED FEES & STANDARD FEE SCHEDULE

APPENDIX C: PROPOSAL ACCEPTANCE

APPENDIX D: TERMS AND CONDITIONS OF SERVICE

APPENDIX A: SCOPE OF SERVICES

Our construction materials engineering & testing services scope is limited to providing periodic testing and/or observations for the expected general construction activities noted previously. We understand that the client or their designated representative will be scheduling our services, and the number of hours and level of effort that we based our proposal on should be considered approximate for budgetary purposes since it is not based on a published construction schedule or contractor material quantities. If a schedule becomes available, we can review this schedule against our assumptions and be more definitive in our proposed scope of services.

Unless otherwise noted, we agree to provide an engineering technician(s) or an engineer to perform our construction materials field testing, sampling, and observation services as noted in the following sections. *To most effectively serve the client and facilitate the construction process, our services should be scheduled 24-hours in advance. We understand that the construction process incorporates a large degree of variability and as such, we will do our best to accommodate scheduling calls made on the same day as our services are needed but we cannot guarantee that we can satisfy service requests made after-hours or on the same day as the services are needed to be performed.*

We anticipate the following services for this project:

Earthwork

Perform as-scheduled earthwork (soils) observation, sampling, and testing services including:

1. Obtain (pick up) soil samples and perform laboratory soil tests generally including moisture/density relationship (Standard Proctor) tests, soil classification tests (Atterberg Limits and percent finer than the no. 200 sieve) for each requested soil-type. Additional soil testing may be required depending on project-specific requirements.
2. Observe proof-rolling of prepared subgrade areas.
3. Observe placement and compaction of backfill materials (as scheduled)
4. Perform in-place moisture/density tests on placed and compacted soils and prepared subgrades.
5. As-requested, periodically observe excavation operations to document removal of unsuitable materials including but not limited to deleterious materials, trash, debris, frozen soil, or stones.

Foundations (Footings)

Perform as-scheduled observation, sampling, and testing services for foundation installation events including:

1. Observe foundation excavation including prepared subgrade surfaces (shallow foundations, footings, etc).
2. Observe reinforcing steel layout and concrete placement (see “Reinforcing Steel & Cast-In-Place Concrete” scope).

Reinforcing Steel & Cast-In-Place Concrete

Perform as-scheduled observation, sampling, and testing services for concrete placement events including:

1. Observe reinforcing steel layout for size, spacing, cleanliness, length, splices, and positioning.
2. Observe concrete placement, contractor procedures, and limited initial curing.
3. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
4. Pick up concrete sample cylinders the following work-day and transport them to the ECS concrete laboratory for processing, moisture curing, and subsequent compressive strength testing. *Appropriate onsite storage areas (curing boxes, shades, etc) for initial sample curing and any other field curing of concrete samples shall be provided by the contractor.*

Structural Steel

Perform as-scheduled observation and testing of structural steel erection including:

1. Observe general structural steel erection and assembly.
2. Observe completed welds and connections.

Fire Proofing (Structural Steel)

Perform as-scheduled observation of steel frame fire proofing applications including:

1. Observe general fire proofing application.
2. Perform fire proofing thickness measurements.

Project Management

Project Managers and Principal Engineers will manage the project as follows:

1. Coordinate with Client's field and office staff.
2. Attend the Pre-Construction meeting (if held) and 1-2 site meetings (as requested).
3. Coordinate field and lab services with the project general contractor and dispatch our field staff as scheduled.
4. Process, finalize, and distribute all field and laboratory reports.
5. Manage our project operation and services delivery as well as provide general material engineering consultation.

Our field staff or project professionals will provide documentation of events in the field and notify the project general contractor and the client (as needed) upon recognition of deficiencies.

ADDITIONAL SERVICES

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

1. Additional construction material samples for laboratory testing including early test samples or additional sample sets beyond the frequency required in the project documents.*
2. Service cancellations while our staff is in transit to the project site or once at the project site.*
3. Onsite delays and standby time.*
4. Failed Tests.*
5. Field (on site) curing facilities and/or storage for the cementitious samples.
6. Attend routine construction meetings throughout the duration of the construction process.
7. Any additional services not specifically included in the above Scope of Services for this project.*

* Including all associated time, materials, and vehicle charges.

The additional services noted above are not factored into our scope and estimated fees and will be invoiced as additional services to be addressed by the Town of Flower Mound with the contractor. *These additional services will be invoiced as Task 2 charges.* Unless defined specifically, all additional services will be invoiced at their standard rates (subject to overtime modification, where applicable) shown on the "Standard Fee Schedule" provided in Appendix B. Beyond the scope of services presented in this proposal for this project, ECS offers the following construction materials engineering and testing services, locally, that could prove beneficial to the client and the project in general:

- Masonry: Dumpster Enclosure
- Erosion Control Status Observation
- Ground Penetrating Radar (GPR)
- Concrete Coring and Core Sample Testing
- Floor Flatness Testing
- Floor Slab Relative Humidity Testing

APPENDIX B: ESTIMATED FEES & STANDARD FEE SCHEDULE**ESTIMATED FEES**

Description of Services	Detail	Estimate	Quantity	Unit	Rate	Total
Earthwork: Building & Site						
Engineering Technician	<i>Sample Pickup</i>	<i>3 Events</i>	10	hours	\$ 55.00	\$ 550.00
Engineering Technician	<i>Site (Pvmt R&R SG)</i>	<i>2 Events</i>	6	hours	\$ 55.00	\$ 330.00
Engineering Technician	<i>Site (Pvmt)</i>	<i>7 Events</i>	30	hours	\$ 55.00	\$ 1,650.00
Engineering Technician	<i>Site (Flatwork)</i>	<i>3 Events</i>	7	hours	\$ 55.00	\$ 385.00
Engineering Technician	<i>Site (Patio)</i>	<i>2 Events</i>	5	hours	\$ 55.00	\$ 275.00
Engineering Technician	<i>Site (SD Lines)</i>	<i>12 Events</i>	40	hours	\$ 55.00	\$ 2,200.00
Engineering Technician	<i>Site (SS Line)</i>	<i>7 Events</i>	23	hours	\$ 55.00	\$ 1,265.00
Engineering Technician	<i>Site (Deten. Pond)</i>	<i>6 Events</i>	32	hours	\$ 55.00	\$ 1,760.00
Engineering Technician	<i>Building (Pad MC)</i>	<i>4 Events</i>	38	hours	\$ 55.00	\$ 2,090.00
Engineering Technician	<i>Building (Utilities)</i>	<i>5 Events</i>	17	hours	\$ 55.00	\$ 935.00
Senior Engineering Technician	<i>Building (Fdtn SG)</i>	<i>4 Events</i>	10	hours	\$ 60.00	\$ 600.00
Engineering Technician	<i>Building (GB)</i>	<i>4 Events</i>	14	hours	\$ 55.00	\$ 770.00
Nuclear Gauge Fee			49	events	\$ 75.00	\$ 3,675.00
St. Proctor (Moist./Dens. Rel.)	<i>Standard Proctor</i>		6	each	\$ 140.00	\$ 840.00
Atterberg Limits Tests	<i>Plasticity Index</i>		6	each	\$ 80.00	\$ 480.00
Washed Sieve (- #200 Sieve)	<i>Percent Fines</i>		6	each	\$ 60.00	\$ 360.00
Vehicle Charge			59	trips	\$ 35.00	\$ 2,065.00
Subtotal:						\$ 20,230.00
Concrete & Reinforcing Steel: Building & Site						
Engineering Technician	<i>Site (Pvmt R&R)</i>	<i>2 Events</i>	7	hours	\$ 55.00	\$ 385.00
Engineering Technician	<i>Site (HD Pvmt)</i>	<i>4 Events</i>	30	hours	\$ 55.00	\$ 1,650.00
Engineering Technician	<i>Site (SD Pvmt)</i>	<i>6 Events</i>	26	hours	\$ 55.00	\$ 1,430.00
Engineering Technician	<i>Site (Flatwork)</i>	<i>7 Events</i>	23	hours	\$ 55.00	\$ 1,265.00
Engineering Technician	<i>Site (Dumpster)</i>	<i>2 Events</i>	7	hours	\$ 55.00	\$ 385.00
Engineering Technician	<i>Site (Bollards)</i>	<i>1 Events</i>	4	hours	\$ 55.00	\$ 220.00
Senior Engineering Technician	<i>Building (Slab/GB)</i>	<i>5 Events</i>	37	hours	\$ 60.00	\$ 2,220.00
Concrete Cylinders (Comp. Str.)		<i>Sets of 5</i>	210	each	\$ 18.00	\$ 3,780.00
Material Sample Pickup			27	trips	\$ 55.00	\$ 1,485.00
Vehicle Charge			27	trips	\$ 35.00	\$ 945.00
Subtotal:						\$ 13,765.00

* * continued on Page 2 of 4 * *

* * continued from page 1 of 4 * *

Description of Services	Detail	Estimate	Quantity	Unit	Rate	Total
Structural Steel & Fire Proofing: Building						
Structural Steel Technician		8 Events	38	hours	\$ 80.00	\$ 3,040.00
Specialty Engineering Technician	Fireproofing	4 Events	20	hours	\$ 75.00	\$ 1,500.00
Vehicle Charge			12	trips	\$ 35.00	\$ 420.00
Subtotal:						\$ 4,960.00
Project Management						
Administrator / Clerical			10	hours	\$ 50.00	\$ 500.00
Project Manager			58	hours	\$ 120.00	\$ 6,960.00
Principal Engineer			18	hours	\$ 165.00	\$ 2,970.00
Vehicle Charge			10	trips	\$ 35.00	\$ 350.00
Subtotal:						\$ 10,780.00
Project Contingency						
Contingency			1	each	\$ 5,000.00	\$ 5,000.00
PROJECT TOTAL:						\$ 54,735.00

General Assumptions:

Based on the general project information and our scope of services outlined above, the general assumptions utilized in the preparation of our estimated fees are listed below:

1. All material sample pickups and transport to our Laboratory are separate trips, independent of scheduled services.
2. All reinforcing steel observation (as scheduled) will be performed on the same trip as the respective concrete placement event, immediately prior to concrete placement.
3. Utility trench excavation backfilling will be completed at a rate of approximately 100 linear feet / day with 2 to 3 lifts placed per day.
4. Concrete will generally be placed at less than 10 cubic yards per event (pour) for sidewalk events with each sidewalk cast independently. Concrete will generally be placed at around 100-150 cubic yards or less per event (pour) for pavement placement events.
5. Unless requested otherwise by the client, concrete sample sets (on average) will consist of 5 sample cylinders measuring 4 inches in height by 8 inches in diameter and will be tested: 2 at 7 Days, 2 at 28 Days, and 1 Hold/56-Day (as needed) to account for any early cylinders needed for budgetary purposes though the Town of Flower Mound generally requires 4 cylinders per set.
6. Overtime is not expected due to the project location and construction work hours constraints.
7. For budgeting purposes, all onsite services are estimated to be performed on separate trips and independent of each other.

STANDARD FEE SCHEDULE

Description of Services	Notes	Unit Rate
Field Services		
• Engineering Technician		\$ 55.00 / hour
• Senior Engineering Technician		\$ 60.00 / hour
• Specialty Engineering Technician		\$ 75.00 / hour
• Structural Steel Technician		\$ 80.00 / day
• Nuclear Gauge Fee		\$ 75.00 / day
• Core Drilling (Crew)		\$ 100.00 / hour
• Core Drilling (Equip. & Matls)		\$ 15.00 / each
Project Management & Engineering Services		
• Administrator / Clerical		\$ 50.00 / hour
• Project Manager		\$ 120.00 / hour
• Principal Engineer		\$ 165.00 / hour
• Concrete Mix Design Review		\$ 300.00 / each
• Certification Letter		\$ 325.00 / each
Laboratory Services		
• St. Proctor (Moist./Dens. Rel.)	ASTM D-698	\$ 140.00 / each
• Mod. Proctor (Moist./Dens. Rel.)	ASTM D-1557	\$ 140.00 / each
• Atterberg Limits Tests	ASTM D-4318	\$ 80.00 / each
• Washed Sieve (- #200 Sieve)	ASTM D-1440	\$ 60.00 / each
• Lime Series	ASTM D-6276	\$ 160.00 / each
• Lime Gradations	ASTM D-6913	\$ 15.00 / each
• Free-Swell Test	ASTM D-4546	\$ 100.00 / each
• Concrete Cylinders (Comp. Str.)	ASTM C-39	\$ 18.00 / each
• Concrete Cores (Comp. Str.)	ASTM C-39	\$ 50.00 / each
• Grout Prisms (Comp. Str.)	ASTM C-1019	\$ 30.00 / each
• Mortar Cubes (Comp. Str.)	ASTM C-270	\$ 18.00 / each
• Masonry Block Prisms (Comp. Str.)	ASTM C-1314	\$ 300.00 / each
Mobilization & Transportation		
• Core Drilling (Mobilization)		\$ 350.00 / each
• Floor Flatness (Mobilization)		\$ 300.00 / hour
• Material Sample Pickup		\$ 55.00 / trip
• Vehicle Charge		\$ 35.00 / trip

General Notes:

1. There will be no minimum charge for services rendered on this project; billing will be based on specific unit rates reflecting only the actual time spent and tests performed on this project.
2. Hourly unit rates are based on a normal 10 hour work day, Monday through Friday (non-holidays), between normal business hours of 7:00 a.m. to 5:00 p.m. Hourly rates outside normal hours (excluding travel time and report preparation/lab time), and on Saturday, Sunday, and Holidays, will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.
3. All vehicle charges account for a round trip from the **ECS Southwest, LLP - Fort Worth, Texas** office to the project site.

APPENDIX C: PROPOSAL ACCEPTANCE FORM

ECS Proposal No.: 63:1076-CP
 ECS Proposal Date: February 15, 2019
 Project Name: Town of Flower Mound Public Library Addition – Flower Mound, Texas
 Scope of Work: Construction Materials Engineering & Testing Services
 Total Estimated Cost: \$ 54,735.00

Client Signature: _____ Date: _____

Please complete this page and return one copy of this proposal to ECS to indicate acceptance of this proposal and to initiate work on the above-referenced project. The Client's signature above also indicates that he/she has read or has had the opportunity to read the accompanying Terms and Conditions of Service and agrees to be bound by such Terms and Conditions of Service.

BILLING INFORMATION (Please Print or Type)

Name of Client: _____

Name of Contact Person: _____

Telephone No. of Contact Person: _____

Party Responsible for Payment: _____

Company Name: _____

Person/Title _____

Department: _____

Billing Address: _____

Telephone Number: _____

Client Project/Account Number: _____

Special Conditions for Invoice: _____

Submittal and Approval: _____

ECS offers a full array of services to assist you with *all* phases of your project, including but not limited to:

☐ Phase I, II and III Environmental Site Assessments	☐ Third Party Mechanical, Electrical, Plumbing Inspections Services	☐ Building Envelope, Roofing, and Waterproofing Inspection and Consultation
☐ Archaeological Assessments	☐ Geotechnical Engineering Services	☐ Pre- and Post-Construction Condition Assessments
☐ Wetlands Delineations	☐ Construction Materials Testing	☐ Specialty Materials and Forensics Testing
☐ Asbestos/Lead Paint Services	☐ Septic/Drainfield Design Services	
☐ Indoor Air Quality Mold Services	☐ LEED® Consulting Services	

Please indicate any of the services you are interested in and a member of the ECS team will contact you to discuss how we can be of service to your project.

APPENDIX D: TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS Southwest, LLP ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

- 1.0 INDEPENDENT CONSULTANT STATUS** - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants
- 2.0 SCOPE OF SERVICES** - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.
- 3.0 STANDARD OF CARE**
 - 3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.**
 - 3.2** CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.
 - 3.3** If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.
 - 3.4** If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.
- 4.0 CLIENT DISCLOSURES**
 - 4.1** Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.
 - 4.2** "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.
 - 4.3** If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.
- 5.0 INFORMATION PROVIDED BY OTHERS** - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT's agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.
- 6.0 CONCEALED RISKS** - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.
- 7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES**
 - 7.1** CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS harmless from

any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

- 7.2** CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.
- 7.3** ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.
- 7.4** CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.
- 8.0 UNDERGROUND UTILITIES**
 - 8.1** ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.
 - 8.2** CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.
 - 8.3** CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.
- 9.0 SAMPLES**
 - 9.1** Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.
 - 9.2** Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.
- 10.0 ENVIRONMENTAL RISKS**
 - 10.1** When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.
 - 10.2** When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.
 - 10.3** Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.
 - 10.4** In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.
 - 10.5** Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.
 - 10.6** CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot

know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, its licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

- 14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.
- 15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 CLIENT agrees to allocate certain risks associated with the Project by limiting ECS' total liability to CLIENT arising from ECS' professional liability, i.e. professional acts, errors, or omissions and for any and all causes including negligence, strict liability, breach of contract, or breach of warranty, injuries, damages, claims, losses, expenses, or claim expenses (including reasonable attorney's fees) relating to professional services provided under this agreement to the fullest extent permitted by law. The allocation is as follows.
- 18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
- 18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, or the total fee for the services rendered, whichever is greater.
- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.
- 19.0 INDEMNIFICATION**
- 19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)
- 19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. If CLIENT is a homeowner, homeowners' association, condominium owner, condominium owner's association, or similar residential owner, ECS recommends that client retain legal counsel before entering into this AGREEMENT to explain CLIENT'S rights and obligations hereunder, and the limitations, and restrictions imposed by this AGREEMENT. CLIENT agrees that failure of CLIENT to retain such counsel shall be a knowing waiver of legal counsel and shall not be allowed on grounds of avoiding any provision of this AGREEMENT.
- 19.4 If CLIENT is a residential builder or residential developer, CLIENT shall indemnify and hold harmless ECS against any and all claims or demands due to injury or loss initiated by one or more homeowners, unit-owners, or their homeowner's association, cooperative board, or similar governing entity against CLIENT which results in ECS being brought into the dispute.
- 19.5 In no event shall the duty to indemnify and hold another party harmless under this Section 19.0 include the duty to defend.
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 TERMINATION**
- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.
- 30.0 TITLES; ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.
- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.

END OF TERMS AND CONDITIONS OF SERVICE



TOWN COUNCIL AGENDA ITEM NO. 09

CONSENT ITEM

DATE: May 6, 2019

FROM: Jeff Garner, Director of Facilities Management

ITEM: Consider approval of Proposal #19-332 for the I/NET Access Control System from Schneider Electric Buildings, a Sole Source Provider, for the Flower Mound Fire Station 7 project in the amount of \$46,695.00.

BACKGROUND INFORMATION: The project is for the installation of the Access Control System for the new Fire Station 7. The work will include the installation of all hardware, wiring and labor for a fully operational access control system. The system will provide secured access for eight doors, access gate, and one apparatus bay door connection integrated with Police Dispatch to open a bay door remotely.

Schneider Electric is the sole manufacture of the I/NET DDC controllers and I/Net Seven EMS software that provide controls throughout the Town of Flower Mound (TFM). The Schneider DDC controls, I/NET Seven software, I/NET hardware, SmartStruxure software's and SXWT hardware's provided to the TFM are designed and manufactured by Schneider Electric.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

FISCAL IMPACT: \$46,695.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$46,695.00	533-111-50082

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

LEGAL REVIEW: N/A.

ATTACHMENTS:

1. Schneider Electric Proposal #19-332
2. Schneider Electric Sole Source Letter

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

April 1, 2019

TO: Jeff Garner

SITE: Flower Mound Fire Station 7
2700 Skillern Boulevard
Flower Mound, TX 75022

REF: I/NET Access Control
Proposal #19-332

Schneider Electric is pleased to offer the following proposal for your consideration. This quote includes the following services:

SCOPE OF WORK

- Provide and install (1) 24x24 panel enclosure. Panel to include the following parts:
 - o (1) TAC Xenta 527
 - o (1) 7798C sub-LAN interface
 - o (2) SCU1284 door controllers
 - o Power supplies
- Provide and install electrification hardware, (1) card reader, (1) request to exit motion detector, and (1) door status switch at (8) door locations.
- Run and terminate access control cables from the doors to the access panel.
- Provide and install (1) gate pedestal and (1) long range card reader at the gate location.
- Provide, run and terminate access cables from the gate to the panel.
- Provide and install one (1) Apparatus Bay Door access control connection and integrate with Dispatch Control to open Bay door remotely. (TBD)
- Program the access control doors and gate into I/NET and configure door schedules, zones, and/or alarms. Create/update new graphics.
- Perform check-out of the access control system for proper operation with the customer.

EXCLUSIONS

- Workstation, network drops, and IP addresses to be provided by others.
- Any existing system repair labor, parts, or materials not specifically mentioned above.
- All 120V power by others.
- Conduit by others.
- Pricing does not include sales tax or bonding cost.

CLARIFICATIONS

- Pricing includes access control permit fee.
- 1-year warranty parts and labor included.
- All work to be performed during normal operating hours: Monday-Friday 8 AM to 5 PM.
- Pricing is valid for a period of 60 days and subject to escalation thereafter.

PRICING

TOTAL PRICE (excluding tax)	\$46,695.00
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We would like to thank you for the opportunity to present our company's proposal and look forward to working with you to address your building's needs. If you have any questions regarding this proposal, please do not hesitate to reach out.

Sincerely,

Mark A. Boyd

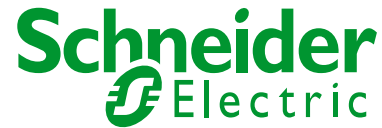
Mark Boyd
Account Manager
(972) 323-5396
mark.a.boyd@schneider-electric.com
SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.

Accepted By: _____

Name: _____

Date: _____

PO#: _____



July 24, 2017

Mr. Jeff Garner
Director of Facilities
Town of Flower Mound
1001 Cross Timbers Rd. #2330
Flower Mound, TX 75028
Phone#214-679-3866

Dear Mr. Garner,

Subject: Schneider Electric\TAC-Inet & SmartStruxure Control System Sole Source Affidavit of Manufacturer and factory training.

Schneider Electric\TAC is the sole manufacture of the Inet DDC controllers and Inet Seven EMS software that provide controls throughout the Town of Flower Mound (TFM). The Schneider DDC controls, Inet Seven software, Inet hardware, SmartStruxure software's and SXWT hardware's provided to TFM are designed and manufactured by Schneider Electric.

Schneider is the only source for the products and training that are required to design, engineer, service and support legacy Inet Seven. The Transition (assimilation) process of Inet software and hardware into EcoStruxure (SmartStruxure), the next generation Schneider BMS software and hardware is already well into the fifth phase. These past and next generation are being implemented into the TFM has wholly been executed through Schneider Electric's specially trained employees.

Schneider has been providing the technical and maintenance support with the legacy Inet BMS. Schneider has been implementing the present and past Transition phases of each building one by one as planned in order of priority importance. These Transition phases have gone very well directly because of the factory trained employees of Schneider Electric. Schneider employees trained to work on Inet are all 10 year plus Inet BMS veterans, who are provided with the necessary tools and years of hands on with the Inet BMS system in each building and the Transition process.

Should you have any questions, please contact our office.

Best Regards,

Mark A. Boyd

Mark Boyd
Account Manager\Systems Design Engineering
SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.
Voice (972) 323-5396
Cell (214) 882-8398
Fax (972) 245-0996



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: May 6, 2019

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

ITEM: Consider approval of a Construction Agreement with Bean Electrical, Inc, for the FM 407 at Browning Signal Reconstruction project, in the amount of \$169,060.25; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On April 9, 2019, bids were received and opened (Bid 2019-53-B) for the construction of the traffic signal at FM 407 at Browning – Reconstruction traffic signal project. Bean Electrical, Inc. submitted the lowest qualified bid of the two responding bidders at \$169,060.25. The work associated with this capital improvement project includes the installation of certain traffic signal equipment supplied by the Town. This location meets warrants for traffic signalization and has been approved by the Texas Department of Transportation.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$169,060.25

Proposed Expenditure/(Revenue):	Account Number(s):
\$169,060.25	531-220-77064

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

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



Town of Flower Mound Bid Tabulation

Bid No: 2019-53-B - FM 407 at Browning Signal Reconstruction

Bid Opening: 4/9/2019 at 11:00 AM

Company	Total Bid
Bean Electrical, Inc	\$ 169,060.25
Roadway Solutions Inc	\$ 177,680.00

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

Certified By: Sabrina Zadow
Purchasing Manager
Town of Flower Mound, Texas

Date: April 9, 2019

TOWN OF FLOWER MOUND
FM 407 at Browning Signal Reconstruction

Bid # 2019-53-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 6th day of May, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Bean Electrical, a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

FM 407 at Browning Signal Reconstruction,
Bid # 2019-53-B

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

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

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;
- D. Special Provisions;

- E. Supplementary Conditions;
- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Hundred Sixty-Nine Thousand Sixty Dollars and Twenty-Five Cents (\$169,060.25)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred Twenty (120) calendar days, and final completion of One Hundred Fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

ARTICLE 3. Before commencing work, the Contractor shall, at its own expense, procure, pay for, and maintain the insurance coverage required by the Contract Documents written by companies approved by the State of Texas and acceptable to the Town of Flower Mound. Contractor shall provide the Town Purchasing Manager with certificates of insurance indicating coverage’s required by the Contract Documents. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificate of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of one hundred percent (100%) of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions. The performance, payment, and maintenance bonds shall be issued on the forms attached to this Construction Agreement. Other performance, payment, and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred

Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

ARTICLE 5. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Town shall pay the Contractor the compensation due him by reason of said faithful performance of the work in accordance with the provisions of this Agreement. As it completes portions of the Work, the Contractor may request progress payments from the Town. Progress payments shall be made by the Town based on the Town's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Town satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Town:

1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;
2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Town releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified

by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Town shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the Contract Work on the effective date of the Contract:

<u>Contract Amount</u>	<u>Retainage Percentage</u>
Up to \$25,000.00	15%
\$25,000.00 to \$400,000.00	10%
Over \$400,000.00	5%

Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
2. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and
3. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Town in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

ARTICLE 6. The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Town may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

ARTICLE 8. When the Work is completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Town's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on "substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Town's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Town may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

ARTICLE 9. After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Town copies of all documents that the Town determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Town has satisfied its obligation to administer the Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the Town shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

ARTICLE 10. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES, OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS, OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this

Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

The Town retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Town elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Town for such costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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

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

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

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

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

This Agreement will be effective on the ____ day of _____, 20__.

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: May 6, 2019

FROM: David Bauer, Construction Manager

ITEM: Consider approval of the Construction Agreement with North Rock Construction LLC, for the Bakersfield Restroom and Concrete Walkway project, in the amount of \$409,968.02; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On April 4, 2019, bids were opened for bid solicitation No. 2019-80-B - Bakersfield Park Restroom & Concrete Walkway project. There were 8 bidders and of those received North Rock Construction LLC, was the lowest responsible bidder.

HISTORY: The addition of a restroom facility has been a request from the Flower Mound Youth Sports Association for the last 10 years and has been on the five year CIP since FY15/16. The project is also listed in the 2017 Parks and Trails Master Plan as a Sustainable Project to be accomplished within 1-10 years.

The location where the restroom will be installed is generally located in between baseball fields 1 – 4 which host the younger age groups. With the closest restroom approximately 800 feet away and near the parking lot, many parents feel uneasy about letting their son(s) or daughter(s) use the facility without them nearby. It can also take a player away from their game for an extended amount of time. The new restroom will help alleviate this problem while meeting a citizen requested park improvement.

As part of the same project, funds were added to install approximately 600 feet of 6-foot wide concrete walkways from the parking lot to the new restroom facility. This dirt path has been worn out by players, coaches, and parents as a short cut to fields 1 – 4. The concrete path will provide a safe and ADA accessible route to the fields.

The funding for the park improvement project was recommended for approval by the Parks Board at their April 5, 2018, regular meeting, and by the Community Development Corporation after a public hearing at their April 24, 2018 meeting. Both of these items were approved by unanimous vote.

FISCAL IMPACT: \$409,968.02

Proposed Expenditure/(Revenue):	Account Number(s):
\$409,968.02	317-110-90601

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

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

ATTACHMENTS:

1. Proposers Bid Tabulation
2. Construction Agreement

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



Town of Flower Mound Bid Tabulation

Bid No: 2019-111-B - Bakersfield Park Restroom & Concrete Walkway

Bid Opening: 4/4/2019 at 11:00 AM

Company	Total Bid
Sawyers Construction Inc Non-Conforming	\$ 401,079.00
North Rock Construction LLC	\$ 409,968.02
DENCO Construction Specialists	\$ 417,425.44
J&B Co., LLC	\$ 441,021.00
Dean Electric, Inc	\$ 458,139.00
AUI Partners, LLC	\$ 486,463.00
2L Construction, LLC	\$ 483,761.00
Concord Commercial Services LLC	\$ 727,751.37

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

Certified By: Sabrina Zadow
 Purchasing Manager
 Town of Flower Mound, Texas

Date: April 4, 2019

TOWN OF FLOWER MOUND**BAKERSFIELD PARK RESTROOM AND CONCRETE WALKWAY****Bid # 2019-80-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 6th day of May, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and North Rock Construction, a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

BAKERSFIELD PARK RESTROOM AND CONCRETE WALKWAY**Bid # 2019-80-B**

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

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

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;
- D. Special Provisions;
- E. Supplementary Conditions;

- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **Four Hundred Nine Thousand Nine Hundred Sixty-Eight Dollars and Two Cents (\$409,968.02)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred Twenty (120) calendar days, and final completion of One Hundred Fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

ARTICLE 3. Before commencing work, the Contractor shall, at its own expense, procure, pay for, and maintain the insurance coverage required by the Contract Documents written by companies approved by the State of Texas and acceptable to the Town of Flower Mound. Contractor shall provide the Town Purchasing Manager with certificates of insurance indicating coverage’s required by the Contract Documents. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificate of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of one hundred percent (100%) of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions. The performance, payment, and maintenance bonds shall be issued on the forms attached to this Construction Agreement. Other performance, payment, and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law

as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

ARTICLE 5. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Town shall pay the Contractor the compensation due him by reason of said faithful performance of the work in accordance with the provisions of this Agreement. As it completes portions of the Work, the Contractor may request progress payments from the Town. Progress payments shall be made by the Town based on the Town's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Town satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Town:

1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;
2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Town releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work.

Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Town shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the Contract Work on the effective date of the Contract:

<u>Contract Amount</u>	<u>Retainage Percentage</u>
Up to \$25,000.00	15%
\$25,000.00 to \$400,000.00	10%
Over \$400,000.00	5%

Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
2. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and
3. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Town in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

ARTICLE 6. The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Town may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

ARTICLE 8. When the Work is completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Town's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on "substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Town's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Town may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

ARTICLE 9. After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to

the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Town copies of all documents that the Town determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Town has satisfied its obligation to administer the Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the Town shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

ARTICLE 10. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES, OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS, OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.

INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

The Town retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Town elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Town for such costs.

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Five Hundred and Zero/One Hundredths Dollars (\$500.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Seven Hundred Fifty and Zero/One Hundredths Dollars (\$750.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the maintenance bond surety, or both.

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

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

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

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

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

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

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

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

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

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

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

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

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

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

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

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

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

This Agreement will be effective on the ____ day of _____, 20____.

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

_____(Signature)
_____(Printed Name)
_____(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____(Signature)
_____(Position)



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: May 6, 2019

FROM: Tiffany Bruce, Executive Director of Public Works/Town Engineer

ITEM: Consider approval of a resolution appointing Clay Riggs as the Town's representative, to serve on the Upper Trinity Regional Water District (UTRWD) Board of Directors for a four-year term ending May 19, 2023; and authorization for the Mayor to sign on behalf of the Town.

BACKGROUND INFORMATION: The Town of Flower Mound has a representative on the Board of Directors for the Upper Trinity Regional Water District (UTRWD). The current term for the representative will be ending on May 31, 2019, and the Council will need to consider the appointment of someone to the new term.

Assistant Director of Public Works, Clay Riggs, was appointed by Town Council in 2018 to complete the current four-year term that was vacated due to Ken Parr's retirement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The Town Council could choose to appoint another person to serve on the UTRWD Board of Directors. Any person appointed to the UTRWD Board must be a qualified voter living within the District.

FISCAL IMPACT: N/A

LEGAL REVIEW: Chris John, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed this resolution as to form and legality.

ATTACHMENTS:

1. Resolution

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

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, REAPPOINTING CLAY RIGGS AS THE TOWN'S REPRESENTATIVE ON THE UPPER TRINITY REGIONAL WATER DISTRICT (UTRWD) BOARD OF DIRECTORS FOR A FOUR-YEAR TERM ENDING MAY 31, 2023; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Upper Trinity Regional Water District (UTRWD) is a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Constitution of the State of Texas and is governed by a board of directors; and,

WHEREAS, a director may not be an official of any governmental entity that has authority to appoint a member of the board, and a director shall serve four years; and,

WHEREAS, directors shall be appointed by the governing bodies of the participants and contract members; and,

WHEREAS, the Town of Flower Mound, as a participating member of the UTRWD, is eligible to have a representative to serve on the UTRWD Board of Directors; and,

WHEREAS, the Town Council recognizes the need to make an appointment for a representative to serve on the UTRWD Board of Directors for a four-year term ending May 31, 20~~23~~¹⁹;

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

SECTION 1

The Town Council of the Town of Flower Mound, Texas, hereby reappoints Clay Riggs to serve as the Town's representative on the UTRWD Board of Directors for a four-year term ending May 31, 2023.

SECTION 2

The Resolution shall take effect immediately upon its passage by the Town Council of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN
OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE
6th DAY OF MAY, 201⁹⁸.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 13

REGULAR ITEM

DATE: May 6, 2019

FROM: Andrea Roy, Economic Development Director

ITEM: **Public Hearing to consider approval of an ordinance designating a contiguous geographic area within the Town of Flower Mound as Reinvestment Zone Number Two, Town of Flower Mound, Texas, for Tax Increment Financing Purposes pursuant to Chapter 311 of the Texas Tax Code; Creating a Board of Directors for such zone; containing findings and other provisions relating to the foregoing subject; and providing a severability clause.**

BACKGROUND INFORMATION: In conjunction with the zoning application requested in fall 2017 for the Lakeside Village development (office, restaurants, retail, hotel, villa homes, and high density residential), 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 (Phase I) on August 6, 2018. Later, 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 approximate \$25,000,000 in public infrastructure costs associated with the project. Most recently, on March 4, 2019, the Town Council approved a second consulting contract with Hawes Hall (Phase II) to draft the TIRZ Project Plan and Financing Plan and provide TIRZ creation assistance to the Town.

Moving forward with the implementation of the TIRZ, Staff requests Council's consideration of the subject ordinance establishing the boundaries of the Tax Increment Reinvestment Zone (TIRZ #2), setting the duration of the TIRZ (20-years) and the Town's level of participation (75%), creating a Board of Directors, establishing the base year, creating a Tax Increment Fund, and making certain findings in accordance with Chapter 311 of the Texas Tax Code.

The purpose of establishing the Reinvestment Zone is to assist in expediting development of the Lakeside Village mixed-use project through financial assistance with the project's extensive level of infrastructure, such as street excavation, wastewater system, storm drainage detention, water distribution system, paving. The TIRZ funds would also assist with the public amenities planned for the project, such as landscaping, irrigation, public art, site furniture, fountain, public parking garages, and other public amenities. The TIRZ will assist with approximately \$25 million in public infrastructure items, while the developer will fund approximately \$28 million in other infrastructure items, such as the offsite sewer improvements, community lawn, amphitheater, restaurant common area, boardwalk and landscaping, and engineering and design.

Based on the Town's proposed participation rate of 75%, combined with the County's participation rate of 50%, the estimated total revenues over the life of the TIRZ are \$151,824,311, producing an estimated \$100,494,015 to the TIRZ. The Town will retain an estimated \$24,581,860 and the County will retain an estimated \$26,748,436.

With the TIRZ in place, full build out value for Lakeside Village is estimated to occur by 2030 and be \$1.47 billion. By the end of the TIRZ term, estimated total value is \$1.8 billion. This \$1.8 billion in value will generate an estimated \$8.5 million to the Town annually.

While the feasibility study indicated that the Town revenues during the 20-year term were similar with or without the TIRZ (approx. \$24-\$29 million), these figures do not take into account the accelerated development that would occur as a result of the TIRZ being in place and generating additional value sooner than later. The table below represents the project's value and annual revenue estimates the first full taxable year after the 20-year period.

	Year 21 Total Value	Year 21 Total Town Revenue
With the TIRZ	\$1,937,923,289	\$8,507,483
Without the TIRZ	\$809,723,859	\$3,554,688
Difference	\$1,128,199,430	\$4,952,796

Additionally, the financial estimates provided within the feasibility study and the project plan and financing plan consider the value of real property, where Lakeside Village would generate additional sales tax revenues, business personal property tax revenue, events that will draw patrons to the Town to shop, stay and dine, hotel stays and related hotel occupancy taxes, employment opportunities, increased community character and recognition, and spillover development.

If the TIRZ were to be created, the developer would fund all project costs and then be reimbursed by the revenues generated in the TIRZ; bonds could be issued, if so desired, once property values reach a level that would cover the debt payments. The Town will provide funds to the developer on a reimbursement basis only once tax increment levels are sufficient to cover the disbursements. The TIRZ creation would pose no risk to the Town.

Details and conditions surrounding the reimbursement schedule will be negotiated through a developer reimbursement agreement, which will be considered by Council as the TIRZ process continues. The developer reimbursement agreement will contain any development milestones or triggers, reimbursement terms, etc.

In accordance with the notice requirements of Section 311.03 of the Tax Code, notice of the subject public hearing inviting the public to comment was provided in the Denton Record Chronicle on Saturday, April 27th.

The following items represent the remaining steps necessary to create and activate TIRZ Number Two. Some of these items may occur concurrently.

1. (Current Item- May 6, 2019) Town Council holds Public Hearing and considers creation of the Tax Increment Reinvestment Zone (via Ordinance), present Draft Project & Financing Plan
2. Town Council considers nomination of a TIRZ Board of Directors
3. TIRZ Board considers approval of a Final Project & Financing Plan
4. Town Council considers approval of a Final Project & Financing Plan (via Ordinance)
5. Town Staff meets with representatives of Tarrant County to finalize Participation Agreement
6. TIRZ Board considers approval of a Participation Agreement w/ Tarrant County
7. Town Council considers approval of a Participation Agreement w/ Tarrant County
8. TIRZ Board considers approval of a Reimbursement/Developer Agreement
9. Town Council considers approval of a Reimbursement/Developer Agreement

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: There is no immediate fiscal impact to the Town as a result of the TIRZ creation. Once the TIRZ is fully established, with a Board of Directors, executed Developer Reimbursement Agreement, executed Participation Agreement, and Final Project Plan and Financing Plan, 75% of any new real property value above the base year value will be allocated to the TIRZ Fund.

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

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

ATTACHMENTS:

1. Ordinance establishing Reinvestment Zone Number Two.
Exhibit A-Boundary Description
Exhibit B-Map of Proposed Reinvestment Zone
2. Exhibit C-Preliminary Project Plan & Financing Plan

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

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DESIGNATING A CONTIGUOUS GEOGRAPHIC AREA WITHIN THE TOWN OF FLOWER MOUND AS REINVESTMENT ZONE NUMBER TWO, TOWN OF FLOWER MOUND, TEXAS, FOR TAX INCREMENT FINANCING PURPOSES PURSUANT TO CHAPTER 311 OF THE TEXAS TAX CODE; CREATING A BOARD OF DIRECTORS FOR SUCH ZONE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, pursuant to Chapter 311 of the Texas Tax Code, as amended (“Code”), the Town may designate a contiguous or noncontiguous area within the Town as a reinvestment zone if the area satisfies the requirements of certain sections of the Code; and

WHEREAS, the Town has prepared a preliminary reinvestment zone project plan and financing plan for the designation of a proposed reinvestment zone within a contiguous area of the Town known as Lakeside Village (“proposed zone”) which provides that the Town of Flower Mound ad valorem taxes are to be deposited into a tax increment fund; and

WHEREAS, a notice of the May 6, 2019 public hearing on the creation of the proposed zone was published on April 27, 2019, in the Denton Record Chronicle, a newspaper of general circulation in the Town; and

WHEREAS, at the public hearing on May 6, 2019, interested persons were allowed to speak for or against the creation of the proposed zone, its boundaries, or the concept of tax increment financing; and

WHEREAS, evidence was received and presented at the public hearing in favor of the creation of the proposed zone and its benefits to the Town and to property in the proposed zone pursuant to the provisions of the Code; and

WHEREAS, the Town provided reasonable opportunity for the owners of the properties in the area proposed for inclusion in the proposed zone to protest the inclusion of such properties in the proposed zone; and

WHEREAS, the Town has done all required by the Code or other laws as a condition to the designation of the proposed zone; and

WHEREAS, the appraised value of taxable real property in the proposed zone is approximately \$4,805,431 and the total appraised value of taxable real property in the

proposed zone and existing zones in the Town as of the date of this Ordinance is approximately \$1,193,739,930; and

WHEREAS, the total area within the proposed zone is approximately +/- 58 acres; and

WHEREAS, the Town intends to participate in the proposed zone by contributing tax increment to the tax increment fund for the proposed zone from taxes levied and collected by the Town at seventy-five percent (75%) of its tax rate for the twenty (20) years of the proposed zone;

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

SECTION 1. Findings

- (a) That the findings and recitals contained in the preamble of this Ordinance are hereby found and declared to be true and correct and are adopted as part of this Ordinance for all purposes.
- (b) That the Town Council further finds and declares that the proposed improvements in the proposed zone will significantly enhance the value of all taxable real property in the proposed zone and will be of general benefit to the Town.
- (c) That the Town Council further finds and declares that the proposed zone meets the criteria and requirements of Code Section 311.005 because the proposed zone is predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impairs or arrests the sound growth of the Town.
- (d) That the Town Council, pursuant to the requirements of the Code, further finds and declares:
 - i. That the proposed zone is a contiguous geographic area located wholly within the corporate limits of the Town of Flower Mound;
 - ii. That less than thirty percent (30%) of the property in the proposed zone is used for residential purposes within the meaning of Code Section 311.006(d);
 - iii. That the total appraised value of taxable real property in the proposed zone and any existing zones adopted by the Town do not exceed fifty (50%) of the total appraised value of taxable real property in the Town and the industrial districts created by the Town; and

- iv. That development or redevelopment of the property within the boundaries of the proposed zone will not occur solely through private investment in the reasonably foreseeable future.
- (e) That the Town Council further finds that the preliminary project and finance plan, attached hereto as Exhibit "C", is feasible.

SECTION 2. Designation of Zone

That the Town, acting pursuant to the provisions of the Code, specifically Section 311.005(a)(2), does hereby designate as a reinvestment zone the area described in **Exhibit "A"** attached hereto and depicted on the map attached hereto as **Exhibit "B"** to promote the redevelopment of the area. The reinvestment zone shall hereafter be named for identification as Reinvestment Zone Number Two, Town of Flower Mound, Texas ("Zone").

SECTION 3. Board of Directors

That there is hereby created a Board of Directors for the Zone ("Board"), consisting of seven (7) members. Positions One through Six on the Board shall be appointed by the Town Council. Position Seven shall be reserved for the County. Failure of the County to appoint a director by January 1, 2020, shall be deemed a waiver of the right to appoint a director, and the Town shall be entitled to appoint persons to the position.

The directors appointed to odd-numbered positions shall be appointed for two-year terms, beginning on the effective date of this Ordinance, while the directors appointed to even-numbered positions shall be appointed to a one-year term, beginning on the effective date of this Ordinance. All subsequent appointments shall be for two-year terms. The member of the Board appointed to Position One is hereby designated to serve as the chair of the Board for a one-year term beginning on the effective date of this Ordinance. Thereafter, the Town Council shall annually appoint a member to serve as chair for a term of one year beginning on the anniversary of the effective date of this Ordinance. The Town Council authorizes the Board to elect from its members a vice-chairman and such other officers as the Board sees fit.

The Board shall make recommendations to the Town Council concerning the administration of the Zone. The Board shall prepare or cause to be prepared and adopt a project plan and a reinvestment zone financing plan for the Zone as described in Section 311.011 of the Code, and shall submit such plans to the Town Council for its approval. The Town hereby delegates to the Board all powers necessary to prepare and implement the project plan and reinvestment zone financing plan, subject to approval by the Town Council, including the power to employ any consultants or enter into any reimbursement agreements payable solely from the Tax Increment Fund established pursuant to Section 7 of this Ordinance that may be reasonably necessary or convenient to assist the Board in the preparation of the project plan and reinvestment zone financing plan and in the issuance of tax increment obligations.

SECTION 4. Duration of the Zone

That the Zone shall take effect immediately upon the passage and approval of this Ordinance, and termination of the Zone shall occur on the earlier of: (i) December 31, 2039, or at an earlier or later time designated by subsequent ordinance adopted under Section 311.007(c) of the Code; or (ii) the date on which all project costs, tax increment bonds and interest on those bonds, and other obligations have been paid in full.

SECTION 5. Tax Increment Base

That the tax increment base of the Town or any other taxing unit participating in the Zone is the total appraised value of all real property in the Zone that is taxable by the Town or other taxing unit participating in the Zone, determined as of January 1, 2019, the year in which the Zone was designated as a reinvestment zone (the "Tax Increment Base").

SECTION 6. Approval of the Town's Level of Participation in the Zone

That the Town will participate in the Zone by contributing tax increment to the tax increment fund for the Zone from taxes levied and collected by the Town at seventy-five percent (75%) of its tax rate for the duration of the Zone.

SECTION 7. Tax Increment Fund

That there is hereby created and established a Tax Increment Fund for the Zone which may be divided into subaccounts as authorized by subsequent ordinances. All Tax Increment, as defined below, shall be deposited into the Tax Increment Fund. The Tax Increment Fund and any subaccount shall be maintained at the depository bank of the Town and shall be secured in the manner prescribed by law for funds of Texas municipalities. The annual Tax Increment shall equal the property taxes levied and collected by the Town and any other taxing unit participating in the Zone for that year on the captured appraised value, as defined in Code Section 311.012, of real property located in the Zone that is taxable by the Town or any other taxing unit participating in the Zone, less any amounts that are to be allocated from the Tax Increment pursuant to the Code. All revenues from the sale of any tax increment bonds, notes, or other obligations hereafter issued by the Town for the benefit of the Zone, if any; revenues from the sale of property acquired as part of the project plan and reinvestment zone financing plan, if any; and other revenues to be used in the Zone shall be deposited into the Tax Increment Fund. Prior to the termination of the Zone, money shall be disbursed from the Tax Increment Fund only to pay project costs for the Zone, as defined by the Code, to satisfy the claims of holders of tax increment bonds or notes issued for the Zone, or to pay obligations incurred pursuant to agreements entered into to implement the project plan and reinvestment zone financing plan and achieve their purpose pursuant to Code Section 311.010(b).

SECTION 8. Severability

If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining provisions of this Ordinance or their application to other persons or set of circumstances shall not be affected thereby, it being the intent of the Town Council in adopting this Ordinance that no portion hereof or regulations connected herein shall become inoperative or fail by reason of any unconstitutionality, voidness, or invalidity of any portion hereof, and all provisions of this Ordinance are declared severable for that purpose.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS BY A VOTE OF __TO __, ON THIS THE ____ DAY OF _____, 2019.

APPROVED:

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

Exhibit "A"

Boundary Description

JURISDICTIONAL BOUNDARY DESCRIPTION TAX INCREMENT REINVESTMENT ZONE - LAKESIDE VILLAGE TOWN OF FLOWER MOUND, TARRANT COUNTY

The Tax Increment Reinvestment Zone at Lakeside Village is centered on the intersection of Lakeside Pkwy and Lakeside Village Blvd within the municipal limits of Flower Mound, Tarrant County. The Zone is +/- 58.4 acres of land and described as follows:

BEGINNING at northeast corner of 6.309 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 33) and southeast corner of Village Oaks Mobile Home Park, a 11.64 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 36);

Then south along east boundary of said 6.309 acre tract to north right-of-way (ROW) of Lakeside Village Blvd;

Then east and northeast along north ROW of Lakeside Village Blvd to south ROW of FM 2499 (Long Prairie Rd);

Then generally east southeast along south ROW of FM 2499 (Long Prairie Rd) to south ROW of Lakeside Village Blvd;

Then generally southwest and west along south ROW of Lakeside Village Blvd to east ROW of Lakeside Pkwy and west boundary of 5.02 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 32);

Then south by east along west boundary of said 5.02 acre tract to southwest corner of said tract and coincident boundary line of Town of Flower Mound and City of Grapevine;

Then west and south by west along coincident boundary line of Town of Flower Mound and City of Grapevine, across ROW of Lakeside Pkwy to southeast corner of 3.536 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5);

Then west along south boundary of said 3.536 acre tract to interior corner of said tract;

Then generally south along east boundary of said 3.536 acre tract, 4.259 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C), and 2.03 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C1 & 5D) to southeast corner of said 2.03 acre tract;

Then generally west along south boundary of said 2.03 acre tract to southwest corner of said tract and east boundary of 3.04 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5E 5E1 5E2 & 5F);

Then generally south east boundary of said 3.04 acre tract to southeast corner of said tract;

Then west along south boundary of said 3.04 acre tract to southwest corner of said tract;

Then generally north along west boundary of said 3.0 acre tract, 1.32 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5D01), 2.03 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C1 & 5D), 4.259 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C) to west corner of 3.536 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5);

Then east by north along north boundary of said 3.536 acre tract to southwest corner of 11.149 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 30A);

Then generally north northwest along west boundary of said 11.149 acre tract and 9 acre lot (LAKESIDE HOTEL Block 1 Lot 1) to northwest corner of said 9 acre lot;

Then east along north boundary of said 9 acre lot to southwest corner of 1.733 acre lot (LAKESIDE TOWER Block A Lot 2);

Then north by west along west boundary of said 1.733 lot to north corner of said lot and south ROW of Lakeside Pkwy;

Then east by north across ROW of Lakeside Pkwy to boundary of 4.010 acre lot (LAKESIDE DFW Block A Lot 5X) at Lakeside Park;

Then generally north along west boundary of said 4.010 acre lot to north corner of said lot and south boundary of +/- 4.9 acre tract (LAKESIDE DFW Block A Lot 7 BALANCE IN DENTON COUNTY);

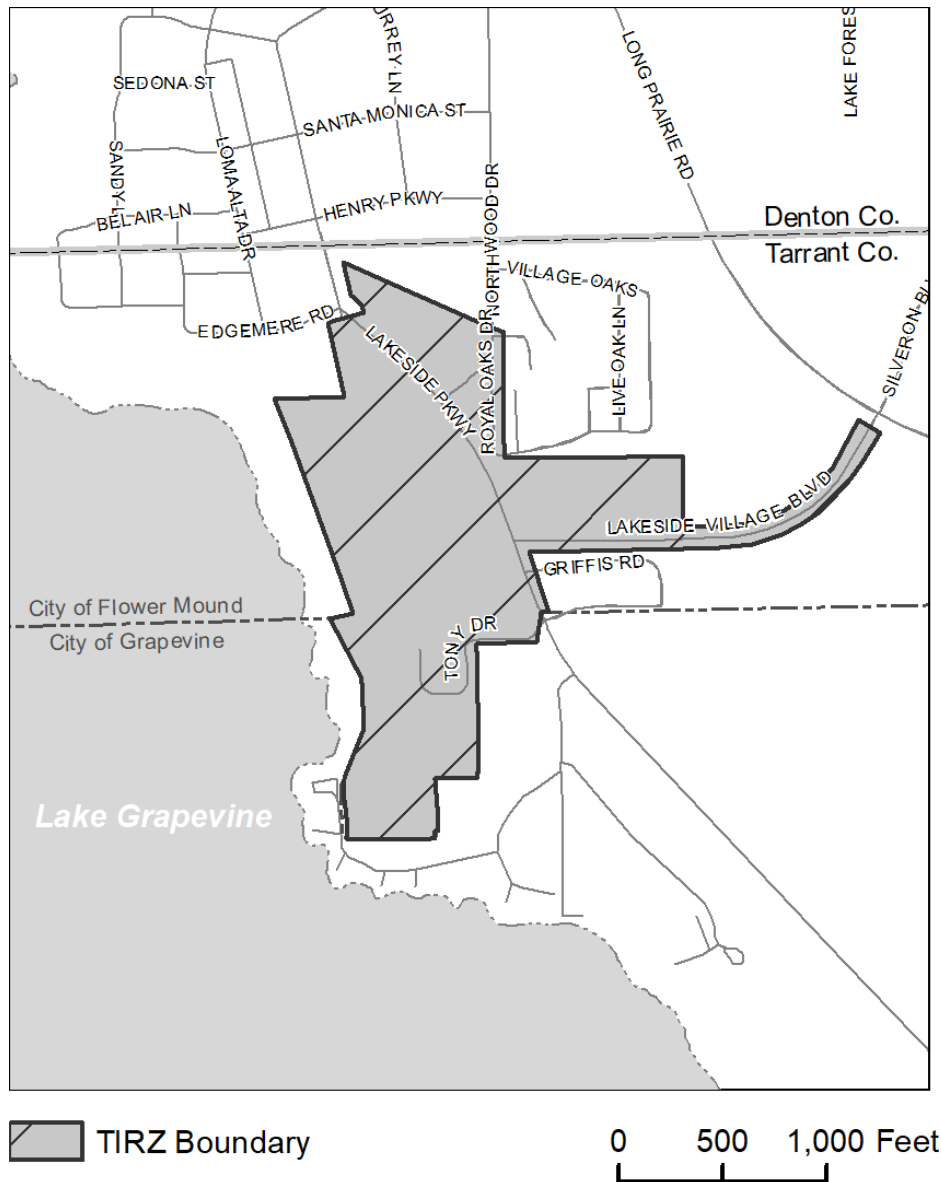
Then generally east southeast along north boundary of said 4.010 acre lot, across ROW of Northwood Dr to west boundary of Village Oaks Mobile Home Park at 3.9 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 35);

Then south along east ROW of Northwood Drive and west boundary of Village Oaks Mobile Home Park, a 3.9 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 35), and 3.08 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 34), and east ROW of Royal Oaks Dr to southwest corner of said 3.08 acre tract 34 and north boundary of 6.309 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 33);

Then east along north boundary of said 6.309 acre tract, and south boundary of Village Oaks Mobile Home Park, to northeast corner of said 6.309 acre tract and the PLACE OF BEGINNING of Tax Increment Reinvestment Zone Boundary at Lakeside Village, containing +/- 58.4 acres of land.

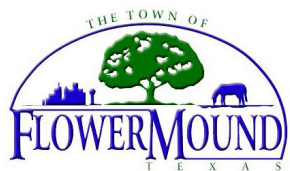
Exhibit "B"

Map of Proposed Reinvestment Zone



Date: 4/11/2019

DRAFT
May 2019



Reinvestment Zone Number 2 - Lakeside Village Town of Flower Mound, Texas

Preliminary Project Plan and Financing Plan



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TIRZ CONCEPT

A tax increment reinvestment zone (TIRZ) is a financing tool enabled by the Texas Legislature with the adoption of Chapter 311 of the Texas Tax Code. A TIRZ is a tool that can be used to pay for public improvements that will attract private investment to an area.

Cities may create a TIRZ where conditions exist that substantially impair an area’s sound growth and where development or redevelopment is not likely to occur but for public infrastructure enhancements financed by a TIRZ.

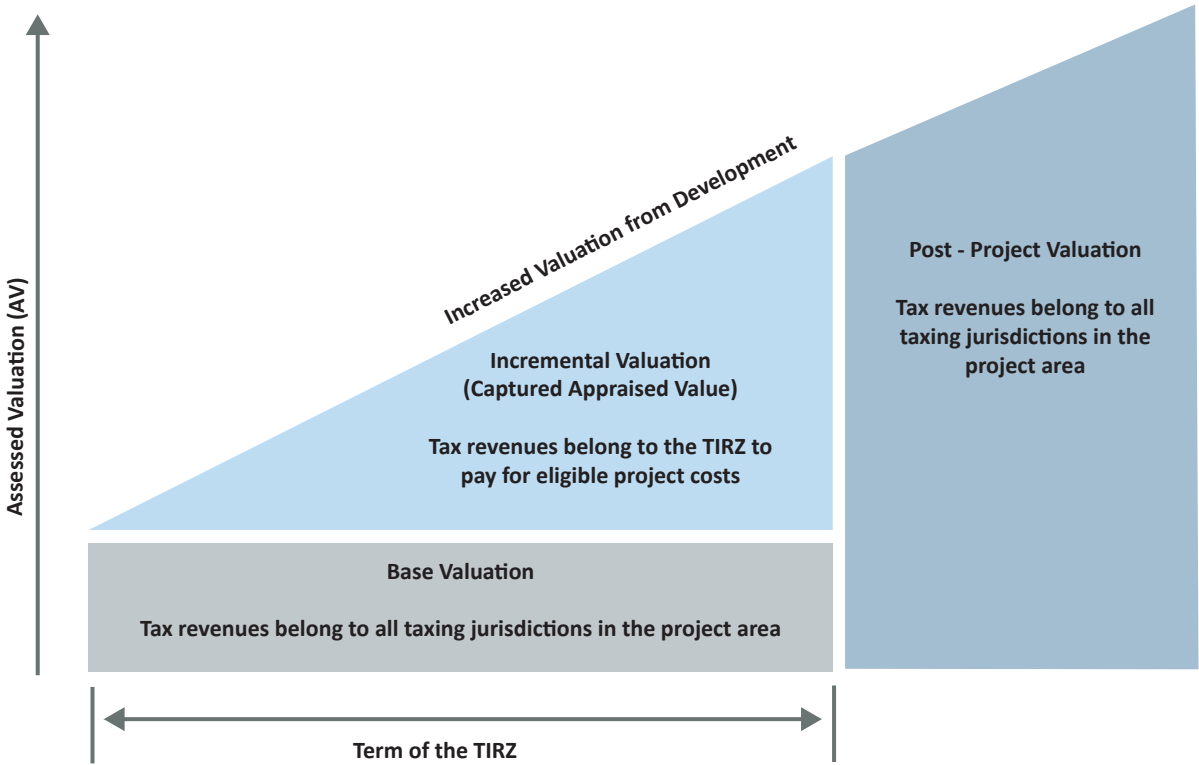
Upon creation of the Zone, the total appraised value of real property located within its boundaries is established for the year in which it was created. This is known as the base value. As development occurs in the Zone due to the provision of new infrastructure, the value of real property increases.

This additional value above the base is known as the increment. It is set aside to finance infrastructure improvements within the Zone. Once all projects are completed, or after a defined period of time, the TIRZ is dissolved.

During the life of the Zone, the city and other participating taxing jurisdictions collect tax revenue on the base value of the Zone. When the Zone is dissolved, the city and other participating taxing jurisdictions receive the benefit of the full increment value created by new development.

ABOUT THIS DOCUMENT

This document constitutes the Preliminary Project Plan and Financing Plan as required by Section 311 of the Tax Code for TIRZ Creation. The document details the projects proposed for the TIRZ, as well as the methods and means to finance them.



INTRODUCTION

PURPOSE

The purpose of the Lakeside Village Tax Increment Reinvestment Zone (the “Zone”) is to finance the construction of necessary public facilities and infrastructure to expedite the development of residential and commercial uses within Lakeside Village. Expenditures associated with the design and construction of public infrastructure within the Zone, as well as other specific project related costs, will be funded by tax increment revenues derived from increases in property values following new development in Lakeside Village.

PROJECT

The Lakeside Village development is proposed to be a mixed use development located south of Lakeside DFW, adjacent to Lake Grapevine. Building upon its location along Lake Grapevine, views of the Lake and the natural beauty of the land, the development will include villa homes, high density residential including lofts, office space, restaurants, retail and hotel uses. Amenities will include a naturally formed amphitheater, boardwalk and trails. The development will be an added amenity for Town residents as well as a regional attraction. Upon build out, the development is projected to be valued at approximately \$1.47 billion.

The site is currently vacant and lacks the necessary infrastructure to support the proposed development. For development of Lakeside Village to occur, approximately \$53.8 million in infrastructure improvements, including public parking garages, are needed.

The TIRZ would fund approximately \$25.7 million of public infrastructure improvements, while Lakeside would pay for the other \$28.1 million. Project costs proposed to be funded by the TIRZ are shown in Tables 1 and 2. Projects to be funded by the developer are shown in Table 3.

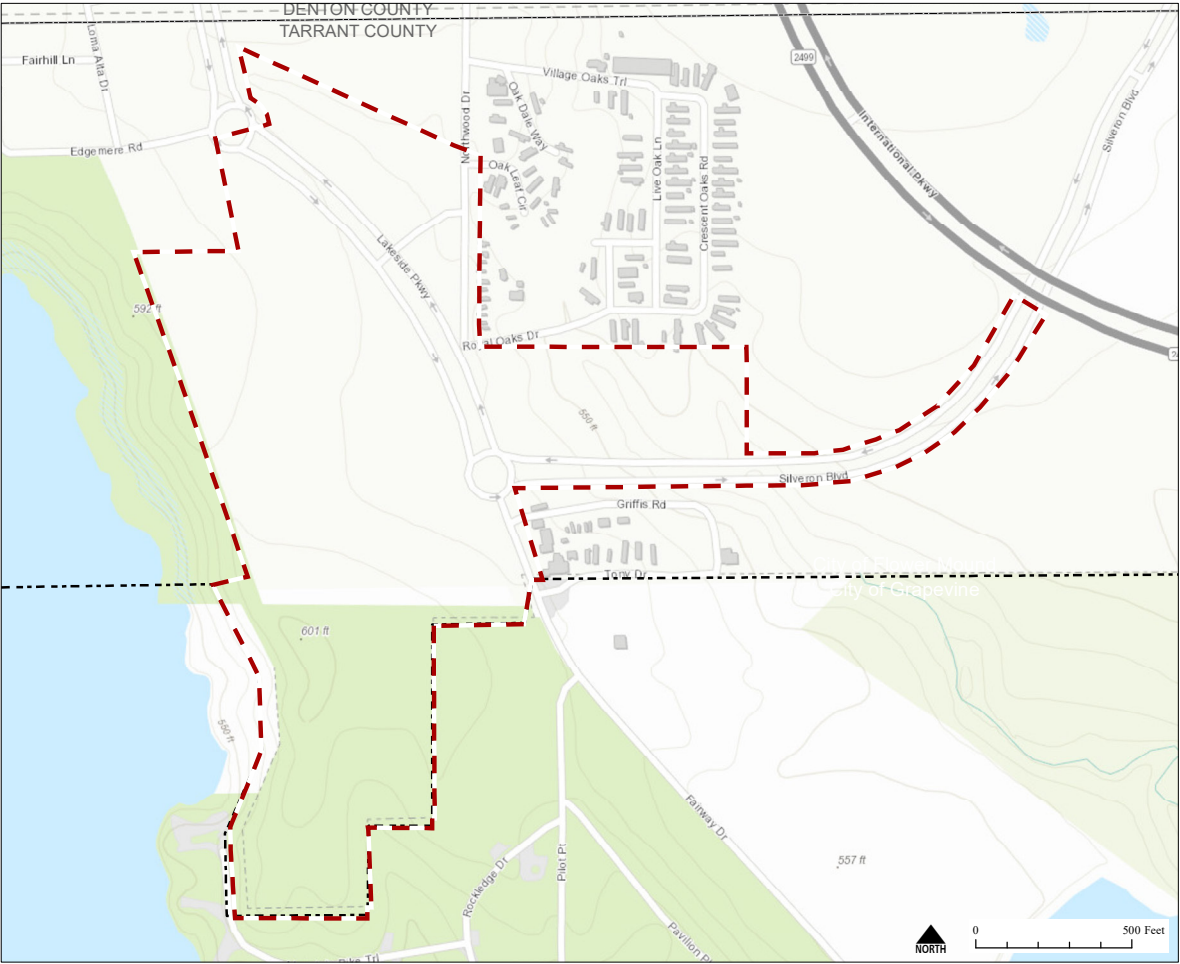
Lakeside Village:

- ❖ **Total value upon build out is estimated to be \$1.47 billion**
- ❖ **Includes the following uses:**
 - ★ **875 Residential Units**
 - ★ **Three hotels, 395 hotel rooms**
 - ★ **Seven Restaurants**
 - ★ **395,000 square feet of commercial development (retail/office)**

LOCATION

Tax Increment Reinvestment Zone Number 2 - Lakeside Village consists of approximately 58 acres located south of Lakeside DFW in the Town of Flower Mound. The site is located in the southern portion of the Town and is entirely in Tarrant County. Map 1 depicts the location of the Tax Increment Reinvestment Zone Number 2, in context of the surrounding area.

Map 1



The project costs for the TIRZ are detailed in Table 1. Projects include; roadways, water, sewer, and storm drainage improvements; landscaping and public art; and a public parking garage. Non-Project costs are those infrastructure costs that will not be funded or reimbursed by the TIRZ but will be funded by other parties, such as the Town, County, the Texas Department of Transportation or private sources including the developer.

Table 1 - Project Costs (Improvements Funded by the TIRZ)

Project	Costs
Infrastructure/Amenities Lakeside Village	\$25,738,000
Administration	\$200,000
Total Costs	\$25,938,000

Table 2 - Infrastructure/Amenities Lakeside Village

Infrastructure	
Street Excavation	\$918,000
Wastewater System	\$559,000
Storm Drainage Detention	\$920,000
Water Distribution System	\$857,000
Paving	\$3,281,000
Miscellaneous Items	\$178,000
Landscaping	\$800,000
Irrigation	\$300,000
Public Art	\$200,000
Site Furniture	\$100,000
Fountain	\$200,000
Waterfall/other Amenities	\$650,000
Professional Fees & Permits	\$775,000
Contingency	\$700,000
Public Parking Garage #1	\$9,500,000
Public Parking Garage #2	\$5,800,000
Total	\$25,738,000

AUTHORIZED PROJECT COSTS

Table 3 - Non- Project Costs (Funded by the Developer)

Project	Cost
Offsite Sewer Improvements	\$689,551
Public Parking Garage (Overage)	\$1,400,000
Clubhouse	\$1,000,000
Community Lawn	\$500,000
Amphitheater	\$500,000
Restaurant Common Area	\$1,000,000
Landscape/Park on Rest. Garage	\$500,000
Boardwalk & Landscaping	\$650,000
Sunset Point Improvements	\$250,000
Engineering and Design Costs	\$1,050,000
Construction Management	\$1,143,768
Other Project Costs*	\$17,600,363
Contingency	\$1,839,858
Total	\$28,123,540

* Includes land costs, soft costs, and financing costs

BENEFITS TO TAXING JURISDICTIONS

The Lakeside Village development will attract new residents and visitors to the area, resulting in increased ad valorem revenues and sales tax for the Town and County. Table 4 summarizes jurisdictional participation and ad valorem revenues generated for the TIRZ.

Over the life of the TIRZ the Lakeside Village Development is estimated to generate over \$150 million in ad valorem tax revenue for the Town and County. Total revenues dedicated to the TIRZ would equal over \$100 million over the 20 year period. The Town is participating at a rate of 75% in the Zone, and would retain approximately \$24.6 million, while the County, who is participating at 50% of it’s tax rate, would retain approximately \$26.7 million.

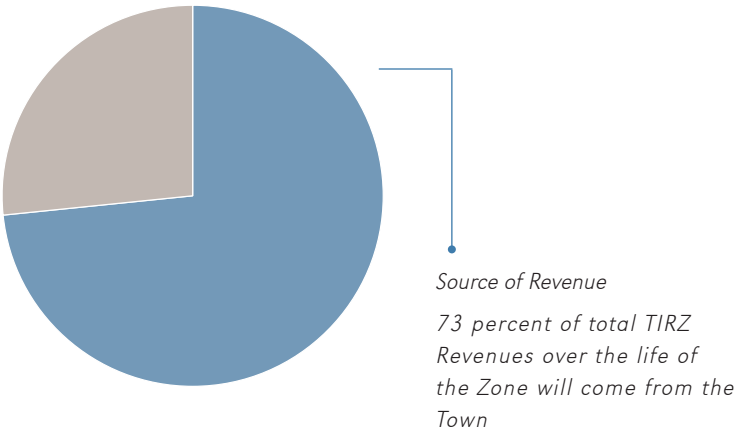
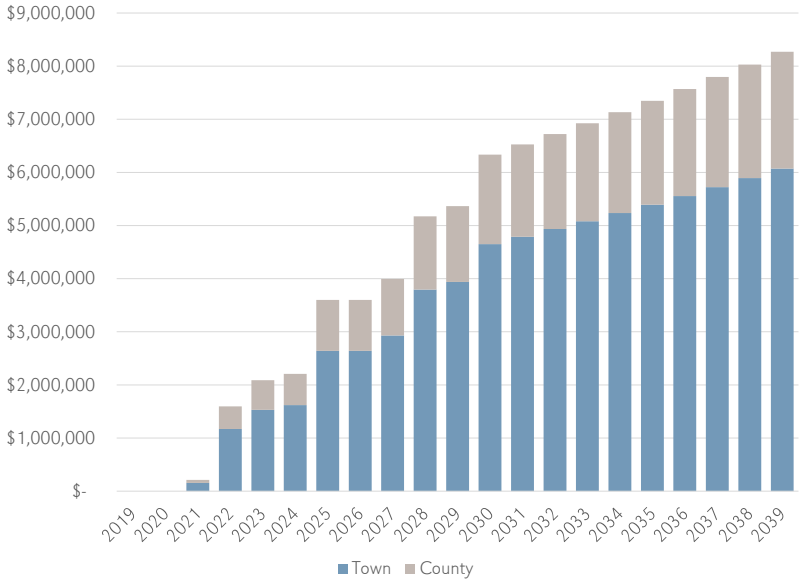


Table 4 - Benefits to Taxing Jurisdictions

	Town	County	Total
Total Revenues Generated	\$98,327,439	\$53,496,872	\$151,824,311
Revenue Dedicated to TIRZ	\$73,745,579	\$26,748,436	\$100,494,015
Revenue Retained by Jurisdiction	\$24,581,860	\$26,748,436	\$51,330,296
Participation Rate	75%	50%	

Revenues Generated

Over 20 years, Lakeside Village is projected to generate \$100.5 million in TIRZ revenues



PROJECT PLAN

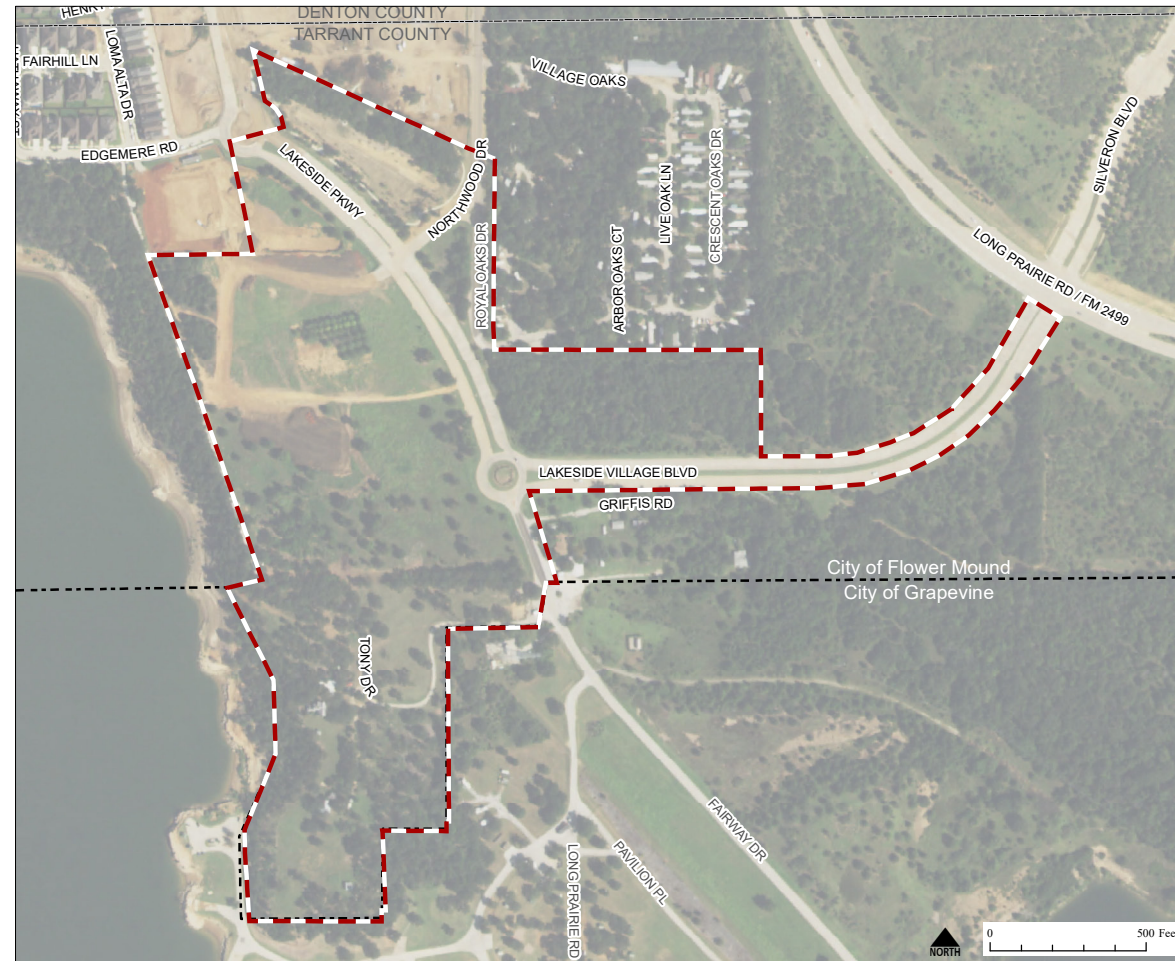
EXISTING AND PROPOSED USES OF LAND (TEXAS TAX CODE § 311.011(B)(1))

Existing Land Use - The existing site is predominately vacant and lacks adequate infrastructure to support development of the site to its fullest potential. Map 2 displays existing conditions.

Surrounding Land Use - Land surrounding the Zone ranges from vacant, to single family residential to commercial uses. The aerial view shown in Map 3 shows surrounding land uses.

Proposed Uses - Proposed uses will include villa homes, high density residential including lofts, office space, restaurants, retail, and hotels. The master plan for the site is shown in Map 4.

Map 2



PROPOSED CHANGES OF ZONING ORDINANCES, MASTER PLAN OF MUNICIPALITY, BUILDING CODES, AND OTHER MUNICIPAL ORDINANCES
(TEXAS TAX CODE § 311.011(B)(2))

All construction will be performed in conformance with the Town’s existing rules and regulations. There are no proposed changes to any Town ordinance, master plan, or building code. The Lakeside Village Development is an extension of the Lakeside DFW Mixed Use Development.

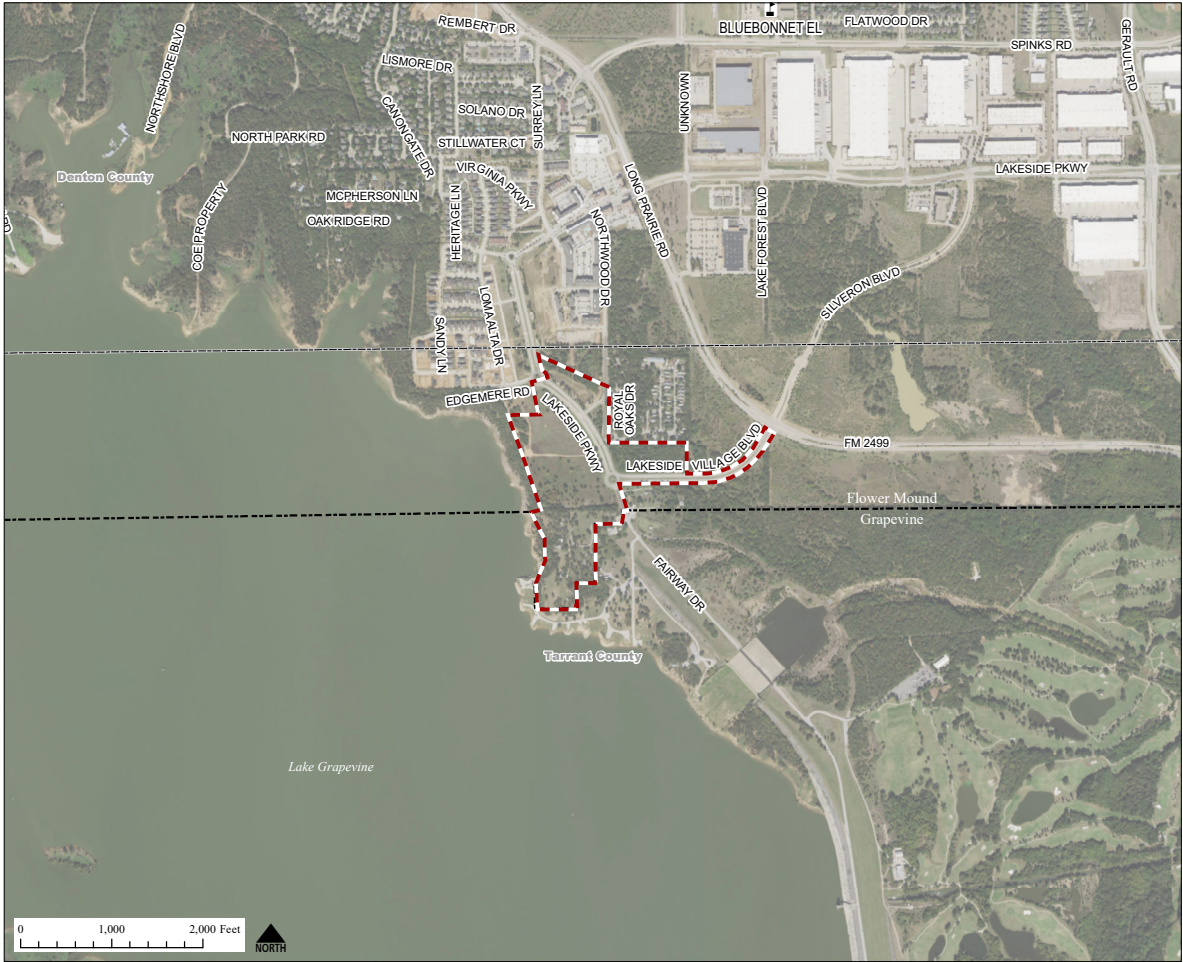
ESTIMATED NON-PROJECT COSTS
(TEXAS TAX CODE § 311.011(B)(3))

Non-Project costs are those infrastructure costs that will not be funded or reimbursed by the TIRZ but will be funded by other parties. For the Lakeside Village development, non-project costs will equal approximately \$28.1 million as shown in Table 3. These costs will be funded by the developer.

METHOD OF RELOCATING PERSONS TO BE DISPLACED, IF ANY, AS A RESULT OF IMPLEMENTING THE PLAN
(TEXAS TAX CODE § 311.011(B)(4))

It is not anticipated that any residents will be displaced or relocated as a result of this Plan.

Map 3



REINVESTMENT ZONE FINANCING PLAN

ESTIMATED PROJECT COSTS (TEXAS TAX CODE § 311.011(c)(1))

Table 1 details proposed public improvements to be funded utilizing resources from the Zone. As set forth in the Plan, the dollar amounts are approximate and may be amended from time to time by the Board of Directors of the Zone, with the approval of Town Council. Financing costs are a function of project financing needs and will vary with market conditions.

Contributions to the TIRZ Fund by Tarrant County, shall not be used to fund any municipal facilities.

PROPOSED KIND, NUMBER, AND LOCATION OF ALL PROPOSED PUBLIC WORKS OR PUBLIC IMPROVEMENTS TO BE FINANCED BY THE ZONE (TEXAS TAX CODE § 311.011(c)(2))

These details are described throughout the Plan, and include roadways, drainage, water, and wastewater improvements, as well as amenities including landscaping, public art, and public parking garages. The number and location of proposed improvements are contained in Tables 1 and 2.

Map 4



ECONOMIC FEASIBILITY
(TEXAS TAX CODE § 311.011(C)(3))

2018 TIRZ Financial Feasibility Analysis

In 2018, Hawes Hill and Associates was tasked by the Town of Flower Mound to look at the financial feasibility of establishing a Tax Increment Reinvestment Zone (TIRZ) for the proposed Lakeside Village development. The analysis evaluated the financial feasibility of the development and established whether a reinvestment zone was appropriate/feasible in meeting the community’s objectives. After evaluating several scenarios, including partial build out of the site, the report concluded that revenues generated were sufficient to cover the cost of the proposed infrastructure improvements and that utilizing a tool like the TIRZ would be a viable option for funding public infrastructure improvements associated with the Lakeside Village development.

The following table summarizes revenues generated over a 20 year time frame for the various scenarios that were evaluated:

Scenarios	Total Town & County Revenues	Revenues Dedicated to the TIRZ
Complete Build Out		
Town/County Participate at 50%	\$ 139,328,205	\$69,664,102
Town/County Participate at 75% & 50%	\$ 139,328,205	\$92,222,338
Town/County Participate at 75%	\$ 139,328,205	\$ 104,496,154
Partial Build Out (Town/County Participate at 75%/75%)		
Partial Build Out (63% of Total Build Out)	\$ 107,738,170	\$80,803,628
Partial Build Out (47% of Total Build Out)	\$ 71,424,758	\$53,568,569
No TIRZ	\$45,453,422	

Project Overview

The proposed tax increment reinvestment zone consists of approximately 58 acres located south of Lakeside DFW in the Town of Flower Mound. The site is located in the southern portion of the Town and is entirely in Tarrant County. Lakeside DFW, located just north of the proposed site, is a mixed-use development, connected by trails, parks and open spaces, overlooking Lake Grapevine.

Building off the character of the land and its location along Lake Grapevine, the Lakeside Village development will be a mixed use community that will include villa homes, high density residential including lofts, office space, restaurants, retail and hotel uses. The site and uses will be designed to take advantage of the views of Lake Grapevine and will be connected through trails and open spaces.

Currently the area within the Zone consists generally of vacant land with limited to no infrastructure. Infrastructure improvements including adequate roadways, water, drainage and sewer facilities are needed to support the demand for housing, office and retail development in the

area. A Tax Increment Reinvestment Zone would facilitate construction of these improvements, supporting the development of residential and commercial uses. Improvements would be funded from tax increment revenues derived from increases in property values (captured value) following new residential and commercial development. The development of this property would not be feasible in the manner and in the proposed timeframe without the assistance of a tool like a TIRZ.

Development of the site is anticipated to occur over nine years. The public improvements proposed in this plan would convey a direct benefit to the Town of Flower Mound and Tarrant County both in terms of quality regional growth and significant increases in ad valorem values and sales tax revenue.

Area Profile & Growth

The Town of Flower Mound is a master planned community that encompasses approximately 46 square miles and is centrally located within the Dallas/Fort Worth Metroplex. The Town has a current population of 74,000 residents. Town residents are highly educated and enjoy high income levels. The median household income is \$124,000, which is well above the county averages. The median home value in the Town is over \$312,000.

Located within the Dallas/Fort Worth Region, the area is experiencing strong growth and resulting demand for housing, office and retail uses. National forecasts of population and economic growth indicate that this region will continue to add residents and jobs well into the future.

Population in Denton and Tarrant Counties is expected to grow to over 1.2 million and 3.2 million respectively, by the Year 2040, while the Town of Flower Mound is expected to grow to 109,739 by the Year 2040.

2018 Demographics

	Flower Mound	Denton County	Tarrant County
 Population			
Population	74,876	848,929	2,071,433
Households	24,441	304,190	739,506
Housing Units	24,929	317,876	782,766
 Race			
Hispanic Origin	9.4%	19.6%	29.1%
White	79.6%	70.1%	62.7%
Black	4.0%	10.1%	16.6%
Asian	11.3%	8.9%	5.5%
 Income			
Median HH Income	\$124,221	\$81,357	\$62,234
Average HH Income	\$157,554	\$106,641	\$86,805
 Education Attainment			
High School Diploma	11.6%	18.8%	23.6%
Bachelor's/Grad Degree	60.3%	43.6%	32.0%
 Homes			
Median Value	\$312,778	\$241,679	\$176,750
Owner Occupied	83.4%	61.3%	57.2
Renter Occupied	14.6%	34.4%	37.3
Vacant	2%	4.3%	5.5

Source: ESRI 2018

Proposed Development & Taxable Value

Upon build out, Lakeside Village will include restaurants, public parks, shops, offices, hotels, upper story living with lake views and villas.

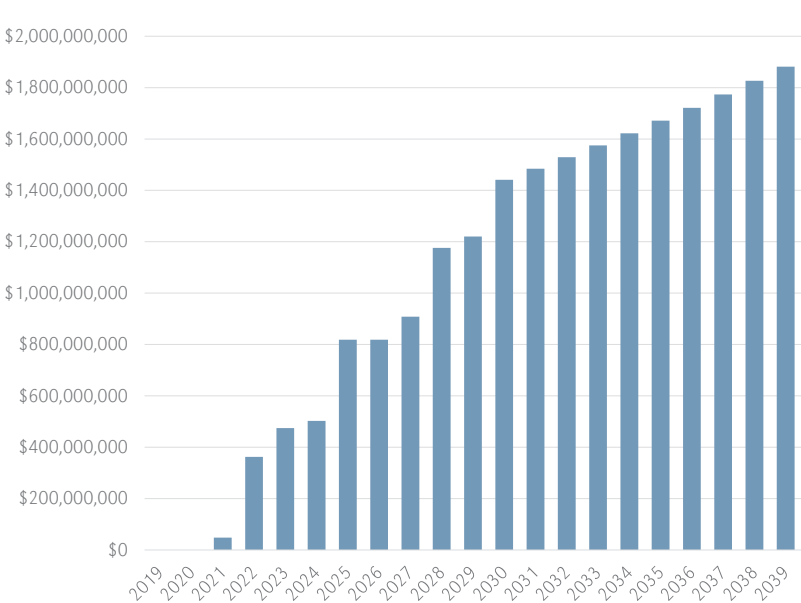
Build out of the site is expected to occur by the year 2030 and be valued at \$1.47 billion. Exhibits 1 and 2 show build out and the projected future value over the life of the proposed TIRZ. Taxable value within the Zone is expected to grow to over \$1.8 billion by the Year 2039.

Revenue Impacts

The proposed improvements would expedite residential and commercial development in the area. This would enhance taxable value of property within the TIRZ, which would be of a benefit to the Town and County in terms of property value and sales tax.

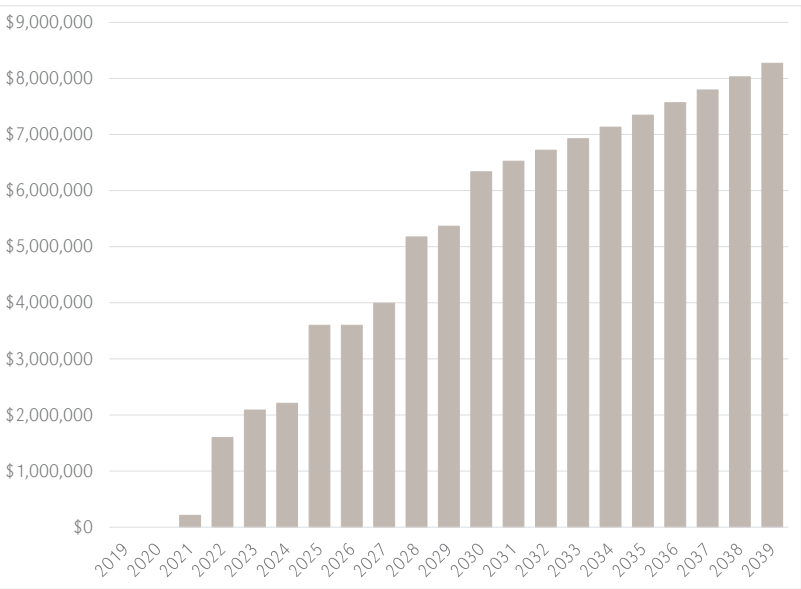
With a TIRZ participation rate of 75% by the Town and 50% by the County, increment revenues over the life of the TIRZ are projected to equal over \$100 million.

Exhibit 2 shows projected revenues over the life of the Zone. The future anticipated revenue of the Zone exceeds the cost of proposed improvements. **The Zone and the Town find and determine that the Plan is economically feasible.**



Taxable Value

Taxable value within the Zone is expected to grow to over \$1.8 billion by the Year 2039



Revenue

Over 20 years, Lakeside Village is projected to generate \$100.5 million in revenues for the TIRZ

ESTIMATED AMOUNT OF BOND INDEBTEDNESS;
ESTIMATED TIME WHEN RELATED COSTS OR MONETARY
OBLIGATIONS INCURRED
(TEXAS TAX CODE § 311.011(c)(4), § 311.011(c)(5)):

Issuance of notes and bonds by the Zone may occur as tax increment revenues allow. The value and timing of the issuance of notes or bonds will correlate to debt capacity as derived from the projects and revenue schedules included in Table 1 and Exhibit 3, as well as actual market conditions for the issue and sale of such notes and bonds.

The time when related costs or monetary obligations are to be incurred is a function of the availability of TIRZ revenues as shown in Exhibit 3.

METHODS AND SOURCES OF FINANCING PROJECT COSTS
AND PERCENTAGE OF INCREMENT FROM TAXING UNITS
ANTICIPATED TO CONTRIBUTE TAX INCREMENT TO THE
ZONE
(TEXAS TAX CODE § 311.011(c)(6)):

Methods and sources of financing include the issuance of notes and bonds, as well as collaboration with the developer. The developer will advance funds for their related project costs, as set forth in Table 1 and will be reimbursed these costs from tax increment revenues generated from the Zone as provided in an agreement between the Developer, Town and the TIRZ.. It is anticipated that bonds or notes will be issued at the time when the increment from the development is adequate to do so, in order to reimburse the developer at a quicker

rate and/or fund additional public infrastructure projects.

Tax increment associated with this Plan will consist of contributions from the Town and County. The Town will participate at 75% of it’s tax rate and the County will participate at 50% annually on the captured appraised value in the Zone as shown below.

Entity	Tax Rate	Participation %
Town	0.439/\$ 100	75%
County	0.234/\$ 100	50%



CURRENT TOTAL APPRAISED VALUE OF TAXABLE REAL PROPERTY

(TEXAS TAX CODE § 311.011(c)(7))

The 2018 appraised value of taxable real property in the Zone is \$4,805,431 .

ESTIMATED CAPTURED APPRAISED VALUE OF ZONE DURING EACH YEAR OF EXISTENCE

(TEXAS TAX CODE § 311.011(c)(8))

The estimated captured appraised value of the Zone during each remaining year of its existence is contained in Exhibit 2. It is estimated by 2039 that the taxable value within the Zone will increase to over \$1.8 billion.

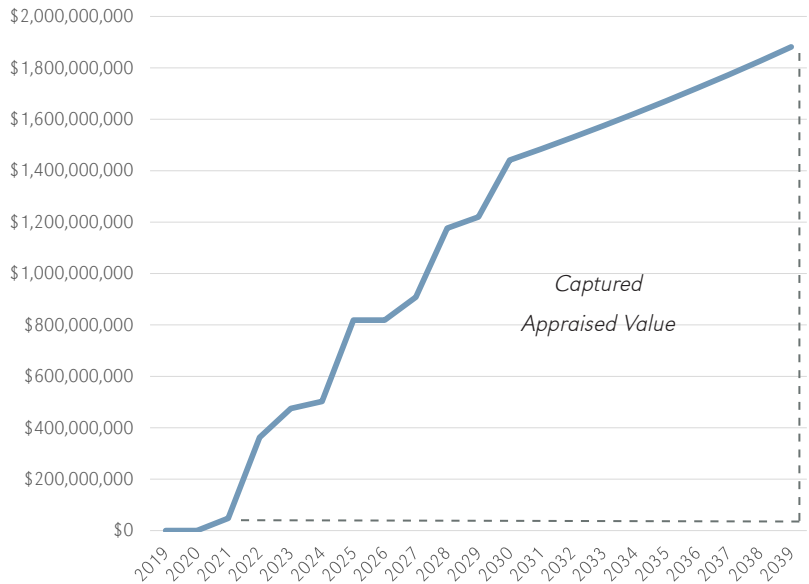


ZONE DURATION

(TEXAS TAX CODE § 311.011(c)(9))

The Zone will take effect on January 1, 2019 and will terminate on December 31, 2039. Final TIRZ payments will be received in 2040. The Zone may terminate at an earlier time designated by subsequent ordinance, or at such time, subsequent to the issuance of proposed revenue bonds, notes or other obligations, if any, that all project costs, bonds, and interest on bonds have been paid in full.

Projected Taxable Value



EXHIBITS

EXHIBIT 1- BUILD OUT SCHEDULE

EXHIBIT 2 - EXEMPTIONS & VALUES

EXHIBIT 3 - REVENUES

EXHIBIT 4 - BOUNDARY DESCRIPTION

EXHIBIT 1 - BUILD OUT

Project Number	Project	Residential (No. of Units)	Hotel (Rooms)	Commercial (SF)	Valuation	Year of Completion (Jan 1)
3	Villa Homes adj. to Lakeside Tower	8			\$8,800,000	2021
5	Villa Homes	29			\$40,600,000	2021
4	11 Villa Homes	11			\$15,400,000	2022
7	Residential and Retail	16		12,000	\$15,000,000	2022
13	3 Restaurants				\$18,000,000	2022
18	Luxury Residential Tower	240			\$275,000,000	2022
6	23 Villa Homes	23			\$32,200,000	2023
8	Residential and Retail	2		8,000	\$6,000,000	2023
11	Hotel - Community Lawn		150		\$75,000,000	2023
12	Retail in Fine Arts			8,000	\$3,600,000	2024
14	4 Restaurants				\$24,000,000	2024
2	East Hotel		120		\$38,400,000	2025
17	Luxury Residential Tower	241			\$286,000,000	2025
10	Retail in Office Tower			10,000	\$4,500,000	2027
9	Office Tower			190,000	\$85,000,000	2027
16	Luxury Residential Tower	230			\$276,000,000	2028
1	East Office Building			125,000	\$43,750,000	2029
15	Boutique Condo/Hotel	75	125		\$225,000,000	2030

EXHIBIT 2 - VALUE

Tax Year	Incremental Residential Valuation	Cumulative Residential Assessed Valuation	No of Homes Added	Cum. No. of Homes Added	Town Homestead Exemption (2.5%)	Senior Exemptions			Residential Valuation		Commercial Valuation		Town	County
						No of Homes Eligible (5%)	Town Exemption (100,000)	County Exemption (\$50,000)	Town Projected Residential Valuation	County Projected Residential Valuation	Commercial Incremental Valuation	Cumulative Commercial Incremental Valuation	Total Projected Valuation	Total Projected Valuation
2019														
2020														
2021	\$ 49,400,000	\$ 49,400,000	37	37	(1,235,000)	1.85	\$ (185,000)	\$ (92,500)	\$ 47,980,000	\$ 49,307,500	\$ -	\$ -	\$ 47,980,000	\$ 49,307,500
2022	\$ 300,000,000	\$ 349,400,000	257	294	(8,735,000)	14.7	\$ (1,470,000)	\$ (735,000)	\$ 339,195,000	\$ 348,665,000	\$ 23,400,000	\$ 23,400,000	\$ 362,595,000	\$ 372,065,000
2023	\$ 34,600,000	\$ 384,000,000	25	319	(9,600,000)	15.95	\$ (1,595,000)	\$ (797,500)	\$ 372,805,000	\$ 383,202,500	\$ 78,600,000	\$ 102,000,000	\$ 474,805,000	\$ 485,202,500
2024	\$ -	\$ 384,000,000	0	319	(9,600,000)	15.95	\$ (1,595,000)	\$ (797,500)	\$ 372,805,000	\$ 383,202,500	\$ 27,600,000	\$ 129,600,000	\$ 502,405,000	\$ 512,802,500
2025	\$ 286,000,000	\$ 670,000,000	241	560	(16,750,000)	28	\$ (2,800,000)	\$ (1,400,000)	\$ 650,450,000	\$ 668,600,000	\$ 38,400,000	\$ 168,000,000	\$ 818,450,000	\$ 836,600,000
2026	\$ -	\$ 670,000,000		560	(16,750,000)	28	\$ (2,800,000)	\$ (1,400,000)	\$ 650,450,000	\$ 668,600,000	\$ -	\$ 168,000,000	\$ 818,450,000	\$ 836,600,000
2027	\$ -	\$ 670,000,000		560	(16,750,000)	28	\$ (2,800,000)	\$ (1,400,000)	\$ 650,450,000	\$ 668,600,000	\$ 90,000,000	\$ 258,000,000	\$ 908,450,000	\$ 926,600,000
2028	\$ 276,000,000	\$ 946,000,000	240	800	(23,650,000)	40	\$ (4,000,000)	\$ (2,000,000)	\$ 918,350,000	\$ 944,000,000	\$ -	\$ 258,000,000	\$ 1,176,350,000	\$ 1,202,000,000
2029		\$ 946,000,000		800	(23,650,000)	40	\$ (4,000,000)	\$ (2,000,000)	\$ 918,350,000	\$ 944,000,000	\$ 43,750,000	\$ 301,750,000	\$ 1,220,100,000	\$ 1,245,750,000
2030	\$ 150,000,000	\$ 1,096,000,000	75	875	(27,400,000)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,064,225,000	\$ 1,093,812,500	\$ 75,000,000	\$ 376,750,000	\$ 1,440,975,000	\$ 1,470,562,500
2031		\$ 1,128,880,000		875	(28,222,000)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,096,283,000	\$ 1,126,692,500		\$ 388,052,500	\$ 1,484,335,500	\$ 1,514,745,000
2032		\$ 1,162,746,400		875	(29,068,660)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,129,302,740	\$ 1,160,558,900		\$ 399,694,075	\$ 1,528,996,815	\$ 1,560,252,975
2033		\$ 1,197,628,792		875	(29,940,720)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,163,313,072	\$ 1,195,441,292		\$ 411,684,897	\$ 1,574,997,969	\$ 1,607,126,189
2034		\$ 1,233,557,656		875	(30,838,941)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,198,343,714	\$ 1,231,370,156		\$ 424,035,444	\$ 1,622,379,159	\$ 1,655,405,600
2035		\$ 1,270,564,385		875	(31,764,110)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,234,425,276	\$ 1,268,376,885		\$ 436,756,507	\$ 1,671,181,783	\$ 1,705,133,393
2036		\$ 1,308,681,317		875	(32,717,033)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,271,589,284	\$ 1,306,493,817		\$ 449,859,203	\$ 1,721,448,487	\$ 1,756,353,020
2037		\$ 1,347,941,757		875	(33,698,544)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,309,868,213	\$ 1,345,754,257		\$ 463,354,979	\$ 1,773,223,191	\$ 1,809,109,235
2038		\$ 1,388,380,009		875	(34,709,500)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,349,295,509	\$ 1,386,192,509		\$ 477,255,628	\$ 1,826,551,137	\$ 1,863,448,137
2039		\$ 1,430,031,409		875	(35,750,785)	43.75	\$ (4,375,000)	\$ (2,187,500)	\$ 1,389,905,624	\$ 1,427,843,909		\$ 491,573,297	\$ 1,881,478,921	\$ 1,919,417,206

Assumptions:
The number of units, square footage and values used as part of this analysis were provided by the developer
20 Year TIRZ, termination December 31, 2039
Residential units will be owner occupied
2.5% homestead exemption for the Town
3% annual growth rate upon build out

EXHIBIT 3 - REVENUE

Projected Value			Projected Revenue							
Tax Year	Town		Tax Year	Coll Year	Town Tax Rate	Town Participation (75%)	County Tax Rate	County TIRZ Participation (50%)	Total TIRZ Revenues Available for Projects	Cumulative TIRZ Revenues Available for Projects
	Total Projected Valuation	Total Projected Valuation								
2019	\$ -	\$ -	2019	2020	0.439		0.234	\$ -	\$ -	\$ -
2020	\$ -	\$ -	2020	2021	0.439		0.234	\$ -	\$ -	\$ -
2021	\$ 47,980,000	\$ 49,307,500	2021	2022	0.439	\$ 154,815	0.234	\$ 56,536	\$ 211,351	\$ 211,351
2022	\$ 362,595,000	\$ 372,065,000	2022	2023	0.439	\$ 1,169,967	0.234	\$ 426,610	\$ 1,596,577	\$ 1,807,928
2023	\$ 474,805,000	\$ 485,202,500	2023	2024	0.439	\$ 1,532,030	0.234	\$ 556,333	\$ 2,088,363	\$ 3,896,290
2024	\$ 502,405,000	\$ 512,802,500	2024	2025	0.439	\$ 1,621,085	0.234	\$ 587,979	\$ 2,209,064	\$ 6,105,355
2025	\$ 818,450,000	\$ 836,600,000	2025	2026	0.439	\$ 2,640,852	0.234	\$ 959,246	\$ 3,600,097	\$ 9,705,452
2026	\$ 818,450,000	\$ 836,600,000	2026	2027	0.439	\$ 2,640,852	0.234	\$ 959,246	\$ 3,600,097	\$ 13,305,549
2027	\$ 908,450,000	\$ 926,600,000	2027	2028	0.439	\$ 2,931,250	0.234	\$ 1,062,440	\$ 3,993,690	\$ 17,299,239
2028	\$ 1,176,350,000	\$ 1,202,000,000	2028	2029	0.439	\$ 3,795,670	0.234	\$ 1,378,213	\$ 5,173,883	\$ 22,473,122
2029	\$ 1,220,100,000	\$ 1,245,750,000	2029	2030	0.439	\$ 3,936,836	0.234	\$ 1,428,377	\$ 5,365,213	\$ 27,838,335
2030	\$ 1,440,975,000	\$ 1,470,562,500	2030	2031	0.439	\$ 4,649,522	0.234	\$ 1,686,147	\$ 6,335,669	\$ 34,174,003
2031	\$ 1,484,335,500	\$ 1,514,745,000	2031	2032	0.439	\$ 4,789,431	0.234	\$ 1,736,807	\$ 6,526,238	\$ 40,700,241
2032	\$ 1,528,996,815	\$ 1,560,252,975	2032	2033	0.439	\$ 4,933,538	0.234	\$ 1,788,986	\$ 6,722,524	\$ 47,422,765
2033	\$ 1,574,997,969	\$ 1,607,126,189	2033	2034	0.439	\$ 5,081,967	0.234	\$ 1,842,731	\$ 6,924,698	\$ 54,347,463
2034	\$ 1,622,379,159	\$ 1,655,405,600	2034	2035	0.439	\$ 5,234,850	0.234	\$ 1,898,088	\$ 7,132,938	\$ 61,480,401
2035	\$ 1,671,181,783	\$ 1,705,133,393	2035	2036	0.439	\$ 5,392,319	0.234	\$ 1,955,106	\$ 7,347,425	\$ 68,827,825
2036	\$ 1,721,448,487	\$ 1,756,353,020	2036	2037	0.439	\$ 5,554,512	0.234	\$ 2,013,834	\$ 7,568,346	\$ 76,396,171
2037	\$ 1,773,223,191	\$ 1,809,109,235	2037	2038	0.439	\$ 5,721,571	0.234	\$ 2,074,325	\$ 7,795,895	\$ 84,192,067
2038	\$ 1,826,551,137	\$ 1,863,448,137	2038	2039	0.439	\$ 5,893,641	0.234	\$ 2,136,630	\$ 8,030,271	\$ 92,222,338
2039	\$ 1,881,478,921	\$ 1,919,417,206	2039	2040	0.439	\$ 6,070,874	0.234	\$ 2,200,804	\$ 8,271,678	\$ 100,494,015
						\$ 73,745,579		\$ 26,748,436	\$ 100,494,015	

EXHIBIT B - BOUNDARY DESCRIPTION

JURISDICTIONAL BOUNDARY DESCRIPTION
TAX INCREMENT REINVESTMENT ZONE - LAKESIDE VILLAGE
TOWN OF FLOWER MOUND, TARRANT COUNTY

1. The Tax Increment Reinvestment Zone at Lakeside Village is centered on the intersection of Lakeside Pkwy and Lakeside Village Blvd within the municipal limits of Flower Mound, Tarrant County. The Zone is +/- 58.4 acres of land and described as follows:
2. BEGINNING at northeast corner of 6.309 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 33) and southeast corner of Village Oaks Mobile Home Park, a 11.64 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 36);
3. Then south along east boundary of said 6.309 acre tract to north right-of-way (ROW) of Lakeside Village Blvd;
4. Then east and northeast along north ROW of Lakeside Village Blvd to south ROW of FM 2499 (Long Prairie Rd);
5. Then generally east southeast along south ROW of FM 2499 (Long Prairie Rd) to south ROW of Lakeside Village Blvd;
6. Then generally southwest and west along south ROW of Lakeside Village Blvd to east ROW of Lakeside Pkwy and west boundary of 5.02 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 32);
7. Then south by east along west boundary of said 5.02 acre tract to southwest corner of said tract and coincident boundary line of Town of Flower Mound and City of Grapevine;
8. Then west and south by west along coincident boundary line of Town of Flower Mound and City of Grapevine, across ROW of Lakeside Pkwy to southeast corner of 3.536 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5);
9. Then west along south boundary of said 3.536 acre tract to interior corner of said tract;
10. Then generally south along east boundary of said 3.536 acre tract, 4.259 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C), and 2.03 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C1 & 5D) to southeast corner of said 2.03 acre tract;
11. Then generally west along south boundary of said 2.03 acre tract to southwest corner of said tract and east boundary of 3.04 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5E 5E1 5E2 & 5F);
12. Then generally south east boundary of said 3.04 acre tract to southeast corner of said tract;
13. Then west along south boundary of said 3.04 acre tract to southwest corner of said tract;
14. Then generally north along west boundary of said 3.0 acre tract, 1.32 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5D01), 2.03 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C1 & 5D), 4.259 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5C) to west corner of 3.536 acre tract (TANNEHILL, DAVID K SURVEY Abstract 1524 Tract 5);
15. Then east by north along north boundary of said 3.536 acre tract to southwest corner of 11.149 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 30A);
16. Then generally north northwest along west boundary of said 11.149 acre tract and 9 acre lot (LAKESIDE HOTEL Block 1 Lot 1) to northwest corner of said 9 acre lot;
17. Then east along north boundary of said 9 acre lot to southwest corner of 1.733 acre lot (LAKESIDE TOWER Block A Lot 2);
18. Then north by west along west boundary of said 1.733 lot to north corner of said lot and south ROW of Lakeside Pkwy;
19. Then east by north across ROW of Lakeside Pkwy to boundary of 4.010 acre lot (LAKESIDE DFW Block A Lot 5X) at Lakeside Park;
20. Then generally north along west boundary of said 4.010 acre lot to north corner of said lot and south boundary of +/- 4.9 acre tract (LAKESIDE DFW Block A Lot 7 BALANCE IN DENTON COUNTY);
21. Then generally east southeast along north boundary of said 4.010 acre lot, across ROW of Northwood Dr to west boundary of Village Oaks Mobile Home Park at 3.9 acre tract (TANNAHILL, J SURVEY Abstract

1252D Tract 35);

22. Then south along east ROW of Northwood Dr and west boundary of Village Oaks Mobile Home Park, a 3.9 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 35), and 3.08 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 34), and east ROW of Royal Oaks Dr to southwest corner of said 3.08 acre tract 34 and north boundary of 6.309 acre tract (TANNAHILL, J SURVEY Abstract 1252D Tract 33);
23. Then east along north boundary of said 6.309 acre tract, and south boundary of Village Oaks Mobile Home Park, to northeast corner of said 6.309 acre tract and the PLACE OF BEGINNING of Tax Increment Reinvestment Zone Boundary at Lakeside Village, containing +/- 58.4 acres of land.



TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: May 6, 2019

FROM: Chuck Jennings, Parks and Recreation Director

ITEM: Public Hearing to consider approval of a Master Plan for Bella Lago Park (*The Parks Board recommended approval at their April 4, 2019, regular meeting at a vote of 5 to 0*).

BACKGROUND INFORMATION: The purpose of this item is to discuss and consider approval of the attached conceptual master plan for Bella Lago Park. MHS Planning and Design (MHS) has utilized the feedback provided by the Parks Board during their March work session to create a conceptual design which the Parks Board unanimously recommended at their April meeting for Town Council consideration. This item will be presented as a public hearing allowing residents the opportunity to comment on the proposed master plan.

Bella Lago Park Master Plan key meetings and dates:

- January 24, 2019 – Public Input meeting
- March 7, 2019 – Parks Board Work Session
- April 4, 2019 – Parks Board Public Hearing
- May 6, 2019 – Town Council Public Hearing

The creation of a conceptual master plan for the park will provide staff with clear direction on how the park will be maintained and what (if any) amenities will be planned for future development within the park. The proposed plan shows the removal of the multi-purpose trail designation and park sign, leaving the park to be left as open space with routine maintenance only being performed in one small area, and very minimally in other areas (i.e. tree pruning at bridge & board replacement).

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval at their April 4, 2019, regular meeting at a vote of 5 to 0. Citizen feedback was provided three times at various meetings and the report summaries of each meeting are provided as attachments.

ALTERNATIVES/OPTIONS: The Town Council can make changes to the proposed master plan by adding or deleting park elements/amenities.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Proposed Conceptual Master Plan
2. Report Summaries from previous meetings

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



PARADISE LANE

EXISTING WOODS
(MAINTAINED AS
NATURAL OPEN SPACE)

EXISTING WOODS
(MAINTAINED AS
NATURAL OPEN SPACE)

EXISTING BRIDGE
CROSSING

BELLA LAGO DRIVE

BELLA LAGO PARK MASTER PLAN

LAWN AREA TO BE
MAINTAINED TO EXISTING
TREE LINE BY THE TOWN



North



NOT FOR CONSTRUCTION
CONCEPTUAL DRAWING

60' 0' 60' 120'

GRAPHIC SCALE

Town of Flower Mound Parks Board Meeting Bella Lago Park Presentation Summary

On Thursday, April 04, 2019, The Parks Board of the Town of Flower Mound held their monthly meeting and continued the discussion on the development of the Bella Lago Park Master Plan. Multiple residents from the Bella Lago HOA and Emerald Bay HOA attended this meeting and gave their opinions about the Bella Lago Park Master Plan proposed by MHS Planning and Design.

Before the public input started, Hunter Rush from MHS Planning and Design gave a presentation showing the existing site survey, park location, site pictures and previous public input. After that, Hunter Rush presented some park facts and the proposed park recommendations for the Master Plan.

The park facts presented are the following:

- The Bella Lago Property is a public space owned by the Town of Flower Mound.
- Bella Lago is classified as an “Open Space/Natural Area” in the Parks Master Plan.
- The two flowage easements across the property are monitored and controlled by the Army Corps of Engineers.
- No personal property should encroach onto public property.
- No clearing or maintenance within the park boundary should be performed by the public.

Furthermore, these are the park recommendations for the Bella Lago Park Master Plan:

- Leave the Bella Lago Property in its current condition as natural open space.
- The existing bridge to remain – it would be very costly to remove and would negatively impact drainage and wildlife habitats.
- Remove the existing Bella Lago Park sign.
- Remove the future trail section through the park per the approved trails master plan.
- Continue to maintain the lawn area off Bella Lago Drive and South of the HOA owned pond.
- Provide minimal maintenance on a demand basis in order to ensure public safety.

After all the above information was presented by Hunter Rush, the public had the opportunity to give their opinions about the proposed Bella Lago Master Plan. A large majority of the residents are in favor of the recommendations presented by MHS Planning and Design. In addition to the recommendations presented, the notion of changing the name of the property to remove the word ‘park’ and removing the park from the Town’s website was discussed.

A few residents voiced their concerns about some of the presented recommendations. Below is a summary of the comments from these residents:

- The lack of routine maintenance by the Town will make the trail unusable to the residents.
- The park is a public property and it should be available and accessible to all the residents of the Town of Flower Mound.
- The removal of the existing sign gives the impression that the park is not available to the general public.

The Parks Board’s recommendation will be presented and voted on by the Town Council on May 6th, 2019. The Town Council meeting will be a Public Hearing allowing for additional public input.

**Town of Flower Mound Parks Board Meeting
Bella Lago Park Presentation Summary**

On March 07, 2019, The Parks Board of the Town of Flower Mound held their monthly meeting and discussed the possible development and master planning of Bella Lago Park. During the meeting, multiple residents from Bella Lago and Emerald Bay presented their opinions on this development to the Parks Board.

Before the public input, Chuck Jennings, Director of Parks and Recreation, presented the history of the park and the schedule for future meetings. Following Mr. Jennings, Hunter Rush, from MHS Planning and Design, gave a presentation showing the existing site survey, site slope analysis, site tree density analysis and site drainage area analysis.

Based on the previously collected public input data, MHS developed two different conceptual site plans. The first site plan involves enhanced and additional trails, bridges, seating areas, nature play and picnic areas. The second layout consists of a trail clean-up along the existing nature path and the installation of a culvert on the Northwest side of the property for easy maintenance access. These two layouts were displayed to the Parks Board and to the residents who were present at the meeting.

After the presentation, multiple residents from Bella Lago and Emerald Bay had the opportunity to give their opinions regarding this subject. All the residents who spoke or filled out a public comment card at the meeting were opposed to any development at the Bella Lago Park. The feedback from the residents were similar to the previous public meeting. The following is a summary of their comments and thoughts:

- The privacy of the residents who live adjacent to the park property is a concern, given the fact that the residents located in the USACE flowage easements in Emerald Bay are not allowed to build a fence or wall around their properties.
- The development could increase criminal activity in that area.
- The land is not suited for this development given that it is a very narrow property.
- The residents from Bella Lago and Emerald Bay have quick and easy access to Twin Coves Park and Post Oak Park, which are approximately 1 mile away, therefore another park in the area is not needed or desired.
- This development can be a risk to the existing wildlife in the area.
- The property value of the houses adjacent to the park would be significantly reduced.
- The area already has drainage issues and any possible development would increase the water runoff even more.
- Most of the residents were told by their realtors that this would remain as an undeveloped natural area when they bought their properties.

The residents are in favor of master planning this property as a land conservation area and requesting that no development occur onsite. In addition, many of the residents requested that the existing Bella Lago Park sign be removed.

These alternatives will be analyzed and based on all the public input received the Parks Board will develop a recommendation regarding the future of this property at their April 4th, 2019 Parks Board Meeting. It is anticipated that the Park Board's recommendation will be presented and voted on by The Town Council on May 6th, 2019. Both of these items will be Public Hearings allowing for additional public input.

Updated 3/25/19



On Thursday, January 24, 2019, The Department of Parks and Recreation of the Town of Flower Mound hosted a public input meeting to discuss a possible development of the Bella Lago Park. More than 50 residents from Bella Lago and Emerald Bay attended the meeting. Each attendee had the opportunity to speak for 3 minutes and give their opinion regarding the development of the Park.

Before the public input started, Chuck Jennings, Director of Parks and Recreation, gave a brief history of the park and presented the schedule for the next public meetings regarding Bella Lago Park. After that, Hunter Rush, MHS Planning and Design, gave a presentation about the company, the scope of work within this project, and the site analysis-which included some design opportunities and concerns.

The following residents from Bella Lago and Emerald Bay were heard: Kathy Schmitt, Jim Musil, Debora Musil, Mel Stockwell, Julie Weems, Eric Schaffer, Frank Antonacci, Andrew Terry, Joyce Taylor, John Cashman, Mellany Lahm, Steve Easley, Susan Young, Jim Harycki, Dana Smith, Troy Pentecost, Fred Pretzer, Dr. Jim Sherman, Patrick McClain, and Elaine Takacs.

A total of 18 of the 20 residents were against any sort of development or improvement in Bella Lago Park. Two residents were understanding and open to the idea of making small improvements to the existing property such as widening the trail or clearing some underbrush for visibility but were not particularly advocating for development. Below is a summary of the comments from these residents:

- The land is not suited for this development given that it is a very narrow property.
- The residents from Bella Lago and Emerald Bay have an easy and quick access to Post Oak Park, which is approximately 1 mile away. Therefore, another park in that area is not needed at the moment.
- This development can be a risk to the existing wildlife in the area.
- The privacy of the residents who live adjacent to the park property is a concern, given the fact that the residents located in the USACE flowage easements in Emerald Bay are not allowed to build a fence or wall around their properties.
- The development could increase criminal activity in that area.
- The property value of the houses adjacent to the park would be significantly reduced.
- A property owner located in Emerald Bay started having drainage issues after the development of the Bella Lago subdivision. Further development of the park would increase storm runoff even more in the area.
- Most of the residents were told that this would remain as an undeveloped natural area when they bought their properties.

Based on the above information, it appears that many residents are not in favor of the development of Bella Lago Park. More discussion is recommended to determine what will be the decision regarding the improvements within the park.



TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: May 6, 2019

FROM: David Bauer, Construction Manager

ITEM: Consider approval of the Guaranteed Maximum Price (GMP) with Steele and Freeman, Inc., for the construction of the Library Expansion Project in the amount of \$10,399,482.11; and authorization for the Mayor to execute the same on behalf of the Town.

BACKGROUND INFORMATION: The Library Expansion construction project includes an approximately 15,000 sq. foot municipal multi-purpose building and associated site improvements on approximately 3 acres located at 3030 Broadmoor Lane. The project utilizes the Construction Manager at Risk (CMaR) delivery method.

The original design group for the Library was Komatsu Architecture, Inc. Town Council approved Komatsu Architecture, Inc. on December 4, 2017 to also serve as the design group for the expansion project.

Steele Freeman was approved by Town Council on June 18, 2018 to serve as the Construction Manager at Risk (CMAR) for the project in order to aid in budgeting the project during the design process. The CMAR prepared the Guaranteed Maximum Price (GMP) proposal considered for the Town's review and acceptance.

The GMP includes the following bid options: modification of the existing park parking lots to comply with the latest Texas Accessibility Standards, addition of Electrochromic Glass in lieu of drywall, new light fixtures and replacement of the roof with new materials with a new 20-year warranty and all new variable refrigerant flow heating, ventilation and air conditioning systems.

FISCAL IMPACT: \$10,399,482.11

Proposed Expenditure/(Revenue):	Account Number(s):
\$10,399,482.11	533-111-32001

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

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

ATTACHMENTS:

1. Contract Agreement

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



AIA[®] Document A133[™] – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

Town of Flower Mound Library Expansion

3030 Broadmoor Lane

Flower Mound, Texas 75022

THE OWNER:

(Name, legal status and address)

Town of Flower Mound

2121 Cross Timbers Road

Flower Mound, Texas 75028

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

Steele & Freeman, Inc.

1301 Lawson Road

Fort Worth, Texas 76131

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Ten Million Three Hundred Ninety Nine Thousand Four Hundred Eighty Two and Eleven Cents) (\$ 10,399,482.11), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference an attachment.)

Reference Exhibit "H" GMP Recap, 13 pages, dated April 18, 2019.

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

Reference Exhibit "F" Alternates, 1 page, dated April 18, 2019.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
Reference Exhibit "C" Allowances, 1 page, dated April 18, 2019	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

Reference Exhibit "D" Clarifications, 2 pages, dated April 18, 2019.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Reference Exhibit "B"	Project Manual and Drawings	April 18, 2019	Pages 1-5

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
Reference Exhibit "B"	Project Manual and Drawings	April 18, 2019	Pages 1-5

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Number	Title	Date
Reference Exhibit "B"	Project Manual and Drawings	April 18, 2019

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

Reference Exhibit "G" Unit Prices, 1 page, dated April 18, 2019.
Reference Exhibit "H" GMP Backup, 13 pages, dated April 18, 2019

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

Reference Exhibit "E" Schedule, 1 page, dated April 18, 2019.

OWNER (Signature)

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

Michael D. Freeman, President

(Printed name and title)

Additions and Deletions Report for AIA® Document A133™ – 2009 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:50:58 ET on 04/29/2019.

PAGE 1

Town of Flower Mound Library Expansion
3030 Broadmoor Lane
Flower Mound, Texas 75022

...

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

...

Steele & Freeman, Inc.
1301 Lawson Road
Fort Worth, Texas 76131

...

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Ten Million Three Hundred Ninety Nine Thousand Four Hundred Eighty Two and Eleven Cents (\$ 10,399,482.11), subject to additions and deductions by Change Order as provided in the Contract Documents.

...

Reference Exhibit "H" GMP Recap, 13 pages, dated April 18, 2019.

...

Reference Exhibit "F" Alternates, 1 page, dated April 18, 2019.

PAGE 2

Reference Exhibit "C" Allowances, 1
page, dated April 18, 2019

...

Reference Exhibit "D" Clarifications, 2 pages, dated April 18, 2019.

...

<u>Reference Exhibit "B"</u>	<u>Project Manual and</u>	<u>April 18, 2019</u>	<u>Pages 1-5</u>
	<u>Drawings</u>		

...

<u>Reference Exhibit "B"</u>	<u>Project Manual and Drawings</u>	<u>April 18, 2019</u>	<u>Pages 1-5</u>
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...

<u>Reference Exhibit "B"</u>	<u>Project Manual and Drawings</u>	<u>April 18, 2019</u>
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...

Reference Exhibit "G" Unit Prices, 1 page, dated April 18, 2019.
Reference Exhibit "H" GMP Backup, 13 pages, dated April 18, 2019

...

Reference Exhibit "E" Schedule, 1 page, dated April 18, 2019.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:50:58 ET on 04/29/2019 under Order No. 6092741853 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment , as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

President

(Title)

04/29/2019

(Dated)

**STEELE & FREEMAN, INC.**

CONSTRUCTION MANAGERS • GENERAL CONTRACTORS

1301 Lawson Road • Fort Worth, Texas 76131

Amendment 1 | AIA A133/CMc
Exhibit 'B' - Project Manual & Drawings

Date: 4/18/2019

Project: Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022

Architect: Komatsu Architecture

SFI Job No.: 5103

Drawings	Item/Sheet No.	Description	Dated
		General	
	G0.00	Cover Sheet	December 14, 2018
	G0.01	General Information	December 14, 2018
	G0.02	Life Safety Plan and Calculations	December 14, 2018
	G0.03	Site Phasing Plan	December 14, 2018
	G0.04	Building Phasing Plan	December 14, 2018
	G0.05	Envelope Com-Check	December 14, 2018
		Civil	
	C0.00	Record Plat	September 26, 2018
	C1.0	Existing Conditions	December 14, 2018
	C2.0	Demolition Plan	December 14, 2018
	C3.0	Site Plan	December 14, 2018
	C4.0	Paving & Dimension Control Plan	December 14, 2018
	C5.0	Grading Plan	December 14, 2018
	C6.0	Pre Drainage Area Map	December 14, 2018
	C6.1	Post Drainage Area Map	December 14, 2018
	C6.2	Detention Pond Plan	December 14, 2018
	C6.3	Detention Pond Calculations	December 14, 2018
	C7.0	Storm Drain Plan	December 14, 2018
	C8.0	Utility Plan	December 14, 2018
	C8.1	Storm & Utility Profile	December 14, 2018
	C9.0	Erosion Control Plan	December 14, 2018
	C9.1	Erosion Control Details	December 14, 2018
	C10.0	Civil Details	December 14, 2018
	C10.1	Civil Details	December 14, 2018
	C10.2	Civil Details	December 14, 2018
	C10.3	Civil Details	December 14, 2018
		Landscape Irrigation	
	L1.01	Tree Protection-Removal Plan	December 14, 2018
	L1.02	Existing Tree Preservation- Removal Chart	December 14, 2018
	L1.03	Planting Plan	December 14, 2018
		Architectural	
	D0.01	Site Plan - Demolition	December 14, 2018
	D1.01	Floor Plan - Demolition	December 14, 2018
	D1.02	Roof Plan - Demolition	December 14, 2018
	D2.01	Exterior Elevations - Demolition	December 14, 2018
	D7.01	Reflected Ceiling Plan - Demolition	December 14, 2018
	A0.01	Site Plan - Architectural	December 14, 2018
	A0.02	Site Details	December 14, 2018
	A0.03	Exterior Views	December 14, 2018
	A0.04	Interior Views	December 14, 2018
	A0.05	Interior Views	December 14, 2018
	A0.06	Interior Views	December 14, 2018
	A1.01	Overall Floor Plan	December 14, 2018
	A1.02	Floor Plan - North	December 14, 2018
	A1.03	Floor Plan - South	December 14, 2018
	A1.04	Overall Roof Plan	December 14, 2018
	A1.05	Roof Plan - North	December 14, 2018
	A1.06	Roof Plan - South	December 14, 2018
	A1.07	Partition Types	December 14, 2018
	A2.01	Exterior Elevations	December 14, 2018
	A2.02	Exterior Elevations	December 14, 2018
	A2.03	Exterior Elevations Colored	December 14, 2018
	A2.04	Exterior Elevations Colored	December 14, 2018
	A3.01	Building Sections	December 14, 2018
	A3.02	Building Sections	December 14, 2018
	A4.01	Plan Details	December 14, 2018
	A4.02	Plan Details	December 14, 2018
	A4.03	Wall Sections	December 14, 2018
	A4.04	Wall Sections	December 14, 2018
	A4.05	Wall Sections	December 14, 2018
	A4.06	Wall Sections	December 14, 2018
	A4.07	Wall Sections	December 14, 2018
	A4.09	Section Details	December 14, 2018
	A4.10	Section Details	December 14, 2018
	A4.11	Section Details	December 14, 2018
	A4.12	Section Details	December 14, 2018
	A5.01	Finish Schedule	December 14, 2018

A5.02	Enlarged Plans and Fixture Schedule	December 14, 2018
A5.03	Enlarged Plans	December 14, 2018
A5.04	Interior Elevations	December 14, 2018
A5.05	Interior Elevations	December 14, 2018
A5.06	Interior Elevations	December 14, 2018
A5.07	Interior Elevations	December 14, 2018
A5.08	Interior Elevations	December 14, 2018
A5.09	Interior Elevations	December 14, 2018
A5.10	Interior Elevations	December 14, 2018
A5.11	Interior Elevations	December 14, 2018
A5.12	Millwork Details	December 14, 2018
A5.13	Millwork Details	December 14, 2018
A6.01	Door Schedule and Details	December 14, 2018
A6.02	Storefront Types	December 14, 2018
A6.03	Storefront Types	December 14, 2018
A6.04	Door and Window Details	December 14, 2018
A6.05	Door and Window Details	December 14, 2018
A6.06	Door and Window Details	December 14, 2018
A6.07	Door and Window Details	December 14, 2018
A7.01	Overall Reflected Ceiling Plan	December 14, 2018
A7.02	Reflected Ceiling Plan - North	December 14, 2018
A7.03	Reflected Ceiling Plan - South	December 14, 2018
A7.04	Enlarged Reflected Ceiling Plans	December 14, 2018
A7.05	Ceiling Details	December 14, 2018
A8.01	Floor Plan - Finish	December 14, 2018
A8.02	Enlarged Floor Finish Plans	December 14, 2018
A8.03	Wall Finish Floor Plan - North	December 14, 2018
A8.04	Wall Finish Floor Plan - South	December 14, 2018
A8.05	Floor Plan - Furniture for Reference Only	December 14, 2018
	Structural	
S0.01	Special Inspections and General Notes	December 14, 2018
S1.01	Foundation Details	December 14, 2018
S1.02	Foundation Details	December 14, 2018
S2.01	Overall Foundation Plan	December 14, 2018
S2.02	Foundation Plan - North	December 14, 2018
S2.03	Foundation Plan - South	December 14, 2018
S2.04	Overall Roof Framing Plan	December 14, 2018
S2.05	Roof Framing Plan - North	December 14, 2018
S2.06	Roof Framing Plan - South	December 14, 2018
S3.01	Framing Details	December 14, 2018
S3.02	Framing Details	December 14, 2018
S3.03	Framing Details	December 14, 2018
S3.04	Framing Details	December 14, 2018
	Mechanical	
MD2.01	Mechanical Demolition Floor Plan	December 14, 2018
M0.01	Mechanical Symbol Legend and Sheet Index	December 14, 2018
M0.02	Mechanical Equipment Schedule	December 14, 2018
M2.01	Mechanical Floor & Roof Plan - North	December 14, 2018
M2.02	Mechanical Floor & Roof Plan - South	December 14, 2018
M4.01	Mechanical Details	December 14, 2018
	Plumbing	
PD2.01	Plumbing Demolition Floor Plan	December 14, 2018
P0.01	Plumbing Legend, General Notes, & Sheet Index	December 14, 2018
P2.01	Plumbing Floor Plan - North - Pressure Piping	December 14, 2018
P2.02	Plumbing Floor Plan - South - Pressure Piping	December 14, 2018
P3.01	Plumbing Floor Plan - North - Sanitary Waste & Vent	December 14, 2018
P3.02	Plumbing Floor Plan - South - Sanitary Waste & Vent	December 14, 2018
P3.03	Plumbing Roof Plan - North	December 14, 2018
P3.04	Plumbing Roof Plan - South	December 14, 2018
P4.01	Plumbing Details	December 14, 2018
P4.02	Plumbing Details	December 14, 2018
P5.01	Plumbing Riser Diagrams	December 14, 2018
P5.02	Plumbing Riser Diagrams	December 14, 2018
	Electrical	
ED2.01	Electrical Demolition Floor Plan	December 14, 2018
E0.01	Electrical Symbol Legend and Sheet Index	December 14, 2018
E0.02	Electrical General Notes	December 14, 2018
E0.03	Electrical Commissioning Notes	December 14, 2018
E0.04	Electrical Comcheck	December 14, 2018
E1.01	Electrical Site Plan	December 14, 2018
E1.02	Site Photometric	December 14, 2018
E2.01	Electrical Floor Plan - North - Power and Systems	December 14, 2018
E2.02	Electrical Floor Plan - South - Power and Systems	December 14, 2018
E2.03	Electrical Roof Plan - North - Power	December 14, 2018
E2.04	Electrical Roof Plan - South - Power	December 14, 2018
E3.01	Electrical Floor Plan - North - Lighting	December 14, 2018
E3.02	Electrical Floor Plan - South - Lighting	December 14, 2018
E4.01	Electrical Schedules	December 14, 2018
E4.02	Electrical Panelboard Schedules - Existing	December 14, 2018
E4.03	Electrical Panelboard Schedules - New	December 14, 2018
E5.01	Electrical One-Line Riser Diagram	December 14, 2018
E6.01	Electrical Details	December 14, 2018
E6.02	Electrical Details	December 14, 2018

Specifications	Section Numbers	Section Title	Dated	Pages
Division 00		Introductory & Contracting Information		
	000010	Cover	December 14, 2018	1
	000110	Table of Contents	December 14, 2018	5
	003132	Geotechnical Data	December 14, 2018	1
		Geotech Report	December 14, 2018	31
	007000	General Conditions	December 14, 2018	1
Division 01		General Requirements		
	011000	Summary	December 14, 2018	2
	012300	Alternates	December 14, 2018	1
	012500	Substitution Procedures	December 14, 2018	2
	012500.13	Substitution Request Form	December 14, 2018	4
	012600	Contract Modification Procedures	December 14, 2018	2
	012900	Payment Procedures	December 14, 2018	3
	013100	Project Management and Coordination	December 14, 2018	7
	013200	Construction Progress Documentation	December 14, 2018	6
	013233	Photographic Documentation	December 14, 2018	2
	013300	Submittal Procedures	December 14, 2018	7
	013516	Alteration Project Procedures	December 14, 2018	3
	014000	Quality Requirements	December 14, 2018	6
	014200	References	December 14, 2018	1
	015000	Temporary Facilities and Controls	December 14, 2018	7
	015300	Mold Prevention Measures	December 14, 2018	2
	015639	Temporary Tree and Plant Protection (L)	December 14, 2018	3
	016000	Product Requirements	December 14, 2018	4
	017300	Execution Requirements	December 14, 2018	6
	017700	Closeout Procedures	December 14, 2018	3
	017823	Operation and Maintenance Data	December 14, 2018	5
	017839	Project Record Documents	December 14, 2018	3
	017900	Demonstration and Training	December 14, 2018	3
	019114	General Commissioning Requirements (MEP)	December 14, 2018	10
Division 02		Existing Conditions		
	024113	Selective Site Demolition	December 14, 2018	4
Division 03		Concrete		
	031000	Concrete Forming and Accessories (S)	December 14, 2018	3
	032000	Concrete Reinforcing (S)	December 14, 2018	2
	033000	Cast-In-Place Concrete (S)	December 14, 2018	6
	033300	Architectural Cast-In-Place Concrete	December 14, 2018	6
	035416	Hydraulic Cement Underlayment	December 14, 2018	2
Division 04		Masonry		
	042000	Unit Masonry	December 14, 2018	12
	044300	Stone Masonry Veneer	December 14, 2018	7
	047200	Cast Stone Masonry	December 14, 2018	5
Division 05		Metals		
	051200	Structural Steel Framing (S)	December 14, 2018	3
	051213	Architecturally Exposed Structural Steel Framing	December 14, 2018	4
	052100	Steel Joist Framing (S)	December 14, 2018	3
	053100	Steel Decking (S)	December 14, 2018	2
	054000	Cold-Formed Metal Framing (S)	December 14, 2018	2
	055000	Metal Fabrications	December 14, 2018	5
	055213	Pipe and Tube Railings	December 14, 2018	5
	057300	Decorative Handrails	December 14, 2018	5
	057500	Decorative Formed Metal	December 14, 2018	3
Division 06		Woods and Plastics		
	061053	Miscellaneous Rough Carpentry	December 14, 2018	4
	061600	Sheathing	December 14, 2018	2
	062023	Interior Finish Carpentry	December 14, 2018	4
	062530	Statwell Panel Systems	December 14, 2018	4
	064023	Interior Architectural Woodwork	December 14, 2018	6
Division 07		Thermal and Moisture Protection		
	070153	Roof Modifications	December 14, 2018	6
	071900	Water Repellents	December 14, 2018	5
	072100	Thermal Insulation	December 14, 2018	3
	072600	Under Slab Vapor Barrier	December 14, 2018	2
	072726	Fluid Applied Membrane Air Barriers	December 14, 2018	5
	074113	Metal Roof Panels	December 14, 2018	7
	074243	Metal Composite Panel System	December 14, 2018	6
	075423	TPO Roofing	December 14, 2018	7
	076200	Sheet Metal Flashing and Trim	December 14, 2018	6
	076210	Flexible Flashing	December 14, 2018	2
	077100	Roof Specialties	December 14, 2018	4
	077200	Roof Accessories	December 14, 2018	5
	078413	Penetration Firestopping	December 14, 2018	4
	078446	Fire Resistive Joint Systems	December 14, 2018	3
	079200	Joint Sealants	December 14, 2018	7
	079500	Expansion Control	December 14, 2018	3
Division 08		Doors & Windows		
	081113	Hollow Metal Doors and Frames	December 14, 2018	8
	081216	Interior Aluminum Door and Window Frames	December 14, 2018	3
	081416	Flush Wood Doors	December 14, 2018	4
	083113	Access Doors and Panels	December 14, 2018	3
	084113	Aluminum-Framed Entrances and Storefronts	December 14, 2018	6
	084229	Automatic Entrances	December 14, 2018	7
	087100	Finish Hardware	December 14, 2018	12
	088000	Glazing	December 14, 2018	7

Division 09	088113	Decorative Glass Glazing	December 14, 2018	4
	088800	Dynamic Glazing	December 14, 2018	7
Division 09		Finishes		
	092216	Non-Structural Metal Framing	December 14, 2018	5
	092900	Gypsum Board	December 14, 2018	6
	093000	Tiling	December 14, 2018	7
	095113	Acoustical Panel Ceilings	December 14, 2018	6
	095426	Linear Wood Ceilings	December 14, 2018	3
	096116	Concrete Floor Sealing	December 14, 2018	3
	096513	Resilient Base and Accessories	December 14, 2018	3
	096517	Linoleum Flooring	December 14, 2018	5
	096518	Resilient Plank Flooring	December 14, 2018	4
	096623	Resin Matrix Terrazzo Flooring	December 14, 2018	5
	096813	Tile Carpeting	December 14, 2018	3
	097200	Wall Coverings	December 14, 2018	2
	097213	Tackable Wall Finish	December 14, 2018	4
	097500	Thin Masonry Veneer	December 14, 2018	3
	098116	Acoustical Blanket Insulation	December 14, 2018	2
	098436	Fabric Wrapped Acoustical Wall Units	December 14, 2018	3
	099100	Painting	December 14, 2018	8
Division 10		Specialties		
	101116	Markerboards	December 14, 2018	2
	101400	Signage	December 14, 2018	3
	102113	Toilet Compartments	December 14, 2018	3
	102220	Demountable Partitions	December 14, 2018	4
	102600	Wall and Door Protection	December 14, 2018	3
	102800	Toilet, Bath and Laundry Accessories	December 14, 2018	3
	103100	Manufactured Fireplaces	December 14, 2018	3
	104413	Fire Extinguishers Cabinets	December 14, 2018	3
	104416	Fire Extinguishers	December 14, 2018	2
	105113	Metal Lockers	December 14, 2018	4
Division 11		Equipment		
	113100	Residential Appliances	December 14, 2018	2
Division 12	115224	Flat Screen TV Mounts	December 14, 2018	2
		Furnishings		
Division 12	122413	Roller Window Shades	December 14, 2018	5
	123662	Engineered Surfacing	December 14, 2018	3
Division 21		Fire Suppression		
	210500	Common Work Results for Fire Suppression	December 14, 2018	5
Division 22	211000	Water-Based Fire Suppression Systems	December 14, 2018	9
		Plumbing		
Division 22	220500	Common Work Results for Plumbing	December 14, 2018	6
	220519	Meters and Gauges for Plumbing Piping	December 14, 2018	3
	220523	General-Duty Valves for Plumbing Piping	December 14, 2018	3
	220529	Hangers and Supports for Plumbing Piping and Equipment	December 14, 2018	4
	220553	Identification For Plumbing Piping and Equipment	December 14, 2018	2
	220700	Plumbing Insulation	December 14, 2018	5
	220800	Commissioning of Plumbing Systems	December 14, 2018	4
	221116	Domestic Water Piping	December 14, 2018	5
	221119	Domestic Water Piping Specialties	December 14, 2018	4
	221316	Sanitary Waste and Vent Piping	December 14, 2018	3
	221319	Sanitary Waste Piping Specialties	December 14, 2018	2
	221413	Storm Drainage Piping	December 14, 2018	3
	221423	Storm Drainage Piping Specialties	December 14, 2018	3
	223300	Electric Water Heaters	December 14, 2018	4
	224000	Plumbing Fixtures	December 14, 2018	3
Division 23		Heating, Ventilating, and Air Conditioning (HVAC)		
	230010	Basic Mechanical Requirements	December 14, 2018	13
	230513	Common Motor Requirements for HVAC Equipment	December 14, 2018	2
	230517	Sleeves and Sleeve Seals for HVAC Piping	December 14, 2018	2
	230518	Escutcheons for HVAC Piping	December 14, 2018	1
	230529	Hangers and Supports for HVAC Piping and Equipment	December 14, 2018	4
	230548	Vibration and Seismic Controls for HVAC Piping and Equipment	December 14, 2018	3
	230553	Identification For HVAC Piping and Equipment	December 14, 2018	3
	230593	Testing, Adjusting, and Balancing For HVAC	December 14, 2018	5
	230713	Duct Insulation	December 14, 2018	6
	230719	HVAC Piping Insulation	December 14, 2018	3
	230800	Commissioning of HVAC	December 14, 2018	5
	232300	Refrigerant Piping	December 14, 2018	4
	233113	Metal Ducts	December 14, 2018	5
	233300	Air Duct Accessories	December 14, 2018	6
	233423	HVAC Power Ventilators	December 14, 2018	3
	233713	Diffusers, Registers, and Grilles	December 14, 2018	2
	234100	Particulate Air Filtration	December 14, 2018	2
	237413	Packaged, Outdoor, Central-Station Air-Handling Units	December 14, 2018	10
Division 26	238126	Split-Systems Air-Conditioners	December 14, 2018	6
		Electrical		
Division 26	260010	TLC Basic Electrical Requirements	December 14, 2018	12
	260519	Low-Voltage Electrical Power Conductors and Cables	December 14, 2018	3
	260526	Grounding and Bonding for Electrical Systems	December 14, 2018	6
	260529	Hangers and Supports for Electrical Systems	December 14, 2018	3
	260533	Raceways and Boxes for Electrical Systems	December 14, 2018	7
	260544	Sleeves and Sleeve Seals for Electrical Raceways and Cabling	December 14, 2018	3
	260553	Identification for Electrical Systems	December 14, 2018	5

	260573	Overcurrent Protection Device Coordination Study	December 14, 2018	3
	260800	Commissioning of Electrical	December 14, 2018	5
	260923	Lighting Control Devices	December 14, 2018	7
	260933	Central Dimming Controls	December 14, 2018	3
	262416	Panelboards	December 14, 2018	6
	262726	Wiring Devices	December 14, 2018	4
	262813	Fuses	December 14, 2018	2
	262816	Enclosed Switches and Circuit Breakers	December 14, 2018	4
	263323	Central Battery Equipment	December 14, 2018	3
	264313	Surge Protective Devices (SPD's) for Low Voltage Electrical Power Circuits	December 14, 2018	3
Division 27		Communications		
	270010	Technology General Provisions	December 14, 2018	14
	270528	Grounding and Bonding for Communication Systems	December 14, 2018	5
	270528	Pathways for Communication Systems	December 14, 2018	10
Division 28	270529	Hangers and Supports for Communication Systems	December 14, 2018	2
		Electronic Safety and Security		
Division 31	283111	Digital, Addressable Fire Alarm System	December 14, 2018	8
		Earthwork		
	311000	Site Preparation and Demolition (C)	December 14, 2018	2
	312200	Earthwork (C)	December 14, 2018	4
	312333	Trench Excavation (C)	December 14, 2018	2
	312334	Trench Backfill (C)	December 14, 2018	4
	312335	Trench Safety System (C)	December 14, 2018	2
	312500	Erosion Control (C)	December 14, 2018	2
	313116	Termite Control	December 14, 2018	2
Division 32	311500	Excavation Support and Protection	December 14, 2018	2
		Exterior Improvements		
	321218	Asphalt Paving (C)	December 14, 2018	6
	321313	Concrete Paving (C)	December 14, 2018	6
	321400	Unit Paving	December 14, 2018	4
	321714	Precast Concrete Site Accessories	December 14, 2018	1
	321723	Pavement Markings (C)	December 14, 2018	2
	329200	Turf and Grasses (L)	December 14, 2018	7
	329300	Plants (L)	December 14, 2018	8
	329350	Landscape Establishment (L)	December 14, 2018	10
Division 33	329400	Planting Irrigation (L)	December 14, 2018	13
		Utilities		
	33 10 00	Water Utilities (C)	December 14, 2018	6
	33 30 00	Sanitary Sewerage Utilities (C)	December 14, 2018	6
	33 40 00	Storm Drainage Utilities (C)	December 14, 2018	2

Addendum	Item	Description	Dated	Number of Pages
	1	Addenda No. 1 General Construction	January 17, 2019	78
	2	Addenda No. 2 General Construction	January 21, 2019	31
	ASI 1	Post Bid	April 1, 2019	67
	Narrative	VRF Design	April 4, 2019	4



STEELE & FREEMAN, INC.
CONSTRUCTION MANAGERS • GENERAL CONTRACTORS
1301 Lawson Road • Fort Worth, Texas 76131

**Amendment 1 | AIA A133/CMc
Exhibit 'C' - Allowances**

Date: 4/18/2019

Project: Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022

Architect: Komatsu Architecture

SFI Job No.: 5103

Allowances	Description	
	None	
05 7500	Decorative Formed Metal Sign	\$25,000.00
09 8850	Floor Leveling	\$2,750.00

Allowance Total Included in the GMP	\$27,750.00
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Amendment 1 | AIA A133/CMc
Exhibit 'D' - Clarifications

Date: 4/18/2019

Project: Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022

Architect: Komatsu Architecture

SFI Job No.: 5103

List of Clarifications, Qualifications and Assumptions

Div 01

General Requirements

- 1 We have excluded state sales tax on materials.
- 2 We have excluded test lab fees.
- 3 It is assumed that the contract documents have been thoroughly reviewed to meet Federal, state, and local codes; therefore, anything required to make the site and/or building code compliant (that is not noted in the contract documents) is excluded.
- 4 Owner's betterment and construction contingencies are the only allowances noted and observed.
- 5 We have excluded tap and impact fees.
- 6 We have excluded surveyor prepared and stamped as-builts.
- 7 We have excluded any and all rock excavation.
- 8 The Building Permit cost has been excluded.
- 9 The schedule does not account for rain delay; therefore, any rain events will have a day-for-day impact on the schedule.
- 10 We have excluded all A.B.A.A QAC Certifications.

Div 03

Concrete

- 1 We have excluded the disposal of any contaminated soils.
- 2 We have excluded patterned, textured, stained, polished or colored concrete of any type.

Div 05

Metals

- 1 We have excluded Details S3.03/7&8 not called out on plans.
- 2 We have excluded AISC certifications.

Div 07

Thermal & Moisture Protection

- 1 Future details to be issued for Alternate #5 - Re-Roof Existing. Pricing to be issued accordingly, if required).

Div 09

Finishes

- 1 We have excluded the Dirtt System glass portal feature at the Childrens' area as directed.

Div 10

Specialties

- 1 We have excluded hand dryers.
- 2 We have excluded expansion joint covers as directed.
- 3 We have excluded knox box as directed.

Div 12

Furnishings

- 1 We have excluded all furniture.
- 2 We have excluded circulation desk and benches.

Div 21

Fire Suppression

- 1 It is assumed that the existing fire riser will have sufficient pressure to serve existing and and new; therefore, all fire pumps are excluded.

Div 22 & 23 Plumbing & HVAC

- 1 We have excluded cleaning of new and existing ductwork.
- 2 We have excluded temporary air conditioning.
- 3 We have excluded indoor air quality control inspections.
- 4 We have excluded EMS system for the VRF HVAC.
- 5 VRF sequencing will be confirmed with Architect & Engineering Consultants in submittal phase. (Pricing to be issued accordingly, if needed).
- 6 We have excluded any mechanical demolition that is not shown on the construction documents

Div 26 Electrical

- 1 We have excluded lightning protection.
- 2 We have excluded retrofitting light fixtures as directed.

Div 27 Communications

- 1 We have excluded A/V Systems.
- 2 We have excluded access controls.
- 3 We have excluded surveillance system
- 4 We have excluded the PA system.
- 5 We have excluded telephone equipment.

Div 28 Electrical Safety & Security

- 1 We have excluded data cabling.
- 2 We have excluded controls.
- 3 Power to the VRF system assumes sufficient capacity in the existing electrical panels.
- 4 Power disconnects for the VRF system include (34) FCU's, (23) Cassettes, and (3) OAU's.

Div 33 Utilities

- 1 We have excluded any utility vaults.



STEELE & FREEMAN, INC.

CONSTRUCTION MANAGERS • GENERAL CONTRACTORS

1301 Lawson Road • Fort Worth, Texas 76131

**Amendment 1 | AIA A133/CMc
Exhibit 'E' - Schedule**

Date: 4/18/2019

Project: Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022

Architect: Komatsu Architecture

SFI Job No.: 5103

Completion Schedule

General Construction

Substantial Completion to be 487 construction calendar days plus 104 days of potential weather delays based on the schedule listed in the specifications, from notice to proceed or the issuance of the building permit which ever is the later.

Calendar Days: 591

**STEELE & FREEMAN, INC.**

CONSTRUCTION MANAGERS • GENERAL CONTRACTORS

1301 Lawson Road • Fort Worth, Texas 76131

**Amendment 1 | AIA A133/CMc
Exhibit 'F' - Alternates****Date:** 4/18/2019**Project:** Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022**Architect:** Komatsu Architecture**SFI Job No.:** 5103**Alternates Included in the GMP**

Alt. #2	Added TAS required parking	\$	39,211.00
Alt. #3	Added electrochromic glass	\$	66,142.00
Alt. #4	Added new light fixtures	\$	14,307.00
Alt. #5	Re-Roof Existing (excludes ALL MEP connections, curbs, support, framing, and MEP hoisting)(excludes Gas Line modifications)	\$	181,371.00
Option A	VRF Mechanical System	\$	743,331.00
ASI 1	Post Bid		
		\$	1,044,382.00

Alternates Not Included in the GMP

Alt. #1	Added Parking (Future Separate Contract)	\$	54,976.00
Option B	Replace Existing RTUs	\$	358,697.00
		\$	413,673.00



STEELE & FREEMAN, INC.

CONSTRUCTION MANAGERS • GENERAL CONTRACTORS

1301 Lawson Road • Fort Worth, Texas 76131

**Amendment 1 | AIA A133/CMc
Exhibit 'G' - Unit Prices**

Date: 4/18/2019

Project: Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022

Architect: Komatsu Architecture

SFI Job No.: 5103

Unit Prices	Description	Unit Price
	None	

**STEELE & FREEMAN, INC.**

CONSTRUCTION MANAGERS • GENERAL CONTRACTORS

1301 Lawson Road • Fort Worth, Texas 76131

**Amendment 1 | AIA A133/CMc
Exhibit 'H' - Guaranteed Maximum Price****Date:** 4/18/2019**Project:** Flower Mound Public Library Addition
3030 Broadmoor Lane
Flower Mound, Texas 75022**Architect:** Komatsu Architecture**SFI Job No.:** 5103**Guaranteed Maximum Price Recap**

General Requirements, Building & Site Construction	\$9,167,590.11
ASI #1 Post Bid	\$187,530.00
Alt. #2 Added TAS required parking	\$39,211.00
Alt. #3 Added electrochromic glass	\$66,142.00
Alt. #4 Added new light fixtures	\$14,307.00
Alt. #5 Re-Roof Existing (excludes ALL MEP connections, curbs, support, framing, and MEP hoisting)(excludes Gas Line modifications)	\$181,371.00
Alt. #7 VRF Mechanical System	\$743,331.00

Guaranteed Maximum Price	\$10,399,482.11
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Steele & Freeman, Inc.
Construction Managers
General Contractors
(301) Lawson Road
Fort Worth, Texas 76131
PH: 817.232.4742 FAX: 817.232.9113

GMP

Exhibit H - GMP Backup

Project: Flower Mound Public Library Addition
Architect: Knutson Architecture

SFI Job No: 5103

Dated: 4/18/2019

GMP including ASI #1, Alternates 2, 3, 4, 5 and Option A VRF Mechanical System

TOTAL MATERIAL		145,219
TOTAL LABOR		209,080
LABOR BURDEN	38.00%	79,450
TOTAL SUBCONTRACT		8,112,545
TOTAL OTHER		381,420
TOTAL EQUIPMENT		38,941
SALES TAX		3,278
OWNER CONTINGENCY	3.00%	311,984
CONSTRUCTION CONTINGENCY	3.00%	311,984
OVERHEAD	FIXED	400,000
P&P BOND	0.86%	89,436
GENERAL COMMERCIAL LIABILITY	0.38%	39,518
BUILDERS RISK	0.16%	16,639
CM FEE	2.50%	259,987
TOTAL GMP		10,399,482.11

TOTAL SF	\$ SF
41,160.00	252.66

	145,219	209,080	79,450	8,112,545	381,420	38,941	3,278	8,969,933
DESCRIPTION	TOTAL MATERIAL	TOTAL LABOR	TOTAL LABOR BURDEN	TOTAL SUBCONTRACT	TOTAL OTHER	TOTAL EQUIPMENT	TOTAL SALES TAX	LINE ITEM TOTAL
GENERAL REQUIREMENTS	350	115,306	43,816	53,990	381,420	12,938	1,067	608,888
SITE & BUILDING PACKAGE	144,869	93,774	35,634	8,058,555	0	26,003	2,210	8,361,045

	0	0	0	1,313,689	0	0	0	107,875	36,451	1,458,035
	TOTAL MATERIAL	TOTAL LABOR	TOTAL LABOR BURDEN	TOTAL SUBCONTRACT	TOTAL OTHER	TOTAL EQUIPMENT	TOTAL SALES TAX	Cont. / Betterment Insurance / Bonding	CM Fee	LINE ITEM TOTAL
ALT. NO. 1 - PETER COLONY PARK PAVING	0	0	0	49,533	0	0	0	4,068	1,374	54,975
ALT. NO. 2 - REPLACE PAVING ADA	0	0	0	35,329	0	0	0	2,902	980	39,211
ALT. NO. 3 - ELECTROCHROMATIC GLASS	0	0	0	59,594	0	0	0	4,894	1,654	66,142
ALT. NO. 4 - ADDED LIGHT FIXTURES	0	0	0	12,891	0	0	0	1,059	358	14,307
ALT. NO. 5 - RE-ROOF EXISTING	0	0	0	163,415	0	0	0	13,421	4,534	181,371
OPTION A - VRF MECHANICAL SYSTEM	0	0	0	669,742	0	0	0	55,007	18,583	743,331
OPTION B - REPLACE EXISTING RTU's	0	0	0	323,186	0	0	0	26,544	8,967	358,697

GENERAL REQUIREMENTS

TOTAL MATERIAL	350
TOTAL LABOR	115,306
LABOR BURDEN	38.07%
TOTAL SUBCONTRACT	53,990
TOTAL OTHER	381,420
TOTAL EQUIPMENT	12,938
SALES TAX	1,067
TOTAL GEN REQ ESTIMATE	608,888



Steele & Freeman, Inc.
Construction Managers
General Contractors
1301 Lovers Road
Fort Worth, Texas 76131
Ph: 817.232.4742 Fax: 817.232.9113

Project: The Flower Mound Public Library Addition
Architect: Komatsu Architecture

SFI Job No: 3183

Dated: 4/18/2019

GMP

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SITE & BUILDING PACKAGE

TOTAL MATERIAL	144,869
TOTAL LABOR	93,774
LABOR BURDEN	35,434
TOTAL SUBCONTRACT	8,054,553
TOTAL OTHER	0
TOTAL EQUIPMENT	25,083
SALES TAX	2,210
TOTAL ESTIMATE:	8,361,045



Steele & Freeman, Inc.
Construction Managers
General Contractors
1301 Lawson Road
Fort Worth, Texas 76131
PH: 817.332.4742 FAX: 817.332.9113

Project: The Hoover Memorial Public Library Addition
Architect: Kohnstien Associates

SFI Job No: 5103
Dated: 4/18/2019

GNIP

Renovation Area	25000
Addition Area	16160
Total	41160

Cost Per SF	\$ 203.14
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						144.00		91.77		35.34		119.07		0		26.01		2.10		#REP	
ITEM	DESCRIPTION	QTY.	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 30%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	TOTAL				
DIY. 02	EXISTING CONDITIONS																				
02 0000	DEMOLITION	1	LS		0.00		0.00	0.00	98,850.00	98,850.00		0.00		0.00	0.00	0.00	98,850.00	254,968.00			
02 2000	DEMO SLAB FOR MEP	916	SF		0.00		0.00	0.00	10.00	9,160.00		0.00		0.00	0.00	0.00	9,160.00	PRECISION			
02 2010	ADHESIVE REMOVAL	2,500	SF		0.00		0.00	0.00	0.30	500.00		0.00		0.00	0.00	0.00	500.00				
02 2020	TEMPORARY PARTITIONS WITH REMOVAL REEST. ALL	3,450	SF		0.00	2.00	6,916.00	2,628.00	8.00	27,664.00		0.00		0.00	0.00	0.00	27,208.00				
02 2025	EXISTING FOUNDATION UNDERPINNING W/ ENGINEERING	1	LS		0.00		0.00	0.00	54,800.00	54,800.00		0.00		0.00	0.00	0.00	54,800.00	CSC & ORLANDO			
02 2030	DEMO MISC.	25,000	SF		0.00		0.00	0.00	0.75	18,750.00		0.00		0.00	0.00	0.00	18,750.00				
	ASI #1	1	LS		0.00		0.00	0.00	500.00	500.00		0.00		0.00	0.00	0.00	500.00	STRILAND			
	OPTION A - VRF M/FCH	1	LS		0.00		0.00	0.00	3,000.00	3,000.00		0.00		0.00	0.00	0.00	3,000.00	PRECISION			
DIY. 03	CONCRETE																				
03 0000	CONCRETE	1	LS		0.00		0.00	0.00	632,675.00	632,675.00		0.00		0.00	0.00	0.00	632,675.00	STRILAND			
	ALT #1 - Concrete Paving	1	LS		0.00		0.00	0.00	28,340.00	28,340.00		0.00		0.00	0.00	0.00	28,340.00	STRILAND			
03 1000	RELOCATE LIGHT POLE AND AND NEW PIER (8.00)	2	EA		0.00		0.00	0.00	950.00	1,900.00		0.00		0.00	0.00	0.00	1,900.00				
03 3000	MEP PATCHBACK SLAB	916	SF		0.00		0.00	0.00	13.00	13,740.00		0.00		0.00	0.00	0.00	13,740.00				
03 3003	MISC. CONCRETE	1	LS		0.00		0.00	0.00	25,000.00	25,000.00		0.00		0.00	0.00	0.00	25,000.00				
DIY. 04	MASONRY																				
04 0000	MASONRY	1	LS		0.00		0.00	0.00	370,977.00	370,977.00		0.00		0.00	0.00	0.00	370,977.00	PRYOR & PRYOR			
	ASI #1 INTERLOCKING PAVERS	1	LS		0.00		0.00	0.00	48,399.00	48,399.00		0.00		0.00	0.00	0.00	48,399.00				
04 4010	FLASHING	1	LS		0.00		0.00	0.00	27,177.00	27,177.00		0.00		0.00	0.00	0.00	27,177.00	SFI			
04 4020	MISC. MASONRY	25,000	SF		0.00		0.00	0.00	0.05	21,250.00		0.00		0.00	0.00	0.00	21,250.00				
DIY. 05	METAL																				
05 0000	STEEL FABRICATION & ERECTION	1	SF		0.00		0.00	0.00	464,831.00	464,831.00		0.00		0.00	0.00	0.00	464,831.00	KEYSTONE			
	ASI #1 - Steel Modifications	1	SF		0.00		0.00	0.00	39,428.00	39,428.00		0.00		0.00	0.00	0.00	39,428.00				
	Option A - VRF Mech. Space	1	LS		0.00		0.00	0.00	10,000.00	10,000.00		0.00		0.00	0.00	0.00	10,000.00				
05 0510	STAINLESS STEEL CABLE RAILING	1	LS		0.00		0.00	0.00	69,591.25	69,591.25		0.00		0.00	0.00	0.00	69,591.25	SFI			
05 0530	MISCELLANEOUS METALS	1	LS	5,000.00	5,000.00	7,500.00	7,500.00	2,884.00	37,500.00	37,500.00		0.00	2,500.00	2,500.00	212.24	53,342.34					
05 7500	DECORATIVE FORMED METAL - ALLOWANCE	1	LS		0.00		0.00	0.00	25,000.00	25,000.00		0.00		0.00	0.00	0.00	25,000.00				
DIY. 06	WOOD, PLASTIC & COMPOSITES																				
06 1000	ROUGH CARPENTRY	41,160	SF	1.25	\$1,456.00	1.85	76,144.00	28,136.40		0.00		0.00	0.33	14,406.00	1,324.54	172,363.99	433,798.99				
	Option A - VRF Mech. Space	41,160	SF		0.00		0.00	0.00	0.30	12,348.00		0.00		0.00	0.00	0.00	12,348.00	SFI			
06 0800	CABINETS & SOLID SURFACE	1	LS		0.00		0.00	0.00	226,547.00	226,547.00		0.00		0.00	0.00	0.00	226,547.00	AUSTIN CONNER			
	SOLID SURFACE WINDOW SILLS	1	LS		0.00		0.00	0.00	4,416.00	4,416.00		0.00		0.00	0.00	0.00	4,416.00	EST			
06 4030	MISC MILL WORK	41,160	SF		0.00		0.00	0.00	0.30	8,232.00		0.00		0.00	0.00	0.00	8,232.00	SFI			
06 4030	PHASED CONST.	1	LS		0.00		0.00	0.00	10,000.00	10,000.00		0.00		0.00	0.00	0.00	10,000.00	EST			
DIY. 07	THERMAL & MOISTURE PROTECTION																				
07 1800	FLUO APPLIED AIR BARRIER	1	LS		0.00		0.00	0.00	44,250.00	44,250.00		0.00		0.00	0.00	0.00	44,250.00	SFI			
07 1800	FOAM IN PLACE INSULATION	314	LF		0.00		0.00	0.00	25.00	7,850.00		0.00		0.00	0.00	0.00	7,850.00	EST			
07 4240	WATER REPELLENTS (Int. & Ext.)	1	LS		0.00		0.00	0.00	6,300.00	6,300.00		0.00		0.00	0.00	0.00	6,300.00	SFI			
07 5110	TPO, SOFFITS, AND STANDING SEAM ROOFING	1	LS		0.00		0.00	0.00	230,510.00	230,510.00		0.00		0.00	0.00	0.00	230,510.00	KINGDOM			
	ALT #3 - RE ROOF EXISTING ROOF	2	LS		0.00		0.00	0.00	140,000.00	140,000.00		0.00		0.00	0.00	0.00	140,000.00				
	ALT #4 - MISC. ROOFING COST DUE TO RE ROOF OPERATIONS	1	LS		0.00		0.00	0.00	21,000.00	21,000.00		0.00		0.00	0.00	0.00	21,000.00				
	Option A - VRF Mech. Space	1	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	0.00	5,000.00	KINGDOM			
07 5115	FLAT CHANNELS AT PARAPET	2	LS		0.00		0.00	0.00	7,000.00	7,000.00		0.00		0.00	0.00	0.00	7,000.00	SFI			
07 5115	M/UM COMPOSITE PANELS	2	LS		0.00		0.00	0.00	30,000.00	30,000.00		0.00		0.00	0.00	0.00	30,000.00	SFI			
07 4254	ALUMINUM SHADE SCULPTURE POWDER COATED	1	LS		0.00		0.00	0.00	54,970.00	54,970.00		0.00		0.00	0.00	0.00	54,970.00	CLEB/TRE			
07 9200	FIRE STOPPING	1	LS		0.00		0.00	0.00	1,300.00	1,300.00		0.00		0.00	0.00	0.00	1,300.00	SFI			
07 9200	JOINT SEALANTS	1	LS		0.00		0.00	0.00	20,400.00	20,400.00		0.00		0.00	0.00	0.00	20,400.00	SFI			
07 9200	INTERIOR STORE FRONT CAULKING	3	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	0.00	5,000.00	SFI			

DIV.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL	LABOR	MATERIAL	EQUIPMENT	PERMIT	INSURANCE	TAXES	FEE'S	REMARKS
DIV. 06	DOORS / FRAMES / HARDWARE												
06-1113	ALUM. DOORS & FRAMES	1	L.S.	1,100.00	1,100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	WOODWARD'S
	ALUM. DOOR FRAMES	1	L.S.	2,180.00	2,180.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	WOODWARD'S
	WOOD DOORS	1	L.S.	11,760.00	11,760.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	WOODWARD'S
	FINISHED HARDWARE	1	L.S.	14,612.00	14,612.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	WOODWARD'S
06-1150	DOORS & HARDWARE INSTALLATION	1	L.S.	0.00	0.00	0.00	0.00	3,700.00	0.00	0.00	0.00	0.00	JDR
06-9030	GLASS & ALUMINUM	1	L.S.	0.00	0.00	0.00	0.00	321,000.00	0.00	0.00	0.00	0.00	TEXAS COMMERCIAL
06-9010	STOREFRONT BLOCKING	1	L.S.	0.00	0.00	0.00	0.00	5,000.00	0.00	0.00	0.00	0.00	SFI
06-9020	FILM AT EXISTING GLASS	1	L.S.	0.00	0.00	0.00	0.00	2,600.00	0.00	0.00	0.00	0.00	SFI
DIV. 07	FINISHES												
07-3900	DAY WALL	1	L.S.	0.00	0.00	0.00	0.00	708,977.00	0.00	0.00	0.00	0.00	1,364,197.70
	- Option A VRF Mech. System	1	L.S.	0.00	0.00	0.00	0.00	32,047.00	0.00	0.00	0.00	0.00	BAKER
07-7500	CLEAN & REPAIR RTU COIL	1	L.S.	0.00	0.00	0.00	0.00	7,500.00	0.00	0.00	0.00	0.00	BAKER
07-2317	RIGID INSULATION	1	L.S.	0.00	0.00	0.00	0.00	29,273.00	0.00	0.00	0.00	0.00	SW CONST.
07-3008	TILE W/ CRAIG ISO	1	L.S.	0.00	0.00	0.00	0.00	16,800.00	0.00	0.00	0.00	0.00	SW CONST.
	- ASI #1	1	L.S.	0.00	0.00	0.00	0.00	500.00	0.00	0.00	0.00	0.00	MODERN TILE
07-3028	STONE 1/4" TILE AT FIRE PLACE	1	L.S.	0.00	0.00	0.00	0.00	2,500.00	0.00	0.00	0.00	0.00	
07-6423	PETARAZZO FLOOR	1	L.S.	0.00	0.00	0.00	0.00	40,000.00	0.00	0.00	0.00	0.00	AMERICAN
07-6310	CARPET & RESILIENT	1	L.S.	0.00	0.00	0.00	0.00	213,348.00	0.00	0.00	0.00	0.00	B/S
07-6450	FLOOR LEVELING ALLOWANCE	30	B/L	0.00	0.00	0.00	0.00	51.00	0.00	0.00	0.00	0.00	EST
07-6451	FLOORING PROTECTION	41,160	SF	0.00	0.00	0.00	0.00	0.30	0.00	0.00	0.00	0.00	SFI
07-6456	MOISTURE MITIGATION	25,000	SF	0.00	0.00	0.00	0.00	2.50	0.00	0.00	0.00	0.00	SFI
07-9030	PAINTING W/ VOC	1	L.S.	0.00	0.00	0.00	0.00	156,000.00	0.00	0.00	0.00	0.00	PRODIGY
07-9013	MISC. & TOUCH UP PAINTING	41,160	SF	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.00	0.00	SFI
	- Option A VRF Mech. System	41,160	SF	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.00	0.00	SFI
DIV. 08	SPECIALTIES												
08-1100	MAGNETIC MARKER SURFACE	1	L.S.	0.00	0.00	0.00	0.00	19,364.00	0.00	0.00	0.00	0.00	SDI
08-1400	SIGNAGE	1	L.S.	0.00	0.00	0.00	0.00	20,113.00	0.00	0.00	0.00	0.00	KENCO MARK
	- ASI #1	1	L.S.	0.00	0.00	0.00	0.00	4,454.00	0.00	0.00	0.00	0.00	
08-2800	CORNER GUARDS (R EA)	1	L.S.	0.00	0.00	0.00	0.00	2,571.00	0.00	0.00	0.00	0.00	SDI
08-2814	TOILET ACCESSORIES	1	L.S.	0.00	0.00	0.00	0.00	4,792.00	0.00	0.00	0.00	0.00	SDI
08-2815	TOILET PARTITIONS	1	L.S.	0.00	0.00	0.00	0.00	7,798.00	0.00	0.00	0.00	0.00	SDI
08-2219	DIRT WALL SYSTEM - 13 MM WALLS, 6 MM DOORS & 6" PILLS	1	L.S.	0.00	0.00	0.00	0.00	240,964.00	0.00	0.00	0.00	0.00	GL SEAMAN
	- NY #1 Electrochromic Glass	1	L.S.	0.00	0.00	0.00	0.00	58,213.00	0.00	0.00	0.00	0.00	GL SEAMAN
08-2220	DIRTY WALL SYSTEM - GLASS FILM	1	L.S.	0.00	0.00	0.00	0.00	82,967.00	0.00	0.00	0.00	0.00	GL SEAMAN
08-4400	FIRE EXTINGUISHERS & CABINETS	1	L.S.	0.00	0.00	0.00	0.00	649.00	0.00	0.00	0.00	0.00	SDI
08-5115	LOCKERS	1	L.S.	0.00	0.00	0.00	0.00	2,051.00	0.00	0.00	0.00	0.00	SDI - CUSTOM PAINT
DIV. 11	EQUIPMENT												
11-3063	TRANSACTION DRAWER	1	L.S.	2,800.00	2,800.00	184.00	184.00	0.00	0.00	0.00	0.00	0.00	0.00
11-3000	BOOK DROP & RETURN	1	L.S.	2,500.00	2,500.00	184.00	184.00	0.00	0.00	0.00	0.00	0.00	0.00
11-1019	RENTAL EXISTING BOOK DROP	1	L.S.	0.00	0.00	184.00	184.00	0.00	0.00	0.00	0.00	0.00	0.00
11-1100	FIRE PLACE	1	L.S.	0.00	0.00	0.00	0.00	5,300.00	0.00	0.00	0.00	0.00	0.00
11-1110	FIRE PLACE - FLUE (COLGAN COVER)	1	L.S.	0.00	0.00	0.00	0.00	1,300.00	0.00	0.00	0.00	0.00	0.00
11-1100	APPLIANCES	1	L.S.	0.00	0.00	0.00	0.00	3,300.00	0.00	0.00	0.00	0.00	0.00
11-3224	TV MOUNTS	1	L.S.	2,600.00	2,600.00	500.00	500.00	0.00	0.00	0.00	0.00	0.00	0.00
DIV. 12	PLUMBING/AC												
12-5000	ROLLER SHADES - PROGRAM ROOMS 117, 146 & 149	1	L.S.	0.00	0.00	0.00	0.00	62,460.00	0.00	0.00	0.00	0.00	62,460.00
DIV. 13	SPECIAL CONSTRUCTION												
13-2000	MODULARITY STONE PANELS	217	SF	21.00	4,557.00	0.00	0.00	10.00	0.00	0.00	0.00	0.00	4,567.00
13-2000	LINACOR PANELS	113	SF	53.00	5,976.00	0.00	0.00	10.00	0.00	0.00	0.00	0.00	5,986.00
DIV. 21	FIRE SUPPRESSION												
21-0900	FIRE SUPPRESSION SYSTEM	1	L.S.	0.00	0.00	0.00	0.00	63,500.00	0.00	0.00	0.00	0.00	63,500.00
	- Option A VRF Mech. System	1	L.S.	0.00	0.00	0.00	0.00	5,000.00	0.00	0.00	0.00	0.00	68,500.00
DIV. 22	PLUMBING												
22-0900	PLUMBING SHOT & COLD WATER LINES INSULATED	1	L.S.	0.00	0.00	0.00	0.00	246,000.00	0.00	0.00	0.00	0.00	246,000.00
	- ASI #1	1	L.S.	0.00	0.00	0.00	0.00	6,000.00	0.00	0.00	0.00	0.00	252,000.00
	- Option A VRF Mech. System	1	L.S.	0.00	0.00	0.00	0.00	25,016.00	0.00	0.00	0.00	0.00	277,016.00
DIV. 25	MECHANICAL												
25-0000	HVAC	1	L.S.	0.00	0.00	0.00	0.00	223,670.00	0.00	0.00	0.00	0.00	223,670.00
	- Option A VRF Mech. System	1	L.S.	0.00	0.00	0.00	0.00	641,597.00	0.00	0.00	0.00	0.00	865,267.00
	- Option A Drier RTU Scope	1	L.S.	0.00	0.00	0.00	0.00	222,054.00	0.00	0.00	0.00	0.00	1,087,321.00
25-0030	HVAC TEST & BALANCE	1	L.S.	0.00	0.00	0.00	0.00	5,600.00	0.00	0.00	0.00	0.00	1,092,921.00
	- Option A VRF Mech. System	1	L.S.	0.00	0.00	0.00	0.00	6,000.00	0.00	0.00	0.00	0.00	1,098,921.00

DAY	DESCRIPTION	QTY	UNIT	PRICE	TOTAL	DATE	STATUS	REMARKS	ESTIMATE	ACTUAL	DIFFERENCE	REMARKS
DAY 26	ELECTRICAL											
26.0000	ELECTRICAL	1	LS	0.00	0.00	0.00	0.00	1,113,700.00	1,113,700.00	0.00	0.00	1,113,700.00
	ASI #1	1	LS	0.00	0.00	0.00	0.00	44,300.00	44,300.00	0.00	0.00	44,300.00
	ALT #1 Electromechanical Glass	1	LS	0.00	0.00	0.00	0.00	500.00	500.00	0.00	0.00	500.00
	ALT #2 - ADD TYPE EL LIGHT FIXTURES	1	LS	0.00	0.00	0.00	0.00	13,700.00	13,700.00	0.00	0.00	13,700.00
	Option A VRF Mech. System	1	LS	0.00	0.00	0.00	0.00	120,100.00	120,100.00	0.00	0.00	120,100.00
DAY 29	ELECTRONIC SAFETY AND SECURITY											
29.1100	FIRE ALARM	1	LS	0.00	0.00	0.00	0.00	23,700.00	23,700.00	0.00	0.00	23,700.00
	ASI #1	2	LS	0.00	0.00	0.00	0.00	5,000.00	5,000.00	0.00	0.00	5,000.00
	Option A VRF Mech. System	1	LS	0.00	0.00	0.00	0.00	7,500.00	7,500.00	0.00	0.00	7,500.00
DAY 31	EARTHWORK											
31.2010	EROSION CONTROL											
	SWEEP NARRATIVE	1	EA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	CONSTRUCTION ENTRANCE	1	EA	0.00	0.00	0.00	0.00	2,000.00	2,000.00	0.00	0.00	2,000.00
	SILT FENCE	1317	LS	0.00	0.00	0.00	0.00	2.00	2,634.00	0.00	0.00	2,634.00
	STRAW BATTLE	100	LF	0.00	0.00	0.00	0.00	3.50	350.00	0.00	0.00	350.00
	INLET PROTECTION	6	EA	0.00	0.00	0.00	0.00	125.00	750.00	0.00	0.00	750.00
	MAINTENANCE	60	WCS	0.00	36.00	2,160.00	0.00	0.00	0.00	0.00	0.00	0.00
31.3000	EARTHWORK & SITE DEMOLITION	1	LS	0.00	0.00	0.00	0.00	102,301.00	102,301.00	0.00	0.00	102,301.00
	ALT #1 - DEMO PAVING	3	LS	0.00	0.00	0.00	0.00	6,000.00	6,000.00	0.00	0.00	6,000.00
31.0015	FINE GRADE DISTURBED AREAS	41,484	SF	0.00	0.00	0.00	0.00	0.00	36,207.20	0.00	0.00	36,207.20
31.0015	TEMP DRILLATION	21,000	SF	0.00	0.00	0.00	0.00	0.45	11,250.00	0.00	0.00	11,250.00
31.1110	TERRACE CONTROL	1	LS	0.00	0.00	0.00	0.00	1,439.00	1,439.00	0.00	0.00	1,439.00
DAY 32	SITE IMPROVEMENTS											
32.1720	PAVEMENT MARKINGS	1	LS	0.00	0.00	0.00	0.00	5,000.00	5,000.00	0.00	0.00	5,000.00
	ALT #2 - AD Paving Marking	1	LS	0.00	0.00	0.00	0.00	150.00	150.00	0.00	0.00	150.00
32.0010	LANDSCAPE	1	LS	0.00	0.00	0.00	0.00	112,000.00	112,000.00	0.00	0.00	112,000.00
32.0010	IRRIGATION	1	LS	0.00	0.00	0.00	0.00	36,000.00	36,000.00	0.00	0.00	36,000.00
DAY 33	UTILITIES											
33.1100	UTILITIES	1	LS	0.00	0.00	0.00	0.00	117,229.00	117,229.00	0.00	0.00	117,229.00
	LAYOUT / SPOT REMOVAL & MAINTENANCE	1	LS	0.00	0.00	0.00	0.00	10,360.00	10,360.00	0.00	0.00	10,360.00
	ASI #1 UTILITIES	1	LS	0.00	0.00	0.00	0.00	17,966.13	17,966.13	0.00	0.00	17,966.13

ASI No. 01

TOTAL MATERIAL		0
TOTAL LABOR		0
LABOR BURDEN		0
TOTAL SUBCONTRACT	168,964	0
TOTAL OTHER		0
TOTAL EQUIPMENT		0
SALES TAX		0
OWNER CONTINGENCY	3.00%	5,626
CONSTRUCTION CONTINGENCY	3.00%	5,626
P&P BOND	0.86%	1,613
GENERAL COMMERCIAL LIABILITY	0.38%	713
BUILDERS RISK	0.16%	300
CM FEE	2.50%	4,688
TOTAL ESTIMATE		187,530



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Project: The Flower Mound Public Library Addition
 Architect: Komatsu Architecture

SFI Job No: 5103
 Dated: 4/18/2019

GMP

ITEM	DESCRIPTION	QTY.	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 30%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV. 02	EXISTING CONDITIONS																148,581.00
02 0000	DEMOLITION	1	LS		0.00		0.00	0.00	500.00	500.00		0.00		0.00	0.00	500.00	DEMOLITION
DIV. 04	MASONRY																0.00
04 4000	MASONRY - INTERLOCKING PAVERS	1	LS		0.00		0.00	0.00	48,399.00	48,399.00		0.00		0.00	0.00	48,399.00	PAVER PAVING
DIV. 05	METALS																39,428.00
05 0000	STEEL FABRICATION & ERECTION	1	SP		0.00		0.00	0.00	39,428.00	39,428.00		0.00		0.00	0.00	39,428.00	WELDING
DIV. 09	FINISHES																500.00
09 3000	TILE W/ CRACK ISO	1	LS		0.00		0.00	0.00	500.00	500.00		0.00		0.00	0.00	500.00	WATERPROOFING
DIV. 10	SPECIALTIES																4,454.00
10 1400	SIGNAGE	1	LS		0.00		0.00	0.00	4,454.00	4,454.00		0.00		0.00	0.00	4,454.00	SIGNAGE
DIV. 22	PLUMBING																6,000.00
22 0000	PLUMBING (HOT & COLD WATER LINES INSULATED)	1	LS		0.00		0.00	0.00	6,000.00	6,000.00		0.00		0.00	0.00	6,000.00	ORTH TEXAS PLUMBING
DIV. 26	ELECTRICAL																44,300.00
26 0000	ELECTRICAL	1	LS		0.00		0.00	0.00	44,300.00	44,300.00		0.00		0.00	0.00	44,300.00	ELECTRICAL
DIV. 28	ELECTRONIC SAFETY AND SECURITY																5,000.00
28 3100	FIRE ALARM	1	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	5,000.00	INTEX
DIV. 33	UTILITIES																17,886.15
33 1100	UTILITIES	1	LS		0.00		0.00	0.00	17,886.15	17,886.15		0.00		0.00	0.00	17,886.15	UTILITIES
		1	LS		0.00		0.00	0.00		0.00		0.00		0.00	0.00	0.00	



TOTAL MATERIAL		0
TOTAL LABOR		0
LABOR BURDEN		
TOTAL SUBCONTRACT	669,742	
TOTAL OTHER	0	
TOTAL EQUIPMENT	0	
SALES TAX	0	
OWNER CONTINGENCY	3.00%	22,300
CONSTRUCTION CONTINGENCY	3.00%	22,300
P&P BOND	0.86%	6,393
GENERAL COMMERCIAL LIABILITY	0.38%	2,825
BUILDERS RISK	0.16%	1,189
CM FEE	2.50%	18,583
TOTAL ESTIMATE		743,331

\$ 55,006.53

GMP

ITEM	DESCRIPTION	QTY.	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 38%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV. 02	EXISTING CONDITIONS																
02 0000	DEMOLITION	1	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	5,000.00	PRECISION
DIV. 05	METALS																
05 0520	MISCELLANEOUS METALS	1	LS		0.00		0.00	0.00	10,000.00	10,000.00		0.00		0.00	0.00	10,000.00	10,000.00
DIV. 06	WOOD, PLASTICS & COMPOSITES																
06 1000	ROUGH CARPENTRY	41,340	SF		0.00		0.00	0.00	0.30	12,348.00		0.00		0.00	0.00	12,348.00	SFI
DIV. 07	THERMAL & MOISTURE PROTECTION																
07 5510	TPO, SOFFITS, AND STANDING SEAM ROOFING	1	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	5,000.00	KINGDOM
DIV. 09	FINISHES																
09 2900	DRYWALL	1	LS		0.00		0.00	0.00	32,047.00	32,047.00		0.00		0.00	0.00	32,047.00	BAKER
09 9015	MISC. & TOUCH UP PAINTING	41,340	SF		0.00		0.00	0.00	0.25	10,290.00		0.00		0.00	0.00	10,290.00	SFI
DIV. 21	FIRE SUPPRESSION																
21 0000	FIRE SUPPRESSION SYSTEM	1	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	5,000.00	IMPERIAL
DIV. 22	PLUMBING																
22 6000	PLUMBING (HOT & COLD WATER LINES INSULATED)	1	LS		0.00		0.00	0.00	25,016.00	25,016.00		0.00		0.00	0.00	25,016.00	NORTH TEXAS PLUMBING
DIV. 23	MECHANICAL																
23 0000	HVAC	1	LS		0.00		0.00	0.00	643,597.00	643,597.00		0.00		0.00	0.00	643,597.00	CMS
	HVAC - DELETE ORIGINAL RTU SCOPE	1	LS		0.00		0.00	0.00	-222,054.00	-222,054.00		0.00		0.00	0.00	-222,054.00	ADVANCE AIR
23 0020	HVAC TEST & BALANCE	1	LS		0.00		0.00	0.00	6,000.00	6,000.00		0.00		0.00	0.00	6,000.00	ADVANCE AIR
DIV. 26	ELECTRICAL																
26 0000	ELECTRICAL	1	LS		0.00		0.00	0.00	120,100.00	120,100.00		0.00		0.00	0.00	120,100.00	INTEN
DIV. 28	ELECTRONIC SAFETY AND SECURITY																
28 3100	FIRE ALARM	1	LS		0.00		0.00	0.00	7,500.00	7,500.00		0.00		0.00	0.00	7,500.00	NEI DATACOM

Option B - RTU Replacement GMP w/ ASI #1 and Alternates 1, 2, 3, 4, 5

TOTAL MATERIAL		0
TOTAL LABOR		0
LABOR BURDEN		0
TOTAL SUBCONTRACT	323,186	
TOTAL OTHER		0
TOTAL EQUIPMENT		0
SALES TAX		0
OWNER CONTINGENCY	3.00%	10,761
CONSTRUCTION CONTINGENCY	3.00%	10,761
P&P BOND	0.86%	3,085
GENERAL COMMERCIAL LIABILITY	0.38%	1,363
BUILDERS RISK	0.16%	574
CM FEE	2.50%	8,967
TOTAL ESTIMATE		358,697



Steele & Freeman, Inc.

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General Contractors1301 Lawson Road
Fort Worth, Texas 76131
Ph: 817.232.4742 Fax: 817.232.9113Project: The Flower Mound Public Library Addition
Architect: Komatsu Architecture

SFI Job No: 5103

Dated: 4/18/2019

GMP

ITEM	DESCRIPTION	QTY.	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 38%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV. 05	METALS									323,186							318,410
05 0520	MISCELLANEOUS METALS	1	LS		0.00		0.00	0.00	10,000.00	10,000.00		0.00		0.00	0.00	10,000.00	10,000.00
DIV. 06	WOOD, PLASTICS & COMPOSITES																
06 1000	ROUGH CARPENTRY	41,160	SF		0.00		0.00	0.00	0.30	12,348.00		0.00		0.00	0.00	12,348.00	12,348.00
DIV. 07	THERMAL & MOISTURE PROTECTION																
07 5510	ITO, SOFFITS, AND STANDING SEAM ROOFING	1	LS		0.00		0.00	0.00	10,000.00	10,000.00		0.00		0.00	0.00	10,000.00	KINGDOM
07 9200	JOINT SEALANTS	1	LS		0.00		0.00	0.00		0.00		0.00		0.00	0.00	0.00	0.00
DIV. 08	OPENINGS																
DIV. 09	FINISHES																
09 2900	DRYWALL	1	LS		0.00		0.00	0.00	32,047.00	32,047.00		0.00		0.00	0.00	32,047.00	BAKER
09 9015	MISC & TOUCH UP PAINTING	41,160	SF		0.00		0.00	0.00	0.25	10,290.00		0.00		0.00	0.00	10,290.00	SFI
DIV. 21	FIRE SUPPRESSION																
21 0000	FIRE SUPPRESSION SYSTEM	1	LS		0.00		0.00	0.00	5,000.00	5,000.00		0.00		0.00	0.00	5,000.00	5,000.00
DIV. 22	PLUMBING																
22 0000	PLUMBING (HOT & COLD WATER LINES INSULATED) ALLOWANCE	1	LS		0.00		0.00	0.00	25,016.00	25,016.00		0.00		0.00	0.00	25,016.00	25,016.00
DIV. 23	MECHANICAL																
23 0000	HVAC	1	LS		0.00		0.00	0.00	139,889.00	139,889.00		0.00		0.00	0.00	139,889.00	139,889.00
23 0020	HVAC TEST & BALANCE	1	LS		0.00		0.00	0.00	6,000.00	6,000.00		0.00		0.00	0.00	6,000.00	6,000.00
DIV. 26	ELECTRICAL																
26 0000	ELECTRICAL	1	LS		0.00		0.00	0.00	60,320.00	60,320.00		0.00		0.00	0.00	60,320.00	60,320.00
DIV. 28	ELECTRONIC SAFETY AND SECURITY																
28 3100	FIRE ALARM	1	LS		0.00		0.00	0.00	7,500.00	7,500.00		0.00		0.00	0.00	7,500.00	7,500.00

ALT. No. 01 - Add Peter Colony Park Parking

TOTAL MATERIAL		0	
TOTAL LABOR		0	
LABOR BURDEN		0	
TOTAL SUBCONTRACT		49,533	
TOTAL OTHER		0	
TOTAL EQUIPMENT		0	
SALES TAX		0	
OWNER CONTINGENCY	3.00%	1,649	
CONSTRUCTION CONTINGENCY	3.00%	1,649	
P&P BOND	0.86%	473	
GENERAL COMMERCIAL LIABILITY	0.38%	209	
BUILDERS RISK	0.16%	88	
CM FEE	2.50%	1,374	
TOTAL ESTIMATE		54,976	\$ 4,068.19



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 General Contractors
 1301 Lawson Road
 Fort Worth, Texas 76131
 Ph: 817.232.4742 Fax: 817.232.9113

Project: The Flower Mound Public Library Addition

Architect: Komatsu Architecture

SFI Job No: 5103

Dated: 4/18/2019

GMP

ITEM	DESCRIPTION	QTY	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 38%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV. 03	CONCRETE																43,500.00
03 3200	CONCRETE	1	EA		0.00		0.00	0.00	39,500.00	39,500.00		0.00		0.00	0.00	39,500.00	STRILAND
DIV. 26	ELECTRICAL																
26 0000	LIGHT POLE FIXTURE	1	EA		0.00		0.00	0.00	4,000.00	4,000.00		0.00		0.00	0.00	4,000.00	EST
DIV. 31	EARTHWORK																
31 3000	EARTHWORK	1	LS		0.00		0.00	0.00	4,201.00	4,201.00		0.00		0.00	0.00	4,201.00	RPMX
DIV. 32	EXTERIOR IMPROVEMENTS																
32 1312	CONCRETE - LIGHT POLE PIER	1	EA		0.00		0.00	0.00	950.00	950.00		0.00		0.00	0.00	950.00	EST
32 1723	PAVEMENT MARKINGS	1	LS		0.00		0.00	0.00	150.00	150.00		0.00		0.00	0.00	150.00	STRIPING PLUS

ALT. No. 02 - Replace Paving to Meet ADA

TOTAL MATERIAL		0
TOTAL LABOR		0
LABOR BURDEN		0
TOTAL SUBCONTRACT	35,329	
TOTAL OTHER		0
TOTAL EQUIPMENT		0
SALES TAX		0
OWNER CONTINGENCY	3.00%	1,176
CONSTRUCTION CONTINGENCY	3.00%	1,176
P&P BOND	0.86%	337
GENERAL COMMERCIAL LIABILITY	0.38%	149
BUILDERS RISK	0.16%	63
CM FEE	2.50%	980
TOTAL ESTIMATE		39,211

\$ 2,901.61



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 Fort Worth, Texas 76121
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Project: The Flower Mound Public Library Addition
 Architect: Komane Architecture

SFI Job No: 5103

Dated: 4/18/2019

GMP

ITEM	DESCRIPTION	QTY	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 38%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV 32	EXTERIOR IMPROVEMENTS																
31 3000	DEMO PAVING	1	LS		0.00		0.00	0.00	6,099.00	6,099.00		0.00		0.00		6,099	HPACK
DIV 32	EXTERIOR IMPROVEMENTS																
32 1312	CONCRETE	1	LS		0.00		0.00	0.00	28,550.00	28,550.00		0.00		0.00		28,550	STRILAND
32 1723	PAVEMENT MARKINGS	1	LS		0.00		0.00	0.00	158.00	158.00		0.00		0.00		158	STRIPING PLUS

ALT. No. 03 - Add Electro Chromatic Glass at Room
III North & East Walls



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Project: The Flower Mound Public Library Addition

Architect: Komatsu Architecture

SFI Job No: 5803

Dated: 4/18/2019

TOTAL MATERIAL		0	
TOTAL LABOR		0	
LABOR BURDEN		0	
TOTAL SUBCONTRACT	59,594		
TOTAL OTHER		0	
TOTAL EQUIPMENT		0	
SALES TAX		0	
OWNER CONTINGENCY	3.00%	1,984	
CONSTRUCTION CONTINGENCY	3.00%	1,984	
P&P BOND	0.86%	569	
GENERAL COMMERCIAL LIABILITY	0.38%	251	
BUILDERS RISK	0.16%	106	\$ 4,894.49
CM FEE	2.50%	1,654	
TOTAL ESTIMATE		66,142	

GMP

ITEM	DESCRIPTION	QTY.	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 36%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV. 07	THERMAL & MOISTURE PROTECTION																
08 9000	DIRT WALL SYSTEM - ELECTRO - CHROMATIC	1	L.S.		0.00		0.00	0.00	58,213.00	58,213.00		0.00		0.00	0.00	58,213.00	GL SEAMAN
DIV. 26	ELECTRICAL																
26 0000	ELECTRICAL	1	L.S.		0.00		0.00	0.00	500.00	500.00		0.00		0.00	0.00	500.00	

ALT. No. 04 - Add New Light Fixtures

TOTAL MATERIAL		0
TOTAL LABOR		0
LABOR BURDEN		0
TOTAL SUBCONTRACT	12,891	0
TOTAL OTHER		0
TOTAL EQUIPMENT		0
SALES TAX		0
OWNER CONTINGENCY	3.00%	429
CONSTRUCTION CONTINGENCY	3.00%	429
P&P BOND	0.86%	123
GENERAL COMMERCIAL LIABILITY	0.38%	54
BUILDERS RISK	0.16%	23
CM FEE	2.50%	358
TOTAL ESTIMATE		14,307



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Project: The Flower Mound Public Library Addition
Architect: Komatsu Architecture

SFI Job No: 5103
Dated: 4/18/2019

GMP

ITEM	DESCRIPTION	QTY.	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 38%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
Div. 26	ELECTRICAL																0.00
	ADD TYPE F1 LIGHT FIXTURES	1	LS		0.00		0.00	0.00	12,700.00	12,700.00		0.00		0.00		0.00	12,700.00

ALT. No. 05 - Re-Roof Existing

TOTAL MATERIAL		0	
TOTAL LABOR		0	
LABOR BURDEN		0	
TOTAL SUBCONTRACT	163,415		
TOTAL OTHER		0	
TOTAL EQUIPMENT		0	
SALES TAX		0	
OWNER CONTINGENCY	3.00%	5,441	
CONSTRUCTION CONTINGENCY	3.00%	5,441	
P&P BOND	0.86%	1,560	
GENERAL COMMERCIAL LIABILITY	0.38%	689	
BUILDERS RISK	0.16%	290	
CM FEE	2.50%	4,534	\$ 13,421.43
TOTAL ESTIMATE		181,371	



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Project: The Flower Mound Public Library Addition
Architect: Komatsu Architecture

SFI Job No: 5193
Dated: 4/18/2019

GMP

ITEM	DESCRIPTION	QTY	UNIT	UNIT MATERIAL	TOTAL MATERIAL	UNIT LABOR	TOTAL LABOR	BURDEN 38%	UNIT SUB	TOTAL SUB	UNIT OTHER	TOTAL OTHER	UNIT EQUIP	TOTAL EQUIP	SALES TAX	LINE ITEM TOTAL	
DIV. 07	ELECTRICAL																0.00
07 5510	RE-ROOF EXISTING	1	L.S		0.00		0.00	0.00	140,000.00	140,000.00		0.00		0.00		0.00	140,000.00
	ANTICIPATED ESCALATION	1	L.S		0.00		0.00	0.00	21,000.00	21,000.00		0.00		0.00		0.00	21,000.00



TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: May 6, 2019

FROM: Andrea Roy, Director of Economic Development

ITEM: **Public Hearing to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial-industrial tax abatement at 951 Garden Ridge Blvd.**

BACKGROUND INFORMATION: Establishment of a reinvestment zone on the property will facilitate a proposed Tax Abatement and Chapter 380 Agreement between the Town, Thirty-One Gifts, LLC (company/tenant) and Prologis (building owner/landlord), in exchange for Thirty-One Gifts relocating its warehouse distribution facility to 951 Garden Ridge Blvd.

Chapter 312 of the Texas Tax Code requires that municipalities wishing to execute a Tax Abatement Agreement designate a Tax Abatement Reinvestment Zone by ordinance after a public hearing. Notice of the subject public hearing appeared in the Denton Record-Chronicle on Saturday, April 27, 2019. Additionally, all other applicable taxing entities (Denton County & LISD) were notified of the intention to establish the reinvestment zone.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

All financial analysis will be provided in conjunction with the Thirty-One Gifts, LLC and Prologis Tax Abatement and Chapter 380 Agreement item.

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

Finance Review by: N/A

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

ATTACHMENTS:

1. Ordinance designating Tax Abatement Reinvestment Zone at 951 Garden Ridge Blvd.

RECOMMENDATION: Move to approve as presented in the agenda caption.

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DESIGNATING A CERTAIN AREA AS A TAX ABATEMENT REINVESTMENT ZONE FOR COMMERCIAL-INDUSTRIAL TAX ABATEMENT, WITHIN THE TOWN OF FLOWER MOUND, TEXAS; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATED THERETO; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound, Texas (sometimes hereinafter referred to as the "Town") desires to promote the development or redevelopment of a certain contiguous geographic area within the Town of Flower Mound, Texas, by the creation of a reinvestment zone for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended; and,

WHEREAS, a public hearing before the Town Council of the Town was scheduled and held at 6:00 p.m. on May 6, 2019, such date being at least seven (7) days after the date of publication of the notice of such public hearing, pursuant to Section 312.201(d) of the Texas Tax Code, as amended; and,

WHEREAS, the Town Council held such public hearing after publishing notice of such public hearing, and giving written notice to all taxing units overlapping the territory inside the proposed Tax Abatement Reinvestment Zone; and,

WHEREAS, the Town at such public hearing invited any interested person to appear and speak for or against the creation of the Tax Abatement Reinvestment Zone, the boundaries of the proposed Tax Abatement Reinvestment Zone, whether all or part of the territory should be included in such proposed Tax Abatement Reinvestment Zone, and the concept of tax abatement;

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

SECTION 1

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2

The Town, after conducting such public hearing and having heard such evidence and testimony has made the following findings and determinations based upon the testimony presented:

- (a) That a public hearing on the adoption of the Tax Abatement Reinvestment Zone has been properly called, held and conducted, and that notice of such hearing has been published at least seven (7) days before the hearing in a newspaper of general circulation within the Town, and mailed to all property taxing units overlapping the territory inside the proposed Tax Abatement Reinvestment Zone at least seven (7) days prior to the public hearing; and

- (b) That the boundaries of the Tax Abatement Reinvestment Zone should be the area as described in Exhibit A, which is attached hereto and incorporated herein for all purposes; and
- (c) That creation of the Tax Abatement Reinvestment Zone for commercial-industrial tax abatement with boundaries as described in Exhibit A will result in benefits to the Town, and to the land included within the Zone, and the improvements sought are feasible and practical; and
- (d) That the Tax Abatement Reinvestment Zone as described and/or depicted in Exhibit A meets the criteria for the creation of a tax abatement reinvestment zone as set forth in Section 312.202(a) of the Texas Tax Code, as amended, and in particular Section 312.202(a)(6) of the Texas Tax Code, in that it is “reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the Town”; and
- (e) That the Tax Abatement Reinvestment Zone as described and/or depicted in Exhibit A meets the criteria for the creation of a tax abatement reinvestment zone as set forth in the Town’s Tax Abatement Guidelines and Criteria; and
- (f) That the Improvements proposed for the Tax Abatement Reinvestment Zone are feasible and practical and would be a benefit to the land and to the Town after the expiration of any tax abatement agreement.

SECTION 3

Pursuant to Section 312.201 of the Texas Tax Code, as amended, the Town of Flower Mound, Texas, hereby creates a Tax Abatement Reinvestment Zone for commercial-industrial tax abatement encompassing only the area described in Exhibit A, and such Tax Abatement Reinvestment Zone is hereby designated.

SECTION 4

The Tax Abatement Reinvestment Zone shall take effect immediately upon passage of this Ordinance. The Tax Abatement Reinvestment Zone is effective for five (5) years and may be renewed for periods not to exceed five (5) years. The expiration of the designation of the Tax Abatement Reinvestment Zone does not affect an existing tax abatement agreement.

SECTION 5

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

SECTION 6

Any provision of any prior ordinance of the Town, whether codified or uncoded, which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the Town, whether codified or uncoded, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

SECTION 7

This Ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS BY A VOTE OF __TO __, ON THIS THE 6TH DAY OF MAY, 2019.

APPROVED:

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

Exhibit "A"

LEGAL DESCRIPTION

951 GARDEN RIDGE BLVD.

FLOWER MOUND, TEXAS

LOT 1 BLOCK A OF CORNERSTONE I, an Addition to the City of Flower Mound, Denton County, Texas, according to the Amended Plat thereof recorded in Cabinet Y, Page 12-16, Plat Records, Denton County, Texas.



TOWN COUNCIL AGENDA ITEM NO. 17

REGULAR ITEM

DATE: May 6, 2019

FROM: Andrea Roy, Economic Development Director

ITEM: **Public Hearing to consider approval of a Tax Abatement and Chapter 380 Agreement with Thirty-One Gifts, LLC and Prologis, for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town.**

BACKGROUND INFORMATION: The subject request relates to the proposed Tax Abatement and Chapter 380 Agreement between the Town, Thirty-One Gifts, LLC (company/tenant), and Prologis (building owner/landlord), in order for Thirty-One Gifts to relocate their warehouse-distribution facility from Columbus, Ohio to 951 Garden Ridge Boulevard. Thirty-One Gifts is a direct-sales company offering purses, wallets, totes, accessories, home décor, organizing solutions, thermal bags, jewelry and more.

The Town has been in negotiations with Thirty-One Gifts, LLC since spring 2018, as local, county, and state agencies worked to recruit the company and assist in offsetting the company's extensive relocation costs. Since that time, the company considered a variety of options and ultimately decided to relocate their headquarters operations within Ohio and move the distribution facility to Texas, which will provide for new technology and delivery efficiencies for the company.

Thirty-One Gifts will make a total \$17.5 million capital investment, with \$7.5 million going into improvements in the real property and \$10 million added in business personal property (equipment, conveyors, etc.). Additionally, an estimated \$3 million of existing equipment will be relocated from Ohio. The company will occupy the entire 651,000 sq. ft. facility, which formerly served as the Kohler distribution center. Lastly, the company is expected to generate a significant level of sales and use tax to the Town, as sales transacted within the State of Texas will be cited in Flower Mound and taxed at the Town's 2% rate (1% to the General Fund and 1% to the Crime and Fire Districts).

Thirty-One Gifts will hire an estimated 650 individuals to fully staff the distribution center. Hiring is currently underway and the facility is operating with a small crew at this time, but will quickly ramp up as order fulfillment begins to transition from Ohio to Flower Mound. Provided the option to relocate to Texas, many of the company's current employees took advantage of the opportunity and have moved to the area (approx. 20-25), which will assist with the company's staffing efforts. While the company intends to employ 650 employees, due to the short ramp up period, the company will utilize staffing agencies to assist with the hiring, and, will therefore likely employ contract employees at the facility for a period of time. Of the estimated 650 employees, the incentive agreement requires that a minimum of 400 employees be direct employees of the company.

The proposed Tax Abatement and Chapter 380 Agreement provides for a 5-year, 50% real and business personal property tax abatement on any added value over 2019 values (total estimated savings \$285,500), a 5-year, 50% rebate of the Town's 1% (General Fund) Sales and Use Tax generated based on taxable sales and start-up purchases sourced in Flower Mound (estimated at \$587,500), a grant equal to 100% of impact fees assessed (it has since been determined that no impact fees are due), and a 50% building permit fee waiver (\$39,400). A 10-year cost-benefit analysis indicates a total cost to the Town of \$912,000, providing a minimum net benefit of over \$6 million. The payback period is just over 3 years.

In exchange for the noted above incentives, the company will (in accordance with the terms of the incentive agreement) relocate its warehouse distribution operations to 951 Garden Ridge Boulevard by no later than June 1, 2019, occupy and operate from this facility for an approximate ten year period, employ no fewer than three hundred (300) full-time equivalent jobs by the end of 2019 and no fewer than four hundred (400) full-

time equivalent jobs by end of the year 2020, a number which must be maintained for the life of the agreement.

With regard to the sales and use tax rebate, the company's sales must produce no less than \$150,000 in sales and use taxes to the Town on an annual basis. For the purpose of this agreement, sales and use tax is defined as the Town's 1% General Fund Sales and Use Tax, not the full 2%. If this minimum is not met, the company is not eligible for the sales and use tax rebate portion of the incentive agreement, leaving the remainder of the terms active and in effect. This portion of the incentive agreement was crafted in this way, as the State's Sales and Use Tax Laws are multifaceted and the company's sales are generated through a variety of outlets (online, independent sales consultant, etc.), which may impact the manner in which sales tax will be generated to the Town.

With regard to the real property abatement, Prologis, the building owner, must legally be the recipient of the real property abatement; however, the incentive agreement requires the benefit be passed through to the company. Prologis is in not liable for the performance measures required by the company. Tax abatement benefit will only apply to the added value above and beyond the 2019 base year value of both the real and business personal property.

Additional incentives offered to the company are workforce development and hiring assistance through the State's Workforce Board, as well as Denton County's consideration of a 5-year, 25% abatement of real and business personal property.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: Sales and Use Tax Rebate (5-Year Period) estimated annually at \$100,000-\$150,000, dependent upon sales and use tax received by the Town.

Proposed Expenditure:	Account Number:
Estimated Annual Expense \$100,000-\$150,000	100-680-81000-5320

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

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

ATTACHMENTS:

1. Thirty-One Gifts/Prologis Tax Abatement and Chapter 380 Agreement
2. Cost-Benefit Analysis

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

**TAX ABATEMENT AND CHAPTER 380 AGREEMENT
BETWEEN
THE TOWN OF FLOWER MOUND,
THIRTY-ONE GIFTS, LLC, &
PROLOGIS**

This Tax Abatement and Chapter 380 Agreement ("**Agreement**") is made and entered into by and between the Town of Flower Mound, Texas ("**Town**"), Thirty-One Gifts, LLC, an Ohio limited liability company ("**Company**"), and PROLOGIS, a Maryland real estate investment trust ("**Owner**"), for the purposes and considerations stated below. Town, Company, and Owner, may sometimes hereafter be referred to individually as a "**Party**" or collectively as the "**Parties**."

WITNESSETH:

WHEREAS, on or about December 17, 2007, the Town adopted Resolution No. 37-07 electing to become eligible to participate in tax abatement agreements, in accordance with Section 312.002(a) of the Texas Tax Code, and subsequently has timely reaffirmed said tax abatement agreement policies; and

WHEREAS, at such times the Town also adopted and/or reaffirmed tax abatement guidelines and criteria, in accordance with Section 312.002 of the Texas Tax Code (hereinafter referred to as the "Town's Tax Abatement Guidelines and Criteria"); and

WHEREAS, the Town's Tax Abatement Guidelines and Criteria constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the Town, as contemplated by Chapter 312 of the Texas Tax Code, as amended; and

WHEREAS, on or about _____, 2019, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. ____ establishing a Tax Abatement Reinvestment Zone ("**Zone**") in the Town of Flower Mound, Texas, for commercial-warehouse tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code; and

WHEREAS, the Owner owns the real property located within the Zone; and

WHEREAS, the Company is leasing, or will lease, real property within the Zone; and

WHEREAS, this abatement of real and tangible personal property taxes will maintain and enhance the economic and employment base of the Town, thereby benefiting the Town, in accordance with the Tax Abatement Guidelines and Criteria and the Property Redevelopment and Tax Abatement Act; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, finds that the contemplated use of the Real Property, and the Improvements to the Real Property as set forth in this Agreement, and the other terms hereof are consistent with encouraging continued reinvestment within said Reinvestment Zone in the Town of Flower Mound, Texas, in accordance with the purposes for its creation, and are in compliance with the Town's Tax Abatement Guidelines and Criteria, and Chapter 312 of the Texas Tax Code; and

WHEREAS, the Owner and Company acknowledge and agree that the tax abatements granted by this Agreement are contingent upon their compliance with this Agreement in accordance with the terms and conditions set forth herein; and

WHEREAS, the Town desires to provide incentives to the Company pursuant to Chapter 380 of the Texas Local Government Code to locate Company's national warehouse distribution facility in 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 and Town, by assisting in eliminating unemployment or underemployment in the State and Town, and will enhance business and commercial activity within the State and Town; and

WHEREAS, the Owner shall pass on the benefits of the real property tax abatement to the Company, and the Company shall be the sole beneficiary of the real and tangible personal property tax abatements and Chapter 380 incentives provided for in this Agreement; and

WHEREAS, the Town finds that it is in the public interest to provide the tax abatement and 380 agreement;

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", "Owner", "Parties", and "Party", shall have the meanings provided above.

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with the entity to which the term refers, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise; (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity; or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Base Year Tax Value" means the assessed value of the Real Property according to the Denton Central Appraisal District for Tax Year 2019.

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

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

“Expiration Date” shall mean December 31, 2028 or the termination of the Lease, unless this Agreement is sooner terminated as provided herein.

“Event of Bankruptcy” means the commencement of any proceeding under any bankruptcy laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Facility” means the existing 651,000 square foot warehouse distribution building located at 951 Garden Ridge owned by Owner and to be leased by Company.

“First Year of Abatement” shall mean January 1 of the calendar year immediately following the date of issuance of a Certificate of Occupancy for the Facility.

“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.

“Full-Time Equivalent Jobs” means any employee on a 36 hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least 36 hours per week.

“Grants” shall collectively mean the Impact Fee Grant and Sales and Use Tax Grant.

“Impact Fee Grant” means the grant from Town in an amount equal to 100% of the Town impact fees (water, wastewater, and roadway) paid by Owner and/or Company and received by Town, which are attributable to the construction of the Improvements.

“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 Owner or Company or any property or any business owned by the Owner or Company within the Town.

“Improvements” means any structural modifications or renovations made to the Facility, including the installation of machinery and equipment at the Real Property, as described on the attached Exhibit “C”.

“Lease” means that certain Lease dated August 22, 2018, by and between the Owner and the Company, as may be amended from time to time.

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

“Real Property” shall collectively mean the approximate 32 acres of land and the approximately 651,000 square foot building constructed upon such land, located at 951 Garden Ridge Road, Flower Mound, Texas, depicted on the attached Exhibit “A” and described more particularly in Exhibit “B,” hereto.

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

“Sales and Use Tax” means the Town’s municipal Sales and Use Tax, currently at the rate of one percent (1.0%) pursuant to Chapter 321 of the Texas Tax Code, as amended; provided, however, should the electors of the Town reallocate the Sales and Use Tax or should the Texas Legislature amend the applicable tax code provision to increase or decrease the amount of allowed municipal sales and use tax, then in the event of a decrease, Sales and Use Tax shall mean the actual amount of sales and use tax received by the Town, and in the event of an increase, the Sales and Use Tax shall mean one percent (1.0%).

“Sales and Use Tax Grants” means the grants as described in Section 5.2. Each individual grant will be referred to as a Sales and Use Tax Grant.

“Sales Tax Report” has the meaning as set forth in Section 3.5.

“Tangible Personal Property” shall have the same meaning assigned by Texas Tax Code, Section 1.04, and shall mean Tangible Personal Property owned by Company, including but not limited to furniture, fixtures, leasehold improvements, vehicles and equipment located at the Real Property (or within the Facility) which, at the time of execution of this Agreement is not on the tax rolls of the Town. Tangible Personal Property does not include inventory, supplies, Freeport Goods (as defined in the Texas Tax Code) or Goods in Transit (as defined in the Texas Tax Code).

“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” means the appraised value as certified by the Denton County Appraisal District as of January 1 of a given year.

“Term” shall have the meaning assigned to such term 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 Company to the Town. The terms of this Agreement shall implement the program.

2.2 Term. Upon full execution of this Agreement, the Term of this Agreement will commence from and after the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 COMPANY OBLIGATIONS

As consideration for the tax abatements, Grants, and waiver of fees by Town, the Company agrees and covenants as follows:

3.1 Construction of Improvements. Company or its designee agrees to design and construct, or cause to be designed and constructed, the Improvements. Company must (i) submit a full and complete building permit application for construction of the Improvements, as deemed acceptable by the Town, no later than March 15, 2019; (ii) receive all necessary permits permitting construction of the Improvements from all applicable governmental authorities no later than June 1, 2019; and (iii) subject to events of Force Majeure, ensure a Certificate of Occupancy for the Facility is received on or before June 1, 2019.

3.2 Tenancy. Company agrees to operate a fulfillment center in the Facility beginning on the date the Town issues a Certificate of Occupancy for the Facility and continuing thereafter until December 31, 2028 or the termination of the Lease.

3.3 Full-Time Equivalent Jobs. Company covenants and agrees that it shall employ (or cause to be employed) no fewer than three hundred (300) Full-Time Equivalent Jobs at the Facility by December 31, 2019 and no fewer than four hundred (400) Full-Time Equivalent Jobs at the Facility by December 31, 2020, and maintaining four hundred (400) Full-Time Equivalent Jobs for the remainder of the Term of this Agreement.

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

3.5 Sales Tax Reports. Company will provide Town, on a quarterly basis, a copy of the financial report it submits to the State Comptroller relating to the remission of Sales and Use Taxes collected in the Town as a result of the Company's operation at the Real Property ("**Sales Tax Report**"). Additionally, Company hereby grants consent for the State Comptroller's office to release the monthly reported figures along with any State audit adjustments to the Town. The Parties designate this Agreement as a revenue sharing agreement entitling the Town to request Sales and Use Tax information from the Comptroller, pursuant to section 321.3022, Texas Tax Code, as amended. Company further agrees to provide Town any other reasonable documentation

in a form acceptable to Town that establishes and proves amounts necessary for Town to make the Sales and Use Tax Grant as provided in this Agreement. Owner agrees to provide Town any reasonable documentation in a form reasonably acceptable to Town that establishes and documents purchases made by Owner in accordance with Section 5.2(b) of this Agreement.

3.6 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. 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. Any such audit must: (i) not be disruptive to the Company's business; (ii) not occur more than once during any 12 consecutive month period, unless special circumstances arise that cause the Town to reasonably determine that another audit is immediately necessary; (iii) take place on at least thirty (30) days' prior written notice; (iv) be completed within thirty (30) days from commencement; and (v) be conducted by the Town's, and its authorized representatives, alone and not in conjunction or cooperation with any other party. The Town may not schedule an audit to take place in the first calendar quarter of any year. In the event the Town's examination reveals a payment deficiency or discrepancy, the Town and the Company will cooperate in good faith to address and resolve such deficiency or discrepancy. The Town will be solely responsible for all costs of any audit it conducts, unless the audit reveals fraud, misrepresentation or negligence in the reporting of information by the Company or its Affiliates, the absence of which would have prevented the necessity for an audit. Information, documents and materials that do not constitute public information under The Public Information Act (Chapter 552 of the Texas Local Government Code) or are exempt from disclosure under The Public Information Act obtained by the Town in connection with any such audit shall be treated as confidential information of the Company, and the Town agrees to maintain the confidentiality of such information to the maximum extent permitted by applicable law. Information, documents and materials provided by the Company that constitute public information under The Public Information Act shall be treated as described in Section 3.7 of this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, the Company shall not be required to disclose, permit the inspection of or examination of, or discuss, any document, information or other matter that is not necessary to verify the Company's compliance with this Agreement and (a) constitutes trade secrets or proprietary information, (b) in respect of which disclosure is prohibited by law or any binding agreement or (c) is subject to attorney-client or similar privilege, employee privacy or constitutes attorney work product.

3.7 Public Records; Confidentiality. The Company acknowledges and agrees that this Agreement and the Sales Tax Reports are public records subject to disclosure (after redaction of information exempt from disclosure as described below) under The Public Information Act. The Parties acknowledge and agree that The Public Information Act exempts from disclosure certain types of records, materials and information, including without limitation: records confidential by law, either constitutional, statutory or by judicial decision (Section 552.101 of the Texas Government Code); social security numbers (Section 552.117(a)(2) of the Texas Government

Code); trade secrets and economic development project information (Sections 552.110 and 552.131 of the Texas Government Code); and proprietary commercial information (Section 552.110 of the Texas Government Code). The Company and the Owner acknowledge that this Agreement constitutes public information and the materials, communications, data and information related to this Agreement may also constitute public information subject to disclosure under The Public Information Act and agrees that the Town may disclose this Agreement, and the portions of materials, communications, data and information related to this Agreement as required by law, provided that the Town will) provide Company or Owner, as applicable, notice as required under the Public Information Act. In particular, the Town, without waiving its right to appeal an opinion or ruling under applicable procedures, hereby agrees to comply with any opinion or ruling of the Texas Attorney General or court order requiring production, redaction, or withholding of information in response to a request for public information.

ARTICLE 4 OWNER OBLIGATIONS

4.1 The Parties acknowledge that Section 312.204(a) of the Texas Tax Code requires Town to enter into a tax abatement agreement with the owner of real property, but Company is the intended beneficiary of the real property abatement under this Agreement. Accordingly, Owner, in consideration of Company making the Improvements and leasing the Facility, and as owner of the Real Property and direct beneficiary of the real property tax abatement, agrees to pass on the benefits of the real property tax abatement to Company during the term of the Lease, so long as Company is not in default of the Lease beyond any applicable notice and cure period. Owner's obligation to pass on the benefits of the tax abatement to Company is a covenant running with the land until (i) the termination of this Agreement, (ii) the termination of the lease, or (iii) any uncured default by Company under the lease.

4.2 The terms and conditions of how the real property tax abatement benefits will be passed through to the Company shall be addressed between the Owner and Company either through the Lease, contract, or an alternative method agreed to and signed by both parties, and Owner agrees to provide Town satisfactory proof thereof simultaneously upon Owner's execution of this Agreement. The Town agrees that a certification executed by the Owner and the Company certifying that the Company and the Owner have entered into an agreement contemplated under this Section 4.3 is sufficient to serve as satisfactory proof thereof.

4.3 The Parties agree that Town (i) has no obligation to ensure that Owner has passed on the benefits of real property tax abatement to Company pursuant to this Article 4; (ii) has the right, but no obligation, to enforce Owner's commitment to pass on the benefits of real property tax abatement to Company; and (iii) will have no liability to Owner or Company due to Owner's breach of its obligations in this Article 4 or due to Company not receiving the benefits of the tax abatement.

ARTICLE 5 TOWN INCENTIVES

5.1 Tax Abatement.

(a) Subject to Company's and Owner's continued satisfaction of their obligations as required by this Agreement, and subject to the provisions of this Section 5.1, Town hereby grants Owner an abatement of fifty percent (50%) of the Taxable Value of the Real Property and grants Company an abatement of fifty percent (50%) of the Taxable Value of the Tangible Personal Property, for a period of five (5) consecutive years, beginning with the First Year of Abatement. The actual percentage of Taxable Value of the Real Property subject to abatement for each year this Agreement is in effect will apply only to the portion of the Taxable Value of the Real Property that exceeds the Base Year Tax Value. The actual percentage of Taxable Value of the Tangible Personal Property subject to abatement for each year this Agreement is in effect will apply only to Company's Tangible Personal Property that is added to the Facility subsequent to the Effective Date.

(b) Company shall, before May 1 of each calendar year that this Agreement is in effect, certify in writing to the Town that it is in compliance with each applicable term of this Agreement and provide sufficient evidence thereof; provided however, that Company will not be required to submit to Town any personally identifiable information about its employees.

(c) The Real Property and the Improvements constructed thereon at all times shall be used in the manner (i) that is consistent with the Town's Comprehensive Zoning Ordinance and all other Town development and building regulations, as amended, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment of the Zone.

(d) It shall be the responsibility of the Company to complete for the Owner's review and submission an annual exemption application form for the Real Property and a responsibility of the Company to file an annual exemption application form for the Tangible Personal Property, with the Denton County Appraisal District. A copy of the respective exemption application shall be submitted to the Town upon request.

(e) Company shall annually render the value of the Tangible Personal Property to the Denton County Appraisal District, and provide a copy of the same to Town upon written request.

(f) Upon reasonable advance written notice from Town, Company and Owner will provide access to and authorize inspection of the Real Property and Facility by Town employees to confirm that the Improvements are made according to the specifications and conditions of this Agreement.

5.2 Sales and Use Tax Grants.

(a) Ongoing Merchandise Sales. Town agrees to pay Company an amount equal to fifty percent (50%) of the Sales and Use Tax received by Town and attributed solely to those sales consummated (excluding purchases by Company) at the Facility beginning at such time as the first taxable sale occurs at the Facility, generating Sales and Use Taxes to the Town, and continuing thereafter for five (5) years, subject to the following requirements:

(i) Timing of Payments. The Sales and Use Tax Grants will be paid on an annual basis. The Town covenants and agrees to make annual payments to Company within forty-five (45) days following its receipt of the latter of: (a) the Sales Tax Reports each month of the applicable year; (b) the reports or other information establishing the amounts of received Sales and Use Tax from the Comptroller's office for each month in the applicable year; (c) the Town's receipt of the Sales and Use Tax from the Comptroller's office for each month of the applicable year; and (d) a Payment Request.

(ii) Minimum Annual Requirements. Town must annually receive no less than \$150,000 in Sales and Use Taxes attributable to Company's sales at the Facility, and failure to achieve such amount will result in a forfeiture of the Sales and Use Tax Grant for the applicable year, but in no event shall the failure of the Town to annually receive less than \$150,000 in Sales and Use Taxes attributable to Company's sales at the Facility be an event of default under this Agreement.

(iii) Timely Payment Request. If Company shall fail to timely submit a Payment Request for a particular year, then the Town will give Company written notice of Company's failure to timely submit such request, and Company shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit a Payment Request. Failure to timely submit a Payment Request for a given year within thirty (30) days after notice shall operate as a forfeiture of the Sales and Use Tax Grant for that calendar year.

(b) Construction and Start-Up Purchases. The Town agrees that it shall pay to Company an amount equal to fifty percent (50%) of the Sales and Use Tax received by the Town attributable to the purchase of construction materials and machinery and equipment by Owner or Company or contractors retained by Owner or Company in connection with the construction of the Improvements to the Facility, or in connection with equipping the Facility for its business operations. The grants under this section 5.2(b) are limited to purchases made during a period beginning on June 5, 2018 and continuing thereafter for five (5) years.

(c) Erroneously Paid Sales and Use Tax. In the event the Comptroller determines, for any reason, that any Sales and Use Taxes were erroneously paid to Town from the sales provided for herein and Town is required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the Sales and Use Taxes received by Town under this Agreement, and in the event the calculation of

Sales and Use Taxes paid for a Sales and Use Tax Grant shall reflect an overpayment by Town to Company, Company agrees to reimburse Town the amount of such overpayment within sixty (60) days of the Town's notification. Notification of any such required adjustment will be provided to Company at the earliest practical date. This section will survive termination of this Agreement.

5.3 Impact Fee Grant. If any applicable Town impact fees are due in association with the Company constructing the Improvements and occupying the Facility, the Town agrees to pay Company an Impact Fee Grant equal to the assessed fees within forty-five (45) days after: (i) the Town issues a Certificate of Occupancy for the Facility; and (ii) the Town's receipt of a Payment Request.

5.4 Permit Fee Waiver. The Town agrees to waive fifty percent (50%) (the "Waiver") of the following permit and related fees for construction of the Improvements: 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. If a payment for which the Waiver applies has previously been made prior to the Effective Date without the Waiver having been credited, the Town shall refund such overpayment to the Company within thirty days after written demand for such refund.

ARTICLE 6 TERMINATION; REPAYMENT; OFFSET

6.1 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 a non-breaching Party to the other Parties, if a Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within sixty (60) days after written notice thereof;
- (c) upon written notice by Town to both other Parties, if any Impositions owed to Town or the State of Texas by Owner or Company shall have become delinquent (provided, however, Owner and Company retain 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;
- (e) upon written notice by Company, Owner or Town, 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.

6.2 Repayment.

(a) Repayment of Fee Waivers, Grants and Tangible Personal Property Tax Abatement. In the event this Agreement is terminated by Town pursuant to Section 6.1 (b), (c), or (d), Company shall, within ninety (90) days after written demand therefor, refund to Town: (i) an amount equal to the amount of all fee waivers and Grants that have been provided by Town to Company, 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, accruing from the Commitment Date until paid; and (ii) the amount of all Tangible Personal Property taxes abated under this Agreement.

(b) Repayment of Real Property Tax Abatement. In the event this Agreement is terminated by Town pursuant to Section 6.1 (b), (c), or (d), Company will repay Town the amount of all Real Property taxes abated under this Agreement. The Parties agree that all benefits of the real property tax exemption shall be passed down from the Owner to the Company; therefore, the Owner will not be obligated to make any repayment of real property taxes to the Town.

(c) Additional Remedies. Upon termination of this Agreement by Town, all taxes abated as a result of this Agreement and obligated to be repaid pursuant to Section 6.2 shall become a debt to the Town as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is provided. The Parties acknowledge that actual damages in the event of default would be speculative and difficult to determine. The Town shall have all remedies for the collection of the abated tax provided in the Texas Tax Code for the collection of delinquent property tax from the Company. The Town at its sole discretion has the option to provide a repayment schedule. The computation of the abated tax for the purposes of this Agreement shall be based upon the increased Taxable Value of the Real Property and the Tangible Personal Property, without tax abatement for the years in which tax abatement hereunder was received by the Company as determined by the Denton County Appraisal District, multiplied by the Town's tax rate for the years in which tax abatement was received. The liquidated damages shall constitute a tax lien against the Company's Tangible Personal Property. There shall be no tax lien against the Real Property, and there shall be no tax lien against Company's Tangible Personal Property if removal may cause structural damage to the Real Property. Further, the liquidated damages shall incur penalties and interest as provided for delinquent taxes and shall commence to accrue after expiration of the thirty (30) day payment period. Notwithstanding anything to the contrary herein, Company's Tangible Personal Property shall not be removed in connection with a remedy described in this subsection (c) if removal may cause structural damage to the Real Property.

(d) Survival of Repayment Obligations. The repayment obligations of Company set forth in this Section 6.2 shall survive termination of this Agreement.

6.3 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 7 MISCELLANEOUS

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

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

7.3 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.

7.4 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.

7.5 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:

Thirty-One Gifts, LLC
Attn: Vice President - Finance
8131 Smith's Mill Rd.
New Albany, OH 43054
RE: TA & Ch 380 Agrmnt. (Property ID 529132)

If intended for Owner, to:

PROLOGIS
C/O Prologis-RE Tax

1800 Wazee Street
Denver, CO 80202-1234
RE: TA & Ch 380 Agrmnt. (Property ID
529132)

With a copy to:

PROLOGIS
1800 Wazee Street
Denver, CO 80202-1234
Attn: General Counsel

7.6 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.

7.7 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.

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

7.9 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.

7.10 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.

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

7.12 Successors and Assigns. Except for an assignment to an Affiliate of Owner or Company, this Agreement may not be assigned without the prior written consent of the Town.

7.13 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.

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

7.15 Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts Town's ability to pay the Grants, the abatement of taxes, or otherwise extracts or imposes any penalty or other restriction upon the payment of Grants or abatement of taxes, such payments and abatements 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 or Town as of the effective date of such limitation or restriction.

7.16 Undocumented Workers. Company certifies that Company, and its branches, divisions and departments, does 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 their 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. For the avoidance of doubt, this Section 7.16 applies only to Company locations in the State of Texas.

7.17 Attorney's Fees. In the event it should become necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing Party in such action shall be entitled to recover from the non-prevailing Party reasonable attorney's fees and costs of court.

[Signatures on following page]

**PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, on this ____ day of _____, 2019.**

TOWN:

TOWN OF FLOWER MOUND, TEXAS

Steve Dixon, Mayor

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the ____ day of _____, 2019,
Steve Dixon, Mayor of the Town of Flower Mound, Texas, a Texas home rule municipality, on
behalf of said Town.

Notary Public, State of Texas

OWNER:

PROLOGIS

By: _____

Name: _____

Title: _____

STATE OF _____)

)

COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2019,
by _____, the _____ of **PROLOGIS**.

Notary Public, State of Texas

Notary Public, State of Ohio

EXHIBIT "A"

Site Plan

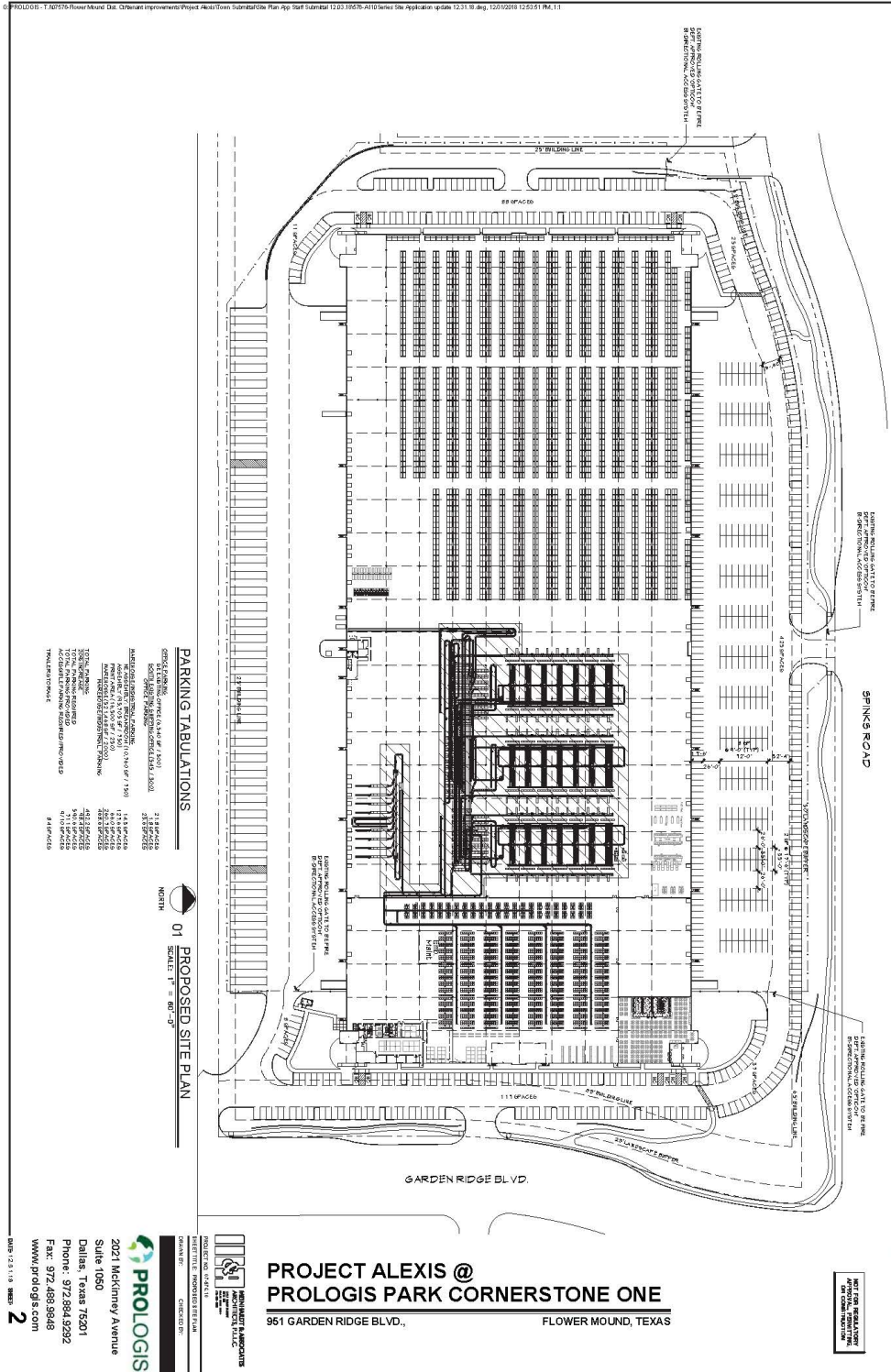


EXHIBIT “B”

Legal Description

951 GARDEN RIDGE BOULEVARD.

FLOWER MOUND, TEXAS

LOT 1 BLOCK A OF CORNERSTONE I, an Addition to the City of Flower Mound, Denton County, Texas, according to the Amended Plat thereof recorded in Cabinet Y, Page 12-16, Plat Records, Denton County, Texas.

EXHIBIT “C”

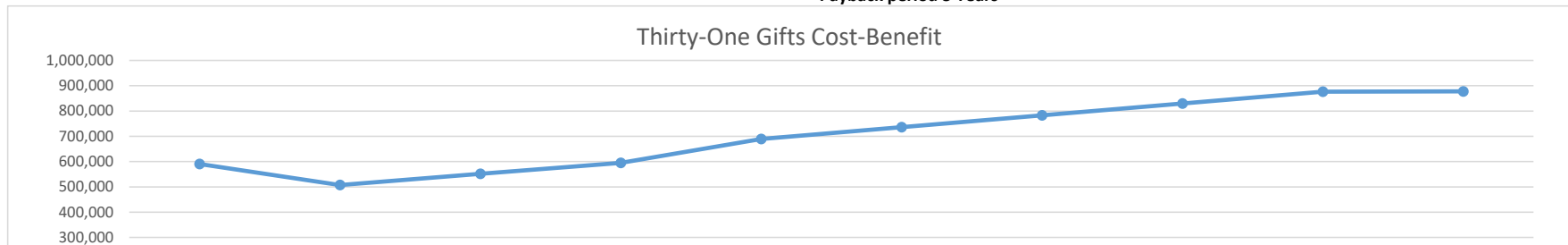
Company is a direct sales company that sells personalized purses, totes, handbags, utility items and home décor through a network of independent sales consultants in the US and Canada. Company plans to move its national fulfillment center to a leased warehouse located at 951 Garden Ridge Boulevard, Flower Mound, Texas. In connection with the move, Company is adding approximately \$4.6 million of real property improvements to the Facility for its operations. Real property improvements include construction of offices, employee break rooms, temperature-controlled rooms to house personalization equipment, and electrical upgrades to support the Company's personalization and material handling equipment. Personal property additions include the addition of approximately \$13 million of new warehouse equipment including conveyors, sorters, and storage racking; over \$1.5 million in IT infrastructure investment to support the operations; and over \$5 million of personalization equipment such as embroidery machines, laser etching machines, and garment printers which will be moved from the Company's current fulfillment facility in Ohio.

Attach #2-Thirty-One Gifts Cost-Benefit

Thirty-One Gifts Cost-Benefit Analysis (Based on 5% sales being sourced in FM) Final

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	7,500,000	7,725,000	7,956,750	8,195,453	8,441,316	8,694,556	8,955,392	9,224,054	9,500,776	9,785,799	
	Real Property Tax Revenue	32,925	33,913	34,930	35,978	37,057	38,169	39,314	40,494	41,708	42,960	377,448
	Business Personal Property Value (Equip)	10,000,000	9,000,000	8,000,000	7,000,000	6,000,000	5,000,000	4,000,000	3,000,000	2,000,000	2,000,000	
	Business Personal Property Tax Revenue (Equip)	43,900	39,510	35,120	30,730	26,340	21,950	17,560	13,170	8,780	8,780	245,840
	Business Personal Property Value (Relocated Equip)	3,000,000	2,700,000	2,160,000	1,512,000	907,200	907,200	907,200	907,200	907,200	907,200	
	Business Personal Property Revenue (Relocated Equip)	13,170	11,853	9,482	6,638	3,983	3,983	3,983	3,983	3,983	3,983	65,039
	Business Personal Property Value (Inventory)	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	5,000,000	
	Business Personal Property Revenue (Inventory)	21,950	21,950	21,950	21,950	21,950	21,950	21,950	21,950	21,950	21,950	219,500
	Building Permit Fees	78,787	0	0	0	0	0	0	0	0	0	78,787
	Impact Fees (Est. at \$56,5288-Did not occur)	0	0	0	0	0	0	0	0	0	0	0
	Taxable Sales Sourced in Flower Mound (5% total sales)	20,000,000	20,000,000	22,500,000	25,000,000	30,000,000	32,500,000	35,000,000	37,500,000	40,000,000	40,000,000	
	Sales Tax Revenue (2% only)	400,000	400,000	450,000	500,000	600,000	650,000	700,000	750,000	800,000	800,000	6,050,000
Cost		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
50%, 5-Yr	Real Property Rebate	16,463	16,956	17,465	17,989	18,529	0	0	0	0	0	87,402
50%, 5-Yr	BPP Property Rebate	21,950	19,755	17,560	15,365	13,170	0	0	0	0	0	87,800
100%	Impact Fee Grant	0	0	0	0	0	0	0	0	0	0	0
50%	Building Permit Fee Waiver	39,394	0	0	0	0	0	0	0	0	0	39,394
50%, 5-Yr.	Sales Tax Rebate (50% of 1% only)	100,000	100,000	112,500	125,000	150,000	0	0	0	0	0	587,500
Analysis		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
	Benefit	590,732	507,226	551,483	595,296	689,330	736,052	782,807	829,596	876,421	877,672	7,036,614
	Cost	177,806	136,711	147,525	158,354	181,699	0	0	0	0	0	802,095
	Net Benefit	412,926	370,514	403,957	595,296	689,330	736,052	782,807	829,596	876,421	877,672	6,234,519

Payback period 3 Years





TOWN COUNCIL AGENDA ITEM NO. 18

REGULAR ITEM

DATE: May 6, 2019

FROM: Andrea Roy, Director of Economic Development

ITEM: Consider consent to a security agreement and collateral assignment of the Chapter 380 Agreement between the Town of Flower Mound and FM 2499 Office Venture, LLC, (converted to FM 2499 Office Venture, LP) to First United Bank and Trust Company, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This item is for consideration of a security agreement and the collateral assignment of the Chapter 380 Agreement with FM 2499 Office Venture, LLC (converted to FM 2499 Office Venture LP) to First United Bank and Trust Company.

On April 16, 2018, the Town approved the Chapter 380 Agreement between the Town and FM 2499 Office Venture, LLC for the development of a 10-acre site on the west side of Long Prairie Road, between Lakeside Pkwy. and Silveron Blvd., known as Lakeside Corporate Center.

In exchange for an estimated \$32.5 million in capital investment for the construction of approximately 120,000 sq. ft. and 18,500 sq. ft. of speculative office space, the Town provided a 5-year, 50% real property grant, a grant equal to 100% of impact fees, a building permit fee waiver, an infrastructure grant for off-site improvements (not to exceed \$100,000), and a monthly debt service guarantee to be provided to the developer's lender, as needed for the first three years.

The subject collateral assignment has been requested by representatives of FM 2499 Office Venture as a requirement associated with the \$25.2 million loan through First United Bank and Trust Company, the lender. The assignment will assign the financial benefits associated with the Chapter 380 Agreement to the Lender for the term of the Loan. The subject assignment will in no way impact the terms, obligations, or performance measures noted within the approved Chapter 380 Agreement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:

N/A

Account Number(s):

N/A

Finance Review by: N/A

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

ATTACHMENTS:

1. Security Agreement between FM 2499 Office Venture LP & First United Bank and Trust Co.

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

SECURITY AGREEMENT

FM 2499 OFFICE VENTURE, LP,
a Texas limited partnership

909 Lake Carolyn Parkway, Suite 150

Irving, Texas 75039
(hereafter called "Borrower")

**FIRST UNITED BANK AND TRUST
COMPANY**

6401 South Custer Road, Suite 100

McKinney, Texas 75070
(hereafter called "Lender")

The Lender and Borrower agree as follows:

SECTION I. CREATION OF SECURITY INTEREST.

In order to secure a promissory note of even date herewith in the original principal amount of **Twenty-Five Million One Hundred Seventy Thousand Two Hundred Two and 00/100 Dollars (\$25,170,202.00)** executed by Borrower and made payable to Lender and all other indebtedness and liabilities of all kinds of Borrower to Lender, and interest thereon (whether evidenced by a promissory note or by other evidence of indebtedness, including overdrafts, whether created indirectly or acquired by Lender indirectly by assignment or otherwise, and whether now existing or hereafter arising, absolute or contingent, joint and/or several, due or to become due, primary or secondary, purchase money and nonpurchase money, including obligations of performance, and all renewals, extensions and rearrangements thereof), hereafter referred to as "Obligations," Borrower grants to Lender a security interest in that certain Chapter 380 Agreement dated May 3, 2018 by and between Borrower and The Town of Flower Mound, together with all of the proceeds therefrom and instruments and all documents representing any of the foregoing (the "Collateral").

SECTIONS II. BORROWER'S REPRESENTATIONS AND WARRANTIES.

Borrower Represents and Warrants to Lender that:

(1) The office where Borrower's records are kept concerning the accounts is located at 909 Lake Carolyn Parkway, Suite 150, Irving, Texas 75039;

(2) Borrower is duly organized and existing under the laws of the State of Texas and is duly qualified and in good standing in every other State in which it is doing business; and the execution, delivery, and performance of this Agreement and the Obligations secured hereby are within Borrower's partnership powers, have been duly authorized, are not in contravention of law or the terms of Borrower's partnership agreement, or of any indenture, agreement, or undertaking to which Borrower is a party or by which it is bound;

(3) There is no lien, security interest, or other encumbrance on all or any part of the Collateral covered by this Agreement at the time of execution of this Agreement, nor is there any financing statement on file in Borrower's name which purports to cover any of the Collateral or the proceeds of any of the Collateral;

(4) Borrower's principal place of business is 909 Lake Carolyn Parkway, Suite 150, Irving, Texas 75039;

(5) All financial statements delivered to Lender at or prior to the execution of this Agreement, and all financial statements which may hereafter be delivered to Lender, fairly present

the financial condition and the results of Borrower's operations at the times and for the periods therein stated, and since the latest date covered by the most recent financial statements delivered prior to the execution of this Agreement there has been no adverse change in the financial condition, the operations, or any other status of Borrower;

(7) All information furnished to or to be furnished to Lender by or on behalf of Borrower concerning the Collateral and the proceeds thereof or in connection with the Obligations secured by this Agreement, is (or will be at the time the same is furnished) complete and accurate in all material respects;

(8) Each of Borrower's accounts and all papers and documents relating to the Collateral are (or will be at the time such accounts come into existence) genuine and in all respects what they purport to be.

SECTION III. BORROWER'S AFFIRMATIVE COVENANTS.

Borrower Covenants and Agrees That Borrower Shall:

(1) Pay promptly when due (unless they are being contested in good faith) all taxes, assessments, costs, and expenses necessary to preserve, protect, collect, and maintain the Collateral; keep the Collateral free from other liens, security interests or other encumbrances; defend the Collateral if necessary against all claims and demands of all persons at any time claiming an interest therein adverse to Lender; file all tax returns and pay all taxes when due, and cause any and all liens for taxes to be properly released; and in the event of failure to do so, Borrower agrees that Lender may make expenditures for any or all such purposes (but is not obligated to do so), and the amount so expended together with interest thereon at 18% per annum shall constitute one of Borrower's Obligations to Lender secured by the security interest granted in Section I above, and any such expenditures by Lender will be repayable by Borrower on demand. Borrower hereby appoints Lender as Borrower's attorney-in-fact to enable Lender to act for Borrower in fulfilling all Borrower's responsibilities and exercising all of Borrower's rights under this Agreement for the purpose of preserving and protecting the Collateral and Lender's interest therein;

(2) Maintain at all times complete and accurate books and records covering the Collateral. Immediately upon the execution of the agreement, Borrower shall mark all books and records with an entry showing the collateral assignment to Lender of all proceeds of the Collateral to Lender, and Lender is hereby given the right and privilege of auditing the books and records of Borrower relating to the Collateral and inspecting Borrower's business locations and operations at any reasonable time Lender deems proper;

(3) Without hindrance or delay, furnish reports, schedules of aged accounts receivable, data, and financial statements, including audits by independent public accountants, in respect of its business and financial conditions, as Lender may reasonably require;

(4) Join with Lender in executing a financing statement, notice, affidavit, or any similar instruments which Lender deems necessary or advisable to establish or maintain its security interest in a form satisfactory to Lender together with such other instruments as Lender may from time to time reasonably request and pay all costs of filing same in any public office or offices deemed advisable by Lender; and

(5) Immediately notify Lender of any event causing loss or diminution in value of any of the Collateral and the amount of such loss or depreciation.

SECTION IV. COLLECTION PROCEDURES.

(1) Borrower shall, as Lender's agent, receive all payments (hereafter called "Payment Items") representing the proceeds of Collateral covered by this Agreement. Borrower shall, at Borrower's own expense, take all reasonable and appropriate steps when necessary to enforce the collection of the contracts which comprise the Collateral;

(2) Immediately upon receipt, Borrower shall deposit all Payment Items in a special bank account. These Payment Items shall be deposited in the same form as received except for the addition of Borrower's endorsement or assignment where necessary to permit collection of the items, which endorsement or assignment Borrower agrees to give (and in this connection, Borrower waives presentment, demand, notice of dishonor, protest, and all other notices related thereto), and in the event Borrower fails to do so, Lender will have the authority to endorse the Payment Items on Borrower's behalf. Borrower agrees that Borrower shall not commingle any such Payment Items with any of Borrower's other funds or property but shall hold them separate and apart therefrom upon an express trust for Lender;

(3) At any time requested by Lender and from time to time, Borrower shall deliver to Lender a complete status report on all Payment Items and any other matters as Lender may specify. Further, if Lender so requests, and after the occurrence of an Event of Default under the above-described promissory note or any instrument evidencing or securing same, Borrower, at Borrower's own expense, shall direct that the payments are to be made directly to Lender, and Borrower shall indicate on all payment applications to such account debtors that the payments are payable directly to Lender. If Lender so elects, and after the occurrence of an Event of Default under the above-described promissory note or any instrument evidencing or securing same, Lender may itself, at Borrower's expense, direct that the payments be made directly to Lender. Lender is authorized to enforce the collection of the payments under the Collateral by any appropriate means it deems necessary;

(4) The Town of Flower Mound, Texas joins in this Security Agreement for the sole purpose of: (i) consenting to Lender's security interest in the Collateral; (ii) consenting to Borrower's assignment of the proceeds of the Collateral to Lender; and (iii) agreeing to forward proceeds of the Collateral directly to Lender, in a manner reasonably requested by Lender. BORROWER HEREBY INDEMNIFIES AND HOLDS HARMLESS THE TOWN OF FLOWER MOUND, TEXAS FROM AND AGAINST ANY AND ALL COSTS, EXPENSE, LIABILITY AND OTHER DAMAGES WHICH THE TOWN MAY INCUR OR SUSTAIN BY REASON OF ITS ADHERENCE TO THE PROVISIONS OF THIS SECURITY AGREEMENT, INCLUDING (WITHOUT LIMITATION) THE REQUIREMENTS TO MAKE PAYMENTS OF THE COLLATERAL DIRECTLY TO LENDER AS PROVIDED ABOVE.

SECTION V. BORROWER'S NEGATIVE COVENANTS.

Borrower Covenants and Agrees That Without Authorization from Lender, Borrower Shall Not:

(1) Change Borrower's principal place of business to an address different from that shown at the beginning of this Agreement;

(2) Move the records concerning Borrower's accounts to any office having an address different from that shown in Paragraph "(1)" of Section II;

(3) Agree to any material modification of the terms of any of the contracts which comprise the Collateral;

(4) Allow to be filed in any public office any financing statement in Borrower's name covering the Collateral;

(5) Sell, assign, exchange, encumber or otherwise dispose of any part or all of the Collateral or any of Borrower's rights therein or under this Agreement;

(6) Assert any claims or defenses Borrower may have against Lender's assignee, it being understood that Lender may assign any part or all of Borrower's Obligations and this Security Agreement to an assignee who will be entitled to all of the rights, privileges, and remedies granted in this Agreement to Lender; and

(7) Create or permit the existence of any lien or security interest in any of the Collateral other than the security interest created hereby.

SECTION VI. EVENTS OF DEFAULT.

Each of the following events shall constitute a Default:

(1) Default in the timely payment of any installment of principal and interest under any of the Obligations or in the performance of any covenant or provision of any writings evidencing such Obligations (the "Loan Documents").

(2) Borrower, or any Guarantor, shall: (a) execute an assignment for the benefit of creditors or take any action in furtherance thereof; or (b) admit in writing his inability to pay his debts generally as they become due; or (c) as a debtor, file a petition, case, proceeding, or other action pursuant to, or voluntarily seek the benefit or benefits of any debtor relief law or take any action in furtherance thereof; or (d) seek, acquiesce in, or suffer the appointment of a receiver, trustee, or custodian of Borrower, any Guarantor, the Collateral, in whole or in part, or any significant portion of other property belonging to Borrower or any Guarantor that affects performance under the Obligations; or (e) voluntarily become a party to any proceeding seeking to effect a suspension or having the effect of suspending any of the rights of Lender or the Trustee granted or referred to in the Loan Documents or take any action in furtherance thereof.

(3) The filing of a petition, case, proceeding, or other action against Borrower, or any Guarantor, as a debtor under any debtor relief law; or seeking appointment of a receiver, trustee, or custodian of Borrower, or any Guarantor, or of any property described in the Loan Documents or any part thereof, or of any significant portion of other property belonging to Borrower or any Guarantor, that affects its ability to perform under the Obligations, or seeking to effect a suspension or having the effect of suspending any of the rights of Lender or the Trustee granted or referred to in the Loan Documents, and: (a) Borrower or any Guarantor admits, acquiesces in, or fails to contest the material allegations thereof; or (b) the petition, case, proceeding, or other action results in entry of an order for relief or order granting the relief sought against Borrower or any Guarantor; or (c) the petition, case, proceeding, or other action is not permanently dismissed on or before the earliest of trial thereon or sixty (60) days next following the date of its filing.

(4) The discovery by Lender that any warranty, covenant, or representation made to Lender by or on behalf of Borrower or any Guarantor is false, misleading, erroneous, or breached in any material respect.

(5) A Default shall not be an Event of Default if (i) the Default is of a monetary nature and is cured within ten (10) days following the delivery of or two business days after the mailing of written notice from Lender to Borrower's most current address as reflected in Lender's business

records specifying the existence of any such monetary Default, and (ii) if a non-monetary Default, it is cured within thirty (30) days following the delivery of or two business days after the mailing of written notice from Lender to Borrower's most current address as reflected in Lender's business records specifying the existence of any such non-monetary Default. If such Default is not cured within the respective ten (10) or thirty (30) day period, the Default shall be an Event of Default without need of any further notice or action by Lender.

SECTION VII. LENDER'S RIGHTS IN EVENT OF DEFAULT.

(1) Upon the occurrence of any Event of Default, and at any time thereafter, Lender may, without notice to or demand upon Borrower (Borrower hereby expressly waives all notices, demands for payment, presentations for payment, notice of intention to accelerate the maturity and actual acceleration of maturity, protest and notice of protest as to the Obligations), exercise its right to declare all Obligations secured by the security interest created herein to be immediately due and payable, in which case Lender will have all rights and remedies granted by law and particularly by the Texas Business and Commerce Code, including, but not limited to, immediate possession of all books and records evidencing the Collateral, and may (as long as no breach of peace occurs) enter into any of Borrower's premises where any of the Collateral may be or is supposed to be, and, without notice or demand and without any legal proceedings, take possession, remove, keep and store any such books and records that pertain to the Collateral. Lender may also require Borrower to provide all books and records relating to the Collateral and make them available to Lender at a place to be designated by Lender which is reasonably convenient to both parties. Lender will send Borrower reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition of the Collateral is to be made. This requirement of sending reasonable notice will be met if such notice is mailed, postage prepaid, to Borrower at the address designated at the beginning of this Agreement at least five days before the time of the sale or disposition. In addition to the expenses of retaking, holding, preparing for sale, selling and the like, Lender will be entitled to recover reasonable attorneys' fees and legal expenses as provided for in this Agreement and in the writings evidencing said Obligations before applying the balance of the proceeds from the sale or other disposition toward satisfaction of the Obligations themselves. Borrower will remain liable for any deficiency remaining after the sale or other disposition. Lender may at any time, in its discretion, transfer any of the Collateral or evidence thereof into its own name or that of its nominee and receive the proceeds therefrom. Lender may demand, collect, settle, compromise, adjust, sue for, or foreclose upon the Collateral, in its own name or in the name of Borrower, as Lender may determine. Lender shall not be liable for the failure to collect any account or enforce any contract right or for any act or omission on the part of the Lender, its officers, agents, or employees, except willful misconduct.

(2) No act, delay, omission, or course of dealing between Borrower and Lender including Lender's remedying of any Event of Default hereunder will constitute a waiver of any of Lender's rights or remedies under this Agreement. A waiver by Lender of any rights or remedies under the terms of this Agreement or with respect to any of Borrower's Obligations to Lender will not be a bar to the exercise of any right or remedy on any subsequent occasion.

(3) All rights and remedies of Lender hereunder are cumulative and may be exercised singly or concurrently, and the exercise of any one or more of them will not be a waiver of any other. It is expressly agreed and understood that the Lender's right to exercise its rights and remedies under the Texas Business and Commerce Code is not conditioned upon acceleration of

the maturity of the underlying Obligations, but only upon Borrower's default as defined above, notwithstanding anything herein to the contrary. Lender shall not be limited by any election of remedies if it chooses to judicially foreclose its security interest. The right to sell under the terms hereof shall exist cumulative with said judicial foreclosure and one method so resorted to shall not bar the other, but both may be exercised at the same or different times, nor shall one be a defense to the other. No waiver, change, modification or discharge of any of Lender's rights or Borrower's duties as so specified or allowed to be effective unless contained in a written instrument signed by Lender specifying such waiver, change, modification or discharge.

SECTION VIII. MISCELLANEOUS.

(1) This Agreement and the security interest in the Collateral herein created will terminate when all Obligations secured hereby have been paid in full.

(2) Borrower releases Lender from all claims for loss or damage caused by any failure to collect any of the Collateral or by any act or omission on the part of Lender, its officers, agents, and employees except willful misconduct.

(3) The provisions of this Agreement are in addition to those contained in any writings evidencing the Obligations secured hereby, all of which will be construed as one instrument. In addition to the amounts provided for in said writings agreed to be paid by Borrower as reimbursement for Lender's attorneys' fees and legal expenses in the event of default, Borrower also agrees to pay Lender's reasonable attorneys' fees in enforcing and carrying out the covenants, terms, and conditions contained in this Security Agreement including Lender's right to undertake the collection of the Collateral as above provided. As used in this Agreement, "attorneys' fees" shall be defined as the reasonable value of the services of the attorneys employed by Lender from time to time to commence, defend, or intervene in any court proceeding, or to file a petition, answer, motion or other pleadings, or to take any other action in or with respect to any suit or proceeding (bankruptcy or otherwise) relating to the Collateral, this Agreement, or the Obligations, or to protect, collect, lease, sell, take possession of, or liquidate any of the Collateral, or to attempt to enforce any security interest in any of the Collateral. Said attorneys' fees, and any legal expenses, costs, and charges relating thereto, shall be additional Obligations of Borrower, payable on demand and secured by the Collateral.

(4) Any notice under this Agreement shall be in writing and shall be effective when actually delivered or, if mailed, shall be deemed effective when deposited in the United States mail first class, certified mail, postage prepaid, directed to the addresses shown near the beginning of this Security Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

(5) The term "Borrower" as used in this Agreement will be construed as singular or plural to correspond with the number of persons executing this Agreement as Borrower. If more than one person executes this Agreement as Borrower, his, her, their, or its duties and liabilities under this Agreement will be joint and several. The terms "Lender" and "Borrower" as used in this Agreement include the heirs, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties.

(6) Where there are contained in this Agreement words or phrases which are defined in the Texas Business and Commerce Code, the Code definitions will control the meaning of the

words or phrases. A determination that any provision contained herein is unenforceable will have no effect on the validity of the remaining provisions.

(7) The law governing this secured transaction will be that of the State of Texas in force on the date of execution of this agreement. The Obligations contained in this Agreement (which require only the Borrower's signature to become enforceable) are performable in the county wherein Lender is located.

(8) Borrower waives the right to direct the application of any and all payments at any time or times hereafter received by Lender from Borrower, and Borrower hereby agrees that Lender shall have the continuing exclusive right to apply and reapply any and all payments received at any time or times hereafter against the Obligations in such manner as Lender may deem advisable.

(9) Borrower agrees that a carbon, photographic or other reproduction of this Agreement or Financing Statement may be filed as an original.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

EXECUTED effective the _____ day of _____, 2019.

BORROWER:

FM 2499 OFFICE VENTURE, LP, a Texas
limited partnership

BY: RCM GENPAR 2015, LLC, a Texas limited
liability company, General Partner

BY: REALTY CAPITAL MANAGEMENT, LLC,
a Texas limited liability company, Manager

BY: _____

JAMES W. ARCHIE, II, Manager

BY: SC FM 2499 GP LLC, a Texas limited
liability company, General Partner

BY: STAUBACH CAPITAL, LLC, a Texas
limited liability company, Manager

BY: _____
JEFF STAUBACH, Manager

[CONSENT SITUATED ON THE FOLLOWING PAGE]

CONSENT BY:

TOWN OF FLOWER MOUND, TEXAS

BY: _____
NAME: _____
TITLE: _____

PREPARED IN THE LAW OFFICE OF:

William David Keese, P.C.
P.O. Box 1764
Denison, Texas 75021-1764



SCHEDULED	5/14/2019	Regular	Consider approval of an ordinance canvassing returns and declaring results of an election held May 4, 2019, for Charter Amendments and electing Councilmembers Place 1 and Place 3, and providing an effective date.
	5/20/2019	Presentation	National Public Works Week Proclamation
		Presentation	DFW Airport Noise Monitoring
		Presentation	Certificate of Achievement for Lauren Cox
		Consent	Consider approval of a Professional Services Agreement with Alan Plummer Associates, Inc., to provide contract construction management, associated with the Wastewater Treatment Plant Ultraviolet System Update project, in the amount of \$161,908.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	CoServ to Install Street Lights @ Forest Vista @ Garden Street.
		Consent	Consider approval of the purchase and installation of fifteen (15) benches and fifteen (15) trash receptacles to be used along the parks and trails as a part of the ongoing Park and Trail Amenities project, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$34,955.00.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 6, 2019.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on May 14, 2019.
		Regular	Public Hearing to consider a request for rezoning (ZPD17-0013 - Lakewood) from Planned Development District No. 31 (PD-31) with Campus Commercial District (CC) uses to Planned Development District No.163 (PD-163) with both non-residential and residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, and with an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design, and a waiver to the Architectural Standards in the Town's Urban Design Plan for roof pitch for certain buildings less than 15,000 square feet in size, a request for an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and with certain waivers, exceptions and modifications to the Code of Ordinances including but not limited to an exception to Section 98-147, "Topographical Slope Protection". The property is generally located north of Long Prairie Road and east of Silveron Boulevard.

SCHEDULED	5/20/2019	Regular	Public Hearing to consider an application for a tree removal permit for nine (9) specimen trees on property proposed for development as Windhaven Assisted Living. The property is generally located south of Cross Timbers Road and west of Auburn Drive. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its March 5, 2019, meeting).
		Regular	Public Hearing to consider an application for a tree removal permit for one hundred seven (107) specimen trees on property proposed for development as Lakewood development. The property is generally located north of Long Prairie Road and east of Silveron Boulevard. Commission Member Naylor seconded the motion. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its March 5, 2019, meeting).
		Regular	Public Hearing to consider a request for rezoning (ZPD18-0011 - Highland Pointe Park) to amend Planned Development District No. 19 (PD-19) with Office District (O) uses to Planned Development District No. 19 (PD-19) with Retail District-2 (R-2) uses on certain tract of land, to add the conceptual plans and elevations, to modify the development standards, request an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and request certain modifications and exceptions to the Code of Ordinances as related to the subject property. The property is generally located north of Valley Ridge Boulevard and east of Morriss Road.
		Regular	Public Hearing to consider a request for rezoning (ZPD19-0005 - Windhaven Assisted Living) from Agricultural District (A) uses to Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility, with certain exceptions and modifications to the Code of Ordinances. The property is generally located south of Cross Timbers Road and west of Auburn Drive.
		Regular	Public Hearing to consider an application for a tree removal permit for ten (10) specimen trees on property proposed for development as Townlake Phase 4. The property is generally located south of Cross Timbers Road and east of Flower Mound Road. (The Environmental Conservation Commission recommended approval by a vote of 4-2-0 at its April 2, 2019, meeting).
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA19-0001 – Senior Housing Overlay) to amend Section 1, Land Use Plan, by deleting the provisions related to Senior Housing.
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA18-0007- Highland Pointe Park) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Medium Density Residential to Retail uses. The property is generally located north of Valley Ridge Boulevard and east of Morriss Road.
6/3/2019	Consent	Sidewalk Links (407 - Morriss to Browning) - Design Award.	
	Consent	Consider approval of Amendment No. 4 to the Fiscal Year 2018-2019 Capital Improvement Program..	
6/17/2019	Presentation	Proclamation for National Parks and Recreation Month	
	Consent	Upper Timber Creek Interceptor Ph 3&4 - Testing Award	

SCHEDULED	6/17/2019	Consent	Consider approval of Whyburn Farm Drainage and Easement Agreement; and authorization for the Mayor to execute the same on behalf of the Town.
		Regular	Upper Timber Creek Interceptor Ph 3&4 - Construction Award
	7/15/2019	Consent	FM 1171 @ Riverwalk Drive Intersection Improvements - Construction Award.
		Consent	Valley Ridge Blvd @ Morriss Rd - Construction Award.
		Consent	Valley Ridge Blvd @ Morriss Rd - Testing Award.
		Consent	Grady Court Reconstruction - Testing Award.
		Consent	Grady Court Reconstruction - Construction Award.
	8/19/2019	Consent	FM 1171 @ Riverwalk Drive - Testing Award
		Consent	Red Bud Point Water Service Relocation - Testing Award.
		Consent	Windsor Roundabout Connection - Testing Award.
		Consent	Windsor Roundabout Connection - Construction Award.
		Consent	Red Bud Point Water Service Relocation - Construction Award.