

AGENDA

**FLOWER MOUND TOWN COUNCIL REGULAR MEETING;
TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION,
AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING;
AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING**

9/16/2019

**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."

Led by cub Scout Pack 295, Old Settlers Elementary School, Red Phoenix Patrol

D. PUBLIC COMMENT

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

E. PRESENTATIONS

1. Proclamation for United Way of Denton County, "LIVE UNITED Month"
2. Recognition of the 2019 Food Safety Award of Excellence winners and National Food Safety Month
3. National Septic Smart Week Proclamation

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. Small Cell Permits

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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. Board and Commission Interviews (9/17 & 9/19).
2. A regular meeting is scheduled for Monday, October 7.
3. A joint work session with Parks Board is scheduled for Thursday, October 17.

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 9/3- Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on September 3, 2019.
2. Voting Equipment (Tarrant Co.)- Consider approval of a resolution adopting a new voting system for Town elections (Tarrant County); and providing an effective date.
3. Development Process Review- Consider approval of a Professional Services Agreement with Matrix Consulting Group, Inc. to conduct an assessment of the development review process, in the amount of \$34,800.00; and authorization for the Mayor to execute same on behalf of the Town.
4. Riverwalk PID Annual Update- Consider and approve annual update to the River Walk Public Improvement District No. 1 (PID) Service and Assessment Plan (SAP) and Assessment Roll
5. Atmos Mid-Tex Rate Filing- Consider approval of an ordinance adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.
6. Stormwater Utility Fees- Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound through the amendment of Appendix A "Fee Schedule" of the Code of Ordinances by amending Section 70-777 relative to the charges for the Stormwater Utility System fee.
7. Utility Rate Structure- Consider approval of an ordinance amending Appendix A of the Code of Ordinances by amending the charges for residential and non-residential water and wastewater service; providing a severability clause; providing for publication; and providing an effective date.
8. Financial Policies- Consider approval of a resolution amending the financial policies of the Town of Flower Mound.
9. Investment Policy- Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.

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10. Personal Protective Gear- Consider approval of the purchase of 18 sets of bunker gear for \$49,130.82 and 100 pairs of firefighting gloves for \$7,286.00 from NAFECO, Inc. through Buyboard Purchasing Contract # 514-17 in the total amount of \$56,416.82 and authorization for the Mayor to approve same on behalf of the town.
11. Central Fire Station CO#2 - ADA Improv.- Consider approval of Change Order No. 2 for the Flower Mound Central Fire Station, Phase II project, amending the contract with Schmoldt Construction, to provide for an increase to the contract in the amount of \$45,084.11; and authorization for the Mayor to execute same on behalf of the Town.
12. Gibson Grant Log Cabin CMR- Consider approval of a Construction Manager at Risk Agreement for the restoration of the Gibson Grant Log Cabin Project with Phoenix I Restoration and Construction, Ltd., for a fixed fee of \$185,244.00; and authorization for the Mayor to execute the same on behalf of the Town.
13. Bakersfield Park Restroom - CO#1- Consider approval of Change Order No. 1 to North Rock Construction, LLC,. for the Bakersfield Rest Room and Concrete Walkways project, in the amount of \$89,818.03; and authorization for the Mayor to execute same on behalf of the Town.
14. WWTP Phase IV - CCA Amend 1- Consider approval of Amendment No. 1 to the Professional Services Agreement with Alan Plummer Associates, Inc., to provide additional contract construction management and resident project representation services, associated with Wastewater Treatment Plant Rehabilitation Phase IV project for an increase of \$30,000.00; and authorization for the Mayor to execute same on behalf of the Town.
15. Kirkpatrick Ln Waterline Testing Award- Consider approval of a Professional Services Agreement with ECS Southwest, LLP., to provide construction materials engineering and testing, for the Kirkpatrick Lane 12-Inch Water Line Phase II project, in the amount of \$47,170.00; and authorization for the Mayor to execute same on behalf of the Town.
16. Kirkpatrick Ln Waterline Construction- Consider approval of a Construction Agreement with A&M Construction and Utilities, Inc., for the Kirkpatrick Lane 12-Inch Water Line Phase II project, in the amount of \$867,140.80; and authorization for the Mayor to execute same on behalf of the Town.
17. FM 2499 Waterline Testing Award- Consider approval of a Professional Services Agreement with ECS Southwest, LLP, to provide construction materials engineering and testing, for the FM2499 12-Inch Water Line Phase I project, in the amount of \$18,320.00; and authorization for the Mayor to execute same on behalf of the Town.
18. FM 2499 Waterline Construction Award- Consider approval of a Construction Agreement with GRod Construction, LLC., for the FM2499 12-Inch Water Line Phase I project, in the amount of \$859,092.30; and authorization for the Mayor to execute same on behalf of the Town.
19. Valley Ridge & Windsor Roundabout Test- Consider approval of a Professional Services Agreement with Braun Intertec Corporation, to provide construction materials engineering and testing, for the Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive Roundabout Connection projects, in the amount of \$30,182.00; and authorization for the Mayor to execute same on behalf of the Town.

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20. Valley Ridge & Windsor Roundabout Const- Consider approval of a Construction Agreement with 2L Construction, LLC., for the Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive Roundabout Connection projects, in the amount of \$613,413.50; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

21. FY 19/20 Town Budget Adoption- Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and making appropriations for each fund and department.
22. FY 19/20 Crime District Budget Adoption- Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.
23. FY 19/20 Fire District Budget Adoption- Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.
24. FY 19/20 Tax Rate Adoption- Consider approval of an ordinance fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.4390 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2019.
25. Tree Removal- Lakewood- **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).
26. ZPD - Lakewood PD-163- **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," and consider adopting an ordinance providing for said amendment subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is generally located north of Long Prairie Road and east of Silveron Boulevard. (The Planning and Zoning Commission recommended denial by a vote of 6 to 1 at its August 26, 2019, meeting.)

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27. SUP19-0001 - RaceTrac SUP-456- Public Hearing to consider a request for Specific Use Permit No. 456 (SUP19-0001 - RaceTrac) to permit a convenience store with gasoline sales, with an exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, an exception to Section IV.C.5. of the Town's Engineering Design Criteria regarding the requirement for a wet detention pond, an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design, a waiver to the Architectural Standards in the Town's Urban Design Plan regarding roof pitch and a deviation to the required parking standard pursuant to Section 82-73 of the Code of Ordinances, and to consider adopting an ordinance providing for said amendment.. The property is generally located east of Long Prairie Road and south of Spinks Road. (The Planning and Zoning Commission recommended denial by a vote of 4 to 3 at its September 9, 2019, meeting.)
28. ZPD19-0010 - Parker Sq Sign Package- Public Hearing to consider a request for rezoning (ZPD19-0010 – Parker Square CSP Building 700) to amend the Comprehensive Sign Standards within Planned Development District No. 24 (PD-24) by allowing certain attached office tenant signs for Building 700, and consider adopting an ordinance providing for said amendment. The property is located north of Cross Timbers Road at 700 Parker Square Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 1 at its September 9, 2019, meeting.)
29. SP19-0017 - Valley Creek Church Parking- Consider a request for a Site Plan (SP19-0017 – Valley Creek Church Parking Lot Expansion) to develop a parking lot addition with a request for a deviation to the required parking standard pursuant to Section 82-73 of the Code of Ordinances. The property is generally located south of Dixon Lane and east of Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 7 to 0 at its September 9, 2019, meeting.)
30. WWTP Phase V Construction Award- Consider approval to award Bid No. 2019-155-B to Archer Western Construction, LLC., for the Wastewater Treatment Plant Rehabilitation Phase V, Solids Facility Improvements, in the amount of \$9,199,060.00; 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, personnel, and economic development negotiations, as follows:

a. Consultation with Attorney.

1. Regulation of Short Term Rentals

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, cultural arts center, 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.

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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: September, 2019, at 4:20 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and 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: September 16, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on September 3, 2019.

BACKGROUND INFORMATION: The Town Council held a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on September 3, 2019.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):	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.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 3, 2019**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 3RD DAY OF SEPTEMBER 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
Sandeep Sharma	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Ben Bumgarner	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
Tammy Wilson	Exec Dir of Financial Services
Kay Wilkinson	Budget Officer
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Executive Director of Public Works

A. CALL REGULAR MEETING TO ORDER

Mayor Dixon called the regular meeting to order at 6:10 p.m.

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

Chaplain Richard Plunk gave the invocation and Mayor Dixon led the pledges.

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.	Daniel Bennett, 408 White Settlement, White Settlement	TAD Election Process
2.	Tracy Watson, 5404 Clear Creek	Budget considerations for Town employees
3.	Nancy Kleckner, 2608 Wisdom Creek	Tennis Center
4.	Don McDaniel, 3801 Hide A Way Ln	Blood Drive
5.	Brit Stock, 3701 Acton	Support of employees
6.	Paul Stone, 4100 Broadway	Budget
7.	Edward Horne, 2612 Winding path Way with donated time from: 1) Srinivasan Padmanabhan, 2808 Merryglen Ln 2) Luis Giner, 3052 Birch Leaf Place	2499/Chaparral Traffic Signal

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	3) Patricia Giner, 3052 Birch Leaf Place 4) Jaymin Kavaia, 2603 Merryglen Ln 5) Cesar J Miranda Hiraldo, 2629 Creekside Pl 6) Mary Helen Phillips-Feiler, 2701 Cypress Leaf Ln 7) Bill Sondericker, 2608 Long Prairie Rd 8) Vivek Goel, 2609 Leafsray Ln 9) Tracy Smith, 2701 Merryglen Ln 10) Manvinder Chopra, 2801 Merryglen Ln 11) Swati Rustaul, 2600 Creekside Pl	
8.	Mike Baldree, Flower Mound Professional Firefighter Association and Josh Acker, Flower Mound Police Association, 4150 Kirkpatrick Ln with donated time from*: 1) Andrew Payne 2) Tim Grubb 3) Greg Cherry 4) Samuel Thrash 5) Brad Hutcheson 6) Troy Mills 7) Justin Pierce 8) John Wright 9) Jacob Ventrca 10) Tim Mackling 11) Wade Cannon 12) Gustavo Trujillo *addresses omitted in accordance with the Public Information Act.	Budget

E. PRESENTATIONS**1. Texas Police Chiefs Association Recognition Program Presentation**

Chief Robert Crawford, Director, Region 8 Texas Police Chiefs Association, presented Chief Kancel and the Police Department with a re-recognition certificate for best practices.

F. ANNOUNCEMENTS

Deputy Mayor Pro Tem Forest stressed the importance of donating blood and encouraged everyone to come to the Sept. 11th blood drive at the YMCA from noon to 6 p.m.

Several councilmembers expressed condolences to the families of victims from the Odessa-Midland tragedy.

Councilmember Engel announced that the Town is accepting applications for boards and commissions and the deadline is September 6th.

Councilmember Pierson expressed appreciation for the many people who showed up to the meeting and the importance of people coming out to speak their minds in a civil and honorable manor.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 3, 2019**PAGE 3**

Mayor Dixon expressed appreciation for everyone who showed up and expressed appreciation for all the Town employees.

G. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update on the following projects:

1. Capital improvement projects
 - Traffic signal at Silveron and Lakeside Village (no bids received)
 - Red Bud Point 8 inch line (no bids received)
 - Peters Colony Park
2. Economic Development projects
 - New business openings
3. Explanation of 65th percentile (market adjustments)
 - Clarification as to what the 65th percentile means as it relates to market adjustments

and he responded to the following questions from Council:

- Clarification that it's not an across the board 65th percentile for all employees; however, more for public safety or other positions based on the market
- Clarification regarding TMRS and the 2:1 match

H. FUTURE AGENDA ITEMS

1. There were no future agenda item request.

I. COORDINATION OF CALENDARS

Mayor Dixon announced that the next regular Town Council meeting is scheduled for Monday, September 16, 2019.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on August 19, 2019.
2. Consider approval of the purchase of a new Ford Transit Van with camera equipment per Vendor Specifications/Quotes from Silsbee Ford and CLS-Cues Equipment for Special Equipment for Public Works - Utility Line Maintenance Division in the amount of \$109,129.00.
3. Consider approval of a resolution accepting the STEP Comprehensive Grant from the Texas Department of Transportation, execution of an agreement with TxDOT, and authorization for Sgt. Steven Strickland to enter into an agreement on behalf of the Town.
4. Consider approval of the purchase and installation of a fire station alerting system in the amount of \$358,306.46.

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5. Consider approval of an Ordinance amending Chapter 14, "Buildings and Building Regulations," Article XII, "Construction within public Rights-Of-Way," Division 2, "Registration and Permit," Section 14-472, "Construction Permits," of the Code of Ordinances, of the Town of Flower Mound, Texas, by requiring permit fees for permits issued for construction in the public Rights-of-way.

ORDINANCE NO. 42-19

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE XII, "CONSTRUCTION WITHIN PUBLIC RIGHTS-OF-WAY," DIVISION 2, "REGISTRATION AND PERMIT;" SECTION 14-472, "CONSTRUCTION PERMITS;" REQUIRING A PERMIT FEE FOR PERMITS ISSUED FOR CONSTRUCTION TO BE PERFORMED IN PUBLIC RIGHTS-OF-WAY; 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.

6. Consider approval of an Ordinance amending Chapter 14, "Buildings and Building Regulations," Article XII, "Construction within public Rights-Of-Way," Division 5, "Network Nodes and Node support Poles;" section 14-507, "conformance with the Town's public rights-of-way ordinance," of the code of ordinances of The Town of Flower Mound, Texas.

ORDINANCE NO. 43-19

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE XII, "CONSTRUCTION WITHIN PUBLIC RIGHTS-OF-WAY," DIVISION 5, "NETWORK NODES AND NODE SUPPORT POLES;" REQUIRING A PERMIT PURSUANT TO SECTION 284.152 OF THE TEXAS LOCAL GOVERNMENT CODE; REQUIRING A NONDISCRIMINATORY PERMIT FEE AS AUTHORIZED BY SECTION 284.156 OF THE TEXAS LOCAL GOVERNMENT CODE; 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.

7. Consider approval of an Ordinance amending Appendix A "Fee Schedule," referenced in Chapter 14, "Buildings and Building Regulations," Section 14-471, "Public Rights-of-Way Registration fee and Section 14-472 Construction (ROW) Permit fees," of the code of ordinances of The Town of Flower Mound, Texas, by adding a registration fee for rights-of-way contractors and a permit fee for right-of-way permits; and a new fee schedule to allow for notary services charges.

ORDINANCE NO. 44-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING APPENDIX A "FEE SCHEDULE," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS; ESTABLISHING THE FEE FOR REGISTRATION OF CONTRACTORS WORKING WITHIN TOWN RIGHTS-OF-WAY PURSUANT TO SECTION 14-471 OF THE TOWN CODE; ESTABLISHING A FEE for RIGHTS-OF-WAY CONSTRUCTION PERMITS PURSUANT TO SECTION 14-472 OF THE TOWN CODE; ESTABLISHING FEES FOR NOTARY SERVICES TO THE PUBLIC; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL

ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

8. Consider approval of an ordinance amending Chapter 34, "Environment," by creating Article X, "Fats, Oils, and Grease," of the Code of Ordinances of the Town of Flower Mound, Texas, to: regulate, capture and dispose of fats, oils, and grease; require installation and maintenance of traps or interceptors to prevent fats, oils, and grease from entering treatment works.

ORDINANCE NO. 45-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 34. - ENVIRONMENT OF THE CODE OF ORDINANCES BY CREATING ARTICLE X. - FATS, OILS, AND GREASE, TO REGULATE CAPTURE AND DISPOSAL OF FATS, OILS, AND GREASE; TO REQUIRE INSTALLATION AND MAINTENANCE OF TRAPS OR INTERCEPTORS TO PREVENT FATS, OILS, AND GREASE FROM ENTERING TREATMENT WORKS; SETTING A PENALTY FOR VIOLATIONS; 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.

9. Consider approval of the purchase of traffic signal heads and parts, in the estimated annual amount of \$125,000.00, from Consolidated Traffic Control, through the HGAC contract.

Deputy Mayor Pro Tem Forest moved to approve by consent Items 1 – 9, as presented in the agenda caption. Mayor Pro Tem Sharma seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

Motion passed

AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON

NAYS: NONE

K. REGULAR ITEMS

10. Public Hearing (2 of 2) to consider a tax rate of \$0.4390 per \$100 assessed valuation.

Staff Presentation

At the request of Mayor Dixon, Mr. Meredith clarified as to whether or not the budget can be discussed in detail with respect to the tax rate item.

Ms. Wilkinson gave a presentation identifying or noting:

- Required budget and tax rate adoption language
- How Flower Mound compares
- 2019 Debt service and tax rate
- Recommended tax rate change
- Tax rate change impact
- Alternative recommendation
- Debt payments
- Next steps

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and she, or Ms. Wilson, responded to the following questions from Council:

- Clarification regarding the call date time frame as it relates to debt service

Council Discussion

There was Council discussion regarding:

- Support to keep the tax rate the same
- Preference to keep the tax rate the same and avoid taking on additional debt
- In favor of keeping the rate the way it is but keep from adding more debt
- Importance of being financially responsible and debt free
- Past down market conditions
- How the smartest thing for council to do is to maintain the tax rate
- Clarification that no action will be taken this evening
- The importance of being financially responsible and not getting in more debt or paying down debt
- Concerns regarding the discussions about lowering merit increases and cutting benefits to Town employees
- Interest in not having merit increases or compensation as part of the discussion at the next meeting

Mayor Dixon opened the Public Hearing at 7:10 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
Albert Picardi, 1525 Lindby	Patrick Martin, 4700 Oak Springs Dr	Jody Smith, 3705 Sarah Springs
Brit Stock, 3701 Acton		Carol Kohankie, 4312 Lauren Way
Joe Roach, 4993 Lusk Ln		
Jody Roach, 4975 Lusk Ln		
Paul Stone, 4100 Broadway		

Mayor Dixon closed the Public Hearing at 7:27 p.m.

Mayor Dixon made the following required announcement:

"The Town of Flower Mound's tax rate is scheduled for adoption on Monday, September 16, 2019, at 6:00 p.m., at a regular Town Council meeting, to be held in the Town of Flower Mound Council Chambers, located at 2121 Cross Timbers Road, Flower Mound, Texas 75028."

L. BOARDS/COMMISSIONS (Pre-Council Room)

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: **Animal Services Board, Cultural Arts Commission**, Environmental

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Conservation Commission, Parks Board, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and Transportation Commission.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 7:40 p.m. on September 3, 2019, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, and reconvened into an open meeting at 7:59 p.m. on September 3, 2019, and no action was taken on the following items

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

O. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 7:59 p.m. on Tuesday, September 3, 2019, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: September 16, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of a resolution adopting a new voting system for Town elections (Tarrant County); and providing an effective date.

BACKGROUND INFORMATION: Tarrant County upgraded their voting equipment to HART InterCivic [Verity Hybrid system](#), which is demonstrated in [this video](#).

Why the change? The following quote is from Heider Garcia, Tarrant County Elections Administrator:

"Tarrant County had identified the need to upgrade the voting technology years ago, to address growing concerns around the security and transparency of our elections. The new technology provides the latest information security methods and techniques available in the market, together with a paper trail for every voter. In addition, this new technology allowed the County to join the Countywide Polling Place Program (Vote Centers), making voting a more convenient and accessible process for our constituents".

Pursuant to Chapter 123, Subchapter A of the Texas Election Code ("Code"), a voting system must be adopted for use in any one or more elections by resolution, order or other official action.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):	Account Number(s):

Finance Review by: N/A

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

ATTACHMENTS:

1. Draft Resolution

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

RESOLUTION NO. _____**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING A NEW VOTING SYSTEM FOR TOWN ELECTIONS; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Town of Flower Mound contracts with Tarrant County for the purpose of conducting its elections; and

WHEREAS, on August 13, 2019, the Tarrant County Commissioners Court voted to accept a contract with HART InterCivic to purchase Verity System version 2.3.1 (the "System"); and

WHEREAS, the System will be used in accordance with the terms and conditions specified in the certification order issued by the Texas Secretary of State; and

WHEREAS, Chapter 123, Subchapter A of the Texas Election Code requires voting systems to be adopted by the Town.

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

SECTION 1.

The Town adopts the HART InterCivic Verity Voting System version 2.3.1 as the voting system for Town elections, including absentee voting by mail, early voting by personal appearance, regular voting on Election Day and provisional voting.

SECTION 2.

This resolution shall be effective immediately from and after its passage.

PASSED AND APPROVED on this the 16th day of September, 2019.

Steve Dixon, Mayor

Attest:

Theresa Scott, Town Secretary



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: September 16, 2019

FROM: JP Walton, Assistant to the Town Manager

ITEM: Consider approval of a Professional Services Agreement with Matrix Consulting Group, Inc. to conduct an assessment of the development review process, in the amount of \$34,800.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: In the FY18-19 Adopted Budget, Town Council approved a Decision Package for the Development Services Department to perform a Development Process Review with a budget of \$35,000. This process review will include analyzing the Town's Development Review Committee, workload, development application and permit processing, application and permit payment systems, application and permit timing, departmental work flow, responsiveness to the applicant, internal software operating systems, and analyze application and permit review responsibilities. After analyzing the department's current processes the consultant will provide the Town with suggestions on improving the department's efficiency and effectiveness as it pertains to the internal review and processing of applications and permits. The potential benefits of this external review of the Town's development processes are improved efficiency, effectiveness, communication, accountability, consistency, responsiveness, and documentation.

Due to the specialized services required, the Town identified three firms with notable experience in this line of work, which have worked extensively in the Dallas-Fort Worth Metroplex. Two out of the three firms responded to the Town with a proposal to perform the Development Process Review. Staff evaluated the proposals based on their approach, professionalism of response, qualifications, directly related experience in the area, overall experience of the firm and their key personnel assigned to this review, anticipated services, and estimated fees. Based on these criteria, Matrix Consulting Group, Inc. was chosen to recommend to Council.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$34,800

Proposed Expenditure/(Revenue):	Account Number(s):
\$34,800	100-620-22000-5110

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Matrix Consulting Group, Inc. 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
MATRIX CONSULTING GROUP, INC.**

This contract is entered into on this 16th day of September, 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 **Matrix Consulting Group, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 101 Southpointe Drive, Suite E, Edwardsville IL 62025.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT to conduct an assessment of the development review process; and

WHEREAS, CONSULTANT is a professional consulting 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 Development Process Review project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Proposal to Conduct an Assessment of the Development Review Process" (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 Four Thousand Eight Hundred and No/100 Dollars (\$34,800.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

Each month CONSULTANT will submit to TOWN an invoice for 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:

JP Walton
Assistant to the Town Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6081 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

IX. **Right to Inspect Records**

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

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

XVIII.
Confidential Information

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

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

XIX.
Notice Information

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

JP Walton
Assistant to the Town Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6081 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:

Allen Pennington
Vice President
Matrix Consulting Group
101 Southpointe Drive, Suite E
Edwardsville, Illinois 62025
618-692-9085 Telephone

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

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

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Matrix Consulting Group, Inc.

By: _____
Name:
Title:

Date Signed: _____

State of Texas §
 §
 County of _____ §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____ in his capacity as _____ of _____, a _____ Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____ DAY OF ____, 20____.

 Notary Public, State of Texas

My Commission Expires:

Proposal to Conduct an Assessment of the Development Review Process

FLOWER MOUND, TEXAS



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July 12, 2019

JP Walton
 Assistant to the Town Manager
 Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, TX 75028

Dear Mr. Walton:

The Matrix Consulting Group is very pleased to present our qualifications to conduct an assessment of the Town's development review process. Our statement of qualifications is based on our review of the services request, our extensive experience analyzing development services in Texas and throughout the country, and our past experience working with the Town of Flower Mound.

Our firm and the proposed project team have conducted staffing, process, and operations studies of more than 200 community development departments in the country. The following table summarizes our most recent dedicated studies of development services:

Community Development Studies

Albany, New York	Greenville, South Carolina	Miami Beach, Florida
Arlington, Virginia	Gwinnett County, Georgia	Milpitas, California
Blacksburg, Virginia	Hanover County, Virginia	Napa County, California
Boston, Massachusetts	Hilton Head Island, SC	Niles, Illinois
Burlington, Vermont	Johnson City, Tennessee	Oceanside, California
Coral Gables, Florida	Kissimmee, Florida	San Francisco, California
Culver City, California	Lake Oswego, Oregon	San Jose, California
Cupertino, California	Lawrence, Kansas	Santa Monica, California
Dayton, Ohio	Lee's Summit, Missouri	Sunrise, Florida
DeKalb County, Georgia	Los Angeles, California	ToHo Water Authority, Florida
Des Moines, Washington	Mamaroneck, New York	Waukesha County, Wisconsin
Downey, California	Manatee County, Florida	West Palm Beach, Florida
East Point, Georgia	Marion County, Oregon	Westminster, Colorado

Our firm has prior experience providing similar services to the Town of Flower Mound. We conducted an Operational Assessment of the Code Enforcement Division in 2014.

We are currently completing similar evaluations of development review operations and processes for the cities of Menlo Park and Ventura (CA) and Rowan County (NC).

In addition to our dedicated studies of development services, we have conducted over 75 organization-wide studies that also included reviews of development services, including:

Organization-wide Studies Including Development Process Evaluations

Albuquerque, New Mexico	Goodyear, Arizona	Palos Verdes Estates, CA
Augusta, Georgia	Half Moon Bay, California	Rancho Mirage, California
Avon, Connecticut	Johnson County, Kansas	Rancho Palos Verdes, CA
Barstow, California	Monroe County, Michigan	Raymore, Missouri
Brattleboro, Vermont	Monrovia, California	Roseville, California
Carroll County, New Hampshire	Montpelier, Vermont	Salt Lake County, Utah
Deltona, Florida	Orland Park, Illinois	Sunnyvale, California
Franklin Township, New Jersey	Orleans, Massachusetts	Tinley Park, Illinois
Fort Morgan, Colorado	Orting, Washington	Waltham, Massachusetts

Our team would be led by Alan Pennington, head of our General Consulting Practice, and would include several highly experienced consultants who have conducted dozens of similar development process assessments. Our lead analyst previously served as a Planning Manager in Oklahoma.

Our firm has a unique place in the consulting industry as a fact-based firm. We pride ourselves on the development of well-written findings and recommendations. This is achieved by:

- Intensive input from City staff and other stakeholders.
- Extensive data collection of workloads, service levels and costs.
- Detailed analysis of operations, services, processes, technology, management and staffing.
- Extensive interaction with the City as the project progresses. We would utilize a broadly-based project steering committee to ensure that both the quality and appropriate direction are achieved.

We look forward to the opportunity to further discuss our background and qualifications with you. Please do not hesitate to contact me at rbrady@matrixcg.net or 650.858.0507 if you have any questions regarding our qualification statement.

Richard P. Brady
Matrix Consulting Group

Richard Brady
 President

1 Firm Overview

In this section of the proposal, we are providing an overview of the Matrix Consulting Group, a summary of our qualifications, and our approach to project management and quality assurance.

1. Introduction to the Matrix Consulting Group

The Matrix Consulting Group's only business focus is the provision of organization, staffing and management analytical services to the public sector. Our philosophy in providing management consulting services is to address our clients' issues and needs in a fact-based manner that not only solves immediate problems, but also provides management and staff with implementation assistance and ways to continue to manage effectively into the future.

The following points provide specific information regarding the firm's background, focus and composition:

- The Matrix Consulting Group was founded in 2002 and is an independent organization, not a subsidiary of any firm.
- The firm is domestically incorporated in California. Our headquarters are in Mountain View with a satellite office in Irvine. In addition, we have regional offices in North Carolina, Illinois, Texas, Massachusetts, and Oregon. We are also incorporated in Texas.
- We currently have 18 full-time and 8 part-time staff.
- We have a full time, dedicated team of specialists who focus on development review operations and assessments.

Since our creation, the firm has developed a reputation for in-depth and quality analysis and responsiveness to our local government clients.

2. Our Management Studies Philosophy

Our firm's reputation is based on providing detailed analysis through extensive data collection, input and interaction with our clients. The cornerstone of our philosophy in conducting organization and management studies is summarized in the following points:

- A principal of the firm is always involved in our work for our government clients. For this project, we would commit the Vice President of the company, who leads

our general consulting practice. He has 13 years of local government consulting experience and 14 years of local government work experience.

- We approach our projects with a firm grounding in formal analytical methodologies. All impacts are identified and analyzed in detail to ensure that recommendations are implemented and our clients (and the public they serve) can understand the reasons for recommended changes. This is achieved by:
 - Use of proven project management techniques.
 - Extensive input from municipal staff members through interviews and surveys; extensive input from elected and appointed officials.
 - Detailed data collection and analysis derived from primary sources.
 - Extensive internal reviews of facts, findings, conclusions and recommendations as studies proceed.
 - Detailed implementation plans.

This philosophy and approach has provided our clients with valuable assistance and advice in dealing with important public policy issues. It provides a high level of buy-in from all affected stakeholders, as they have multiple opportunities for participation in the study and are apprised of our progress throughout the term of the engagement. It has also resulted in very high implementation levels of our recommendations, with over 85% of our recommendations being implemented.

3. Project Management and Controls

We believe very strongly in the science of our craft. As a result, we approach each project utilizing the following techniques as a baseline:

- **Project Management:** One critical success in conducting a project of this size and complexity in an efficient, timely, and effective approach to project management. The Matrix Consulting Group utilizes project management approaches that assures we have minimum impact on staff and their daily operations, while providing effective coordination of the project. Such examples include the development of a project schedule in advance of formal project kickoff, distribution of a data collection list prior to being onsite, and coordinating onsite efforts well in advance. All project work activities are defined in advance and tied to each project team member, deliverables, the schedule and the budget. Our approach to project management keeps all parties apprised of current project status and when to expect deliverables.

- **Information Gathering:** Equally important to the success of the project are the methods that we will use to collect, analyze, and present information in order to formulate findings and develop and assure acceptance of recommendations. The Matrix Consulting Group has developed and fine-tuned over the years a number of information-gathering tools and techniques. These tools enable us to gather information efficiently and quickly. They include the documentation of data through the development of checklists that specify the types of data and other quantitative information we typically seek in order to evaluate workloads; development of interview guides to ensure that we capture the necessary objective and subjective information required to understand each position, process, and major operational areas; and observing current processes to identify strengths and improvement opportunities.
- **Interaction:** Continual communication between the client and project team is a critical component of this study. We will conduct numerous interviews with staff from Planning, Building Inspections, and other staff involved in the development review process (e.g. Fire, Public Works, etc.) Additionally, we will have on-going communication with the Town's project manager and steering committee related to project status and review of project deliverables. Additionally, we spend a significant portion of our budget being onsite and meeting with staff and gaining an understanding of current operations.
- **Quality Control:** Our project manager designs and personally reviews all interim and final products before they are delivered to the client. This is done to ensure a quality document and that all services and analytical efforts outlined in our proposal have been fully completed.
- **Implementation:** Our projects result in implementable recommendations and solutions for our clients. We develop an implementation action plan that sets forth the steps required to accomplish a successful implementation. The implementation action plan is critical, especially for recommendations that include significant organizational and process changes, such as centralizing permit processing. The action plan will provide strategy and management tools to successfully complete the implementation. Furthermore, our project team will remain available for consultation during the implementation phase.

These project management approaches have resulted in all of our projects being delivered at a high level of quality, on time and on budget. Furthermore, our approach to each project results in implementable recommendations.

4. Prior Experience Working With the Town of Flower Mound.

The Matrix Consulting Group conducted an Operational Assessment of the Code Enforcement Division in 2014.

5. Disclosures

The Matrix Consulting Group has no disclosures to make.. The firm is not now, and has never been involved in any contract failures, civil or criminal litigations, or any pending investigations or litigations involving the firm or in which the firm has been judged guilty or liable.

2 Prior Experience and References

This section of our proposal outlines our relevant project experience and provides specific references for prior clients.

1. Most Recent Project Experience.

Our firm and proposed project team members have conducted staffing, operations, and process studies of more than 200 community development departments throughout the United States. The following table summarizes our most recent dedicated studies of development review services including centralization of permitting functions:

Community Development Studies

Albany, New York	Greenville, South Carolina	Miami Beach, Florida
Arlington, Virginia	Gwinnett County, Georgia	Milpitas, California
Blacksburg, Virginia	Hanover County, Virginia	Napa County, California
Boston, Massachusetts	Hilton Head Island, SC	Niles, Illinois
Burlington, Vermont	Johnson City, Tennessee	Oceanside, California
Coral Gables, Florida	Kissimmee, Florida	San Francisco, California
Culver City, California	Lake Oswego, Oregon	San Jose, California
Cupertino, California	Lawrence, Kansas	Santa Monica, California
Dayton, Ohio	Lee's Summit, Missouri	Sunrise, Florida
DeKalb County, Georgia	Los Angeles, California	ToHo Water Authority, Florida
Des Moines, Washington	Mamaroneck, New York	Waukesha County, Wisconsin
Downey, California	Manatee County, Florida	West Palm Beach, Florida
East Point, Georgia	Marion County, Oregon	Westminster, Colorado

We are currently completing similar evaluations of the permitting process for the cities of Menlo Park (CA), Ventura (CA), and Rowan County (NC).

In addition, we have conducted over 75 organization-wide studies that included reviews of development services operations. These clients include:

Organization-wide Studies Including Development Process Evaluations

Albuquerque, New Mexico	Goodyear, Arizona	Palos Verdes Estates, CA
Augusta, Georgia	Half Moon Bay, California	Rancho Mirage, California
Avon, Connecticut	Johnson County, Kansas	Rancho Palos Verdes, CA
Barstow, California	Monroe County, Michigan	Raymore, Missouri
Brattleboro, Vermont	Monrovia, California	Roseville, California
Carroll County, New Hampshire	Montpelier, Vermont	Salt Lake County, Utah
Deltona, Florida	Orland Park, Illinois	Sunnyvale, California
Franklin Township, New Jersey	Orleans, Massachusetts	Tinley Park, Illinois
Fort Morgan, Colorado	Orting, Washington	Waltham, Massachusetts

As shown, the Matrix Consulting Group has significant relevant experience related to the evaluation of development review and permitting services.

2. Project References

We are providing the following references for prior community development studies conducted by the firm and members of the project team.

Project References

Milpitas, California

Assessment of the Development Review Process

Reference:

Steven McHarris
Assistant City Manager
408.586.3059
smcharris@ci.milpitas.ca.gov

In this just completed study, the firm conducted a comprehensive evaluation of all operational and organizational practices related to the development review process. The scope of work included evaluating operational practices, staffing allocations and organizational structure, policy review and development, and budget/fee policy and structure evaluation. The departments involved in the assessment included: Building and Safety, Planning, Fire, Engineering and Land Development, Public Works, and Finance. Key recommendations including modification of processes to increase efficiency (including increasing administrative approvals), technology assessment, policy modifications, process changes to enhance a “one stop shop” approach, fee modifications, and establishment of service level performance targets. We also developed a new fee schedule. We are continuing to work with this client to develop a “work in progress” financial model.

Blacksburg, Virginia

Assessment of the Development Process

Reference:

Christopher Lawrence
Deputy Town Manager
540.443.1005
clawrence@blacksburg.gov

This study encompassed a comprehensive assessment of the administrative development review process, building permit review and inspections, and engineering reviews. The goals of the study were to develop recommendations to ensure the Town provided consistent, predictable, and best-in-class service to customers. Key recommendations included: adopting specific performance targets for each permit type, expansion of public information and interaction with customers, improvements to the pre-application meetings, conducting a completeness review prior to application acceptance, and issuance of a consolidated review letter outlining all review comments from departments. Additionally, recommendations were made to enhance technology utilization including the acceptance of electronic signatures to enable online processing of selected applications.

Miami Beach, Florida**Review of the Regulations and Development Review Process****Reference:**

Susanne Torriente

Assistant City Manager

305.673.7010

SusanneTorriente@miamibeachfl.gov

In this just completed project, the Matrix Consulting Group was engaged by the City to conduct review of the following areas: timeliness of service delivery, decisiveness and authority, processes utilized, charter requirements versus delegated authority, a best practices review, internal controls and customer outreach. Key recommendations included: establishment of performance standards, reduction in processing time through cross-training of reviewers, process redesign to eliminate manual scanning of documents for review through implementation of electronic submittals, increasing the number of administrative approvals, updating of policies and procedures, require completeness checks on all submittals, implementation of a Development Review committee, reallocation of various variance approvals from the Land Use Board to the Board of Adjustment, and enhancement of public information materials regarding requirements and processes associated with the development review process

Downey, California**Development Services Analysis**

Aldo Schindler

Director of Community Development

562.904.7151

aschindler@downeyca.org

This study examined the entire development review process including zoning and land use, building permitting and inspections, and associated reviews conducted by engineering, fire and external entities. The study evaluated processes, staffing levels, organizational structure, and technology. A key focus of the study was ensuring a high level of customer service. Key recommendations included: modifications to staffing allocations, implementation of a permit technician position at the one-stop counter, enhanced technology use to streamline processes and increase staff efficiency, implementation of training programs for staff, transferring the Building Official from a contractual position to a city staff position and enhancing access to online information regarding application requirements.

Kissimmee, Florida**Management Study of the Development Review Process and Development of New Fee Structure**

Craig Holland, Director

101 Church St., Suite 110

Kissimmee, FL 34741

407.518.2140

cholland@kissimmee.org

The project team evaluated the entire development review and permitting function performed by the Community Development Department and the development of a new fee structure for all permit types. A key focus of the study was on improving customer service through defining service levels, standardizing processes utilized, employing technology, and increased customer education. The study included the conduct of both individual interviews and focus groups with customers to fully understand their perceptions related to services provided by the City. Recommendations included alternative staffing plans, increased technology utilization, establishment of review time standards, and increased public education (through handouts and educational materials regarding the development process). Additionally, we developed a new fee structure for the City.

We encourage you to contact our references to attest to the expertise of our staff, the quality of our work, and the usefulness of our recommendations. Additional references can be provided, as desired.

3 Proposed Project Team

The Matrix Consulting Group proposes to utilize a project team that has significant experience in conducting operational reviews and assessment of permitting processes and implemented centralized and consolidated permitting operations.

The following table provides a listing of our project team members showing their area of responsibility on the project.

Team Member / Location	Project Role
Alan Pennington, Vice President Project Manager	Mr. Pennington will be the Project Manager on this engagement. He has led or been the lead analyst on all development review studies conducted by the firm in the last decade. He will be involved in all aspects of the project with a particular focus on the analysis and development of recommendations.
Aaron Baggarly, AICP, Manager Lead Analyst	Mr. Baggarly will serve as the lead Analyst on this engagement. He will lead the analysis of the operational and service delivery assessment, workflow and associated processes, and evaluation of staffing needs.
David Branch, Manager Analyst	Mr. Branch will be involved in supporting all senior staff members on this engagement. He will be involved in the data analytics to evaluate service delivery, comparative research (if required), and the assessment of staffing needs of the organization.

On the following pages are resumes for each of our project team members detailing their prior experience, background, education, and a listing of prior clients for whom they have provided local government consulting services, and specifically those related to development review processes.

ALAN D. PENNINGTON VICE PRESIDENT, MATRIX CONSULTING GROUP

Background: Alan Pennington is a Vice President with the Matrix Consulting Group and leads our General Consulting Practice. He has been employed by the Matrix Consulting Group since 2005. Prior to that he served for over 15 years in public sector positions in Maine and Illinois. He served in Peoria, Illinois (from 1992 to 2005), in various positions including Assistant City Manager, Assistant Human Resources Director, and Labor Relations Manager. Mr. Pennington has conducted operational studies and analysis, budget preparation, implementation of performance measurement systems, direct supervision of an emergency communications center, equal opportunity unit and a labor negotiator.

Community Development (Planning, Building, Code Enforcement): Evaluated the development review and permitting processes. Conducted assessment of staffing, operations, process mapping, technology utilization, performance level assessment, and customer service.

Albany, New York	Fort Worth, Texas	Manatee County, Florida
Blacksburg, Virginia	Greenville, South Carolina	Marion County, Oregon
Boston, Massachusetts	Gwinnett County, Georgia	Milpitas, California
Burlington, Vermont	Hanover County, Virginia	Niles, Illinois
Coral Gables, Florida	Hilton Head Island, SC	Redlands, California
Cupertino, California	Johnson City, Tennessee	San Jose, California
Dayton, Ohio	Kissimmee, Florida	Springfield, Massachusetts
DeKalb County, Georgia	Lawrence, Kansas	Sunrise, Florida (two studies)
Des Moines, Washington	Lee's Summit, Missouri	ToHo Water Authority, Florida
Downey, California	Little Rock, Arkansas	Waukesha County, Wisconsin
East Point, Georgia	Napa County, California	West Palm Beach, Florida
Flower Mound, Texas	Mamaroneck, New York	Westminster, Colorado

Agency-Wide Studies: Participated on project teams conducting evaluations of entire city and county organizations. Work scope included evaluation of business processes, service levels, policies and procedures, staffing levels, evaluation of spans of control, and reviewing alternatives options for overall organizational structure.

Avon, Connecticut	Orleans, Massachusetts
DeKalb County, Georgia	Peoria County, Illinois
Fort Morgan, Colorado	Palos Verdes Estates, California
Half Moon Bay, California	Rancho Mirage, California
Johnson County, Kansas	Rancho Palos Verdes, California
Montgomery College, Maryland	Raymore, Missouri
Montpelier, Vermont	Roseville, California
Mt. Lebanon, Pennsylvania	South Coast Water District, California
Orland Park, Illinois	Washington State Ferries

Public Works and Utilities: Conducted studies of full service public works departments including maintenance, fleet, traffic, engineering, and roads. Studies have focused on evaluation of maintenance management, crew sizes and staff utilization, technology, organizational structure, standard operating procedures, levels of performance management, and feasibility of shares services with neighboring governmental units.

Alexandria, Virginia	Nashville-Davidson County, Tennessee
Charleston County, South Carolina	Orleans, Massachusetts
Franklin, Tennessee (Water/Wastewater)	Rock County, Wisconsin
Franklin, Tennessee (Fleet Management)	Washington County, New York
Milwaukee, Wisconsin	White Plains, New York

ALAN D. PENNINGTON VICE PRESIDENT, MATRIX CONSULTING GROUP

Parks and Recreation: Evaluated parks and recreational functions including scope of services provided, utilization of facilities, public-private partnerships, preventive maintenance and long-range planning, and technology utilization.

Elmhurst Park District, IL
Grand Rapids, Michigan
Los Angeles, California

Orleans, Massachusetts
Seattle, Washington
Southlake, Texas

Administrative Services: Conducted studies of administrative support services including Human Resources, Finances, Procurement, and City Clerk. Study scope of work included performance measurement, customer service (internal and external), technology utilization, staffing evaluations, policy and procedure review, and comparison to best management practices.

Avon (CT) - HR, Finance, Maintenance
Carroll County (NH) – Human Resources
Charlotte (NC) - Procurement
CPS Consultants (CA) – Organizational, HR
Highland Park (IL) – HR
Ketchikan (AK) – HR Division Assessment
Los Angeles (CA) – Payroll
Irvine (CA) – Administrative Services incl. HR
Imperial Irrigation District (El Centro, CA) – HR
Madison Area Technical College - HR
Marshall University (WV) - Procurement
Matanuska (AK) - School Site Selection
Missouri Department of Conservation - HR

Peoria County (IL) - HR, Procurement, Finance
Portsmouth (NH) - Labor Relations, Overtime
Riverside (CA) - Finance
Riverside (CA) – Human Resources
Rockingham County (NH) – Human Resources
Salt Lake City (UT) - Human Resources
Santa Clara Valley Water (CA) – Procurement
Seattle City Light (WA) – Worker's Compensation
Springfield (MA) - City Clerk
Springfield (MA) - Finance, Procurement
Sunnyvale (CA) – Finance, Procurement
VTPO (FL) – Human Resources Program Study
West Virginia University (WV) - Procurement

Professional Associations:

Association of Local Government Auditors (ALGA)
American Planning Association (APA)
International Code Council (ICC)
International City-County Management Association (ICMA)

Education:

BA, University of Maine – Public Management
MPA, University of Maine – Public Administration

AARON C. BAGGARLY, AICP MANAGER, MATRIX CONSULTING GROUP

Background: Aaron Baggarly is a Manager with the Matrix Consulting Group and is the lead analyst on development review and permitting studies. Mr. Baggarly has extensive experience in organizational, operational, and planning assessments for local, state and national agencies. Mr. Baggarly most recently worked for the City of Stillwater, OK as the Planning Manager and oversaw planning and development activities, and prior to that worked for another planning firm. Mr. Baggarly has over 12 years of public and consulting experience, completing over 100 studies including a wide array of analysis for public sector clients focusing on process studies for planning, building, and code enforcement activities. Analytical techniques include data and workload analysis, needs assessments, visioning, organizational and staffing assessments, public engagement, and best management practices evaluation. Mr. Baggarly also serves on his local Board of Adjustment.

Community Development (Planning, Building, Code Enforcement): Evaluated the development review, permitting, and service delivery processes of municipalities. Contributed to assessment of staffing, operations, process mapping, technology utilization, and policy and procedure development.

Blacksburg (VA) – Development Process Analysis
Boston (MA) – Inspectional Services Assessment
Burlington (VT) - Permitting Review
Downey (CA) – Development Services Review
East Point (GA) – Development Process Review
Everett (WA) – Engineering and Building Dept Assessment
Ft Myers (FL) – Permitting Operations Review
Ft Worth (TX) – Code Enforcement/ Environmental Staffing Assessment
Kyle (TX) – Code Enforcement Staffing Assessment

Mamaroneck (NY) – Building & Planning Department Review
Miami Beach (FL) – Building and Planning Review
Milpitas (CA) – Development Process Review
Napa County (CA) – Planning and Permitting Review
Orland Park (IL) – Organizational/Community Development Review
Tinley Park (IL) – Org/Development Review
Toho Water Authority – Private Development Review
Waukesha County (WI) – Permitting Process Review

Staffing Assessments / Analysis: Mr. Baggarly has performed a wide array of analysis and subsequent studies for public sector clients. Worked with the public and employees to develop a system wide approach to operational philosophy that has resulted in needs assessments and master plans to provide customer-oriented services to the public. Work includes data collection and analysis, needs assessments, public input sessions, and master plan development. Representative project experiences encompass work with Matrix Consulting Group and prior firms.

Berkeley County (SC) - Government Master Plan
Benton County (OR) - Government Master Plan
Broward County (FL) - Courts Master Plan
Colorado - State Capital Complex Master Plan
Commonwealth of Massachusetts – Correctional Master Plan
Franklin County (PA) - Government Master Plan
Jasper County (MO) - Court Master Plan
Monroe County (FL) - Government Master Plan

Monroe County (PA) - Court Master Plan
North Carolina - State Offices Master Plan
Ocean County (NJ) – Master Plan
Pasco County (FL) - Government Master Plan
Port Gamble S'Klallam Tribe (WA) – Facility Master Plan
Richland County (SC) - Government Master Plan
Sunnyvale (CA) - Government Master Plan
Wyoming - State Capital Master Plan

Education and Certification:

BS, Appalachian State University – Community and Regional Planning, minor in GIS.
American Institute of Certified Planners (AICP)

DAVID BRANCH MANAGER, MATRIX CONSULTING GROUP

Background: David Branch is a Manager with our firm and provides a wide array of data analysis, including the completion of comparative assessments. Mr. Branch is responsible for reviewing and analyzing data sets for a variety of functions including review processing timelines, permit issuance time frames, inspection completion, code enforcement caseload, etc. His data analysis supports a variety of project team, but his strong emphasis is data analysis for development service operations. He has been employed by the Matrix Consulting Group since June 2013. Prior to joining the firm, he taught for two years in St. Louis through the highly selective Teach for America post-graduate program.

Community Development (Planning, Building, Code Enforcement) and Public Works: Evaluated the development review, permitting, and service delivery processes of municipalities. Contributed to assessment of staffing, operations, process mapping, technology utilization, performance level assessment, and customer service.

Albany (NY) – Development Review
Coral Gables (FL) – Planning & Zoning
DeKalb County (GA) – Development Review
Elmhurst (IL) – Parks & Recreation
Fort Worth (TX) – Code Enforcement
Flower Mound (TX) – Code Enforcement
Kissimmee (FL) – Development Review
Lake County (IL) – Public Works
Los Angeles (CA) – Development Review

Mamaroneck (NY) – Building Department
Martin County (FL) – Utilities and Solid Waste
Niles (IL) – Public Works
Ogden (UT) – Fleet & Facilities
Redlands (CA) – Planning & Permitting
Rock County (WI) – Public Works
San Clemente (CA) – Public Works
Schaumburg (IL) – Public Works
Westminster (CO) – Planning & Permitting

Administrative Services: Contributed to studies of administrative support services including Human Resources, Finances, Procurement, and City Clerk. Study scope of work included performance measurement, customer service (internal and external), technology utilization, staffing evaluations, policy and procedure review, and comparison to best management practices.

Cedar Rapids (IA) – Human Resources
Charlotte (NC) – Aviation Procurement
Elmhurst (IL) Parks District – Staffing
Lake County (IL) – Human Resources/Payroll
Marshall University (WV) – Purchasing Audit
Montgomery College (MD) – General Org. Study
Niles (IL) Public Library – General Org. Study

Peoria County (IL) – Countywide Org. Study
Rockingham County (NH) – General Org. Study
Riverside (CA) – Human Resources
Salt Lake County (UT) - General Org. Study
Springfield WSC (MA) – Human Resource
Secretary of State (VT) – General Org. Study

Education

BS, University of Southern California – Public Policy, Management, and Planning
M.Ed., University of Missouri, St. Louis – Secondary Education

4 Project Approach and Schedule

This section of our proposal outlines a proposed task plan for conducting this engagement and ensuring a thorough review and assessment of the development review processes in the Town of Flower Mound.

1. Proposed Task Plan

Task 1 | Project Initiations, Staff Interviews, Data Collection and Current State Assessment.

To evaluate the organization and operations of the development review process in Flower Mound, we need to develop an understanding of the key issues impacting and shaping service requirements for the community. To develop this perspective, we will conduct interviews with Town management, Planning and Building Inspections management and staff, and other Town personnel involved in the development review process.

These interviews will focus on exploring issues and attitudes in the following areas:

- Adequacy of service levels, and perceived gaps in existing levels of service;
- Organizational changes which have been made in the past several years and perceptions of the impacts of these changes;
- Goals and objectives with regard to the delivery of services in each operational functional area;
- Adequacy of management systems and technology, and the extent to which managers utilize this information to make meaningful managerial, operational, scheduling and staff allocation decisions;
- Outsourcing philosophy of the department, the services that are currently outsourced and additional candidates for alternative service delivery especially to meet peak workload demands.
- Identification of relevant workload for staff involved in the review process.

Next, we will develop a detailed description of the services provided by each respective development review entity. Our focus will be on how services are delivered, staffed, and managed, as well as the costs associated with the delivery of those services. The development of this detailed description will be based on interviews as well as on the collection of operating information and data, including the following:

- The current organization of the services providing development review functions including:
 - The structure and functions of each division and unit;
 - The staffing levels of each division;
 - The basic job responsibilities staff; and
- Documentation of all key operations, including:
 - Service scope and content;
 - How staff are scheduled and deployed;
 - Workload data;
 - Process mapping of the relevant review, permitting, and inspection processes.
 - Basic service levels; and
 - The extent of any contracted services by type, size, and cost.
- Documentation of management systems available to support departmental operations, including:
 - Financial reporting, billing and budgeting systems;
 - Organizational business processes and procedures; and
 - Performance monitoring systems.
- Document current performance targets related to major services areas within the department such as turnaround times for permitting processes, response times for complaints, percentage of inspections completed within 24 hours of request, etc.
- Document the current coordination mechanism and procedures in place to coordinate service delivery among different departments and divisions.

Once these initial data collection activities have been completed, the project team will prepare a summary descriptive profile that presents our understanding of the current organization, staffing, and operations included in the development review process.

Upon completion of understanding of roles and responsibilities of the development review process, the project team will complete a best practices assessment. This assessment will focus on benchmarking current practices against industry best practices. The purpose of this exercise is to evaluate the services provided by the Town related to development review services. When conducting the best management practices assessment, each operational area would be assessed against unique management practices. The best practices comparison would be completed for each key function in these divisions. We have, for example, presented some representative best management practices for community development operations in the table below.

Best Management Practice Examples

The Town maintains an up-to-date comprehensive plan and reviews zoning regulations for consistency with the current plan.

Town policies/website clearly identify what applications can be approved administratively versus approval by Planning and Zoning Commission and Town Council.

Permit technicians are used to review applications for completeness at time of submittal.

Application review timeliness are clearly established and met consistently.

Applications are distributed to different review agencies by a single point of contact within the Planning Department; plans are reviewed concurrently by all staff to reduce turnaround times.

Services are contracted out for services where required expertise is not available in-house.

Applicants can request building inspections up to 5pm on the day before.

Combination inspectors are used to reduce the need for duplicate inspections on a single project.

We will evaluate the programs and practices of the department against best practices in areas such as staffing, management and strategic planning, process, employee training, timelines, technology, etc. The best practices utilized for comparison in this task would be based upon our accumulated knowledge and experience with efficient and effective organizations across the country, including agencies that have seen a similar upswing in new construction and redevelopment activities. Additionally, the best practice assessment will include best practices and benchmarking from industry organizations such as American Planning Association, American Public Works Association, International Code Council, International Building Council and others.

The best practice assessment will include the identification of areas where Flower Mound currently meets or exceeds the best practice. More importantly, the analysis will identify areas where current gaps and shortcomings exist and present opportunities for improvement for existing operations. The best practice assessment will begin to clearly identify major operational issues and will include preliminary analysis of applicable data. The issues identified in the best practice assessment will form the base for many of the recommendations presented in the draft and final report, which is discussed in subsequent tasks.

TASK RESULT

The deliverable of this task would be a current state assessment outlining current services, staffing allocations, workload, operational practices and an assessment of how the existing processes compare to best practices.

Task 2 | Evaluate Operational Practices, Work Flow, Technology, and Service Levels of the Development Review Process.

This task involves an evaluation of workload, staff utilization, work practices, technology use, and service levels within the development review process. We will address these issues by employing several different approaches, such as those outlined below:

- **Evaluate the adequacy of major work practices utilized by each function.** This analysis will include the review of historic development related workload for each functional area of the development review process. Additional analysis will focus on the identification of opportunities to streamline internal processes and assignments as well as work practices to increase productivity and/or enhance their effectiveness. Also, we will identify the degree to which key projects or work tasks are not being accomplished due to lack of staff and assess the extent to which tasks could be absorbed through streamlining of work process, if at all.
- **Analyze response and review timeliness.** The focus of this task is for the project team to conduct an in depth analysis of response and review timeliness. The project team will evaluate the previous year's workload to understand processing timelines. Analysis will include the timeliness of processing applications, conducting initial and subsequent application reviews, issuing permits (or approval), scheduling and completion of inspections, and finalizing certificate of occupancies. Also, we will identify where timelines are not in compliance with established performance metrics, adopted local and state ordinance or industry best practice.
- **Evaluate customer service including internal and external customers.** The project team will analyze the level of service provided to both internal and external customers. The project team will address coordination between departments/divisions related to the development review process and approach used for public outreach and education.
- **Evaluate current technology systems.** This task will focus on understanding and assessing current technology systems (TRAKiT and others) utilized by the Town. The project team will evaluate the current permitting/land management software suite, degree to which GIS is implemented and utilized, how mobile and handheld devices are used in the field (e.g. tablets for inspectors), and the degree to which current systems result in efficient information-sharing and elimination of duplicative input.
- **Identify impediments for current processes.** The project team will evaluate current processes, laws and regulations to identify issues that are driving any inefficiencies in staffing or processes or other issues that impact the efficiency of the various plan review and inspection processes. This task may result in

alternative process approaches that will streamline current review, permitting and inspection processes. As a result, a “to-be” process diagram will be created for each process.

At the conclusion of this task, we will have evaluated all aspects of the development review process including staffing in the areas of work and operational practices, service levels, technology, work flows and work activities to identify improvement opportunities.

In conjunction with interviews, data collection and the best practice assessment described in previous tasks, the project team will, at this juncture, be able to evaluate the efficiency of performance of current tasks and determine which of these should continue to be performed by internal staff, and those that should either be outsourced or discontinued, and the policy or process changes needed to increase consistency or increase the efficiency and effectiveness of the development services processes. The resulting analysis will help improve process, effectiveness, business practices, delivery models, staff training and development.

TASK RESULT

The deliverable of this task would be improvement opportunities and proposed adjustments in staffing, work practices, policies and procedures employed, authority levels, service levels, customer service, and operations of the Town’s development review process.

Task 3 | Evaluate Staffing Levels and the Overall Organizational Structure of the Units Involved in Providing Development Review Services.

In this task, the project team will evaluate the staffing needs and plan of organization for the development review function by analyzing several questions related to staffing and organizational structure including:

- Does the Town have the right number and types of positions providing development review services and support? This assessment will include:
 - Evaluating the adequacy of staffing levels,
 - Evaluation of the types of positions utilized,
 - Determination of the necessary resources (number and type of staff positions, external resources, etc.) to support existing and expected workloads.
- Does the current approach to organizing development review services in the Town foster accountability?
- Are spans of control for functions in the component divisions too broad or too limited?

- Are the plans of management organization for development services in the department providing adequate communication and coordination where needed? Including to both internal and external stakeholders. Does the current structure enhance shared knowledge and understanding?
- Do the plans of organization enhance career development opportunities, training, and recruitment and retention?
- Do the plans of organization enable staff to provide better service to the public in terms of cycle times, user friendliness, performance management, quality control, and consistency?
- Would alternative organizational structures improve the delivery of services to the public?

The end result of this analysis will be a proposed staffing plan and recommended organizational structure promotes accountability, communication and efficient work flow in the processing of development review applications and permits.

TASK RESULT

The product of this task would be a recommended staffing plan, outlining the number and types of positions required, and any recommended changes to the overall organizational structure.

Task 4 | Prepare a Draft and Final Report.

Once the work tasks noted above have been completed, our analysis, findings, and conclusions will be documented and reviewed with Town staff. The draft and final reports will contain the following elements:

- A final version of the descriptive profile and best management practices assessment.
- Detailed analysis of each identified improvement opportunity relating to philosophies and commitments, staffing required given these commitments, managerial and operational practices for service delivery.
- Detailed process evaluations and evaluation of the authority of decision-makers throughout the process to ensure decisions are made at the appropriate level. Including processing diagrams for current and recommended process flows.
- Recommended staffing allocations, by number and position, for each division and an overall organizational structure for the development review process that

maximizes communications, workloads and efficiency, and that minimizes duplication.

- Identification of cost (or savings) of the recommendations identified as part of this study.
- Develop an implementation plan that outlines key findings and recommendation and when they may be implemented. Including the identification of specific actions needed for policy changes and modification in the review process to be implemented by the Town. This will include the identification of internal lead for each recommendation (e.g. management or Town Council, etc.)

The Matrix project team recognizes that some recommended improvements may have associated cost impacts, and these will be identified and prioritized. Once staff and the Project Steering Committee have reviewed the draft final report and provided input, we would develop and deliver the final report.

TASK RESULT

The product of this task would be the draft and final reports.

2. Project Schedule

We are proposing to complete this project over a twelve (12) week schedule as shown in the following project schedule.

Task	Week											
	1	2	3	4	5	6	7	8	9	10	11	12
Current State Assessment												
Operational and Process Assessment												
Staffing and Organizational Assessment												
Draft Report												

We are available to begin work within two weeks of a notice to proceed. Each of the team members proposed has sufficient time and capacity to commit to this project at the levels proposed.

5 Price

We are proposing to conduct this assessment for a total fixed not-to-exceed price of **\$34,800**, as detailed in our project budget below:

	Project Manager	Senior Analyst	Analyst	
Current State Assessment	12	32	24	68
Operational and Process Assessment	8	32	20	60
Staffing and Organizational Assessment	4	20	16	40
Draft and Final Report	8	16	16	40
Total Hours	32	100	76	208
Hourly Rate	\$225	\$150	\$125	
Total Professional Fees	\$7,200	\$15,000	\$9,500	\$31,700
Project Expenses				\$3,100
Total Project Cost				\$34,800

We typically invoice monthly for actual time and expenses incurred in providing services related to this engagement.



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: September 16, 2019

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

ITEM: **Consider and approve annual update to the Riverwalk Public Improvement District No. 1 (PID) Service and Assessment Plan (SAP) and Assessment Roll.**

BACKGROUND INFORMATION: The Riverwalk Public Improvement District No. 1 (PID) was created on April 19, 2013, to finance certain improvement projects for the benefit of the property in the PID. A service and assessment plan (SAP) was prepared when the PID was created and pursuant to Chapter 372, Texas Local Government Code, must be reviewed and updated annually. The Town also adopted an assessment roll that identifies the assessment on each parcel within the PID. The annual update to the SAP also updates the Assessment Roll.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure/(Revenue):

Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: Corey Admire, of Fulbright & Jaworski L.L.P., approved the original SAP as to form and legality.

ATTACHMENTS:

1. Annual Service Plan Update

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

**RIVERWALK
PUBLIC IMPROVEMENT DISTRICT NO. 1
TOWN OF FLOWER MOUND, TEXAS**

**ANNUAL SERVICE PLAN UPDATE
2019-20**

SEPTEMBER 16, 2019

PREPARED BY:

MUNICAP, INC.
— PUBLIC FINANCE —

RIVERWALK
PUBLIC IMPROVEMENT DISTRICT No. 1
ANNUAL SERVICE PLAN UPDATE – 2019-20

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A. INTRODUCTION

The Riverwalk Public Improvement District No. 1 (the “PID”) was created pursuant to the PID Act and a resolution of the Town Council on April 19, 2013 to finance certain public improvement projects for the benefit of the property in the PID. The Town of Flower Mound, Texas Special Assessment Revenue Bonds, Series 2014 (Riverwalk Public Improvement District No. 1) (the “Bonds”) in the aggregate principal amount of \$16,000,000 were issued to finance, refinance, provide or otherwise assist in the acquisition, construction and maintenance of the public improvements provided for the benefit of the property in the PID.

A service and assessment plan (the “Service and Assessment Plan”) was prepared at the direction of the Town identifying the public improvements (the “Authorized Improvements”) to be provided by the PID, the costs of the Authorized Improvements, the indebtedness to be incurred for the Authorized Improvements, and the manner of assessing the property in the PID for the costs of the Authorized Improvements. Pursuant to Chapter 372, Texas Local Government Code, the Service and Assessment Plan must be reviewed and updated annually. This document is the annual update of the Service and Assessment Plan for 2019-20 (the “Annual Service Plan Update”).

The Town also adopted an assessment roll (the “Assessment Roll”) identifying the Assessments on each Parcel within the PID, based on the method of assessment identified in the Service and Assessment Plan. This Annual Service Plan Update also updates the Assessment Roll for 2019-20.

Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Service and Assessment Plan as updated from time to time.

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B. UPDATE OF THE SERVICE PLAN

I. ANNUAL BUDGET FOR THE PUBLIC IMPROVEMENTS

The total costs of the Authorized Improvements are equal to \$12,910,000, which remains the same as the budget estimates included in the original Service and Assessment Plan. According to the Developer's quarterly improvement implementation report dated June 18, 2019, all Authorized Improvements have been constructed and are complete.

As shown by Table B-1 below, the PID has incurred indebtedness in the total amount of \$16,000,000 in the form of the Bonds, which are to be repaid from Assessments.

Table B-1
Sources and Uses of Funds
Public Improvements

Sources of Funds	Funded by the PID
Bond Proceeds	\$16,000,000
Total sources of funds	\$16,000,000
Uses of Funds	
Authorized Improvements	
Estimated costs paid with Bonds	\$12,910,000
<i>Subtotal: Construction costs</i>	<i>\$12,910,000</i>
Costs of issuing the Bonds	
Deposit to capitalized interest	\$356,321
Deposit to debt service reserve fund	\$1,329,875
Bond issue costs	\$1,403,804
<i>Subtotal: Costs of issuing the</i>	
<i>Bonds</i>	<i>\$3,090,000</i>
Total uses of funds	\$16,000,000

A service plan must cover a period of five years. All of the Authorized Improvements are expected to be built within a period of five years. The anticipated budget for the Authorized Improvements over a period of five years and the indebtedness expected to be incurred for these costs is shown by Table B-2 on the following page.

Table B-2
Authorized Improvements
PID Sources and Uses of Funds – 2014-2024

Assessment Year ending 09/01	Annual Projected Cost	Annual Projected Indebtedness	Sources other than PID Bonds	Projected Annual Installments
2014-2019	\$16,000,000	\$16,000,000	\$0	\$6,871,800
2020	\$0	\$0	\$0	\$1,399,126
2021	\$0	\$0	\$0	\$1,389,454
2022	\$0	\$0	\$0	\$1,370,383
2023	\$0	\$0	\$0	\$1,351,328
2024	\$0	\$0	\$0	\$1,432,290
Total	\$16,000,000	\$16,000,000	\$0	\$13,814,380

II. DEBT SERVICE AND COLLECTION COSTS

The Assessment imposed on any Parcel may be paid in full at any time. If not paid in full, the Assessment shall be payable in thirty Annual Installments of principal and interest beginning with the tax year following the issuance of the Bonds, of which twenty-four Annual Installments remain outstanding.

Pursuant to the Service and Assessment Plan, each Assessment shall bear interest at the rate on the Bonds commencing with the issuance of the Bonds. The effective interest rate on the Bonds is 6.534 percent for 2019-20. Pursuant to Section 372.018 of the PID Act, the interest rate for that assessment may not exceed a rate that is one-half of one percent higher than the actual interest rate paid on the debt. Accordingly, the additional interest of one-half of one percent, together with other estimated district administration costs, is included as Annual Collection Costs. These payments, the “Annual Installments” of the Assessments, shall be billed by the Town, or any other party designated by the Town, in 2019 and will be delinquent on February 1, 2020.

Pursuant to the Service and Assessment Plan, the Annual Service Plan Update shall show the remaining balance of the Assessments, the Annual Installment due for 2019-20 and the Annual Collection Costs to be collected from each Parcel. Annual Collection Costs shall be allocated to each Parcel pro rata based upon the amount the Annual Installment on a Parcel bears to the total amount of Annual Installments in the PID as a whole that are payable at the time of such allocation. Each Annual Installment shall be reduced by any credits applied under an applicable Assessment Ordinance or Indenture of Trust, such as capitalized interest and interest earnings on any account balances and by any other funds available to the PID.

Annual Budget for the Repayment of Indebtedness

Debt service on the Bonds will be paid from the collection of the Annual Installments. In addition, Annual Collection Costs are to be collected with the Annual Installments to pay expenses related to the collection of the Annual Installments and other district administration expenses. The additional interest collected with the Annual Installments will be used to pay the prepayment and delinquency reserve amounts as described in the Service and Assessment plan and applicable Indenture of Trust.

Annual Installments to be collected for 2019-20

The budget for the PID will be paid from the collection of Annual Installments collected for 2019-20 as shown by Table B-3 below.

Table B-3
Budget for the Annual Installments
to be Collected for 2019-20

Descriptions	Total
Interest payment on March 1, 2020	\$492,190
Interest payment on September 1, 2020	\$492,190
Principal payment on September 1, 2020	\$300,000
<i>Subtotal debt service on bonds</i>	<i>\$1,284,379</i>
Annual collection costs	\$114,746
<i>Subtotal Expenses</i>	<i>\$1,399,126</i>
Available reserve fund income	\$0
Available capitalized interest account	\$0
Available collection costs account	\$0
<i>Subtotal funds available</i>	<i>\$0</i>
Annual Installment to be collected	\$1,399,126

As shown in Table B-3 above, the total Annual Installment for 2019-20 is equal to \$1,399,126. The total debt service payments on the Bonds and the Annual Collection Costs for 2019-20 are shown as \$1,284,379 and \$114,746, respectively.

According to the revised development plan, 662.67 total Equivalent Units were estimated to be built within the PID. According to the Trustee, Parcel 667648 (0.90 Equivalent Units), Parcel 652931 (1.00 Equivalent Units), Parcel 667645 (0.90 Equivalent Units), Parcel 652930 (1.00 Equivalent Units), and Parcel 652972 (1.00 Equivalent Units) have prepaid their Assessments in full, lowering the total outstanding Equivalent Units to 657.97 (i.e. $662.67 - 0.90 - 1.00 - 0.90 - 1.00 - 1.00 = 657.97$). The mandatory prepayment of Parcel 667418 (0.90 Equivalent Units), as required by Section VI.C of the Service and Assessment Plan, further lowered the total outstanding

Equivalent Units to 657.07 ($657.97 - 0.90 = 657.07$). As a result, the remaining total outstanding Equivalent Units subject to the Assessments are calculated to be 657.07 ($657.97 - 0.90 = 657.07$). The net principal and interest portion of Annual Installment to be collected from each outstanding Equivalent Unit will be \$1,954.70 (i.e. $\$1,284,379 \div 657.07 = \$1,954.70$) and the Annual Collection Costs to be collected from each Equivalent Unit will be \$174.63 (i.e. $\$114,746 \div 657.07 = \174.63). As a result, the total Annual Installment to be collected from each Equivalent Unit within the PID will be \$2,129.33 (i.e. $\$1,954.70 + \$174.63 = \$2,129.33$).

The list of Parcels within the PID, the cumulative amount of Assessments on each Parcel, the principal and interest, the Annual Collection Costs, and the Annual Installment to be collected for 2019-20 are shown in the Assessment Roll summary attached hereto as Appendix B.

III. BOND REFUNDING RELATED UPDATES

The Bonds were issued in May 2014. Pursuant to Section 4.3 of the Indenture of Trust, the Town reserves the right and option to redeem the Bonds before their scheduled maturity dates, in whole or in part, on any interest payment date on or after September 1, 2019, such redemption date or dates to be fixed by the Town, at the redemption prices and dates shown in the Indenture of Trust.

The Administrator has conducted a preliminary evaluation of the current refunding market conditions, recent PID bond refunding transactions, and other relevant factors. Based on this preliminary evaluation, the Administrator believes a refunding of the Bonds may be viable at this time. The Administrator will continue to monitor the refunding market conditions, applicable PID bond refunding transactions, and other relevant factors and provide relevant updates to the Town.

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C. UPDATE OF THE ASSESSMENT PLAN

The Service and Assessment Plan adopted by the Town Council provided that the PID Costs shall be allocated to the Assessed Property equally on the basis of the number of residential dwelling units anticipated to be built on each Parcel once such property is fully developed, and that such method of allocation will result in the imposition of equal shares of the PID Costs to Parcels similarly benefited.

According to the Developer, the initial plan for a single category of townhomes in the PID has been revised to include two townhome categories based on the location of such townhomes with respect to the amenity area. As a result, Land Use Class 2 has been updated as follows and a new land use class (“Land Use Class 9”) has been created for the second category of townhomes as follows:

“Land Use Class 2” means lots identified as such on the Assessment Roll, which are referred to as townhomes in the CBD and being generally lots for an attached single-family dwelling unit on individually platted lots adjacent to the River Walk amenity area.

“Land Use Class 9” means lots identified as such on the Assessment Roll, which are referred to as townhomes in the CBD and being generally lots for an attached single-family dwelling unit on individually platted lots located along the outer periphery of the CBD.

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D. UPDATE OF THE ASSESSMENT ROLL

Pursuant to the original Service and Assessment Plan, the Assessment Roll shall be updated each year to reflect:

The identification of each Parcel as Benefited Property, Assessed Property, and Non-Assessed Property; (ii) the Assessment for each Parcel, including any adjustments authorized by the Service and Assessment Plan or in the Act; (iii) the Principal Portion of the Assessment for each Parcel, including any adjustments authorized by this Service and Assessment Plan or in the Act; (iv) the Annual Installment for the Parcel for the year (if the Assessment is payable in installments); and (v) payments of the Assessment, if any, as provided by Section VI.C of the Service and Assessment Plan.

The Assessment Roll summary is shown in Appendix B. Each Parcel in the PID is identified, along with the Assessment on each Parcel and the Annual Installment to be collected from each Parcel. Assessments are to be reallocated for the subdivision of any Parcels.

I. PARCEL UPDATES

According to the Service and Assessment Plan, upon the subdivision of any Parcel, the Administrator shall reallocate the Assessment for the Parcel prior to the subdivision among the new subdivided Parcels according to the reallocation formula shown in the Service and Assessment Plan. The reallocation formula, which was intended to be applied using Equivalent Units is updated as shown in the following formula:

$$A = B \times (C \div D)$$

Where the terms have the following meanings:

- A = the Assessment for each new subdivided Parcel.
- B = the Assessment for the Parcel prior to subdivision.
- C = the estimated number of Equivalent Units to be built on each newly subdivided Parcel
- D = the sum of the estimated number of Equivalent Units to be built on all of the new subdivided Parcels

The calculation of the estimated number of Equivalent Units to be built on a Parcel shall be performed by the Administrator and confirmed by the Town Council based on the information available regarding the use of the Parcel. The estimate as confirmed shall be conclusive. The number of units and related Equivalent Units to be built on a Parcel may be estimated by net land area and reasonable density ratios.

According to DCAD online records, a re-plat of five Parcels within the Riverwalk at Central Park subdivision has been filed. Parcels 705224, 705225, 705226, 705227, and 705228 have been re-platted and are now Parcels 744738, 744739, 744740, 744741, and 744742. These changes are shown in Table D-1 below.

Table D-1
2019-20 Parcel Replats

Prior to Replat				After Replat			
Parcel	Land Use Type	Total Equivalent Units	Total Assessments	Parcel	Land Use Type	Total Equivalent Units	Total Assessments
705224	Open Space	0.00	\$0.00	744738	Open Space	0.00	\$0.00
705225	Open Space	0.00	\$0.00	744739	Open Space	0.00	\$0.00
705226	Restaurant	14.49	\$332,244.06	744740	Restaurant	14.49	\$332,244.06
705227	Reception Hall	8.97	\$205,674.89	744741	Reception Hall	8.97	\$205,674.89
705228	Open Space	0.00	\$0.00	744742	Open Space	0.00	\$0.00
Total		23.46	\$537,918.95			23.46	\$537,918.95

According to DCAD online records, a re-plat of three Parcels within the Riverwalk at Central Park Villas subdivision has been filed. Parcels 652960, 652961, and 652962 have been re-platted and are now Parcels 744723, 744724, and 744725. These changes are shown in Table D-2 below.

Table D-2
2019-20 Parcel Replats

Prior to Replat				After Replat			
Parcel	Land Use Type	Total Equivalent Units	Total Assessments	Parcel	Land Use Type	Total Equivalent Units	Total Assessments
652960	Single Family Villa	1.00	\$22,929.20	744723	Single Family Villa	1.00	\$22,929.20
652961	Single Family Villa	1.00	\$22,929.20	744724	Single Family Villa	1.00	\$22,929.20
652962	Single Family Villa	1.00	\$22,929.20	744725	Single Family Villa	1.00	\$22,929.20
Total		3.00	\$68,787.59			3.00	\$68,787.59

The Assessments on Parcels 705216, 705217, and 705222 were reallocated incorrectly within the 2018-19 annual service plan report, resulting in inaccurate EU calculations for the Parcels and an Assessment allocation to an open space Parcel (Parcel 705217) instead of the correct Parcel

705222. According to the Developer, Parcel 705217 is estimated to have 6,000 square feet of retail space which results in outstanding Equivalent Units of 4.14 ($0.69 \times (6,000/1,000) = 4.14$). Parcel 705216 is estimated to have 25,000 square feet of retail space and 14,000 square feet of office space, which results in outstanding Equivalent Units of 23.69 [$(0.69 \times (25,000/1,000)) + (0.46 \times (14,000/1,000)) = 23.69$]. Table D-3 below shows the adjustments to Equivalent Units and outstanding Assessment that the Parcel owners have acknowledged and have consented to the adjustments.

Table D-3
Summary of Equivalent Unit and Outstanding Assessment Adjustments

Prior to Adjustment				After Adjustment			
Parcel	Land Use Type	Total Equivalent Units	Total Assessments	Parcel	Land Use Type	Total Equivalent Units	Total Assessments
705217	Retail	3.71	\$85,082.61	705217	Retail	4.14	\$94,926.87
705216	Retail & Office	24.12	\$553,036.93	705216	Retail & Office	23.69	\$543,192.67
Total		27.83	\$638,119.54	Total		27.83	\$638,119.54

Additionally, the adjusted outstanding Assessment for Parcel 705217 of \$94,926.87 is to be transferred to Parcel 705222 as Parcel 705217 is an open space Parcel as shown in Table D-4 below.

Table D-4
Outstanding Assessment Adjustments

Prior to Adjustment				After Adjustment			
Parcel	Land Use Type	Total Equivalent Units	Total Assessments	Parcel	Land Use Type	Total Equivalent Units	Total Assessments
705217	Retail	4.14	\$94,926.87	705222	Retail	4.14	\$94,926.87
Total		4.14	\$94,926.87	Subtotal		4.14	\$94,926.87

II. PREPAYMENT OF ASSESSMENTS

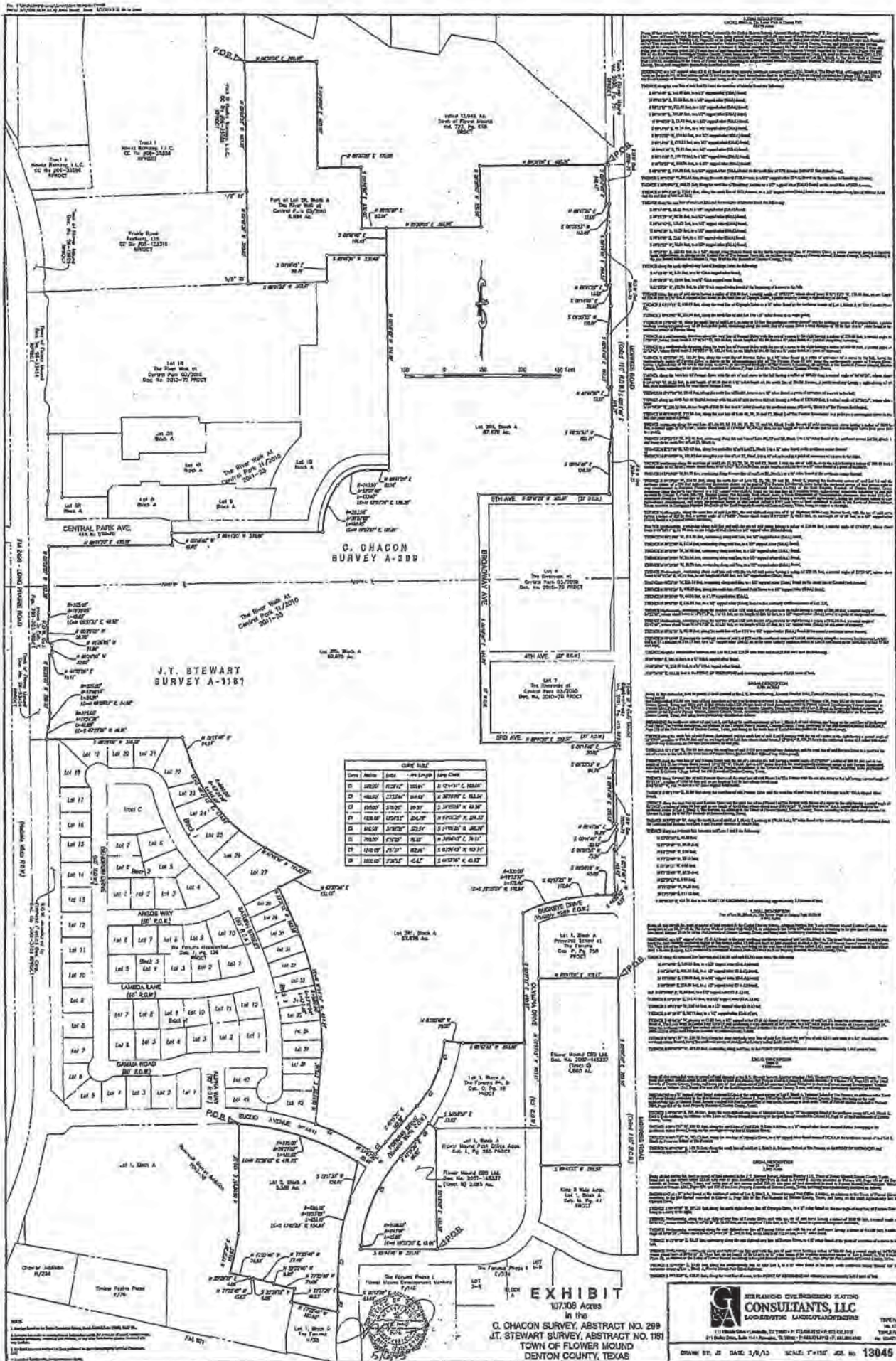
According to the trustee, Parcel 667648, Parcel 652931, Parcel 667645, Parcel 652930, and Parcel 652972 have prepaid their Assessments in full as of August 31, 2019.

According to Section VI. C. of the Service and Assessment Plan, the remaining Assessment balance on Parcel 667418 has been prepaid in full as a mandatory prepayment of \$20,946 due to the proposed decrease in total Equivalent Units as a result of the final subdivision Lots from this parent Parcel.

The list of current Parcels within the PID, the estimated number of units to be developed on the current residential Parcels, the corresponding total Assessments and current Annual Installment are shown in the Assessment Roll summary attached hereto as Appendix B.

The complete Assessment Roll is available for review at Flower Mound Town Hall, located at 2121 Cross Timbers Road, Flower Mound, Texas 75028.

APPENDIX A
PID MAP



APPENDIX B
ASSESSMENT ROLL SUMMARY – 2019-20

Riverwalk PID No. 1

Assessment Roll Summary 2019-20

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
715531	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715532	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715533	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715534	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715535	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715536	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715537	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715538	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715539	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715540	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715541	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715542	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715543	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715544	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715545	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715546	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715547	0.00	\$0	\$0.00	\$0.00	\$0.00
715548	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715549	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715550	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715551	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715552	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715553	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715554	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715555	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715556	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715557	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715558	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715559	0.00	\$0	\$0.00	\$0.00	\$0.00
715560	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715561	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715562	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715563	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715564	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715565	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715566	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715567	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715568	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715569	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715570	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715571	0.00	\$0	\$0.00	\$0.00	\$0.00
715572	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715573	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715574	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715575	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715576	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715577	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715578	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715579	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715580	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715581	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715582	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
715583	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715584	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715585	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715586	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715587	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715588	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715589	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715590	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715591	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715592	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715593	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715594	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715595	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715596	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715597	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715598	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715599	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715600	0.00	\$0	\$0.00	\$0.00	\$0.00
715601	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715602	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715603	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715604	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715605	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715606	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715607	0.00	\$0	\$0.00	\$0.00	\$0.00
715608	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715609	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715610	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715611	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715612	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715613	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715614	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715615	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715616	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715617	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715618	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
715619	0.00	\$0	\$0.00	\$0.00	\$0.00
715620	0.00	\$0	\$0.00	\$0.00	\$0.00
715621	0.00	\$0	\$0.00	\$0.00	\$0.00
715622	0.00	\$0	\$0.00	\$0.00	\$0.00
563269	25.39	\$582,218	\$49,633.73	\$4,434.28	\$54,068.00
655453	34.64	\$794,222	\$67,706.88	\$6,048.93	\$73,755.81
711952	52.50	\$1,203,783	\$102,621.72	\$9,168.22	\$111,789.94
655447	85.92	\$1,970,077	\$167,947.78	\$15,004.45	\$182,952.23
667424	87.72	\$2,011,337	\$171,465.24	\$15,318.70	\$186,783.94
705216	23.69	\$543,193	\$46,306.83	\$4,137.05	\$50,443.88
705217	0.00	\$0	\$0.00	\$0.00	\$0.00
705218	0.00	\$0	\$0.00	\$0.00	\$0.00
705219	0.00	\$0	\$0.00	\$0.00	\$0.00

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
705220	0.00	\$0	\$0.00	\$0.00	\$0.00
705222	4.14	\$94,927	\$8,092.46	\$722.98	\$8,815.44
705223	0.00	\$0	\$0.00	\$0.00	\$0.00
744741	8.97	\$205,675	\$17,533.65	\$1,566.46	\$19,100.11
744738	0.00	\$0	\$0.00	\$0.00	\$0.00
655450	0.00	\$0	\$0.00	\$0.00	\$0.00
744739	0.00	\$0	\$0.00	\$0.00	\$0.00
744740	14.49	\$332,244	\$28,323.60	\$2,530.43	\$30,854.02
744742	0.00	\$0	\$0.00	\$0.00	\$0.00
667423	0.00	\$0	\$0.00	\$0.00	\$0.00
652930	PREPAID	PREPAID	PREPAID	PREPAID	\$0.00
652931	PREPAID	PREPAID	PREPAID	PREPAID	\$0.00
652932	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652933	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652934	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652935	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652936	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652937	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652938	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652939	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652940	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652941	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652942	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652943	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652944	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652945	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652946	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652947	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652948	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652949	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652950	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652951	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652952	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652953	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652954	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652955	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652956	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652957	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652958	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652959	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
744723	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
744724	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
744725	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652963	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652964	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652965	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652966	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652967	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652968	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652969	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652970	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652971	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652972	PREPAID	PREPAID	PREPAID	PREPAID	\$0.00

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
652973	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652974	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652975	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652976	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652977	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652978	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652979	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652980	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652981	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652982	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652987	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652988	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652989	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652990	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652991	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652992	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652993	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652994	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652995	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652996	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652997	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652998	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652999	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653000	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653001	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653002	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653003	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653004	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653005	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653006	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653007	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653011	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653012	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653013	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653014	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653015	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653016	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653017	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653018	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653019	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653020	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653021	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653022	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653023	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653024	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653025	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653027	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653028	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653029	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653030	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653031	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653032	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
653033	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
653034	1.00	\$22,929	\$1,954.70	\$174.63	\$2,129.33
652983	0.00	\$0	\$0.00	\$0.00	\$0.00
652984	0.00	\$0	\$0.00	\$0.00	\$0.00
652985	0.00	\$0	\$0.00	\$0.00	\$0.00
652986	0.00	\$0	\$0.00	\$0.00	\$0.00
653008	0.00	\$0	\$0.00	\$0.00	\$0.00
653009	0.00	\$0	\$0.00	\$0.00	\$0.00
653010	0.00	\$0	\$0.00	\$0.00	\$0.00
653026	0.00	\$0	\$0.00	\$0.00	\$0.00
653035	0.00	\$0	\$0.00	\$0.00	\$0.00
653036	0.00	\$0	\$0.00	\$0.00	\$0.00
653037	0.00	\$0	\$0.00	\$0.00	\$0.00
653038	0.00	\$0	\$0.00	\$0.00	\$0.00
675215	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675216	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675217	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675218	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675219	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675220	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675221	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675222	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675223	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675227	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675228	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675229	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675230	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675231	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675232	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675233	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675234	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675237	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675238	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675239	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675240	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675241	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675242	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675243	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675245	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675246	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675247	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675248	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675249	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675250	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675251	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675252	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675256	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675257	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675258	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675259	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675260	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675261	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675262	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675263	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
675264	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675265	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675266	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675267	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675268	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675269	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675270	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675275	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675276	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675277	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675278	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675279	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675280	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675281	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675282	0.76	\$17,510	\$1,492.68	\$133.36	\$1,626.04
675224	0.00	\$0	\$0.00	\$0.00	\$0.00
675225	0.00	\$0	\$0.00	\$0.00	\$0.00
675226	0.00	\$0	\$0.00	\$0.00	\$0.00
675235	0.00	\$0	\$0.00	\$0.00	\$0.00
675236	0.00	\$0	\$0.00	\$0.00	\$0.00
675244	0.00	\$0	\$0.00	\$0.00	\$0.00
675253	0.00	\$0	\$0.00	\$0.00	\$0.00
675254	0.00	\$0	\$0.00	\$0.00	\$0.00
675255	0.00	\$0	\$0.00	\$0.00	\$0.00
675271	0.00	\$0	\$0.00	\$0.00	\$0.00
675272	0.00	\$0	\$0.00	\$0.00	\$0.00
675273	0.00	\$0	\$0.00	\$0.00	\$0.00
675274	0.00	\$0	\$0.00	\$0.00	\$0.00
675283	0.00	\$0	\$0.00	\$0.00	\$0.00
675284	0.00	\$0	\$0.00	\$0.00	\$0.00
675285	0.00	\$0	\$0.00	\$0.00	\$0.00
667598	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667599	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667600	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667601	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667602	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667603	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667604	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667605	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667606	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667607	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667608	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667609	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667610	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667611	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667612	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667613	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667614	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667615	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667618	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667619	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667620	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667621	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
667622	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667623	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667624	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667625	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667626	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667627	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667628	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667629	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667630	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667631	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667632	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667633	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667634	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667635	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667637	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667638	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667639	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667640	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667641	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667642	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667643	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667644	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667645	PREPAID	PREPAID	PREPAID	PREPAID	\$0.00
667646	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667647	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667648	PREPAID	PREPAID	PREPAID	PREPAID	\$0.00
667649	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667650	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667651	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667652	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667653	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667654	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667656	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667657	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667658	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667659	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667660	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667661	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667662	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667663	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667664	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667665	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667666	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667667	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667668	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667669	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667670	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667671	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667672	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667673	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
667616	0.00	\$0	\$0.00	\$0.00	\$0.00
667617	0.00	\$0	\$0.00	\$0.00	\$0.00
667636	0.00	\$0	\$0.00	\$0.00	\$0.00

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
667655	0.00	\$0	\$0.00	\$0.00	\$0.00
667674	0.00	\$0	\$0.00	\$0.00	\$0.00
667675	0.00	\$0	\$0.00	\$0.00	\$0.00
693466	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693467	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693468	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693469	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693470	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693471	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693472	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693473	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693474	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693475	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693476	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693477	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693478	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693479	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693480	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693481	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693482	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693483	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693484	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693485	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693486	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693487	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693488	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693489	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693490	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693491	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693492	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693493	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693494	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693495	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693496	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693498	0.00	\$0	\$0.00	\$0.00	\$0.00
693499	0.00	\$0	\$0.00	\$0.00	\$0.00
693500	0.00	\$0	\$0.00	\$0.00	\$0.00
693501	0.00	\$0	\$0.00	\$0.00	\$0.00
693502	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693503	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693504	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693505	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693506	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693507	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693508	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693509	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693510	0.00	\$0	\$0.00	\$0.00	\$0.00
693511	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693512	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693513	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693514	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693515	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693516	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693517	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693518	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693519	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19

Parcel	Estimated EU	Outstanding Assessments	Annual Assessment (Principal and Interest)	Annual Collection Costs	Annual Installments - 2019-20
693520	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693521	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693522	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693523	0.90	\$20,537	\$1,750.77	\$156.41	\$1,907.19
693524	0.00	\$0	\$0.00	\$0.00	\$0.00
Total	657.07	\$15,066,144	\$1,284,379.21	\$114,746.40	\$1,399,125.61



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: September 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: **Consider approval of an ordinance adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.**

BACKGROUND INFORMATION:

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

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by ACSC members in 2018. On or about April 1, 2019, the Company filed a rate request pursuant to the RRM Tariff adopted by ACSC members. The Company claimed that its cost-of-service in a test year ending December 31, 2018, entitled it to additional system-wide revenues of \$70 million. Application of the standards set forth in ACSC's RRM Tariff required Atmos to reduce its request to \$54 million, \$39.3 million of which would be applicable to ACSC members. ACSC's consultants concluded that the system-wide deficiency under the RRM regime should be \$38.7 million instead of the claimed \$54 million. The amount of the \$38.7 million deficiency applicable to ACSC members would be \$28.2 million.

After the Company reviewed ACSC's consultants' report, ACSC's Executive Committee and the Company negotiated a settlement whereby the Company would receive an increase of \$35.4 million from ACSC Cities. The Executive Committee recommends a settlement at this amount. The Effective Date for new rates is October 1, 2019. ACSC members should take action approving the Ordinance before the end of September.

The impact of the settlement on average residential rates is an increase of \$2.05 on a monthly basis, or 3.7 percent. The increase for average commercial usage will be \$6.18 or 2.31 percent. A bill impact comparison is attached as Attachment 2.

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

While residents outside municipal limits must pay rates governed by GRIP, there are some cities served by Atmos Mid-Tex that chose to remain under GRIP rather than adopt RRM. Additionally, the City of Dallas adopted a variation of RRM which is referred to as DARR. When new rates become effective on October 1, 2019, ACSC residents will have a slight economic monthly advantage over comparable GRIP and comparable DARR rates (see Attachment 3).

The Legislature's GRIP process allowed gas utilities to receive annual rate increases associated with capital investments. The RRM process has proven to result in a more efficient and less costly (both from a consumer rate impact perspective and from a ratemaking perspective) than the GRIP process. Given Atmos Mid-Tex's claim that its historic cost of service should entitle it to recover \$70 million in additional system-wide revenues, or \$54 million from ACSC Cities, the RRM settlement at \$35.4 million for ACSC Cities reflects substantial savings to ACSC Cities in the amount of \$18.6 million. ACSC's consultants produced a report indicating that Atmos had justified increased revenues for ACSC Cities of at least \$32.7 million. Settlement at \$35.4 million is fair and reasonable.

The ACSC Executive Committee consisting of city employees of 18 ACSC members urges all ACSC members to pass the Ordinance before September 30, 2019. New rates become effective October 1, 2019. If a City Council denies the RRM rate increase, Atmos would either appeal the denial to the Railroad Commission or initiate imposition of GRIP rates or both. Rates for residents of that City would be higher than rates of other ACSC member residents. Rate case expenses (both the City and Company) associated with litigation at the Railroad Commission would likely be surcharged back to the City that denied the increase.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

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

ATTACHMENTS:

1. Proof of Revenues
2. Bill Impact
3. RRM Monthly Savings Over GRIP and DARR Rates
4. Proposed Ordinance

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

Attachment 1

Proof of Revenues

**ATMOS ENERGY CORP., MID-TEX DIVISION
RRM CITIES RATE REVIEW MECHANISM
PROOF OF REVENUES - SYSTEMWIDE
TEST YEAR ENDING DECEMBER 31, 2018**

Line No.	Customer Class	Current	Proposed	Bills	Ccf/MmBtu
	(a)	(b)	(c)	(d)	(e)
1	Residential				
2	Customer Charge	\$ 18.85	\$ 19.55	18,572,400	
3	Consumption Charge	0.14846	0.17423		876,575,629
4	Revenue Related Taxes				
5	Total Class Revenue				
6					
7	Commercial				
8	Customer Charge	\$ 43.50	\$ 46.50	1,492,740	
9	Consumption Charge	0.09165	0.09924		576,758,305
10	Revenue Related Taxes				
11	Total Class Revenue				
12					
13	Industrial & Transportation				
14	Customer Charge	\$ 784.00	\$ 845.50	9,804	
15	Consumption Charge Tier 1	\$ 0.3312	\$ 0.3572		10,724,328
16	Consumption Charge Tier 2	\$ 0.2425	\$ 0.2616		12,346,302
17	Consumption Charge Tier 3	\$ 0.0520	\$ 0.0561		22,335,700
18	Revenue Related Taxes				
19	Total Class Revenue				
20					
21	Total Excluding Other Revenue				
22					
23					
24	Revenue Related Tax Factor	6.7078%			

Current Revenues	Proposed Revenues	Increase
(f)	(g)	(h)
\$ 350,089,740	\$ 363,090,420	
130,136,418	152,725,772	
32,212,790	34,600,111	
<u>\$ 512,438,948</u>	<u>\$ 550,416,303</u>	<u>\$ 37,977,356</u>
\$ 64,934,190	\$ 69,412,410	
52,859,899	57,237,494	
7,901,436	8,495,470	
<u>\$ 125,695,525</u>	<u>\$ 135,145,374</u>	<u>\$ 9,449,849</u>
\$ 7,686,336	\$ 8,289,282	
3,551,897	3,830,730	
2,993,978	3,229,793	
1,161,456	1,253,033	
1,032,582	1,113,691	
<u>\$ 16,426,250</u>	<u>\$ 17,716,529</u>	<u>\$ 1,290,278</u>
<u>\$ 654,560,722</u>	<u>\$ 703,278,206</u>	<u>\$ 48,717,483</u>

Attachment 2

Bill Impact

**ATMOS ENERGY CORP., MID-TEX DIVISION
AVERAGE BILL COMPARISON - BASE RATES
TEST YEAR ENDING DECEMBER 31, 2018**

Line						CURRENT	PROPOSED	CHANGE
1	Rate R @ 47.5 Ccf							
2	Customer charge					\$ 18.85		
3	Consumption charge	47.5	CCF	X \$ 0.14846	=	7.05		
4	Rider GCR Part A	47.5	CCF	X \$ 0.27375	=	13.00		
5	Rider GCR Part B	47.5	CCF	X \$ 0.27485	=	13.06		
6	Subtotal					\$ 51.96		
7	Rider FF & Rider TAX		\$ 51.96	X 0.06708	=	3.49		
8	Total					\$ 55.45		
9								
10	Customer charge						\$ 19.55	
11	Consumption charge	47.5	CCF	X \$ 0.17423	=	8.28		
12	Rider GCR Part A	47.5	CCF	X \$ 0.27375	=	13.00		
13	Rider GCR Part B	47.5	CCF	X \$ 0.27485	=	13.06		
14	Subtotal					\$ 53.89		
15	Rider FF & Rider TAX		\$ 53.89	X 0.06708	=	3.61		
16	Total					\$ 57.50	\$ 2.05	
17								3.70%
18								
19	Rate C @ 367.6 Ccf							
20	Customer charge					\$ 43.50		
21	Consumption charge	367.6	CCF	X \$ 0.09165	=	33.69		
22	Rider GCR Part A	367.6	CCF	X \$ 0.27375	=	100.62		
23	Rider GCR Part B	367.6	CCF	X \$ 0.19927	=	73.25		
24	Subtotal					\$ 251.06		
25	Rider FF & Rider TAX		\$ 251.06	X 0.06708	=	16.84		
26	Total					\$ 267.90		
27								
28	Customer charge						\$ 46.50	
29	Consumption charge	367.6	CCF	X \$ 0.09924	=	36.48		
30	Rider GCR Part A	367.6	CCF	X \$ 0.27375	=	100.62		
31	Rider GCR Part B	367.6	CCF	X \$ 0.19927	=	73.25		
32	Subtotal					\$ 256.85		
33	Rider FF & Rider TAX		\$ 256.85	X 0.06708	=	17.23		
34	Total					\$ 274.08	\$ 6.18	
35								2.31%

ATMOS ENERGY CORP., MID-TEX DIVISION
AVERAGE BILL COMPARISON - BASE RATES
TEST YEAR ENDING DECEMBER 31, 2018

Line						CURRENT	PROPOSED	CHANGE
36	Rate I @ 4066 MMBTU							
37	Customer charge					\$ 784.00		
38	Consumption charge	1,500	MMBTU	X \$	0.3312 =	496.80		
39	Consumption charge	2,566	MMBTU	X \$	0.2425 =	622.14		
40	Consumption charge	0	MMBTU	X \$	0.0520 =	-		
41	Rider GCR Part A	4,066	MMBTU	X \$	2.6733 =	10,868.51		
42	Rider GCR Part B	4,066	MMBTU	X \$	0.4491 =	1,825.85		
43	Subtotal					\$ 14,597.30		
44	Rider FF & Rider TAX					979.16		
45	Total					<u>\$ 15,576.46</u>		
46								
47	Customer charge						\$ 845.50	
48	Consumption charge	1,500	MMBTU	X \$	0.3572 =		535.80	
49	Consumption charge	2,566	MMBTU	X \$	0.2616 =		671.14	
50	Consumption charge	0	MMBTU	X \$	0.0561 =		-	
51	Rider GCR Part A	4,066	MMBTU	X \$	2.6733 =		10,868.51	
52	Rider GCR Part B	4,066	MMBTU	X \$	0.4491 =		1,825.85	
53	Subtotal						\$ 14,746.80	
54	Rider FF & Rider TAX						989.19	
55	Total						<u>\$ 15,735.99</u>	\$ 159.53
56								1.02%
57	Rate T @ 4066 MMBTU							
58	Customer charge					\$ 784.00		
59	Consumption charge	1,500	MMBTU	X \$	0.3312 =	496.80		
60	Consumption charge	2,566	MMBTU	X \$	0.2425 =	622.14		
61	Consumption charge	0	MMBTU	X \$	0.0520 =	-		
62	Rider GCR Part B	4,066	MMBTU	X \$	0.4491 =	1,825.85		
63	Subtotal					\$ 3,728.79		
64	Rider FF & Rider TAX					250.12		
65	Total					<u>\$ 3,978.91</u>		
66								
67	Customer charge						\$ 845.50	
68	Consumption charge	1,500	MMBTU	X \$	0.3572 =		535.80	
69	Consumption charge	2,566	MMBTU	X \$	0.2616 =		671.14	
70	Consumption charge	0	MMBTU	X \$	0.0561 =		-	
71	Rider GCR Part B	4,066	MMBTU	X \$	0.4491 =		1,825.85	
72	Subtotal						\$ 3,878.29	
73	Rider FF & Rider TAX						260.15	
74	Total						<u>\$ 4,138.44</u>	\$ 159.53
75								4.01%

Attachment 3

RRM Monthly Savings Over GRIP and DARR Rates

ACSC Margin Advantage Over GRIP and DARR Residential Customers
Effective October 1, 2019

Group	Average Monthly Consumption	Customer Charge	Consumption Charge	Average Bill	Average Monthly Savings
ACSC/RRM	47.5 CCF	\$19.55	\$0.17423	\$27.83	X
Environs GRIP	47.5 CCF	\$19.84	\$0.18653	\$28.70	\$0.87
ATM GRIP	47.5 CCF	\$21.69	\$0.14846	\$28.74	\$0.92
DARR	47.5 CCF	\$21.25	\$0.14924	\$28.34	\$0.51

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2019 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHED EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN ATTACHED EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.

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

WHEREAS, the Town is a member of the Atmos Cities Steering Committee (“ACSC”), a coalition of similarly-situated cities served by Atmos Mid-Tex (“ACSC Cities”) that have joined together to facilitate the review of, and response to, natural gas issues affecting rates charged in the Atmos Mid-Tex service area; and

WHEREAS, ACSC and the Company worked collaboratively to develop a new Rate Review Mechanism (“RRM”) tariff that allows for an expedited rate review process by ACSC Cities as a substitute to the Gas Reliability Infrastructure Program (“GRIP”) process instituted by the Legislature, and that will establish rates for the ACSC Cities based on the system-wide cost of serving the Atmos Mid-Tex Division; and

WHEREAS, the current RRM tariff was adopted by the Town in a rate ordinance in 2018; and

WHEREAS, on about April 1, 2019, Atmos Mid-Tex filed its 2019 RRM rate request with ACSC Cities based on a test year ending December 31, 2018; and

WHEREAS, ACSC coordinated its review of the Atmos Mid-Tex 2019 RRM filing through its Executive Committee, assisted by ACSC’s attorneys and consultants, to resolve issues identified in the Company’s RRM filing; and

WHEREAS, the Executive Committee, as well as ACSC’s counsel and consultants, recommend that ACSC Cities approve an increase in base rates for Atmos Mid-Tex of \$35.4 million applicable to ACSC Cities; and

ORDINANCE NO. _____**PAGE 2**

WHEREAS, the attached tariffs (Exhibit A) implementing new rates are consistent with the recommendation of the ACSC Executive Committee, are agreed to by the Company, and are just, reasonable, and in the public interest; and

WHEREAS, the settlement agreement sets a new benchmark for pensions and retiree medical benefits (Exhibit B); and

WHEREAS, the settlement agreement establishes an amortization schedule for regulatory liability (Exhibit C); and

WHEREAS, the RRM Tariff contemplates reimbursement of ACSC's reasonable expenses associated with RRM applications;

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

SECTION 1

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

SECTION 2

That, without prejudice to future litigation of any issue identified by ACSC, the Town Council finds that the settled amount of an increase in revenues of \$35.4 million for ACSC Cities represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by Atmos Mid-Tex within the municipal limits arising from Atmos Mid-Tex's 2019 RRM filing, is in the public interest, and is consistent with the Town's authority under Section 103.001 of the Texas Utilities Code.

SECTION 3

That the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable. The new tariffs attached hereto and incorporated herein as Exhibit A, are just and reasonable, and are designed to allow Atmos Mid-Tex to recover annually an additional \$35.4 million from customers in ACSC Cities, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

SECTION 4

That the ratemaking treatment for pensions and retiree medical benefits in Atmos Mid-Tex's next RRM filing shall be as set forth on Exhibit B, attached hereto and incorporated herein.

SECTION 5

That amortization of regulatory liability shall be consistent with the schedule found in attached Exhibit C attached hereto and incorporated herein.

SECTION 6

That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC in processing the Company's 2019 RRM filing.

ORDINANCE NO. _____

PAGE 3

SECTION 7

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

SECTION 8

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

SECTION 9

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

SECTION 10

That consistent with the Town Ordinance that established the RRM process, this Ordinance shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after October 1, 2019.

SECTION 11

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 16th DAY OF SEPTEMBER, 2019.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: September 16, 2019

FROM: Tammy Wilson, Executive Director of Financial Services

ITEM: Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound through the amendment of Appendix A "Fee Schedule" of the Code of Ordinances by amending Section 70-777 relative to the charges for the Stormwater Utility System fee.

BACKGROUND INFORMATION: Every property owner and customer of the Town's Stormwater Utility System pays a Stormwater Utility System (SWUS) fee for the benefited property. The fee for residential property is based on the size of a residential lot including the following classifications: less than one acre; one to five acres; and over five acres. The multifamily, commercial, and industrial rates are based on the size of a commercial/industrial building including the following classifications: less than 25,000 square feet; 25,000 to 50,000 square feet; and over 50,000 square feet.

Lots that utilize stormwater detention facilities qualify for a 17 percent discount from the standard SWUS fee. A property may qualify for the discount through one of two methods. First, an individual lot or parcel may qualify for a discount if a stormwater detention facility is located on the property. Second, a lot or parcel may also qualify for a discount if it is part of a larger unified development or subdivision that provides stormwater detention facilities.

The Stormwater Utility System fee has not been adjusted since 2017. Staff recommends an inflationary adjustment of 4.62% to maintain the current level of stormwater services. The inflationary increase would continue to provide a 17 percent discount to qualified properties.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$ (66,211)

Proposed Expenditure/(Revenue):	Account Number(s):
\$ (66,211)	230-4250 Stormwater Fees

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

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

ATTACHMENTS:

1. Proposed Ordinance

DRAFT MOTION: Move to approve 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, AMENDING APPENDIX A “FEE SCHEDULE” OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND RELATIVE TO THE CHARGES FOR STORMWATER UTILITY SYSTEM FEES; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Home Rule Charter adopted November 3, 1981; and

WHEREAS, the Town of Flower Mound possesses all the rights, powers, and authorities possessed by all home rule municipalities to regulate the fees for services provided; and

WHEREAS, the Town of Flower Mound has determined that it needs to increase the fees charged for the operation and maintenance of the Town’s surface water management program designed to assist in the protection of public health and safety from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from water runoff within the boundaries of the Town;

WHEREAS, the Town Council finds that the classification of the benefited properties and the increased fees charged for the operation and maintenance of the Town’s surface water management program are nondiscriminatory, reasonable, and equitable for similar services in all areas of the service area.

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Appendix A, “Fee Schedule,” of the Code of Ordinances of the Town of Flower Mound shall be amended by amending Section 70-777, Stormwater Utility System fee as follows:

Code Section Number	Description
70-777	Stormwater Utility System fee:

ORDINANCE NO. _____**PAGE 2**

(a) The drainage charge for single family residential, townhome, duplex, and mobile home parcels that are not entitled to a Discount:

- (1) For property that is less than one (1) acre in size is Four and Fifty-Five/One Hundredths Dollars (\$4.55) per month;
- (2) For property that is between one (1) acre and five (5) acres in size is Three and Ninety-Two/One Hundredths Dollars (\$3.92) per month; and
- (3) For property greater than five (5) acres in size is Three and Thirty/One Hundredths Dollars (\$3.30) per month.

(b) The drainage charge for Multi-family, Commercial, and Industrial parcels that are not entitled to a Discount:

- (1) For property that is up to twenty-five thousand (25,000) square feet in size is Thirty-Four and Twenty-Five/One Hundredths Dollars (\$34.25) per month;
- (2) For property that is between twenty-five thousand (25,000) square feet and fifty thousand (50,000) square feet in size is Forty-Six and Seventy-One/One Hundredths Dollars (\$46.71) per month; and
- (3) For property that is over fifty thousand (50,000) square feet in size is Fifty-Nine and Sixteen/One Hundredths Dollars (\$59.16) per month.

(c) The drainage charge for single family residential, townhome, duplex, and mobile home parcels that are entitled to a Discount:

- (1) For property that is less than one (1) acre in size is Three and Seventy-Seven/One Hundredths Dollars (\$3.77) per month;
- (2) For property that is between one (1) acre and five (5) acres in size is Three and Twenty-Six/One Hundredths Dollars (\$3.26) per month; and
- (3) For property greater than five (5) acres in size is Two and Seventy-Four/One Hundredths Dollars (\$2.74) per month.

(d) The drainage charge for Multi-family, Commercial, and Industrial parcels that are entitled to a Discount:

ORDINANCE NO. _____**PAGE 3**

- (1) For property that is up to twenty-five thousand (25,000) square feet in size is Twenty-Eight and Forty-Three/One Hundredths Dollars (\$28.43) per month;
- (2) For property that is between twenty-five thousand (25,000) square feet and fifty thousand (50,000) square feet in size is Thirty-Eight and Seventy-Seven/One Hundredths Dollars (\$38.77) per month; and
- (3) For property that is over fifty thousand (50,000) square feet in size is Forty-Nine and Ten/One Hundredths Dollars (\$49.10) per month.

SECTION 3

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

SECTION 4

If any section, subsection, clause, phrase or provision of this Ordinance and the Code, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance and the Code, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5

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

SECTION 6

This Ordinance shall take effect and be in full force on and after October 1, 2019, and its publication as provided by the laws of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

ORDINANCE NO. _____

PAGE 4

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 16th DAY OF
SEPTEMBER, 2019.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: September 16, 2019

FROM: Debra Wallace, Deputy Town Manager, CFO

ITEM: **Consider approval of an ordinance amending Appendix A of the Code of Ordinances by amending the charges for residential and non-residential water and wastewater service; providing a severability clause; providing for publication; and providing an effective date.**

BACKGROUND INFORMATION: The proposed utility rate structure is designed to bring long-term financial stability to the utility system and fully fund all costs of the system from user rates. The Town of Flower Mound owns and operates a wastewater treatment plant and purchases treated water with up to 11 MGD from the City of Dallas (DWU) and up to 30 MGD from the Upper Trinity Regional Water District, (UTRWD). The majority of the cost increases in the Town's utility system are due to increases in treated water rates purchases from UTRWD and City of Dallas, and increased construction costs.

The attached ordinance sets water and wastewater rates for FY 2019-20 to recover the full costs of the Town's water and wastewater systems and are designed to meet the following criteria:

1. Implement the necessary capital improvements to meet customer needs for utility services.
2. Pay the full cost of services provided by the Town's General Fund by the utility system.
3. Maintain the quality of water and wastewater services required by the Town's customers.
4. Position the utility system financially to be able to replace necessary infrastructure as the system ages.

The following table displays the rate changes contained within the attached ordinance which are effective each October of the years noted:

	Current FY 2019	FY 2020
<u>Water</u>		
Minimum Bill*	\$ 34.82	\$ 35.86
2,001-10,000	\$ 3.98	\$ 4.06
10,001-15,000	\$ 5.33	\$ 5.49
15,001-50,000	\$ 6.07	\$ 6.25
over 50,000	\$ 6.80	\$ 7.01
<u>Wastewater</u>		
Minimum Bill	\$ 20.02	\$ 20.82
2,001-10,000	\$ 4.07	\$ 4.23

*For residential 3/4 inch meter. All other minimum bills will increase in same proportion.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditures(Revenues):	Account Number(s):
The attached ordinance sets utility rates to recover the full costs of the Town's water and wastewater systems.	200-4205 Water Sales (\$35,766,096) 200-4210 Wastewater Sales (\$11,419,212)

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

LEGAL REVIEW: This standard ordinance was approved in the past by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. No alteration to the legal content of this form document was made in preparation of this document.

ATTACHMENTS:

1. Proposed ordinance

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

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING APPENDIX A, "FEE SCHEDULE," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND BY AMENDING THE CHARGES CONTAINED THEREIN FOR RESIDENTIAL AND NON-RESIDENTIAL WATER AND WASTEWATER SERVICE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipal corporation organized and existing by virtue of the Constitution and laws of the State of Texas and by its Home Rule Charter adopted November 3, 1981; and,

WHEREAS, the Town of Flower Mound possesses all the rights, powers, and authorities possessed by all home rule municipalities to regulate utility billing services and the fees for services provided; and,

WHEREAS, the Town of Flower Mound enacted Ordinance No. 66-85 on September 30, 1985 to establish rates for water service provided by the Town of Flower Mound; and,

WHEREAS, the Town of Flower Mound has from time to time amended the water service rate fee schedule as well as the sewer service rate fee schedule applicable to residential and non-residential water consumption and sewer service; and,

WHEREAS, the Town of Flower Mound desires to amend the water service rate fee schedule as well as the sewer service rate fee schedule applicable to residential and non-residential water consumption and sewer service and hereby finds that it is in the best interest of the health, safety and general welfare of the citizens of the Town to amend the fees as outlined herein;

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

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings 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 Appendix A-Fee Schedule of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by amending the schedule of fees corresponding to Section 70-361, "Water Service Rates," to read as follows:

Code Section Number	Description
70-361	Water service rates:

The minimum monthly charge for each sized meter in the Town, which amount includes 2,000 gallons of water is as follows:

ORDINANCE NO _____**PAGE 2**

Water Meter Size (inches)	Minimum Bills Water Usage Beginning 10/01/2019 and Thereafter
3/4 or 5/8	\$35.86
1	59.02
1 1/2	97.58
2	143.89
3	267.34
4	406.21
6 and larger	768.92

The monthly volume charge per 1,000 gallons after the first 2,000 gallons of water usage is as follows:

Volumetric Rates	Per 1,000 Gallons Water Usage Beginning 10/01/2019 and Thereafter
2,000 – 10,000 Gallons	\$4.06
10,001 – 15,000 Gallons	5.49
15,001 – 50,000 Gallons	6.25
Over 50,000 Gallons	7.01
Town Meters	2.11
Fire Hydrants	7.01

SECTION 3

That Appendix A-Fee Schedule of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by amending the schedule of fees corresponding to Section 70-381, "Sewer Service Rates," to read as follows:

Code Section Number	Description
70-381	Sewer service rates:

The minimum monthly charge for sewer service for each sized water meter in the Town, which amount includes 2,000 gallons of water usage is as follows:

ORDINANCE NO _____**PAGE 3**

Water Meter Size (inches)	Minimum Bills Water Usage Beginning 10/01/2019 and Thereafter
All Sizes	\$20.82
"Residential No-Average Maximum"	\$46.20

The monthly volume charge per 1,000 gallons after the first 2,000 gallons of water usage is as follows:

Volumetric Rates	Per 1,000 Gallons Water Usage Beginning 10/01/2019 and Thereafter
Over 2,000 Gallons	\$4.23

SECTION 4

Any and all ordinances, orders, resolutions, rules, regulations, policies or provisions in conflict with the provisions of this Ordinance and the Code are hereby repealed and rescinded to the extent of any conflict herewith.

SECTION 5

If any section, subsection, clause, phrase or provision of this Ordinance and the Code, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance and the Code, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 6

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.

ORDINANCE NO _____

PAGE 4

SECTION 7

This Ordinance shall take effect and be in full force immediately upon its passage and adoption as provided by the laws of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 16TH DAY OF SEPTEMBER, 2019.

APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: September 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: Consider approval of a resolution amending the financial policies of the Town of Flower Mound.

BACKGROUND INFORMATION:

Staff reviews the Town's Financial Policies annually to determine if the document needs editing. Changes could occur for various reasons, including: language clarification, new governmental accounting standards, criteria changes, or to remove completed item. Staff recommends making two administrative type changes this year.

Change: The Town's fund balance in the General Fund shall be maintained at a minimum level of 20.0% of annual General Fund expenditures.

Staff recommends the word "unassigned" be removed from the fund balance description so language can be consistent between the Comprehensive Annual Financial Report (CAFR), the Town's budget documents and Financial Policies.

Change: Notice of Certain Events

15. Incurrence of a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation of the Town, or a guarantee of any such debt obligation or derivative instrument, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of any such financial obligation of the Town, any of which affect security holders, if material; and
16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any such financial obligation of the Town, any of which reflect financial difficulties.

Staff recommends including amendments to rule 15c2-12 of the Securities and Exchange Act, adopted by the Securities and Exchange Commission, to enhance transparency in the municipal securities market. Point 15 and 16 have been added to the Financial Policies.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

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

ATTACHMENTS:

1. Resolution
2. Proposed Financial Policies

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, PROVIDING FOR THE ADOPTION OF AMENDED FINANCIAL POLICIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound, Texas has previously adopted Financial Policies ("Financial Policies") to guide and set goals for the financial administration and operations of the Town of Flower Mound; and,

WHEREAS, the Financial Policies address, among other things, accounting, budgeting, financial planning, reserves, utilities, debt management, investments and grants; and,

WHEREAS, the Town Council has determined that the Financial Policies should be amended to meet the changing needs of the Town;

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 factual and legislative determinations of the Town of Flower Mound, and they are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

SECTION 2

The Town Council hereby approves and adopts the attached amended Financial Policies for the Town of Flower Mound.

SECTION 3

This Resolution shall become effective on and after its date of adoption.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 16th DAY OF SEPTEMBER, 2019.

ATTEST:**APPROVED:**

Theresa Scott, TOWN SECRETARY

Steve Dixon, MAYOR

Town of Flower Mound, Texas
Financial Policies
September 16, 2019

Accounting, Budgeting, and Financial Planning

1. The Annual Operating Budget shall be prepared such that current revenues plus net operating transfers and one-time use of excess reserves will be sufficient to support budgeted expenditures.
2. One-time revenues or drawdown of excess reserves will not be used to fund on-going expenditures. These one-time funding sources shall only be used to fund capital improvements, capital equipment or other one-time expenditures.
3. The Town's Vehicle Equipment Replacement Fund shall be funded annually to maintain an 85% funding level or higher.
4. Charges for services and other revenues will be examined annually during the budget process and adjusted as deemed necessary to respond to cost increases or any other changing circumstances.
5. A minimum of a three-year financial forecast shall be prepared annually projecting revenues and expenditures for all operating funds. This forecast shall be used as a planning tool in developing the following year's operating budget.
6. The Town shall annually submit the Annual Operating Budget to the GFOA for the purpose of earning the Distinguished Budget Presentation Award.
7. The Town shall annually submit the Comprehensive Annual Financial Report (CAFR) to the Government Finance Officer's Association (GFOA) for the purpose of earning the Certificate of Achievement for Excellence in Financial Reporting.
8. The Town's CAFR and annual budget shall be made available to Town citizens and the general public upon request and available on the Town's website. The Town shall strive to maintain full transparency and accountability of all of its financial resources and assets.
9. The Town will establish accounting practices that conform to generally accepted accounting principles as set forth by the Governmental Accounting Standards Board.
10. An independent certified public accounting firm will perform an annual audit and a CAFR shall be issued no later than six months following year-end.
11. The Town's general funded budget for street maintenance shall set a goal to double funding by September 30, 2020, from the current level of \$680,000 to a level of \$1,360,000.
12. The Town shall use 75% of the additional General Fund revenue from the expiration of TIRZ #1 (anticipated to begin in FY 2024-2025) to fund street maintenance.
13. The Town shall continue to use funds received and budgeted from park development fees and park dedication fees for the completion of the Town's park and trail system.

General and Debt Service Fund Reserves

1. The Town's fund balance in the General Fund shall be maintained at a minimum level of 20.0% of annual General Fund expenditures.
2. The Town's fund balance in the Debt Service Fund shall be maintained at a minimum level of 4.0% of annual debt service expenditures.

Property Tax Supported Debt

1. The ratio of net debt (total outstanding tax supported debt less debt paid by the Utility Fund) to total taxable assessed valuation shall be targeted to maintain a level of 1.75% or below. This excludes debt of overlapping jurisdictions.
2. The ratio of debt service fund expenditures to total expenditures (general fund operating expenditures and debt service combined) shall be targeted to maintain a level of 20% or below.
3. The Town's goal is to maintain the debt service tax rate at 12.00 cents or lower. The reduced rate can be shifted to the General Fund tax rate to fund operating costs.

Water and Wastewater Utility

1. The Town will operate the water and wastewater utility as an enterprise fund with rates and charges supporting the full cost of all expenses and operations.
2. The Town shall conduct an annual rate study of water and wastewater charges. Rates will be determined based on "**normalized year**" water consumption. The rates will pass-through, subject to final Town Council approval, to its ratepayers any rate adjustments pertaining to contracts with its wholesale providers of treated water purchases or wastewater treatment.
3. The Town's goal is to maintain a coverage factor in the setting of water and wastewater rates (based on normalized year assumptions) of at least 1.25 times coverage of all utility paid debt service for rates.
4. The Town's goal is to maintain a working capital reserve equal to a minimum of 60 days (16.7%) of the annual expenses. Revenues collected that would bring the reserve in excess of a 90-day level (25.0%) will be used for capital replacement or expansion expenditures in lieu of issuing debt.

Stormwater Utility

1. The Town will operate the stormwater utility as an enterprise fund with rates and charges supporting the full costs of all expenses and operations.
2. The Town shall conduct a rate review of stormwater charges a minimum of every three years. The rates will be set, subject to final Town Council approval, to cover the required costs of the Town's stormwater management program and necessary drainage improvements.

3. The Town's goal is to maintain working capital equal to a minimum of 30 days (8.3%) of the annual expenses. Revenues collected that would bring the reserve in excess of a 60-day level (16.7%) will be used for one-time expenditures.

Debt Management

1. Debt financing which includes general obligation bonds, permanent improvement bonds, revenue bonds, certificates of obligation, lease/purchase agreements and other obligations allowed under Texas law shall be used to acquire or construct land and improvements that cannot be funded by current revenues. The term of debt shall not exceed the expected useful life of the capital asset being financed.
2. Each year the Town will adopt a capital improvement plan. The plan will recommend specific funding of projects for the following two fiscal years and will identify projects for further consideration in years three through five.
3. The Town is committed to providing continuing disclosure of certain financial and operating data and material event notices, see as required by Securities and Exchange Commission (SEC) Rule 15c2-12. The Financial Services Department shall be responsible for the preparation of all annual disclosure documents and timely releases required under Rule 15c2-12 to the Municipal Securities Rulemaking Board (the "MSRB") which is available from the MSRB's Electronic Municipal Market Access ("EMMA") System at www.emma.msrb.org. All filings will be documented and maintained in the Financial Services Department.

a. Annual Reports

1. The Town will provide certain updated financial information and operating data to the MSRB annually. The information to be updated includes all quantitative financial information and operating data with respect to the Town.
2. The updated information will include audited financial statements. If audited financial statements are not available by the required time, the Town will provide unaudited financial information and operating data of the general type required by the Town's undertaking under the Rule by the required time, and audited financial statements when and if the audit report becomes available.
3. The Town will update and provide this information within six months after the end of each fiscal year end. If the Town changes its fiscal year, it will notify the MSRB of the change.

b. Notice of Certain Events

The Town will also provide timely notices of certain events to the MSRB. The Town will provide notice of any of the following events with respect to the Certificates to the MSRB in a timely manner (but not in excess of ten business days after the occurrence of the event):

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
 7. Modifications to rights of holders of the Certificates, if material;
 8. Bond calls, if material, and tender offers;
 9. Defeasances;
 10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
 11. Rating changes;
 12. Bankruptcy, insolvency, receivership, or similar event of the Town, which shall occur as described below;
 13. The consummation of a merger, consolidation, or acquisition involving the Town or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
 14. Appointment of a successor or additional trustee or the change of name of a trustee, if material. In addition, the Town will provide timely notice of any failure by the Town to provide annual financial information in accordance with their agreement in the official statement of an issuance;
 15. Incurrence of a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation of the Town, or a guarantee of any such debt obligation or derivative instrument, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of any such financial obligation of the Town, any of which affect security holders, if material; and
 16. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any such financial obligation of the Town, any of which reflect financial difficulties.
4. A good faith deposit of 2.0% of the par amount of the bond sale for a competitively-bid issue or 1.0% of the par amount of the bond sale for a negotiated issue shall be presented by the underwriter in the form of a check or surety acceptable to the Town and bond counsel prior to the approval of the bonds by the Mayor and Town Council.
 5. The Town shall use a competitive bidding process in the sale of debt unless the use of a negotiated process is warranted due to adverse market conditions, such as a high degree of volatility in the bond market, market timing requirements (refunding), or a unique pledge or debt structure. The Town will award competitively issued debt on a true interest cost (TIC) basis.
 6. The Town welcomes ideas and proposals from investment bankers and will seek to give first consideration to those firms that submit unique and innovative ideas that benefit the Town. Unsolicited proposals should be submitted to the Town's Financial Services Department and the Town's financial advisor.
 7. The selection of an underwriter or group of underwriters for a negotiated sale shall be based on the following factors:
 - a. Participation in the Town's competitive sales;
 - b. Submission of unique or creative proposals;
 - c. Qualifications of a firm, including their capital position; and

- d. Size and geographic distribution of their sales staff.
8. An advance refunding of outstanding debt shall only be considered when present value savings of at least 3.50% of the principal amount of the refunded bonds are produced, unless a debt restructuring or bond covenant revisions are necessary. Savings from refundings will be distributed evenly over the life of the refunded bonds unless special circumstances warrant another savings structure.
9. The use of reimbursement resolutions shall be encouraged as a cash management tool for debt funded projects. Reimbursement resolutions may be used for any project that has been approved in the Town's Capital Budget.

Investments

1. Investments shall be made in conformance with the Town's Investment Policy, with the primary objectives of:
 - a. Safety – preservation of capital in the investment portfolio;
 - b. Liquidity – portfolio remains sufficiently liquid to meet operating requirements; and
 - c. Yield – goal of rate of return above the higher of the three-month United States Treasury bill yield or the Federal Funds rate.

Grants

1. The Town will aggressively pursue all available grant opportunities. Each grant shall be evaluated on the long-term financial impact to the Town. The Town will only accept grants for one-time or capital items or when the continued funding of the program can be incorporated into the Town's future budgets.
2. All grants and other federal and state funds shall be managed to comply with the laws, regulations, and guidance of the grantor, and all gifts and donations shall be managed and expended according to the wishes and instructions of the donor.

Tax Collection

1. The Town shall encourage the Denton County Tax Assessor-Collector to follow an aggressive policy of collecting property tax revenues. The Town will contract with a tax collection firm as allowed by state law to take necessary legal action to collect delinquent taxes. An average collection rate of at least 98.5% of current levy shall be maintained.

Self-Insurance and Retirement Funds

1. All retirement and self-insurance funds will be examined annually to ensure that adequate balances and funding progress are maintained. Unfunded actuarial liabilities in a retirement program are to be amortized over a 30-year period, or less.



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: September 16, 2019

FROM: Julie Taylor, Director of Treasury Operations

ITEM: **Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.**

BACKGROUND INFORMATION: The Town Council is required by the Public Funds Investment Act of 1987 ("Act") and the Town's Investment Policy ("Policy") to review the investment policy and strategies, not less than annually, and adopt a resolution stating that the investment policy has been reviewed and revised if required.

The Policy provides the guidelines by which the Town of Flower Mound will maintain the minimum amount of cash in its bank accounts to meet daily needs and to provide protection for its principal while maximizing the investment of all available cash. The Policy was adopted pursuant to the provisions of the Act, as amended, Chapter 2256, Texas Government Code.

The Town Council is required by the Act and the Policy to review the investment policy and strategies, not less than annually, and adopt a resolution stating that the Policy has been reviewed. No revisions are recommended at this time.

Approval of the attached proposed resolution will not only continue compliance with the Act, but will also continue the Town's safe and prudent investment of available funds.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: This standard investment policy resolution was approved in the past by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. No alteration to the legal content of this form document was made in preparation of this document.

ATTACHMENTS:

1. Proposed Resolution including Exhibit A, the Proposed Investment Policy

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

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

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS (“TOWN”), ADOPTING AN INVESTMENT POLICY FOR FUNDS FOR THE TOWN AS REQUIRED ANNUALLY BY THE PUBLIC FUNDS INVESTMENT ACT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Director of Treasury Operations for the Town has prepared, and the Town Council has previously adopted, a policy regarding the investment of Town funds to comply with the Public Funds Investment Act of 1987, located in Title 2, Chapter 11, of the Town’s Personnel and Administrative Regulations Manual (“Investment Policy”); and,

WHEREAS, the purpose of the Investment Policy is to provide guidelines by which the Town will maintain the minimum amount of cash in its bank accounts to meet daily needs, and to provide protection for the Town’s principal while receiving the highest yield possible from investing all temporary excess cash; and,

WHEREAS, the Town Council is required by the Public Funds Investment Act, Chapter 2256, Texas Government Code, as amended, and the Investment Policy to review the investment policies and strategies, not less than annually, and adopt a resolution stating that the Investment Policy has been reviewed and updated if updates are required; and,

WHEREAS, the Director of Treasury Operations has determined that no revisions to the Investment Policy are necessary; and,

WHEREAS, the Town Council has reviewed and desires to adopt the Investment Policy, pursuant to the recommendation by the Director of Treasury Operations, as the official Town policy regarding investment of Town funds;

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

SECTION 1

The following policy, attached hereto as Exhibit A and made a part hereof by reference, has been reviewed by the Town Council and is hereby adopted as the official Investment Policy of the Town pursuant to the provisions of the Public Funds Investment Act.

SECTION 2

The attached policy shall be filed with the Town Secretary as an official record of the Town.

SECTION 3

The attached policy replaces the Investment Policy which was adopted by the Town by Resolution No.16-18 and became effective September, 17, 2018.

Resolution No. _____

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SECTION 4

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, ON THIS 16th DAY OF SEPTEMBER, 2019.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A
TITLE II
ADMINISTRATIVE POLICIES

CHAPTER 11: INVESTMENT POLICY

11.01 Purpose

This policy shall provide the guidelines by which the Town of Flower Mound will maintain the minimum amount of cash in its bank accounts to meet daily needs, and to provide protection for its principal while receiving the highest yield possible from investing all temporary excess cash. This policy is being adopted pursuant to the provisions of the Public Funds Investment Act of 1987, Chapter 2256 of the Texas Government Code, as amended, and supersedes all other investment policies.

11.02 Scope

This Investment Policy applies to the investment activities of the Town of Flower Mound, excluding the specific funds cited hereafter.

This policy shall not govern funds which are managed under separate investment programs. Such funds currently include Employees' Retirement Funds of the Town of Flower Mound, other funds established by the Town for deferred employee compensation, and certain private donations. The Town shall and will maintain responsibility for these funds to the extent required by Federal and State Law, the Town Charter, and donor stipulations.

The following funds, as well as other funds that may be created from time to time, shall be administered in accordance with the provisions of this policy: cash equivalent assets of the General Fund, Utility Fund, Capital Project Funds, Debt Service Fund, Special Revenue Funds and any other fund of the Town not specifically excluded in these policy guidelines.

11.03 Investment Strategy

The overall strategy of the Town's investment objective shall be to ensure a) the understanding of suitability of investment to the financial requirements of the Town, b) preservation and safety of principal, c) liquidity, d) marketability of the investment, if the need arises to liquidate the investment before maturity, e) diversification of the investment portfolio; and f) yield.

The Town maintains portfolios which utilize four specific investment strategy considerations designed to address the unique characteristics of the fund groups represented in the portfolios:

- A. Investment strategies for operating funds and commingled pools containing operating funds have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. The Town may invest various types of funds in a commingled pool in

order to achieve efficiencies in the investment program. The secondary objective is to create a portfolio structure which will experience minimal volatility during economic cycles. This may be accomplished by purchasing high quality, short to medium-term securities which will compliment each other in a laddered or barbell maturity structure. A dollar weighted average maturity of 365 days or less will be maintained and calculated by using the stated final maturity date of each security.

- B. Investment strategies for debt service funds, if invested separately, shall have as the primary objective the assurance of investment liquidity adequate to cover the debt service obligation on the required payment date. Securities purchased shall not have a stated final maturity date which exceeds the debt service payment date. The dollar weighted average maturity will be 180 days or less to accomplish this goal.
- C. Investment strategies for debt service reserve funds shall have as the primary objective the ability to generate a dependable revenue stream to the appropriate debt service fund from securities with a low degree of volatility. Securities should be of high quality and, except as may be required by the bond ordinance specific to an individual issue, of short to intermediate-term maturities. Volatility shall be further controlled through the purchase of securities carrying the highest coupon available, within the desired maturity and quality range, without paying a premium. Such securities will tend to hold their value during economic cycles. The dollar weighted average maturity will be no greater than 730 days.
- D. Investment strategies for special projects or special purpose fund portfolios, if invested separately, will have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. These portfolios should include at least 10% in highly liquid securities to allow for flexibility and unanticipated project outlays. The stated final maturity dates of securities held should not exceed the estimated project completion date. The dollar weighted average maturity will be 90 days or less to accomplish this goal.
- E. Investment strategies for capital project funds will have as their primary objective to assure that anticipated cash flows are matched with adequate investment liquidity. These portfolios should include at least 10% in highly liquid securities to allow for flexibility and unanticipated project outlays. The stated final maturity dates of securities held should not exceed the estimated project completion date. The dollar weighted average maturity will be 365 days or less to accomplish this goal.

11.04 Objective

In terms of day-to-day investment purposes, the core objectives of the Town's investment policy shall be to first preserve the capital in the overall portfolio. Each investment transaction shall seek to first ensure that capital losses are avoided, whether they are from securities defaults or erosion of market value.

The second objective shall be liquidity and the final objective shall be the yield of the investment.

- A. To prevent the possibility of loss of resources, the Town will attempt to identify and limit exposure to market price risk and default risk, or not invest in a manner which is contrary to applicable Federal and State regulations. To further protect the Town's resources, credit rating changes for securities held by the Town will be monitored in coordination with the Town's financial advisor.
- B. To enable the Town to meet operating requirements that might be reasonably anticipated, the Town's investment portfolio will remain sufficiently liquid. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets.
- C. Management of the investment portfolio will strive to achieve a rate of return commensurate with the legal, safety and liquidity considerations. In any event, yield should exceed the average rate of return of secondarily-traded three (3) months U.S. Treasury Bills, or the monthly average of the Federal Funds Effective rate, whichever is higher. The first measure of success in this area will be the attainment of enough income to offset inflationary increases. Even though steps will be taken to obtain this goal, the Town's staff shall constantly be cognizant of risk limitations pursuant to the provisions of the amended Public Funds Investment Act, Section 2256.006(a) of the Texas Government Code.
- D. All participants in the investment process shall seek to act responsibly as stewards of public assets. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment programs, or which could impair their ability to make impartial investment decisions. Any investment officer who is related within the second degree by affinity or consanguinity as determined pursuant to the Texas nepotism statute, Chapter 573 of the Texas Government Code, as amended, to an individual seeking to sell an investment to the Town, or who has a prohibited personal business relationship, as defined in Section 2256.005 of the Texas Government Code, as amended, shall file a statement disclosing that relationship and any personal business relationship or material financial interests with the Town Council and the Texas Ethics Commission. The Director of Treasury Operations, or anyone involved in investment activity, shall avoid any transactions that might impair public confidence in the Town's ability to govern effectively. The governing body recognizes that in diversifying the portfolio, occasional measured losses due to market volatility are inevitable, and must be considered within the content of the overall portfolio's investment return, provided that adequate diversification has been implemented.

11.05 Investment Committee

There is hereby created an Investment Committee consisting of the Town Manager and/or his designee, the Assistant Town Manager/Chief Financial Officer (CFO) and/or his designee, and the Director of Treasury Operations. The Investment Committee shall meet at least quarterly to determine general strategies and to monitor results. Included in its deliberations will be such topics as: economic outlook, portfolio diversification, maturity structure, potential risk to the Town's funds, authorization of brokers and dealers, and the target rate of return on the investment portfolio. The committee shall establish its own rules of procedures, including, but not limited to maintaining a record of their meetings and discussions included therein.

11.06 Responsibility and Standard

- A. The management responsibility for the investment program is hereby delegated to the CFO who shall establish written procedures for the operation of the investment program, consistent with this investment policy. Such procedures shall include explicit delegation of authority to the individual(s) responsible for investment transactions. The primary individual who shall be involved in investment activities will be the Director of Treasury Operations. Both the CFO and the Director of Treasury Operations are designated as investment officers. To ensure the maturity and the quality and capability of the investment management, the investment officers are required to have three years of progressively responsible experience. Accordingly, the investment officers shall attend at least one training session containing at least 10 hours of instruction relating to their responsibility under the Act within 12 months after assuming duties. Thereafter, the investment officers shall attend additional investment training sessions containing at least 8 hours of instruction relating to investment responsibilities under the Act not less than once every two years, beginning on the first day of the Town's fiscal year, October 1, and consisting of the two consecutive fiscal years after that date. The training sessions must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio and compliance with the Public Funds Investment Act. The investment training sessions shall be provided by an independent source approved by the Investment Committee. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institute of higher learning or any other sponsor other than a business organization with whom the Town may engage in an investment transaction. No persons may engage in investment transactions except as provided under the terms of this policy and the procedures established by the CFO. The CFO shall be responsible for all transactions undertaken, and shall establish a system of control to regulate the activities of the Director of Treasury Operations. The controls shall include a monthly review and an annual review by an external auditor. The reviews will provide internal control by assuring compliance with policies and procedures.

- B. The Town Manager, CFO, Director of Treasury Operations, and other Town employees associated with investment functions shall be personally indemnified in the event of investment loss provided the Investment Policies and Guidelines are followed.
- C. The standard of prudence to be used by the investment officials shall be the Prudent Investor Rule, and will be applied in the context of managing an overall portfolio: Investments shall be made with judgment and care under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.
- Investment officials meeting this standard will be relieved of personal responsibilities for an individual security's credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.
- D. The CFO shall direct the preparation and presentation of a written report on the Town's investment transactions for the preceding reporting period for the Town Council and Town Manager. The report shall be provided quarterly, and shall contain the following:
1. A detailed description of the investment position of the Town as of the end of the reporting period.
 2. A summary statement of each pooled fund covering:
 - a. Beginning market value for the period (monitored by the Wall Street Journal and software).
 - b. The book and market value of each invested asset at the end of the reporting period by type of fund.
 3. The maturity date of each invested asset.
 4. Fully accrued interest for the period.
 5. The fund group for each individual investment.
 6. The compliance of the investment portfolio of the Town as it relates to the investment strategy of the Town and the Public Funds Investment Act.
 7. Signatures of all investment officers.
- E. The guidelines of retaining records for seven years, as recommended in the Texas State Library Municipal Records Manual should be followed. The Director of Treasury Operations shall oversee the filing and/or storing

of investment records.

- F. Wire transfer authorization forms shall be kept on file with banking institutions. The authorization form shall identify individuals authorized to make wire transfers and the institutions designated to receive the wire transfer. The Director of Treasury Operations or other authorized representative of the Town should complete a transfer notice and give it to the proper Finance Department personnel. The transfer confirmation received from the bank should be agreed with this notice and the appropriate journal entry made. Wire transfers shall not be executed without written confirmation from authorized Town staff and the proper exchange and verification of personal identification numbers. The Director of Treasury Operations will be authorized to execute repetitive transfers based on appropriate security measures, as established by the CFO.
- G. In the event of the absence of the Director of Treasury Operations, the authority to invest shall be regulated by the controls and procedures outlined by the CFO.

11.07 Investment

- A. Idle funds of the Town of Flower Mound may be invested in:
 - 1. Obligations of the United States of America, its agencies and instrumentalities (maturing in five (5) years or less).
 - 2. Direct obligations of the State of Texas and agencies thereof (maturing in two (2) years) or less.
 - 3. Other obligations, the principal of and interest on which are unconditionally guaranteed or insured by the State of Texas or United States of America or their agencies and instrumentalities (maturing in less than two (2) years) including obligations that are fully guaranteed or insured by the Federal Deposit Insurance Corporation or by the explicit full faith and credit of the United States.
 - 4. Obligations of the states, agencies thereof, counties, cities, and other political subdivisions of any state having been rated as investment quality by a nationally recognized investment rating firm, and having received a rating of not less than "A" or its equivalent (maturing in two (2) years or less).
 - 5. Certificates of deposit and share certificates (maturing in two (2) years or less) issued by state and/or national banks or savings and loans associations with main or branch offices in Texas that are:
 - a. Guaranteed or insured by the Federal Deposit Insurance

Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF) or their successors; or

- b. Secured as described in section 11.09 Principal Protection and Safekeeping.

In addition to the authority to invest funds in certificates of deposit, funds which are secured as described in Section 11.09 Principal Protection and Safekeeping, are invested through:

- a. A broker that has its main office or branch office in Texas and is selected from a list adopted by the Investment Committee; or
- b. A depository institution that has its main office or branch office in Texas and is selected by the Town.

- 6. Fully collateralized direct repurchase agreements with a defined termination date secured by a combination of cash and obligations of the United States or its agencies and instrumentalities. Purchases are required to be pledged to the entity, held in the entity's name and deposited at the time investment is made with the entity or a third party, selected by the Director of Treasury Operations, other than an agency for the pledgor. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in Texas. Each issuer of repurchase agreements must sign a copy of the Town's Master Repurchase Agreement (termination date must be 30 days or less).
- 7. An eligible investment pool, if the Town Council by official Town action authorizes investment in the particular pool. An investment pool shall invest the funds it receives from entities in authorized investments permitted by state statutes. Funds may be invested in money market mutual funds to the extent permitted by and consistent with state statutes and the investment policies and objectives adopted by the investment pool and by providing, at a minimum, the following information:
 - a. The types of investments in which money is allowed to be invested.
 - b. The maximum average dollar-weighted maturity allowed, based on the stated maturity date, of the pool.
 - c. The maximum stated maturity date of any investment security within the portfolio.
 - d. The objectives of the pool.

- e. The size of the pool.
- f. The names of the members of the advisory board of the pool and the dates their terms expire.
- g. The custodian bank that will safekeep the pool's assets.
- h. Whether the intent of the pool is to maintain a net asset value of \$1 and the risk of market price fluctuation.
- i. Whether the only source of payment is the assets of the pool at market value or whether there is a secondary source of payment, such as insurance or guarantees, and a description of the secondary source of payment.
- j. The name and address of the independent auditor of the pool.
- k. The requirements to be satisfied for an entity to deposit funds in and withdraw funds from the pool and any deadlines or other operating policies required for the entity to invest funds in and withdraw funds from the pool.
- l. The performance history of the pool, including yield, average dollar weighted average maturities, and expense ratios.
- m. Information presented in disclosure instruments or reports must be posted on Internet websites.
- n. Annual audited financial statements must be made available.
- o. Disclose fee breakpoints and state the lowest possible level of return based on the smallest level of funds invested.

To be eligible to receive funds from and investments on behalf of the Town, an investment pool must be rated no lower than AAA or AAA-m or at an equivalent rating by at least one nationally recognized rating service. (Maximum dollar average weighted maturity must be 60 days or less).

To maintain eligibility to receive funds from and invest funds on behalf of the Town, an investment pool must furnish to the investment officer investment transaction confirmations and a monthly report that contains, at a minimum, the following information:

- a. The types and percentage breakdown of securities in which

the pool has invested.

- b. The current average dollar-weighted maturity, based on the stated maturity date, of the pool.
- c. The current percentage of the pool's portfolio in investments that have stated maturities more than one year.
- d. The book value verses the market value of the pool's portfolio, using amortized cost valuation.
- e. The size of the pool.
- f. The number of participants in the pool.
- g. The custodian bank that is safekeeping the assets of the pool.
- h. A listing of daily transaction activity of the entities participating in the pool.
- i. The yield and expense ratio of the pool and a statement regarding how yield is calculated.
- j. The portfolio managers of the pool.
- k. Any changes or addenda to the offering circular.

The Town, by contract, may delegate to an investment pool the authority to hold legal title as custodian of investments purchased with its local funds.

For purposes of investment in an investment pool, yield shall be calculated in accordance with regulations governing the registration of open-end management investment companies under the Investment Company Act of 1940, as promulgated from time to time by the Federal Securities and Exchange Commission ("SEC"). If an investment pool is functioning as a money market mutual fund, yield must be reported in accordance with the SEC.

- 8. No-load money market mutual funds regulated by the Securities and Exchange Commission which have a dollar weighted average stated maturity of 90 days or fewer and include in their investment objectives the maintenance of a stable net asset value of \$1 for each share. A no-load mutual fund is an authorized investment under this subchapter if the mutual fund is registered with the Securities and Exchange Commission, has an average weighted maturity less than two years, is invested exclusively in obligations approved by Chapter 2256.014, Government Code, is continuously rated as to investment quality by at least one nationally recognized

investment rating firm of not less than AAA or its equivalent, and conforms to the requirements set forth in Sections 2256.016(b) and (c), Government Code, relating to the eligibility of investment pools to receive and invest funds of investing entities. The Town of Flower Mound is not authorized to invest in the aggregate more than 15% of its monthly average fund balance, excluding bond proceeds and reserves and other funds held for debt service, in mutual funds as herein set forth above, or invest its funds or funds under its control, including bond proceeds and reserves and other funds held for debt service, in any one mutual fund as herein set out above in an amount that exceeds 10% of the total assets of the mutual fund.

- B. The Town's authorized investment options are more restrictive than those allowed by state law. Furthermore, this policy specifically prohibits investment in the following investment securities:
1. Obligations whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.
 2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
 3. Collateralized mortgage obligations that have a stated final maturity date of greater than 10 years.
 4. Collateralized mortgage obligations, the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.
- C. It is the policy of the Town of Flower Mound to diversify its investment portfolios. The diversification will protect interest income from the volatility of interest rates and the avoidance of undue concentration of assets in a specific maturity sector; therefore, portfolio maturities shall be staggered. Securities shall also be selected which provide for stability of income and reasonable liquidity. Diversification strategies shall be determined and revised periodically by the Investment Committee. In establishing specific diversification strategies, the following general policies and constraints shall apply:
1. Risk of market price volatility shall be controlled through maturity diversification such that aggregate price losses on instruments with maturities exceeding one (1) year shall not be greater than coupon interest and investment income received from the balance of the portfolio.
 2. The Investment Committee shall establish strategies and

guidelines for the percentage of the total portfolio that may be invested in U.S. Treasury Securities, federal agencies instrumentalities, repurchase agreements, insured/collateralized certificates of deposit and other securities or obligations. The Investment Committee shall conduct a quarterly review of these guidelines, and shall evaluate the probability of market and default risk in various investment sectors as part of its considerations.

Risk of principal loss in the portfolio as a whole shall be minimized by diversifying investment types according to the following limitations:

<u>Investment Type</u>	<u>% of Portfolio</u>
• U.S. Treasury Notes/Bonds/Bills	100%
• U.S. Agencies and Instrumentalities	75%
• State of Texas Obligations & Agencies	10%
• No-Load Money Market Mutual Fund	25%
• Local Government Investment Pools	70%
• Local Government Obligations	10%
• Repurchase Agreements - Operating	10%
• Repurchase Agreements - Construction	100%
• Certificates of Deposit	100%

- D. Investments will be solicited on a competitive basis with at least three (3) institutions. The Investment Committee can approve exceptions on a case by case basis or on a general basis in the form of guidelines. These guidelines shall take into consideration the investment type maturity date, amount, and potential disruptiveness to the Town's investment strategy. The investment will be made with the broker/dealer offering the best yield/quality to the Town.

11.08 Selection of Banks and Dealers

- A. Town Council shall, by ordinance, select and designate one banking institution as the primary depository for the monies and funds of the Town. The primary depository shall be selected based on solvency and stability and secondly, on rate of interest, services, and cost.
- B. The Director of Treasury Operations shall conduct a comprehensive review of the prospective primary depository's credit characteristics and financial history.
- C. The primary depository shall be selected through a formalized bidding process in response to the Town's request for proposal (RFP) outlining all services required. The Investment Committee shall have the discretion to determine the time span for rebidding the banking services contract; however, a five-year period will be the maximum length of time between rebidding, as permitted by state law.

- D. Banks and savings and loans associations seeking to establish eligibility for the Town's competitive certificate of deposit purchase program, shall submit financial statements, evidence of federal insurance and other information as required by the Director of Treasury Operations.
- E. The Investment Committee shall be responsible for selecting brokers and dealers of government securities. Their selection shall be among only primary government securities dealers that report directly to the New York Federal Reserve Bank or other secondary firms that are adequately financed to conduct public business. The Investment Committee shall base its evaluation of security dealers and financial institutions upon:
 - 1. Financial conditions, strength and capability to fulfill commitments.
 - 2. Overall reputation with other dealers and investors.
 - 3. Regulatory status of the dealer.
 - 4. Background and expertise of the individual representatives.
- F. Approved brokers and dealers must complete Exhibit A and return it to the Director of Treasury Operations. In dealing with Town funds, the Director of Treasury Operations shall conduct business with securities dealers approved annually by the Investment Committee or with banks selected as outlined above.

11.09 Principal Protection and Safekeeping

- A. All bank and savings and loan associations deposits and investments of Town funds shall be secured by pledged collateral with a market value equal to no less than 103 percent of the principal plus accrued interest less an amount insured by FDIC or NCUSIF. Evidence of proper collateralization in the form of original safekeeping receipts held in institution's trust department or at a third party institution not affiliated with the bank or bank holding company will be maintained in the office of the Director of Treasury Operations at all times. The CFO, Director of Treasury Operations, or other authorized Town representative will approve and release all pledged collateral. Collateral will be reviewed monthly to assure the market value of the securities pledged exceeds the related bank balances. The Town shall request additional collateral in the event that deposits are not sufficiently protected by the pledged collateral.
- B. Safekeeping procedures shall be established by the Investment Committee which clearly define steps for gaining access to the collateral should the Town determine that the Town's funds are in jeopardy. Collateral safekeeping and substitution agreements will be a part of the procedure.

- C. Only securities allowed by the Public Funds Collateral Act shall be eligible to be pledged as collateral. The CFO has the discretion to additionally restrict the securities used as collateral.
- D. All security transactions will be accomplished with authorized security dealers and financial institutions on a delivery-versus-payment (DVP) basis. Securities will be held by the Town's safekeeping agent, which shall be selected through a competitive process (RFP) or that agent's representative in New York City, or in its account at the Federal Reserve Bank.

EXHIBIT A**TEXAS PUBLIC FUNDS INVESTMENT ACT
CERTIFICATION BY BUSINESS ORGANIZATION**

This certification is executed on behalf of the **Town of Flower Mound** (the Investor) and _____ (the Business Organization) pursuant to the Public Funds Investment Act, Chapter 2256, Texas Government Code (the Act), in connection with investment transactions conducted between the Investor and the Business Organization.

The undersigned Qualified Representative of the Business Organization hereby certifies on behalf of the Business Organization that:

1. The undersigned is a Qualified Representative of the Business Organization offering to enter into an investment transaction with the Town of Flower Mound as such terms are used in the Public Funds Investment Act, Chapter 2256, Texas Government Code;
2. The Qualified Representative of the Business Organization has received and reviewed the Investment Policy furnished by the Town of Flower Mound; and
3. The Qualified Representative of the Business Organization has implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the Business Organization and the Town of Flower Mound that are not authorized by the entity's investment policy, except to the extent that this authorization is dependent on an analysis of the makeup of the entity's entire portfolio or requires an interpretation of subjective investment standards.

Qualified Representative of the Business Organization

Name: _____

Title: _____

Date: _____

EXHIBIT B

INVESTMENT GLOSSARY

AGENCIES: Federal agency securities.

ASKED: The price at which securities are offered.

BANKERS' ACCEPTANCE (BA): A draft, bill, or exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

BID: The price offered by a buyer of securities. (When you are selling securities, you ask for a bid.) See Offer.

BROKER: A broker brings buyers and sellers together for a commission.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Large denomination CD's are typically negotiable.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR): The official annual report for the Town of Flower Mound. It includes five combined statements for each individual fund and account group prepared in conformity with GAAP. It also includes supporting schedules necessary to demonstrate compliance with finance related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section.

COUPON: (a) The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value. (b) A certificate attached to a bond evidencing interest due on a payment date.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DEBENTURE: A bond secured only by the general credit of the issuer.

DELIVERY VERSUS PAYMENT: There are two methods of delivery of securities: delivery versus

payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt for the securities.

DISCOUNT: The difference between the cost price of a security and its maturity when quoted at lower than face value. A security selling below original offering price shortly after sale also is considered to be at a discount.

DISCOUNT SECURITIES: Non-interest bearing money instruments that are issued at a discount and redeemed at maturity for full face value, e.g. U.S. Treasury Bills.

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL CREDIT AGENCIES: Agencies of the federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

FEDERAL FUNDS RATE: The rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open-market operations.

FEDERAL HOME LOAN BANKS (FHLB): The institutions that regulate and lend to savings and loan associations. The Federal Home Loan Banks play a role analogous to that played by the Federal Reserve Banks vis-a-vis member commercial banks.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The

corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL OPEN MARKET COMMITTEE (FOMC): Consists of seven members of the Federal Reserve Board and five of the twelve Federal Reserve Bank Presidents. The President of the New York Federal Reserve Bank is a permanent member, while the other Presidents serve on a rotating basis. The Committee periodically meets to set Federal Reserve guidelines regarding purchases and sales of Government Securities in the open market as a means of influencing the volume of bank credit and money.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the U.S. Government. Ginnie Mae securities are backed by the FHA, VA or FMHM mortgages. The term "pass throughs" is often used to describe Ginnie Maes.

LETTERS OF CREDIT: A financial instrument in which the issuing bank promises to pay a third party on behalf of a second party.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable sized can be done at those quotes.

LOCAL GOVERNMENT INVESTMENT POOL (LGIP): The aggregate of all funds from political subdivisions that are placed in the custody of the State Treasurer for investment and reinvestment.

MARKET VALUE: The price at which a security

is trading and could presumably be purchased or sold.

MASTER REPURCHASE AGREEMENT: A written contract covering all future transactions between the parties to repurchase-reverse repurchase agreements that establishes each party's rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller-borrower.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

OFFER: The price asked by a seller of securities. (When you are buying securities, you ask for an offer.) See Asked and Bid.

OPEN MARKET OPERATIONS: Purchases and sales of government and certain other securities in the open market by the New York Federal Reserve Bank as directed by the FOMC in order to influence the volume of money and credit in the economy. Purchases inject reserves into the bank system and stimulate growth of money and credit; sales have the opposite effect. Open market operations are the Federal Reserve's most important and most flexible monetary policy tool.

NATIONAL CREDIT UNION SHARE INSURANCE FUND: The federal fund to insure member's deposits in federally insured credit unions. Administered by the National Credit Union Administration, and is backed by the "full faith and credit" of the U.S. Government.

PORTFOLIO: Collection of securities held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state the so-called legal list. In other states the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

QUALIFIED PUBLIC DEPOSITORIES: A financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and which has been approved by the Public Deposit Protection Commission to hold public deposits.

RATE OF RETURN: The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

REPURCHASE AGREEMENT (RP OR REPO): A holder of securities sells these securities to an investor with an agreement to repurchase them at a fixed price on a fixed date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate him for this. Dealers use RP extensively to finance their positions. Exception: When the Fed is said to be doing RP, it is lending money, that is, increasing bank reserves.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

SECONDARY MARKET: A market made for the purchase and sale of outstanding issues following the initial distribution.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC RULE 15C3-1: See Uniform Net Capital Rule.

TREASURY BILLS: A non-interest bearing discount security issued by the U.S. Treasury to

finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY BONDS: Long-term coupon bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

TREASURY NOTES: A medium-term coupon-bearing U.S. Treasury securities issued as direct obligation of the U.S. Government and having initial maturities from two to 10 years.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called *net capital rule and net capital ratio*. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage. (a) **INCOME YIELD** is obtained by dividing the current dollar income by the current market price for the security. (b) **NET YIELD or YIELD TO MATURITY** is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

The Town of Flower Mound Investment Policy is hereby approved this 16th day of September 2019.

Jimmy Stathatos, Town Manager



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: September 16, 2019

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of 18 sets of bunker gear for \$49,130.82 and 100 pairs of firefighting gloves for \$7,286.00 from NAFECO, Inc. through Buyboard Purchasing Contract # 514-17 in the total amount of \$56,416.82 and authorization for the Mayor to approve same on behalf of the town.

BACKGROUND INFORMATION: This purchase is part of the department's five year gear replacement program approved with the FY 17-18 Budget to maintain compliance with National Fire Protection Administration (NFPA) 1851 mandated by the Texas Commission on Fire Protection (TCFP). TCFP requires all Personal Protective Equipment to be advanced cleaned, inspected and tested annually. TCFP requirements also include equipment to be in compliance with established service life standards. This program also includes ancillary equipment such as the firefighting gloves included in this purchase.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$56,416.82

Proposed Expenditure/(Revenue):	Account Number(s):
\$56,416.82	100-660-63000-2270

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. NAFECO Sales Quote for 18 sets of bunker gear
2. NAFECO Sales Quote for 100 pair of firefighting gloves

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



NAFECO Inc.
 "North America Fire Equipment Co."
 1515 West Moulton Street
 Decatur, AL 35601
 Office: 800-628-6233
 Damon's Cell: 903-813-6569

**Bill To:**

Flower Mound Fire Department
 2121 CROSS TIMBERS ROAD
 FLOWER MOUND, TX 75028

Shipping Address:

Flower Mound Fire Department
 3911 S. Broadway Ave.
 FLOWER MOUND, TX 75028

Date: 08/20/2019

Customer ID: FLO315

BuyBoard# 524-17

Contact	Sales Rep #	Sales Rep.	Expires	PSGQ	Contact	Sales Quote
Kirby	82	Stewart		PSGQ18145-C		Good until 10/08/2019

Line	Item	Qty.	Description	Unit Price	Total
1	CVFM	18	Lion / V-Force® Raglan Sleeve Coat with Black PBI® Max, 7.0 oz., C7 Liner	\$1,550.94	\$27,916.92
2	PVFM	18	Lion / V-Force® Belted Pants with black PBI® Max, 7.0 oz., C7 Liner	\$1,178.55	\$21,213.90
3					
4					
5					
				Total	\$49,130.82



NAFECO Inc.
 "North America Fire Equipment Co."
 1515 West Moulton Street
 Decatur, AL 35601
 Office: 800-628-6233
 Damon's Cell: 903-813-6569

**Bill To:**

Flower Mound Fire Department
 2121 CROSS TIMBERS ROAD
 FLOWER MOUND, TX 75028

Shipping Address:

Flower Mound Fire Department
 3911 S. Broadway Ave.
 FLOWER MOUND, TX 75028

Date: 08/20/2019

Customer ID: FLO315

BuyBoard# 524-17

Contact	Sales Rep #	Sales Rep.	Expires	PSGQ	Contact	Sales Quote
Kirby	82	Stewart		PSGQ18145-C		Good until 10/01/2019

Line	Item	Qty.	Description	Unit Price	Total
1	FC-P5000	100	Firecraft Glove, Phoenix Leather, NFPA, Gauntlet, Any Size	\$72.86	\$7,286.00
2					
3					
4					
5					
				Total	\$7,286.00



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: September 16, 2019

FROM: Jeff Garner, Director of Facilities Management

ITEM: Consider approval of Change Order No. 2 for the Flower Mound Central Fire Station, Phase II project, amending the contract with Schmoldt Construction, to provide for an increase to the contract in the amount of \$45,084.11; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On November 5, 2018, Schmoldt Construction, Inc., was awarded the construction contract for the Flower Mound Central Fire Station Phase II project in the amount of \$1,457,000.00.

Change Order No. 2 will increase the contract \$45,084.11, providing changes to the perimeter sidewalks and front entry landing and ramps on the west side of entry, east side of the building, and around the building perimeter, to meet federal ADA requirements, for a revised contract amount of \$1,512,865.77.

Funding is from the ADA Transition Plan.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$45,084.11

Proposed Expenditure/(Revenue):	Account Number(s):
\$45,084.11	531-220-70050 ADA Transition Plan

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

ADA Transition Plan/Implementation Project is an annual project with varying amounts. Total to date funding sources:

- Other \$ 13,000
- Tax Debt \$ 1,135,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No. 2

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

CHANGE ORDER No. 2

Effective Date: Upon execution by the Mayor
 Owner: Town of Flower Mound
 Contractor: Schmoltdt Constrution
 Project: Flower Mound Central Fire Station Ph II

CHANGE ORDER NO. 2

The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.

You are directed to make the following changes in the Contract Documents:

Item No.	Description	Unit	Add/ Deduct	Qty.	Unit Price	Extended Amount
CO2-A	Per ASI 05 and ASI 06, various changes were made to the perimeter sidewalks and front entry landing and ramps. The below costs address all items per the TAS report completed by Marc Frame, AIA, RAS with TexMod Accessibility and design by Carrillo Engineering and issued per ASI 06. Per direction from Jeff Garner remove and replace additional sidewalk adjacent to building on west sided of entry	LS	Add	1	\$45,084.11	\$45,084.11
TOTAL						\$45,084.11

JUSTIFICATION

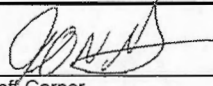
Change Order No. 2-A provides for the following: 1) Sawcut, demolish, remove, and haul-off existing concrete for new entry area (East Side Of Building); 2) Form, Pour, and Finish new sidewalk for new entry area (East Side of Building); 3) TexMod Accessibility TAS Survey (Survey all sidewalks and building perimeter); 4) Survey time required to verify grades and check viability of new design (3 trips @ 4 hr/ea trip x \$65/hr) + (Helper 6 hrs x \$50/hr); 5) Form, Pour, and Finish new perimeter sidewalks per ASI 06 around building perimeter; 6) Demolish existing perimeter sidewalks to prepare for new sidewalks per ASI 06; 7) Earthwork required for new sidewalks; 8) Joint Sealants for new sidewalks; 9) Remove and replace sidewalk adjacent to building on west side of building. This work is required to satisfy ADA accessibility concerns which were identified during construction and to bring the exterior of the building into compliance. Once construction commenced issues with the existing sidewalks and ramps were identified, a firm specializing in accessibility issues was hired to provide an indepth survey of the exterior of the building. The issues are being addressed through this change order to bring the exterior of the building and sidewalks surrounding the building into compliance with current ADA laws. Funding will be provide from a fund dedicated to correcting ADA issues instead of project funds.

Original Contract	\$ 1,457,000.00
Change Order #1	\$ 10,781.66
Change Order #2	\$ 45,084.11
Revised Contract Price	\$ 1,512,865.77

Original Substantial Completion Days	180
Change Order No. 1 Additional Days	4
Change Order No. 2 Additional Days	15
Revised Substantial Completion Days	199

Original Final Completion Days	270
Change Order No. 1 Additional Days	4
Change Order No. Additional Days	15
Revised Final Completion Days	289

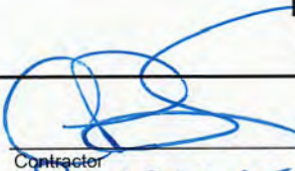
Recommended
for Approval


 Jeff Garner
 Director of Facilities Management

8/21/2019

Date

Contractor


 Steve Dixon
 Contractor Title

Date

Approved

Steve Dixon
 Mayor, Town of Flower Mound

Date



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: September 16, 2019

FROM: David Bauer, Construction Manager

ITEM: **Consider approval of a Construction Manager at Risk Agreement for the restoration of the Gibson Grant Log Cabin Project with Phoenix I Restoration and Construction, Ltd., for a fixed fee of \$185,244.00; and authorization for the Mayor to execute the same on behalf of the Town.**

BACKGROUND INFORMATION: The Gibson-Grant Log Cabin, constructed in 1860-1861, is of exceptional historical significance as one of the few remaining log structures of mid-nineteenth century still standing on its original site in Denton in 2017. Quimby McCoy was contracted by the Town of Flower Mound to prepare a Historic Structure Report and a Master Plan for the Gibson-Grant Log House. The log house, dating from 1860, was discovered inside the walls of a seemingly modern-day residence in the Town of Flower Mound, Denton County.

In 2015, Curtis Grant, a Flower Mound developer who bought the subject property with the intent of demolishing the existing house and subdividing the lot for residential development, discovered the historic log house inside the living room walls, with newer construction built around it in stages. He immediately contacted the Denton County Office of History and Culture to report his findings and seek information and guidance. Further investigation by the Denton County Office of History and Culture revealed that this was likely an early log house built by settlers who came to Texas as part of the Peters Colony, the earliest settlement in Denton County.

The Town of Flower Mound acquired the property the same year with the intent of restoring the historic log cabin. Further research and testing was undertaken by the University of Arkansas Tree-Ring Laboratory; by taking core samples of the logs and remaining chinking and analyzing them, the Tree-Ring Laboratory team determined that the logs had been cut between 1857 and 1860 and stockpiled on site awaiting construction, which was undertaken between 1860-1861.

The recommendations provided herein are intended as part of a plan for the restoration of the historic log house and surrounding historic additions and to serve the owner's goals for the use of the building and property. The house is historically significant for two reasons, for its association with William Gibson, a Peters Colonist and because it exemplifies the evolution of early homesteads on the Texas frontier.

Because of many unknown existing building and site conditions staff recommends the Construction Manager at Risk (CMR) delivery method which helps determine a maximum guaranteed price to complete this undertaking. As the Architect develops the construction documents, the CMR will provide pricing for each stage of work to be done.

The Log Cabin was originally planned to be restored in 3 phases:

- Phase 1: \$419,000 - Design for structural, roof replacement, removal of some of the additions, restoration of historical siding. This phase will make the building watertight, safe and aesthetically appealing.
- Phase 2: \$307,000 - Site improvements including a prefabricated restroom with related infrastructure, a small parking lot located at Quail Run Road, and side walk to the restroom.
- Phase 3: \$710,000 - Interior modifications, mechanical, electrical and plumbing and restroom building.

However, the Town was recently notified of the award of a \$1.5 million grant and anticipates combining the phases in order to take advantage of the funding. Anticipated construction start is December 2019 and anticipated completion December 2020.

A request for Statement of Qualifications (SOQ No. 2019-154-B) from prospective CMR firms was advertised on June 30, 2019 and July 7, 2019. Each firm was requested to submit their qualifications. Four firms responded to the request for SOQ. The project team reviewed each submittal based upon qualifications, experience, financial viability, and previous experience with the Town. Of those responses, three were selected to submit a best and final offer or Request for Proposals (RFP) for the project.

The project team reviewed the submittals and recommends Phoenix I Restoration and Construction, Ltd., as the CMR for the Log Cabin project. The CMR shall prepare a Guaranteed Maximum Price (GMP) proposal for the Town's review and acceptance. The GMP in the proposal will be the sum of the construction manager's estimate of the cost of the work, including contingencies described in section 2.2.4 of the agreement, and the construction manager's fee \$185,244.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$185,244.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$185,244.00	325-373-90763 Gibson Grant Cabin

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

Total project cost is \$1,436,000. **Current funding source** is Tax Debt. If change approved in the CIP budget, funding source will be:

- Grant \$ 1,340,509
- Tax Debt (previous issue) \$ 88,000 Committed/spent prior to grant
- Other \$ 7,491 Committed/spent prior to grant

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

ATTACHMENTS:

1. Attachment 1 CMR agreement (AIA 133 and 201)
2. Attachment 2 A 133-2009 Amendments
3. Attachment 3 A 201-2017 Amendments
4. SOQ 2019-154-B

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



AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Nineteenth day of August in the year Two Thousand Nineteen

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status and address)

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

and the Construction Manager:

(Name, legal status and address)

Phoenix I Restoration and Construction, Ltd.
14032 Distribution Way,
Farmers Branch, TX 75234

for the following Project:

(Name and address or location)

Restoration of Gibson Grant Log House and Related Site Improvements

The Architect:

(Name, legal status and address)

McCoy Collaborative Preservation Architecture, PLLC
3200 Main St. #3.6, Dallas, Texas 75226
214.977.9118 ext. 7002

The Owner's Designated Representative:

(Name, address and other information)

The Construction Manager's Designated Representative:

(Name, address and other information)

Dale C. Sellers

14032 Distribution Way

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.

Farmers Branch, TX 75234
214.902.0111
dsellers@phoenix1.org

The Architect's Designated Representative:
(Name, address and other information)

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS**
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**
- 3 OWNER'S RESPONSIBILITIES**
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE**
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**
- 8 INSURANCE AND BONDS**
- 9 DISPUTE RESOLUTION**
- 10 TERMINATION OR SUSPENSION**
- 11 MISCELLANEOUS PROVISIONS**
- 12 SCOPE OF THE AGREEMENT**

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**ARTICLE 1 GENERAL PROVISIONS****§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

Init.

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$4,800.00

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid N/A () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

N/A %

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

CMAR Fee: Overhead and Profit: 11.7% Administrative Fee: 1.2% TOTAL FEE: 12.9%

CMR FEE: \$185,244.00

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Cost + CMAR Fee - 5.1.1 above

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed seventy five percent (75 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements,

customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

Init.

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25 day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25 day of the following month. If an Application for Payment is received by the Architect after the application date fixed above,

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payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond**Limit of Liability or Bond Amount (\$0.00)****ARTICLE 9 DISPUTE RESOLUTION**

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☒ [X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

ARTICLE 10 TERMINATION OR SUSPENSION**§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time

of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
and

- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement

Init.

without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

N/A

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

RFQ-SOQ NO. 2019-154-B from the Town of Flower Mound and Addendum #1 dated 7/31/19

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

Town of Flower Mound
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Dale C. Sellers , President / CEO of GP
(Printed name and title)

Additions and Deletions Report for AIA® Document A133™ – 2009

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 14:31:09 ET on 09/05/2019.

PAGE 1

AGREEMENT made as of the Nineteenth day of August in the year Two Thousand Nineteen

...

(Name, legal status and ~~address~~)address

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

...

Phoenix I Restoration and Construction, Ltd.
14032 Distribution Way,
Farmers Branch, TX 75234

...

Restoration of Gibson Grant Log House and Related Site Improvements

...

McCoy Collaborative Preservation Architecture, PLLC
3200 Main St. #3.6, Dallas, Texas 75226
214.977.9118 ext. 7002

...

Dale C. Sellers
14032 Distribution Way
Farmers Branch, TX 75234
214.902.0111
dsellers@phoenixi.org

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\$4,800.00

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§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid N/A () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

N/A %

...

CMAR Fee: Overhead and Profit: 11.7% Administrative Fee: 1.2% TOTAL FEE: 12.9%

CMR FEE: \$185,244.00

...

Cost + CMAR Fee - 5.1.1 above

...

15%

...

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed seventy five percent (75 %) of the standard rate paid at the place of the Project.

...

N/A

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§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25 day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25 day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~←~~thirty (30) days after the Architect receives the Application for Payment.

...

- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

...

- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

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N/A

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☒ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

...

N/A

PAGE 18

N/A

...

RFQ-SOQ NO. 2019-154-B from the Town of Flower Mound and Addendum #1 dated 7/31/19

...

Town of Flower Mound

Dale C. Sellers , President / CEO of GP

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 14:31:09 ET on 09/05/2019 under Order No. 8048721129 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, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Restoration of Gibson Grant Log House and Related Site Improvements
Flower Mound, TX 75028

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

McCoy Collaborative Preservation Architecture, PLLC
3200 Main St. #3.6
Dallas, TX 75226

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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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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User Notes:

(389ADA55)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

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assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the

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Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT**§ 4.1 General**

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor,

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prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work,

promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will

affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and

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unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS**§ 11.1 Contractor's Insurance and Bonds**

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to

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the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**§ 14.1 Termination by the Contractor**

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

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the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the

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Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

Init.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201™ – 2017

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 17:24:45 ET on 08/19/2019.

PAGE 1

Restoration of Gibson Grant Log House and Related Site Improvements
Flower Mound, TX 75028

...

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

...

McCoy Collaborative Preservation Architecture, PLLC
3200 Main St. #3.6
Dallas, TX 75226

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 17:24:45 ET on 08/19/2019 under Order No. 8048721129 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Amendments to AIA Document
A133-2009 Edition
(Standard Form of Agreement Between Owner and Construction Manager as Constructor)

OWNER: Town of Flower Mound, Texas

PROJECT: Restoration of Gibson Grant Log Cabin

CONSTRUCTION MANAGER: Phoenix I Restoration and Construction, Ltd.

WHEREAS, Owner and Construction Manager have agreed to enter into AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor ("Agreement"); and

WHEREAS, certain terms and conditions of the Agreement need to be modified to comply with applicable laws and policies affecting Owner and Construction Manager in the construction of the Project.

NOW THEREFORE, Owner and Construction Manager hereby agree to the following amendments to the Agreement:

These amendments are incorporated into the Agreement. Where a portion of the Agreement is modified or deleted by these Supplementary Conditions, the unaltered portions of AIA Document A133-2009 shall remain in effect.

ARTICLE 1 GENERAL PROVISIONS

§1.1 The Contract Documents

Delete the last sentence of this section.

§1.2 Relationship of the Parties

Add the following language at the end of the first sentence:

“, and to perform the Work defined in the Contract Documents, in accordance with the Owner’s requirements and construction cost limitations, as approved by the Owner and set forth in the Contract Documents.”

§1.3 General Conditions

Add the following language at the end of this section:

“Any reference to the AIA Document A201-2007, General Conditions of the Contract for Construction, in this Agreement shall mean the AIA Document A201-2017 as amended by the parties.”

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§2.1.3 Add the following language at the end of the section:

“; and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.”

§2.1.5.2 Add the following language at the end of the section:

“, including but not limited to, substitution of materials or revisions or alterations to the Design Development Documents or the Construction Documents, to bring the Project within the Owner's budget, but shall not delete necessary components of the Project without Owner's consent. In the event that the quality or scope identified in the estimates are unacceptable or exceed the Owner's identified budget, the Construction Manager shall work with the Architect to develop options that are acceptable to Owner and are within the Owner's budget to the extent feasible.”

§2.1.8 Extent of Responsibility

Add the following language at the end of this section:

“The Construction Manager shall certify to the Owner that the Work, to the best of his knowledge, has been constructed in accordance with the Architect's construction documents. The certification shall be in a form which is acceptable to the Owner and Construction Manager.”

§2.2.4 Delete this section in its entirety and replace it with the following:

“**2.2.4** If Owner requests, Construction Manager shall make available for inspection the background documents and information that form the basis of the Construction Manager's Guaranteed Maximum Price proposal.”

§2.2.9 Delete this section in its entirety and replace it with the following:

“**§2.2.9** The Guaranteed Maximum Price shall not include in the Cost of the Work any taxes from which the Owner is exempt by virtue of its status as a governmental entity. In the event that the Contractor is required to pay or bear the burden of any new federal, state, or local tax, or if any rate increase of an existing tax (except a tax on net profits), as a result of any statute, court decision, written ruling, or regulation takes effect after the contract date, the Guaranteed Maximum Price shall be increased by the amount of the new tax, or tax increase.”

§2.3.2.1 Delete this section in its entirety and replace it with the following:

“**§2.3.2.1** All portions of the Work, other than minor work, site clean-up, etc. (“General Conditions”), shall be performed by trade contractors or subcontractors, including the Construction Manager, who have been selected using competitive bids or competitive sealed proposals. With the Owner’s approval, the Construction Manager shall publicly advertise and solicit either competitive bids or competitive sealed proposals in accordance with the policies and procedures approved by the Owner. On all portions of the Work for which the Construction Manager does not submit a bid or proposal, the Construction Manager and the Owner shall receive and open all trade contractor and subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process. On any portion of the Work for which the Construction Manager submits a bid or proposal, the Owner shall receive and open the trade contractors’, subcontractors’ and Construction Manager’s bids or proposals, but shall not disclose the contents of the bids or proposals until the selection process therefor is completed. All bids or proposals shall be made public within seven (7) days after the date of final selection.”

§2.3.2.2 In the first sentence of this section, delete “and” from between “Work” and “(3)” and insert the following in between “exceptions,” and “but”: “and (4) offers the best value to the Owner.”

§2.3.2.5 Add the following language at the end of this section:

“The Construction Manager shall provide periodic presentations updating the progress, quality and status of the Work to the Owner's Town Council, at the Owner’s request, at no additional cost to the Owner.”

Add the following new subsection **§2.3.2.9**:

“§2.3.2.9 Liquidated Damages for Failure to Complete on Time. The time of completion is the essence of this Agreement. For each day that any work shall remain uncompleted after the time specified in the Contract Documents, or the increased time granted by the Owner, or as agreed upon to be increased by additional Work or materials ordered after this Agreement is signed, the sum of Five Hundred and No/100 Dollars (\$500.00) shall be deducted from the monies due the Construction Manager. The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages per day that the Construction Manager shall be in default after the time stipulated in the Contract Documents for completing the Work. The said amount is fixed and agreed upon by and between the Owner and the Construction Manager because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner in such event would sustain; and said amount is agreed to be the amount of damages which the Owner would sustain and which shall be retained from the monies due, or that may become due, the Construction Manager under this Agreement; and if said monies are

insufficient to cover the amount owing, then the Construction Manager or its surety shall pay any additional amounts due. In the event that the actual damages incurred by the Owner exceed the amount of liquidated damages, the Owner shall be entitled to recover its actual damages.”

Add the following new subsection **§2.3.2.10**:

“§2.3.2.10 Claims for Additional Time. The Construction Manager shall be entitled to an extension of the contract time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site only as determined from climatological data set forth in this subsection. The Construction Manager shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Guaranteed Maximum Price by reason of such delays or disruptions. Rainy days shall not be considered an abnormal or adverse weather condition for which an extension of time will be granted unless and except in those months during which the actual cumulative number of rain days within the month exceed the historical average cumulative number of rain days for said month, and provided that the rainfall prevented the execution of major items of work on normal working days. A rain day is defined as a day when rainfall exceeds one-tenth (.1) inch during a twenty-four (24) hour period. The historical average cumulative number of rain days per calendar month is agreed by the Owner and the Construction Manager to be as set forth in the following Rainfall Table:

Rainfall Table

JAN	7 calendar days	APR	7 calendar days	JUL	4 calendar days	OCT	7 calendar days
FEB	6 calendar days	MAY	9 calendar days	AUG	4 calendar days	NOV	6 calendar days
MAR	8 calendar days	JUN	7 calendar days	SEP	6 calendar days	DEC	6 calendar days

The number of rain days shown in the Rainfall Table for the first and last months of this Agreement will be prorated in determining the total number of rain days expected during the period of this Agreement. Time extensions may also be granted for any day following a period of precipitation during which muddy conditions exist and prevent performance of major items of work conducted on normal working days, which muddy conditions are subject to confirmation by the Owner.

Requests for an extension of time pursuant to this subsection shall be submitted to the Owner and the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, and shall include documentation demonstrating the nature and duration of the delays or disruptions and the anticipated effect it will have on the Construction Manager’s abilities to perform its obligations along with a plan to deal with the effects of such abnormal or adverse weather conditions and proposed amendments to all affected schedules and the Gantt Chart necessarily resulting therefrom. Failure to timely submit a complete notice of claim for delays and extension of time for completion due to abnormal or adverse weather conditions or rain days

pursuant to this subsection shall result in the denial of a request for extra time for performance under the Contract Documents. In the event of such failure, no adjustment shall be made to the Guaranteed Maximum Price or the amount of liquidated damages owing, and the Construction Manager shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in the adjustment of the working time, due to any of the factors outlined within this subsection.

No payment, compensation, or adjustment of any kind (other than the extensions of time provided for in the Contract Documents) shall be made to the Construction Manager for damages because of hindrances or delays from any cause other than intentional interference of the Owner, whether such hindrances or delays be avoidable or unavoidable, and the Construction Manager agrees that he will make no claim for compensation, damages or mitigation of liquidated damages for any such delays.”

Add the following new section **§2.6**:

“**§2.6** The Owner may have provided the initial construction survey for design purposes, and the Construction Manager shall be responsible for any additional construction surveys and staking. Dimensions of Work shall not be determined by scale or rule, but figured dimensions shall be followed at all times. The Construction Manager shall compare all drawings and verify all dimensions, and shall take any and all measurements necessary to verify the Drawing dimensions in relation to conditions already established at the Project site before laying out the Work. Any discrepancy will be immediately called to the attention of the Architect and the Owner by the Construction Manager. The Construction Manager will be held responsible for subsequent errors which could have been avoided.”

ARTICLE 3 OWNER’S RESPONSIBILITIES

§3.1.2 Delete this section in its entirety.

§3.1.3 Delete this section in its entirety.

§3.1.4 Delete the third sentence in this section and replace it with the following:

“Such information or services shall be provided for informational purposes only and are not warranted or represented to accurately show the conditions at the Project site. The Construction Manager may use the information at its own risk and shall use customary precaution relating to the performance of the Work. Notwithstanding the preceding sentences and the delivery of surveys or other documents and reports by the Owner, the Construction Manager shall perform all work in such a non-negligent manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the Property. The Construction Manager shall be responsible for any damage done to such lines, cables, pipes and pipelines during the Work.”

§3.2 Owner's Designated Representative

Delete this section and replace with the following language:

"§3.2 Owner's Designated Representative The Owner shall designate a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring Town Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Construction Manager."

§3.2.1 Legal Requirements

Delete this section in its entirety.

§3.3 Architect

Delete this section in its entirety and replace it with the following:

"§3.3 Architect The Owner shall retain an Architect to provide services, duties and responsibilities in connection with the Project, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement, unless such Additional Services are caused by or attributable to the fault of the Construction Manager, in which case the Construction Manager shall be responsible for the cost of such Additional Services. Upon request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the Agreement."

Add the following new section **§3.4**:

"§3.4 Inspection and Testing The Owner shall provide or contract for, independently of the Construction Manager, the inspection services, the testing of construction materials engineering and the verification testing services necessary for acceptance of the Work by the Owner."

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§4.2.2 Delete all existing language after the first sentence, and replace it with the following language:

“, in accordance with the provisions of Texas Government Code section 2251.021, including computation of interest on unpaid amounts."

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§5.1.2 Add after the word “Work” the following:

“shall be by formal Change Order.”

§5.1.3 Add after the word “Work” the following:

“shall be no more than five percent (5%) of the subcontractor’s cost, for overhead, and shall be no more than five percent (5%) of the subcontractor’s cost, for profit.”

§5.2.1 Add the following language at the end of this section:

“In case of any “buy out” transaction or agreement by the Construction Manager with a subcontractor for the subcontractor’s cost of its portion of the Work, then such savings shall be shared with the Owner in the following percentages: one hundred percent (100%) to the Owner, zero percent (0%) to Construction Manager. Said savings shall be memorialized by appropriate change order. Documentation regarding such “buy out” transactions/agreements shall be subject to the Owner’s audit and inspection rights set forth in §6.11.”

§5.3.2 Add the following language to the end of the existing sentence:

“, unless such costs are caused by or attributable to the fault of the Construction Manager.”

§5.3.5 Delete this section in its entirety and replace with:

“**§5.3.5** In the case of changes in the Work, the fee will be adjusted as provided for in Section 5.1.1, if both parties agree that the scope of services has changed significantly. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a change order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.”

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§6.1.1 Add the following language at the end of the first sentence:

“, unless such costs are caused by or attributable to the fault of the Construction Manager.”

§6.2.4 Delete this section in its entirety and replace it with the following:

“**§6.2.4** Costs paid or incurred by the Construction Manager for payroll taxes, insurance, and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3, and provided that such costs do not exceed thirty percent (30%) of such wages and salaries.”

§6.2.5 Delete this section in its entirety.

§6.3 Subcontract Costs

Delete from this section the last word “subcontracts” and replace it with “Guaranteed Maximum Price Amendment.”

§6.5.5 Add at the end of this section the following language:

“, subject to the Owner’s approval.”

§6.6.2 Delete this section in its entirety.

§6.6.5 Delete this section in its entirety.

§6.6.6 Delete this section in its entirety.

§6.6.7 Delete this section in its entirety.

§6.6.8 Delete this section in its entirety.

§6.6.9 Delete this section in its entirety.

§6.7.3 Delete this section in its entirety.

§6.7.4 Delete this section in its entirety.

§6.8.1 In the first line of this section, delete the phrase “The Cost of the Work shall not include the items listed below” and replace it with the following:

“The Cost of the Work shall exclude items including, but not limited to, those items listed below:”

§6.9.1 Add a period after the first “Owner” in the first sentence of this section and delete the remainder of the first sentence. Add the following language at the beginning of this section:

“The Construction Manager shall take advantage of all available discounts, rebates and refunds for supplies, materials and equipment connected with the Work and which conform to the Contract Documents, which discounts, rebates and refunds shall accrue to the benefit of the Owner.”

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§7.1.5 Add the following at the end of this section:

“The Construction Manager shall use AIA Document G702 for Application and Certificate for Payments, and shall use AIA Document G703 for necessary continuation sheets related to AIA Document G702, or shall use such documents in a similar format approved by the Owner.”

Add the following new section **§7.1.11**:

“§7.1.11 In conjunction with any application for payment submitted by the Construction Manager, the Construction Manager shall comply with the release, lien waiver and other documentation requirements set forth in, but not limited to, AIA Document A201-2017, §9.3.3 and §9.10.2.”

§7.2.1 Add a new subsection .4 as follows:

“.4 Owner’s receipt of an “All Bills Paid” affidavit signed by the Construction Manager affirming that all indebtedness associated with the Work and all sums of money due for labor, materials, fixtures, equipment and machinery have been paid in full.”

§7.2.1 Add the following to the end of the section:

"The amount of final payment shall be calculated as follows:

- .1** Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's fee, but not more than the Guaranteed Maximum Price.
- .2** Subtract amounts, if any, for which the Architect or the Owner disputes, refuses or withholds payment, including liquidated damages, if any.

- .3 Subtract the aggregate of previous payments made by Owner.
- .4 The final payment amount determined in accordance with this Section shall be further modified under the following circumstances:
 - .1 If the Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then the Owner shall be entitled to deduct such liquidated damages, amounts and fees due the Construction Manager at any time.
 - .2 If the Construction Manager fails or refuses to complete the Work, or has unsettled claims with the Owner, any final payment to the Construction Manager shall be subject to deduction for such amounts as the Architect shall determine as the cost for completing incomplete Work and the value of unsettled claims."

§7.2.3 Delete the second and third sentences of this section. Add the following in the first sentence after the word "amount" and delete the remainder of the first sentence:

"in accordance with the Contract Documents."

ARTICLE 8 INSURANCE AND BONDS

Article 8 is amended to read as follows:

"The Construction Manager shall, upon Owner's approval of the Guaranteed Maximum Price, furnish bonds covering the faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. Notwithstanding anything herein to the contrary, all bonds must comply with Chapter 2253, Texas Government Code, including the requirement that such bonds must be executed by a corporate surety in accordance with the Texas Insurance Code. Such bonds shall be on forms approved by Owner. The Construction Manager shall upon execution of the Contract, furnish a bid bond or other financial security acceptable to the Owner to ensure that the Construction Manager will furnish the required performance and payment bonds when a Guaranteed Maximum Price is established.

The Construction Manager shall procure and maintain the following types of insurance coverage in at least the following amounts:

Workers' Compensation:	Statutory
Comprehensive General Liability:	\$1,000,000.00 each occurrence \$1,000,000.00 in the aggregate

Comprehensive Automobile Liability:	(Any auto, hired auto, non-owned auto)
a) Bodily Injury:	\$1,000,000.00 each person \$1,000,000.00 each occurrence
b) Property Damage:	\$1,000,000.00 each occurrence
Owner's and Contractor's Protective:	\$1,000,000.00
Builder's Risk:	Full value of construction costs
General Liability Umbrella Policy:	\$5,000,000.00 each occurrence"

ARTICLE 9 DISPUTE RESOLUTION

§9.2 Amend to specify that claims are to be resolved by litigation in a court of competent jurisdiction and not by arbitration.

ARTICLE 10 TERMINATION OR SUSPENSION

§10.1.3 Delete the words "or indemnify" in the final paragraph of the section.

§10.2.2 Delete the remainder of the sentence after the word "above".

ARTICLE 11 MISCELLANEOUS PROVISIONS

§11.5 Add the following subsections:

“§11.5.1 No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

§11.5.2 The Construction Manager stipulates that the Owner 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 Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

§11.5.3 The Construction Manager may not assign its responsibilities, duties, obligations and rights under this Agreement, without the express written consent of the Owner. This does not prevent the Construction Manager from engaging subcontractors to perform various phases of the Project, but the Construction Manager shall be fully responsible to the Owner for the work, actions and omissions of all such subcontractors.

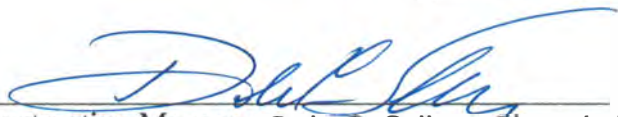
§11.5.4 If any portion of this Agreement is determined to be invalid, unenforceable, or void, then that portion shall be severed, and all other portions of this Agreement shall remain in full force and effect.”

ARTICLE 12 SCOPE OF THE AGREEMENT

§12.2 Add the following language after the word "Agreement" in the first sentence:

“, as amended by the parties:”

EXECUTED THIS 3 **day of** September, 2019.



Construction Manager Dale C. Sellers, Phoenix I Restoration and Construction, Ltd.
President / CEO of G.P.

Steve Dixon, Mayor

**Amendments to AIA Document
A201-2017 Edition
(General Conditions of the Contract for Construction)**

OWNER: Town of Flower Mound, Texas

PROJECT: Restoration of Gibson Grant Log Cabin

CONSTRUCTION MANAGER: Phoenix I Restoration and Construction, Ltd.

WHEREAS, Owner and Construction Manager have agreed to enter into AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor ("Agreement"); and

WHEREAS, the Agreement incorporates AIA Document A201-2007, General Conditions of the Contract for Construction; and

WHEREAS, Owner and Construction Manager desire to substitute the new AIA Document A201-2017 ("General Conditions") in the place of AIA Document A201-2007; and

WHEREAS, certain terms and conditions of the General Conditions need to be modified to comply with applicable laws and policies affecting Owner and Construction Manager in the construction of the Project.

NOW THEREFORE, Owner and Construction Manager hereby agree to the following amendments to the General Conditions:

ARTICLE 1 GENERAL PROVISIONS

§1.1.2 The Contract

Add the following after the second sentence:

"As a material consideration for the making of the Contract Documents, modification to this Contract shall not be construed against the maker of said modifications."

§1.2 Correlation and Intent of the Contract Documents

Add new sections 1.2.4 and 1.2.5 to read as follows:

"§1.2.4 In case of discrepancy between two or more drawings (Architectural, Structural, Mechanical, etc.) or drawings and specifications, the Architect shall be the sole judge as to which takes precedence, but in any case it shall be assumed that bids are based on the most expensive procedure shown.

§1.2.5 Dimensions found in error should be submitted to the Architect for resolution before proceeding with the Work.”

§1.5.2 Add the following at the end of the Section 1.5.2:

“Should the Contractor find discrepancies, omissions or conflicts within the Contract Documents, or be in doubt as to their meaning, the Contractor shall at once notify in writing the Architect and Owner, and Architect will issue a written addendum to all parties that is consistent with the Owner’s Scope of the Work.”

Add the following new section 1.9:

“§1.9 Property of Political Subdivision 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.”

ARTICLE 2 OWNER

§2.1.1 Delete the remainder of §2.1.1 after the first sentence, and replace it with the following:

“The Owner shall designate a representative with respect to the Project. Such representative shall not have authority to make final decisions on behalf of the Owner concerning Change Orders, changing the Guaranteed Maximum Price, extending the date of Substantial or Final Completion, or other items requiring Town Council approval; however, the Owner or such authorized representative, shall render decisions in a timely manner in order to avoid unreasonable delay in the service or Work of the Contractor.”

§2.1.2 Delete this section in its entirety.

§2.2 Evidence of the Owner’s Financial Arrangements

Delete this section in its entirety.

§2.3.4 Delete this section and replace it with the following:

“§2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. Owner does not guarantee the accuracy of the survey as describing the site of the Project and Contractor should determine the sufficiency of same before beginning the work. The Owner does not guarantee the utility lines to be in the exact locations as shown on plans and surveys. Contractor shall verify with the utilities the location of utility lines. Any water, gas or sewer line, telephone, telegraph or electric wire, or cable broken or cut which had been previously identified and known by the Contractor or any of his workmen

or subcontractors, shall be replaced by the Contractor at his own expense, or by the responsible subcontractor at its own expense, and will not be paid for by the Owner. Repairs shall be made immediately and no other work shall be done until breaks or damages have been repaired and service restored. Any delay caused by the cut or break of a previously identified line shall be solely attributed to the Contractor.”

§2.3.5 Add the following language at the end of the section:

“Absent such written request, any Claim based upon lack of such information or service shall be waived.”

ARTICLE 3 CONTRACTOR

§3.1 General

Add a new section 3.1.4 to read as follows:

“**§3.1.4** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner 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 where the Project is located 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.”

§3.3 Supervision and Construction Procedures

Add a new section 3.3.4 to read as follows:

“**§3.3.4** The Contractor shall properly and efficiently coordinate the timing, scheduling and routing of all Work performed by all trades and sub-contractors.”

§ 3.4 Labor and Materials

Add a new section 3.4.4 and 3.4.5 to read as follows:

“§3.4.4 Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Among other things, this Article provides that it shall be mandatory upon the Contractor and upon any subcontractor under him to 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 the Contract. No claims for additional compensation shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein.

§3.4.5 The Owner 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.”

§3.5 Warranty

Add new sections 3.5.3 and 3.5.4 to read as follows:

“§3.5.3 Except where otherwise stipulated in the Contract Documents, the Contractor shall, as per its Contract, warranty all materials and workmanship furnished under this Contract for a period of two (2) years after the date of Substantial Completion and shall repair and make good, without expense to the Owner, any and all defects in his work which may develop within that time.

§3.5.4 All required warranties on equipment, machinery, materials, or components shall be submitted to the Architect on the manufacturer’s or supplier’s approved forms at the time of Substantial Completion.”

§3.6 Taxes

Add a new section 3.6.1 to read as follows:

“§3.6.1 This Project is eligible for exemption from the State Sales Tax on materials incorporated in the Project, provided that Contractor fulfills the requirements of State Tax Laws. For the purpose of establishing exemption, it is understood and agreed that Contractor will be required to segregate materials and labor costs at the time a Contract is awarded, and will accept an exemption certificate from the Owner. The Contractor shall pay any taxes otherwise assessed because of the Contractor’s failure to comply with the requirements of State Law to qualify for that tax exemption.”

§3.12.10.1 In the second sentence add the word “reasonably” before the word “rely”.

§3.12.11 Add a new section 3.12.11 to read as follows:

“**§3.12.11** The Architect’s review of the Contractor’s submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Owner is entitled to obtain reimbursement from the Contractor for amounts paid to the Architect for evaluation of additional submittals.”

§3.16 Access to Work

Add the following to the end of section 3.16:

“The Contractor shall ensure that the Work, at all times, is performed in a manner that affords the Owner reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material and equipment likely to cause hazardous conditions. The Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work, or the building, in the event of partial occupancy. The presence of the Owner, the Architect or their representatives does not constitute acceptance or approval of the Work.”

§3.17 Royalties, Patents and Copyrights

Delete the last sentence and replace it with the following:

“However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.”

ARTICLE 4 ARCHITECT

§4.2.2 Add the following to the end of section 4.2.2:

“The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.”

§4.2.13 Delete existing section and replace it with the following:

“**§4.2.13** The Owner’s decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. The Architect shall be the sole interpreter of the design intent with respect to such matters, but the Architect’s authority with respect thereto shall not contravene any other rights of the Owner ascribed to the Owner by other provisions of the Contract.”

ARTICLE 5 SUBCONTRACTORS

§5.3 Subcontractual Relations

Amend section 5.3 to read as follows:

“§5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor’s Work that the contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§5.3.2 Contractor shall promptly notify Owner and Architect of any material defaults by any Subcontractor. Notwithstanding any provision contained in Article 5 to the contrary, it is hereby acknowledged and agreed that Owner has in no way agreed, expressly or implicitly, nor will Owner agree, to allow any Subcontractor or other materialman or workman employed by Contractor the right to obtain a personal judgment or to create a lien against Owner for the amount due from the Contractor.

§5.3.3 In the event of any termination of the Contract in accordance with Article 14, Owner shall not be liable to any subcontractor. Contractor shall be responsible for any claim of a subcontractor for Work executed under the Contract.”

§5.4 Contingent Assignment of Subcontractors

Add a new Section 5.4.4 as follows:

“§5.4.4 Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a subcontractor or material vendor may also be liable. Owner shall only be responsible for compensating subcontractors for Work performed or material furnished from and after the

date on which the Owner gives written notice of its acceptance of the subcontract agreement. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance."

ARTICLE 7 CHANGES IN THE WORK

§7.4 Minor Changes in the Work

In both the third and fourth sentences, add the words "and the Owner" after the word "Architect".

ARTICLE 9 PAYMENTS AND COMPLETION

§9.5 Decisions to Withhold Certification

Add a new section 9.5.5 to read as follows:

"**§9.5.5** Notwithstanding any provision contained within this Article, if the Work has not attained Substantial Completion or Final Completion by the required dates, subject to extensions of time allowed under these Conditions, then Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damage. The Owner shall not be deemed in default by reason of withholding such payment."

§9.6.7 Delete this section in its entirety and replace with the following language:

"**§9.6.7** Payments received by the Contractor for Work properly performed by Subcontractors or materials properly provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed the Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner."

§9.6.8 Delete the phrase "Provided the Owner has fulfilled its payment obligations under the Contract Documents," from the beginning of this section.

§9.7 Failure of Payment

Amend section 9.7 to read as follows:

"**§9.7.1** If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus

interest as provided for in the Contract Documents.

§9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to the Owner, or the Owner incurs any costs and expense to cure any default of the Contractor or to correct defective Work, pursuant to the Contract, the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect either to:

.1 deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to the Contractor from the Owner, or

.2 issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled."

§9.8.3 Add the following at the end of section 9.8.3:

"The Architect will perform no more than two (2) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for any additional inspections."

§9.8.5 Add the following at the end of section 9.8.5:

"The application for payment to release retainage will not be approved by the Architect until the completed and corrected closeout documents are provided to the Architect by the Contractor. Closeout documents shall be delivered to the Architect under conditions and times set forth in the contract documents and specifications."

§9.8.6 Add a new section 9.8.6 to read as follows:

"**§9.8.6** Notwithstanding any provision contained within this Article, if the work has not attained Substantial Completion with the contract time, subject to extensions of time allowed under these Conditions, Owner may withhold any further payment to Contractor to the extent necessary to preserve sufficient funds to complete the construction of the Project and to cover liquidated damages assessed against Contractor up to the time of Application for Payment and to the time it is reasonably anticipated that Substantial Completion will be achieved."

§9.10.1 Add the following at the end of section 9.10.1:

"The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for

amounts paid to the Architect for any additional inspections.”

§9.10.4 Delete this section in its entirety and replace it with the following language:

“**§9.10.4** The making of final payment shall not constitute a waiver of any Claims by the Owner.”

§9.11 Add a new section 9.11 to read as follows:

“**§9.11** The time of completion is the essence of this Contract. Should the Contractor fail to reach Substantial Completion of the Project within the time required by the Contract Documents, plus any additional time allowed by the Owner, Contractor shall pay, or there shall be deducted from any amounts due and owing to Contractor, liquidated damages for each day that any Work shall remain uncompleted after the time for Substantial Completion of the Project, plus any additional time allowed by the Owner. The liquidated damages sum shall be \$ 500 per day. The liquidated damage sum for such delay, failure or non-completion is fixed and agreed upon between Owner and Contractor as the most reasonable estimate of Owner's actual damages because of the impracticability and extreme difficulty of fixing and ascertaining the Owner's true actual damages.”

ARTICLE 11 INSURANCE AND BONDS

§11.1 Contractor's Insurance and Bonds

Add new Sections 11.1.5, 11.1.6 and 11.1.7 to read as follows:

“**§11.1.5** By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor for administrative penalties, criminal penalties, civil penalties, or other civil actions.

§11.1.6 The Contractors' failure to comply with any of these provision is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

§11.1.7 Any failure of Contractor to comply with the reporting provisions of the policies shall not affect the coverage provided to the Owner, its officers, employees, or volunteers.”

§11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

Delete this section in its entirety and replace with the following:

“§11.4 Contractor’s Bonds

§11.4.1 With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner, the surety bonds specified in this Section. Without exception, the Owner's bond forms must be used, and exclusive venue for any lawsuit in connection with the bonds shall be Tarrant County. The surety bonds shall be in accordance with the provisions of Chapter 2253, Government Code, Vernon's Texas Codes Annotated. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract Sum with or without notice to the surety, but in no event shall a change which reduces the Contract Sum reduce the penal amount of such bonds.

§11.4.2 The Contractor shall provide a good and sufficient performance bond in an amount not less than one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with the Contract Documents, including any extensions, for the protection of the Owner. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two years from the date of completion and acceptance of the improvement by the Owner or such lesser or greater period as may be designated in the Contract Documents.

§11.4.3 The Contractor shall provide a good and sufficient payment bond in an amount not less than one hundred (100) percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise guaranteeing the full and proper protection of all claimants supplying labor and material in the execution of the Work provided for in this Contract and for the use of each claimant.

§11.4.4 No sureties shall be accepted by the Owner who are now in default or delinquent on any bonds or who are interested in any litigation against the Owner. All bonds shall be made on forms furnished by the Owner, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the Owner. Each bond shall be executed by the Contractor and surety. Each surety shall designate an agent resident in the Owner's jurisdictional area acceptable to the Owner to whom any requisite notices may be delivered and on whom service of process may be obtained in matters arising out of the suretyship.

§11.4.5 If at any time the Owner determines that the Contractor’s surety has experienced financial losses such that the Owner’s ability to enforce the bond obligations is substantially at risk, the Contractor shall within thirty (30) days after notice from the Owner to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The premiums on such bonds shall be paid by the Contractor without recourse to the Owner. No further progress payments under the contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by

the Owner; however, in such event, final payment shall be due and payable as provided in this Contract whether or not such additional bonds are obtained, to the extent that the project is complete and the Owner is not exposed to liability for payment bond claims.”

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.2.2 After Substantial Completion

Add a new Section 12.2.2.4 to read as follows:

“**§12.2.2.4** Upon request by the Owner or prior to the expiration of one year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.”

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.5 Interest

Delete this section in its entirety and replace with the following:

“**§13.5 Interest** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is overdue, at the rate provided by Section 2251.025, Texas Government Code.”

§13.6 Add a new section 13.6 to read as follows:

“§13.6 Equal Opportunity

§13.6.1 The Contractor shall maintain policies of employment as follows:

§13.6.1.1 The Contractor and the Contractor’s Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the nondiscrimination policies.

§13.6.1.2 The Contractor and the Contractor’s Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.”

§13.7 Add a new Section 13.7 to read as follows:

“**§13.7 Immunities** Contractor stipulates that Owner 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, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.”

§13.8 Add a new section 13.8 to read as follows:

“§13.8 Prohibition of Boycott Israel Contractor verifies that it does not Boycott Israel and agrees that during the term of the Contract will not Boycott Israel as that term is defined in Texas Government Code Chapter 2270, as amended.”

§13.9 Add a new section 13.9 to read as follows:

“§13.9 Conflicts of Interest By signature of the Contract, Contractor warrants to Owner that it has made full disclosure in writing of any existing conflicts of interest or potential conflicts of interest, including business or personal financial interests, direct or indirect, in property abutting the proposed project and business relations with abutting property owners, or with elected officials or employees of the Owner. Contractor further warrants that it will make disclosure in writing of any conflicts of interest that develop subsequent to the signing of this Contract and prior to final payment under the Contract. Contractor warrants that it has submitted to the Owner a completed Conflicts of Interest Questionnaire as required by Chapter 176 of the Texas Local Government Code.”

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§14.1.3 Delete the phrase “as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination” at the end of Section 14.1.3, and replace it with the phrase “through the date of termination.”

§14.2.1 Add the following subsections to Section §14.2.1:

“.5 fails to furnish the Owner, upon request, with assurances satisfactory to the Owner, evidencing the Contractor’s ability to complete the Work in compliance with all the requirements of the Contract Documents;

.6 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner’s ethics or conflict of interest policies; or

.7 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents.”

§14.3.2 Delete “shall” and replace it with “may” after the words “Contract Time”.

§14.4.1 Delete this section in its entirety and replace with the following:

“**14.4.1** The Owner may, at any time, terminate the Contract, or any part or portion thereof, for the Owner’s convenience and without cause.”

§14.4.3 Delete this section in its entirety and replace with the following:

“**§14.4.3** In the case of such termination for the Owner’s convenience, the Contractor shall only be entitled to receive payment for work properly executed through the date of termination.”

§14.4.4 Add a new section 14.4.4 to read as follows:

“**§14.4.4** Owner shall be entitled to delete or terminate any portion of the Contract bid as an alternate component, at any time at the Owner’s convenience and without cause. In the event of such termination, the Contractor shall only be entitled to receive payment for Work executed on the alternate component, if any, through the date of termination.”

ARTICLE 15 CLAIMS AND DISPUTES

§5.1.2 Time Limits on Claims

Delete this section in its entirety.

§15.1.6 Claims for Additional Time

Add new Sections 15.1.6.3, 15.1.6.4, and 15.1.6.5 to read as follows:

“**§15.1.6.3** Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days’ increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§15.1.6.4 Extension of time for completion of the work on account of weather or other circumstances beyond the Contractor’s control will be subject to submission of verifiable data. Request for extension of time shall be submitted in writing with each Request for Payment. If the Contractor fails to submit a timely request, time extension will not be approved for the pay period.

§15.1.6.5 No extension of time shall be made to the Contractor because of hindrances or delays from any cause which is the fault of the Contractor or the Contractor’s Subcontractors or under the Contractor’s control. Claims for extension of time may only be considered because of rain delays, or hindrances or delays which are the fault of the Owner and/or under the Owner’s control, but only to the extent that Substantial Completion

of the Project is adjusted beyond the original Substantial Completion date. Town Council approval shall be required for any extension of time. No damages shall be paid for delays. The Contractor shall only be entitled to time extensions per the terms of the Contract Documents.”

§15.3.3 Delete this section in its entirety.

§15.4 Arbitration

Delete this section in its entirety.

EXECUTED this 3 day of September, 2019.

OWNER:

By: Steve Dixon

Title: Mayor

CONTRACTOR:

Phoenix I Restoration and Construction, Ltd.

By: 

Dale C. Sellers

Title: President/CEO of GP

**TOWN OF FLOWER MOUND SOQ NO. 2019-154-B****REQUEST FOR STATEMENT OF QUALIFICATIONS FOR CONSTRUCTION MANAGER AT RISK FOR THE RESTORATION OF GIBSON GRANT LOG HOUSE AND RELATED SITE IMPROVEMENTS**

The Town of Flower Mound will accept Statements of Qualifications (SOQ) for Construction Manager-At-Risk services for the restoration of the Gibson Grant Log House and related site improvements until 11:00AM CT on July 24, 2019. All submittals and SOQ should be delivered to:

Town of Flower Mound
Attn: Purchasing Office
2121 Cross Timbers Rd.
Flower Mound, Texas 75028

A mandatory pre-bid information site tour is scheduled at the SW corner of Flower Mound Road and Quail Run Road at 8:30am and a follow up and questions meeting in the Council Chambers at Town of Flower Mound Town Hall at 9:30am on July 16, 2019 located at 2121 Cross Timbers Road, Flower Mound, TX.

July 17, 2019, at 12:00 pm will be the deadline for receipt of bidder questions. After that day and time, no bidder questions will be accepted or answered by the Engineer or Town. All questions must be submitted in writing to Sabrina Zadow via email address purchasing@flower-mound.com.

Qualification submittal packets shall be plainly marked on outside of envelope as follows:

**CONSTRUCTION MANAGER-AT-RISK FOR:
RESTORATION OF GIBSON GRANT LOG HOUSE AND RELATED SITE
IMPROVEMENTS
SOQ NO. 2019-154-B
ATTENTION: PURCHASING OFFICE
DO NOT OPEN UNTIL: 11:00AM ON JULY 24, 2019**

Any qualification packets received later than the specified time, whether delivered in person or by mail, will not be accepted, and shall be returned unopened.

The Town of Flower Mound reserves the right to waive any informality and to reject any or all qualifications/proposals.

The Town of Flower Mound appreciates your time and effort in preparing a response. Please note that all submissions must be received at the designated location by the deadline shown. Submissions will not be publicly opened, but a list of the names of the offerors will be read aloud, on the due date and time at the Town of Flower Mound, Town Hall, 2121 Cross Timbers Road, Flower Mound, Texas, 75028. Submissions received after the deadline will not be considered for the award of the contract and will be returned unopened. Submissions may not be altered, amended or withdrawn after the due date and time.

A qualified Construction Manager at Risk (CMR) will be chosen in a two-step process to work alongside the Town's selected Architect or Engineer for the restoration and related site improvements of the Gibson Grant Log House located at the southeast corner of Flower Mound Road and Quail Run Road in Flower Mound, Texas. The selection will be determined solely by the Town of Flower Mound, Texas. The Town will select the SOQ submitted that provides the best value to the Town. The CMR will provide pre construction cost estimates and construction services at a contracted fee.

Town of Flower Mound
Vendor Information Form
SOQ No. 2019-154-B

Bid Title: SOQ For Construction Manager-At-Risk for Restoration of the Gibson Grant Log House

Company Information

Please complete the following and include with your bid submittal:

Company Name: _____

Principal Place of Business Address: _____

Principal Place of Business City, State, Zip: _____

Principal Place of Business Phone Number: _____

Principal Place of Business Fax Number: _____

Email Address: _____

CONFLICT OF INTEREST QUESTIONNAIRE For vendor or other person doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.	OFFICE USE ONLY Date Received	
1 Name of person who has a business relationship with local governmental entity.		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)		
3 Name of local government officer with whom filer has employment or business relationship. _____ Name of Officer This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? ☐ Yes ☐ No B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No D. Describe each employment or business relationship with the local government officer named in this section.		
4 _____ Signature of person doing business with the governmental entity _____ Date		

Adopted 06/29/2007

SOQ No. 2019-154-B

Bid Title: SOQ For Construction Manager-At-Risk services for Restoration of the Gibson Grant Log House and Related Site Improvements

PROJECT, SCOPE OF WORK, AND ANTICIPATED SCHEDULE:

The Town invites the submittal of responses to this Request for Construction Manager at Risk Statement of Qualifications from firms who can adequately demonstrate they have the resources, experience, and qualifications necessary to provide “Construction Management at Risk” services in connection with the restoration of the Gibson Grant Log House and related site improvements. **This is a historic house requiring submitting firms to have experience in restoration of historic structures as noted in Section 4.7 of this solicitation.**

The Town will evaluate the submittals and will select the highest ranking submittal pursuant to the criteria outlined here in. The statements of qualifications received will be one part of the selection process utilized by the Town, together with an interview as needed, to determine if a consulting contract shall be pursued. After the Town selects the highest ranking Construction Manager at Risk (CMR), the Town will attempt to negotiate a contract with the CMR for performing general construction of the project. However, the Town reserves the right to terminate its negotiations with the CMR in writing if it appears to the Town that the negotiations will not result in the execution of a contract. In such event, the Town will select the next highest ranking CMR and attempt to negotiate a contract with that CMR, and so on and so forth until the Town has successfully negotiated a contract with a selected CMR.

The Town reserves the right to disqualify any submittal without cause. By submission of a response, Proposers waive any rights to make a claim against the Town, its employees, agents and consultants related in any way to the submission of the proposal or the Owner’s disqualification of the proposal as a result.

For purposes of this Request for SOQ, terms of the future contract will be based on the Construction Agreement and General Conditions respectively, as modified for this project. The finalized and signed Agreement and Conditions will include such language and modifications agreed upon by the Town of Flower Mound, Texas and the CMR.

Payment and performance bonds will be required of the CMR for the entire project. If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the Town must each be in an amount equal to the project budget, as specified in this request for statements of qualifications. The CMR shall deliver the bonds to the Town not later than the 10th day after the date the CMR executes the contract unless the CMR furnishes a bid bond or other financial security acceptable to the Town to ensure that the CMR will furnish the required performance and payment bonds when a guaranteed maximum price is established.

The Log House will be restored with supporting infrastructure in 3 phases.

Phase 1 includes design for structural, roof replacement, removal of some of the additions, restoration of historical siding. This phase will make the building watertight, safe and aesthetically appealing on the outside valued at \$ 420,000.00

Phase 2 will be site improvements that includes a prefabricated rest room with related infrastructure, a small parking lot located at Quail Run Road and side walk to the rest room all valued at \$ 307,000.00

Phase 3 will be Interior modifications, mechanical, electrical and plumbing and restroom building valued at \$ 710,000.00

Construction Budget: \$1,436,000.00

Anticipated Construction Start: December 2019

Anticipated Construction Completion: December 2020

The following describes the anticipated services expected during design and construction:

- Manage the Guaranteed Maximum Price (GMP) Documentation
- Establish budget by providing cost estimates of the Architect's Design Development and 50% Construction Document drawings and specifications and to establish a guaranteed maximum price on the 100% Construction Documents for each phase.
- Prepare sub-contractor bid or proposal packages
- Conduct pre-bid meetings
- Receive bids
- Conduct award of contracts/purchase orders
- Provide coordination and management of sub-contractors
- Summarize monthly reports
- Provide change order and contingency funds control
- Establish a quality management program
- Provide for job safety functions
- Provide accounting functions
- Provide jobsite security functions
- Provide post construction services
- Provide value engineering and management of construction schedule
- Attend pre-construction meetings with Town personnel

CONSTRUCTION MANAGER SELECTION SCHEDULE

- | | |
|---|------------------|
| • Statement of Qualifications
First advertisement | June 30, 2019 |
| • Statement of Qualifications
Second advertisement | July 7, 2019 |
| • Mandatory Pre-Bid Meeting & Site Visit | July 16, 2019 |
| • Questions Deadline | July 17, 2019 |
| • Receive sealed qualifications | July 24, 2019 |
| • Evaluation Period | July 25-29, 2019 |
| • Interviews (if deemed beneficial to the Town) | To Be Determined |
| • Receive Sealed Proposals and negotiate fee | August 2, 2019 |
| • Recommendation to Town Council | August 19, 2019 |

STATEMENT OF QUALIFICATIONS:

Pursuant to the provisions of the Chapter 2269, Subchapter F. of the Government Code, it is the intention of the Town of Flower Mound to select a Construction Manager-At-Risk in a two-step process for the services in connection with the Restoration of the Gibson Grant Log House and Related Site Improvements. Sealed submittals are to include the information requested in this package in the sequence and format prescribed herein. Please complete the enclosed Vendor Information Form and Conflict of Interest Form and include in your submittal. In addition to and separate from the requested information, submitting organizations may provide supplementary materials further describing their capabilities and experience (under separate cover).

Selected short-list proposers may be requested to submit additional information indicating fees.

One original and five (5) copies along with a pdf file of the original on a flash drive that the Town will retain are to be submitted to:

Town of Flower Mound
Attn: Purchasing Office
2121 Cross Timbers Rd.
Flower Mound, Texas 75028

No later than: 11:00AM CT ON JULY 24, 2019

Immediately thereafter, the Town will review the information. The Town of Flower Mound will use a two-step selection process.

The Town Council of the Town of Flower Mound, Texas, reserves the right to accept or reject any submittal, or any part thereof, or any combination of submittals, and to waive any or all formalities.

Receipt of a submittal does not bind the Town to any contract for said services, nor does it give any guarantee that a contract will be awarded. Receipt of submittals shall be received and acknowledged only so as to avoid disclosure of the contents to competing offerors and kept strictly confidential during the negotiation/evaluation process. However, all documents shall be open for public inspection after a contract is awarded to the extent required under Texas law.

REQUEST FOR QUALIFICATIONS CONTENT OF SUBMITTALS:

To enable the Town to efficiently evaluate the responses, it is IMPORTANT that respondents follow the required format in preparing responses and submittals. SUBMITTALS THAT DO NOT CONFORM TO THE PRESCRIBED FORMAT MAY NOT BE EVALUATED. The aesthetics of the submittals will play no part in the award of a contract for the work. Clarity and completeness are required.

Please provide the following information in the sequence and format prescribed by this request. Supplemental materials providing additional information may be included under separate cover attached, but the information requested below is to be provided in this format.

1. FIRM INFORMATION

- 1.1 Name of firm
- 1.2 Address of Principal office
- 1.3 Phone
- 1.4 Fax
- 1.5 Form of Business Organization (Corporation, Partnership, Individual, etc.)
- 1.6 Year founded
- 1.7 Primary individual to contact

2. ORGANIZATION

- 2.1 How many years has your organization been in business in its current capacity?
- 2.2 How many years has your organization been in business under its present name? Under what other or former name(s) has your organization operated?
- 2.3 If your organization is a corporation, please provide date of incorporation, State of incorporation and list all officers of the corporation.
- 2.4 If your organization is a partnership, answer the following: Date of

organization, type of partnership (if applicable), and names of managing partner(s).

- 2.5 If your organization is individually owned, answer the following: Date of organization, name of owner.
- 2.6 If the form of your organization is other than those listed above, describe it and name the principals.
- 2.7 Information of the individual that will be the lead on this project.

3. LICENSING

- 3.1 List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable.
- 3.2 List jurisdictions in which your organization's partnership or trade name is filed.

4. EXPERIENCE

- 4.1 List the categories of work that your organization normally performs with its own forces. Would you propose to do any work with your own forces or to bid all work to subcontractors?
- 4.2 List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.
- 4.3 Claims and suits (if the answer to any of the questions below is yes, please attach details).
 - 4.3.1 Has your organization ever failed to complete any work awarded to it?
 - 4.3.2 Are there any judgments, claims, arbitration proceedings or suits filed or outstanding against your organization or its officers for the last 5 years?
 - 4.3.3 Has your organization filed any lawsuits or requested arbitration with regards to construction contracts within the last 5 years?
- 4.4 Within the last 5 years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (if the answer is yes, please attach details).
- 4.5 Current work:
List the major construction projects your organization has in progress (noting method of selection, i.e.: CM at Risk, Bid, Proposal or other), giving the name and location of project owner, architect, contract amount, percent complete, and scheduled completion date.
- 4.6 Work over last 5 years:
List major projects (particularly public facilities) constructed by your firm. For each project, provide the name, nature of the project/function of the building, size of building (SF), location, cost, completion date, owner, architect, and method selection (i.e.: CM @ Risk, Bid, Proposal or other).
- 4.7 Historic Restorations of at least two projects in the past five years that are similar in scope to the restoration of the Gibson Grant Log House project. A

Master Plan for the restoration to a period that includes the “T” shape and the exterior siding has been approved by the Texas Historical Commission. A copy of this Master Plan can be made available as reference material. For each project, provide the name, nature of the project/function of the building, size of building (SF), location, cost, completion date, owner, architect, and method selection (i.e.: CM @ Risk, Bid, Proposal or other).

5. FINANCIAL INFORMATION

5.1 Attach a financial statement, preferable audited, including your organization’s latest balance sheet and income statement showing the following items:

- Current assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory, and prepaid expenses).
- Non-current assets (e.g., net fixed assets, other assets).
- Current liabilities (e.g., account payable, notes payable (current), accrued expenses, provisions for income taxes, advances, accrued salaries, and accrued payroll taxes).
- Non-current liabilities (e.g., notes payable).
- Capital accounts and retained earnings (e.g., capital, capital stock, authorized and outstanding shares par value, earned surplus, and retained earnings).

5.2 Name and address of firm preparing attached financial statement and date thereof.

5.3 Is the attached financial statement for the identical organization named under item 1 above? If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent, subsidiary).

5.4 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

5.5 Provide name, address, and phone number for bank reference.

6. INSURANCE AND BOND INFORMATION

6.1 Certificates of Insurance for both Liability and Worker’s Compensation showing the Town as an additional insured party will be required upon submission of the GMP. Minimum coverage will be up to \$15,000,000. The Certificate of Insurance shall be provided on an ACORD form itemizing the firm’s normal coverage at the time of the submittal. The firm shall provide evidence of any additional insurance coverage available to the Town. Additional insurance coverage available to the Town without increase in cost (due to normal coverage carried by the company) will be considered of benefit to the Town. Show available excess or umbrella coverage on the insurance certificate, should such coverage be in place. **See Exhibit A at end of this solicitation.**

6.2 Worker’s Compensation coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage

agreements which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.6.3 Performance and Payment Bonds for 100% of the construction cost will be required upon submission of the GMP.

7. EXPERIENCE WITH CONCEPTS FOR WORKING AS A CONSTRUCTION MANAGER-AT-RISK

7.1 Describe your organization's concepts for working in a team relationship with the Owner and Architect during the design and construction of major projects. Describe your organization's methods for estimating costs, and for scheduling during the design/document phases. Describe how your company will benefit this project using Construction Manager at Risk.

7.2 Cost Estimates:

Provide an example of a proposed accounting method for a Construction Manager at Risk contract and a preconstruction and FGMP cost estimate on similar work. Attach a sample conceptual cost estimate prepared during the design phase of the project and a sample of the final cost estimate/breakdown used to fix the contract amount for the construction of the same project. (The identity of the project may be concealed. The intent is to see the nature and format of the cost information provided).

7.3 Fees:

Pre-construction phase service fee:

Describe your organization's ideology as it pertains to the pre-construction phase fee, i.e., items and services to be included in the fee. DO NOT INCLUDE A DESCRIPTION OF YOUR ESTIMATED FEES IN THIS SECTION, ONLY INCLUDE A DESCRIPTION OF WHAT ITEMS AND SERVICES WILL BE INCLUDED IN THE FEE. Selected short-list proposers may be requested to submit additional information indicating fees.

Construction phase service fee:

Describe your organization's ideology as it pertains to the construction phase fee, i.e., fixed fee, percentage fee, and particular items to be included and/or excluded from the fee. DO NOT INCLUDE A DESCRIPTION OF YOUR ESTIMATED FEES IN THIS SECTION, ONLY INCLUDE A DESCRIPTION OF WHAT ITEMS AND SERVICES WILL BE INCLUDED IN THE FEE AND HOW THAT FEE WILL BE CALCULATED (FIXED FEE VERSUS PERCENTAGE FEE). Selected short-list proposers may be requested to submit additional information indicating fees.

7.4 Savings:

Describe your organization's concept for the disposition of savings realized during construction. Is the full amount or a percentage thereof returned to the Owner?

- 7.5 Contingencies:
Describe your organization's concept for cost contingencies during design? During construction? What is your organization's concept for the disposition of contingency funds after the completion of the project? Give a history of project cost based on bid cost versus final cost noting reasons and amounts of change orders. What percentage contractor contingency do you carry with 100% construction documents?

- 7.6 Cost Information:
Your firm would be required to make all cost information during design and construction available to the Town and the Town's Architect. Describe how this information would be furnished and how the Town and architect would be assured that it is complete and accurate.

8. SAFETY

- 8.1 Provide information as pertains to your firm's accident frequency rate and modifier for the last five years. List any OSHA citations in the last five years. List any deaths that have occurred on your projects in the last five years.

9. SCHEDULES

- 9.1 Provide samples of schedules that will be used to control various project phases. Give a history of your ability to deliver projects on time for the past 5 years. Describe methods employed to keep projects on schedule and methods of corrective action to overcome schedule deficiencies.

10. PAYMENT

- 10.1 The Town will authorize progress payments, only after Town officials have personally inspected and signed the request for payment (invoice) from said Construction Manager at Risk. Upon completion of project, the Town may withhold a semi-final payment if there are any unsettled claims connected with this project.

11. REFERENCES

- 11.1 For the projects listed above (re: item 4.6), identify a representative of the owner and a representative of the architect (provide name, phone/fax numbers) whom we could contact as references regarding your organization's services. Ideally, some of the references should be for municipal projects of comparable scope.

12. PERSONNEL

- 12.1 Given the scope and schedule of the project, identify the specific Project Manager, Estimator, and Superintendent who would work on the project. Provide a resume for each individual.

13. OWNER/CONTRACTOR AGREEMENT

- 13.1 The Town will only accept a submittal based on the Owner/Construction Manager Agreement on the AIA Document A133/CMc - 2009, with AIA

A133-2009 Exhibit A and the AIA Document A201 – 2007, General Conditions of the Contract, all as modified for this project.

CRITERIA FOR SELECTION:

Per Chapter 2269, Subchapter F of the Government Code, the Town of Flower Mound may consider the following in determining to whom to award the contract for Construction Manager-At-Risk services. The selection process is weighted heavily on important issues critical to the success of the project. In determining the best value to the Town, the following are key issues that will be evaluated in the Town's selection decision:

- a) The reputation of the vendor and of the vendor's goods or services;
- b) The relevant experience of the vendor with historic and log houses;
- c) The quality of the vendor's goods and services;
- d) Past performance of the vendor;
- e) The vendor's past relationship with the Town;
- f) The extent to which the goods and services meet the Town's needs;
- g) Vendors methodology for the project;
- h) The impact on the ability of the Town to comply with laws and rules relating to historically under-utilized businesses;
- i) Vendors safety record;
- j) Proposed personnel for the project;
- k) The total long-term cost to the Town to acquire the vendor's goods and services; and
- l) Any other relevant factor that a private business entity would consider in selecting a vendor.

The following weighted criteria will be considered in selecting the Construction Manager:

EXPERIENCE - (50% of scoring)

- a) The reputation of the vendor and of the vendor's services;
 - b) The relevant experience of the vendor;
 - c) The quality of the vendor's goods and services;
 - d) Past performance of the vendor; and
 - e) The vendor's past relationship with the Town.
- How substantial is the firm's recent experience in the construction of projects of comparable size and complexity?
 - How substantial is the firm's experience in providing construction services for municipal facilities of comparable size and complexity?
 - Is the firm knowledgeable about or experienced in the North Texas construction market?
 - How substantial is the firm's recent experience in providing pre-construction services for projects of comparable size and complexity?

TOWN'S NEEDS - (25% of scoring)

- a) The extent to which the goods and services meet the Town's needs;
 - b) Vendors methodology for the project; and
 - c) The impact on the ability of the Town to comply with laws and rules relating to historically under-utilized businesses.
- Does the description provided by the firm of its pre-construction services evidence both understanding and capabilities of the process in general and as it applies to these projects for the municipality?
- Does the construction manager appear to have the capability to meet the Town's schedule objectives?

ORGANIZATION, LICENSING, FINANCIAL INFORMATION, PERSONNEL, REFERENCES, SAMPLE CONTACT – (25% of scoring)

- a) Vendor's safety record;
 - b) Proposed personnel for the project;
 - c) The total long-term cost to the Town to acquire the vendor's goods and services; and
 - d) Any other relevant factor that a private business entity would consider in selecting a vendor.
- Does the vendor have a good safety record and active safety program?
- How long has the firm been in business providing the type of services sought by the Town?
- Does the firm's organizational structure, licensing and financial information indicate that the firm is capable of undertaking these projects?
- Do the personnel proposed for the project appear to have the appropriate experience, capabilities?
- Did the reference list (both owners and architects) have a favorable experience with the organization? Would they work with them again? How comparable was their project to these projects?

INTERVIEWS:

Submittals will be taken and reviewed after receipt. It is anticipated a short list of up to three (3) candidates may be interviewed, but the Town reserves the right to not conduct any interviews and to base the selection strictly on the SOQ submitted or to eliminate any Construction Manager(s) from the selection as late as the day prior to any potential interview if the Town determines the submittal is insufficiently responsive to merit further consideration.

Interviews, if conducted, will be 60 minutes, with 30 minutes for the candidate presentation and remaining time for questions and discussion. As to the Project Team, the Project Manager, Superintendent, and Lead Estimator should be in attendance for the Project Team at a minimum. The chemistry and comfort of the team is vital to the selection. The candidate's focus in the interview should be specific to this project and the Town's concerns, including, but not limited to, the following:

- What has the Contractor done recently that is similar to this project in schedule, complexity, scope?
- What experience do the individuals proposed for the project have, particularly in recreation and park projects?
- What are your thoughts on the schedule? Issues? Most problematic portions? What strategies or tactics can be used to expedite off site work/ preparation prior to onsite access, onsite tactics or strategies?
- How will you estimate earthwork and other major trades before they are brought onto the team? How do we get them onboard as early as we need them, and keep them competitive?
- What is your experience in early procurement of equipment? How is it best done? Schedule lead times?
- What unique leverages/advantages do you offer the project including but not limited to knowledge, experience, subcontractor market issues, vendor/equipment supplier issues, Town processes, etc.?
- Use of local sub-contractors? Your ability to perform work using CMR staff.

TOWN OF FLOWER MOUND STANDARD TERMS & CONDITIONS FOR PROCUREMENTS

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Flower Mound, unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Flower Mound advertises procurement opportunities through www.flower-mound.com, [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies.com) and the *Denton Record Chronicle*. The Town shall not be responsible for information distributed by sources other than those listed.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of addenda. The sole issuing authority shall be vested in the Town of Flower Mound Purchasing Division. If addenda contain material changes to the specifications or pricing form, the respondent shall acknowledge receipt of addenda in the designated section on the Bid/Proposal Certification Form. It is the responsibility of the bidder/respondent to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Flower Mound reserves the right to waive any minor defect, irregularity, or informality in any bid/proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all bids/proposals with or without cause prior to award.
6. **ELECTRONIC SUBMISSIONS:** The Town of Flower Mound utilizes IonWave Technologies, Inc. to advertise and receive bids and proposals electronically over the Internet. Electronic submissions through IonWave Technologies, Inc. shall be electronically signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents should clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.

The Town of Flower Mound has elected to fund a monthly fee to IonWave Technologies, Inc. in order to eliminate all costs for vendors to utilize the system for standard bids and proposals solicited by the Town. For Cooperative Procurements and Reverse Auctions ONLY, respondent agrees to pay to IonWave Technologies, Inc. a transaction fee of one percent (1%) of the total awarded amount of all contracts for goods or services awarded to the respondent. Cooperative procurements and Reverse Auctions will be clearly identified in the bid/proposal documents. To assure that all respondents are treated equally, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies.com) for further information.

7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Flower Mound and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Flower Mound Purchasing Division, 2121 Cross Timbers Road, Flower Mound, Texas 75028 by the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Flower Mound Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Flower Mound is not responsible for issues encountered with methods of delivery.
10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered cannot be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting minor errors in bid price after bid opening. However, a bidder may be able to withdraw a bid only if it contains a substantial mistake that would, in the sole opinion of the Town, cause a great hardship if enforced against the bidder.

11. **TAXES:** The Town of Flower Mound is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. Tax shall not be included in prices offered. A Tax Exempt Form will be provided by the Town of Flower Mound

upon request. A request for a Tax Exempt Form can be submitted in writing to purchasing@flower-mound.com or by contacting the Purchasing Division at 972.874.6006. In no event is it the Town's responsibility to provide a tax exempt form without a request for the same.

12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of bid/proposal without written approval of the Purchasing Manager.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Flower Mound, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Flower Mound will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town of Flower Mound's discretion, testing may be required prior to award of bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town of Flower Mound's discretion, samples may be required prior to award of bid/proposal, or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.
17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is descriptive and not restrictive, and is intended to indicate type and minimum quality level desired for comparison purposes, unless otherwise stated herein. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.
18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Flower Mound's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive.

The Town of Flower Mound will make a determination regarding the responsiveness of offers submitted based upon compliance with all applicable laws and the Town of Flower Mound's purchasing guidelines and project documents including, but not necessarily limited to, the bid/proposal specifications and contract documents. The Town will notify the successful respondent upon award of the contract; and, if required by State law, all offers received will be available for inspection after award.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.

19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Bid/Proposal summary results will be available for public viewing at www.flower-mound.com and [www.IonWave Technologies, Inc..com](http://www.IonWaveTechnologies.com). Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to purchasing@flower-mound.com. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the state laws including chapter 176 of the Local Government Code, the Town Charter, and the Town Code of Ethics regarding conflicts of interest and agrees to comply with each. No officer, employee or agent of the Town of Flower Mound shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 13.00, Chapter 1 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined herein.
22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid the non-resident bidder on a bid/proposal for goods and services in the non-resident bidder's state, or the amount by which a resident bidder would be required to underbid the non-resident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Flower Mound for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Flower Mound may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Be otherwise qualified and eligible to receive an award.
25. **AWARD OF CONTRACT:** The Town of Flower Mound reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.

The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

 - A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The respondent's past relationship with the Town;
 - F. The total long-term cost to the Town to acquire the respondent's goods or services;
 - G. Any relevant criteria specifically listed herein or in the contract documents.
26. **ACCEPTANCE:** Respondent agrees that acceptance of any or all items by the Town of Flower Mound, Texas within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for the bid/proposal will be for one (1) year upon Town approval, with three (3) optional one (1) year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town of Flower Mound is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available.
29. **ASSIGNMENT:** The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or will enter into, interlocal cooperative purchasing agreements with the Town of Flower Mound.
31. **CHANGE ORDER:** The Town of Flower Mound reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract will be documented in written form by the Town of Flower Mound and acknowledged by the contracted vendor. All change orders and modifications to the contract shall be processed through the Purchasing Division only.
32. **DELIVERY PROMISE – PENALTIES:** Where indicated, respondents must provide number of calendar days required to deliver goods or services to the Town of Flower Mound after receipt of order (ARO). Do not quote shipping dates. When delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if

reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.

33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Flower Mound location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Flower Mound's satisfaction.
35. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, 2121 Cross Timbers Road, Flower Mound, Texas 75028, or electronically to accountspayable@flower-mound.com.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Flower Mound shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Flower Mound requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Flower Mound's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Flower Mound, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Flower Mound, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
42. **PATENT RIGHTS:** Respondent agrees to indemnify and hold harmless the Town of Flower Mound from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town.
43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.

Post-award protests must be submitted in written form to the Purchasing Manager within five (5) working days after award.

The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest. The Purchasing Manager, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Flower Mound reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost to the defaulting contracted vendor.
45. **TERMINATION FOR TOWN CONVENIENCE:** Whenever the Town, in its discretion, deems it to be in the Town's best interests, it may terminate this contract for the Town's convenience. Such termination shall be effective thirty (30) days after Town delivers written notice of such termination for convenience to the contracted vendor. Upon receipt of such notice from the Town, Vendor shall not thereafter incur, and Town shall have no liability for, any costs under this contract that are not necessary for actual performance of the contract between the date of the notice of termination for convenience and the effective date of that termination for convenience. In the event of a termination for convenience hereunder, Town shall have no liability to Vendor for lost or anticipated profit resulting therefrom.
46. **REMEDIES:** The successful vendor and the Town of Flower Mound agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
47. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Denton County, Texas.
48. **DETERMINATION OF NON-RESPONSIBLE BIDDER:** The Town may disqualify a vendor as non-responsible and its bid shall not be considered for reasons including, but not limited to, the following:
- A. Reason for believing collusion exists among vendors.
 - B. Where the vendor, any subcontractor, supplier, or the Surety on any bond given, or to be given, is in litigation with the Town, or where such litigation is contemplated or imminent, in the sole opinion of the town.
 - C. The vendor being in arrears on any existing contract or having defaulted on a previous contract.
 - D. Lack of competency, in the judgment of the Town, as revealed by pertinent factors, including but not necessarily limited to, experience and equipment, financial statement and questionnaires.
 - E. Uncompleted work that, in the judgment of the Town, will prevent or hinder the prompt completion of additional work if awarded.
 - F. Where the vendor, or subcontractor thereof, in the judgment of the Town, has failed to perform in a satisfactory manner on a previous contract.
 - G. Where a vendor or subcontractor thereof has failed to disclose a potential conflict of interest or discovered to have a conflict of interest in accordance with the Town's Code of Business Ethics.
 - H. Where a vendor, its subcontractor, or individual officer/principal of the bidder or subcontractor is under criminal indictment or been convicted of a criminal offense.
49. **DETERMINATION OF NON-RESPONSIVE BID:** The Town may disqualify a bid as non-responsive and it shall not be considered for reasons including, but not limited to, the following:
- A. The bid shows any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind, in the sole determination of the Town.
 - B. Bid received after the time limit for receiving bids.
 - C. Bid was not signed.
 - D. Unbalanced value of any items.
 - E. Improper or insufficient bid guaranty, if required.
 - F. Bid did not meet specifications.
 - G. Bid did not contain all requested/required documents, submittals and/or samples.

EXHIBIT A

INSURANCE REQUIREMENTS CONSTRUCTION SERVICES

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Comprehensive General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Explosion Collapse and Underground (XCU) Coverage.
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
3. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired and non-owned autos.
4. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.

5. \$1,000,000 Umbrella Liability Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions in excess of \$10,000 must be declared to and approved by the Town.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages:

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The contractor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limits of liability.

2. Workers Compensation and Employer's Liability Coverage:

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the contractor for the Town.

3. All Coverages:

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after 30 days written notice to the Town for all occurrences, except 10 days written notice to the Town for non-payment.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than A- VI, or better.

F. VERIFICATION OF COVERAGE

Contractor shall provide the Town with certificates of insurance indicating coverage's required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.



TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: September 16, 2019

FROM: David Bauer, Construction Manager

ITEM: Consider approval of Change Order No. 1 to North Rock Construction, LLC, for the Bakersfield Rest Room and Concrete Walkways project, in the amount of \$89,818.03; 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 eight bidders and of those received North Rock Construction LLC, was the most qualified lowest bidder. On May 6, 2019, the Town Council approved the contract with North Rock Construction for a base bid of \$409,968.02.

Change Order No. 1 includes original bid options not previously awarded, which include providing additional 8 foot trail and 6 foot sidewalk, ADA Improvements on the existing parking lot, and some modifications on the trail at the restroom to make the connections for ADA compliance. If approved this change order will increase the contract amount from \$409,968.02 to \$499,786.05.

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 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. Additional park development funds, approved with CIP Amendment No.4, were added to install approximately 600 feet of 8 foot and 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 route to the fields.

BOARD REVIEW/CITIZEN FEEDBACK: 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 approved by unanimous vote.

FISCAL IMPACT: \$89,818.03

Proposed Expenditure/(Revenue):	Account Number(s):
\$65,439.58	310-320-90601 Park Development
\$24,378.45	317-110-90601 4-B Dedicated Sales Tax

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

Total project cost is \$600,000. Funding sources are:

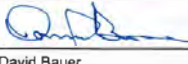
- Park Development Fund \$ 100,000
- Dedicated Sales Tax \$ 500,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No. 1

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

CHANGE ORDER No. 1						
Effective Date: Effective on the date of execution by the Mayor						
Owner: Town of Flower Mound						
Contractor: North Rock Construction, LLC 525 South Loop 288 Suite 105 Denton, Texas 76205						
Project: Bakersfield Rest Room and Concrete Walkways						
CHANGE ORDER NO. 1						
The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.						
You are directed to make the following changes in the Contract Documents:						
Bid Item No.	Description	Add/ Deduct	Quantity	Unit	Price	Extended Amount
CO1-A	8' Concrete Trail Bid Option	ADD	1	LS	\$58,112.98	\$58,113.98
CO1-B	6' concrete sidewalk Bid Option	ADD	1	LS	\$21,650.06	\$21,650.06
CO1-C	ADA Improvements Bid Option	ADD	1	LS	\$5,645.67	\$5,645.67
CO1-D	Demolition of concrete trail	ADD	448	SF	\$2.40	\$1,075.20
CO1-E	Pour back of concrete trail	ADD	448	SF	\$7.44	\$3,333.12
Total						\$89,818.03
Original Contract Price						\$409,968.02
Change Order No. 1						\$89,818.03
Revised Contract Price						\$499,786.05
Bid Item No.	JUSTIFICATION					
CO1-A	Provides for adding a 8' concrete trail from the main parking lot to the rest room					
CO1-B	Provides for adding a 6' sidewalk along the existing main parking lot from the entrance to the picnic pavilion.					
CO1-C	Provides for modifying the existing parking lot to modify the concrete and add ADA compliant parking spaces with signage and striping.					
CO1-D	Provides for removal of non compliant trail that the new rest room will tie into					
CO1-E	Provides for pouring back compliant trail that ties into the new rest room.					
Original Substantial Completion Days						120
Change Order No. 1 Additional Days						0
Revised Substantial Completion Days						120
Original Final Completion Days						150
Change Order No. 1 Additional Days						0
Revised Final Completion Days						150
Recommended for Approval	 David Bauer Construction Manager		8-27-19 Date	 Contractor Contractor Title President		
Approved	Steve Dixon Mayor, Town of Flower Mound					



TOWN COUNCIL AGENDA ITEM NO. 14

CONSENT ITEM

DATE: September 16, 2019

FROM: Clay Riggs, PE, CFM, Assistant Director of Public Works

ITEM: Consider approval of Amendment No. 1 to the Professional Services Agreement with Alan Plummer Associates, Inc., to provide additional contract construction management and resident project representation services, associated with Wastewater Treatment Plant Rehabilitation Phase IV project for an increase of \$30,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On October 3, 2016, the Professional Services Agreement for the Wastewater Treatment Plant Rehabilitation Phase IV project was approved, in the amount of \$331,125.00, to Alan Plummer Associates, Inc. This first amendment to the Professional Services Agreement provides additional resident representation, testing, and as-built preparation (Additional Services – Task A) needed to close out the project. These additional services are funded by the reduction to the construction agreement with Red River Construction through Change Order 4, approved on February 21, 2019.

If approved, Amendment No. 1 will increase the current contract value of \$331,125.00 by \$30,000.00, for a new contract value of \$361,125.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$30,000.00

Proposed Expenditure:	Account Number(s):
\$30,000.00	630-970-98471 Utility

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

Total project cost is \$11,800,000. Funding sources are:

- Utility Debt \$ 11,800,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. CCA Amendment No. 1
2. Construction Change Order 4

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH
ALLAN PLUMMER ASSOCIATES, INC.**

This First Amendment to Professional Services Agreement (“First Amendment”) is entered into on this 16th day of September, 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 **Allan Plummer Associates, Inc.**, (“hereinafter referred to as “Consultant”) regarding the following project:

WASTEWATER TREATMENT PLANT REHABILITATION PHASE IV

I. RECITALS

WHEREAS, Town entered into a professional engineering design and related construction services from Consultant for the Wastewater Treatment Plant Rehabilitation Phase IV project (“Services”) on or about the 3rd day of October, 2016 (the “Contract”); and

WHEREAS, Town and Consultant both desire to amend the Contract and Consultant is willing to undertake the performance of such additional services and agrees to the increased cost for such services as expressed herein;

II. TERMS OF AMENDMENT

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:

A.

Recitals Incorporated

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

B.

Amendment of Paragraph No. II

From and after the approval of this First Amendment, Section II of the Contract, entitled “Scope of Services” is hereby deleted in its entirety and replaced with a new Paragraph No. II to read as follows:

“CONSULTANT shall perform such professional engineering services, not necessarily limited to, the tasks enumerated more fully in Attachment “A-1” entitled “Scope of

Services”, as are necessary to complete the Wastewater Treatment Plant Rehabilitation Phase IV project (hereafter referred to collectively as the “Project”). Attachment “A-1” 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-1” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.”

C.

Amendment of Paragraph No. III

From and after the approval of this First Amendment, Section III of the Contract entitled “Payment for Services” is amended in part by deleting the first paragraph of said Section III and replacing it with a new paragraph reading as follows and leaving all other provisions of Section III intact and unchanged:

“Total payment for services described herein for the Services for the Project shall be a sum not to exceed three hundred thirty one thousand one hundred fifty five Dollars and XX/100 (\$361,125.00) as specified in Attachment “B-1”.”

D.

Revisions of the Scope of Services

From and after the approval of this First Amendment, Attachment “A”, is replaced by the document attached hereto and incorporated herein by reference as Attachment “A-1” to the Contract. In case of conflict in the language of Attachment “A-1” and any other provision of the Contract, as amended by this First Amendment, the terms and conditions of the Contract, as amended by the First Amendment, shall control, and shall be final and binding upon both parties hereto.

From and after the approval of this First Amendment, Attachment “B”, is replaced by the document attached hereto and incorporated herein by reference as Attachment “B-1” to the Contract. In case of conflict in the language of Attachment “B-1” and any other provision of the Contract, as amended by this First Amendment, the terms and conditions of the Contract, as amended by the First Amendment, shall control, and be final and binding upon both parties hereto.

E.

Contract Controls

All other provisions of the Contract remain in full force and effect. In the event of a conflict or an inconsistency between the Contract and/or the First Amendment, the terms of the First Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first written above.

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

ALAN PLUMMER ASSOCIATES, INC

By: _____

Jeffrey E. Caffey, P.E.
Principal

Date Signed: _____

August 17, 2019

State of Texas

§

§

County of Denton

§

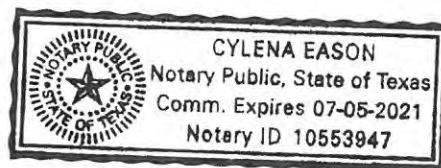
This instrument was acknowledged before me on the 19 day of August, 2019, by Jeffrey E. Caffey, in his capacity as Principal of Alan Plummer Associates, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Alan Plummer Associates, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 19
DAY OF August, 2019.

Cylena Eason
Notary Public, State of Texas

My Commission Expires:

July 5, 2021



ATTACHMENT A-1

TOWN OF FLOWER MOUND
WASTEWATER TREATMENT PLANT PHASE IV REHABILITATION
SOLIDS FACILITY IMPROVEMENTS PART 1
BASIC ENGINEERING SERVICES

Provide construction phase services, resident project representation and post-construction phase services for the Wastewater Treatment Plant Rehabilitation Phase IV - Solids Facility Improvements Part 1.

BASIC SERVICES

ENGINEER agrees to perform BASIC SERVICES in connection with the PROJECT as hereinafter stated, in accordance with the stipulations within this AGREEMENT. The ENGINEER shall perform BASIC SERVICES necessary for the development of the PROJECT as follows:

A. CONSTRUCTION PHASE SERVICES

1. Assist in conducting pre-construction conference with the CONTRACTOR, review construction schedules prepared by the CONTRACTOR pursuant to the requirement of the construction contract, and review the proposed estimate of monthly cost requirements of the PROJECT, as prepared by the CONTRACTOR.
2. Participate in the CONTRACTOR'S monthly progress meeting with the TOWN and its authorized representatives. The ENGINEER will attend up to twelve monthly progress meetings.
3. Prepare Conformed Documents by adding the addendum items from the Advertisement Phase to the Contract Documents. Provide five (5) conformed sets with full-size plans to the TOWN, and five (5) conformed sets with full-size plans to the CONTRACTOR. Provide one (1) electronic copy of the Conformed Documents to the TOWN.
4. Make an average of one (1) site visit each month from the Notice-to-Proceed to the Substantial Completion Date to observe the progress and the quality of construction work. It is anticipated that the project will be substantially complete twelve (12) months following notice to proceed. The site visit can be conducted on the same day as the monthly progress meeting. If the ENGINEER is asked to visit the site more frequently, the requested visits shall be considered a SPECIAL SERVICE and the ENGINEER shall be entitled to additional compensation. In performing these services, the ENGINEER shall endeavor to guard the TOWN against apparent defects and deficiencies in the permanent work constructed by the CONTRACTOR, but the ENGINEER does not guarantee the performance of the CONTRACTOR. The ENGINEER shall not be required to make continuous daily on-site observations to check the quality or progress of the construction work. The ENGINEER shall not be responsible for the construction performance, programs, or for any safety precautions utilized in connection with the construction work. The ENGINEER shall not be responsible for the CONTRACTOR'S failure to execute the work in accordance with the construction contract. However, if the

ENGINEER observes construction conditions not in conformance with construction contract documents, then the ENGINEER shall have authority to recommend rejection of work which does not conform to the construction contract documents whenever, in his/her opinion, the ENGINEER considers it necessary or advisable to insure the proper implementation of the intent of the construction contract documents in accordance with generally accepted engineering practices. The ENGINEER shall have the authority to require special inspection or testing of any work in accordance with the provisions of construction contract documents whether or not such work is then fabricated, installed, or completed. The ENGINEER shall notify the TOWN, in writing, of any actions taken under this paragraph.

5. The ELECTRICAL ENGINEER shall make an average of one (1) site visit every other month from the Notice-to-Proceed to the Substantial Completion Date.
6. Utilize Projectmates for transmitting and tracking construction documents and write and distribute meeting notes for the monthly progress meetings.
7. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill test reports or material and equipment and other data which the CONTRACTOR submits. This review is for the benefit of the TOWN and covers only general compliance with the information given by the construction contract documents. It is anticipated that the ENGINEER will review up to seventy (70) shop drawing submittals. It does not relieve the CONTRACTOR of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect worker and the public, or the necessity to construct a complete and workable facility in accordance with the construction contract documents.
8. Review and answer request-for-information (RFI) typical for the scope and size of the improvements included. It is anticipated that the ENGINEER will review and respond to up to a total of twenty-five (25) RFIs. Review of authorized RFIs in excess of the specified number will be considered an Additional Service.
9. Review, evaluate and prepare routine change orders or proposed contract modifications typical for the scope and size of the improvements included. Review up to fifteen (15) Contract Modification Requests/Proposed Contract Modifications (CMR/PCM). Prepare up to three (3) Change Orders (CO) and up to three Field Orders (FO) for execution by the TOWN. Additional authorized CMR/PCM review or CO/FO preparation in excess of the specified number will be considered an Additional Service.
10. The ENGINEER shall be, in the first instance, the interpreter of the requirements of the construction contract documents and the impartial judge of the performance thereunder by both the TOWN and the CONTRACTOR. At the written request of the TOWN, the ENGINEER will be required to make certain interpretations of the construction contract documents. These interpretations shall be in the form of written recommendations and conclusions sent to the appointed representative of the TOWN.

11. The ENGINEER shall not be responsible for the acts or omissions of the CONTRACTOR, or any SUBCONTRACTOR, or any of the CONTRACTOR'S or SUBCONTRACTOR'S agents or employees, or any other persons performing any of the work on the PROJECT, except those employees, agents, and SUBCONTRACTORS of the ENGINEER. In the event of a conflict between this requirement or any other contractual provisions of this AGREEMENT, the other contractual provisions shall prevail.
12. Review monthly and final estimates for payment to the CONTRACTOR based on quantities submitted by the CONTRACTOR as approved by the TOWN'S on-site representative.
13. Assist representatives of the TOWN with final inspection of the PROJECT for conformance with the design concept of the PROJECT and compliance with the construction contract documents, and approve, in writing, final payment to the CONTRACTOR.
14. Revise construction drawings (unless complete redrawing is required) to conform with construction records based on the field-marked drawings from the CONTRACTOR. Furnish one (1) full-size set of construction drawings on reproducible media within sixty (60) days following final completion of the PROJECT and receipt of the field-marked drawings from the CONTRACTOR. Provide one (1) electronic copy of the final drawings to the TOWN.
15. The TOWN acknowledges the ENGINEER'S plans and specifications, including all documents on electronic media, as instruments of professional service. Nevertheless, the plans and specifications prepared under this AGREEMENT shall become the property of the TOWN upon completion of the services and payment in full of all monies due to the ENGINEER. The TOWN shall not reuse or make or permit to be made any modifications to the plans or specifications without the prior written authorization of the ENGINEER. The TOWN agrees to waive any claim against the ENGINEER arising from any unauthorized reuse or modification of the plans or specifications.
16. The TOWN agrees, to the fullest extent permitted by law, to indemnify and hold the ENGINEER harmless for any damage, liability or cost, arising from any modification of the plans and specifications by the TOWN or its authorized representatives without the prior written authorization of the ENGINEER. The ENGINEER makes no warranties, either express or implied, of merchantability and fitness for any particular purpose or of probable useful life of drawing files stored on electronic media.

B. Resident Project Representation

1. ENGINEER shall furnish a Resident Project Representative ("RPR") to assist ENGINEER in observing progress and quality of the Work. The RPR shall provide part time representation on a time and material basis based on a schedule of 16 hours per week for a 52-week period. If additional time is required, the ENGINEER will receive additional compensation or relief by TOWN personnel.

2. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, ENGINEER shall endeavor to provide further protection for TOWN against defects and deficiencies in the Work. However, ENGINEER shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall ENGINEER (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The ENGINEER (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

3. The duties and responsibilities of the RPR are as follows:
 - a. RPR is ENGINEER's representative at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with ENGINEER and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with TOWN only with the knowledge of and under the direction of ENGINEER.
 - b. Serve as ENGINEER's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
 - c. Assist ENGINEER in serving as TOWN's liaison with Contractor when Contractor's operations affect TOWN's on-Site operations.
 - d. Assist in obtaining from TOWN additional details or information, when required for proper execution of the Work.
 - e. Conduct on-Site observations of Contractor's work in progress to assist in determining if the Work is in general proceeding in accordance with the Contract Documents. Report to ENGINEER whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
 - f. Consult with ENGINEER in advance of scheduled inspections, tests, and systems start-ups. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate TOWN's personnel, and that Contractor maintains adequate records thereof. Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems start-ups. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to

ENGINEER.

- g. Furnish to ENGINEER and TOWN copies of all inspection, test, and system start-up reports.
- h. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- i. Participate in a final visit to the Project in the company of TOWN, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
- j. Observe whether all items on the final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.
- k. Resident Project Representative shall not:
 - (1) Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 - (2) Exceed limitations of ENGINEER's authority as set forth in this Agreement.
 - (3) Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
 - (4) Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
 - (5) Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of TOWN or Contractor.
 - (6) Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
 - (7) Authorize TOWN to occupy the Project in whole or in part.

C. Concrete Testing and Geotechnical Construction Assistance

- 1. Provide concrete testing of up to 8 sets of concrete cylinders utilizing the services of a concrete testing lab for confirmation of concrete strength as required for the project.
- 2. Provide Geotechnical Construction Assistance during the drilling of piers to assist in determining the location of the load bearing strata. ENGINEER will utilize the services of a geotechnical firm to provide assistance.

D. Post-Construction Phase

- 1. The ENGINEER will prepare an update to the operation & maintenance (O&M) Manual sections related to the PROJECT in electronic format delivered on CD. Specific services to be performed by the ENGINEER will be to prepare the manual in the format that follows:
 - a. Prepare and submit to TOWN for review a draft of the updated O&M manual sections. The manual will include a description of the facilities and recommendations for O&M. The following topics will be included:
 - (1) Facilities Description, Operation, and Control of Facilities: discussion of

the operation and purpose of each treatment unit or facility with a description of design criteria and control strategy;

- (2) Description and Operation of the Auxiliary Facilities: discussion of auxiliary systems;
 - (3) Electrical System and Control Systems: overview and detailed description of the electrical and control systems;
 - (4) Maintenance: nameplate data for each major piece of equipment, list of the manufacturer's recommended spare parts, and reference to equipment manufacturer's O&M Manual schedule of preventative maintenance activities; and
 - (5) Appendices: glossary of treatment terms and abbreviations used pertinent to this facility;
- b. Five hard copies of the Final Draft and Final O&M manual are to be provided to the TOWN along with two electronic format CDs;
2. Warranty Assistance: Provide up to 24 hours of office and/or on-site consulting concerning the follow-up of Contractor and equipment warranty items during the construction warranty period. One month prior to the end of the construction warranty period, conduct a site visit and document all warranty items and assist in the coordination of the repairs/replacement of the defective work.

E. Additional Effort Related to Extended Construction Time:

1. Additional resident project representative time after scheduled substantial completion in November 2017. Time period of effort was from December 2017 through February 2018:
2. Additional Site Visits attended by RPR, and electrical and HVAC sub-consultants:
 - a. HVAC System walkthrough on May 2, 2018 including electrical and HVAC Sub-consultant
 - b. Equipment startup at plant with equipment manufacturers on June 19, 2018, which could not be completed due to instrumentation wiring not being connected.
 - c. Final HVAC checkout meeting on November 8, 2018.
3. Meeting with Red River and the Town on September to discuss HVAC system issues and project closeout.
4. Provide information to Town to respond to Red River's closeout issues.

ADDITIONAL SERVICES

- A. Additional services to be performed by the ENGINEER, if authorized by the TOWN, which are not included in the above-described BASIC SERVICES, are described as follows:
1. Attending additional meetings as requested by TOWN;

2. Sampling, testing or analysis beyond that specifically included in BASIC SERVICES;
3. Providing additional copies of reports, plans and specifications;
4. Any additional services that may be required by the TOWN for completion of the project that are not included in the BASIC or SPECIAL SERVICES; and
5. Preparing copies of Computer-Aided Drafting (CAD) electronic databases, drawings, or files for the TOWN's use in a future CAD system.

ATTACHMENT B-1

TOWN OF FLOWER MOUND
WASTEWATER TREATMENT PLANT PHASE IV REHABILITATION
SOLIDS FACILITY IMPROVEMENTS PART 1
COMPENSATION SCHEDULE

Basic Services Task A – D:	\$331,125.00
Basic Services Task E:	\$ 30,000.00
Total:	\$361,125.00

CHANGE ORDER No. 4

Effective Date: Upon execution by the Town Manager

Owner: Town of Flower Mound

Contractor: Red River Construction
Attn: Steve Summerkamp
2804 Capital Street
Wylie, TX 75098

Project: Wastewater Treatment Plant Phase IV, Bio-Solids Upgrades

CHANGE ORDER NO. 4

The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.

You are directed to make the following changes in the Contract Documents:

Item No.	Description	Unit	Add/ Deduct	Quan	Unit Price	Extended Amount
CO4A	Project Closeout Credit	LS	Deduct	1	\$63,500.00	(\$63,500.00)
Subtotal						(\$63,500.00)

Contract Price after Change Order No. 3

\$ 3,813,858.88

Change Order No. 4

(\$63,500.00)

Revised Contract Price

\$ 3,750,358.88

JUSTIFICATION

CO4A reduces the contract amount to cover additional equipmental rentals that the Town incurred during the project and additional CCA needed through Alan Plummer Associates, Inc.

Recommended
for ApprovalClay Riggs, PE, CFM2-14-19
DateClay Riggs
Assistant Director of Public WorksSteve Summerkamp2-14-19
DateRed River Construction
Contractor

Approved

Jimmy Stathatos

2/25/2019 | 8:27 AM CST

Jimmy Stathatos
Town Manager

Date



TOWN COUNCIL AGENDA ITEM NO. 15

CONSENT ITEM

DATE: September 16, 2019

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with ECS Southwest, LLP., to provide construction materials engineering and testing, for the Kirkpatrick Lane 12-Inch Water Line Phase II project, in the amount of \$47,170.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Professional Service Agreement includes construction materials engineering and testing for the Kirkpatrick Lane 12-Inch Water Line Phase II project. Construction materials engineering and testing provide Town staff the ability to verify materials are installed to the required standards and specifications. This verification is necessary to ensure a quality project.

On August 20, 2019, bids were received and opened for the Kirkpatrick Lane 12-Inch Water Line Phase II project (Bid #2019-163-B). A&M Construction and Utilities, Inc. submitted the lowest qualified bid of the five (5) responding bidders at a base bid plus add alternate 1 of \$867,140.80. The construction award is scheduled for the September 16, 2019 Town Council meeting.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: \$47,170.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$47,170.00	630-960-96020 Utility Debt

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

Total project cost is \$1,400,000. Funding sources are:

- Impact Fees \$ 665,000
- Other \$ 35,000
- Utility Debt \$ 700,000

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

This contract is entered into on this 16th day of September, 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 4050 Sandshell Drive, Fort Worth, Texas 76137

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the KIRKPATRICK LANE 12-INCH WATER LINE PHASE II 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 KIRKPATRICK LANE 12-INCH WATER LINE PHASE II 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 Forty-Seven Thousand One Hundred Seventy and No/100 Dollars (\$47,170.00). 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:

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX.

Right to Inspect Records

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

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:

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

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

Vince Elizarde, P.E.
ECS Southwest, LLP
4050 Sandshell Drive
Fort Worth, TX 76137
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.

[The remainder of this page left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

By: Siddharth Neekhara
 Name: Siddharth Neekhara, P.E.
 Title: Vice President
 Date Signed: 8/13/2019

State of Texas §

County of Dallas §

This instrument was acknowledged before me on the 13th day of August, 2019, by Sidd Neekhara in his capacity as V President of ECS Southwest LLP, a _____ Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 13th DAY OF August, 2019.

Marcellina Okorie
 Notary Public, State of Texas

My Commission Expires:

08/30/2020



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 for this project. 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. Perform in-place moisture/density tests on placed and compacted backfill soils and prepared subgrades.

Cast-In-Place Concrete

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

1. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
2. 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.*

Project Administration, Clerical, & Dispatching

Project Administrators / Clerical Staff will work on the projects as follows:

1. Perform Field Services Dispatching.
2. Process Field Reports and Laboratory Test Result Reports.
3. Perform additional administrative and clerical duties to aid in project execution.

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 periodic 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 project meetings or 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:

- Erosion Control Status Observation
- Ground Penetrating Radar (GPR)
- Concrete Coring and Core Sample Testing

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

Description of Services	Detail	Estimate	Quantity	Unit	Rate	Total
Earthwork						
Engineering Technician	<i>Sample Pickup</i>	<i>4 Events</i>	14	hours	\$ 55.00	\$ 770.00
Engineering Technician	<i>Water Line</i>	<i>22 Events</i>	74	hours	\$ 55.00	\$ 4,070.00
Engineering Technician	<i>Sidewalks / Trails</i>	<i>10 Events</i>	36	hours	\$ 55.00	\$ 1,980.00
Engineering Technician	<i>Pavement</i>	<i>8 Events</i>	30	hours	\$ 55.00	\$ 1,650.00
Nuclear Gauge Fee			40	events	\$ 75.00	\$ 3,000.00
St. Proctor (Moist./Dens. Rel.)	<i>Standard Proctor</i>		8	each	\$ 140.00	\$ 1,120.00
Atterberg Limits Tests	<i>Plasticity Index</i>		8	each	\$ 80.00	\$ 640.00
Washed Sieve (- #200 Sieve)	<i>Percent Fines</i>		8	each	\$ 60.00	\$ 480.00
Vehicle Charge			44	trips	\$ 35.00	\$ 1,540.00
Subtotal:						\$ 15,250.00
Concrete						
Engineering Technician	<i>Sidewalks / Trails</i>	<i>14 Events</i>	77	hours	\$ 55.00	\$ 4,235.00
Engineering Technician	<i>Pavement</i>	<i>10 Events</i>	55	hours	\$ 55.00	\$ 3,025.00
Engineering Technician	<i>Light Pole(s)</i>	<i>1 Events</i>	4	hours	\$ 55.00	\$ 220.00
Engineering Technician	<i>Misc Replacement</i>	<i>3 Events</i>	16	hours	\$ 55.00	\$ 880.00
Engineering Technician	<i>Pavement Flow Fill</i>	<i>10 Events</i>	35	hours	\$ 55.00	\$ 1,925.00
Engineering Technician	<i>Pipe Bore Grout</i>	<i>14 Events</i>	77	hours	\$ 55.00	\$ 4,235.00
Conc. Cylinders (Comp. Str.)		<i>Sets of 5</i>	260	each	\$ 18.00	\$ 4,680.00
Material Sample Pickup			52	trips	\$ 55.00	\$ 2,860.00
Vehicle Charge			52	trips	\$ 35.00	\$ 1,820.00
Subtotal:						\$ 23,880.00
Project Management						
Administrator / Clerical / Dispatch			20	hours	\$ 50.00	\$ 1,000.00
Project Manager			30	hours	\$ 120.00	\$ 3,600.00
Project Principal			20	hours	\$ 165.00	\$ 3,300.00
Vehicle Charge			4	trips	\$ 35.00	\$ 140.00
Subtotal:						\$ 8,040.00
PROJECT TOTAL:						\$ 47,170.00

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. One soil sample will be collected and lab tested roughly every 500 linear feet of utility trench.
3. For all utility trench excavation in landscaped or undeveloped areas (unpaved), the upper 5 lifts of placed and compacted backfill material are expected to be tested in lengths of 200 linear feet per scheduled testing event. Continuous observation and testing of trench backfill is not expected.
4. Remove and replace concrete pavement areas will not require subgrade stabilization (lime/cement). Flowable fill will be placed below replacement pavement. Concrete will generally be placed in one event (less than 100 cubic yards) per individual area.
5. Grout for pipe tunnel annular space infill will be placed in two events per location. Each location will be bored independent of other locations on separate dates.
6. Unless requested otherwise by the client, concrete sample sets 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).
7. Overtime is not expected due to the project location and construction work hours constraints.
8. For budgeting purposes, all onsite services (example: earthwork and concrete) are estimated to be performed on separate trips and independent of each other.
9. Reinforcing steel will be observed by the Town of Flower Mound Inspectors.

STANDARD FEE SCHEDULE

Description of Services	Notes	Unit Rate
Field Services		
• Engineering Technician		\$ 55.00 / hour
• Senior Engineering Tech.		\$ 60.00 / hour
• Specialty Engineering Tech.		\$ 75.00 / hour
• Structural Steel Tech.		\$ 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 / Dispatch		\$ 50.00 / hour
• Project Manager		\$ 120.00 / hour
• Project Principal		\$ 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
• Conc. Cylinders (Comp. Str.)	ASTM C-39	\$ 18.00 / each
• Conc. 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.



TOWN COUNCIL AGENDA ITEM NO.16

CONSENT ITEM

DATE: September 16, 2019

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Construction Agreement with A&M Construction and Utilities, Inc., for the Kirkpatrick Lane 12-Inch Water Line Phase II project, in the amount of \$867,140.80; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On August 20, 2019, bids were received and opened (Bid # 2019-163-B) for the Kirkpatrick Lane 12-Inch Water Line Phase II project. A&M Construction and Utilities, Inc., submitted the lowest qualified bid of the five (5) responding bidders at a base bid of \$809,240.80 with an add alternate item #1 of \$57,900.00 for a total base bid plus add alternate #1 of \$867,140.80.

The Kirkpatrick Lane 12-Inch Water Line Phase II project is currently identified as Project 9 under the Flower Mound 5-Year Water CIP Project List included in the May 2015 Water Master Plan. The Kirkpatrick Lane 12-Inch Water Line Phase II project will close existing gaps in the Town's water system along Kirkpatrick Lane from north of FM1171 to Valley Ridge Blvd. During design a discrepancy in the Town's Water Plan was found and an additional segment of water main, extending from Lonebuck Drive to Stone Bend Lane along Valley Ridge Blvd., was required. Closing the existing gaps in the Town's water system will provide for overall water distribution improvements, including transmission, quality, capacity, and access.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$867,140.80

Proposed Expenditure/(Revenue):	Account Number(s):
\$551,420.68	601-900-96020 Impact Fees
\$315,720.12	630-960-96020 Utility Debt

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

Total project cost is \$1,400,000. Funding sources are:

- Impact Fees \$ 665,000
- Other \$ 35,000
- Utility Debt \$ 700,000

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 this Construction Agreement.

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: 2019-163-B - Kirkpatrick Lane 12-Inch Water Line Phase II

Bid Opening: 8/20/2019 at 11:00 AM

Company	Total Base Bid	Total Base Bid w/Alternate Bid 1
A & M Construction and Utilities, Inc	\$ 809,240.80	\$ 867,140.80
Gomez Brothers Construction, Inc	\$ 922,910.00	\$ 1,000,110.00
Western Municipal Construction of Texas, LLC	\$ 967,350.00	\$ 1,049,375.00
Dowager Utility Construction, Ltd	\$ 1,290,668.00	\$ 1,418,048.00
Utility Contractors of America, Inc	\$ 1,347,460.00	\$ 1,492,210.00

****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: August 20, 2019

TOWN OF FLOWER MOUND**Kirkpatrick Lane 12-Inch Water Line Phase II****Bid # 2019-163-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 16th day of September, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and A&M Construction and Utilities, 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:

Kirkpatrick Lane 12-Inch Water Line Phase II,
Bid # 2019-163-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 **Eight Hundred Sixty-Seven Thousand One Hundred Forty Dollars and Eighty cents (\$ 867,140.80)** 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 fifty (150) calendar days, and final completion of one hundred eighty (180) 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. 17

CONSENT ITEM

DATE: September 16, 2019

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with ECS Southwest, LLP, to provide construction materials engineering and testing, for the FM2499 12-Inch Water Line Phase I project, in the amount of \$18,320.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Professional Service Agreement includes construction materials engineering and testing for the FM2499 12-Inch Water Line Phase I project. Construction materials engineering and testing provides Town staff the ability to verify materials are installed to the required standards and specifications. This verification is necessary to ensure a quality project.

On August 7, 2019, bids were received and opened for the FM2499 12-Inch Water Line Phase I project (Bid #2019-144-B). GRod Construction LLC submitted the lowest qualified bid of the six (6) responding bidders at a base bid of \$859,092.30. The construction award is scheduled for the September 16, 2019 Town Council meeting.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: \$18,320.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$18,320.00	308-103-98838 TIRZ

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

Total project cost is \$3,200,000. Funding sources are:

- Impact Fees \$ 600,000
- TIRZ \$ 1,700,000
- Utility Debt \$ 900,000

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

This contract is entered into on this 16th day of September, 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 4050 Sandshell Drive, Fort Worth, Texas 76137

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the FM2499 12-INCH WATER LINE PHASE I 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 FM2499 12-INCH WATER LINE PHASE I project 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 Eighteen Thousand Three Hundred Twenty and No/100 Dollars (\$18,320.00). 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:

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX. **Right to Inspect Records**

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

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:

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

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

Vince Elizarde, P.E.
ECS Southwest, LLP
4050 Sandshell Drive
Fort Worth, TX 76137
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.

[The remainder of this page left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

By: Siddharth
Name: Siddharth Neekhra, P.E.
Title: Vice President
Date Signed: 8/9/2019

Rev061818

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 for this project. 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. Perform in-place moisture/density tests on placed and compacted backfill soils and prepared subgrades.

Cast-In-Place Concrete

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

1. Perform concrete field tests and associated measurements including: slump, air content, unit weight, and ambient air & concrete temperature. Sample placed concrete materials.
2. 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.*

Asphalt

A Senior Engineering Technician will perform the following services pertaining to asphalt:

1. Observe general asphalt installation methods (roll patterns, etc) and placement thickness.
2. Perform asphalt field tests and associated measurements (as applicable) including: ambient air & material temperature and in-place density.

Project Administration, Clerical, & Dispatching

Project Administrators / Clerical Staff will work on the projects as follows:

1. Perform Field Services Dispatching.
2. Process Field Reports and Laboratory Test Result Reports.
3. Perform additional administrative and clerical duties to aid in project execution.

Project Management

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

4. Coordinate with Client's field and office staff.
5. Attend the Pre-Construction meeting (if held) and periodic site meetings (as requested).
6. Coordinate field and lab services with the project general contractor and dispatch our field staff as scheduled.
7. Process, finalize, and distribute all field and laboratory reports.
8. 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 project meetings or 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:

- Erosion Control Status Observation
- Ground Penetrating Radar (GPR)
- Concrete Coring and Core Sample Testing

APPENDIX B: ESTIMATED FEES & STANDARD FEE SCHEDULE

ESTIMATED FEES

Description of Services	Detail	Estimate	Quantity	Unit	Rate	Total
Earthwork						
Engineering Technician	<i>Sample Pickup</i>	<i>3 Events</i>	10	hours	\$ 55.00	\$ 550.00
Engineering Technician	<i>W Line 1</i>	<i>2 Events</i>	7	hours	\$ 55.00	\$ 385.00
Engineering Technician	<i>W Line 2</i>	<i>15 Events</i>	52	hours	\$ 55.00	\$ 2,860.00
Engineering Technician	<i>W Line 3</i>	<i>5 Events</i>	16	hours	\$ 55.00	\$ 880.00
Nuclear Gauge Fee			22	events	\$ 75.00	\$ 1,650.00
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			25	trips	\$ 35.00	\$ 875.00
Subtotal:						\$ 8,880.00
Concrete						
Engineering Technician	<i>W Line 1</i>	<i>1 Events</i>	8	hours	\$ 55.00	\$ 440.00
Engineering Technician	<i>W Line 2</i>	<i>0 Events</i>	0	hours	\$ 55.00	\$ -
Engineering Technician	<i>W Line 3</i>	<i>0 Events</i>	0	hours	\$ 55.00	\$ -
Engineering Technician	<i>Misc Replacement</i>	<i>2 Events</i>	9	hours	\$ 55.00	\$ 495.00
Engineering Technician	<i>Trench CLSM Bfill</i>	<i>6 Events</i>	27	hours	\$ 55.00	\$ 1,485.00
Engineering Technician	<i>Pipe Bore Flow Fill</i>	<i>2 Events</i>	9	hours	\$ 55.00	\$ 495.00
Conc. Cylinders (Comp. Str.)		<i>Sets of 5</i>	55	each	\$ 18.00	\$ 990.00
Material Sample Pickup			11	trips	\$ 55.00	\$ 605.00
Vehicle Charge			11	trips	\$ 35.00	\$ 385.00
Subtotal:						\$ 4,895.00
Asphalt						
Senior Engineering Tech.	<i>Pavement SG</i>	<i>1 Events</i>	8	hours	\$ 60.00	\$ 480.00
Nuclear Gauge Fee			1	events	\$ 75.00	\$ 75.00
Vehicle Charge			1	trips	\$ 35.00	\$ 35.00
Subtotal:						\$ 590.00
Project Management						
Administrator / Clerical / Dispatch			4	hours	\$ 50.00	\$ 200.00
Project Manager			15	hours	\$ 120.00	\$ 1,800.00
Project Principal			11	hours	\$ 165.00	\$ 1,815.00
Vehicle Charge			4	trips	\$ 35.00	\$ 140.00
Subtotal:						\$ 3,955.00
PROJECT TOTAL:						\$ 18,320.00

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. One soil sample will be collected and lab tested roughly every 500 linear feet of utility trench.
3. For all utility trench excavation in landscaped or undeveloped areas (unpaved), the upper 5 lifts of placed and compacted backfill material are expected to be tested in lengths of 500 linear feet per scheduled testing event.
4. Remove and replace concrete pavement areas will not require subgrade stabilization (lime/cement) and the concrete will generally be placed in one event (less than 100 cubic yards) per individual area.
5. Flowable fill / controlled low strength material (CLSM) for pipe tunnel annular space infill will be placed in two events per location.
6. Unless requested otherwise by the client, concrete sample sets 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).
7. Overtime is not expected due to the project location and construction work hours constraints.
8. For budgeting purposes, all onsite services (example: earthwork and concrete) are estimated to be performed on separate trips and independent of each other.
9. Reinforcing steel will be observed by the Town of Flower Mound Inspectors.

STANDARD FEE SCHEDULE

Description of Services	Notes	Unit Rate
Field Services		
• Engineering Technician		\$ 55.00 / hour
• Senior Engineering Tech.		\$ 60.00 / hour
• Specialty Engineering Tech.		\$ 75.00 / hour
• Structural Steel Tech.		\$ 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 / Dispatch		\$ 50.00 / hour
• Project Manager		\$ 120.00 / hour
• Project Principal		\$ 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
• Conc. Cylinders (Comp. Str.)	ASTM C-39	\$ 18.00 / each
• Conc. 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.



TOWN COUNCIL AGENDA ITEM NO. 18

CONSENT ITEM

DATE: September 16, 2019

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Construction Agreement with GRod Construction, LLC., for the FM2499 12-Inch Water Line Phase I project, in the amount of \$859,092.30; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On August 7, 2019, bids were received and opened (Bid # 2019-144-B) for the FM2499 12-Inch Water Line Phase I project. GRod Construction, LLC., submitted the lowest qualified bid of the six (6) responding bidders at a base bid of \$859,092.30.

The FM2499 12-Inch Water Line Phase I project is currently identified as Project 8 under the Flower Mound 5-Year Water CIP Project List included in the May 2015 Water Master Plan. The FM2499 12-Inch Water Line Phase I project will close existing gaps in the Town's water system along the east and west sides of FM2499 from north of Sagebrush Drive to south of Dixon Lane. Closing the existing gaps in the Town's water system will provide for overall water distribution improvements, including transmission, quality, capacity, and access.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$859,092.30

Proposed Expenditure/(Revenue):	Account Number(s):
\$859,092.30	308-103-98838 TIRZ

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

Total project cost is \$3,200,000. Funding sources are:

- Impact Fees \$ 600,000
- TIRZ \$ 1,700,000
- Utility Debt \$ 900,000

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 this Construction Agreement.

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: 2019-144-B - FM2499 12-Inch Water Line Phase I (Dixon to South of FM 1171)

Bid Opening: 8/7/2019 at 11:00 AM

Company	Total Bid
GRod Construction LLC	\$ 859,092.30
MacMa HDD LLC	\$ 993,083.06
WhiteWater Construction, Inc	\$ 1,022,876.00
Western Municipal Construction of Texas, LLC	\$ 1,064,000.00
Excel Aircraft, LLC dba Excel Trenching	\$ 1,364,279.00
Atkins Brothers Equipment Company, Inc	\$ 1,818,018.00

******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: August 7, 2019

TOWN OF FLOWER MOUND
FM 2499 12-INCH WATER LINE PHASE I
(DIXON TO SOUTH OF FM 1171)

Bid # 2019-144B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 16th day of September, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and GRod Construction, a Limited Liability Company, 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 2499 12-INCH WATER LINE PHASE I
(DIXON TO SOUTH OF FM 1171)
Bid # 2019-144-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 **Eight Hundred Fifty-Nine Thousand Ninety-Two Dollars and Thirty cents (\$ 859,092.30)** 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 Fifty and Zero/One Hundredths Dollars (\$250.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars (\$250.00) 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. 19

CONSENT ITEM

DATE: September 16, 2019

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with Braun Intertec Corporation, to provide construction materials engineering and testing, for the Morriss Road Improvements (at Valley Ridge Blvd Intersection) and Windsor Drive Roundabout Connection projects, in the amount of \$30,182.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Professional Service Agreement includes construction materials engineering and testing for the Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive Roundabout Connection projects. Construction materials engineering and testing provide Town staff the ability to verify materials are installed to the required standards and specifications. This verification is necessary to ensure a quality project.

On August 14, 2019, bids were received and opened for the Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive Roundabout Connection projects (Bid #2019-132-B). 2L Construction, LLC submitted the lowest qualified bid of the four (4) responding bidders at a base bid of \$613,413.50. The construction award is scheduled for the September 16, 2019 Town Council meeting.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: \$30,182.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$28,458.00	505-220-77101 Morriss Rd
\$1,724.00	505-220-70201 Windsor

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

Valley Ridge @ Morris - Total project cost is \$1,410,000 (included in Morris Road Improvement Project). Funding sources are:

- Impact Fees \$ 250,000
- Grants/Interlocals \$ 399,844
- Other \$ 156
- General Fund Decision Pkg \$ 635,000
- Tax Debt \$ 125,000

Windsor Roundabout - Total project cost is \$325,000. Funding sources are:

- Other \$ 125,000
- General Fund Decision Pkg \$ 200,000

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
BRAUN INTERTEC CORPORATION**

This contract is entered into on this 16th day of September, 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 **BRAUN INTERTEC CORPORATION**, (“hereinafter referred to as “CONSULTANT”) whose address is 2436 E. Randol Mill Road, Arlington, Texas 76011

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the VALLEY RIDGE BLVD & MORRISS ROAD INTERSECTION IMPROVEMENTS AND WINDSOR DRIVE ROUNDABOUT CONNECTION; 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 VALLEY RIDGE BLVD & MORRISS ROAD INTERSECTION IMPROVEMENTS

AND WINDSOR DRIVE ROUNDABOUT CONNECTION 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 Thirty Thousand One Hundred Eighty Two and No/100 Dollars (\$30,182.00). 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:

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX.

Right to Inspect Records

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

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:

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

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

Mark Kalahar
Braun Intertec Corporation
2436 E. Randol Mill Rd.
Arlington, TX 76011
817-786-5999 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:
BRAUN INTERTEC CORPORATION**

By: Mark A. Kalahar
Name: ~~Kim Macy~~ Mark A. Kalahar
Title: Principal
Date Signed: 8/19/19

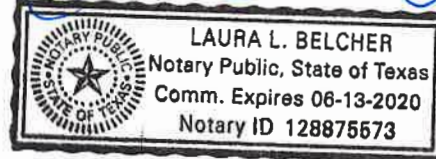
State of Texas §
County of Tarrant §

This instrument was acknowledged before me on the 19th day of August, 2019, by Mark A. Kalahar in his capacity as Principal of Braun Intertec Corp., a Private 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 Braun Intertec, Principal

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 19th DAY OF August, 2019.

Laura L. Belcher
Notary Public, State of Texas

My Commission Expires:
June 13, 2020





Braun Intertec Corporation
2436 E. Randol Mill Rd.
Arlington, TX 76011

Phone: 817.786.5999
Web: braunintertec.com

August 9 2019
Mr. Blake Hummel P.E. C.F.M.
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

Proposal QTB105592

Re: Proposal for Special Inspection and Testing Services
Valley Ridge Blvd. and Morriss Rd. Turn Lane and Windsor Roundabout Connection Flower
Mound, Texas

Dear Mr. Hummel:

Braun Intertec Corporation is pleased to submit this proposal to provide construction materials testing services for the proposed roadways and utilities in Flower Mound, Texas.

Our Understanding of Project

We understand this project will include the construction of turn lanes and a roundabout connection consisting of 8 inches of Portland cement concrete supported by 10 inches of lime or cement treated subgrade which was designed by others.

Available Information

This proposal was prepared using the information provided by the client.

Civil Plans prepared by Pacheco Koch dated 07/10/19

Project Specifications prepared by Pacheco Koch dated 07/10/19

Project Approach and Staff Qualifications

Inspections and Reporting

Our construction materials testing technicians will summarize the nature, extent and results of activities performed at the time they are performed on Daily Report forms submitted electronically to the owner and general contractor's on-site personnel for review and records. These records can also be transmitted electronically to others who may want to review these documents on an agreed upon schedule. When unresolved discrepancies are noted, we will document the issues and work with the design and construction team to bring them to resolution.

Communications

Braun Intertec technicians will communicate the results of their observations and testing to the contractor and our project manager each day observations and testing are performed. We strive to have our technicians develop a working relationship with the project's engineers-of-record. We may attempt contact with the engineering consultant periodically to review the work being performed and to request clarifications and direction on any item that may require it.

Construction Materials Testing

Experience and certification information is available upon request once we are provided with schedule information. Concrete technicians assigned to the project are ACI Concrete Field Testing Technician – Grade I certified to conduct the required concrete testing. Soil technicians are certified to use a nuclear gauge for soil density testing, so test results can be determined on site and evaluated once the required laboratory testing is completed. Field test results will be verbally reported daily to the general contractor on site, with written field and laboratory reports distributed shortly after.

Scope of Services

Services are performed either on a full-time or periodic basis, depending on the construction schedule and when they are requested by the general contractor. After reviewing available information to determine compliance with project plans and/or specifications, other design or construction documents, and applicable ASTM and other industry standards, our scope of services for the project will be limited to the tasks defined below.

Soil Related Services (Pavement and Utilities)

- Perform laboratory Proctor tests to determine the maximum Proctor dry densities and optimum moisture contents of prospective fill materials.
- Perform lime or cement series determination tests of soil to verify the minimum percent of lime application, if needed according to the final design documents.
- Perform gradation on lime or cement stabilized soils.
- Perform depth checks on stabilized subgrade.
- Test compacted stabilized soil placed for pavements and utilities in areas for which compaction specifications have been provided, to determine if the relative compaction was achieved.
- Provide proof test-roll observations of the pavement subgrade soils to determine if the materials tested are capable of supporting concrete pavement.

Concrete Paving Services

- Observe the concrete placement and test sample preparation.
- Sample and test the plastic concrete for slump, unit weight, air content, and temperature.
- Prepare test cylinders for laboratory compressive strength testing.

Project Communication and Reporting Services

- Provide consulting services, review test results and observations reports, and prepare required final reports.

- Management, including scheduling of our field personnel and communication with the contractor, owner, and design team.
- Transmit results to the project team on a weekly basis to the contractor, owner, and design team.

Basis of Scope of Work

The costs associated with the proposed scope of services were estimated using the following assumptions. If the construction schedule is modified or the contractor completes the various phases of the project at different frequencies or durations than shown in this proposal, we may need to adjust the overall cost accordingly. The scope of work and number of trips required to perform these services are as shown in the attached table. Notable assumptions in developing our estimate include:

Cost

We will furnish the services described in this proposal for an estimated fee of **\$30,182.00**. A tabulation showing hourly and unit rates associated with our proposed scope of services is attached. The actual cost of our services will be based on the actual units or hours expended to meet the requirements of the project documents.

This cost estimate was developed with the understanding that the scope of services defined herein will be required and requested during our normal work hours of 7:00 a.m. to 5:00 p.m., Monday through Friday. Services that we are asked to provide to meet the project requirements or the contractor's construction schedule outside our normal work hours will be invoiced using an overtime rate factor. The factor for services provided outside our normal work hours or on Saturday will be 1.5 times the normal hourly rate for the service provided. The factor for services provided on Sunday or legal holidays will be 1.5 times the normal hourly rate for the service provided. You will be billed only for services provided on a time and material basis. Each trip to the project will have at least a 4 hour minimum charge.

Because our services are directly controlled by the schedule and performance of others, the actual cost may vary from our estimate. Invoices for our services will be based on the actual number of hours provided for the project and the units tested. It is difficult to project all of the services and the quantity of services that may be required for any project. If services are required that are not discussed above, we will provide them at the rates shown in the attached table or, if not shown, at our current Schedule of Charges.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. After reviewing this proposal, please sign and return one copy to our office as notification of acceptance and authorization to proceed. If anything in this proposal is not consistent with your requirements, please let us know immediately. Braun Intertec will not release any written reports until we have received a signed agreement. Also, ordering services from Braun Intertec constitutes acceptance of the terms of this proposal (including the attached General Conditions). The proposed fee is based on the scope of services described and the assumption that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

Town of Flower Mound

Proposal QTB105592

Date 08/09/19

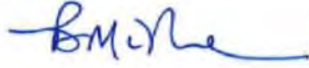
Page 4

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact us.

Sincerely,

BRAUN INTERTEC CORPORATION

TBPE Firm Registration No. F-12228



S. Brent McNeme, P.E.

Associate Principal | Business Unit Manager



Mark A. Kalahar

Principal | Operations Manager

Attachments:

Cost Estimate

General Conditions (1/1/18)

The proposal is accepted. We will reimburse you in accordance with this agreement, and you are authorized to proceed:

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date



The Science You Build On.

Project Proposal

QTB105592

Valley Ridge, Morriss Rd., & Windsor Roundabout

Client:

Town of Flower Mound

2121 Cross Timbers Road
Flower Mound, TX 75028
(972) 874-6064
accountspayable@flower-mound.com

Work Site Address:

Flower Mound, TX

Service Description:

Construction Materials Testing

	Description	Quantity	Units	Unit Price	Extension
Phase 1		Soil			
Activity 1.1	Soil Observations				\$16,795.00
206	Excavation Observations	270.00	Hour	42.00	\$11,340.00
	<i>Work Activity Detail</i>	<i>Qty</i>	<i>Units</i>	<i>Hrs/Unit</i>	<i>Extension</i>
	Moisture Density and Compaction Testing - Paving	20.00	Each	6.00	120.00
	Mositure Density and Compaction Testing - Utilities	12.00	each	6.00	72.00
	Lime Stabilized Sub-Grade Depth Checks	13.00	each	6.00	78.00
1861	CMT Trip Charge	33.00	Each	35.00	\$1,155.00
1318	Moisture Density Relationship (Standard), per sample	4.00	Each	150.00	\$600.00
5252	Lime Stabilized Gradations	30.00	Each	20.00	\$600.00
5253	Lime Stabilized Depth Checks	30.00	Each	20.00	\$600.00
1156	Atterberg Limits LL and PL, Single-Point, per sample	4.00	Each	65.00	\$260.00
1162	Sieve Analysis with 200 wash, per sample	4.00	Each	60.00	\$240.00
A2250C	Nuclear Moisture/Density Gauge, per day	20.00	Each	55.00	\$1,100.00
5253	Lime series	3.00	Each	300.00	\$900.00
Phase 1 Total:					\$16,795.00
Phase 2		Concrete Testing			
Activity 2.1	Concrete Observation				\$7,532.00
260	Concrete Observations - Paving	100.00	Hour	42.00	\$4,200.00
1861	CMT Trip Charge	34.00	Each	35.00	\$1,190.00
278	Concrete Cylinder Pick up	51.00	Hour	42.00	\$2,142.00
Activity 2.2	Concrete Lab Tests				\$3,280.00
1364	Compressive strength of concrete cylinders (ASTM C 39),per specimen	205.00	Each	16.00	\$3,280.00
Phase 2 Total:					\$10,812.00
Phase 3		Project Management, Engineering Review, and Oversight			
Activity 3.1	Project Management, Engineering Review, and Oversight				\$2,575.00
238	Project Assistant	5.00	Hour	35.00	\$175.00
226	Project Manager	10.00	Hour	90.00	\$900.00
126	Project Engineer	10.00	Hour	150.00	\$1,500.00
Phase 3 Total:					\$2,575.00
Proposal Total:					\$30,182.00



TOWN COUNCIL AGENDA ITEM NO. 20

CONSENT ITEM

DATE: September 16, 2019

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Construction Agreement with 2L Construction, LLC., for the Morriss Road Improvements (at Valley Ridge Blvd Intersection) and Windsor Drive Roundabout Connection projects, in the amount of \$613,413.50; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION:

On August 14, 2019, bids were received and opened (Bid # 2019-132-B) for the Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive Roundabout Connection projects. 2L Construction, LLC submitted the lowest qualified bid of the four (4) responding bidders at a total base bid of \$613,413.50. Of the total base bid \$325,044.50 was submitted for Valley Ridge Blvd & Morriss Road Intersection Improvements and \$288,369.00 was submitted for the Windsor Drive Roundabout Connection.

The Valley Ridge Blvd & Morriss Road Intersection Improvements project is currently identified as project I-1 under the 2015 Roadway Impact Fee Update. The Valley Ridge Blvd & Morriss Road Intersection Improvements project will extend the length of the existing southbound left turn lane on Morriss Road and add an eastbound right on Valley Ridge Blvd and restripe the intersection to create a left, thru, and thru-right lanes traveling eastbound. These two thru lanes will now align with Dixon Lane on the west side of the intersection. These improvements will allow for better traffic flow and vehicular storage at the Valley Ridge Blvd and Morriss Road intersection.

The Windsor Drive Roundabout Connection project was adopted into the budget and approved on September 17, 2018. The Windsor Drive Roundabout Connection project will extend Windsor Drive to the existing roundabout at West Windsor Drive just south of Pinon Street. The connection will offer another route in/out of the Westchester subdivisions that have been exclusive to FM1171 & FM2499.

BOARD REVIEW/CITIZEN FEEDBACK:

Neighborhood Meeting (3/28/19) – Held at the Flower Mound Library and presentation given to residents of the Westchester subdivisions. Resident concerns were documented. Residents were informed of the ability to participate in Town Council public participation. Town staff begun working with a consultant on a traffic study.

Transportation Commission (5/16/19) – Presentation given to Transportation Commission that outlined the scope of the project, traffic study results and summary of resident concerns, Windsor Drive Roundabout Connection project was recommended for denial of continuation by a vote of 4 to 2. June 17, 2019 Town Council agenda date set for final determination.

Town Council (6/17/19) – Presentation given to Town Council that outlined the scope of the project, traffic study results and summary of resident concerns, Windsor Drive Roundabout Connection project was approved for continuation by a vote of 4 to 1.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$613,413.50

Proposed Expenditure/(Revenue):	Account Number(s):
\$48,217.33	505-220-77101 Morriss
\$146,827.17	550-117-77101 Morriss
\$130,000.00	531-220-77101 Morriss
\$163,369.00	505-220-70201 Windsor
\$125,000.00	531-220-70201 Windsor

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

Valley Ridge @ Morris - Total project cost is \$1,410,000 (included in Morris Road Improvement Project). Funding sources are:

- Impact Fees \$ 250,000
- Grants/Interlocals \$ 399,844
- Other \$ 156
- General Fund Decision Pkg \$ 635,000
- Tax Debt \$ 125,000

Windsor Roundabout - Total project cost is \$325,000. Funding sources are:

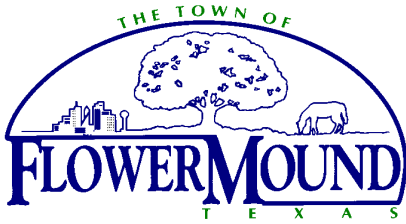
- Other \$ 125,000
- General Fund Decision Pkg \$ 200,000

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 this Construction Agreement.

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



Attachment 1
Town of Flower Mound
Bid Tabulation

Bid No: 2019-132-B - Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive Roundabout Connection

Bid Opening: 8/14/2019 at 11:00 AM

Company	Valley Ridge Blvd & Morris Road Intersection Improvements	Windsor Drive Roundabout Connection	Total Base Bid
2LConstruction	\$ 325,044.50	\$ 288,369.00	\$ 613,413.50
XIT Paving & Construction, Inc	\$ 341,231.60	\$ 385,085.20	\$ 726,316.80
Rebcon, Inc	\$ 413,249.00	\$ 341,926.00	\$ 755,175.00
Ed Bell Construction Company	\$ 417,685.50	\$ 342,193.00	\$ 759,878.50

****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: August 14, 2019

TOWN OF FLOWER MOUND**Valley Ridge Blvd & Morriss Road Intersection Improvements and Windsor Drive
Roundabout Connection****Bid # 2019-132-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 16th day of September, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and 2L Construction, a Limited Liability Company, 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:

**VALLEY RIDGE BLVD & MORRISS ROAD INTERSECTION IMPROVEMENTS
AND WINDSOR DRIVE ROUNDABOUT CONNECTION,
Bid # 2019-132-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 **Six Hundred Thirteen Thousand Four Hundred Thirteen Dollars and Fifty cents (\$ 613,413.50)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of ninety (90) calendar days, and final completion of one hundred ten (110) 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 _____, 2019.

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. 21

REGULAR ITEM

DATE: September 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: **Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and making appropriations for each fund and department; ratify property tax revenue increase reflected in the budget.**

BACKGROUND INFORMATION: The FY 2019-2020 Proposed Budget is hereby presented for adoption in fund total. Section 9.08 of the Town's Charter states that, "The budget shall be adopted by the favorable vote of three (3) of the members of the Town Council."

The Flower Mound Town Council and staff held the FY 2019-2020 Budget Work Session on August 15, 2019, in the Council Chambers. A public hearing for the Proposed Budget was also held on August 19, 2019. The proposed budget for FY 2019-2020 includes a five-year Capital Improvement Program (CIP).

The proposed budget for the General Fund includes \$70,569,203 in revenues and \$74,314,282 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages. Agencies that provide community support for the Town of Flower Mound, and meet certain criteria are eligible to request community support funding. The proposed budget includes \$205,990 for community support funding. Six organizations that provide a quantifiable benefit to the Town are incorporated into Town department budgets for \$96,990. Cultural Arts organizations are funded at \$41,000 and \$68,000 of community support funding is for Social Services/Volunteerism organizations.

The proposed budget for the Utility Fund includes \$48,215,308 in revenues, and \$48,217,825 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages.

The proposed budget for the Stormwater Utility Fund includes \$1,743,000 in revenues, and \$1,922,570 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages.

The Town utilizes three Internal Service Funds. The three funds are the Health Insurance/Flex Fund, the Vehicle and Equipment Replacement Fund and the Technology Replacement Fund. The Health Insurance/Flex Fund is supported by internal charges and employee contributions. The proposed budget for the Health Insurance/Flex Fund includes \$10,845,000 in revenues, and \$10,845,000 in expenditures. The Vehicle and Equipment Replacement Fund and the Technology Replacement Fund are supported by internal transfers. The Vehicle and Equipment Replacement Fund includes \$3,759,600 in revenues, and \$1,500,000 in expenditures. The Technology Replacement Fund includes \$493,712 in revenues, and \$292,780 in expenditures.

The first year of the five-year General Government Capital Improvement Program (CIP) addresses needs pertaining to streets, signals, facilities and parks, and totals \$20,197,000. The largest portion of the CIP for FY 2019-2020 is dedicated to street and signal projects for \$12,690,000, \$1,017,000 for facilities and \$6,490,000 for park projects. No new debt will be issued for these projects. These projects will be supported by dedicated sales tax, park development funds, grants and interlocal agreements, impact fees, TIRZ revenue and cash transfers from the General Fund.

The five-year CIP in the Utility Fund is \$14,383,000 for FY 2019-2020, which includes water and wastewater lines and stormwater projects. These projects will be supported by \$10,110,000 in additional debt.

A complete listing of Funds approved is included in the Fiscal Impact section.

Since the budget will require raising more revenue from property taxes than in the previous year, Section 102.007(c), Local Government Code, requires a separate vote of the governing body (in addition to and separate from the vote to adopt the budget) to ratify the property tax revenue increase reflected in the budget. This separate motion is set out below under the recommendation.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure:

General Fund	\$ 74,314,282
Utility Fund	48,217,825
Stormwater Utility Fund	1,922,570
Health insurance/Flex Fund	10,845,000
Vehicle and Equipment Replacement Fund	1,500,000
Technology Replacement Fund	292,780
Library Development Fund	20,000
TIRZ Fund	10,317,997
Park Development Fund	1,244,895
Tree Preservation Fund	192,964
Public Education Government (PEG) Fund	207,246
Street Maintenance Sales Tax Fund	4,969,572
4B Parks Sales Tax Fund	3,634,819
Park & Recreation Special Activities Fund	238,700
Police Seizure Fund	2,200
IRS Equitable Sharing Fund	514,702
Justice Seizures Fund	609
Chapter 59 Seizures Fund	77,900
Animal Care Fund	31,500
CDBG-HUD Grant Fund	213,805
Neighborhood Improvement Fund	160,000
Hotel Occupancy Tax Fund	340,000
Municipal Court Security Fund	36,600
Municipal Court Technology Fund	31,655
General Debt Service Fund	11,955,950
Total Expenditures	\$ 171,283,571

Proposed Revenue:

General Fund	\$ 70,569,203
Utility Fund	48,215,308
Stormwater Utility Fund	1,743,000
Health insurance/Flex Fund	10,845,000
Vehicle and Equipment Replacement Fund	3,759,600
Technology Replacement Fund	493,712
Library Development Fund	10,250
TIRZ Fund	6,224,710
Park Development Fund	75,000
Tree Preservation Fund	20,000
Public Education Government (PEG) Fund	203,000
Street Maintenance Sales Tax Fund	3,467,000
4B Parks Sales Tax Fund	3,407,000
Park & Recreation Special Activities Fund	245,850
Police Seizure Fund	200
IRS Equitable Sharing Fund	5,000
Justice Seizures Fund	-
Chapter 59 Seizures Fund	-
Animal Care Fund	10,800
CDBG-HUD Grant Fund	213,805
Neighborhood Improvement Fund	76,800
Hotel Occupancy Tax Fund	371,000
Municipal Court Security Fund	23,920
Municipal Court Technology Fund	31,630
General Debt Service Fund	12,057,342
Total Resources	\$ 162,069,130

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

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

ATTACHMENTS:

1. Ordinance

DRAFT MOTION:

Note: Budget adoption must include two motions- the second motion is to ratify the property tax increase reflected in the budget.

1. Move to approve an ordinance adopting the budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and making appropriations for each fund and department.
2. Move to ratify the property tax revenue increase reflected in the FY 2019-2020 budget.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AND APPROVING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020, AND MAKING APPROPRIATIONS FOR EACH FUND AND DEPARTMENT; PROVIDING FOR THE LEVYING AND COLLECTION OF A SUFFICIENT TAX TO PAY THE INTEREST ON SINKING FUND AND OTHER OBLIGATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Manager has caused to be filed with the Town Secretary a budget to cover all proposed expenditures of the government of the Town for the fiscal year beginning October 1, 2019, and ending September 30, 2020; and,

WHEREAS, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and,

WHEREAS, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and,

WHEREAS, notice of public hearing on the proposed Annual Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and,

WHEREAS, one (1) such public hearing was held on August 19, 2019, prior approval of which date being hereby ratified and confirmed by the Town Council, and all those wishing to speak on the budget were heard; and,

WHEREAS, the Town Council has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached in fund total hereto is in the best interest of the Town of Flower Mound; and,

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 findings 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

The budget attached in fund total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2019, and ending September 30, 2020, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other

ORDINANCE NO. _____**PAGE 2**

expenditures as proposed in the attached budget. The budget includes a contingent appropriation in the General Fund of \$7,233,628 (i.e., 10 percent of total expenditures) to be used in the event of unforeseen items of expenditure. Such contingent appropriations shall be under the control of the Town Manager and distributed by him, after approval of the Town Council.

SECTION 3

No expenditure of the funds of the Town shall hereafter be made except in strict compliance with said budget, except that in the case of public necessity, the Town Council shall authorize amendments to said budget such emergency expenditures to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

SECTION 4

The Town Manager shall file or cause to be filed three (3) true and correct copies of said approved budget, along with this Ordinance, with the Town Secretary, who shall file or cause to be filed one (1) true and correct copy of same in the office of the County Clerk of Denton County, Texas and one (1) true and correct copy of same in the office of the County Clerk of Tarrant County, Texas.

SECTION 5

Any and all ordinances, resolutions, rules, regulations, policies, or provisions in conflict with the provisions of this Ordinance are hereby repealed and rescinded to the extent of any conflict herewith.

SECTION 6

If any section, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the Town Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 7

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Ordinance shall take effect immediately from and after its passage.

ORDINANCE NO. _____

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DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE
TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 16th
DAY OF SEPTEMBER, 2019.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. _____

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EXHIBIT A

Town of Flower Mound, Texas
FY 19-20

PROPOSED REVENUES	General Fund	General Debt Service Fund	Utility Fund	Stormwater Utility Fund	Internal Service Funds
Property Taxes	\$ 38,694,154	\$ 9,035,617	\$ -	\$ -	\$ -
Utility Franchise Fees	5,861,341	-	-	-	-
Sales Tax Collections	13,468,000	-	-	-	-
Other Taxes	242,050	-	-	-	-
Charges for Current Services	3,275,800	-	-	-	-
Licenses and Permits	2,692,275	-	-	-	-
Fines and Forfeitures	1,090,807	-	-	-	-
Investment Earnings	120,000	65,000	200,000	8,000	-
Intergovernmental Revenue	604,615	-	-	-	-
Interfund Transfer	2,608,842	2,956,725	-	-	-
Other Revenue	1,911,319	-	180,000	-	-
Water Sales	-	-	35,766,096	-	-
Sewer Charges	-	-	11,419,212	-	-
Stormwater Fees	-	-	-	1,500,000	-
Drainage Inspections	-	-	-	225,000	-
Meter and Connect Fees	-	-	200,000	-	-
Solid Waste Collection	-	-	135,000	-	-
Penalties-Utility Billing	-	-	315,000	10,000	-
Health Insurance Fund	-	-	-	-	10,845,000
Vehicle and Equipment Replacement Fund	-	-	-	-	3,759,600
Technology Replacement Fund	-	-	-	-	493,712
TOTAL REVENUE	\$ 70,569,203	\$ 12,057,342	\$ 48,215,308	\$ 1,743,000	\$ 15,098,312

PROPOSED EXPENDITURES	General Fund	General Debt Service Fund	Utility Fund	Stormwater Utility Fund	Internal Service Funds
Town Manager's Office	\$ 2,002,424	\$ -	\$ -	\$ -	\$ -
Legislative Services	510,208	-	-	-	-
Development Services	2,112,727	-	-	-	-
Parks & Recreation Services	8,457,980	-	-	-	-
Library Services	1,822,733	-	-	-	-
Police Services	15,755,574	-	-	-	-
Financial Services	3,771,329	-	1,747,642	-	-
Administrative Services	6,223,719	-	-	-	-
Fire & Emergency Services	16,497,490	-	-	-	-
Community Relations	707,671	-	-	-	-
General Fund Non-Departmental	9,238,557	-	-	-	-
Utility Fund Non-Departmental	-	-	13,558,326	-	-
Public Works	5,649,560	-	32,911,857	1,826,476	-
Environmental Services	1,564,310	-	-	96,094	-
Debt Service	-	11,955,950	-	-	-
Health Insurance Fund	-	-	-	-	10,845,000
Vehicle and Equipment Replacement Fund	-	-	-	-	1,500,000
Technology Replacement Fund	-	-	-	-	292,780
TOTAL EXPENDITURES	\$ 74,314,282	\$ 11,955,950	\$ 48,217,825	\$ 1,922,570	\$ 12,637,780
NET CHANGE	\$ (3,745,079)	\$ 101,392	\$ (2,517)	\$ (179,570)	\$ 2,460,532

2019-2020 FUND BALANCE PROJECTION	General Fund	General Debt Service Fund	Utility Fund	Stormwater Utility Fund	Internal Service Funds
Fund Balance 10/1/19	\$ 18,608,710	\$ 1,323,247	\$ 8,418,224	\$ 471,139	\$ 13,204,567
Revenue	70,569,203	12,057,342	48,215,308	1,743,000	15,098,312
Expenditure	(74,314,282)	(11,955,950)	(48,217,825)	(1,922,570)	(12,637,780)
Fund Balance 09/30/20	<u>\$ 14,863,631</u>	<u>\$ 1,424,639</u>	<u>\$ 8,415,707</u>	<u>\$ 291,569</u>	<u>\$ 15,665,099</u>

ORDINANCE NO. _____

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EXHIBIT A

Town of Flower Mound, Texas
FY 19-20

PROPOSED REVENUES	Library Development Fund	TIRZ Fund	Park Development Fund	Tree Preservation Fund	Public-Education Government (PEG) Fund	Strt Maint Sales Tax Fund
Taxes	\$ -	\$ 6,099,710	\$ -	\$ -	\$ 200,000	\$ 3,367,000
Licenses and Permits	-	-	-	-	-	-
Intergovernmental Revenue	-	-	-	-	-	-
Charges for Services	-	-	-	-	-	-
Fines and Forfeitures	-	-	-	-	-	-
Interest Earnings	250	125,000	75,000	20,000	3,000	100,000
Interfund Transfer	-	-	-	-	-	-
Other Revenue	10,000	-	-	-	-	-
TOTAL REVENUE	\$ 10,250	\$ 6,224,710	\$ 75,000	\$ 20,000	\$ 203,000	\$ 3,467,000
PROPOSED EXPENDITURES	Library Development Fund	TIRZ Fund	Park Development Fund	Tree Preservation Fund	Public-Education Government (PEG) Fund	Strt Maint Sales Tax Fund
Town Manager's Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legislative Services	-	-	-	-	-	-
Development Services	-	-	-	-	-	-
Community Services	20,000	-	1,244,895	82,499	-	-
Police Services	-	-	-	-	-	-
Financial Services	-	10,317,997	-	-	-	-
Administrative Services	-	-	-	-	207,246	-
Fire & Emergency Services	-	-	-	-	-	-
Community Relations	-	-	-	-	-	-
Public Works	-	-	-	-	-	4,969,572
Environmental Services	-	-	-	110,465	-	-
TOTAL EXPENDITURES	\$ 20,000	\$ 10,317,997	\$ 1,244,895	\$ 192,964	\$ 207,246	\$ 4,969,572
NET CHANGE	\$ (9,750)	\$ (4,093,287)	\$ (1,169,895)	\$ (172,964)	\$ (4,246)	\$ (1,502,572)
2019-2020 FUND BALANCE PROJECTION	Library Development Fund	TIRZ Fund	Park Development Fund	Tree Preservation Fund	Public-Education Government (PEG) Fund	Strt Maint Sales Tax Fund
Fund Balance 10/1/19	\$ 21,835	\$ 4,419,747	\$ 1,169,895	\$ 1,724,584	\$ 4,246	\$ 1,502,572
Revenue	10,250	6,224,710	75,000	20,000	203,000	3,467,000
Expenditure	(20,000)	(10,317,997)	(1,244,895)	(192,964)	(207,246)	(4,969,572)
Fund Balance 09/30/20	\$ 12,085	\$ 326,460	\$ -	\$ 1,551,620	\$ -	\$ -

ORDINANCE NO. _____

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EXHIBIT A

Town of Flower Mound, Texas
FY 19-20

PROPOSED REVENUES	4B Parks Sales Tax Fund	Park & Rec Spc Activities Fund	Police Seizure Fund	IRS Equitable Sharing Fund	Justice Seizures Fund	Chapter 59 Seizure Fund
Taxes	\$ 3,367,000	\$ -	\$ -	\$ -	\$ -	\$ -
Licenses and Permits	-	-	-	-	-	-
Intergovernmental Revenue	-	-	-	-	-	-
Charges for Services	-	244,850	-	-	-	-
Fines and Forfeitures	-	-	-	-	-	-
Interest Earnings	40,000	1,000	200	5,000	-	-
Interfund Transfer	-	-	-	-	-	-
Other Revenue	-	-	-	-	-	-
TOTAL REVENUE	\$ 3,407,000	\$ 245,850	\$ 200	\$ 5,000	\$ -	\$ -
PROPOSED EXPENDITURES	4B Parks Sales Tax Fund	Park & Rec Spc Activities Fund	Police Seizure Fund	IRS Equitable Sharing Fund	Justice Seizures Fund	Chapter 59 Seizure Fund
Town Manager's Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legislative Services	-	-	-	-	-	-
Development Services	-	-	-	-	-	-
Community Services	3,634,819	238,700	-	-	-	-
Police Services	-	-	2,200	514,702	609	77,900
Financial Services	-	-	-	-	-	-
Administrative Services	-	-	-	-	-	-
Fire & Emergency Services	-	-	-	-	-	-
Community Relations	-	-	-	-	-	-
Public Works	-	-	-	-	-	-
Environmental Services	-	-	-	-	-	-
TOTAL EXPENDITURES	\$ 3,634,819	\$ 238,700	\$ 2,200	\$ 514,702	\$ 609	\$ 77,900
NET CHANGE	\$ (227,819)	\$ 7,150	\$ (2,000)	\$ (509,702)	\$ (609)	\$ (77,900)
2019-2020 FUND BALANCE PROJECTION	4B Parks Sales Tax Fund	Park & Rec Spc Activities Fund	Police Seizure Fund	IRS Equitable Sharing Fund	Justice Seizures Fund	Chapter 59 Seizure Fund
Fund Balance 10/1/19	\$ 227,819	\$ 91,555	\$ 10,905	\$ 509,702	\$ 609	\$ 89,893
Revenue	3,407,000	245,850	200	5,000	-	-
Expenditure	(3,634,819)	(238,700)	(2,200)	(514,702)	(609)	(77,900)
Fund Balance 09/30/20	\$ -	\$ 98,705	\$ 8,905	\$ -	\$ -	\$ 11,993

ORDINANCE NO. _____

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EXHIBIT A

Town of Flower Mound, Texas
FY 19-20

PROPOSED REVENUES	Animal Care Fund	CDBG-HUD Grant Fund	Neighborhood Improvement Fund	Hotel Occupancy Tax Fund	Muni Court Security Fund	Muni Court Technology Fund
Taxes	\$ -	\$ -	\$ -	\$ 370,000	\$ -	\$ -
Licenses and Permits	-	-	-	-	-	-
Intergovernmental Revenue	-	213,805	-	-	-	-
Charges for Services	-	-	75,300	-	-	-
Fines and Forfeitures	-	-	-	-	23,120	30,830
Interest Earnings	800	-	1,500	1,000	800	800
Interfund Transfer	-	-	-	-	-	-
Other Revenue	10,000	-	-	-	-	-
TOTAL REVENUE	\$ 10,800	\$ 213,805	\$ 76,800	\$ 371,000	\$ 23,920	\$ 31,630

PROPOSED EXPENDITURES	Animal Care Fund	CDBG-HUD Grant Fund	Neighborhood Improvement Fund	Hotel Occupancy Tax Fund	Muni Court Security Fund	Muni Court Technology Fund
Town Manager's Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legislative Services	-	-	-	-	-	-
Development Services	-	-	-	-	-	-
Community Services	-	-	-	-	-	-
Police Services	31,500	-	-	-	-	-
Financial Services	-	-	-	340,000	36,600	31,655
Administrative Services	-	-	-	-	-	-
Fire & Emergency Services	-	-	-	-	-	-
Community Relations	-	213,805	-	-	-	-
Public Works	-	-	110,000	-	-	-
Environmental Services	-	-	50,000	-	-	-
TOTAL EXPENDITURES	\$ 31,500	\$ 213,805	\$ 160,000	\$ 340,000	\$ 36,600	\$ 31,655

NET CHANGE	\$ (20,700)	\$ -	\$ (83,200)	\$ 31,000	\$ (12,680)	\$ (25)
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2019-2020 FUND BALANCE PROJECTION	Animal Care Fund	CDBG-HUD Grant Fund	Neighborhood Improvement Fund	Hotel Occupancy Tax Fund	Muni Court Security Fund	Muni Court Technology Fund
Fund Balance 10/1/19	\$ 76,398	\$ 33,721	\$ 158,474	\$ 26,396	\$ 91,389	\$ 85,201
Revenue	10,800	213,805	76,800	371,000	23,920	31,630
Expenditure	(31,500)	(213,805)	(160,000)	(340,000)	(36,600)	(31,655)
Fund Balance 09/30/20	\$ 55,698	\$ 33,721	\$ 75,274	\$ 57,396	\$ 78,709	\$ 85,176

CAPITAL IMPROVEMENT PROGRAM

The first year of the five-year General Government Capital Improvement Program (CIP) addresses needs pertaining to streets, signals, facilities and parks, and totals \$20,197,000. The largest portion of the CIP for FY 2019-2020 is dedicated to street and signal projects for \$12,690,000, \$1,017,000 for facilities and \$6,490,000 for park projects. No new debt will be issued for these projects. These projects will be supported by dedicated sales tax, park development funds, grants and interlocal agreements, impact fees, TIRZ revenue and cash transfers from the General Fund.

The five-year CIP in the Utility Fund is \$14,383,000 for FY 2019-2020, which includes water and wastewater lines and stormwater projects. These projects will be supported by \$10,110,000 in additional debt.



TOWN COUNCIL AGENDA ITEM NO. 22

REGULAR ITEM

DATE: September 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.

BACKGROUND INFORMATION: Section 363.204 of the Local Government Code requires the budget to be adopted by the Crime Control and Prevention District (Crime District), Board of Directors.

At the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Crime District, adopted alternative budget procedures for the Crime District to follow similar procedures and dates to the Town's annual budget.

The Flower Mound Town Council acting as the Board of Directors for the Crime District and staff held the FY 2019-2020 Budget Work Session on August 15, 2019, in the Council Chambers. A public hearing for the Crime District's Proposed Budget was held on August 19, 2019.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed (Revenue):	Account Number(s):
\$(3,358,165)	Fund 318-Crime District
Proposed Expenditure:	Account Number(s):
\$3,574,440	Fund 318-Crime District

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

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

ATTACHMENTS:

1. Resolution

DRAFT MOTION: The Town Council, acting as the Board of Directors for the Crime Control and Prevention District, move to approve a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council acting as the Board of Directors of the Town of Flower Mound Crime Control and Prevention District ("Crime District") has adopted procedures for adopting a budget that are different from the procedures outlined in Texas Local Government Code Section 363.204, as permitted by such section; and

WHEREAS, the Town Council acting as the Board of Directors of the Crime District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Crime District for the fiscal year beginning October 1, 2019, and ending September 30, 2020; and

WHEREAS, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and

WHEREAS, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and

WHEREAS, notice of public hearing on the proposed Crime District Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and

WHEREAS, one (1) such public hearing was held on August 19, 2019, prior approval of such date being hereby ratified and confirmed by the Town Council acting as the Board of Directors for the Crime District, and all those wishing to speak on the budget were heard; and

WHEREAS, the Town Council acting as the Board of Directors for the Crime District has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached is in the best interest of the Crime District.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, THAT:

RESOLUTION NO. _____**PAGE 2****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 Resolution as if copied in their entirety.

SECTION 2

The budget attached in total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2019, and ending September 30, 2020, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget.

SECTION 3

No expenditure of the funds of the Crime District shall hereafter be made except in strict compliance with said budget except that, in the case of public necessity, the Town Council acting as the Board of Directors of the Crime District shall authorize amendments to said budget for emergency expenditures necessary to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

SECTION 4

The Town Manager shall file or cause to be filed three (3) true and correct copies of said approved budget, along with this Resolution, with the Town Secretary, who shall file or cause to be filed one (1) true and correct copy of same in the office of the County Clerk of Denton County, Texas and one (1) true and correct copy of same in the office of the County Clerk of Tarrant County, Texas.

SECTION 5

If any section, paragraph, sentence, clause, phrase, or word in this Resolution, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the Town Council acting as the Board of Directors of the Crime District hereby declares it would have passed such remaining portions of the resolution despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Resolution shall take effect immediately from and after its passage.

RESOLUTION NO. _____

PAGE 3

**DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE
TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 16th
DAY OF SEPTEMBER, 2019.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____**PAGE 4****EXHIBIT A****Town of Flower Mound, Texas
FY 19-20****CRIME CONTROL AND PREVENTION DISTRICT**

PROPOSED REVENUES	Crime District Sales Tax Fund
Taxes	\$ 3,350,165
Licenses and Permits	-
Intergovernmental Revenue	-
Charges for Services	-
Fines and Forfeitures	-
Interest Earnings	8,000
Interfund Transfer	-
Other Revenue	-
TOTAL REVENUE	\$ 3,358,165

PROPOSED EXPENDITURES	Crime District Sales Tax Fund
Town Manager's Office	\$ -
Legislative Services	-
Development Services	-
Community Services	-
Police Services	3,574,440
Financial Services	-
Fire & Emergency Services	-
Community Relations Services	-
Infrastructure Services	-
TOTAL EXPENDITURES	\$ 3,574,440

NET CHANGE	\$ (216,275)
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2019-2020 FUND BALANCE PROJECTION	Crime District Sales Tax Fund
Fund Balance 10/1/19	\$ 975,659
Revenue	3,358,165
Expenditure	(3,574,440)
Fund Balance 09/30/20	\$ 759,384



TOWN COUNCIL AGENDA ITEM NO. 23

REGULAR ITEM

DATE: September 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.

BACKGROUND INFORMATION: Section 344.204 of the Local Government Code requires the budget to be adopted by the Fire Control, Prevention, and Emergency Medical Services District (Fire District), Board of Directors.

At the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Fire District, adopted alternative budget procedures for the Fire District to follow similar procedures and dates to the Town's annual budget.

The Flower Mound Town Council acting as the Board of Directors for the Fire District and staff held the FY 2019-2020 Budget Work Session on August 15, 2019, in the Council Chambers. A public hearing for the Fire District's Proposed Budget was held on August 19, 2019.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed (Revenue):	Account Number(s):
\$(3,333,430)	Fund 319-Fire District
Proposed Expenditure:	Account Number(s):
\$3,298,602	Fund 319-Fire District

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

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

ATTACHMENTS:

1. Resolution

DRAFT MOTION: The Town Council, acting as the Board of Directors for the Fire Control, Prevention, and Emergency Medical Services District, move to approve a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council acting as the Board of Directors of the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District (Fire District) has adopted procedures for adopting a budget that are different from the procedures outlined in Texas Local Government Code Section 344.204, as permitted by such section; and

WHEREAS, the Town Council acting as the Board of Directors of the Fire District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Fire District for the fiscal year beginning October 1, 2019, and ending September 30, 2020; and

WHEREAS, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and

WHEREAS, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and

WHEREAS, notice of public hearing on the proposed Fire District Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and

WHEREAS, one (1) such public hearing was held on August 19, 2019, prior approval of such date being hereby ratified and confirmed by the Town Council acting as the Board of Directors for the Fire District, and all those wishing to speak on the budget were heard; and

WHEREAS, the Town Council acting as the Board of Directors for the Fire District has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached is in the best interest of the Town of Flower Mound Fire District.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, THAT:

RESOLUTION NO. _____**PAGE 2****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 Resolution as if copied in their entirety.

SECTION 2

The budget attached in total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2019, and ending September 30, 2020, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget.

SECTION 3

No expenditure of the funds of the Fire District shall hereafter be made except in strict compliance with said budget except that, in the case of public necessity, the Town Council acting as the Board of Directors of the Fire District shall authorize amendments to said budget for emergency expenditures necessary to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

SECTION 4

The Town Manager shall file or cause to be filed three (3) true and correct copies of said approved budget, along with this Resolution, with the Town Secretary, who shall file or cause to be filed one (1) true and correct copy of same in the office of the County Clerk of Denton County, Texas and one (1) true and correct copy of same in the office of the County Clerk of Tarrant County, Texas.

SECTION 5

If any section, paragraph, sentence, clause, phrase, or word in this Resolution, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the Town Council acting as the Board of Directors of the Fire District hereby declares it would have passed such remaining portions of the resolution despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Resolution shall take effect immediately from and after its passage.

RESOLUTION NO. _____

PAGE 3

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 16th DAY OF SEPTEMBER, 2019.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____

PAGE 4

EXHIBIT A

Town of Flower Mound, Texas

FY 19-20

FIRE CONTROL, PREVENTION, AND EMERGENCY
MEDICAL SERVICES DISTRICT

PROPOSED REVENUES	Fire District Sales Tax Fund
Taxes	\$ 3,333,330
Licenses and Permits	-
Intergovernmental Revenue	-
Charges for Services	-
Fines and Forfeitures	-
Interest Earnings	100
Interfund Transfer	-
Other Revenue	-
TOTAL REVENUE	\$ 3,333,430

PROPOSED EXPENDITURES	Fire District Sales Tax Fund
Town Manager's Office	\$ -
Legislative Services	-
Development Services	-
Community Services	-
Police Services	-
Financial Services	-
Fire & Emergency Services	3,298,602
Community Relations Services	-
Infrastructure Services	-
TOTAL EXPENDITURES	\$ 3,298,602

NET CHANGE	\$ 34,828
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2019-2020 FUND BALANCE PROJECTION	Fire District Sales Tax Fund
Fund Balance 10/1/19	\$ 377,322
Revenue	3,333,430
Expenditure	(3,298,602)
Fund Balance 09/30/20	\$ 412,150



TOWN COUNCIL AGENDA ITEM NO. 24

REGULAR ITEM

DATE: September 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: Consider approval of an ordinance adopting the 2019 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.4390 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2019.

BACKGROUND INFORMATION: The Denton Central Appraisal District and the Tarrant Appraisal District provide the final appraisal rolls during the budget process that are utilized by the Town in the calculation of the Town's property tax revenues. The Chief Appraisers certify the appraisal rolls that allow the Town to calculate and submit the effective and rollback tax rates and estimate revenues. On August 5, 2019, the Town Council approved the certified appraisal roll. The approval of the tax rolls is an annual process required by Section 26.09(e) of the Texas Tax Code.

This ordinance apportions the tax levy for the purpose of defraying the current expenses of the General Fund (i.e., \$0.356508) and for creating an interest and sinking fund for outstanding bonded indebtedness not otherwise provided for (i.e., \$0.082492); it also provides for the collection and payment of taxes, and assesses penalties and interest for the nonpayment of taxes within the time set.

An ordinance setting a property tax rate that exceeds the effective tax rate (as with this ordinance) requires the affirmative vote of at least 60% of the members of the governing body.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$51,901,712

Proposed Expenditure/(Revenue):	Account Number(s):
\$(38,667,363)	100-4105 Property Taxes
(8,947,199)	110-4105 Property Taxes
(4,287,150)	308-4105 Property Taxes

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

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

ATTACHMENTS:

1. Ordinance

DRAFT MOTION: "I move that the property tax rate be increased by the adoption of a tax rate of \$0.4390 per \$100 of assessed value, which is effectively a 2.77 percent increase in the tax rate; and move to approve an ordinance adopting the 2019 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.4390 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2019."

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2019, AND ENDING ON SEPTEMBER 30, 2020, AND FOR EACH FISCAL YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT A RATE OF \$0.4390 PER ONE HUNDRED DOLLARS (\$100) ASSESSED VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN AS OF JANUARY 1, 2019; DIRECTING THE ASSESSMENT THEREOF TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST AND SINKING FUND ON ALL OUTSTANDING DEBTS OF THE TOWN; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; PROVIDING FOR APPROVAL OF THE 2019 TAX ROLLS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council hereby finds that the tax rate for the fiscal year beginning October 1, 2019, and ending September 30, 2020, hereinafter levied for current expenses of the Town and the general improvements of the Town and its property, must be levied to provide the revenue requirements of the budget for the ensuing year; and

WHEREAS, the Town Council has approved by a separate Ordinance adopting the budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020; and

WHEREAS, the Town Council provided notice of the effective tax rate as required by law; and

WHEREAS, all statutory and constitutional requirements concerning the levying and assessing of ad valorem taxes have been completed in due and correct time.

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.

ORDINANCE NO. _____**PAGE 2****SECTION 2**

There be and is hereby levied and ordered to be assessed and collected for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, and for each fiscal year thereafter until otherwise provided, on all taxable property, real, personal, and mixed, situated within the corporate limits of the Town of Flower Mound, Texas, and not exempt by the Constitution of the State and valid state laws, a tax rate of \$0.4390 on each One Hundred Dollars (\$100) assessed value of taxable property, which shall be apportioned and distributed as follows:

- A. For the purpose of defraying the current expenses of the municipal government of the Town, a tax rate of \$0.356508 on each One Hundred Dollars (\$100) assessed value of all taxable property within the Town; and
- B. For the purpose of creating an interest and sinking fund to pay the interest and principal of all outstanding debt obligations of the Town, not otherwise provided for, a tax rate of \$0.082492 on each One Hundred Dollars (\$100) assessed value of all taxable property within the Town.

THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.

THE TAX RATE WILL EFFECTIVELY BE RAISED BY 2.77 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$25.33.

SECTION 3

All ad valorem taxes shall become due and payable on October 1, 2019 and all ad valorem taxes shall become delinquent after January 31, 2020. There shall be no discount for payment of taxes prior to said January 31, 2020. If any person fails to pay said ad valorem taxes on or before January 31, 2020, the following penalties shall be payable thereon, to-wit:

During the month of February 2019, six percent	(6%)
During the month of March 2019, seven percent	(7%)
During the month of April 2019, eight percent	(8%)
During the month of May 2019, nine percent	(9%)
During the month of June 2019, ten percent	(10%)
On or after July 1, 2019, twelve percent	(12%)

ORDINANCE NO. _____**PAGE 3****SECTION 4**

Taxes shall be payable at the offices of the Denton County Tax Office. The Town shall have available all rights and remedies provided by law for enforcement of the collection of taxes levied under this Ordinance.

SECTION 5

All delinquent taxes shall bear interest at the rate of twelve percent (12%) per annum, in addition to the penalties.

SECTION 6

The Town Council hereby approves the 2019 tax rolls of the Town of Flower Mound, Texas, in the amount of \$51,901,712, based upon the certified appraisal roll and roll under protest as approved by the Appraisal Review Boards of the Denton Central Appraisal District and the Tarrant Appraisal District, to be used for the authorized collection of ad valorem taxes for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020.

SECTION 7

Pursuant to the authority granted by Section 33.07 of the Texas Tax Code, in the event that 2019 taxes and taxes for all subsequent years become delinquent on or after February 1 but not later than May 1 of the year in which they become delinquent, and in the event such delinquent taxes are referred to an attorney for collection, an additional amount of twenty percent (20%) of the total amount of tax, penalty and interest then due shall be added as collection costs to be paid by the taxpayer, for all taxes delinquent on or after July 1, 2020.

SECTION 8

Pursuant to the authority granted by Section 33.08 of the Texas Tax Code, the Town further provides that all 2019 taxes and taxes for all subsequent years that become delinquent on or after June 1 of the year in which they become delinquent shall, in order to defray the costs of collection, incur an additional 20% of the delinquent tax, penalty and interest.

SECTION 9

Any and all ordinances, resolutions, rules, regulations, policies, or provisions in conflict with the provisions of this Ordinance are hereby repealed and rescinded to the extent of the conflict herewith.

ORDINANCE NO. _____**PAGE 4****SECTION 10**

If any section, paragraph, sentence, clause, phrase, or word in this Ordinance, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and, the Town Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 11

The fact that it is necessary that this Ordinance be enacted in order to authorize the collection of ad valorem taxes for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, requires that this Ordinance shall take effect from and after its passage as the law in such cases provides.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 16th DAY OF SEPTEMBER, 2019.

APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 25

REGULAR ITEM

DATE: September 16, 2019

FROM: James Hoefert, Environmental Review Analyst

ITEM: **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. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its March 5, 2019, meeting).**

BACKGROUND INFORMATION: The Lakewood development is generally located north of Long Prairie Road and east of Silveron Boulevard. The site is approximately 122.1 acres in size. The site is currently zoned for Campus Commercial uses as a portion of Planned Development District No. 31 (PD-31) and master planned for the Lakeside Business District. The applicant is requesting to rezone the property to Planned Development District No. 163 (PD-163) for both residential and non-residential uses. According to the tree survey for the project, the site contains one hundred twenty-two (122) specimen trees. The applicant is requesting to remove one hundred seven (107) specimen trees from the site. The specimen trees proposed for removal are in good to fair condition and located within the proposed buildable area.

The Town's tree ordinance requires that specimen trees removed from the site be replaced at a rate of two times their caliper inches. Based on their size, 1,944" of replacement trees, equaling 648 three-inch caliper trees, will be required for the removal of the forty eight (48) specimen trees that are located outside of Upland Habitat on this site. Upland Habitat for a project is established through an approved Environmental Protection Plan. Specimen trees requested for removal within Upland Habitat still require a specimen tree removal permit; however, the mitigation for the removal of specimen and protected trees located within the defined Upland Habitat is addressed separately. The mitigation for impacting Upland Habitat is set at \$15,000 per acre impacted after applying any preservation credits. In addition, protected trees removed from the buildable area, and located outside of Upland Habitat, will also require replacement at a tree-for-tree rate. Protected tree mitigation / replacement will be determined with the record plat application – once final engineering has been completed for the project.

BOARD REVIEW/CITIZEN FEEDBACK: This application was considered by the Environmental Conservation Commission (ECC) at its March 5, 2019, meeting. The ECC recommended approval of the requested permit to remove the specimen trees. A link to the ECC meetings can be found at: <https://tx-flowermound.civicplus.com/index.aspx?NID=969>

As of September 5, 2019, staff has not received feedback related to this item.

ALTERNATIVES/OPTIONS: The Town Council may approve or deny the requested tree removal permit, or may choose to approve the permit with conditions or changes.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter from the applicant indicating the reason(s) for the tree removal permit request.
2. Specimen tree removal permit application.
3. Tree Survey.
4. Land Use Plan.

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

Attachment 1

Mr. James Hoefert
Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, TX 75028

March 1, 2019

Dear Mr. Hoefert,

A development containing a mixture of commercial and residential uses, Lakewood is being proposed for the 122-acre vacant tract of land at the corner of Long Prairie Road and Silveron Boulevard. In order to allow for development in conformance with Flower Mound's current Master Plan, it is necessary to remove 107 of the 122 specimen trees.

Sincerely,

Jim Wills,
Manager for PS Silveron/RMR LP

Town of Flower Mound
Application for:
TREE REMOVAL PERMIT

(Effective for Developments submitted 10/6/08 - present)

Check one: ☐ Protected Tree ☒ Specimen Tree ☐ Historic Tree

1. Applicant- Note: Must be a licensed Landscape Architect or Registered Arborist

Name:

Alex M. Brown

Address:

13455 Noel Road
Two Galleria Office Tower, Suite 700
Dallas, TX 75240

Phone:

972-770-3029

Applicant's Legal Interest in the Property:

None

2. Property Owner(s)

Name(s):

PS Silveron/RMR LP

Address:

212 S. Palm Ave
Alhambra, Ca 91801

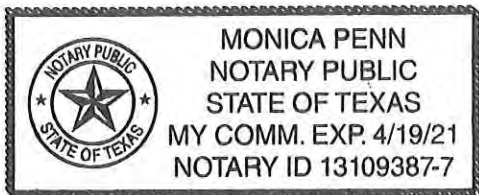
3. Location and Legal Description of Property:

NEC Silveron and FM2499

Page 2 of 3.

4. Owner's Authorization of Representation

I, Sam Wiles ~~for~~ the owner of the above described real property, do hereby authorize Kimley-Horn to represent my interests and to file an Application for Tree Removal Permit for said real property, pursuant to the terms and provisions of Chapter 94 (Trees), of the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances.



[Signature]
Signature of Owner

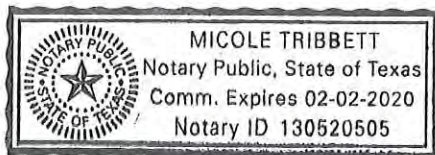
Given Under My Hand and Seal of Office
This the 21 Day of January, 2019
Monica Penn
Notary Public
In and For Dallas County, Texas.

5. Applicants Affidavit- Note: Applicant must be a licensed Landscape Architect or Registered Arborist.

Subject to criminal penalties contained in Subpart B, the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances, I Alex M. Brown, do hereby swear or affirm that all of the Information contained herein and submitted herein is, to the best of my knowledge, true, correct and complete and that no false, misleading or incomplete information has been intentionally provided or submitted with this Application for a Tree Removal Permit.

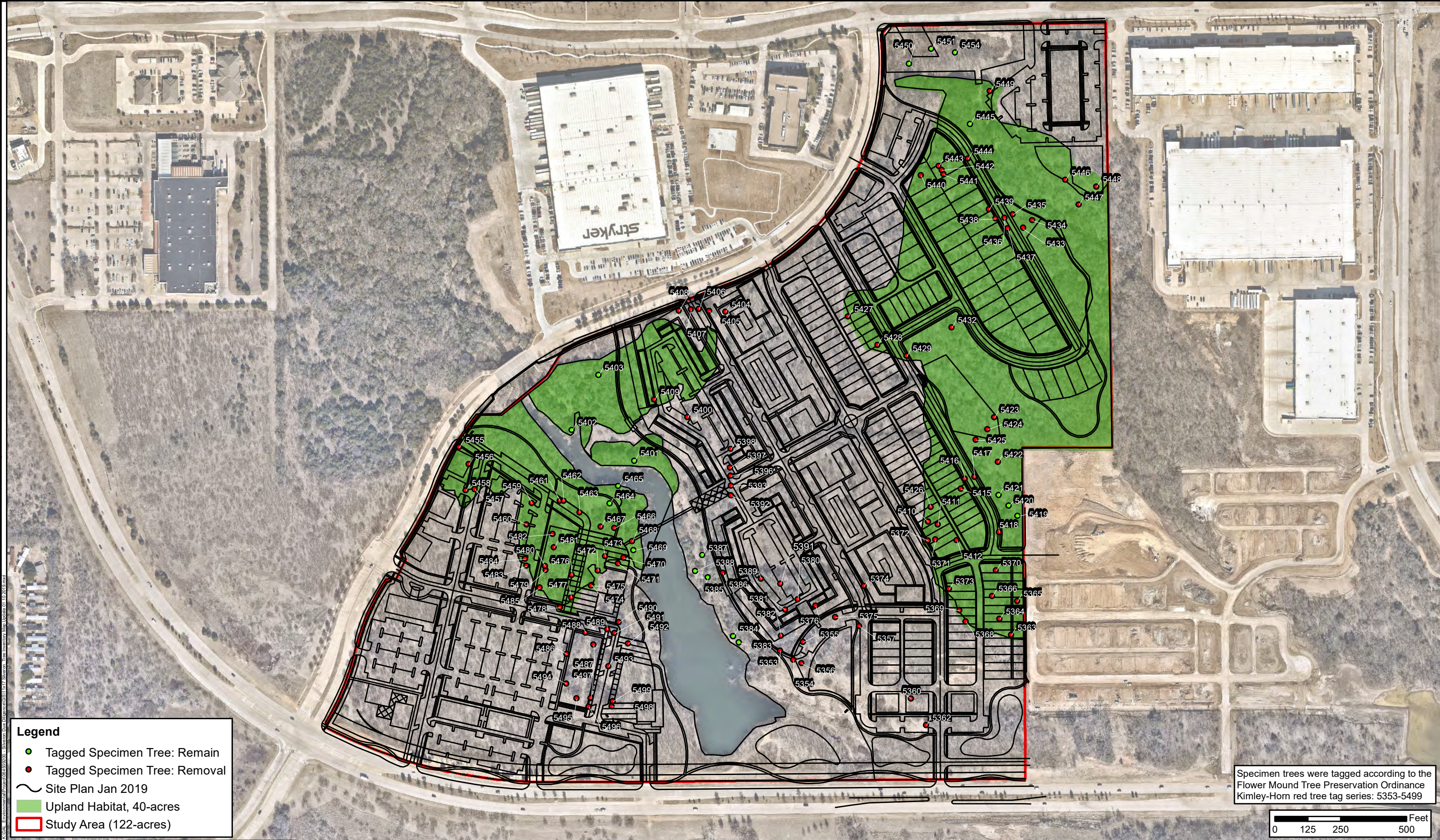
[Signature]
Signature of Applicant

Landscape Architect License No. _____
State of Licensure _____
Or ISA Certified Arborist No. TX-4383A



Given Under My Hand and Seal of Office
This the 10 Day of January, 2019
Micole Tribbett
Notary Public
In and For Dallas County, Texas

6. Received by Town of Flower Mound on (Date) 1/22/2019 by (initials) JRH.



SHEET 1	DATE:	01/10/2019	Specimen Tree Inventory with Concept Site Plan Quad Name: Grapevine	Silveron Mixed-Use Flower Mound, Denton County, Texas		Kimley»Horn This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
	DESIGN:	AMB				
	CHECKED:	LDC				
	KHA NO.:	064509200				

Silveron Mixed-Use - Specimen Tree Inventory
Flower Mound, Denton County, Texas

Updated 02/28/2019

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TAG#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	MULTIPLE-STEMMED	Remain / Remove	Upland Habitat (Y/N)
5353	28.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5354	23.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5355	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5356	26.2	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5357	23.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5360	25.9	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remove	N
5362	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5363	20.3	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5364	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5365	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5366	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5368	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5369	19.5	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5371	22.2	post oak	<i>Quercus stellata</i>	Declining	Multi	Remove	Y
5372	24.1	cedar elm	<i>Ulmus crassifolia</i>	Declining	Multi	Remove	Y
5373	25.1	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Forked	Remove	Y
5374	25.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5375	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5376	23.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5380	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5381	23.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5382	28.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5383	26.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	N
5384	22.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	N
5385	23.4	post oak	<i>Quercus stellata</i>	Declining	Multi	Remain	N
5386	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5387	22.0	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	N
5388	19.6	blackjack oak	<i>Quercus marilandica</i>	Declining	Single	Remain	N
5389	24.3	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remove	N
5391	23.7	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	N
5392	29.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5393	28.3	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5396	28.1	blackjack oak	<i>Quercus marilandica</i>	Declining	Multi	Remove	N
5397	19.1	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Forked	Remove	N
5400	29.7	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5401	23.6	blackjack oak	<i>Quercus marilandica</i>	Healthy	Single	Remain	Y
5402	25.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y
5404	22.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5405	25.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5406	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5407	24.8	blackjack oak	<i>Quercus marilandica</i>	Healthy	Single	Remove	N
5408	23.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5409	33.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5411	24.9	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5412	24.4	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5415	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5416	22.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5417	22.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5418	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5419	22.2	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	Y
5420	29.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y
5421	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y

Silverton Mixed-Use - Specimen Tree Inventory
 Flower Mound, Denton County, Texas

Updated 02/28/2019

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5422	23.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5423	24.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5424	19.7	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5425	24.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5426	22.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5427	24.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5428	22.1	blackjack oak	<i>Quercus marilandica</i>	Declining	Multi	Remove	Y
5429	25.1	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remove	Y
5432	28.7	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5433	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5435	23.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5436	23.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5437	26.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5438	23.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5439	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5441	24.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5442	22.7	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	Y
5444	23.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5445	20.8	post oak	<i>Quercus stellata</i>	Declining	Single	Remain	Y
5446	22.2	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5447	18.5	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5448	25.8	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5449	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5450	31.9	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remain	N
5454	25.1	post oak	<i>Quercus stellata</i>	Declining	Single	Remain	N
5455	23.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5456	22.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5457	31.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5458	28.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5459	23.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5460	22.0	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5461	22.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5462	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5463	20.8	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5464	24.7	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	Y
5465	24.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y
5466	22.7	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5467	27.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5468	22.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5469	26.9	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5470	23.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5471	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5472	23.7	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5473	20.8	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5474	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5475	22.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5476	27.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5477	27.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5478	28.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5479	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5480	24.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5481	26.1	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	Y
5482	22.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y

TAG#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	MULTIPLE-STEMMED	Remain / Remove	Upland Habitat (Y/N)
5483	19.0	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5484	19.0	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	Y
5485	27.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5486	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5487	22.2	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5488	20.7	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	N
5489	19.9	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	N
5490	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5491	19.7	cedar elm	<i>Ulmus crassifolia</i>	Declining	Single	Remove	N
5492	22.1	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5493	27.4	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5494	24.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5495	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5496	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5497	23.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5498	22.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5499	28.9	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N

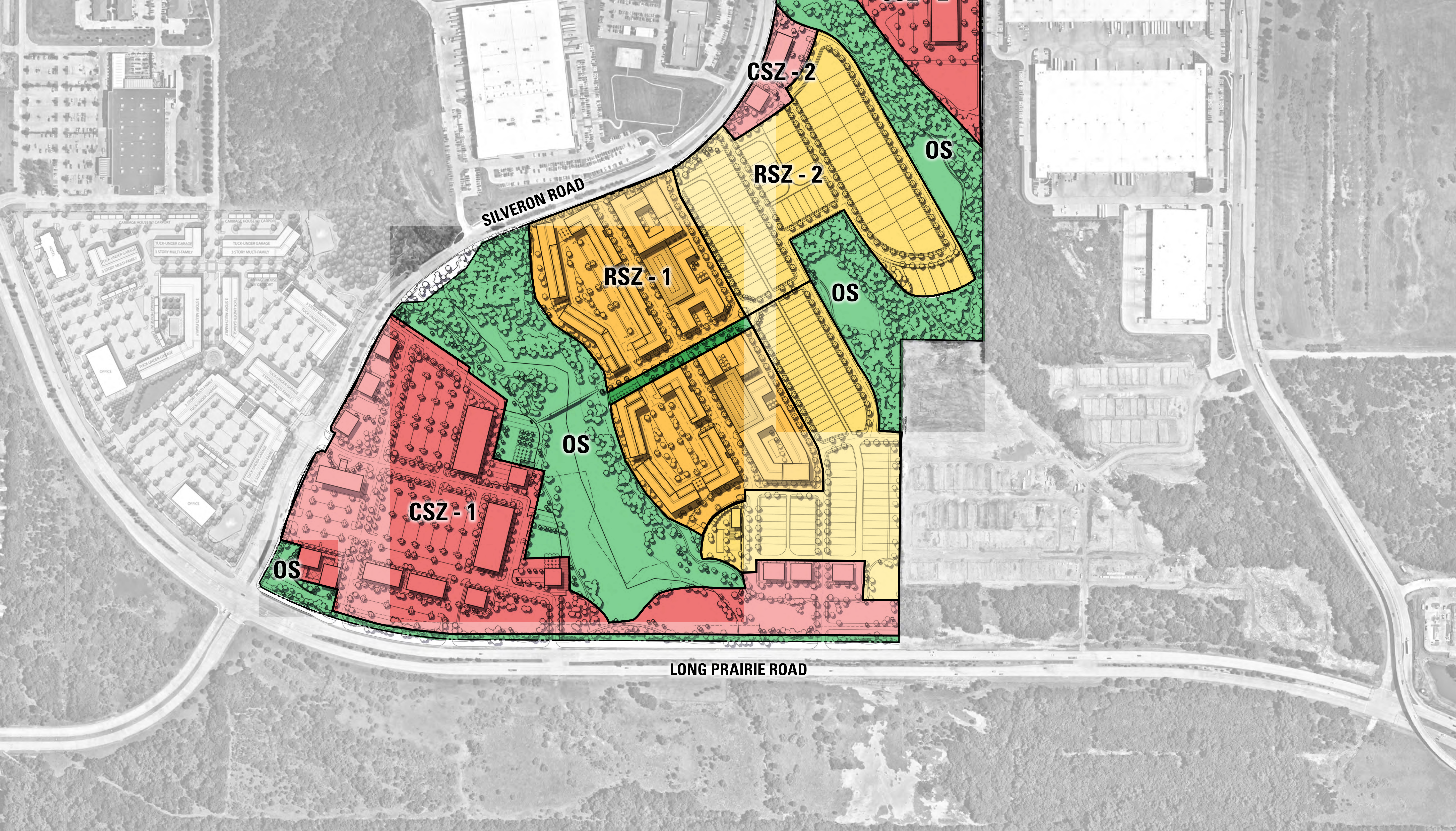
- Kimley-Horn red tree tag series: 5353-5499

- Specimen trees were tagged according to the Flower Mound Tree Preservation Ordinance*

- Multiple trunk trees are measured by adding the diameter of the largest stem with one-half of the diameter of each additional stems, all measured at DBH.

* Specimen trees are defined as any tree listed in the town's small protected tree list that measures 13-inches or more at DBH, medium protected tree list that measures 19-inches or more at DBH, or large protected tree list that measures 25-inches or more at DBH. Post oaks are designated a specimen tree if they measure 22-inches or greater at DBH.

LEGEND		
LAND USE		GROSS AREA
	COMMERCIAL (CSZ)	40.1 ACRES
	URBAN RESIDENTIAL (RSZ-1)	20.5 ACRES
	SINGLE FAMILY RESIDENTIAL (RSZ-2)	26.2 ACRES
	PUBLIC OPEN SPACE	35.3 ACRES
TOTAL:		122.1 ACRES



LAKEWOOD

LAND USE PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

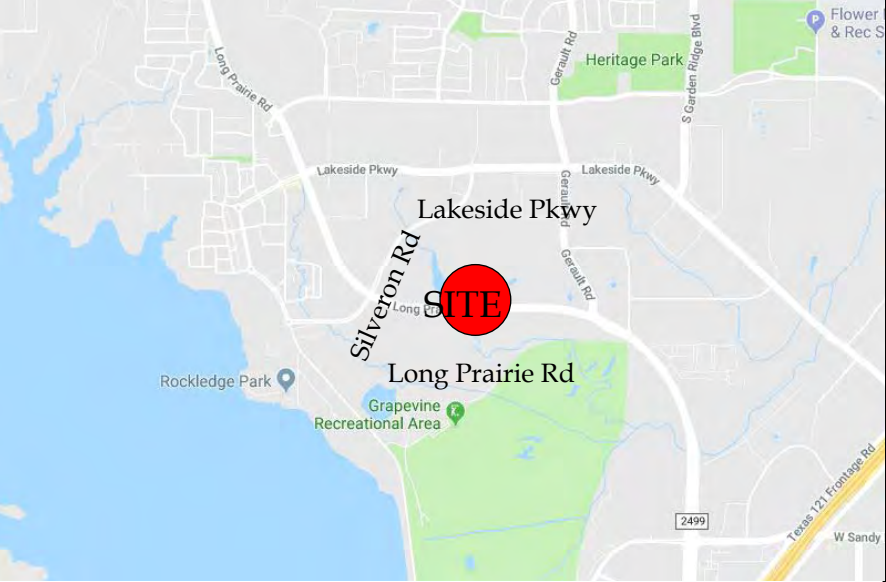
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map



Reference sheet

Name	Description
Land Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location of trails.
Open Space Amenity Key	Shows open space with labels that is referenced in planned development, shows matrix of proposed type of amenities in each open space area and the quantities
Vehicular Network	Shows proposed street network, street types and cross sections, location of utility, enlargement of trail, enlargement of lots that have landscape easement in front yard, enlargement of street tree detail.
Concept Plan - Black and White	Detail drafted site plan with building summary
Conceptual Landscape Plan	Detail drafted landscape plan with landscape requirement compliance chart.

General Note

All plans are conceptual in nature and subject to change based on site and development conditions.

TBG

Scale 1" = 200'

0' 200' 400'

January 7, 2019

The information shown is based on the best information available and is subject to change without notice.

LEGEND

- OFFICE/ HOTEL
- COMMERCIAL
- MULTI-FAMILY RESIDENTIAL
- SINGLE FAMILY RESIDENTIAL

NOTE

LAND INDICATED AS COMMERCIAL LAND USE MAY NOT BE USED FOR RESIDENTIAL OCCUPANCY. LAND INDICATED AS RESIDENTIAL LAND USE MAY BE CHANGED TO COMMERCIAL LAND USE.



LAKEWOOD

CONCEPT PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

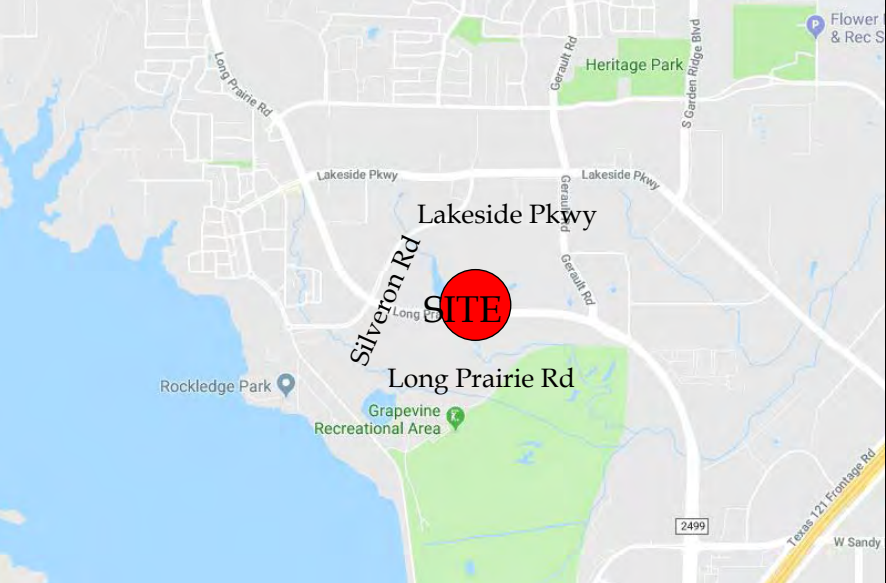
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VICINITY MAP



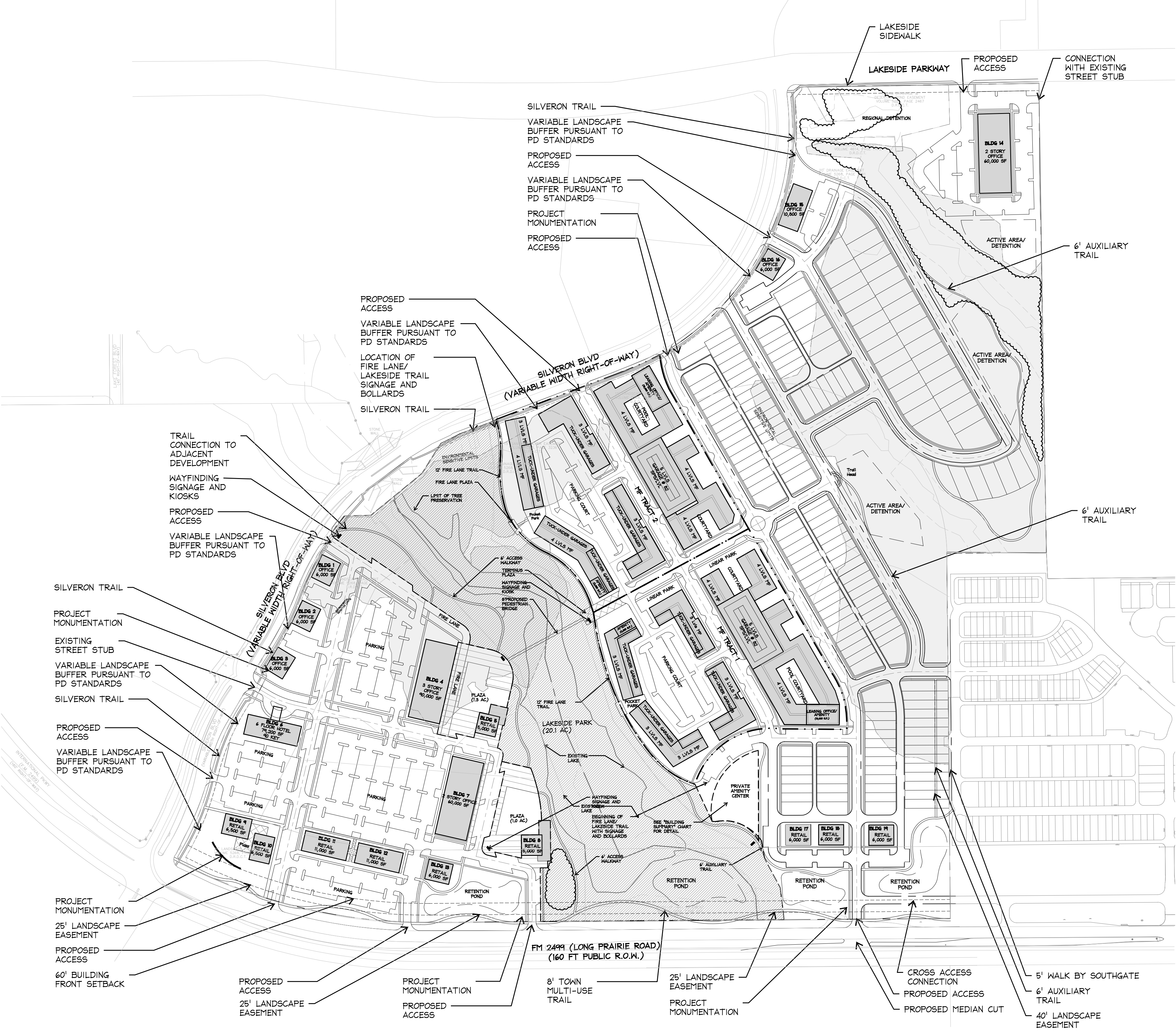
MASTER PLAN FEATURES	
LAND USE PLAN	LAKESIDE BUSINESS DISTRICT / CAMPUS COMMERCIAL
PARKS AND TRAILS	REQUIRED MULTI USE TRAIL ALONG FM2499
THOROUGHFARE PLAN	FM 2499(MAJOR ARTERIAL),SILVEORN BLVD (URBAN MINOR ARTERIAL), LAKESIDE PARKWAY (MAJOR ARTERIAL).
WATER PLAN	LAKESIDE SERVICE AREA - 12" WATER ALONG FM 2499, 12" WATER ALONG SILVERON BLVD.
WASTEWATER PLAN	EXISTING 8" GRAVITY SANITARY SEWER MAIN IN SILVERON BLVD, EXISTING 12" GRAVITY SANITARY SEWER MAIN IN LAKESIDE PKWY, EXISTING 18" GRAVITY SANITARY SEWER MAIN SOUTH OF THE DEVELOPMENT.
ECONOMIC IMPACT	\$250 MILLION AD VALOREM; HOTEL AND ADDITIONAL REVENUE STREAMS TBD.

ALL DRIVE APPROACHES TO BE 24 FEET WITH 20 FEET TURNING RADIUS; ALL FIRE LANES TO BE 26 FEET, WITH 25 FEET TURNING RADIUS.

SEE OPEN SPACE AND TRAIL ACCESS PLAN FOR ALL TRAIL LOCATIONS AND WIDTH.

PROJECT BUILDING SUMMARY									
BLDG.	NUMBER OF STORIES	GROSS SQUARE FEET	USE	NUMBER OF DWELLING UNITS	CITY REQUIRED PARKING RATIO	CITY REQUIRED PARKING	CITY REQUIRED PARKING	CITY REQUIRED REDUCE PARKING	PROVIDED PARKING
1	1	6,000	OFFICE	NA	1 / 300 SF	20	1070	856	1290
2	1	6,000	OFFICE	NA	1 / 300 SF	20			
3	1	6,000	OFFICE	NA	1 / 300 SF	20			
4	3	90,000	OFFICE	NA	1 / 300 SF	300			
5	1	5,000	RETAIL/ RESTAURANT	NA	1 / 75 SF	67			
6	6	79,200 (90' KEY)	HOTEL	NA	1 / 1 KEY	90			
7	2	60,000	OFFICE	NA	1 / 300 SF	200			
8	1	5,000	RETAIL / RESTAURANT	NA	1 / 75 SF	67			
9	1	6,500	RETAIL / RESTAURANT	NA	1 / 75 SF	87			
10	1	6,500	RETAIL / RESTAURANT	NA	1 / 75 SF	87			
11	1	11,000	RETAIL	NA	1 / 250 SF	44	200	200	244
12	1	11,000	RETAIL	NA	1 / 250 SF	44			
13	1	6,000	RETAIL	NA	1 / 250 SF	24			
14	2	60,000	OFFICE	NA	1 / 300 SF	200	56	56	56
15	2	10,800	OFFICE	NA	1 / 300 SF	36			
16	2	6,000	OFFICE	NA	1 / 300 SF	20	72	72	73
17	1	6,000	RETAIL	NA	1 / 250 SF	24			
18	1	6,000	RETAIL	NA	1 / 250 SF	24			
19	1	6,000	RETAIL	NA	1 / 250 SF	24	1,700	1360	1,275 (PARKING FOR MULTIFAMILY LAND USE ASSIGNED TO FOLLOW REQUIREMENTS OUTLINED FOR THE PROPOSED PLANNED DEVELOPMENT DISTRICT)
MF TRACT 1	3-4	399,950	MULTI FAMILY RESIDENTIAL	421	2 /UNIT	842			
MF TRACT 2	3-4	407,550	MULTI FAMILY RESIDENTIAL	429	2 /UNIT	858			
SF 31'X105'	1-2	NA	SINGLE FAMILY RESIDENTIAL	87		NA	NA	NA	NA
SF 50' X 120'	1-2	NA	SINGLE FAMILY RESIDENTIAL	42		NA	NA	NA	NA
TOTAL:				979		3098	3098	2544	2,938

NOTE: REFER TO P.D. TEXT FOR SHARED USE PARKING CALCULATION.



- NOTES:
- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO COMPLEMENT THE MATERIALS AND COLORS WITHIN THE DEVELOPMENT.
 - ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE.
 - ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
 - DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIAL OF THE MAIN BUILDING.
 - DUMPSTER SCREENING WALL REQUIRES SEPARATE BUILDING PERMIT.
 - SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGN DEPICTED ON THE SUBJECT SITE PLAN/ ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.
 - RETAINING WALLS 4 FEET IN HEIGHT OR TALLER, INCLUDING FOOTINGS, WILL REQUIRE A SEPARATE BUILDING PERMIT THROUGH THE BUILDING DEPARTMENT.
 - LOCATIONS OF ALL OUTDOOR SEATING AREAS, GATHERING AREAS, DINING AREAS, AND PERMEABLE OPEN SPACE AREAS MAY BE REVISED DURING SITE PLAN REVIEW FOR EACH BUILDING.
 - BUILDING FOOTPRINTS, GROSS AREA, AND PROJECTED USE MAY BE REVISED IN THE SITE PLAN APPLICATION

PROJECT NAME: LAKEWOOD
STREET ADDRESS: UNPLATTED, NOT ASSIGNED
SITE AREA: 122.1 AC
EXISTING ZONING: PD 31
EXISTING LAND USE: CAMPUS COMMERCIAL

LAKESWOOD

CONCEPT PLAN
- BLACK AND WHITE

EXHIBIT FOR **ZPD 17-0013**

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

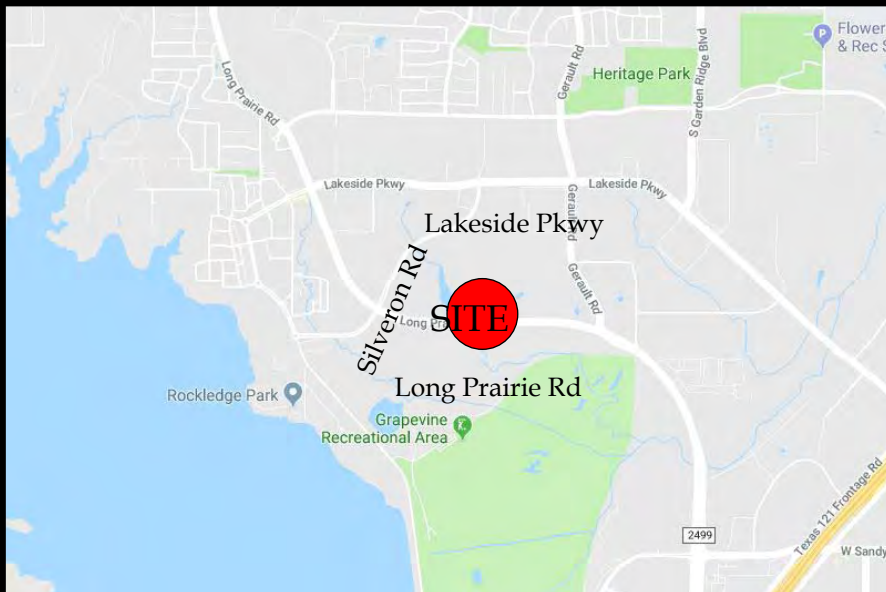
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TBG

Scale 1" = 200'
0' 200' 400'

January 7, 2019

The information shown is based on the best information available and is subject to change without notice.



TOWN COUNCIL AGENDA ITEM NO. 26

REGULAR ITEM

DATE: September 16, 2019

FROM: Chuck Russell, Town Planner

ITEM: 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," and consider adopting an ordinance providing for said amendment subject to the terms and conditions in the attached Development Agreement and authorization for Mayor to execute same on behalf of the Town. The property is generally located north of Long Prairie Road and east of Silveron Boulevard. *(The Planning and Zoning Commission recommended denial by a vote of 6 to 1 at its August 26, 2019, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. Pursuant to the applicable sections of the Town's code of ordinances, the applicant may appeal a denial recommendation by the Planning and Zoning Commission to the Town Council by filing a request in writing within ten days of the action by the Planning and Zoning Commission. Staff received an e-mail from the applicant on August 27, 2019, appealing the denial recommendation by the Planning and Zoning Commission [see Attachment A(4)].

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Development Agreement
4. Appeal E-mail
5. Applicant's Revised Letter of Intent

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

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



PLANNING AND ZONING COMMISSION AGENDA ITEM NO: 2 REGULAR ITEM

DATE: August 26, 2019

FROM: Chuck Russell, Town Planner

ITEM: **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.**

I. ITEM SUMMARY

This application has been reviewed by DRC and has been scheduled for consideration by the Planning and Zoning Commission. There are exception/modification/waiver requests to the Town's regulations as well as unresolved items which necessitate special consideration by the Commission (see Analysis below).

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to rezone approximately 122 acres of land in order to create a planned development district which includes a mixture of both non-residential and residential uses, in accordance with the Campus Commercial land use designation within the Lakeside Business District Area Plan.

As part of the request, the applicant has requested certain waivers, exceptions and modifications to the Code of Ordinances. There are also unresolved items. In summary, the major items are listed below (See Section III below for additional information):

Exceptions:

- **Topographic Slope:** An exception to Section 98-147 of the Town Code in order to impact 7.2-acres of slopes greater than 12%. There is a total of 11.9 acres of slopes greater than 12% on the subject property.

Waivers:

- **Meritorious Design:** Waiver to Section 5.1 of the Town's Urban Design standards to allow elevations of low-rise non-residential buildings to have more than 50% doors and windows per facade.
- **Roof Pitch:** Waiver to Section 12.1 of the Town's Urban Design standards requiring roofs of non-residential buildings 15,000 square feet or less to reflect hip and/or gable styles that replicate residential scale and pitch.
- **Compatibility Buffer:** Waiver to Section 82-302 of the Town Code is being requested for certain proposed non-residential buildings near proposed single-family structures.
- **Compatibility Setback:** Waiver to Section 82-303 of the Town Code is being requested for certain proposed non-residential buildings near proposed single-family structures.

Modifications:

- **Street Buffer Landscaping:** A modification to Section 82-242 of the Town Code to provide variable width street buffers along Silveron Boulevard and Lakeside Parkway in lieu of the required 25 feet of width. Also, a request to modify the required 60-foot-wide buffer requirement in the Campus Commercial zoning district by providing a 25 foot wide buffer along Long Prairie Road. (See Attachment B(1)).
- **Parking:** A modification to Section 82-74 of the Town Code that requires two parking spaces per residential dwelling unit. The applicant is proposing to provide an average of one and a half spaces per unit, or a minimum of one space for each one-bedroom unit and a minimum of two spaces for each two and three-bedroom unit, whichever is greater. The applicant is also requesting a deviation from the required 20 percent parking reduction for large developments.
- **Alternative Tree Planting Standards:** A modification to the Town's standards providing details for onsite soil storage/amendments, standards for delivery of trees, planting details and a list of recommended deep-root non-invasive trees (See Appendix A in Attachment B(2)).
- **Alternative Park Land Dedication and Development Fee Standards:** A modification to the Town's standards essentially providing credit for publically accessible private open space and amenities proposed by the applicant (See Parks Board recommendation below and Section M in Attachment B(2)).
- **Signs:** Modifications to the Town's Sign Code through a proposed Comprehensive Sign Package to primarily allow various ground signs that are situated at the ingress/egress points to the development to serve as signature markers for the development. The applicant is also requesting modifications to building signs and tenant blade signs.
- **Modifications to PD-31 and Base Campus Commercial District Standards:** See below for details.

Unresolved Items:

- **Hotel Elevations:** No elevations for the proposed hotel have been provided by the applicant. The applicant is proposing to provide these elevations at site plan in concert with an amendment to the PD.
- **General Elevations:** Building elevations lack enough vertical elements, particularly at corners of multifamily elevations and on one-story retail buildings (See staff review comments in Attachment (A)10).

Section 2, Area Plans, of the Master Plan defines Campus Commercial as follows:

“Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District’s Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden.
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and,
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics and should be facilitated through the balancing of market demand and community preferences.”

The requested underlying zoning in the PD will be based on certain uses and standards in the Campus Commercial (CC) district. The Town’s Land Development Regulations defines this district as follows:

‘The CC campus commercial district is designed primarily to accommodate a variety of large-scale campus commercial developments such as corporate offices, office parks, hotels, resorts and similar uses in a planned campus setting. Retail, restaurant, hotel and similar uses serving the campus commercial uses could be appropriate if they are planned as integral elements of the developments. In addition

to the use and area regulations of this division, development in the CC campus commercial district shall be in compliance with all other applicable provisions of this chapter.'

With respect to permitted uses, the applicant has requested that two additional uses not permitted in the CC Campus Commercial District be allowed in this planned development:

- Multifamily
- Dwelling, single-family detached

The applicant has also requested that five uses that require approval of an SUP in the CC Campus Commercial District be allowed by right in this planned development:

- Retail, single tenant (25,000 SF but less than 50,000 SF)
- Retail, single tenant (25,000 SF but less than 50,000 SF)
- Drugstore or pharmacy
- Health club or athletic club
- Office-showroom/warehouse

The undeveloped 122-acre site possesses frontage along Long Prairie Road, Lakeside Parkway and Silveron Boulevard. Access to the development will consist of four ingress/egress points along Long Prairie Road; five along Silveron Boulevard; one along Lakeside Parkway and an access point to the Southgate development to the east. The accompanying conceptual site plan [Attachment B(1)] provides for a mixture of uses as well as designated public and private open space areas.

Non-residential component

The conceptual site plan provides for various nonresidential uses:

- 244,800 square feet of office uses located within eight buildings
- 46,000 square feet of retail uses located within six buildings
- 23,000 square feet of restaurant/retail uses located within four buildings
- 79,200 square feet of hotel use (90 room six stories)
- Surface parking areas abutting each building

Residential component

The applicant is requesting a maximum of 850 multifamily dwelling units and a maximum of 170 single family dwellings (1,020 total dwelling units):

- Two four-story multifamily buildings with 2,000 square feet of retail on the first floor
- Eight three-story multifamily buildings
- 128 detached single-family dwellings with a minimum lot size of 3,000 square feet
- 36 detached single-family dwellings with a minimum lot size of 5,000 square feet

Public and Private Open Space and Pedestrian Connectivity

The Planned Development will require various components of publically accessible privately owned open space to be provided so as to engage tenants, employees, and residents within the Planned Development as well as providing access from visitors outside of the development (See Attachment B(1)).

Phasing

The Planned Development includes a phasing component that obligates the developer to complete certain nonresidential development and open space triggers prior to the construction and completion of any residential dwelling units (See Attachment B(2), Section L.8).

Parks Board

At their March 7, 2019 meeting, the Parks Board recommended approval to Town Council of park land dedication via public access easement of an estimated 34.272 acres of land and that park land dedication credits be provided for each acre or part thereof for areas indicated as publicly accessible open space in Ordinance ZPD17-0013, specifically areas OS 1-7 and OS 9, toward park development fees in the amount of \$1,388.00 per unit or \$1,415,760.00 and that credit for park development fees be granted for amenities and improvements in open space areas OS 1-7 and OS 9 as defined in ordinance ZPD17-0013. Note the Parks Board meeting may be viewed here:

<http://flowermoundtx.swagit.com/play/03072019-1089/5/>

Environmental Conservation Commission (ECC)

At their March 5, 2019 meeting, the ECC recommended approval to Town Council of an application for a tree removal permit for one hundred seven (107) specimen trees located on the subject property. The site contains 122 specimen trees. The ECC meeting may be viewed here:

<http://flowermoundtx.swagit.com/play/03052019-1584/6/>

III. EXCEPTIONS AND WAIVERS

A. Exception to Topographical Slope Protection

An exception to Section 98-147 of the Town Code is being requested for 7.2-acres of slopes greater than 12%. There is a total of 11.9 acres of slopes greater than 12% on the subject property. According to the Town Code, no development application or project shall be approved that proposes development on any existing topographical slopes of 12 percent or greater, or that proposes to alter any existing topographical slopes that are less than 12 percent but equal to or greater than five percent then available (other than within five feet of the footprint of the proposed structure or structures). The purpose of this criterion is to ensure that development is respectful of and appropriately integrated with the natural

physical geography of the land in Flower Mound by requiring environmentally sensitive development techniques to eliminate "scrape and build."

Section 98-147 "Topographical slope protection" allows for an applicant to request an exception to these standards as follows:

*Exception. An exception to this requirement may be approved by the town council by the affirmative vote of **at least three-fourths super majority vote** of all members of the town council, for any development that keeps the character of the natural topography and integrates the development into and maintains the overall integrity of the natural topography.*

B. Waiver to Architectural Standards (Meritorious Design)

The Urban Design Plan provides Architectural Standards for non-residential buildings in the Town with the intent of creating developments of "enduring and exemplary quality and design." The purpose of these standards is to encourage building design of meritorious quality throughout the Town and prohibit franchise architecture. Some of the architectural standards addressed are building materials, colors, roof pitch, pedestrian scale, entry points, and building orientation. As allowed by the Urban Design Plan, an applicant can request a waiver to certain Architectural Standards if their proposal is determined to have meritorious quality and design.

Section 5.1 of the Town's Urban Design standards states:

Elevations of low-rise non-residential buildings (one to two stories) should be a minimum of 50% masonry, excluding doors and windows, consisting of stone, brick, stucco or finished tilt-wall concrete, or a mixture of those materials.

The applicant is proposing to exceed 50% doors and windows on certain facades. The percent of proposed doors and windows is less a concern to staff that the overall architectural theme being proposed.

C. Waiver to Architectural Standards (Roof Pitch)

Section 12.1 of the Town's Urban Design standards states:

Roofs and Parapets

12.1. Roofs of non-residential buildings 15,000 square feet or less are to reflect hip and/or gable styles that replicate residential scale and pitch. In designing a residential scaled roof for non-residential buildings 15,000 square feet or less, the goal shall be a roof that provides for characteristic roof pitches/slopes of residential homes in the Town of Flower Mound (6/12 to 9/12 slope) and high steeply-pitched and/or expansive roof pitches/slopes shall be avoided. The Town Council may approve, upon recommendation from the Planning and Zoning Commission a waiver to this request for individual projects. Such requests should only be contemplated in areas that are not adjacent to residences, are part of large-scale developments, and provide architectural detail to soften the appearance of large, tall vertical walls.

The proposed commercial buildings that are less than 15,000 square feet have flat non-pitched roofs, which necessitates Council approval of the proposed waiver. Please refer to the proposed elevations in Attachment B(1).

D. Waivers to Section 82-302 “Compatibility Buffer” and to Section 82-303 “Compatibility Setback”

The residential compatibility standards apply when a non-residential development is proposed adjacent to an existing residential use or zoning, or property designated for residential use on the comprehensive master plan. The applicant is proposing to develop four one-story commercial buildings that meet the definition of being adjacent to single family homes also being proposed by the applicant, thus necessitating the need to request the waivers.

E. Parking

The submitted conceptual site plan provides for a mixture of uses with an aggregate off-street parking requirement of 2,676 spaces. According to the applicant’s required parking study:

“The number of spaces estimated for the multifamily land use comes from the proposed Planned Development District requirements which state that the total multifamily parking should provide an average of one and a half spaces per unit, or a minimum of one space for each one-bedroom unit and a minimum of two spaces for each two and three-bedroom unit, whichever is greater. With the assumed breakout of units for the multifamily land use being 65% one-bedroom units, 30% two-bedroom units, and 5% three-bedroom units, the average of 1.5 spaces per dwelling unit results in a greater supply with a total of 1,275 spaces needed to adequately park Zone 2.” Zone 2 is the area developed with multifamily uses.

Town Code defines a large development as one that is required to provide over 250 spaces per established parking ratios. For a large development, the Town’s parking regulations require a minimum reduction of 20 percent of the aggregate parking requirement along with a parking study.

The Town Code requires a total of **3,097** parking spaces. The required 20 percent reduction (620 spaces) brings the total required parking to **2,477** spaces. Therefore, the applicant’s proposed **2,676** parking spaces exceed the required 20 percent reduction and necessitate the need for a deviation from the Town Code.

F. Comprehensive Sign Package

The Town’s Sign Code states that the purpose of a Comprehensive Sign Package is to “allow for a specialized review of signs which may have meritorious design and seek to promote a unique quality for an existing or proposed development, but which require special consideration.”

A Comprehensive Sign Package is being proposed for consideration of the following:

- Ground signs
- Building signs (Multi-story buildings only)
- Tenant Blade signs

Various ground signs will serve as signature markers for the development and are situated at the ingress/egress points to the development. Please refer to Attachment A(9) for details.

With respect to the building signs, the basis of the applicant's request for flexibility is to address anticipated multi-story structure signage that will allow tenant identification for these areas within the Planned Development. The Town Code limits these signs as follows:

- Maximum sign area of 300 sf.
- Maximum of one primary and two secondary signs per tenant with 60' or more lineal frontage of building wall, with maximum sign area of 300 sf for all primary and secondary signs
- For 60 feet or more of lineal building wall frontage, maximum sign width of 55% of lineal frontage and maximum height of 72 inches; maximum of 12" depth

The applicant is proposing:

- In multi-story office or mixed-use buildings, a primary or single occupant may add signage identifying the building. This sign is in addition to ground floor tenant wall signs if applicable.
- The sign area of Building signs shall not exceed 240 square feet.
- The height shall not exceed 6 feet.
- The width shall not exceed 50 feet.
- Only one sign per building facade is permitted

Regarding tenant blade signs, the Town Code requires the following:

- For nonresidential multitenant buildings, maximum of one sign for each tenant, with maximum width and height based on lineal frontage of the storefront (example, less than 20 feet of frontage permits sign width of 80% of frontage and 36 inches of sign height)

The applicant is proposing:

- Permitted only for office, retail or restaurant uses.
- Maximum of one per tenant.
- The height shall not exceed three feet.
- The width shall not exceed five feet.
- The sign area shall not exceed 15 square feet (per side if a double-faced sign).
- The sign may encroach into the sidewalk area subject to maintaining a minimum clearance of eight feet above the sidewalk
- The sign may be internally or externally illuminated and must not create a glare onto a building or the sidewalk.

At this time, the developer anticipates complying with the Town's sign standards for all other signage.

G. Modifications to PD-31 and Base Campus Commercial District Standards

The applicant has requested the proposed Planned Development be based, in part, on the uses and development standards in the Campus Commercial district (CC) uses, with certain modifications to the dimensional regulations for this district. As the property is currently zoned PD-31 for Campus Commercial District uses, a comparison of the respective development standards where different is noted in the following table:

Development Standard	Existing PD-31 and Campus Commercial District Standards	Proposed PD-163 Standards
Minimum Front Yard	Long Prairie Road, Silveron Boulevard and Lakeside Parkway 65 feet with first 25 feet as a street buffer. Parking prohibited within the first 45 feet	Long Prairie Road- 70 feet with 25 feet as a street buffer and parking prohibited within the first 25 feet Silveron Boulevard-Variable setback width (See Attachment B(1)) Lakeside Parkway- 60 feet and parking prohibited within the first 25 feet No minimum setbacks for internal nonresidential buildings
Minimum Rear Yard	15 feet	No minimum setbacks for internal nonresidential buildings
Maximum Lot Coverage	50 percent	60 percent for multifamily buildings and 80 percent for nonresidential buildings
Maximum Floor Area Ratio	1:1	No maximum FAR for multifamily and nonresidential buildings
Height and Stories	120 feet and 10 stories	70 feet and 5 stories for multifamily uses and 120 feet and 10 stories for nonresidential uses
Minimum Street Buffer	25 feet	25 feet along Long Prairie Road and variable width along Silveron Boulevard and Lakeside Parkway

Street Buffer Trees	One tree (existing or preserved) per 500 square feet of the buffer	One tree (existing or preserved) per 30 linear feet of the buffer, no additional street buffer within existing drainage easement along Lakeside Parkway
Tree Planting Requirements	Town Code	Enhanced planting techniques including augmented soil amendments and sensitivity to planting areas in close proximity to underground detention

IV. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all rezoning requests. At the time this report was written, staff had received one correspondence in support and no correspondence in opposition to the project.

V. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. TIA Summary
4. Parking Study
5. Existing PD-31 Ordinance
6. Campus Commercial Design Intent
7. Environmental Protection Plan
8. Tree survey
9. Comprehensive Sign Package
10. Staff's Elevation Comments

B. Application Details

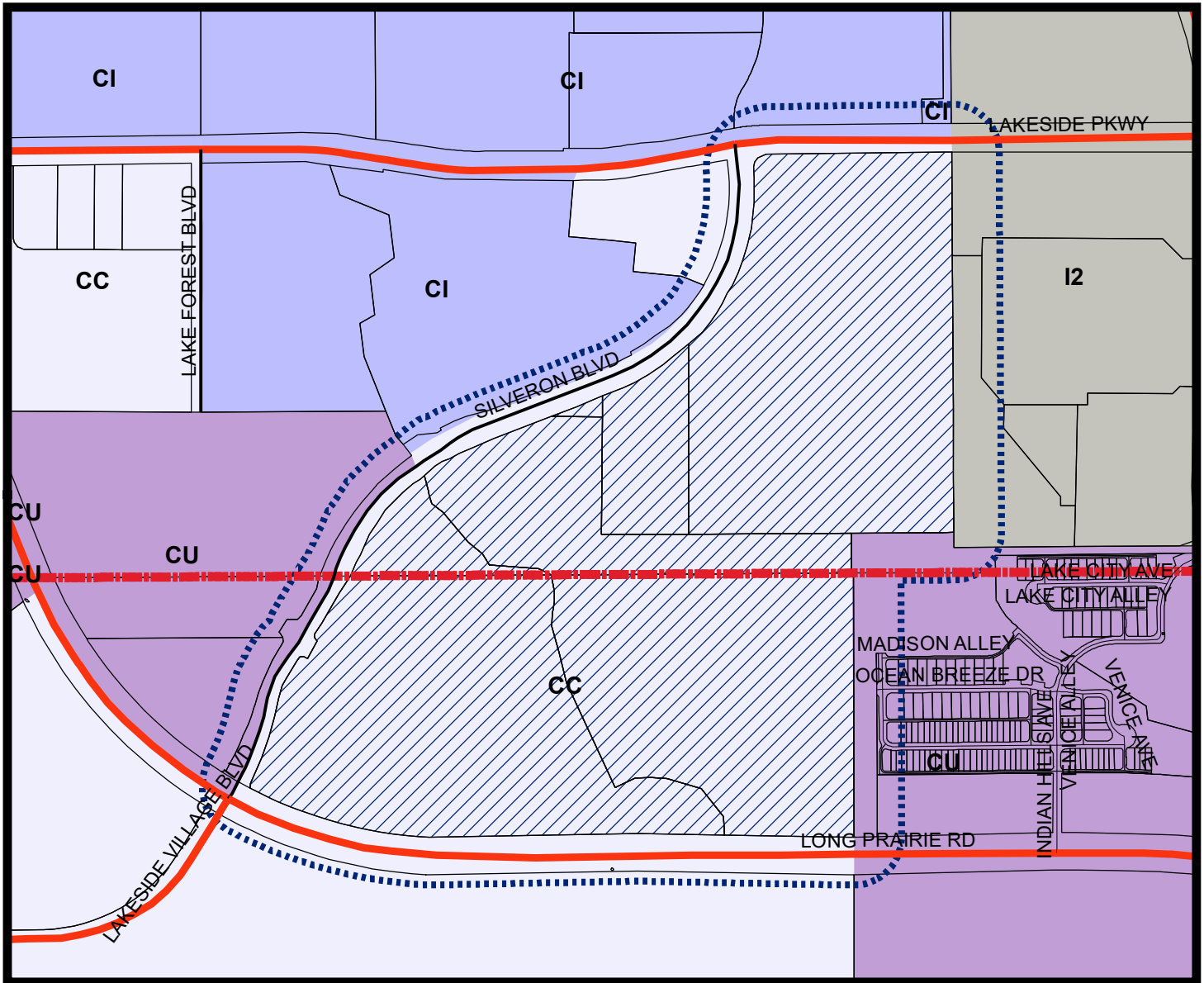
1. Planned Development Package
2. Draft PD Standards

C. Correspondence

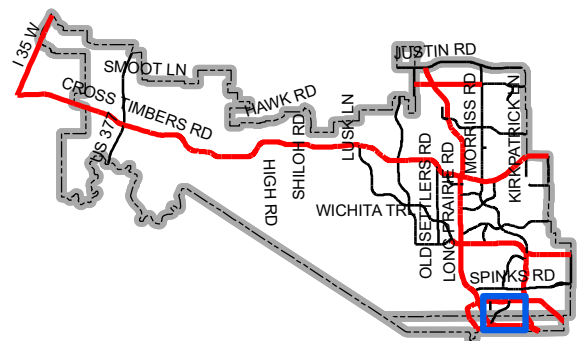
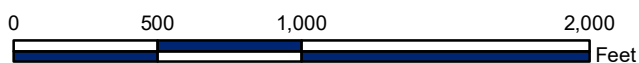
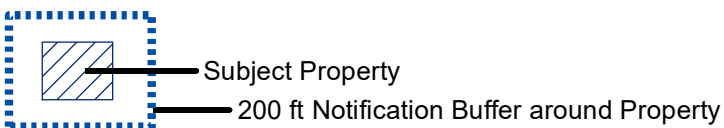
1. Correspondence in Favor

Vicinity Map

Reference Project: ZPD17-0013



LEGEND



Map Location

Chuck Russell
Flower Mound Town Planner
2121 Cross Timbers Road
Flower Mound, TX 75028

July 9, 2018

Dear Mr. Russell,

Lakewood is a proposed 122 acre mixed-use development that we believe meets the vision and intent of the Town's Lakeside Business District. The property is currently zoned Campus Commercial under PD-31.

The Lakewood proposal is similar to other recent projects approved in the area, but we believe the design and benefits exceeds those of the other developments. This letter briefly highlights the factors that should be considered when reviewing the Lakewood proposal.

The developer of the property has been part of the ownership for over 20 years and has actively worked with the Town to develop the Lakeside District as outlined in the Master Plan. During this time the owner participated in and continued to pay for their share of the public improvements to the area through the Chapter 380 agreements entered into in 2000.

In 2013, the Town realized that the district vision needed to be amended as the development of the desired office uses was not occurring despite an overall robust office market in DFW. Beginning with the establishment of the original Master Plan in 2000 and since the Master Plan update in 2013, the property owner has worked to bring development that meets the Town's stated goals to the property and has worked as a partner with the Town. The proposed development reflects the goals outlined in the Master Plan as updated in 2013.

The proposal we have put forward for approval is the culmination of many months work by the development team in conjunction with Town Staff. The project has evolved through months of review and revision to address all of the concerns that have been raised; and we believe it is a better project because of this assessment and analysis. The resulting Lakewood project we believe maximizes capturing the vision of the Town and the uniqueness of the site. We have brought together a development team with the knowledge, extensive background and body of work that ensures that the project can be built as proposed, to Flower Mound's exacting standards.

The starting point for developing the Lakewood plan was the land itself. Specifically, we developed a detailed understanding of how the property is unique to the Lakeside Business District and specifically the Campus Commercial area. The 5-acre spring-fed lake is iconic to the area. It is dominated by steep topography from north to south and west to east. It has mature tree stands and other natural features and is impacted by drainage regulations and area detention. Additionally, the property is surrounded by developed projects that establish a need to address adjacency issues.

The Lakewood development proposal respects and works to incorporate the unique natural features in a manner that preserves the land's integrity while creatively dealing with both the natural challenges and the challenges created by adjacent development. In order to accomplish this, various modifications to Flower Mound's standard zoning districts are required. These are included in the submitted development standards.

A main design tenant of the project was to preserve the beauty of the lake and open it up to the residents of Flower Mound and visitors to Lakewood. This is in keeping with the original intent for the property going back to the early and mid 2000's. Just as important, we are confident that the proposal meets the intent of what the Town has asked of landowners and developers in the Lakeside Business District.

Specifically, the Lakeside Business District / Campus Commercial text of the Master Plan lays out the intent of development in this area:

"Lakeside Business District Land Use Categories:

Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District's Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences."

Our proposal has a mixture of office, retail, residential and open space uses that has been designed respecting the natural features of the site as required by the Master Plan. Lakewood also complies with the three elements of the Districts Vision and provides for exemplary and enduring quality and design by proposing high development standards and industry leading development partners.

Further, the proposed development meets the Town's stated desires for the Campus Commercial District as outlined during the Town Council's 2017 retreat. Those ideas stressed office development, design in context of the natural environment, and limiting high density residential along FM 2499.

The following table shows the land uses for the other developments approved in the area as compared to the proposal for the Lakewood development:

Land Use by Development

Development	Southgate	The Point	Lakeside DFW	Lakewood (pending)
Total Acres	108	33.4	155.8	122
Open Space	7%	16%	10%	29%
Commercial	33%	26%	16%	34%
Mixed Commercial / Residential	19%	3%	14%	0%
Residential	41%	43%	60%	37%
Total Residential & Mixed Use	60%	46%	74%	37%

The Lakewood development has by far the largest amount of open space and retained environmental features compared to the other developments. This is a benefit for residents (both current and future), employees and guests of the district. The plan also shows the greatest concentration of office uses within the district. Our commitment is to build Class A buildings with one of the premier office developers within the DFW area. Our office development partner will be announced in the near future.

Additional features and elements (including requirements for landscaping and other urban design standards) are contained in the Master Plan text for the Campus Commercial district. The proposed plan meets or exceeds all of the requirements of the district including provisions for roadways, landscaping, architecture, trees and natural features, parks and floodplains and trails. This is detailed in the various standards and zoning exhibits submitted to the Town Staff.

The proposal meets the purpose and intent of the Campus Commercial zoning district regulations:

Sec. 98-841. - Purpose and intent.

“The CC campus commercial district is designed primarily to accommodate a variety of large scale campus commercial developments such as corporate offices, office parks, hotels, resorts and similar uses in a planned campus setting. Retail, restaurant, hotel and similar uses serving the campus commercial uses could be appropriate if they are planned as integral elements of the developments. In addition to the use and area regulations of this division, development in the CC campus commercial district shall be in compliance with all other applicable provisions of this chapter.”

This text mirrors that of the Master Plan and as stated above we meet this standard. And finally, we believe the application meets the purpose and intent of the Planned Development (PD) regulations as outlined in the following text from Flower Mound’s Code of Ordinances.

Sec. 98-811. - Purpose and intent.

“The PD planned development district (PD) is designed to permit flexibility and encourage a more creative, efficient and aesthetically desirable design and placement of buildings, open spaces and circulation patterns by allowing a mixture or combination of uses and to best utilize special site features such as topography, size and shape. A planned development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this Code. While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, the requirements

established herein ensure against the misuse of such increased flexibility. It is intended for application in all land use designations on the land use map of the master plan, provided that the uses and development standards proposed are consistent with the stated goals of the town's master plan."

In conclusion, we ask the Town Council to approve this proposal as it meets all of the standards stated for developments in the Lakeside Business District. Taken from the Town's PD standards, the following is the criteria for approval:

Sec. 98-813. - Criteria for approval.

"In approving the planned development district, the town council may impose conditions relative to the quality and standards of development. Based upon the concept plan, the planning and zoning commission and town council shall determine whether the PD district should be established, taking into account the following criteria:

- (1) The proposed planned development district is consistent with the town's, vision, goals, objectives, and policies adopted in the master plan;
- (2) Proposed uses and project design are compatible with existing and planned adjoining uses and the character of the neighborhood in which the project is located;
- (3) Adequate public facilities required to be installed by the developer will be provided in a timely manner to support each phase of the development in accordance with the SMARTGrowth program;
- (4) Proposed uses and development standards are consistent with the purposes of the base zoning district, where applicable; and
- (5) The proposed phasing of development is consistent with the overall growth and development of the town.

As discussed above and demonstrated in the master plan and zoning information provided to the Town, the Lakewood development complies with the Lakeside Business District and should be approved by the Town. Specifically, objectively evaluating the development based the five criteria listed above, demonstrates the proposed development should be approved. We believe this development will be a benefit to the Town, the future residents, employees and guests of the district. The proposed concept plan will protect and integrates the existing natural features and will provide an improved and substantial tax base for the Town. And finally, our development team and partners include the premier firms in the DFW Metroplex and nationwide. Working with us and our development partners, the Town can be assured of the quality of the development moving forward.



MEMORANDUM

To: Matthew J. Hotelling, P.E., PTOE
Transportation Services
Town of Flower Mound, Texas

From: Jeff Whitacre, P.E., AICP, PTP
Pete Kelly, P.E.
Kimley-Horn and Associates, Inc.
TBPE Registered Firm Number F-928

Date: September 10, 2018

Subject: Traffic Impact Analysis – Lakewood Development



09-10-2018

Introduction

This technical memorandum documents a traffic impact analysis for the proposed Lakewood development located southeast of Silveron Boulevard in the Town of Flower Mound, Texas. A conceptual site plan is attached to this document. A vicinity map is provided in **Exhibit 1**.

Purpose

The primary purpose of this study is to evaluate the impact of the traffic that will be introduced to the study area by the Lakewood development and to evaluate access spacing and auxiliary lane needs at the proposed site driveways.

The analysis will also consider additional development that is anticipated to occur northwest of Silveron Boulevard, known as The Point. The Point is a known development anticipated to be built out by 2019. A Traffic Impact Analysis (TIA) was conducted for The Point and submitted to the Town of Flower Mound in September 2017. This TIA will be referenced in this study.

This analysis will examine the impacts of the Lakewood development on the surrounding roadway network and intersections while incorporating the results obtained from the previously conducted studies.

Proposed Development

The proposed development is anticipated to include 183 Single-Family Detached Housing units, 850 Multi-Family Apartments, one hotel with 90 keys, 28,000 square-feet of Retail, 23,000 square feet of Restaurant, and 228,000 square-feet of Office space. Lakewood is proposed to have eleven (11) access points. Along Lakeside Parkway, one (1) full-access drive (Drive 1) is proposed. Along Silveron Boulevard, four right-in/right-out (RI/RO) access drives (Drives 2, 4, 5, and 7) and two (2) full-access drives (Drives 3 and 6) are proposed. Along FM 2499, three (3) RI/RO access drives (Drives 8, 9, and 11) and one full-access drive (Drive 10) are proposed. Drive 3 is anticipated to align with the eastern access point of the Stryker facility. In addition, Drive 6 is anticipated to align with the proposed full-access entry into The Point development. The existing lane use and intersection control in the study area are provided in **Exhibit 2**. A conceptional site plan is attached to this document.



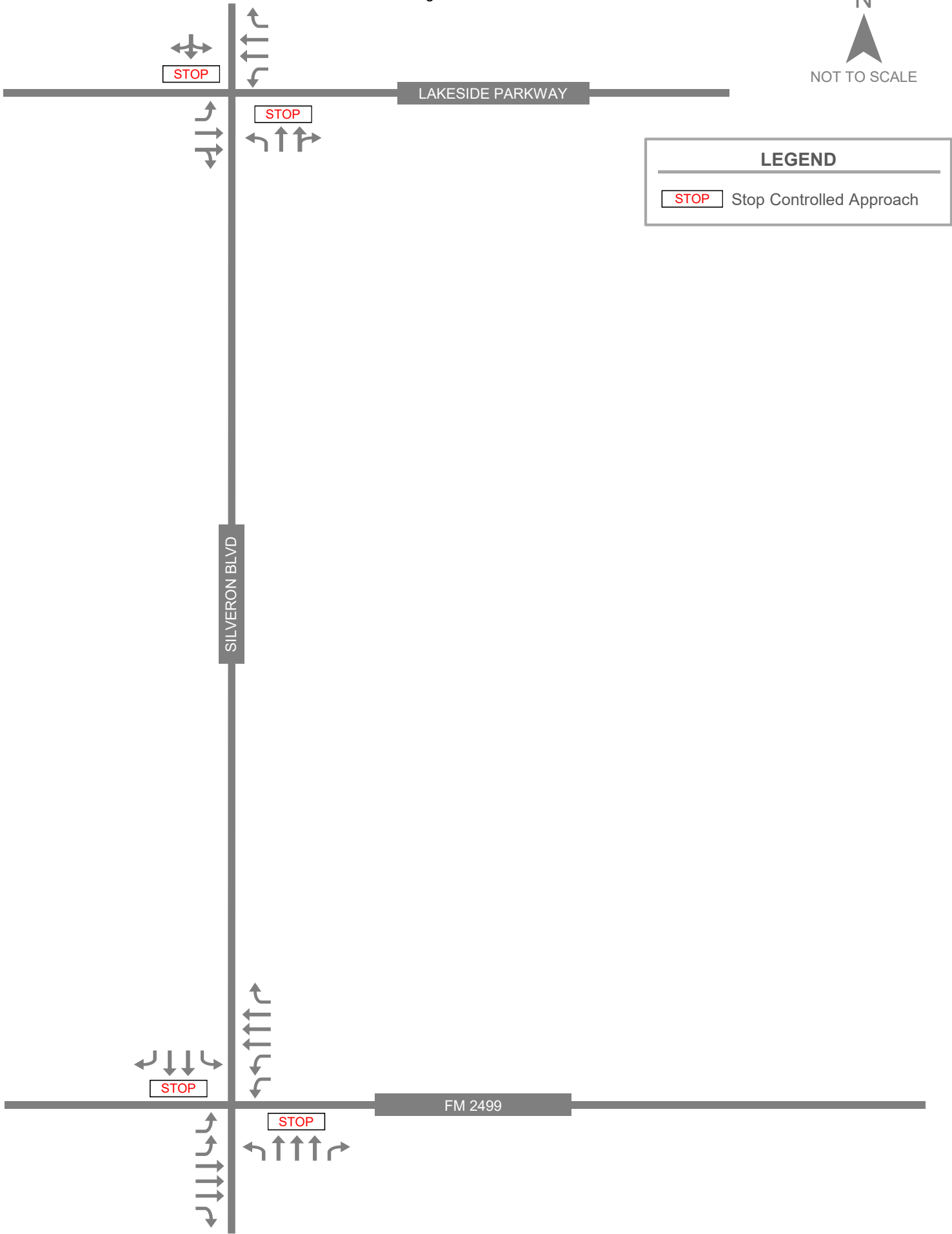
Existing Volumes

Turning movement counts were collected on Wednesday, March 7, 2018 during the AM and PM peak hours at the following intersections:

- FM 2499 and Silveron Boulevard
- Silveron Boulevard and Lakeside Parkway

The Existing (2018) traffic volumes are presented in **Exhibit 3**. Raw traffic counts are provided in the **Attachments**.







Trip Generation

The trip generation was evaluated for the proposed development using the 10th edition of the *ITE Trip Generation Manual*. **Table 1** shows the estimated trip generation rates and in/out splits for the Lakewood development during the AM and PM Peak Hours.

Table 1. Estimated Trip Generation Rates (AM & PM)

Land Use Description	ITE Code	Units	Daily	AM Peak Hour			PM Peak Hour		
				Average Rate	Split		Average Rate	Split	
					In	Out		In	Out
Single Family	210	Units	9.44 * (X)	0.74 * (X)	25%	75%	0.99 * (X)	63%	37%
Apartments (Multi-Family Mid-Rise Apartments)	221	Units	5.44 * (X)	0.36 * (X)	26%	74%	0.44 * (X)	61%	39%
Hotel	310	Rooms	8.36 * (X)	0.47 * (X)	59%	41%	0.6 * (X)	51%	49%
Retail	820	ft ²	37.75 * (X)	0.94 * (X)	62%	38%	3.81 * (X)	48%	52%
Restaurant (High-Turnover (Sit-Down) Restaurant)	932	ft ²	112.18 * (X)	9.94 * (X)	55%	45%	9.77 * (X)	62%	38%
Office	710	ft ²	9.74 * (X)	1.16 * (X)	86%	14%	1.15 * (X)	16%	84%

Table 2 summarizes the trip generation analysis evaluated using the rates provided in **Table 1**. According to the ITE Trip Generation rates, the total trips generated by the proposed development during the AM Peak Hour is 1,003, which consists of 509 entering trips and 494 exiting trips. For the PM Peak Hour, the total trips generated by the proposed development is 1,203, which consists of 603 entering trips and 600 exiting trips.

Table 2. Trip Generation Analysis (AM & PM)

Land Use Description	ITE Code	Intensity	Units	Daily	AM Peak Hour			PM Peak Hour		
					Split		Total	Split		Total
					In	Out		In	Out	
Single Family	210	183	Units	1,728	34	101	135	114	67	181
Apartments (Multi-Family Mid-Rise Apartments)	221	850	Units	4,624	80	226	306	228	146	374
Hotel	310	90	Rooms	752	25	17	42	28	26	54
Retail	820	28,000	ft ²	1,057	16	10	26	51	56	107
Restaurant (High-Turnover (Sit-Down) Restaurant)	932	23,000	ft ²	2,580	126	103	229	140	85	225
Office	710	228,000	ft ²	2,220	228	37	265	42	220	262
Total					509	494	1,003	603	600	1,203

Trip Distribution and Trip Assignment

The trip distribution was assigned for the proposed development based on the area characteristics and surrounding roadway network. The distribution is as follows:

- 15% from West along Lakeside Parkway
- 15% from East along Lakeside Parkway
- 15% from South along Silveron Boulevard
- 15% from West along FM 2499
- 40% from East along FM 2499

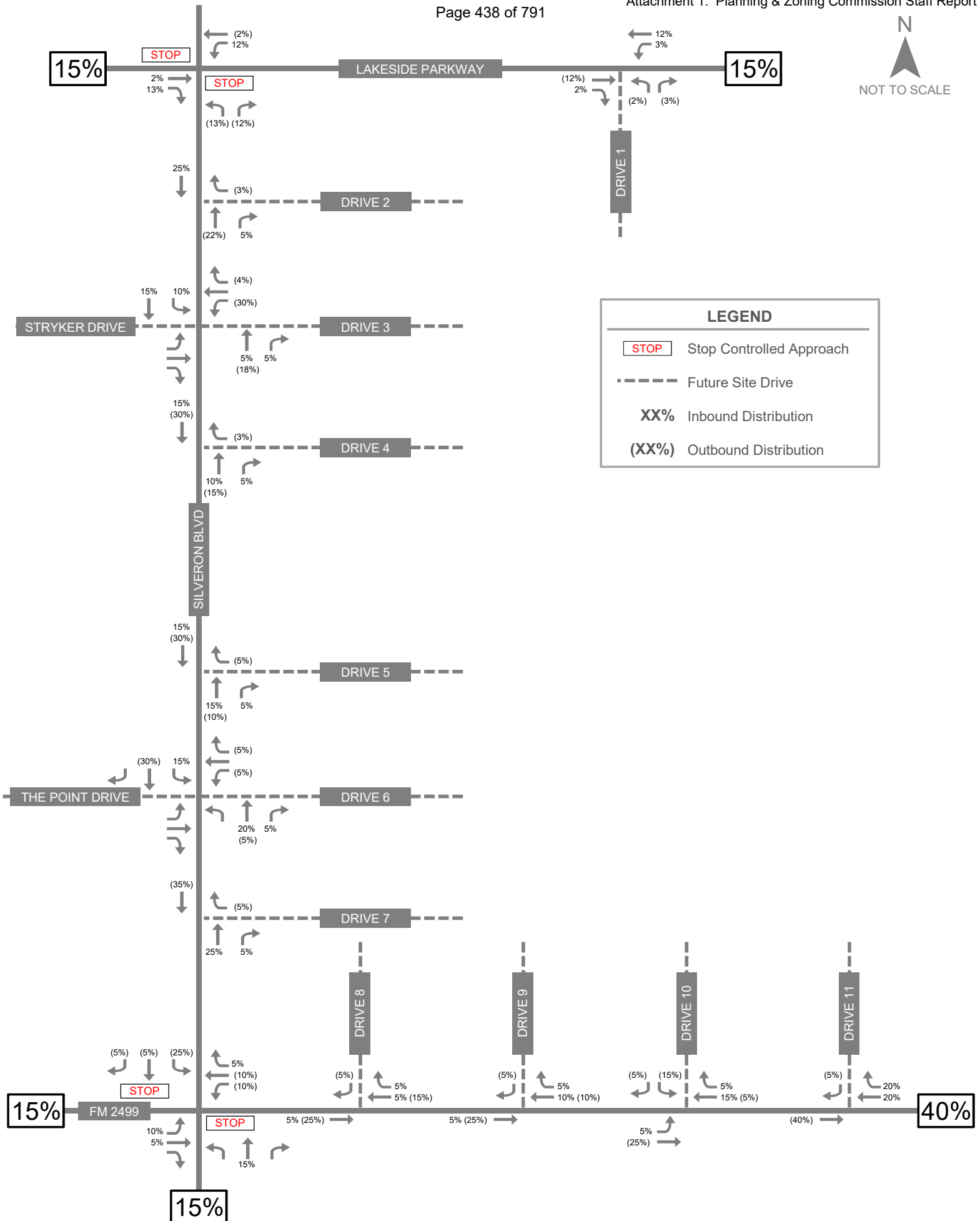
The Peak Hour trip distribution is shown in **Exhibit 4**.

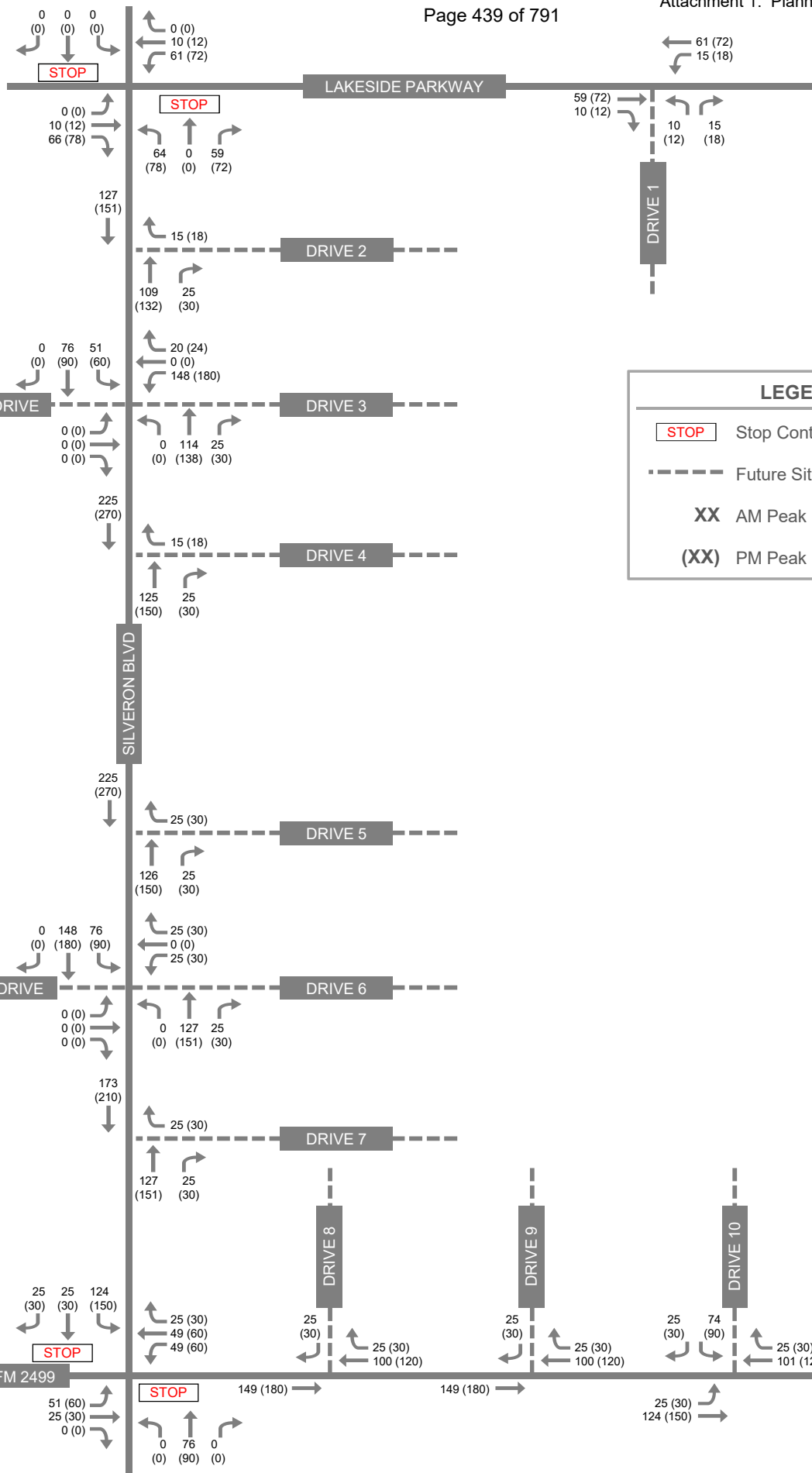
Trip assignment was determined based on the 10th edition of the ITE Trip Generation totals shown in **Table 2** and the Peak Hour trip distribution shown in **Exhibit 4**. The AM and PM Peak Hour trip assignment is presented in **Exhibit 5**. Note, the trip assignment values were rounded to the nearest whole trip. Any minor discrepancies between the trip assignment in/out totals found in **Table 2** and the total in/out trips in the trip assignment **Exhibit 4** are the result of rounding.

Future Volume Development

Future volumes were developed for three (3) analysis scenarios: Buildout (2021) Background, Buildout (2021, and Horizon (2026) Conditions. Based on TxDOT requirements, the horizon analysis year is required to occur five (5) years after the buildout year. With this consideration, this study assumes Year 2026 at the horizon analysis year. According to results obtained from the traffic impact analysis conducted for The Point, a conservative growth rate of 4% was used to estimate annual growth. This growth rate was applied to the existing volumes for this study for three (3) years for Buildout (2021) Background and Buildout (2021) Conditions, and for eight (8) years for Horizon (2026) Conditions.

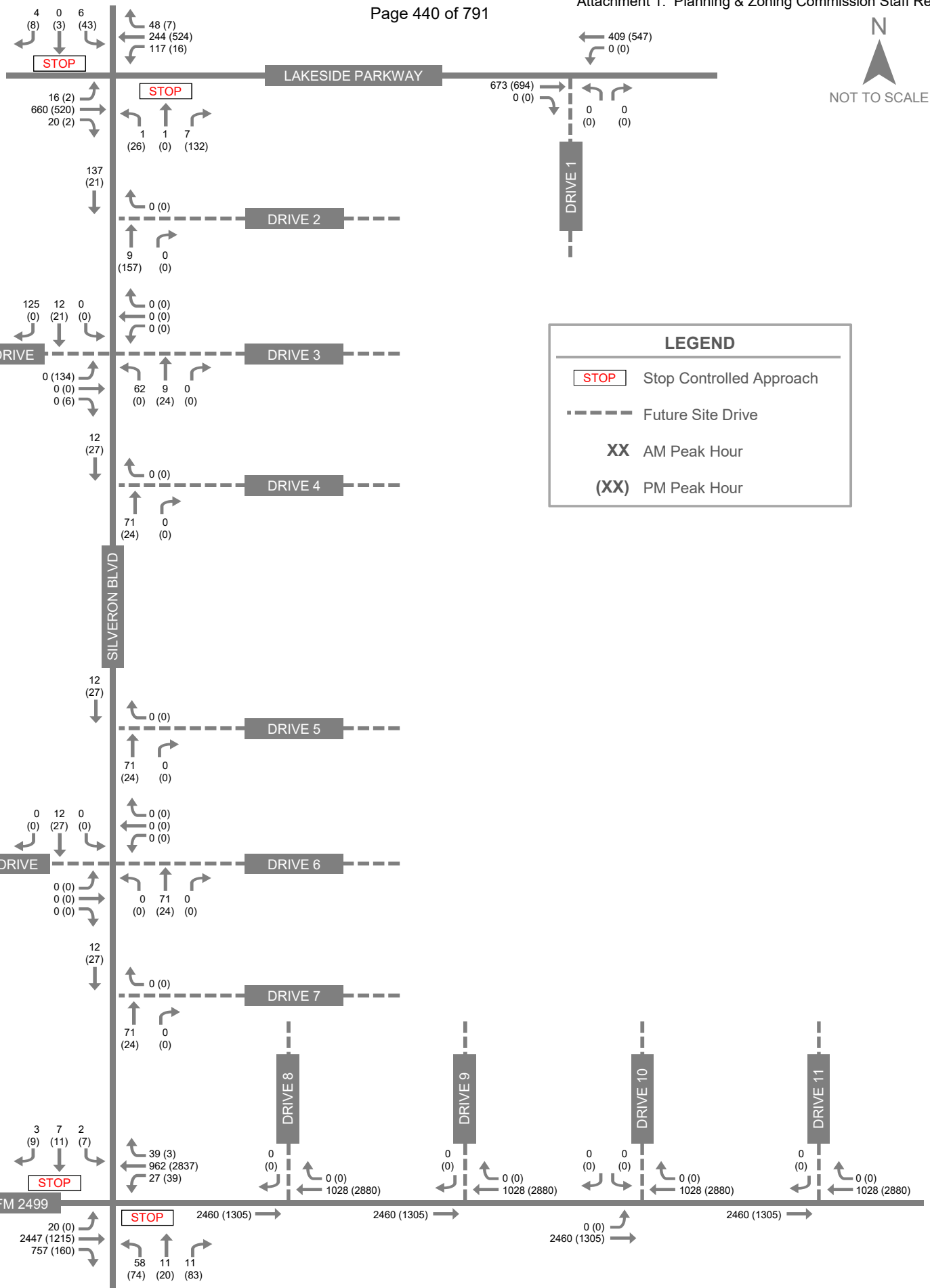
Exhibit 6 provides the Buildout (2021) Background traffic volumes, which include three (3) years of background growth. **Exhibit 7** provides the Buildout (2021) Total traffic volumes, which are a summation of Buildout (2021) Background traffic volumes (**Exhibit 6**), Lakewood Trip Assignment (**Exhibit 5**), and The Point Trip Assignment (see **Attachments**). **Exhibit 8** provides the Horizon (2026) Total traffic volumes, which are a summation of Lakewood Trip Assignment (**Exhibit 5**), The Point Trip Assignment (see **Attachments**), and eight (8) years of background growth.

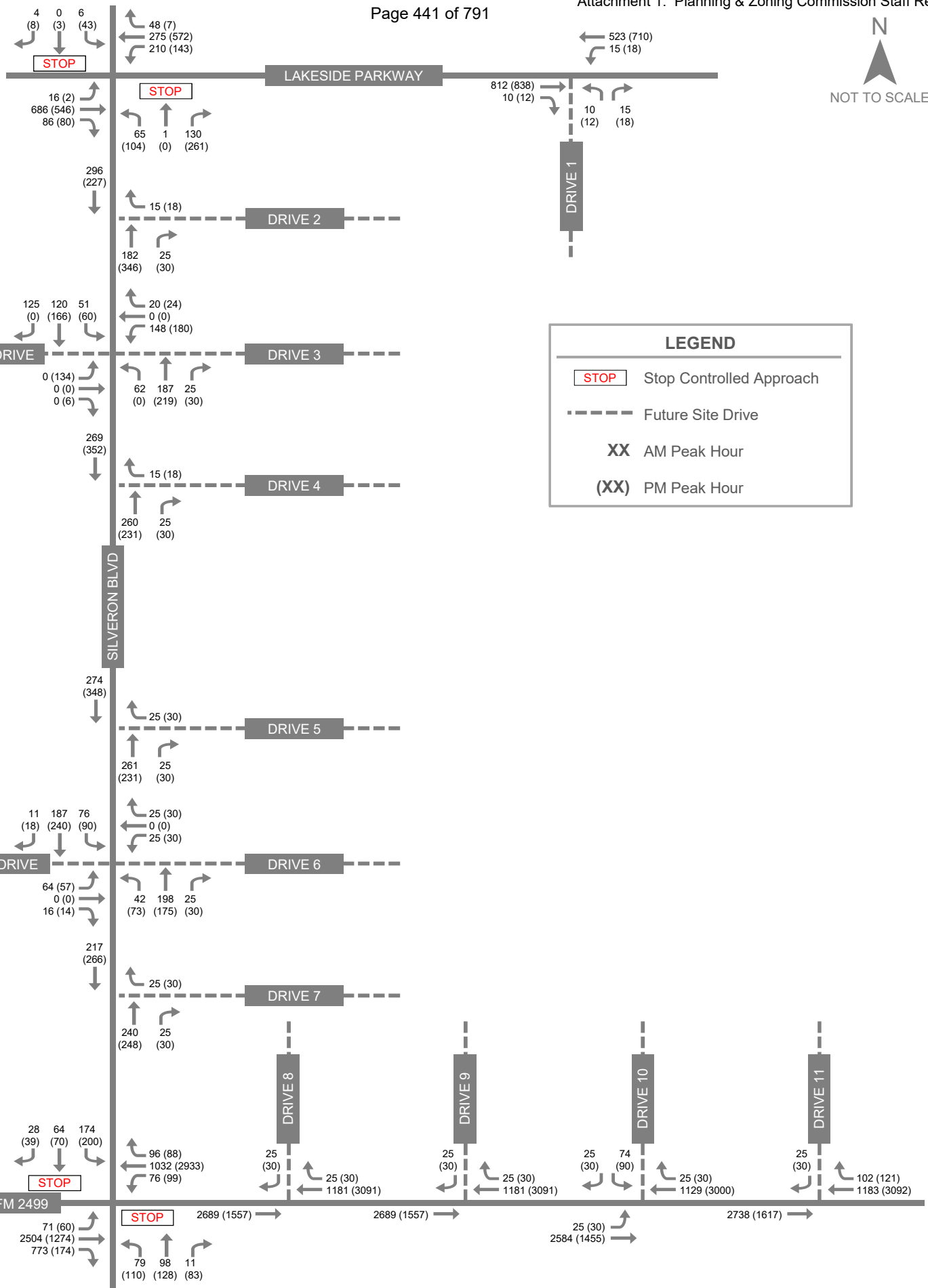


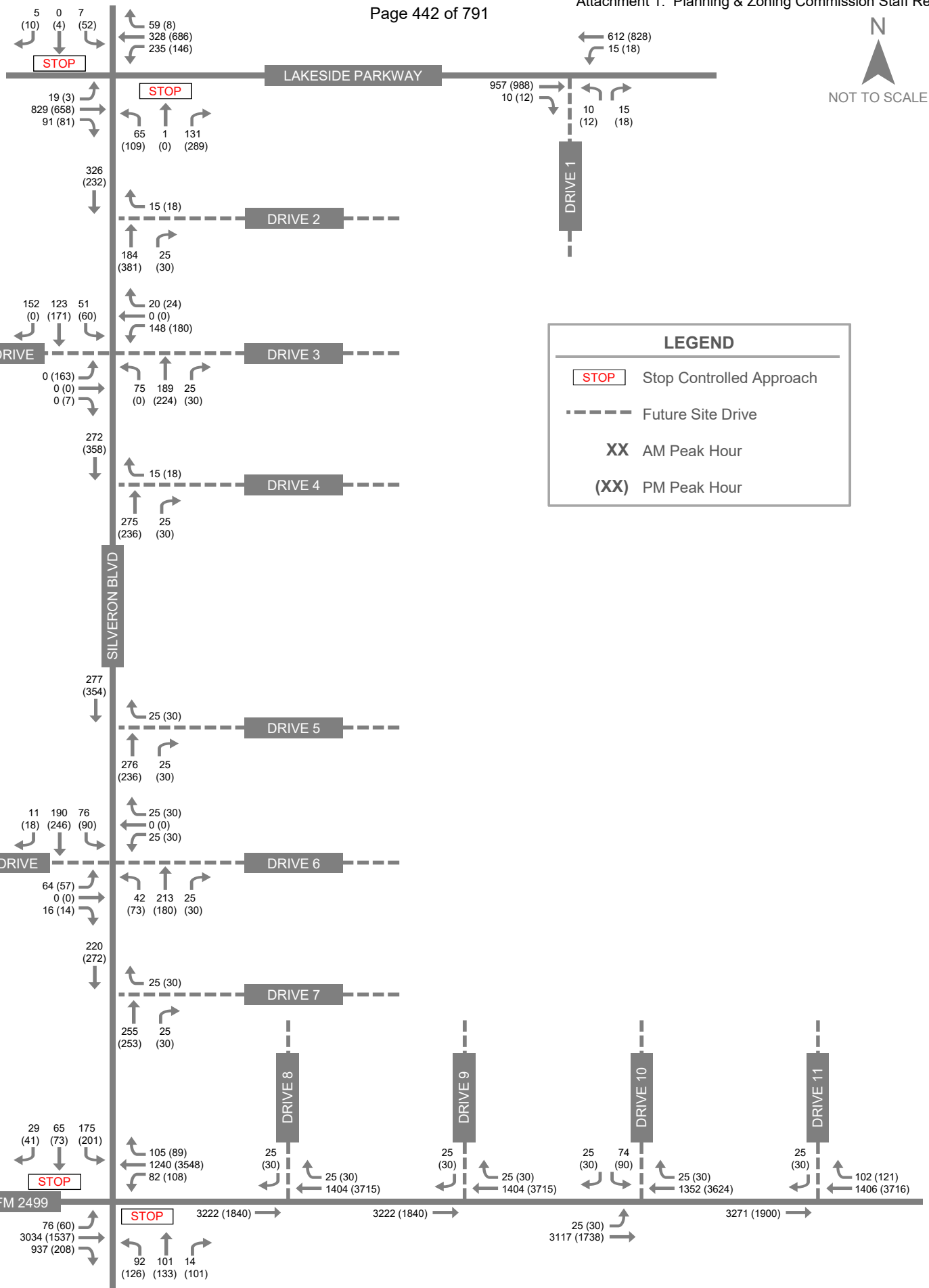


LEGEND

- STOP Stop Controlled Approach
- Future Site Drive
- XX** AM Peak Hour
- (XX)** PM Peak Hour







Intersection and Thoroughfare Capacity Analysis

The evaluation of the existing and future operation of the roadway system is comprised of both weekday AM and PM peak hour level of service analyses. Intersection analysis was performed using *Synchro 10™*, and the thoroughfare capacity analysis was completed using level of service criteria provided in Chapter 6 of the *Town of Flower Mound SMARTGrowth Manual*.

Capacity defines the volume of traffic that can be accommodated by a roadway at a specific “level of service,” and is affected by various geometric factors including roadway type (divided vs undivided), number of lanes, lane widths, and grade. Level of service (LOS), which is a measure of the degree of congestion, ranges from LOS A (free flowing) to LOS F (a congested, forced flow condition). A description of each operational state for the study intersections is presented in **Table 3**.

Table 4 shows the *Town of Flower Mound SMARTGrowth Manual* level of service criteria for the thoroughfare capacity analysis. LOS C is the minimum acceptable level of service by the Town of Flower Mound for design and evaluation purposes.

Table 3. Level of Service Definitions for Intersections

Level of Service	Average Control Delay per Vehicle (sec/veh)		Description
	Signalized	Unsignalized	
A and B	< 10 (A)	< 10 (A)	No delays at intersections with continuous flow traffic. Uncongested operations; high frequency of long gaps available for all left and right-turning traffic; no observable queues.
	> 10 and < 20 (B)	> 10 and < 15 (B)	
C	> 20 and < 35	> 15 and < 25	Moderate delays at intersections with satisfactory to good traffic flow. Light congestion; infrequent backups on critical approaches.
D	> 35 and < 55	> 25 and < 35	Increased probability of delays along every approach. Significant congestion on critical approaches, but intersection functional. No long standing lines formed.
E	> 55 and < 80	> 35 and < 50	Heavy traffic flow condition. Heavy delays probable. No available gaps for cross-street traffic or main street turning traffic. Limit of stable flow.
F	> 80	> 50	Unstable traffic flow. Heavy congestion. Traffic moves in forced flow condition. Average delays greater than one minute highly probable. Total breakdown.

Table 4. SMARTGrowth Level of Service Thresholds for Thoroughfares

Roadway Type	Level of Service "C"		Level of Service "D"		Level of Service "E"	
	Daily Service Volumes*	Hourly Service Volume	Daily Service Volumes*	Hourly Service Volume	Daily Service Volumes*	Hourly Service Volume
A8D***	52,000 - 58,000	780 - 880**	58,000 - 66,000	880 - 990**	66,000 - 73,000	990 - 1,100**
A6D***	39,000 - 44,000	780 - 880**	44,000 - 49,000	880 - 990*	49,000 - 55,000	990 - 1,100**
A4D***	21,000 - 23,000	620 - 700**	23,000 - 26,000	700 - 775**	26,000 - 29,000	775 - 875**
MC4U	17,000 - 18,000	500 - 550**	18,000 - 21,000	550 - 625**	21,000 - 23,000	625 - 675**
C4U	15,000 - 17,000	440 - 500**	17,000 - 18,000	500 - 550**	18,000 - 21,000	550 - 625**
C2U	6,000 - 7,000	350 - 425**	7,000 - 8,000	425 - 500**	8,000 - 9,500	500 - 575**

* Level of service with "K" = 0.10 and "D" = 60%/40%

** Assumes signal progression; no parking; access management; increased intersection capacity and grade separation

*** Assumes 12' lanes and divided roadway; A8D = arterial 8 lane divided; A6D = arterial 6 lane divided; A4D = arterial 4 lane divided

Note: Metropolitan collector MC4U = 4 lane undivided (12' lanes); C4U = collector 4 lane undivided (11' lanes)

Results

To evaluate the proposed development's impact on the study area intersections, level of service analysis was performed for existing conditions and the future year scenarios. The peak hour factors observed for existing conditions were used in the analysis. The level of service at the study intersections during each analysis scenario is summarized in **Table 5** for the AM peak hour and **Table 6** for the PM peak hour.

An alternative analysis tool was developed by Zhou and was published in the September 2006 ITE Journal. This tool provides an alternative solution to *Synchro 10TM* for calculating minor street delay and level of service for multi-lane two-way stop-controlled intersections to account for the fact that the Highway Capacity Manual (HCM) does not always provide an accurate analysis of the stop-controlled approaches on a multi-lane signalized corridor. This alternative analysis was used to obtain the levels of service for all analysis scenarios at the following intersections:

- Lakeside Parkway & Silveron Boulevard
- FM 2499 & Drive 8
- FM 2499 & Drive 9
- FM 2499 & Drive 10
- FM 2499 & Drive 11

As a result of the analysis, the following recommendations are provided:

FM 2499 & Silveron Boulevard – The intersection is currently operating at LOS F during the AM and PM peak hours and is anticipated to continue operating at failing conditions in future scenarios. In the study conducted for The Point, a signal warrant analysis was performed, and a traffic signal was determined to be warranted at the intersection. This study concurs with the recommendation in the Point TIA to install a traffic signal. A traffic signal was implemented into all subsequent analysis scenarios. Based on the results of the Buildout (2021) Mitigated analysis, it is anticipated that a traffic signal will allow the intersection to operate at LOS D during the AM and PM peak hours.



Lakeside Parkway & Drive 1 – During the PM peak hour of Horizon (2026) Conditions, this intersection is projected to operate below the target level of service (LOS D). However, the delay is anticipated to be contained within the development and is not anticipated to negatively impact operations along Lakeside Parkway. The 95th percentile queue length at this location is not projected to exceed one (1) vehicle during the PM peak hour in Horizon (2026) Conditions. Therefore, no further recommendations are provided.

FM 2499 & Drives 8, 9, 10, and 11 – During the PM peak hour of Buildout (2021) Conditions, the southbound approaches of the FM 2499 intersections with Drives 8, 9, 10, and 11 are projected to operate at failing conditions. This delay is due to the projected high volume through movements along FM 2499.

Traffic signals were not considered for Drives 8 or 9 due to their right-in/right-out configuration and their proximity to the intersection of FM 2499 & Silveron Boulevard. Drive 8 is anticipated to be approximately 360 feet east of Silveron Boulevard along FM 2499, and Drive 9 is anticipated to be approximately 800 feet east of Silveron Boulevard. However, a traffic signal was considered for Drive 10, which is 1200 feet east of Silveron Boulevard. It is anticipated that implementing traffic signals at Drive 10 and at Silveron Boulevard along FM 2499 will help to alleviate congestion at Drives 8 and 9 by providing gaps in traffic as vehicles navigate between Drive 11 and Silveron Boulevard.

To determine the need for a traffic signal, a signal warrant analysis was performed at Drive 10 using the projected Buildout (2021) peak hour volumes. As a result of this analysis, a traffic signal is not projected to be warranted at this location in Buildout (2021) Conditions. It is recommended that the volumes at FM 2499 and Drive 10 continue to be monitored for the potential need for a traffic signal.

**Table 5. Intersection Level of Service Summary (AM Peak Hour)**

INTERSECTION	CONTROL	APPROACH	Existing (2018)		Buildout (2021)		Horizon (2026)	
			DELAY (Sec/Veh)	LOS	DELAY (Sec/Veh)	LOS	DELAY (Sec/Veh)	LOS
Lakeside Parkway at Silveron Boulevard*	TWSC	NB	11.1	B	13.3	B	14.6	B
		SB	9.4	A	9.6	A	10.1	B
Silveron Boulevard at FM 2499	TWSC	NB	100+	F	100+	F	100+	F
		SB	100+	F	100+	F	100+	F
Silveron Boulevard at FM 2499 (Mitigated)	Signal	Overall	-	-	26.3	C	36.9	D
Lakeside Parkway at Drive 1	TWSC	NB	-	-	17.9	C	22.0	C
Silveron Boulevard at Drive 2	TWSC	WB	-	-	9.0	A	9.0	A
Silveron Boulevard at Stryker Drive/Drive 3	TWSC	EB	-	-	0.0	A	0.0	A
		WB	-	-	17.2	C	18.5	C
Silveron Boulevard at Drive 4	TWSC	WB	-	-	9.2	A	9.3	A
Silveron Boulevard at Drive 5	TWSC	WB	-	-	9.3	A	9.4	A
Silveron Boulevard at The Point Drive/Drive 6	TWSC	EB	-	-	16.3	C	16.6	C
		WB	-	-	12.5	B	12.7	B
Silveron Boulevard at Drive 7	TWSC	WB	-	-	9.0	A	9.0	A
FM 2499 at Drive 8*	TWSC	SB	-	-	15.2	C	16.6	C
FM 2499 at Drive 9*	TWSC	SB	-	-	15.2	C	16.6	C
FM 2499 at Drive 10*	TWSC	SB	-	-	36.8	E	54.1	F
FM 2499 at Drive 11*	TWSC	SB	-	-	15.2	C	16.6	C

*This intersection was analyzed using an empirical delay model for multi-lane two-way stop controlled intersections.

**Table 6. Intersection Level of Service Summary (PM Peak Hour)**

INTERSECTION	CONTROL	APPROACH	Existing (2018)		Buildout (2021)		Horizon (2026)	
			DELAY (Sec/ Veh)	LOS	DELAY (Sec/ Veh)	LOS	DELAY (Sec/ Veh)	LOS
Lakeside Parkway at Silveron Boulevard*	TWSC	NB	11.1	B	14.3	B	15.4	C
		SB	9.3	A	9.9	A	10.9	B
Silveron Boulevard at FM 2499	TWSC	NB	100+	F	100+	F	100+	F
		SB	100+	F	100+	F	100+	F
Silveron Boulevard at FM 2499 (Mitigated)	Signal	Overall	-	-	37.4	D	50.9	D
Lakeside Parkway at Drive 1	TWSC	NB	-	-	20.2	C	26.1	D
Silveron Boulevard at Drive 2	TWSC	WB	-	-	9.6	A	9.7	A
Silveron Boulevard at Stryker Drive/Drive 3	TWSC	EB	9.3	A	16.4	C	18.0	C
		WB	-	-	16.6	C	16.9	C
Silveron Boulevard at Drive 4	TWSC	WB	-	-	9.2	A	9.2	A
Silveron Boulevard at Drive 5	TWSC	WB	-	-	9.3	A	9.3	A
Silveron Boulevard at The Point Drive/Drive 6	TWSC	EB	-	-	20.5	C	20.8	C
		WB	-	-	13.9	B	14.0	B
Silveron Boulevard at Drive 7	TWSC	WB	-	-	9.0	A	9.0	A
FM 2499 at Drive 8*	TWSC	SB	-	-	37.0	E	51.5	F
FM 2499 at Drive 9*	TWSC	SB	-	-	37.0	E	51.5	F
FM 2499 at Drive 10*	TWSC	SB	-	-	52.0	F	83.8	F
FM 2499 at Drive 11*	TWSC	SB	-	-	37.0	E	51.5	F

*This intersection was analyzed using an empirical delay model for multi-lane two-way stop controlled intersections.



Table 7 provides the thoroughfare capacity analysis for Silveron Boulevard. As shown in the table, the facility is anticipated to operate at LOS C or better for all analysis scenarios.

Table 7. Silveron Boulevard Thoroughfare Capacity Analysis

Scenario	Segment	Lane Configuration	Class (Section)	SMART-Growth Capacity	Direction	AM Peak Hour			PM Peak Hour		
						Vol	V/C	Traffic Condition	Vol	V/C	Traffic Condition
Existing (2018)	North of Bridge	4 Lanes Divided	Urban Minor Arterial	700	NB	8	0.01	A-C	140	0.10	A-C
					SB	122	0.09	A-C	19	0.01	A-C
					Total	130	0.05	A-C	159	0.06	A-C
	South of Bridge	4 Lanes Divided	Urban Minor Arterial	700	NB	63	0.05	A-C	21	0.02	A-C
					SB	11	0.01	A-C	24	0.02	A-C
					Total	74	0.03	A-C	45	0.02	A-C
Buildout (2021)	North of Bridge	4 Lanes Divided	Urban Minor Arterial	700	NB	207	0.15	A-C	377	0.27	A-C
					SB	296	0.21	A-C	227	0.16	A-C
					Total	503	0.18	A-C	604	0.22	A-C
	South of Bridge	4 Lanes Divided	Urban Minor Arterial	700	NB	287	0.21	A-C	262	0.19	A-C
					SB	274	0.20	A-C	348	0.25	A-C
					Total	561	0.20	A-C	610	0.22	A-C
Horizon (2026)	North of Bridge	4 Lanes Divided	Urban Minor Arterial	700	NB	209	0.15	A-C	411	0.29	A-C
					SB	326	0.23	A-C	232	0.17	A-C
					Total	535	0.19	A-C	643	0.23	A-C
	South of Bridge	4 Lanes Divided	Urban Minor Arterial	700	NB	302	0.22	A-C	267	0.19	A-C
					SB	277	0.20	A-C	354	0.25	A-C
					Total	579	0.21	A-C	621	0.22	A-C



Auxiliary Lane Analysis

Turn lane requirements at the study intersections along Silveron Boulevard were based on the Town of Flower Mound's *Design Criteria* (April 2010). Based on the criteria, right-turn deceleration lanes will be required at all driveways served by a median opening and all driveways with a projected peak-hour right-turn entering volume of 50 vehicles or more. In addition, right-turn deceleration lanes will be required at any intersection of collectors and arterials as shown on the Town of Flower Mound Thoroughfare Plan.

TxDOT's Access Management Manual sets forth criteria for auxiliary lanes on FM 2499. According to Table 2.3, *Auxiliary Lane Thresholds*, a right-turn deceleration lane must be considered on roadways with a posted speed greater than 45 mph if the projected right-turn volume into the driveway is greater than 50 vehicles per hour.

All intersections were analyzed for the Buildout (2021) scenario. Based on the above criteria, the following are the recommendations for auxiliary lanes at the intersections:

Table 8. Right-Turn Lane Analysis

Intersection	Direction	Buildout (2021)			
		Volume		Warranted?	Justification
		AM	PM		
Lakeside Parkway at Drive 1	EB	10	12	YES	Existing Median Opening
Silveron Boulevard at Stryker Drive/Drive 3	NB	25	30	YES	Existing Median Opening
Silveron Boulevard at The Point Drive/Drive 6	NB	25	30	YES	Existing Median Opening
FM 2499 at Drive 10	WB	25	30	YES	Existing Median Opening
FM 2499 at Drive 11	WB	102	121	YES	Volumes



Access Management

The Town of Flower Mound's Design and Construction Standards contain the Town's *Access Management Policy and Criteria*. Additionally, the TxDOT *Access Management Manual* contains access spacing standards. The access spacing criteria is based on the functional classification and posted speed of the roadway.

FM 2499 Access

Based on TxDOT standards, the minimum spacing along a state highway with a speed limit of 55 mph or greater is 425 feet.

- Drive 8 on FM 2499 is a proposed RI/RO driveway that is located approximately 355 feet from the intersection of FM 2499 & Silveron Boulevard and approximately 430 feet from the intersection of FM 2499 & Drive 9.
- Drive 9 on FM 2499 is a proposed RI/RO driveway that is located approximately 430 feet from the intersection of FM 2499 & Drive 8 and approximately 400 feet from the intersection of FM 2499 & Drive 10.
- Drive 10 on FM 2499 is a proposed full-access driveway at an existing median opening that is located approximately 400 feet from the intersection of FM 2499 & Drive 9 and approximately 1,100 feet from the intersection of FM 2499 & Drive 11.
- Drive 11 on FM 2499 is a proposed full-access driveway that is located approximately 1,100 feet from the intersection of FM 2499 & Drive 10 and approximately 300 feet from the Lakewood development property line.

Based on the distances provided, all proposed access driveways along FM 2499 meet TxDOT access spacing criteria with a few exceptions. The following recommendations are offered:

- Drive 8 is located approximately 355 feet east of the intersection of FM 2499 & Silveron Boulevard. It is recommended that a 70-foot variance be requested to allow for this driveway, as it is a right-in/right-out driveway which is projected to have a minimal impact to operations on FM 2499.
- Drive 9 is located approximately 400 feet west of the intersection of FM 2499 & Drive 10. It is recommended that a 25-foot variance be requested to allow for this driveway, as it is a right-in/right-out driveway which is projected to have a minimal impact to operations on FM 2499.
- Alternatively, Drives 8 and 9 could be consolidated into a singular driveway to accommodate all spacing requirements.

Silveron Boulevard Access

For an Urban Minor Arterial with a speed limit of 40 mph, the Town's access spacing criteria is 250 feet.

- Drive 2 on Silveron Boulevard is a proposed RI/RO driveway that is located approximately 500 feet from the intersection of Lakeside Parkway & Silveron Boulevard and approximately 500 feet from the intersection of Silveron Boulevard & Stryker Drive (Drive 3).
- Stryker Drive (Drive 3) on Silveron Boulevard is a proposed full access driveway at an existing median opening that is located approximately 500 feet from the intersection of Silveron Boulevard & Drive 2 and approximately 280 feet of the intersection of Silveron Boulevard & Drive 4.
- Drive 4 on Silveron Boulevard is a proposed RI/RO driveway that is located approximately 280 feet from the intersection of Silveron Boulevard & Stryker Drive (Drive 3) and approximately 975 feet from the intersection of Silveron Boulevard & Drive 5.
- Drive 5 on Silveron is a proposed RI/RO driveway that is located approximately 975 feet from the intersection of Silveron Boulevard & Drive 4 and approximately 540 feet of the intersection of Silveron Boulevard & The Point Drive (Drive 6).
- The Point Drive (Drive 6) on Silveron Boulevard is a proposed full-access driveway at an existing median opening that is located approximately 540 feet from the intersection of Silveron Boulevard & Drive 5 and approximately 315 feet of the intersection of Silveron Boulevard & Drive 7.
- Drive 7 on Silveron Boulevard is a proposed RI/RO driveway that is located approximately 315 feet from the intersection of Silveron Boulevard & The Point Drive (Drive 6) and approximately 310 feet of the intersection of Silveron Boulevard & FM 2499.

Based on the distances provided, the proposed access driveways along Silveron Boulevard meet the Town's access management requirements.

Lakeside Parkway Access

For a Major Arterial with a speed limit of 45 mph, the Town's access spacing criteria is 360 feet.

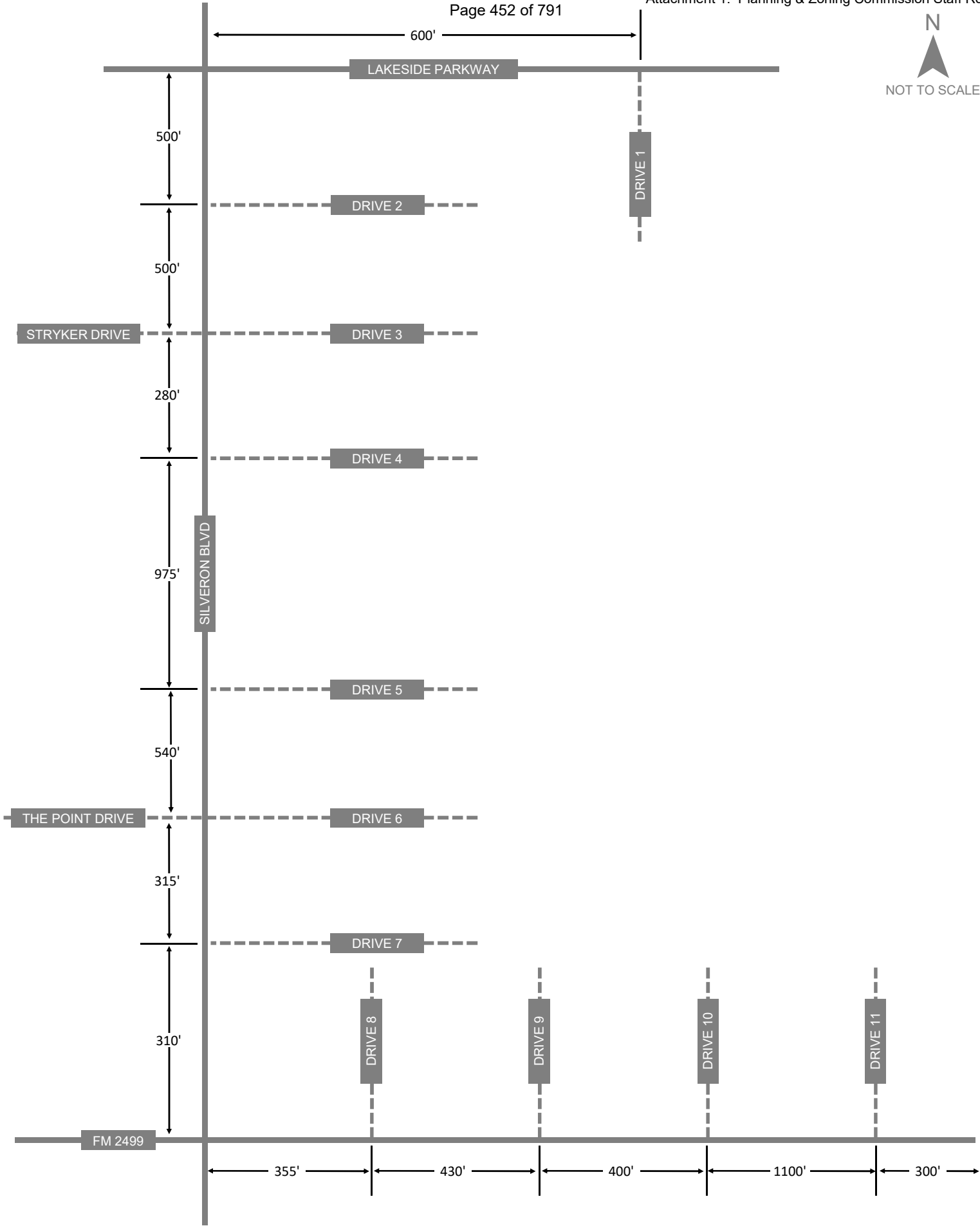
- Drive 1 on Lakeside Parkway is a proposed full-access driveway that is located approximately 600 feet from the intersection of Lakeside Parkway & Silveron Boulevard.

Based on the distance provided, the proposed access driveway along Lakeside Parkway meets the Town's access management requirements.

The access spacing for the development is shown in **Exhibit 9**.

Sight Distance

Field observations were performed to evaluate sight distance at the proposed site driveways. Based on the field observations, adequate sight distance will be available at all site driveways. We recommend that all driveways be designed to provide adequate sight distance (i.e. clear sight with no obstructing object, signs, landscaping, etc).





Conclusions and Recommendations

Based on our review of the proposed development, we offer the following conclusions and recommendations.

Trip Generation – Based on ITE trip generation rates, the development is anticipated to generate 1,003 net new trips during the AM peak hour (509 entering, 494 exiting), and 1,203 net new trips during the PM peak hour (603 entering, 600 exiting).

Intersection Capacity Analysis – Based on the results of the intersection capacity analysis, the following recommendations are provided:

- FM 2499 & Silveron Boulevard operates at failing conditions in all scenarios. In the study conducted for The Point, a signal warrant analysis was performed, and a traffic signal was determined to be warranted at the intersection. This study concurs with the previous analysis, and a traffic signal was implemented into all future analysis scenarios. Based on the results of the Buildout (2021) Mitigated analysis, it is anticipated that a traffic signal will allow the intersection to operate at LOS D during the AM and PM peak hours.
- In the PM peak hour of Horizon (2026) Conditions, the northbound approach of the intersection of Lakeside Parkway and Drive 1 is projected to operate at LOS D. The delay is anticipated to be contained within the development and is not anticipated to negatively impact operations along Lakeside Parkway. The 95th percentile queue length at these locations is not projected to exceed one (1) vehicle during the PM peak hour in Horizon (2026) Conditions. Therefore, no further recommendations are provided.
- During the AM and PM peak hours of Buildout (2021) Conditions, the southbound approaches of the FM 2499 intersections with Drives 8, 9, 10, and 11 are projected to operate at failing conditions. The anticipated delays at these driveways are due to the heavy traffic flow along FM 2499. Signalization was not considered for Drives 8 or 9 due to their proximity to the intersection of the recommended signal at FM 2499 & Silveron Boulevard. To alleviate the anticipated congestion at these driveways, a traffic signal was instead considered at Drive 10. However, the results of a peak hour traffic signal warrant analysis show that a traffic signal is not projected to be warranted at this intersection. It is recommended that the volumes at FM 2499 and Drive 10 continue to be monitored for the potential need for a traffic signal.

Access Management – Based on access spacing criteria provided by the Town of Flower Mound and by TxDOT, all proposed access drives meet access spacing criteria, with the exceptions of Drives 8 and 9. It is recommended that a 70-foot variance be requested for Drive 8 and a 25-foot variance be requested for Drive 9. Alternatively, Drives 8 and 9 could be consolidated into a singular driveway to accommodate all spacing requirements along FM 2499.



Auxiliary Lanes – Based on requirements from TxDOT and the Town of Flower Mound, the following right-turn auxiliary lanes are recommended:

Intersection	Direction	Buildout (2021)			
		Volume		Warranted?	Justification
		AM	PM		
Lakeside Parkway at Drive 1	EB	10	12	YES	Existing Median Opening
Silveron Boulevard at Stryker Drive/Drive 3	NB	25	30	YES	Existing Median Opening
Silveron Boulevard at The Point Drive/Drive 6	NB	25	30	YES	Existing Median Opening
FM 2499 at Drive 10	WB	25	30	YES	Existing Median Opening
FM 2499 at Drive 11	WB	102	121	YES	Volumes

SMARTGrowth (Town Arterial and Collector Links) – The proposed development's trip generation is not anticipated to reduce LOS on any Town arterial or collector thoroughfares below LOS C during the peak-hour demand; therefore, the development meets SMARTGrowth requirements.



MEMORANDUM

To: Chuck Russell, Town Planner
Robert Pegg, Engineering Manager
Town of Flower Mound

From: Jeffrey Whitacre, P.E., AICP, PTP
Kimley-Horn and Associates, Inc.
TPBE Registered Firm Number F-928

Date: August 2, 2019

Re: Northeast Corner of Long Prairie & Silveron Parking Study
Flower Mound, Texas



PURPOSE

Kimley-Horn and Associates, Inc. conducted a parking study for the proposed development located on the northeast corner of Long Prairie Road & Silveron Boulevard in the Town of Flower Mound, Texas. This memorandum summarizes the results of the parking study required in Section 82-73 of the Town's Code of Ordinances.

According to the conceptual site plan (see **Appendix**), the site is planned to include the following:

- **Office Land Use (Zone 1):** 168,000 ft²
- **Office Land Use (Zone 3):** 76,800 ft²
- **Restaurant Land Use:** 23,000 ft²
- **Retail Land Use (Zone 1):** 28,000 ft²
- **Retail Land Use (Zone 3):** 18,000 ft²
- **Multi-Family Land Use:** 850 Dwelling Units
- **Hotel Land Use:** 90 Keys

This study is intended to determine the number of parking spaces needed on site in order to adequately serve the development and meet requirements outlined by the Town of Flower Mound, the Institute of Transportation Engineers (ITE), and the Urban Land Institute (ULI).

METHODOLOGY

Three (3) analyses were performed for this study:

- **Flower Mound Code of Ordinances**
Utilized off-street parking requirements outlined in Section 82-74.
- **ITE Parking Generation**
Utilized the average peak period parking demand rates.
- **ULI Shared Parking Generation**
Utilized base rates as well as time distribution of parking demand.



PROPOSED SUPPLY

Based on the conceptual site plan for the development, 2,676 spaces are planned to be provided on site. **Table 1** outlines the total number of spaces currently planned to be provided for each study zone. The development is split into three zones for analysis purposes.

Table 1 - Planned Parking On-Site			
Zone	Land Use	Intensity/Units	Provided Parking
1	Office	168,000	1,070
	Restaurant	23,000	
	Retail	28,000	
	Hotel	90	
2	Multifamily	850	1,276*
3	Office	76,800	330
	Retail	18,000	
Total			2,676

*Parking for Multifamily land use assumed to follow requirements outlined for the proposed Planned Development District

The number of spaces estimated for the multifamily land use comes from the proposed Planned Development District requirements which state that the total multifamily parking should provide an average of one and a half spaces per unit, or a minimum of one space for each one-bedroom unit and a minimum of two spaces for each two and three-bedroom unit, whichever is greater. With the assumed breakout of units for the multifamily land use being 65% one-bedroom units, 30% two-bedroom units, and 5% three-bedroom units, the average of 1.5 spaces per dwelling unit results in a greater supply with a total of 1,275 spaces needed to adequately park Zone 2.

PARKING ANALYSIS

Flower Mound Code of Ordinances

As stated in Section 82-73 of the Town's Code of Ordinances, the required number of parking spaces for a proposed development is to be based on the requirements listed in section 82-74. These sections of the Town's Code of Ordinances are provided in the **Appendix**.

Based on the site plan provided, office, restaurant, retail, multifamily, and hotel land uses are all proposed on site. When developments are considered "large," requiring over 250 parking spaces, a minimum reduction of 20% from the sum of the specific parking required for each use is required.

Table 2 summarizes the specified study zones and land uses, the corresponding number of parking units, and the parking required based on the Town's Code of Ordinances. Using base ratios outlined in the Town's Code of Ordinances, 3,097 spaces are required for the site. Considering the site as a large development and reducing the parking by the required 20% results in 2,479 required spaces.



Table 2 - Town Parking Requirements					
Zone	Land Use	Intensity/ Units	Parking Requirement	City Required Parking	City Required Reduced Parking
1	Office	168,000	1 space per 300 square feet	560	448
	Restaurant	23,000	1 space per 75 square feet	307	246
	Retail	28,000	1 space per 250 square feet	112	90
	Hotel	90	1 space per guest suite	90	72
2	Multifamily	850	2 spaces per dwelling unit	1,700	1,360
3	Office	76,800	1 space per 300 square feet	256	205
	Retail	18,000	1 space per 250 square feet	72	58
Total Zone 1				1,069	856
Total Zone 2				1,700	1,360
Total Zone 3				328	263
Grand Total				3,097	2,479

ITE Parking Generation

The *ITE Parking Generation Manual* summarizes collected parking demand data which is compiled into statistics. Average peak period demand rates were used for each specified land use to obtain an anticipated parking demand the site.

During the late evening/early morning, both multifamily and hotel land uses experience their peak demand. Other hotel peak demand times occur around noon and during the late evening. Similarly, office land use has multiple peak demand times. Office land use experiences its peak demand from morning-noon and during the late afternoon/early evening. Around noon, restaurant land uses experience their peak demand. Retail land uses have a very specific peak demand time, occurring during December from 11:00 AM to 9:00 PM.

Table 3 summarizes the analysis carried out using the *Parking Generation Manual*. Based on the peak period demand and the site, the anticipated parking demand is 2,206 spaces.

Table 3 - ITE Parking Generation				
Zone	Land Use	Intensity/ Units	Parking Requirement	Parking
1	Office	168,000	2.84 vehicles per 1,000 square feet	478
	Restaurant	23,000	10.1 vehicles per 1,000 square feet	233
	Retail	28,000	3.76 vehicles per 1,000 square feet	106
	Hotel	90	0.91 vehicles per room	82
2	Multifamily	850	1.20 vehicles per dwelling unit	1,020
3	Office	76,800	2.84 vehicles per 1,000 square feet	219
	Retail	18,000	3.76 vehicles per 1,000 square feet	68
Total Zone 1				899
Total Zone 2				1,020
Total Zone 3				287
Grand Total				2,206



ULI Parking Generation

ULI's *Shared Parking* collects parking usage data and calculates peak parking demands for various land uses. ULI provides a rate for both visitors and employees for each land use. Using the ULI base parking ratios, peak parking supply can be calculated.

In addition to peak rates, ULI *Shared Parking* identifies time distributions of parking demand through an average day. By factoring the peak parking demand of each land use, the actual parking demand for each hour of the day can be modeled, taking into account that the same space can be used by different land uses throughout the day. Using the ULI base parking supply as a starting point, time factors can be applied to yield the hourly peak parking demand.

Table 4 shows the ULI recommended parking using base parking ratios as well as anticipated parking during the weekday peak period which is anticipated to occur from 10:00 to 11:00 AM. The time of day adjusted shared parking numbers reduced anticipated demand from 2,930 spaces to 2,347 spaces.

Table 4 - ULI Parking Generation						
Zone	Land Use	Intensity/ Units	Parking Requirement	Base Parking	Time of Day Factor for Weekdays	ULI Shared Parking
Visitor						
1	Office	168,000	0.25 spaces per 1,000 square feet	42	100%	42
	Restaurant	23,000	9 spaces per 1,000 square feet	207	85%	176
	Retail	28,000	2.9 spaces per 1,000 square feet	82	65%	53
	Hotel	90	1 space per room	90	60%	54
Employee						
1	Office	168000	3.15 spaces per 1,000 square feet	530	100%	530
	Restaurant	23000	1.5 spaces per 1,000 square feet	35	100%	35
	Retail	28000	0.7 spaces per 1,000 square feet	20	85%	17
	Hotel	90	0.25 spaces per room	23	100%	23
Visitor						
2	Multifamily	850	0.15 spaces per unit	128	20%	26
Employee						
2	Multifamily	850	1.7 spaces per unit	1,445	75%	1,084
Visitor						
3	Office	76,800	0.25 spaces per 1,000 square feet	20	100%	20
	Retail	18,000	2.9 spaces per 1,000 square feet	53	65%	34
Employee						
3	Office	76,800	3.15 vehicles per 1,000 square feet	242	100%	242
	Retail	18,000	0.7 vehicles per 1,000 square feet	13	85%	11
Total Zone 1				1,029		930
Total Zone 2				1,573		1,110
Total Zone 3				328		307
Grand Total				2,930		2,347



PARKING ANALYSIS SUMMARY

According to the three analyses carried out, the current conceptual site plan exceeds the number of spaces considering guidance provided by The Town, ITE, and ULI. **Table 5** summarizes the anticipated parking supply for the development and the parking projections based on the three analyses.

Table 5 - Parking Analysis Summary							
Zone	Land Use	Provided Parking	City Required Parking	City Required Large Development Parking	ITE Parking	ULI Base Parking	ULI Shared Parking
1	Office	1,070	560	448	478	572	572
	Restaurant		307	246	233	242	211
	Retail		112	90	106	102	70
	Hotel		90	72	82	113	77
2	Multifamily	1,276	1,700	1,360	1,020	1,573	1,110
3	Office	330	256	205	219	262	262
	Retail		72	58	68	66	45
Total Zone 1		1,070	1,069	856	899	1,029	930
Total Zone 2		1,276	1,700	1,360	1,020	1,573	1,110
Total Zone 3		330	328	263	287	328	307
Grand Total		2,676	3,097	2,479	2,206	2,930	2,347

LOT UTILIZATION ANALYSIS

Typical practice for parking lot design attempts to achieve a lot utilization of around 80% to 90% during peak periods. Drivers entering a parking lot with a utilization in this range perceive that the lot still has openings. As this utilization approaches 100%, driver's perception of the lot capacity changes to thinking it is full. This can lead to an increase in illegal parking.

The ITE peak parking demand analysis projects a peak parking demand of 2,206 parking spaces. **Table 6** shows the range of spaces needed to have a 100%, 90%, and 80% parking space utilization based on the anticipated peak parking demand.

Table 6 - Lot Utilization Analysis			
Zone	100 % Parked (Peak ITE Demand)	90% Parked (10% Open)	80% Parked (20% Open)
1	899	999	1,124
2	1,020	1,133	1,275
3	287	319	359
TOTAL	2,206	2,451	2,758

When attempting to provide for 80% to 90% utilization, it is estimated that the site would need a parking supply of 2,451 to 2,758 spaces. Based on the current site plan, the site is planned to provide 2,676 spaces which is above this range. The proposed parking planned on site results in a lot utilization of about 82%.



CONCLUSIONS

The current conceptual site plan for provides 2,676 spaces. Based on the analyses carried out, a supply ranging from 2,206 to 2,479 spaces is projected to be needed for the site. Both ITE and ULI analyses conducted yielded less spaces than requirements provided by the Town. Furthermore, when considering “large” developments the Town’s Code of Ordinances states a **minimum** reduction of 20% is to be applied. Applying this reduction results in the overall site being adequately parked. However, when looking at the three study zones, the following was observed

- **Zone 1 (Mixed Commercial):** Meets parking requirements outlined in all three methodology analyses conducted. Based on the analysis, the Zone 1 allotment for parking is over the amount of parking necessary.
- **Zone 2 (Multifamily):** Meets parking requirements for all agency analyses conducted apart from The Town requirements. If using the Town’s requirements and reducing by 20% for the “large” development, Zone 2 is under parked by approximately 84 spaces. This is likely due to the fact that the Town requirements park two vehicles per unit which can overestimate the amount of parking needed for an apartment complex with a majority of single-unit apartments. However, the proposed Planned Development District matches the ITE requirements with the 80% parked, 20% open general planning principle by providing 1,276 spaces.
- **Zone 3:** Meets parking requirements outlined in all three methodology analyses conducted. Based on the analysis, the Zone 3 allotment for parking is over the amount of parking necessary.

If you have any questions, please contact me at jeff.whitacre@kimley-horn.com or by phone at 817-339-2254.



Appendix

Conceptual Site Plan

Town of Flower Mound Code of Ordinances Sections 82-73 & 82-74



Conceptual Site Plan

VICINITY MAP

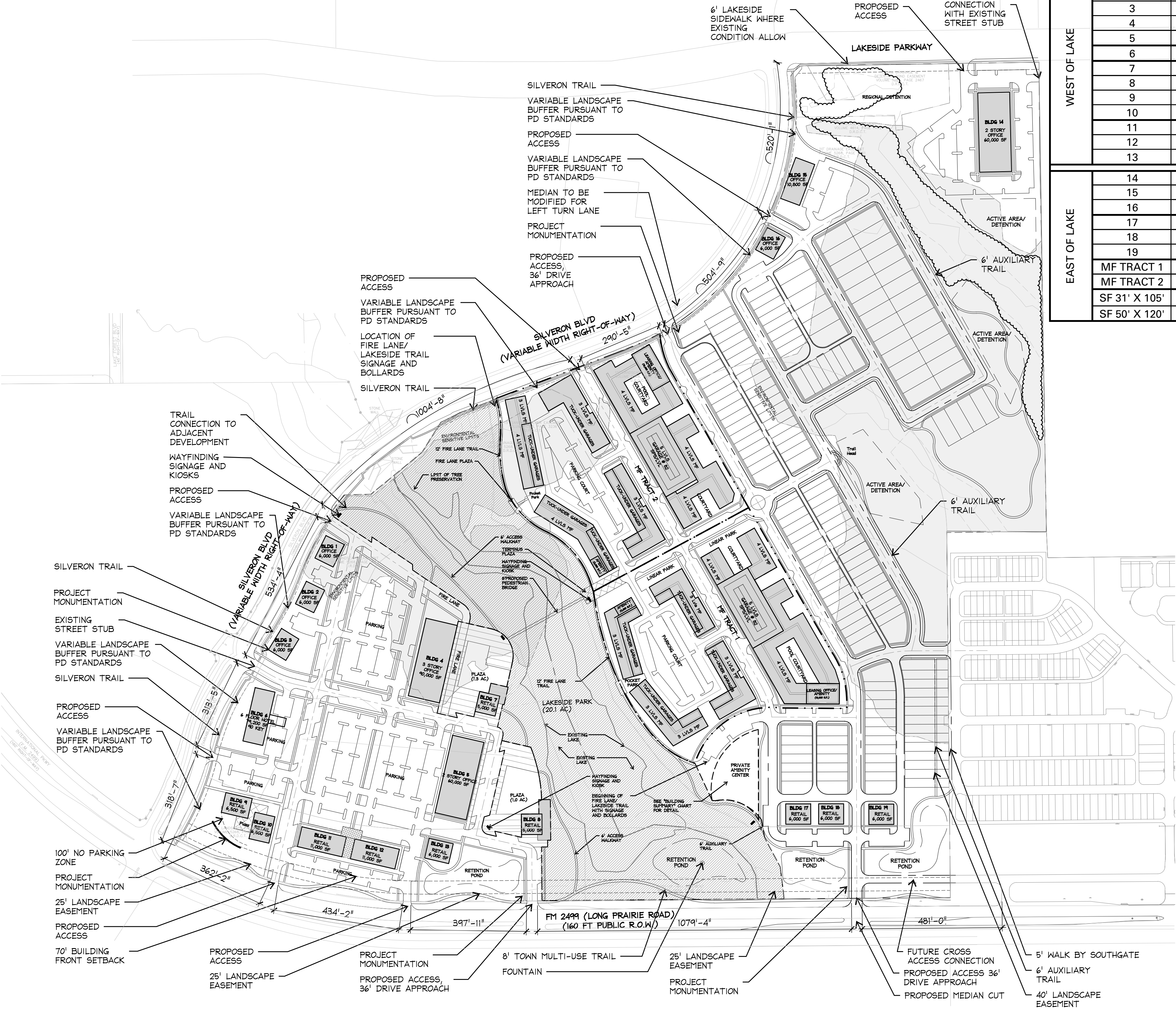


MASTER PLAN FEATURES	
LAND USE PLAN	LAKESIDE BUSINESS DISTRICT / CAMPUS COMMERCIAL
PARKS AND TRAILS	REQUIRED MULTI USE TRAIL ALONG FM2499
THOROUGHFARE PLAN	FM 2499(MAJOR ARTERIAL),SILVEORN BLVD (URBAN MINOR ARTERIAL), LAKESIDE PARKWAY (MAJOR ARTERIAL).
WATER PLAN	LAKESIDE SERVICE AREA - 12" WATER ALONG FM 2499, 12" WATER ALONG SILVERON BLVD.
WASTEWATER PLAN	EXISTING 8" GRAVITY SANITARY SEWER MAIN IN SILVERON BLVD, EXISTING 12" GRAVITY SANITARY SEWER MAIN IN LAKESIDE PKWY, EXISTING 18" GRAVITY SANITARY SEWER MAIN SOUTH OF THE DEVELOPMENT.
ECONOMIC IMPACT	\$250 MILLION AD VALOREM; HOTEL AND ADDITIONAL REVENUE STREAMS TBD.

ALL FIRE LANES TO BE 26 FEET WIDE, WITH 25 FEET TURNING RADIUS. DRIVE APPROACHES FROM SILVERON OR FM2499 AT MEDIAN CUT INTO THE PROJECT TO BE 36 FEET WIDTH WITH 25' TURNING RADIAS.

SEE OPEN SPACE AND TRAIL ACCESS PLAN FOR ALL TRAIL LOCATIONS AND WIDTH.

AREA	BLDG #	LAND USE	SUQARE FOOTAGE	NUMBER OF STORIES	UNITS	CITY PARKING RATIO	CITY PARKING REQ.	TOTAL PARKING REQUIRED	TOTAL PARKING PROVIDED	TOTAL SF/ UNITS
WEST OF LAKE	1	OFFICE	6,000	1	NA	1 / 300 SF	20	1069	1070	168,000
	2	OFFICE	6,000	1	NA	1 / 300 SF	20			
	3	OFFICE	6,000	1	NA	1 / 300 SF	20			
	4	OFFICE	90,000	3	NA	1 / 300 SF	300			
	5	OFFICE	60,000	2	NA	1 / 300 SF	200			
	6	HOTEL	79,200	6	90 KEYS	1 / 1 KEY	90			79,200
	7	RETAIL/REST.	5,000	1	NA	1 / 75 SF	67			23,000
	8	RETAIL/REST.	5,000	1	NA	1 / 75 SF	67			
	9	RETAIL/REST.	6,500	1	NA	1 / 75 SF	87			
	10	RETAIL/REST.	6,500	1	NA	1 / 75 SF	87			
	11	RETAIL	11,000	1	NA	1 / 250 SF	44			28,000
	12	RETAIL	11,000	1	NA	1 / 250 SF	44			
	13	RETAIL	6,000	1	NA	1 / 250 SF	24			
EAST OF LAKE	14	OFFICE	60,000	2	NA	1 / 300 SF	200	328	330	76,800
	15	OFFICE	10,800	1	NA	1 / 300 SF	36			
	16	OFFICE	6,000	1	NA	1 / 300 SF	20			
	17	RETAIL	6,000	1	NA	1 / 250 SF	24			
	18	RETAIL	6,000	1	NA	1 / 250 SF	24			18,000
	19	RETAIL	6,000	1	NA	1 / 250 SF	24			
	MF TRACT 1	MULTI - FAMILY	NA	4	421	1.5 / UN.	632			850
	MF TRACT 2	MULTI - FAMILY	NA	4	429	1.5 / UN.	644			
	SF 31' X 105'	SINGLE FAMILY	NA	2	128	NA	NA	NA	NA	164
	SF 50' X 120'	SINGLE FAMILY	NA	2	36	NA	NA	NA	NA	



- NOTES:
- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE
 - ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
 - DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIAL OF THE MAIN BUILDING.
 - DUMPSTER SCREENING WALL REQUIRES SEPARATE BUILDING PERMIT.
 - SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGN DEPICTED ON THE SUBJECT SITE PLAN/ ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.
 - RETAINING WALLS 4 FEET IN HEIGHT OR TALLER, INCLUDING FOOTINGS, WILL REQUIRE A SEPARATE BUILDING PERMIT THROUGH THE BUILDING DEPARTMENT. RETAINING WALLS 6' IN HEIGHT LOCATED IN THE SINGLE FAMILY WILL BE MAINTAINED BY THE HOA.
 - LOCATIONS OF ALL OUTDOOR SEATING AREAS, GATHERING AREAS, DINING AREAS, AND PERMEABLE OPEN SPACE AREAS MAY BE REVISED DURING SITE PLAN REVIEW FOR EACH BUILDING.
 - BUILDING FOOTPRINTS, GROSS AREA, AND PROJECTED USE MAY BE REVISEDIN THE SITE PLAN APPLICATION

PROJECT NAME: LAKEWOOD
STREET ADDRESS: UNPLATTED, NOT ASSIGNED
SITE AREA: 122.1 AC
EXISTING ZONING: PD 31
EXISTING LAND USE: CAMPUS COMMERCIAL

LAKEWOOD

CONCEPT PLAN
- BLACK AND WHITE

EXHIBIT FOR **ZPD 17-0013**

Development Team

Owner/Applicant :
PS Silveron/RMR LP
5054 Development Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

Planner / Landscape Architect:
TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:
Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map



Reference sheet

Name	Description
Land Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location of trails.
Open Space Amenity Key	Shows open space with labels that is referenced in planned development, shows matrix of proposed type of amenities in each open space area and the quantities
Vehicular Network	Shows proposed street network, street types and cross sections, location of utility, enlargement of trail, enlargement of lots that have landscape easement in front yard, enlargement of street tree detail.
Concept Plan - Black and White	Detail drafted site plan with building summary
Conceptual Landscape Plan	Detail drafted landscape plan with landscape requirement compliance chart.
Conceptual Signage Plan	Proposed signage elevations

General Note

All plans are conceptual in natural and subject to change based on site and development conditions.

TBG

Scale 1" = 200'
0' 200' 400'
May 31, 2019

The information shown is based on the best information available and is subject to change without notice.



Town of Flower Mound Code of Ordinances Sections 82-73 & 82-74

Sec. 82-73. - Computing parking and loading requirements.

The number of parking spaces required for a specific development proposal shall be based on the requirements listed in section 82-74, Off-street parking and loading space requirements, and the following provisions:

- (1) *Deviation of required spaces.* The amount of parking can be reduced or increased by 20 percent. Deviations in excess of 20 percent must be accompanied by a parking study and approved by the town council. Any approved parking in excess of 20 percent must be mitigated. Mitigation can be achieved by the use of pervious paving, increased landscaping, increased stormwater treatment, or other method to reduce the impact of the increased parking.
- (2) *Unlisted uses.* Where questions arise concerning the minimum off-street parking and loading requirements for any use not specifically listed, the requirements may be interpreted by the town as those of a similar use.
- (3) *Large developments.* A large development is defined as any development that is required to provide over 250 parking spaces based on the parking ratios listed in section 82-74. All large developments are required to provide a parking study as defined in this section and should provide a minimum reduction of 20 percent from the sum of the specific parking required for each use.
- (4) *Parking study.* A parking study required by this article shall be reviewed by the town along with any traffic engineering and planning data that are appropriate to the establishment of a parking requirement for the use proposed. A parking study, when required by this article, shall include, but not be limited to, estimates of parking requirements based on recommendations in studies such as those from the Urban Land Institute, the Institute of Traffic Engineers, or the Traffic Institute, and based on data collected from uses or combinations of uses that are the same or comparable to the proposed use. Comparability shall be determined by density, scale, bulk, area, type of activity and location. The analysis must include a shared parking analysis based on the mixture of uses and corresponding peak demand. Specifically, the parking required for restaurants should be included in the study and be determined by the number, location, and type of restaurants proposed. The study shall document the source of data used to develop recommendations.
- (5) *Location.* All required parking shall be located and arranged on the site to insure optimal access and use.

- (6) *Fractions.* When measurements determining the number of required parking and loading spaces result in fractions, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall be rounded upward to the next highest full number.
- (7) *Seating capacity.* Where parking ratios are specified in terms of the number of seats, this shall be interpreted to mean maximum seating capacity as determined using the standards of the uniform building code.
- (8) *Floor area.* Floor area of structures devoted to off-street parking of vehicles shall be excluded in computing the off-street parking and loading requirements of any use.

(Code 1989, ch. 12, § 5.02(c); Ord. No. 62-04, § 4, 7-19-2004)

Sec. 82-74. - Off-street parking and loading space requirements.

The following are the off-street parking and loading space requirements:

SCHEDULE OF PARKING AND LOADING REQUIREMENTS

Use Type	Parking
<i>Residential Uses</i>	
All residential uses	2 spaces per dwelling unit
<i>Educational, institutional and special uses</i>	
Church or rectory	1 space per 3 seats in main sanctuary
College or university	A space per classroom/instruction area plus 1 space per 3 students accommodated
Day care center	1 space per 4 persons accommodated

Fraternal club or lodge	1 space per 4 persons accommodated
Hospital	2 spaces per 3 beds
Institution, drug or psychiatric treatment	2 spaces per 3 beds
Medical office	1 space per 250 square feet
Museum, library or art gallery (public)	10 plus 1 space per 500 square feet
Nursing or congregate care facility	2 spaces per 3 beds
School, elementary or secondary	Elem. or Jr. High, 1 space per classroom plus 1 space per 3 seats in gym or assembly; high school (see college)
<i>Utility and public service uses</i>	
All utility and public service uses	To be determined by town engineer
<i>Transportation-related uses</i>	
All Transportation-related uses	To be determined by town engineer
<i>Retail uses</i>	
Restaurant	1 space per 75 square feet
All other retail uses	1 space per 250 square feet
<i>Personal service uses</i>	

Hotel or motel	1 space per guest suite plus specified requirements for restaurant and other associated uses
Laboratory, medical and dental	1 space per 300 square feet
Office, general business and professional	1 space per 300 square feet
Studio, television or radio	1 space per 300 square feet
All other personal service uses	1 space per 250 square feet
<i>Recreational and entertainment uses</i>	
Amusement and recreation (indoors)	10 spaces, plus 1 space per 200 square feet over 2,000 square feet; bowling alleys: 6 per bowling lane
Health club or athletic club	1 space per 250 square feet
Stable, commercial boarding or rental	1 space per 2 stalls
Theater	1 space per 3 seats
<i>Automobile and related service uses</i>	
Car wash, self-service	2 spaces plus 1 space per bay for drying area
Motor vehicle fuel service station	6 spaces
All other automobile and related service uses	1 space per 250 square feet

<i>Heavy commercial uses</i>	
Building material sales and storage (indoors)	1 space per 250 square feet
Building material sales or storage (outdoors)	1 space per 250 square feet
Cabinet and upholstery shop	1 space per 750 square feet
Cleaning, dyeing or laundry plant	1 space per 750 square feet
Laboratory, manufacturing	1 space per 750 square feet
Laboratory, scientific and research	1 space per 750 square feet
Lithographic or print shop	1 space per 250 square feet
Maintenance service	1 space per 750 square feet
Miniwarehouse	1 space per 75 storage bays with minimum of 3 spaces
Office-showroom/warehouse	Retail — 1 space per 250 square feet; Office — 1 space per 300 square feet; Showroom/warehouse — 1 space per 2,000 square feet
Repair services, general	1 space per 250 square feet
Warehousing and wholesale, general	1 space per 2,000 square feet
Vehicle and equipment sales or rental	1 space per 250 square feet

Welding or machine shop	1 space per 250 square feet
<i>Industrial uses</i>	
All industrial uses	1 space per 750 square feet
<i>Agriculture and extractive uses</i>	
Feed store	1 space per 250 square feet
Greenhouse, wholesale	1 space per 500 square feet

(Code 1989, ch. 12, § 5.02(d); Ord. No. 75-99, § 4, 12-6-1999; Ord. No. 14-00, § 10, 2-17-2000; Ord. No. 40-00, § 2, 6-5-2000; Ord. No. 48-03, § 2, 8-18-2003; Ord. No. 62-04, § 5, 7-19-2004; Ord. No. 06-12, § 7, 2-20-2012)

Sec. 82-75. - Off-site parking.

Required off-street parking spaces shall be on the same lot as the principal use, provided that all or a portion of the required parking spaces may be located on a separate lot from the lot on which the principal use is located, based on the following provisions:

- (1) *Contiguous.* The off-site parking shall be located on a lot that is immediately adjacent to, and contiguous with the lot containing the principal use.
- (2) *Ownership.* If a proposed off-site parking area is not under the same ownership as the principal use to which it is accessory, all necessary legal instruments shall be executed to ensure that the required number of spaces shall remain available throughout the life of the principal use.
- (3) *Zoning.* An off-site parking area shall be located on a lot zoned to permit the principal use as a permitted or specific use. If the principal use is authorized as a specific use in the district in which the proposed off-site parking area is to be located, a specific use permit shall be required for the off-site parking area.

TOWN OF FLOWER MOUND, TEXAS**ORDINANCE NO. 33-00**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES (LAND DEVELOPMENT CODE) AND REPEALING ORDINANCE NUMBER 69-85 OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 281.443 ACRES OF LAND IN THE JOSEPH KNIGHT SURVEY, ABSTRACT NUMBER 692 AND THE J.N. TANNEHILL SURVEY, ABSTRACT NUMBER 1252, BY AMENDING THE ZONING EXHIBIT WITHIN PLANNED DEVELOPMENT NUMBER 31 (PD-31), WHICH ALLOWS FOR COMMERCIAL DISTRICT-2 (C-2) AND INDUSTRIAL DISTRICT-1 (I-1) USES TO PLANNED DEVELOPMENT NUMBER 31 (PD-31) FOR CAMPUS COMMERCIAL DISTRICT (CC) AND CAMPUS INDUSTRIAL DISTRICT (CI), AND BY CHANGING THE ZONING ON APPROXIMATELY 128.31 ACRES OF LAND IN THE JOSEPH KNIGHT SURVEY, ABSTRACT NUMBER 692 FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT NUMBER 31 (PD-31) FOR CAMPUS COMMERCIAL DISTRICT (CC) AND CAMPUS INDUSTRIAL DISTRICT (CI) REPEALING ALL CONFLICTING ORDINANCES, ORDERS, OR RESOLUTIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after public notice and public hearing as required by law, the Planning and Zoning Commission of the Town of Flower Mound, Texas, has recommended the amendment Chapter 12 of the Code of Ordinances (Land Development Code) and repealing Ordinance Number 69-85 of the Town of Flower Mound, Texas, by changing the zoning on approximately 281.443 acres of land in the Joseph Knight Survey, Abstract Number 692 and the J.N. Tannehill Survey, Abstract Number 1252, by amending the zoning exhibit within Planned Development Number 31 (PD-31), which allows for Commercial District-2 (C-2) and Industrial District-1 (I-1) uses to Planned Development Number 31 (PD-31) for Campus Commercial District (CC) and Campus Industrial District (CI), and by changing the zoning on approximately 128.31 acres in the Joseph Knight Survey, Abstract Number 692 from Agricultural District (A) to Planned Development Number 31 (PD-31) for Campus Commercial District (CC) and Campus Industrial District (CI); and,

WHEREAS, after public notice and public hearing as required by law, and upon due deliberation and consideration of the recommendation of said Planning and Zoning Commission and of all testimony and information submitted during said public hearing, the Town Council of the Town of Flower Mound, Texas, has determined that it is in the public's best interest and in furtherance of the health, safety, morals, and general welfare of the citizens of the Town that the zoning on approximately 281.443 acres of land in the Joseph Knight Survey, Abstract Number 692 and the J.N. Tannehill Survey, Abstract Number 1252 and the zoning of an additional 128.31 acres land in the Joseph Knight Survey, Abstract Number 692 be amended as described below;

ORDINANCE NO. 33-00

PAGE 2

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, the official zoning map, Exhibit "A" to Chapter 12 of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended and changed in the following particulars, and all other existing sections, subsections, paragraphs, sentences, definitions, phrases, and words of said Land Development Code are not amended, but shall remain intact and are hereby ratified, verified, and affirmed:

- "A. The uses allowed on a certain tract of land being approximately 281.443 acres of land in the Joseph Knight Survey, Abstract Number 692 and the J.N. Tannehill Survey, Abstract Number 1252, Flower Mound, Denton County, Texas, and more fully described in Exhibit "A," attached hereto and incorporated herein, presently zoned as Planned Development Number 31 (PD-31) with Commercial District-2 (C-2) and Industrial District-1 (I-1) uses and a certain tract of land being approximately 128.31 acres of land in the Joseph Knight Survey, Abstract Number 692, Flower Mound, Denton County, Texas, and more fully described in Exhibit "A," attached hereto and incorporated herein, presently zoned Agricultural District (A) are changed to Planned Development Number 31 (PD-31) with Campus Commercial District (CC) and Campus Industrial District (CI) uses in accordance with Exhibit "B," attached hereto and incorporated herein."

SECTION 3

A general development plan, depicting the general tract sizes and zoning classifications thereof, is attached hereto as Exhibit "C" and incorporated herein.

SECTION 4

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 5

If any section, subsection, clause, phrase, or provision of this Ordinance is for any reason held unconstitutional or void by a court of competent jurisdiction, the

ORDINANCE NO. 33-00

PAGE 3

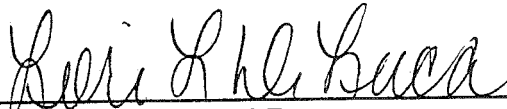
remainder of the ordinance shall continue in effect as if the invalid portion had never been included.

SECTION 6

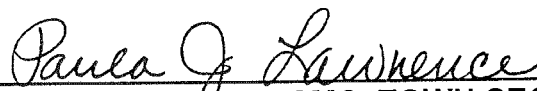
This Ordinance shall take effect and be in full force from and after its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 17TH DAY OF APRIL, 2000.

APPROVED:


Lori DeLuca, MAYOR

ATTEST:


Paula J. Lawrence, CMC, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:


Terrence S. Welch, TOWN ATTORNEY

EXHIBIT "A-1"

Legal Descriptions

TRACT I: BEING 288.497 acres of land located in the JOSEPH KNIGHT SURVEY, Abstract No. 692, and the J.N. TANNEHILL SURVEY, Abstract No. 1252, Denton County, Texas, and being a portion of the 284.535 acre tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust, by the deed recorded in Volume 1360, Page 433 of the Real Property Records of Denton County, Texas, and all of the 4.003 acre tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust, by the deed recorded in Volume 1470, Page 279 of the Real Property Records of Denton County, Texas, and all of the tracts of land conveyed to Trustees, E-Systems, Inc., Pool Trust by the deeds recorded in Denton County Clerk's Files No. 96R-0075624, No. 96R-0085598 and No. 96-0091514. Said 208.496 acres of land being more particularly described by metes and bounds, as follows:

BEGINNING at a 1/2" iron rod at the intersection of the East boundary line of said 284.535 acre tract with the North right-of-way line of Farm-to-Market Road No. 2499 (a 160 foot wide right-of-way). Said Point of Beginning also being located at a point S 89° 52' 42" E 3690.83 feet, and THENCE N 00° 20' 16" W 767.37 feet from the Southwest corner of said JOSEPH KNIGHT SURVEY;

THENCE Along the North right-of-way line of said Farm-to-Market Road No. 2499, as follows:

1. S 89° 46' 02" W 1790.47 feet, to a concrete Texas Highway Department Right-of-way Monument found, at the beginning of a curve to the Right;
2. NORTHWESTERLY 2189.77 feet, along said curve to the Right, having a radius of 1829.86 feet, a central angle of 68° 33' 54" and a chord bearing N 55° 57' 01" W 2061.41 feet to a concrete Texas Highway Department Right-of-way Monument found, at the end of said curve;
3. N 21° 40' 04" W 1224.17 feet, to a 1/2" iron rod set, at the intersection of the centerline of Old Donald Road, being the North boundary line of aforesaid 284.535 acre tract;

THENCE S 88° 39' 39" E 257.70 feet, along the centerline of said Old Donald Road to a 1/2" iron rod set, at the intersection of the common boundary between the aforesaid KNIGHT and TANNEHILL SURVEYS;

THENCE SOUTH along the common line between said surveys, generally following a fence at 25.0 feet passing a 1/2" iron rod in the former South right-of-way line of said Old Donald Road, and in all 499.95 feet along the West boundary line of the tract of land conveyed to Mae Powell, by the deed recorded in Volume 373, Page 467 of the Deed Records of Denton County, Texas, to a 1/2" iron rod set, at the Southwest corner of said Powell Tract;

THENCE N 89° 52' 08" E 857.83 feet, along a fence in the South boundary line of said Mae Powell Tract to a 1/2" iron rod set, at the Southeast corner of said Powell Tract;

THENCE N 00° 15' 17" W 2557.72 feet, along the East boundary line of said Powell Tract to a 1/2" iron rod set, in the South right-of-way line of Spinks Road;

THENCE S 89° 10' 58" E 742.23 feet, along the South right-of-way line of said Spinks Road to a 1/2" iron rod set, at the Northwest corner of the Tract of land conveyed to Thomas W. Harris and wife Mary Anne Harris by Denton County Clerk's File No. 96R-0075623;

THENCE S 00° 15' 17" E 1457.48 feet, departing said Spinks Road and running along the West boundary line of said Harris Tract to a 1/2" iron rod set, at the Southwest corner of said Harris Tract;

03-14-00 17:10

From-

1. S 01° 40' 34" E 284.72 feet, to a 1/2" iron rod set at the beginning of a curve to the left;
2. SOUTHEASTERLY 145.72 feet, along said curve to the left having a radius of 1000.00 feet, a central angle of 08° 20' 57" and a chord bearing S 85° 57' 00" E 145.59 feet to a 1/2" iron rod set at the end of said curve;
3. N 89° 52' 32" E 177.01 feet, to a 1/2" iron rod set at the Southeast corner of said Harris Tract, lying at the most Westerly Northwest corner of the Tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust according to Denton County Clerk's File No. 96R-0075624;

THENCE N 89° 52' 32" E 272.92 feet, along the most Southerly North boundary line of said E-Systems Tract to a 1/2" iron rod set;

THENCE N 04° 03' 59" W 1500.05 feet, along the West boundary line of said E-Systems Tract to a 1/2" iron rod set, at the most Northerly Northwest corner of said E-Systems Tract, lying in the South right-of-way line of aforesaid Spinks Road;

THENCE Along the South right-of-way line of said Spinks Road as follows:

1. S 89° 08' 14" E 200.63 feet to a 5/8" iron rod found, at the Northeast corner of the aforesaid E-Systems Tract, being the Northwest corner of the Tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust according to Denton County Clerk's File No. 96R-0065598;
2. S 89° 20' 53" E 470.78 feet along the North boundary line of said E-Systems Tract to a 1/2" iron rod set, at the Northeast corner thereof, being the Northwest corner of the Tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust according to Denton County Clerk's File No. 96-0091514;
3. S 89° 23' 28" E 560.49 feet to a 1/2" iron rod found, at the most Northerly Northeast corner of said E-Systems Tract;

THENCE S 00° 26' 21" E 484.96 feet departing said right-of-way line and running along the most Westerly East boundary line of said E-Systems Tract to a 1/2" iron rod found;

THENCE N 89° 33' 41" E 360.08 feet along the most Southerly North boundary line of said E-Systems Tract to a 1/2" iron rod found, at the most Easterly Northeast corner of said E-Systems Tract, lying in the West boundary line of the Tract of land conveyed to United States of America by the deed recorded in Volume 2014, Page 746 of the Deed Records of Denton County, Texas;

THENCE Along the East boundary line of said E-Systems Tract and the West boundary line of said United State of America Tract as follows:

1. S 00° 25' 16" E 729.74 feet to a 1/2" iron rod set;
2. S 89° 22' 53" W 90.00 feet to a 5/8" iron rod found;
3. S 00° 37' 07" E 100.56 feet to a 5/8" iron rod found, at the Southwest corner of said United States of America Tract;
4. N 89° 18' 55" E 130.17 feet to a 5/8" iron rod found, at the Southeast corner of said United States of America Tract, lying in the West boundary line of the Tract of land conveyed to Suzann Ruff by the deed recorded in Volume 2162, Page 247 of the Deed Records of Denton County, Texas;

THENCE Along the East boundary line of said E-Systems Tract and the West boundary line of said Ruff Tract, also being the same line defined by the boundary line agreement recorded in Denton County Clerk's File No. 96-R0025321, as follows:

1. S 00° 03' 24" E 421.68 feet to a 60d nail found;

03-14-00 17:11 From-

3. S 00° 47' 23" E 902.24 feet to a 6" steel fence post found at the Southeast corner of said E-Systems Tract;

THENCE N 69° 32' 38" W 341.96 feet along the South boundary line of said E-Systems Tract to a 6" steel fence post found, at the most Easterly Northeast corner of the Tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust by the deed recorded in Volume 1360, Page 433 of the Deed Records of Denton County, Texas;

THENCE S 00° 20' 16" E 1259.09 feet along the East boundary line of said E-Systems Tract to THE PLACE OF BEGINNING, containing 288.497 acres of land.

EXHIBIT "A-2"

Legal Descriptions

TRACT I:

B.

BEING 72.948 acres of land located in the JOSEPH KNIGHT SURVEY, Abstract No. 692, and the J.N. TANNEHILL SURVEY, Abstract No. 1252, Denton County, Texas, and being a portion of the 284.535 acre tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust, by the deed recorded in Volume 1360, Page 433 of the Real Property Records of Denton County, Texas. Said 72.948 acres of land being more particularly described by metes and bounds, as follows:

BEGINNING at a 3/4" iron pipe found, at a fence corner marking the Southwest of said JOSEPH KNIGHT SURVEY and the Southeast corner of said J.N. TANNEHILL SURVEY, and lying in the boundary line between Denton and Tarrant Counties;

THENCE N 00° 20' 37" W 1663.16 feet along the common line between said KNIGHT and TANNEHILL SURVEYS to a fence post at the Northeast corner of the tract of land conveyed to M.E. S.Z. & S.J. Colville, by the deed recorded in Volume 82, Page 213 of the Deed Records of Denton County, Texas;

THENCE N 87° 58' 47" W 209.85 feet along a fence and the North boundary line of said Colville Tract to a 1/2" iron rod found, at the Southeast corner of the tract of land conveyed to Austin Allen Roach, et ux., Elizabeth M. Roach, by the deed recorded in Volume 811, Page 519 of the Deed Records of Denton County, Texas;

THENCE N 00° 09' 36" W 573.63 feet to a 1/2" iron rod found, at the Northeast corner of said Roach Tract;

THENCE S 89° 23' 57" W 64.15 feet along the North boundary line of said Roach Tract to a fence post at the Southeast corner of the tract of land conveyed to Sadie S. Allen, by the deed recorded in Volume 865, Page 760 of the Deed Records of Denton County, Texas;

THENCE along the East and North boundary line of said Allen Tract, also being the West boundary line of aforesaid 284.535 acre tract, as follows:

1. N 00° 49' 28" W 273.48 feet to a 1/2" iron rod found;
2. N 85° 13' 07" W 129.73 feet to a 1/2" iron rod found;
3. N 07° 24' 36" E 321.52 feet to a 1/2" iron rod found, at the most Northerly Northeast corner of said Allen Tract;
4. S 89° 24' 24" W 483.82 feet along the North boundary line of said Allen Tract to a 1/2" iron rod set, at the Northwest corner thereof, lying in the East right-of-way line of Old Farm-to-Market Road No. 2499;

THENCE N 00° 07' 00" W along the East right-of-way line of said Old Farm-to-Market Road No. 2499, at 193.76 feet passing a 1/2" iron rod in the South right-of-way line of Old Donald Road, and in all 218.76 feet, to a 1/2" iron rod set, in the centerline of said Old Donald Road;

THENCE S 88° 39' 39" E 423.79 feet along the centerline of said Old Donald Road to a 1/2" iron rod set, at the intersection of the West right-of-way line of New Farm-to-Market Road No. 2499;

THENCE along the West and South right-of-way line of said New Farm-to-Market Road No. 2499, as follows:

1. S 21° 40' 04" E 1292.11 feet to a concrete Texas Highway Department Right-of-way Monument found, at the beginning of a curve to the Left;
2. SOUTHEASTERLY 2381.23 feet along said curve to the Left, having a radius of 1989.86 feet, a central angle of 68° 33' 54" and a chord bearing S 55° 57' 01" E 2241.67 feet to a concrete Texas Highway Department Right-of-way Monument found, at the end of said curve;
3. N 89° 48' 02" E 1790.76 feet to a 1/2" iron rod set, at the intersection of the East boundary line of aforesaid 284.535 acre tract;

THENCE S 00° 20' 16" E 607.35 feet along the East boundary line of said 284.535 acre tract to a 1/2" iron rod set, at the Southeast corner thereof, also being in the South boundary line of said JOSEPH KNIGHT SURVEY;

THENCE N 89° 52' 42" W 3890.83 feet along the South boundary line of said JOSEPH KNIGHT SURVEY, being the South boundary line of aforesaid 284.535 acre tract, to THE PLACE OF BEGINNING, containing 72.948 acres of land.

THENCE S 88° 39' 39" E 423.79 feet along the centerline of said Old Donald Road to a 1/2" iron rod set, at the intersection of the West right-of-way line of New Farm-to-Market Road No. 2499;

THENCE along the West and South right-of-way line of said New Farm-to-Market Road No. 2499, as follows:

1. S 21° 40' 04" E 1292.11 feet to a concrete Texas Highway Department Right-of-way Monument found, at the beginning of a curve to the Left;
2. SOUTHEASTERLY 2381.23 feet along said curve to the Left, having a radius of 1989.86 feet, a central angle of 68° 33' 54" and a chord bearing S 55° 57' 01" E 2241.67 feet to a concrete Texas Highway Department Right-of-way Monument found, at the end of said curve;
3. N 89° 48' 02" E 1790.76 feet to a 1/2" iron rod set, at the intersection of the East boundary line of aforesaid 284.535 acre tract;

THENCE S 00° 20' 16" E 607.35 feet along the East boundary line of said 284.535 acre tract to a 1/2" iron rod set, at the Southeast corner thereof, also being in the South boundary line of said JOSEPH KNIGHT SURVEY;

THENCE N 89° 52' 42" W 3890.83 feet along the South boundary line of said JOSEPH KNIGHT SURVEY, being the South boundary line of aforesaid 284.535 acre tract, to THE PLACE OF BEGINNING, containing 72.948 acres of land.

EXHIBIT "A-3"**Legal Descriptions****TRACT II:**

BEING 20.551 acres of land located in the JOSEPH KNIGHT SURVEY, Abstract No. 632, Denton County, Texas, and being a portion of the tract of land conveyed to Trustees, E-Systems, Inc. Pool Trust by the deed recorded in Volume 1360, Page 433 of the Deed Records of Denton County, Texas. Said 20.551 acres being more particularly described by metes and bounds, as follows:

BEGINNING at a 1/2" iron rod found at the most Northerly Northeast corner of said E-Systems Tract, lying in the South right-of-way line of Spinks Road. Said point of beginning also being the Northwest corner of the Tract of land conveyed to Thomas W. Harris and wife Mary Anne Harris by the deed recorded in Volume 2962, Page 782 of the Deed Records of Denton County, Texas;

THENCE S 00° 27' 06" E 1499.60 feet generally following a fence along the common boundary line between said E-Systems and Harris Tracts to a 1/2" iron rod set;

THENCE S 89° 52' 32" W 177.01 feet severing said E-Systems Tract to a 1/2" iron rod set at the beginning of a curve to the right;

THENCE NORTHWESTERLY 145.72 feet along said curve to the right having a radius of 1,000.00 feet a central angle of 08° 20' 57" and a chord bearing N 85° 57' 00" W 145.59 feet to a 1/2" iron rod set at the end of said curve;

THENCE N 81° 46' 32" W 284.72 feet to a 1/2" iron rod set;

THENCE N 00° 15' 17" W 1457.48 feet to a 1/2" iron rod set in the North boundary line of aforesaid E-Systems Tract and the South right-of-way line of said Spinks Road;

THENCE S 89° 10' 58" E 598.75 feet along the North boundary line of said E-Systems Tract and the South boundary line of said Spinks Road to THE PLACE OF BEGINNING, containing 20.551 acres (895,204 square feet) of land.

EXHIBIT "A-4"

Legal Descriptions

TRACT II:

B.

BEING 7.757 acres of land located in the JOSEPH KNIGHT SURVEY, Abstract No. 692, Denton County, Texas, and being a portion of the tract of land conveyed to Thomas W. Harris and wife Mary Anne Harris by the deed recorded in Volume 2962, Page 782 of the Deed Records of Denton County, Texas. Said 7.757 acres being more particularly described by metes and bounds, as follows:

BEGINNING at a 1/2" iron rod found at the most Northerly Northwest corner of said Harris Tract, lying in the South right-of-way line of Spinks Road:

THENCE S 69° 05' 14" E 178.38 feet along the North boundary line of said Harris Tract and the South right-of-way line of said Spinks Road to a 1/2" iron rod set;

THENCE S 04° 03' 59" E 1500.06 feet severing said Harris Tract to a 1/2" iron rod set;

THENCE S 89° 52' 32" W 272.92 feet to a 1/2" iron rod set in a fence in the West boundary line of said Harris Tract being the East boundary line of the Tract of land conveyed to Trustees, E-Systems, Inc., Pool Trust by the deed recorded in Volume 1360, Page 433 of the Deed Records of Denton County, Texas;

THENCE N 00° 27' 06" W 1499.60 feet, generally following a fence along the common boundary line between said Harris and E-Systems Tracts to THE PLACE OF BEGINNING, containing 7.757 acres (337,923 square feet) of land.

MAR 21 2002 11:14

BRACKETTE-DAVIS-DRAKE, INC

214-824-7064 P.02

EXHIBIT "A-5"

PROPERTY DESCRIPTION

BEING a 7.0969 acre tract of land situated in the JOSEPH KNIGHT SURVEY, Abstract Number 692 and the J.N. TANNEHILL SURVEY, Abstract Number 1252, Denton County, Texas and being part of the same tracts of land as conveyed to Trustees, E-Systems, Inc. Pool Trust by the deeds recorded in the County Clerk's Files 96R-0075624, 96R-0065598 and 96R-009151 of the Real Property Records of Denton County, Texas; said 7.0969 acres being more particularly described as follows:

COMMENCING at a ¾" iron pipe at the southwest corner of said Knight Survey, being the southeast corner of said Tannehill Survey, lying in the Denton and Tarrant County line; thence N00°20'37"W along the line between said Knight and Tannehill Surveys a distance of 1663.16 feet to a fence post for the POINT OF BEGINNING, said fence post being the northeast corner of the Colville tract recorded in Volume 882, Page 213, Deed Records, Denton County, Texas;

THENCE N87°58'47"W along the north line of said Colville tract a distance of 209.85 feet to a ½" iron rod at the southeast corner of the Roach tract recorded in Volume 811, Page 519, Deed Records, Denton County, Texas;

THENCE N00°09'36"W along the east line of said Roach tract a distance of 573.63 feet to a 3/8" iron rod at the northeast corner thereof;

THENCE S89°23'57"W along the north line of said Roach tract a distance of 64.15 feet to a fence post at the southeast corner of the Allen tract recorded in Volume 865, Page 760, Deed Records, Denton County, Texas;

THENCE N00°49'28"W along the east line of said Allen tract a distance of 273.48 feet to a ½" iron rod for angle point;

THENCE N86°13'07"W continuing with said east line a distance of 129.73 feet to a ½" iron rod for angle point;

THENCE N07°24'36"E continuing with said east line a distance of 321.52 feet to a ½" iron rod for the northeast corner thereof;

THENCE S33°13'50"W a distance of 1189.37 feet;

THENCE S56°46'10"W a distance of 340.00 feet to the POINT OF BEGINNING and containing 7.0969 acres of land, more or less.

EXHIBIT "B"**DEVELOPMENT STANDARDS**

- I. The development on approximately 280.3 acres depicted on Exhibit "C" shall be for Campus Commercial District (CC) uses in accordance with the Town's Land Development Code, as amended, and shall be subject to the following conditions and requirements:
 - A. The Tracts designated on Exhibit "C" as Tract One, consisting of approximately 24.6 acres; Tract Two, consisting of approximately 29.3 acres; Tract Three, consisting of approximately 41.3 acres; and Tract Four, consisting of approximately 185.1 acres shall be developed for Campus Commercial District (CC) uses allowed under the Town's Land Development Code, as amended.
 - B. A minimum 65 foot front building setback shall be provided on all major streets. The first 25 feet shall be landscaped and irrigated with an automatic sprinkler system installed in a manner approved by the Planning and Zoning Commission. No parking shall be allowed in the first 45 feet measured from the property line.
- II. The development on approximately 93.1 acres depicted on Exhibit "C" shall be for Campus Industrial District (CI) uses in accordance with the Town's Land Development Code, as amended and shall be subject to the following conditions and requirements:
 - A. The Tracts designated on Exhibit "C" as Tract Five, consisting of 21.4 acres; Tract Six, consisting of 28.2 acres; and Tract Seven, consisting of 43.5 acres shall be developed for Campus Industrial District (CI) uses as allowed under the Town's Land Development Code, as amended.
 - B. A minimum 65 foot front building setback shall be provided on all major streets. The first 25 feet shall be landscaped and irrigated with an automatic sprinkler system installed in a manner approved by the Planning and Zoning Commission. No parking shall be allowed in the first 45 feet measured from the property line.
- III. General requirements for Planned Development Number 31 (PD-31) shall be as follows:
 - A. A comprehensive site plan for each proposed development shall be submitted for approval to the Planning and Zoning Commission. Each comprehensive site plan shall be in general conformity to the requirements of the general development plan attached hereto as Exhibit "C" and all other applicable provisions of the Town's Comprehensive Plan and Land Development Code.

- B. Access points of ingress/egress from any major street or thoroughfare into any of the tracts shown on Exhibit "C" shall be determined at the time the comprehensive site plan for the respective Tract is submitted for approval by the Planning and Zoning Commission.
- C. Prior to the issuance of a Certificate of Occupancy, that portion of the north/south road as shown in Exhibit "C" and directly adjacent to any platted lot for which the application for a Certificate of Occupancy has been filed shall be completed and accepted in accordance with the required standards of the Town.
- D. Developer and owner agree that all ingress and egress from any major street or thoroughfare shall be limited in a manner approved by the Planning and Zoning Commission to allow and maintain such streets as free flowing arterials to the greatest extent possible.
- E. All development must be in compliance with all components outlined in the Lakeside Business District Area Plan of the Comprehensive Plan.

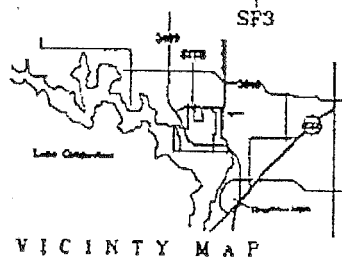
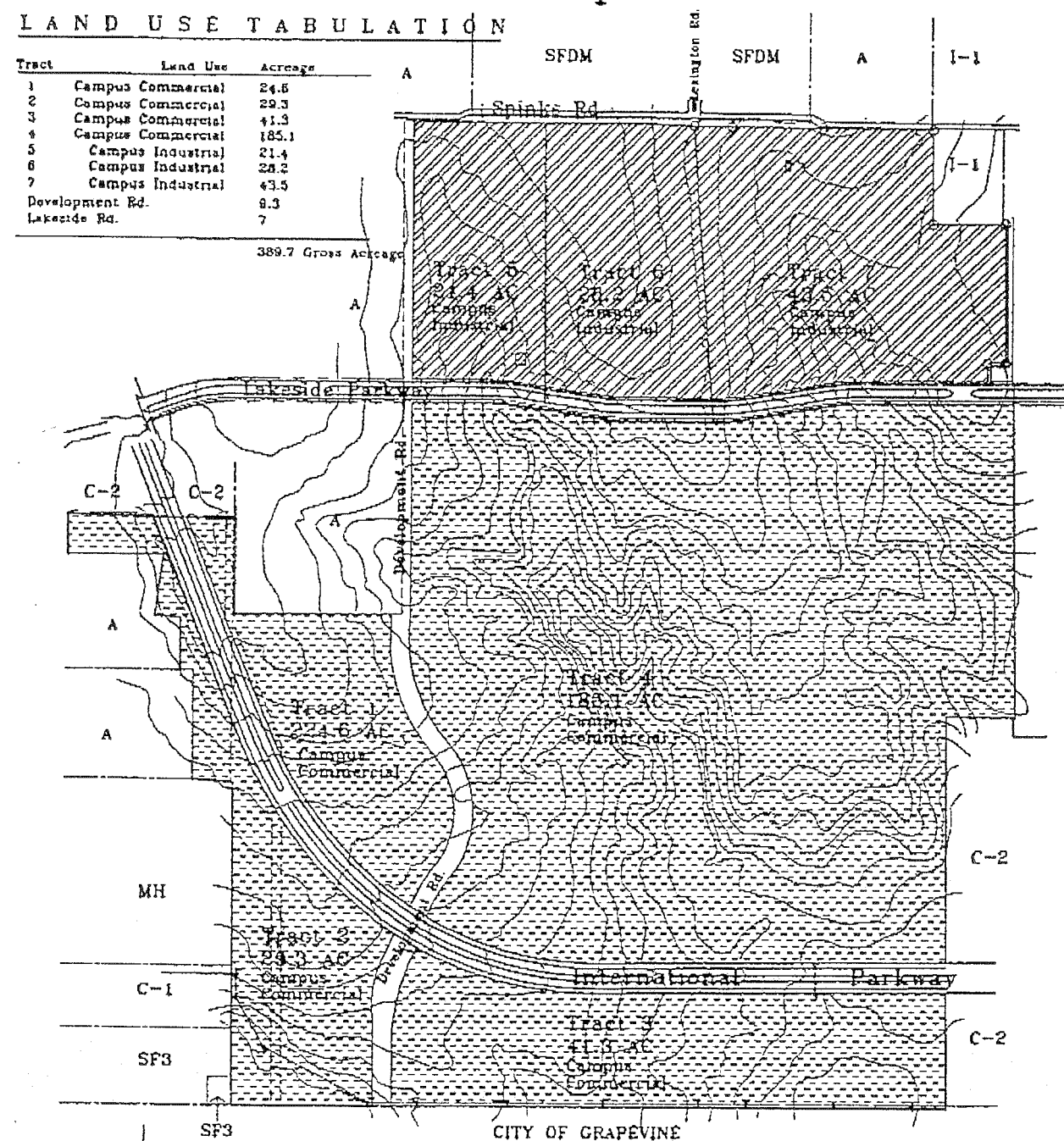
Exhibit "C"

General Development Plan

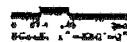
LAND USE TABULATION

Tract	Land Use	Acreage
1	Campus Commercial	24.6
2	Campus Commercial	29.3
3	Campus Commercial	41.3
4	Campus Commercial	185.1
5	Campus Industrial	21.4
6	Campus Industrial	28.2
7	Campus Industrial	43.5
Development Rd.		8.3
Lakeside Rd.		7

389.7 Gross Acreage



389.7 ACRE TRACT
Planned Development 31
Flower Mound, Texas



02/28/00

TBC
PARTNERS

BROCKETTE DAVIS DRAKE, inc.
consulting engineers

CROFT COMPTON CO.
ARCHITECTURE & ENGINEERING

CURRENT LAKESIDE BUSINESS DISTRICT MASTER PLAN POLICY LANGUAGE:**Lakeside Business District**

Large scale commercial and/or light industrial developments such as corporate offices, office parks, industrial parks, clean manufacturing, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District's Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences.

Attachment A(5): Campus Commercial Design Intent

DESIGN AND USE INTENT:

In implementing the standards for the Campus Commercial areas, it is the intent that proposed developments focus on job creation and developing a non-residential tax base by planning and designing office and commercial uses. Continuing with the elements of the District's vision, development must:

1. Focus on exemplary and enduring building and site design
2. Focus on high quality development standards
3. Focus on place making, and creating engaging and inspiring places
4. Focus on protecting, respecting, and incorporating open and natural areas through preservation and creating unique outdoor experiences
5. Focus on connectivity to adjacent developments and amenities

In that context development shall:

1. Focus on high quality office development
2. Provide for high quality office and focused commercial uses along FM 2499
3. Limit large parking fields along FM 2499
4. Provide a design that incorporates all uses into a walkable site including open spaces, gathering spots and linked to environmental amenities

In consideration of office and focused commercial development, the Town may allow a limited number of residential units as an incentive for development that incorporates the elements of the district. Any planned residential areas shall be away from, and off of, FM 2499.

The Town will initiate an amendment to change the cross section of Silveron to make it pedestrian oriented.

Environmental Protection Plan

Silveron Mixed-Use Development
Flower Mound, Denton County, Texas

Prepared For:

5054 Development
Pacific Center II
14160 North Dallas Parkway, Suite 750
Dallas, Texas 75254

MARCH 2019 | VERSION 1

Prepared By:

Kimley-Horn and Associates, Inc.
Two Galleria Office Tower, Suite 700
Dallas, TX 75240

Kimley»Horn

ENVIRONMENTAL PROTECTION PLAN

PROJECT DESCRIPTION AND PURPOSE

Kimley-Horn and Associates, Inc (Kimley-Horn) developed this Environmental Protection Plan (EPP) for the proposed Silveron mixed-use development to satisfy the Town of Flower Mound's (Town) development requirements. The Silveron mixed-use development is located on an approximately 122-acre tract in the Town of Flower Mound, Denton County, Texas (site or study area). The site is generally located north of Farm-to-Market 2499 (Long Prairie Road) and east of Silveron Boulevard, as shown on Sheet 1 in Appendix A. This EPP was developed in accordance with the Town's SMARTGrowth Program.

The project proposes to construct a mixed-use development to meet the needs of this rapidly expanding area. Associated support infrastructure, such as access roads, overhead and underground utilities, and parking lots will also be constructed.

A review of the site by Mr. James Hoefert, with the Town of Flower Mound, Development Services & Environmental Services, was conducted to initially identify Environmentally Sensitive Area (ESA) criteria within the study area. The Environmentally Sensitive Area Survey results were provided to Kimley-Horn on February 12, 2018 (Appendix C). That report states that multiple ESAs are located within the study area which include: Upland Habitat, Riparian Habitat, Waters of the State, Wetlands, a Water Impoundment, and Topographical Slope Protection.

On March 1, and March 8, 2018, Kimley-Horn conducted site visits with the objective of collecting data necessary to revise the Town's ESA survey, delineate aquatic resources, and to formulate this EPP. The EPP will outline applicable best management practices (BMPs) to minimize habitat loss, maintain continuity of tree stands and other wildlife habitat areas or corridors, and identify proposed measures to inform and educate future residents or occupants about the EPP.

SITE DESCRIPTION AND BACKGROUND MAPPING

The study area is located in the Lower Denton Creek Watershed (United States Geological Survey (USGS) Hydrologic Unit Code (HUC) 120301403). The center coordinates of the study area are Latitude 32.989 and Longitude: -97.054 (1983 North American Datum (NAD) Coordinates).

The study area is shown on Sheets 1 through 5 in Appendix A. Sheet 1 provides a vicinity map which depicts the general location of the study area. Sheet 2 depicts the boundaries of the study area on United States Geological Survey (USGS) Topographic base data. Sheet 3 depicts the location of likely waters of the U.S. and Kimley-Horn's revisions to the Town of Flower Mound's ESA boundaries with recent aerial photography from Nearmap (January 2018) used as base data. Aerial photography from 1996 serves as base data for Sheet 4. The proposed site plan and Environmentally Sensitive Area (ESA) boundaries are shown on Sheet 5.

Sheet 1 in Appendix B shows the general location and direction of representative ground-level photographs taken during the site visits that took place on March 1 and March 8, 2018. The two-digit numbering system on the sheet corresponds to the site visit photograph numbers, included in Appendix B.

The site currently is undeveloped, except for fences surrounding the property and pond in the southern portion of the site. Based on Kimley-Horn's ESA review, the site contains large wooded areas, several small ephemeral streams, two larger intermittent streams, two emergent wetlands and two open water features (Sheet 3 in Appendix A). One of the intermittent streams and its ephemeral tributaries flow through the northeast corner of the site. A second series of ephemeral streams flows south of the first stream system. One of the open water features covers approximately 6.0-acres and feeds a small emergent wetland and intermittent stream near the southern boundary of the site. The second open water feature is a historic borrow pit excavated in uplands and does not have connections to the other surrounding aquatic features.

The Town's ESA survey listed three wetlands; however, based on Kimley-Horn's delineation, OW2 (Sheet 3 in Appendix A) should not be classified as a wetland according to USACE criteria, it lacked hydric soil conditions. The Town's ESA also classified the entire length of feature E9 as a stream (Appendix C); however, is it Kimley-Horn analysis that a portion of this feature should be classified as upland drainage and would likely not be considered a water of the U.S. (Sheet 3 in Appendix A).

The site topography varies from approximately 570-feet above mean sea level (MSL) in the southwest and northwest portions of the study area to approximately 520-feet above MSL along the center of the stream systems, the large pond, and within the southern intermittent stream.

FEMA FLOODPLAIN

The Federal Emergency Management Agency (FEMA) designates areas of mapped floodway and floodplain; these mapped areas are shown in Appendix D. This map was used to determine that the study area is located outside the mapped FEMA 100-year floodplain.

NATIONAL WETLANDS INVENTORY MAP

The United States Fish and Wildlife Service's (USFWS) National Wetland Inventory (NWI) Wetlands Mapper was used to generate a NWI map for the study area. Although these maps are not always accurate, six mapped aquatic features are depicted on the sit: one freshwater forested wetland

(PFO1Ch), two riverine features (R5UBH and R4SBC), and three freshwater ponds (PAB4Hh and PUBHh), are shown within the study area on the NWI map. A reproduction of this map is provided in Appendix E.

USDA SOILS DATA

According to the USDA Texas Soil Survey for Denton County none of the mapped soil types are located on the Denton County hydric soils list and wetlands would not be expected (Appendix F).

VEGETATIVE CHARACTERISTICS

Vegetation on the study area was dominated by upland species including: poison ivy (*Toxicodendron radicans*), greenbrier (*Smilax rotundifolia*), prickly pear (*Opuntia spp.*) mesquite (*Prosopis glandulosa*), eastern redcedar (*Juniperus virginiana*), Johnson grass (*Sorghum halepense*), Osage-orange (*Maclura pomifera*), post oak (*Quercus stellata*), blackjack oak (*Quercus marilandica*), and cedar elm (*Ulmus crassifolia*). A majority of the study area is a combination of mixed forest, mesquite groves, and disturbed open areas.

ENVIRONMENTALLY SENSITIVE AREA CRITERIA

The Town of Flower Mound categorizes an ESA as one of the following: Upland Habitat, Riparian Habitat, Prairie Habitat, Waters of the State, Floodplain, Wetlands, Water Impoundment Protection and Topographical Slope Protection. The Town conducted an ESA Survey for the proposed development site (Appendix C). Kimley-Horn conducted site visits to revise the Town's ESA boundaries (Sheet 3 in Appendix A). The following discussion is a summary of the revised Kimley-Horn ESA Survey results for the site with brief definitions of the ESA criteria.

UPLAND HABITAT

The Town Defines Upland Habitat as:

"Areas, a minimum of ten acres in size, equal to or exceeding 50 trees per acre, which contain a predominant matrix of tree species identified in the town's protected tree list. Any tree species that makes up over 30 percent of the population within a complex is considered to be the predominant species."

Areas of upland habitat were delineated at the site and cover 40-acres. The predominant species included: post oak and blackjack oak. Based on the concept site plan, 28% (11.3-acres) of the existing upland habitat will be preserved and 72% (28.7-acres) of the upland habitat will be impacted (Sheet 5 in Appendix A).

RIPARIAN HABITAT

The Town Defines Riparian Habitat as:

"Areas designated within the FEMA 100-year floodplain or interconnected and adjacent to wetland, tree and understory vegetation and including significant stands of predominantly native water-related habitat. These areas include wetlands."

The site does not contain areas of mapped FEMA 100-year floodplain. The site does contain two wetlands areas that are designated as riparian habitat for a total of 0.4-acre. Based on the concept site plan, the wetland areas will not be impacted. Wetland W1 (Sheet 3 in Appendix A) has developed in a detention area that will remain as a detention area.

PRAIRIE HABITAT

The Town Defines Prairie Habitat as:

"Areas designated as containing onsite predominant distributions of climax or mid-successional native grass species underlain by intact (noneroded) prairie and savannah soil types."

According to the Town's ESA survey and Kimley-Horn's ESA survey, Prairie Habitat was not observed on this site.

WATERS OF THE STATE

The Town Defines Waters of the State (WOTS) as:

"Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or costal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state."

Waters of the State ESA is present on the site. Kimley-Horn completed a stream and wetland delineation and mapped the following Waters of the State: nine ephemeral streams, two intermittent streams, one upland drainage, two emergent wetlands, and two open water features (Sheet 3 in Appendix A).

Two of the mapped aquatic features would likely not be considered a water of the U.S. according to the USACE. Open Water Two would likely not be considered jurisdictional because it does not have a surface hydrologic connection to another jurisdictional aquatic feature. The upland drainage upstream of Ephemeral Stream Nine (E9) would likely not be considered jurisdictional because there is a broken connection to a downstream aquatic feature and flow has been directed from stormwater drainage coming from Silveron Boulevard (Sheet 3 in Appendix A).

Based on the concept site plan, 60% (1,701-linear feet) of the existing ephemeral streams will be preserved and there are no proposed impacts to either of the intermittent streams. 1,147-linear feet of ephemeral stream are proposed to be impacted. Proposed direct impacts to streams, that require permitting through the U.S. Army Corps of Engineers, are shown on (Sheet 3 in Appendix A).

Stream Name	Length of Proposed Direct Impact (Linear Feet)
E1	221
E2	98
E3	134
E4	105
E5	26
E6	226
E7	0
E8	82
E9	254
Total	1,147

The larger open water feature will not be impacted (6.0-acres) and the smaller open water feature will be completely impacted (0.4-acre). The entire length of the upland drainage feature (E9) will be impacted (707-linear feet).

FLOODPLAIN

Floodplain ESA was not present because the site does not contain areas of mapped FEMA 100-year floodplain.

WETLANDS

The Town Defines Wetlands as:

“Jurisdictional wetlands as defined by the federal Clean Water Act and the standards and guidelines in use by the United States Army Corps of Engineers, including the Federal Manual for Identifying and Delineating Jurisdictional Wetlands.”

Kimley-Horn completed a wetland delineation at the site. The results indicated that there were two likely jurisdictional emergent wetlands totaling 0.4-acre.

Based on the concept site plan, the wetland areas will not be impacted. Wetland W1 (Sheet 3 in Appendix A) has developed in a detention area that will remain as a detention area.

WATER IMPOUNDMENT PROTECTION

The Town's SMARTGrowth Program requires preservation and enhancement of impoundments greater than 0.5-acre identified at proposed developments. There were two open water features located on the site. One open water feature appears to be an old soil borrow pit that was excavated in uplands and retains rain water and is 0.4-acre in size. The other open water feature is an impoundment totaling 6.0-acres in size. The larger 6.0-acre impound will require Water Impoundment Protection.

TOPOGRAPHICAL SLOPE PROTECTION

The Town's SMARTGrowth Analysis contains topographical slope protection criterion as it applies to development on existing topographical slopes of 12% or greater, or projects that propose to alter existing topographical slopes that are less than 12% but equal to or greater than 5% (other than within 5-feet of the footprint of the proposed structure or structures). This criterion applies when the stated topographical slopes exist for a total horizontal distance over 50-feet or if the total vertical rise is over 6-feet.

Based on the Town's topographic slope protection map, several areas on the site contain slopes between 5% and 12% and are subject to corresponding development criteria. Those areas are highlighted in Appendix C.

The proposed site plan will avoid impacts to 10.0-acres of slopes between 5% and 12%; 4.7-acres of slopes greater than 12%. The proposed site plan will impact 28.1-acres of slopes between 5% and 12%; 7.2-acres of slopes greater than 12% (Sheet 6 in Appendix A).

STATE AND FEDERALLY LISTED SPECIES INFORMATION

Kimley-Horn performed a review of readily accessible resources to assess the potential for state or federally listed species to be found on site prior to field reconnaissance.

A review of the United States Fish and Wildlife Service (USFWS) Information, Planning and Conservation System (IPaC) (<http://ecos.fws.gov/ipac>, March 28, 2018, listed four threatened and endangered species for Denton County (Appendix G).

A review of the Texas Parks and Wildlife Department (TPWD) Annotated County Lists of Rare Species for Denton County (http://www.tpwd.state.tx.us/landwater/land/maps/gis/ris/endangered_species/, last revised 12/30/2016) listed several State listed Rare, Threatened and Endangered Species (Appendix H). During the site visit, the study area was evaluated for suitable habitat for listed species and compared to the database information that was compiled. No USFWS designated Critical Habitat is present within the study area. The table below includes information on both state and federally listed species in Denton County.

Table 1, below, is a Summary of the State and Federally listed species for Denton County.

Species	Federal Status	State Status	Potential Suitable Habitat Present?	Species Impact / Effect	Pertinent Project Information
Birds					
American peregrine falcon , <i>Falco peregrinus anatum</i>	De-listed	Threatened	No	No Impact	--
Arctic peregrine falcon , <i>Falco peregrinus tundrius</i>	De-listed	Species of concern	No	No Impact	--

Species	Federal Status	State Status	Potential Suitable Habitat Present?	Species Impact / Effect	Pertinent Project Information
Bald Eagle , <i>Haliaeetus leucocephalus</i>	De-listed	Threatened	Yes	No Impact	Large trees and water present, however no nests or individuals were observed on site.
Henslow's Sparrow , <i>Ammodramus henslowii</i>	Not listed	Species of concern	Yes	No Impact	Historic agricultural use makes it unlikely this species would be observed on site.
Interior least tern , <i>Sterna antillarum athalassos</i>	Endangered	Endangered	No	No Effect	--
Piping plover , <i>Charadrius melodus</i>	Threatened	Not listed	No	No Effect	--
Red knot , <i>Calidris canutus rufa</i>	Threatened	Species of concern	No	No Effect	--
Sprague's Pipit , <i>Anthus spragueii</i>	Not listed	Species of concern	No	No Impact	--
Western Burrowing Owl , <i>Athene cunicularia hypugaea</i>	Not listed	Species of concern	Yes	No Impact	No burrows or individuals were observed on site.
White faced-ibis , <i>Plegadis chihi</i>	Not listed	Threatened	No	No Effect	--
Whooping crane , <i>Grus Americana</i>	Endangered	Endangered	No	No Effect	--
Wood stork , <i>Mycteria Americana</i>	Not listed	Threatened	No	No Effect	--
Mammals					
Plains spotted skunk , <i>Spilogale putorius interrupta</i>	Not listed	Species of concern	Yes	Not likely to adversely effect	Historic agricultural use make it unlikely this species would be observed on site. No individuals were observed on site.
Red wolf , <i>Canis rufus</i>	Endangered	Endangered	No	No Effect	--
Mollusks					
Louisiana pigtoe , <i>Pleurobema riddellii</i>	Not listed	Threatened	No	No Impact	--
Sandbank pocketbook , <i>Lampsilis satura</i>	Not listed	Threatened	No	No Impact	--
Texas heelsplitter , <i>Potamilus amphichaenus</i>	Not listed	Threatened	No	No Impact	--
Texas pigtoe , <i>Fusconaia askewi</i>	Not listed	Threatened	No	No Impact	--
Reptiles					
Texas garter snake , <i>Thamnophis sirtalis annectens</i>	Not listed	Species of concern	Yes	No Impact	Habitat within the study area is low quality, and past agricultural uses make it unlikely that this species would be present.

Species	Federal Status	State Status	Potential Suitable Habitat Present?	Species Impact / Effect	Pertinent Project Information
Texas horned lizard , <i>Phrynosoma cornutum</i>	Not listed	Threatened	No	No Impact	--
Timber rattlesnake , <i>Crotalus horridus</i>	Not listed	Threatened	Yes	Not likely to adversely effect	Low quality habitat is present on site; however no individuals were observed during field reconnaissance.
Plants					
Glen Rose yucca , <i>Yucca necopina</i>	Not listed	Species of concern	No	No Impact	--
Topeka purple-coneflower , <i>Echinacea atrorubens</i>	Not listed	Species of concern	No	No Impact	--

No rare or listed species were observed during field reconnaissance. Limited, low-quality habitat for listed species is present within the study area within the open fields, however historic land use for agriculture makes it unlikely that listed species would be present. 'Take' of either state or federally listed species is limited by law and enforced by multiple agencies. It is Kimley-Horn's opinion that it is unlikely that listed species would be impacted by the proposed project. However, if state or federally listed species are observed within the project area during construction all impacts to these species should be avoided.

PROPOSED DEVELOPMENT PLAN

The current site plan proposes the property to be developed as a mixed-use development. The goals of this project are to provide a variety of services to the growing community of the Town of Flower Mound while seeking to preserve natural resources to the maximum extent practicable while achieving development feasibility. Impacts to ESAs have been minimized, where practicable, to reduce overall impact to the natural habitats onsite. Best Management Practices (BMPs) will be employed during construction to retain sediments and other pollutants onsite.

MITIGATION MEASURES DURING CONSTRUCTION

The following mitigation measures will be employed through the planning and construction of the project:

- The site plan has been designed to preserve as many trees and ESAs as possible while still maintaining an economically viable mixed-use development project and in conformance with the Town's applicable zoning criteria.
- Stormwater control devices will be installed and maintained during construction to limit sediment and pollutant runoff, to reduce velocity of concentrated flows, and protect downstream water quality.
- Stormwater Pollution Prevention Plan(s) will be utilized during construction activities per local, state, and federal requirements.
- Major soil disturbing activities will be sequenced to preserve existing vegetation.
- During construction, procedural BMPs will be implemented to minimize impacts to resident and migrant native wildlife.
- Fill placed into jurisdictional waters of the U.S. will be authorized by a U.S. Army Corps of Engineers permit.
- Active migratory bird nesting areas will be avoided during site development. Although not anticipated, if a threatened or endangered species is encountered during site development, the USFWS and/or TPWD authorities will be contacted.
- Approximately 40-acres of Town-defined Upland Habitat exists on the site. The concept development plan has been designed to preserve a portion of this habitat. Mitigation for the 28.7-acres of impacted upland habitat will be partially accomplished by preserving 11.3-acres of upland habitat onsite and paying into the Town's tree mitigation fund.
- Areas of planned green space will be incorporated into the development to offset the loss of upland habitat.
- Three stream and wetland mitigation areas are located on the site and no impacts to these areas are proposed.

CONCLUSION

It is our opinion that this project is expected to have no effect on the federally listed species and is not expected to have adverse impacts on state listed animal or plant species. Resident or migrant wildlife that may be displaced by the proposed development are highly mobile and generally benefit from urban landscapes.

Efforts were made to design a development footprint that minimizes impacts to Town ESA and natural habitat. Areas within the development will remain as natural habitats and wildlife corridors for the surrounding area.

This EPP, including applicable structural and procedural BMPs, will be implemented to minimize ESA loss, minimize habitat loss, maintain continuity of tree stands and other wildlife habitat areas, while allowing for practicable development.

Please contact us by phone at (972) 770-3029 or by email at alex.brown@kimley-horn.com, if you have questions or need additional information about this Environmental Protection Plan.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



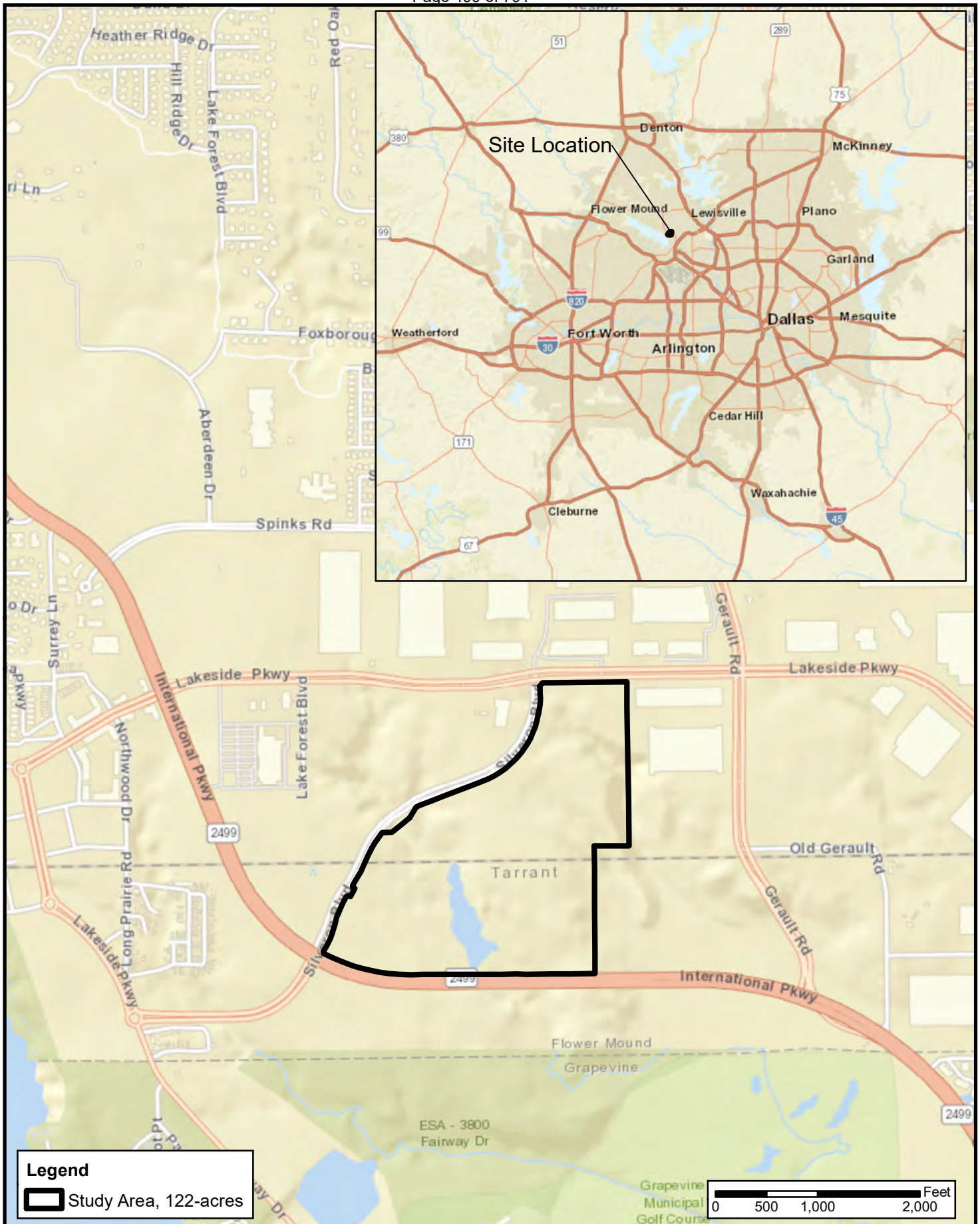
Alex M. Brown, PWS



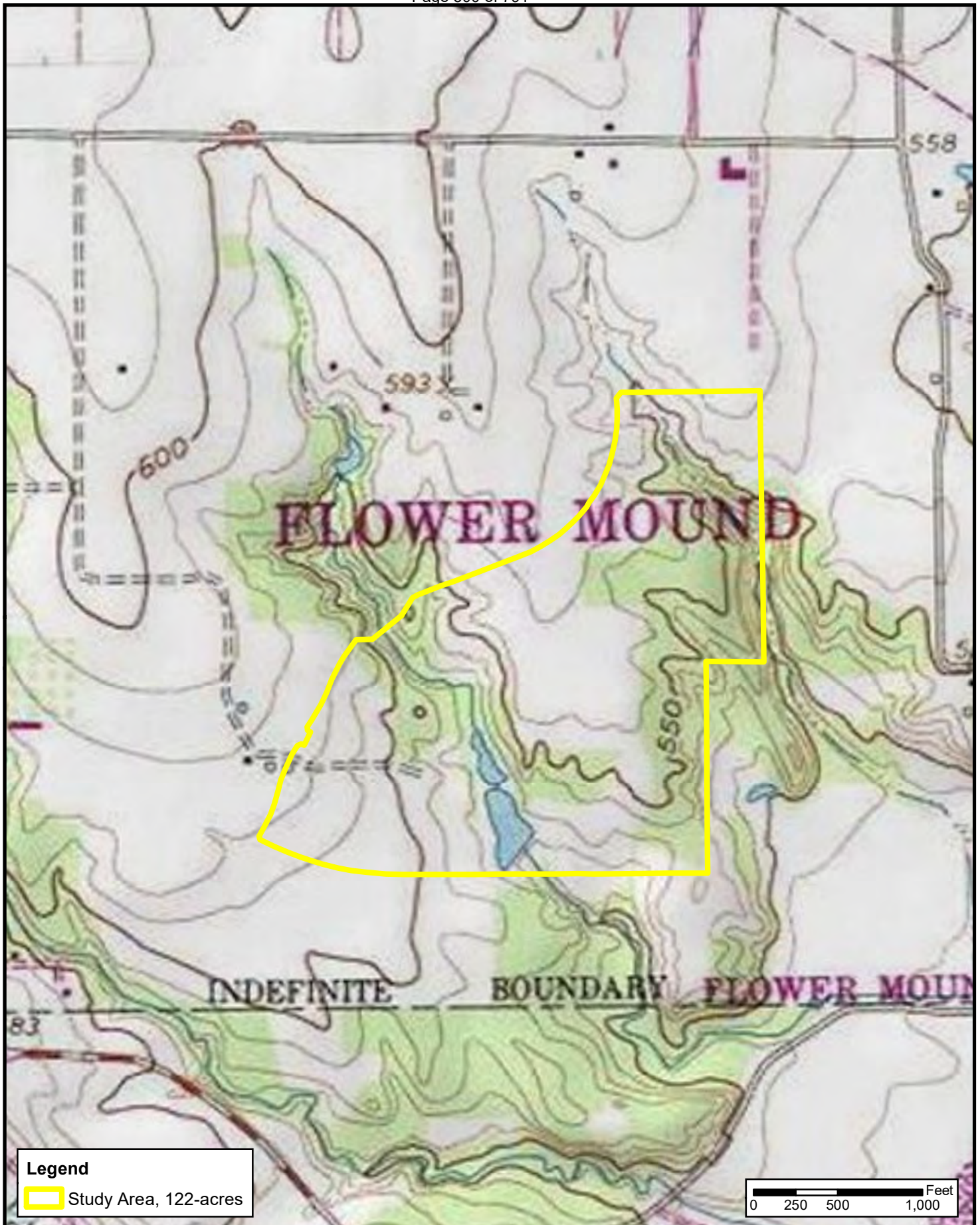
Larry Clendenen, CF, PWS

APPENDIX A

Study Area Maps



SHEET 1	DATE: 02/24/2017 DESIGN: SDG DRAWN: SDG CHECKED: LDC KHA NO.: 064509200	Vicinity Map	Silveron Mixed-Use Flower Mound, Denton County, Texas		Kimley»Horn This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
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Legend

 Study Area, 122-acres

0 250 500 1,000 Feet

SHEET

2

DATE:	02/24/2017
DESIGN:	SDG
DRAWN:	SDG
CHECKED:	LDC
KHA NO.:	064509200

Topographic Map

Quad Name: Grapevine

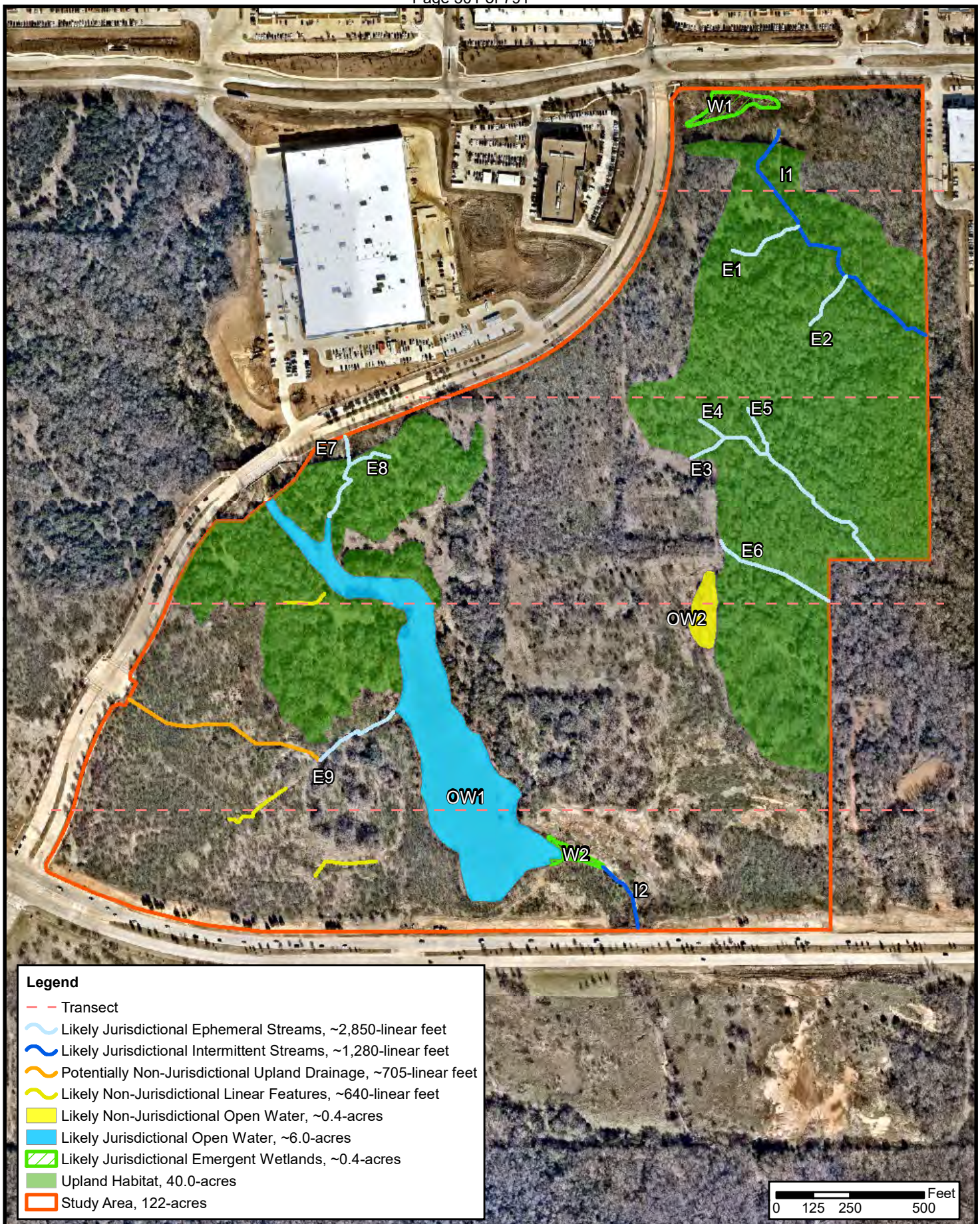
Silveron Mixed-Use

Flower Mound,
Denton County, Texas



Kimley»Horn

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SHEET

3

DATE: 03/13/2018

DESIGN: SDG

DRAWN: SDG

CHECKED: AMB

KHA NO.: 064509200

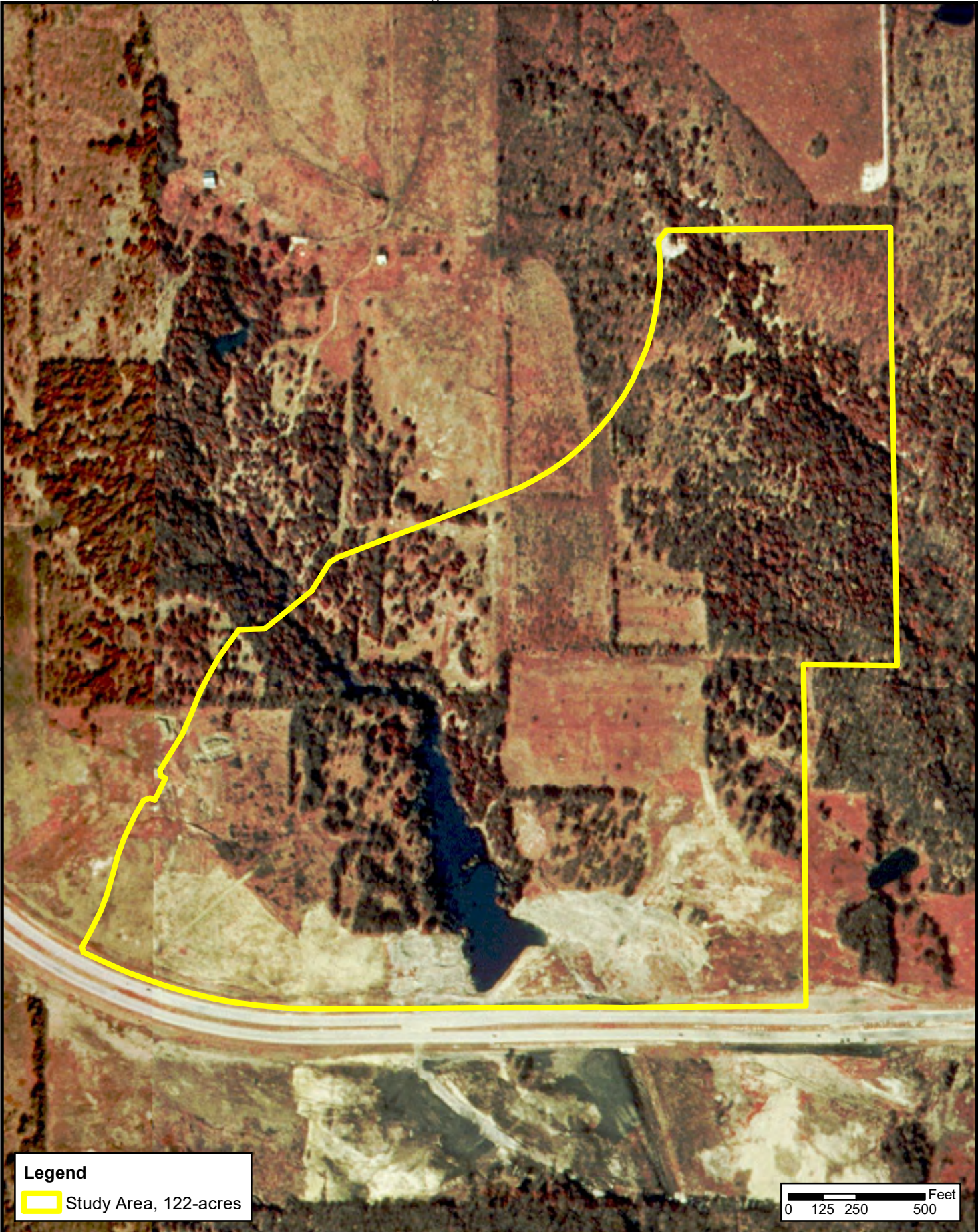
Aquatic Resource Delineation Map

Aerial Date: January 2017

Silveron Mixed-Use

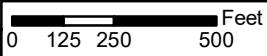
Flower Mound,
Denton County, Texas
Kimley»Horn

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

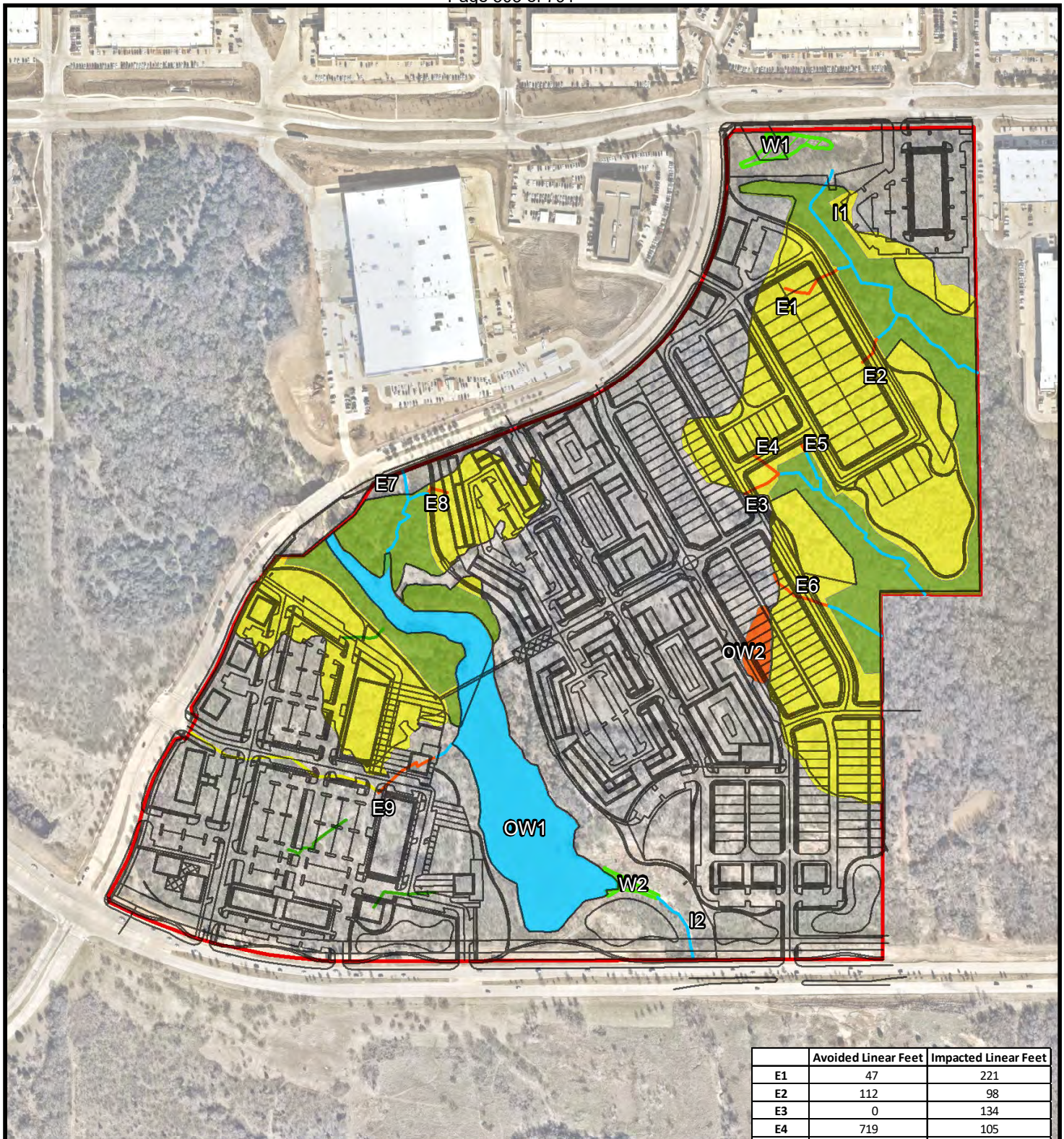


Legend

 Study Area, 122-acres



SHEET 4	DATE:	02/24/2017	Historic Aerial Map Aerial Date: 1996	Silveron Mixed-Use Flower Mound, Denton County, Texas		Kimley»Horn This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.
	DESIGN:	SDG				
	DRAWN:	SDG				
	CHECKED:	LDC				
	KHA NO.:	064509200				

**Legend**

- Site Plan
- ~ Avoided Streams, 2,982-linear feet
- ~ Impacted Streams, 1,147-linear feet
- ~ Impacted Upland Drainage, 707-linear feet
- ~ Impacted Non-Stream Linear Features, 637
- ~ Avoided Upland Habitat, 11.3-acres
- ~ Impacted Upland Habitat, 28.7-acres
- ~ Impacted Open Water, 0.4-acres
- ~ Avoided Open Water, 6.0-acres
- ~ Avoided Wetlands, 0.4-acres
- ~ Study Area, 122-acres

	Avoided Linear Feet	Impacted Linear Feet
E1	47	221
E2	112	98
E3	0	134
E4	719	105
E5	148	26
E6	206	226
E7	331	0
E8	70	82
E9	68	254
I1	1028	0
I2	253	0

0 125 250 500 Feet

SHEET

5

DATE: 03/28/2019

DESIGN: AMB

DRAWN: AMB

CHECKED: MMC

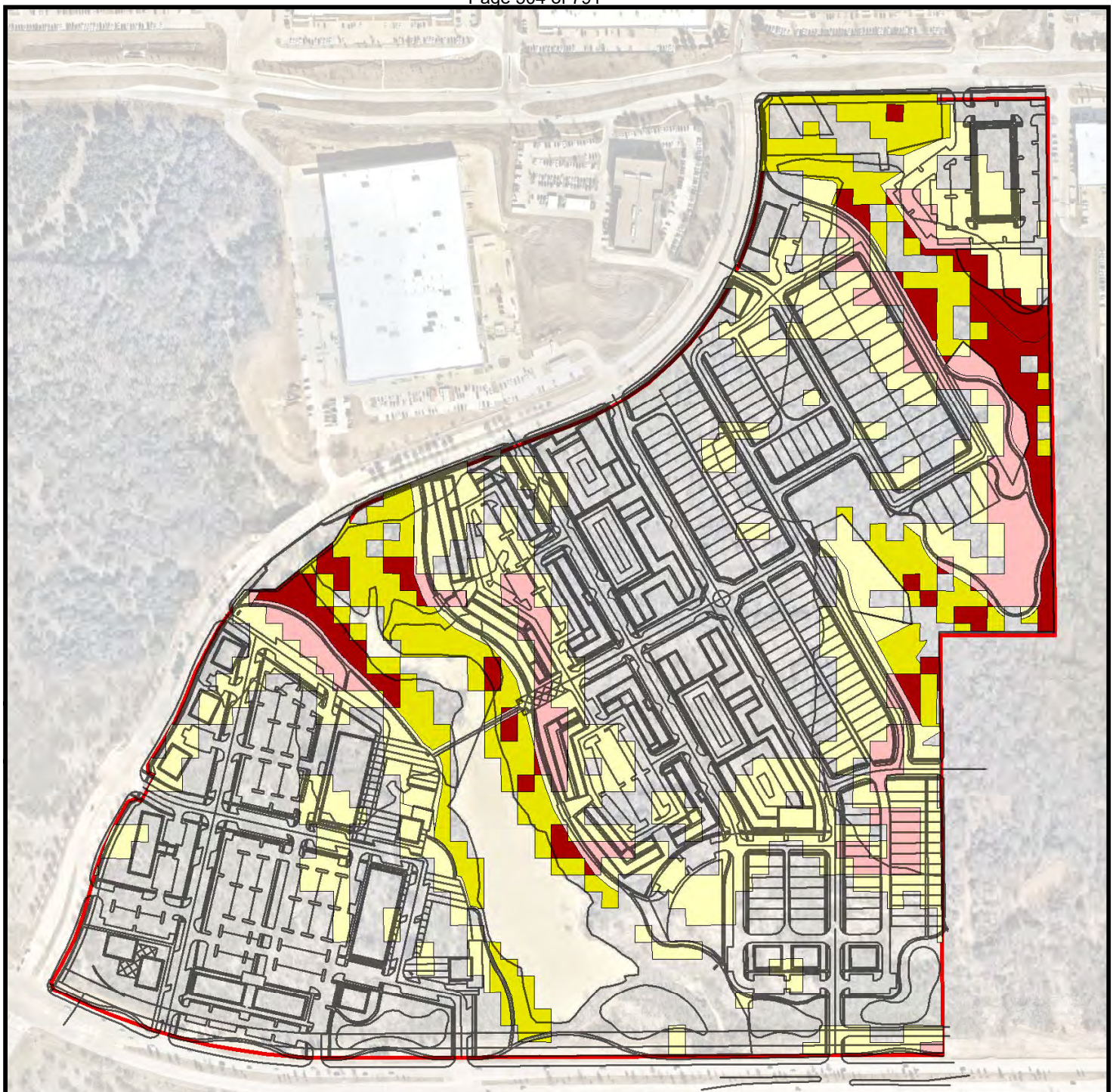
KHA NO.: 064509200

ESA Impacts Map

Aerial Date: January 2017

Silveron Mixed-UseFlower Mound,
Denton County, Texas**Kimley»Horn**

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

**Legend**

— Site Plan

ESA Slope Impacts

- Slopes 5% to 12%, Impacted (28.1-acres)
- Slopes 12% and Greater, Impacted (7.2-acres)
- Slopes 5% to 12%, Avoided (10.0-acres)
- Slopes 12% and Greater, Avoided (4.7-acres)
- Study Area, 122-acres

0 125 250 500 Feet

SHEET

6

DATE: 03/28/2019

DESIGN: AMB

DRAWN: AMB

CHECKED: MMC

KHA NO.: 064509200

Slope Impacts Map

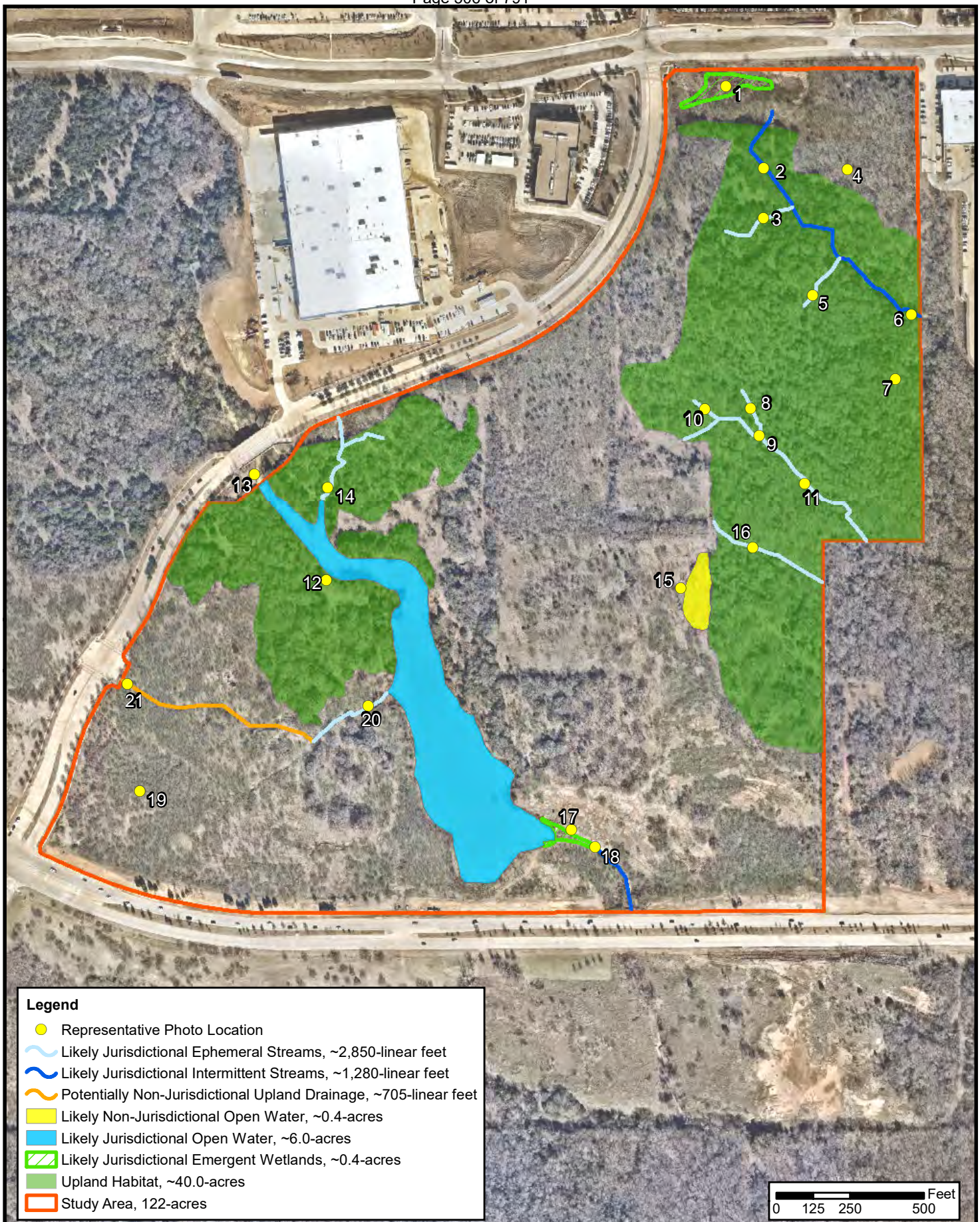
Aerial Date: January 2017

Silveron Mixed-UseFlower Mound,
Denton County, Texas**Kimley»Horn**

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

APPENDIX B

Site Visit Photos



SHEET

1

DATE: 03/13/2018

DESIGN: SDG

DRAWN: SDG

CHECKED: AMB

KHA NO.: 064509200

Representative Photo Location Map

Aerial Date: January 2017

Silveron Mixed-Use

Flower Mound,
Denton County, Texas
Kimley»Horn

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APPENDIX C

Town of Flower Mound

ESA Survey



Environmentally Sensitive Area Survey

Property Name: Silveron Project		Contact: Alex Brown, with Kimley-Horn
Property Address: Generally located north of Long Prairie Rd. and east of Silveron Blvd.		
Environmentally Sensitive Area Criteria	ESA Criteria Description & Notes	
<u>Upland Habitat</u> Criteria Present? ☒ Yes ☐ No	Multiple Upland Habitat areas appear to be located on the site. The predominant matrix of species identified in these areas includes post oak, blackjack oak, cedar elm and Texas ash.	
<u>Riparian Habitat</u> Criteria Present? ☒ Yes ☐ No	The three (3) wetland areas are classified as Riparian Habitat areas.	
<u>Prairie Habitat</u> Criteria Present? ☐ Yes ☒ No	None	
<u>Waters of the State</u> Criteria Present? ☒ Yes ☐ No	There is a large intermittent stream that bisects the northern portion of the property, with another stream that appears to also be intermittent, which feeds into it. The rest of the streams identified on the site appear to be ephemeral streams. A few of the ephemeral streams that flow SE to an adjacent property appear to have been significantly impacted by that development. Any proposed impacts to the existing streams on the site must be assessed by the developer and an authorization letter from the USACE will need to be submitted to the Town before the Record Plat can be approved for this site.	
<u>Floodplain</u> Criteria Present? ☐ Yes ☒ No	None	
<u>Wetlands</u> Criteria Present? ☒ Yes ☐ No	There were three (3) wetland areas identified on the site.	
<u>Water Impoundment Protection</u> Criteria Present? ☒ Yes ☐ No	The existing pond is large enough to warrant water impoundment protection.	
<u>Topographical Slope Protection</u> Criteria Present? ☒ Yes ☐ No	There are multiple areas on the site with significant slope ($\geq 5\%$). The estimated location of these areas is shown on the slope map provided. This map shows areas where these slope conditions could exist. This data is not exact and is meant to be used as a guide. Based on Town staff's field observations, there appears to be areas on this property that exceed slopes of 12% where the streams have been identified and along the western portion of the large pond, which might be significantly impacted by the proposed development. The Town's SMARTGrowth Program allows modification of slopes between 5% and 12% - but only up to 5 feet outside the footprint of the structure or structures being built. The objective of this provision of SMARTGrowth is to preserve topographic features and the topographic character of each site, and to avoid the "balancing" or flattening of sites. A thorough analysis to identify all areas on the site with slopes greater than or equal to 5% will need to be completed by the applicant's consultant and forwarded to Town staff for review.	
Action Steps/Additional Notes		
Multiple ESAs were identified on this site. Therefore, an EPP will be required. The construction plans will need to show that the developer is working with existing slopes on the site. The applicant needs to demonstrate that the development complies with the topographic slope requirements found in the Town's SMARTGrowth Program – Environmental Quality Section.		

EPP Required? ☒ Yes ☐ No	Attachments ☒ Site Orthographic Aerial Photograph ☐ Other:	
EPP Consultant: N/A		
Submitted by: (print) James Hoefert		Signature & Date: James Hoefert 2/12/2018
Forwarded to EPP Consultant: N/A	Filed with Development Services & Environmental Services	Last Modified: 2/12/2018

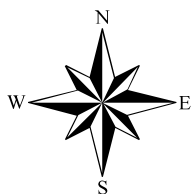


Environmentally Sensitive Area Survey Silveron Project

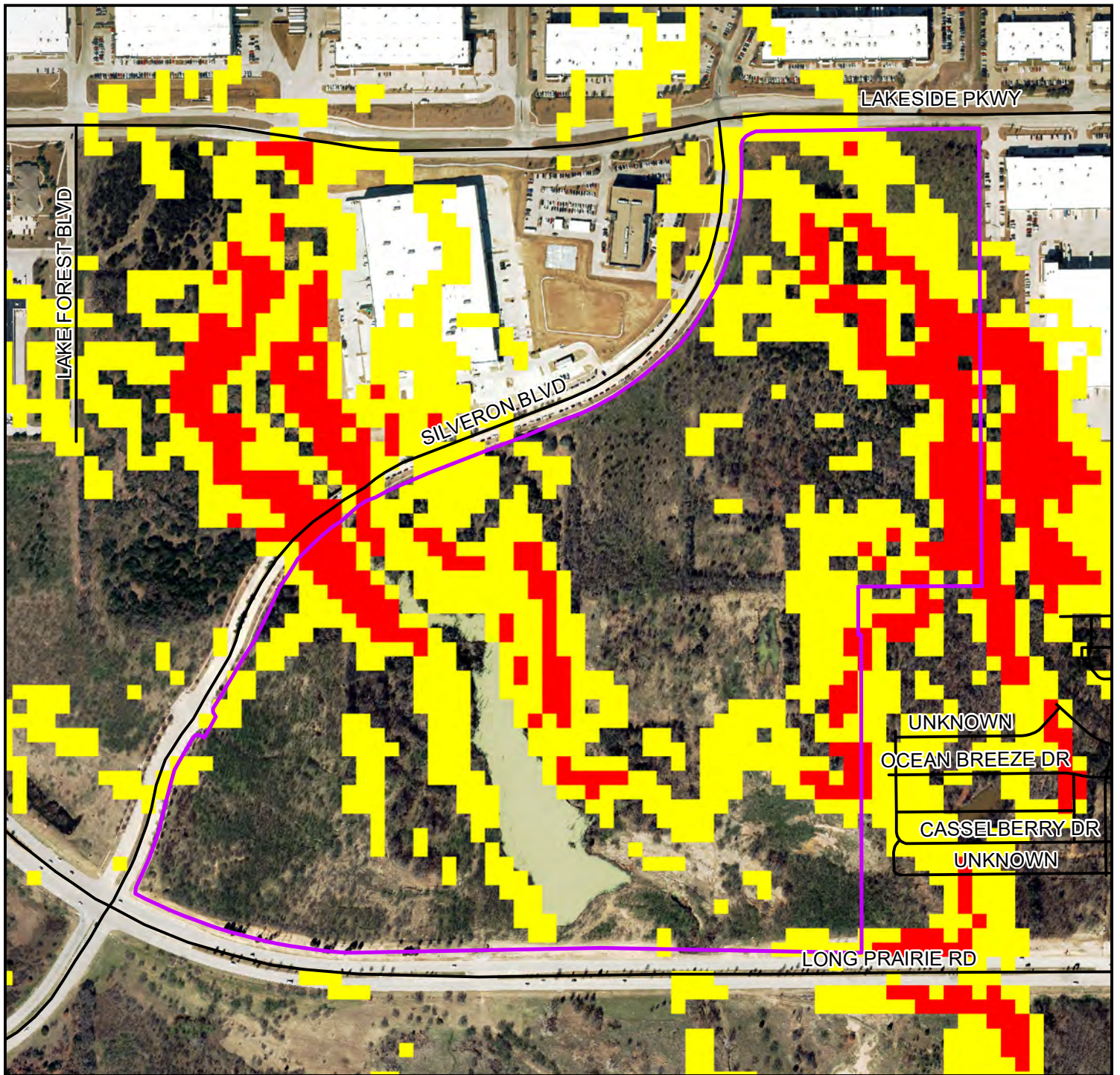
Map Created: February 12, 2018
Environmental Services Department
Town of Flower Mound

1 inch = 500 feet

0 150 300 600 900 1,200 Feet



Property **Streets** Streets Upland Habitat Streams Wetlands Pond

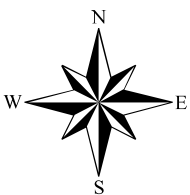


Silveron Project - Slope Map

Map Created: February 12, 2018
Environmental Services Department
Town of Flower Mound

1 inch = 500 feet

0 195 390 780 1,170 1,560 Feet



APPENDIX D

FEMA FIRMette Map



Legend

 Study Area, 122-acres

FEMA Flood Zone

A
 AE

0 500 1,000 2,000 Feet

SHEET

1

DATE: 03/13/2018

DESIGN: SDG

DRAWN: SDG

CHECKED: AMB

KHA NO.: 064509200

**FEMA Flood
Hazard Map**

FEMA FIRM: 48121C0545G,
48121C0685G, 48439CD110K,
48439CD105K

Silveron Mixed-Use

Flower Mound,
Denton County, Texas

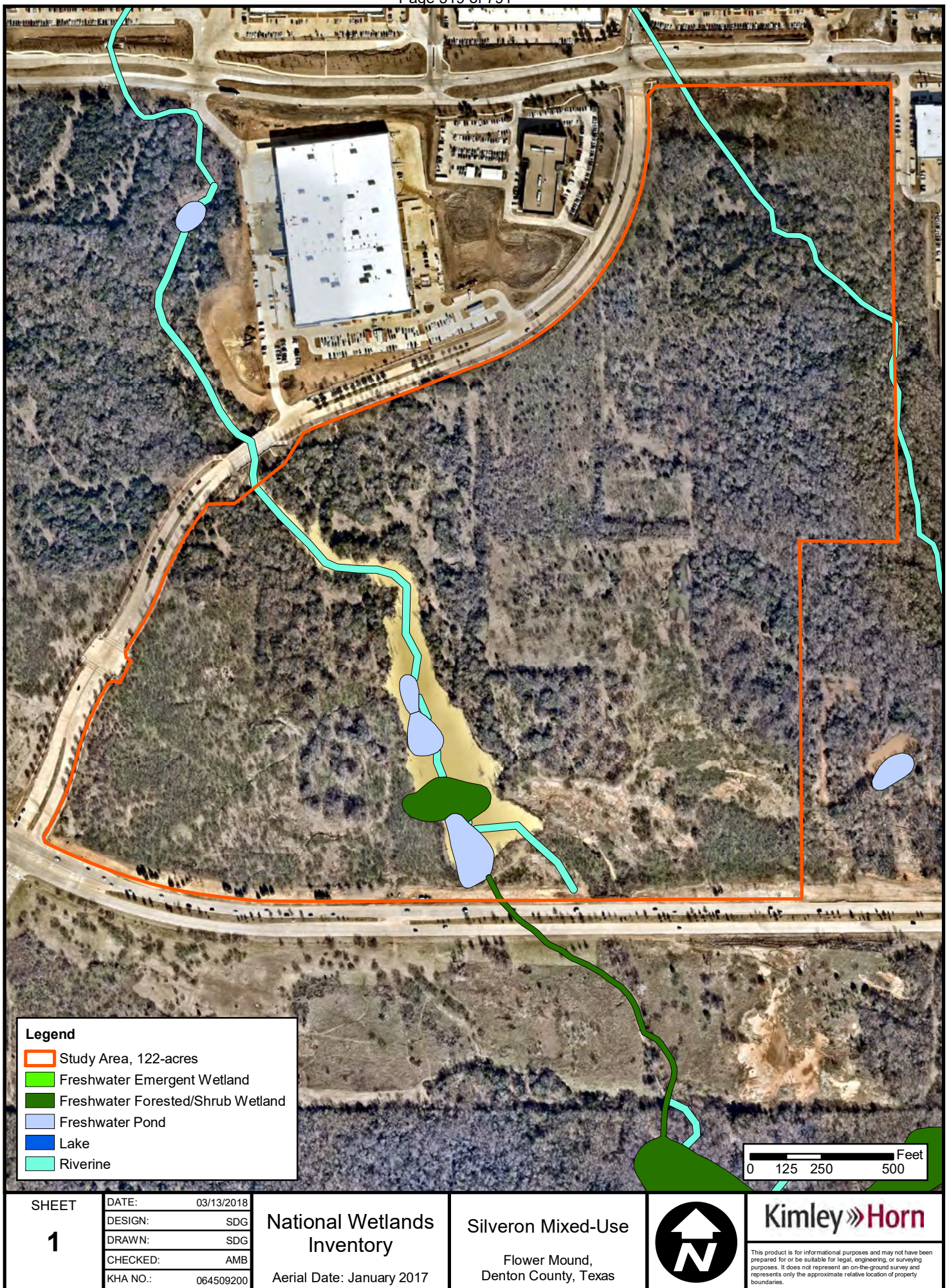


Kimley»Horn

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APPENDIX E

USFWS NWI Map



SHEET

1

DATE:	03/13/2018
DESIGN:	SDG
DRAWN:	SDG
CHECKED:	AMB
KHA NO.:	064509200

National Wetlands Inventory

Aerial Date: January 2017

Silveron Mixed-Use

Flower Mound,
Denton County, Texas



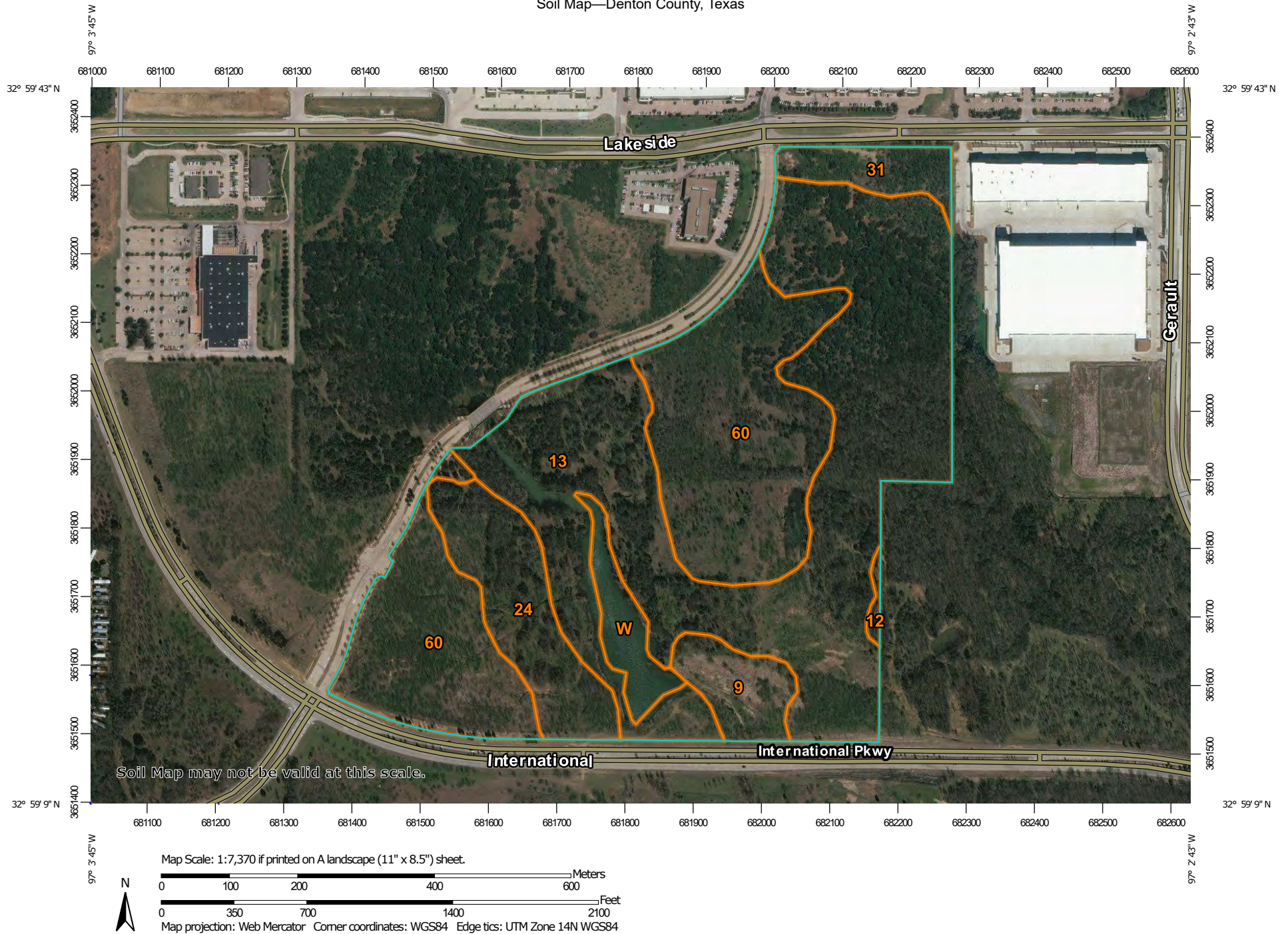
Kimley»Horn

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APPENDIX F

USDA Soils Map

Soil Map—Denton County, Texas



Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey

3/28/2018
Page 1 of 3

Soil Map—Denton County, Texas

MAP LEGEND

Area of Interest (AOI)

 Area of Interest (AOI)

Soils

 Soil Map Unit Polygons

 Soil Map Unit Lines

 Soil Map Unit Points

Special Point Features



Blowout



Borrow Pit



Clay Spot



Closed Depression



Gravel Pit



Gravelly Spot



Landfill



Lava Flow



Marsh or swamp



Mine or Quarry



Miscellaneous Water



Perennial Water



Rock Outcrop



Saline Spot



Sandy Spot



Severely Eroded Spot



Sinkhole



Slide or Slip



Sodic Spot



Spoil Area



Stony Spot



Very Stony Spot



Wet Spot



Other



Special Line Features

Water Features



Streams and Canals

Transportation



Rails



Interstate Highways



US Routes



Major Roads



Local Roads

Background



Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service

Web Soil Survey URL:

Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Denton County, Texas

Survey Area Data: Version 14, Nov 7, 2017

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Nov 27, 2014—Feb 23, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
9	Bastil fine sandy loam, 1 to 3 percent slopes	4.7	3.9%
12	Birome fine sandy loam, 3 to 5 percent slopes	0.4	0.4%
13	Birome-Rayex-Aubrey complex, 2 to 15 percent slopes	59.6	49.0%
24	Callisburg fine sandy loam, 3 to 5 percent slopes	10.9	8.9%
31	Ferris-Heiden clay, 3 to 5 percent slopes	4.0	3.3%
60	Navo clay loam, 1 to 3 percent slopes	38.1	31.3%
W	Water	3.9	3.2%
Totals for Area of Interest		121.7	100.0%

APPENDIX G

USFWS IPaC Official Species List

IPaC Information for Planning and Consultation U.S. Fish & Wildlife Service

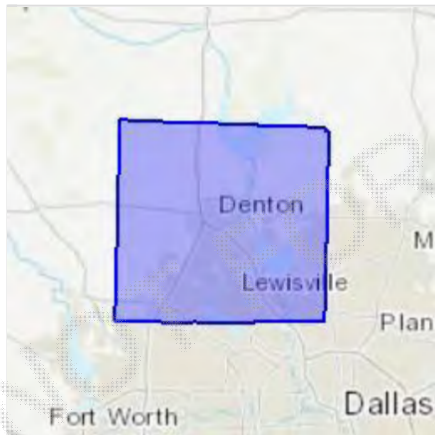
IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Denton County, Texas



Local office

Arlington Ecological Services Field Office

☎ (817) 277-1100

📅 (817) 277-1129

2005 Ne Green Oaks Blvd
Suite 140
Arlington, TX 76006-6247

<http://www.fws.gov/southwest/es/arlingtontexas/>
<http://www.fws.gov/southwest/es/EndangeredSpecies/lists/>

NOT FOR CONSULTATION

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population, even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act requires Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can only be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species

¹ and their critical habitats are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service (USFWS) and the fisheries division of the National Oceanic and Atmospheric Administration (NOAA Fisheries²).

Species and critical habitats under the sole responsibility of NOAA Fisheries are not shown on this list. Please [contact NOAA Fisheries](#) for [species under their jurisdiction](#).

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information.
2. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

The following species are potentially affected by activities in this location:

Birds

NAME	STATUS
Least Tern <i>Sterna antillarum</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/8505	Endangered
Piping Plover <i>Charadrius melodus</i> This species only needs to be considered if the following condition applies: • Wind Energy Projects There is final critical habitat for this species. Your location is outside the critical habitat. https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> This species only needs to be considered if the following condition applies: • Wind Energy Projects No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/1864	Threatened
Whooping Crane <i>Grus americana</i> There is final critical habitat for this species. Your location is outside the critical habitat. https://ecos.fws.gov/ecp/species/758	Endangered

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

THERE ARE NO CRITICAL HABITATS AT THIS LOCATION.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act

¹ and the Bald and Golden Eagle Protection Act².

Any person or organization who plans or conducts activities that may result in impacts to migratory birds, eagles, and their habitats should follow appropriate regulations and consider implementing appropriate conservation measures, as described [below](#).

1. The [Migratory Birds Treaty Act](#) of 1918.

2. The [Bald and Golden Eagle Protection Act](#) of 1940.

Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Nationwide conservation measures for birds <http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

The birds listed below are birds of particular concern either because they occur on the [USFWS Birds of Conservation Concern](#) (BCC) list or warrant special attention in your project location. To learn more about the levels of concern for birds on your list and how this list is generated, see the FAQ [below](#). This is not a list of every bird you may find in this location, nor a guarantee that every bird on this list will be found in your project area. To see maps of where birders and the general public have sighted birds in and around your project area, visit E-bird tools such as the [E-bird data mapping tool](#) (search for the name of a bird on your list to see specific locations where that bird has been reported to occur within your project area over a certain timeframe) and the [E-bird Explore Data Tool](#) (perform a query to see a list of all birds sighted in your county or region and within a certain timeframe). For projects that occur off the Atlantic Coast, additional maps and models detailing the relative occurrence and abundance of bird species on your list are available. Links to additional information about Atlantic Coast birds, and other important information about your migratory bird list can be found [below](#).

For guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds on your list, click on the PROBABILITY OF PRESENCE SUMMARY at the top of your list to see when these birds are most likely to be present and breeding in your project area.

NAME

BREEDING SEASON (IF A BREEDING SEASON IS INDICATED FOR A BIRD ON YOUR LIST, THE BIRD MAY BREED IN YOUR PROJECT AREA SOMETIME WITHIN THE TIMEFRAME SPECIFIED, WHICH IS A VERY LIBERAL ESTIMATE OF THE DATES INSIDE WHICH THE BIRD BREEDS ACROSS ITS ENTIRE RANGE. "BREEDS ELSEWHERE" INDICATES THAT THE BIRD DOES NOT LIKELY BREED IN YOUR PROJECT AREA.)

American Golden-plover *Pluvialis dominica*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Bald Eagle *Haliaeetus leucocephalus*

Breeds Sep 1 to Jul 31

This is not a Bird of Conservation Concern (BCC) in this area, but warrants attention because of the Eagle Act or for potential susceptibilities in offshore areas from certain types of development or activities.

<https://ecos.fws.gov/ecp/species/1626>

Buff-breasted Sandpiper *Calidris subruficollis*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/9488>

Harris's Sparrow *Zonotrichia querula*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Henslow's Sparrow *Ammodramus henslowii*

Breeds May 1 to Aug 31

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/3941>

Lesser Yellowlegs *Tringa flavipes*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/9679>

Marbled Godwit *Limosa fedoa*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/9481>

Red-headed Woodpecker *Melanerpes erythrocephalus*

Breeds May 10 to Sep 10

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Semipalmated Sandpiper *Calidris pusilla*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Sprague's Pipit *Anthus spragueii*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

<https://ecos.fws.gov/ecp/species/8964>

Willet *Tringa semipalmata*

Breeds elsewhere

This is a Bird of Conservation Concern (BCC) throughout its range in the continental USA and Alaska.

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in your project's counties during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season (■)

Yellow bars denote a very liberal estimate of the time-frame inside which the bird breeds across its entire range. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (|)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the counties of your project area. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

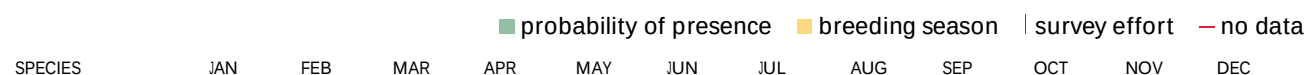
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

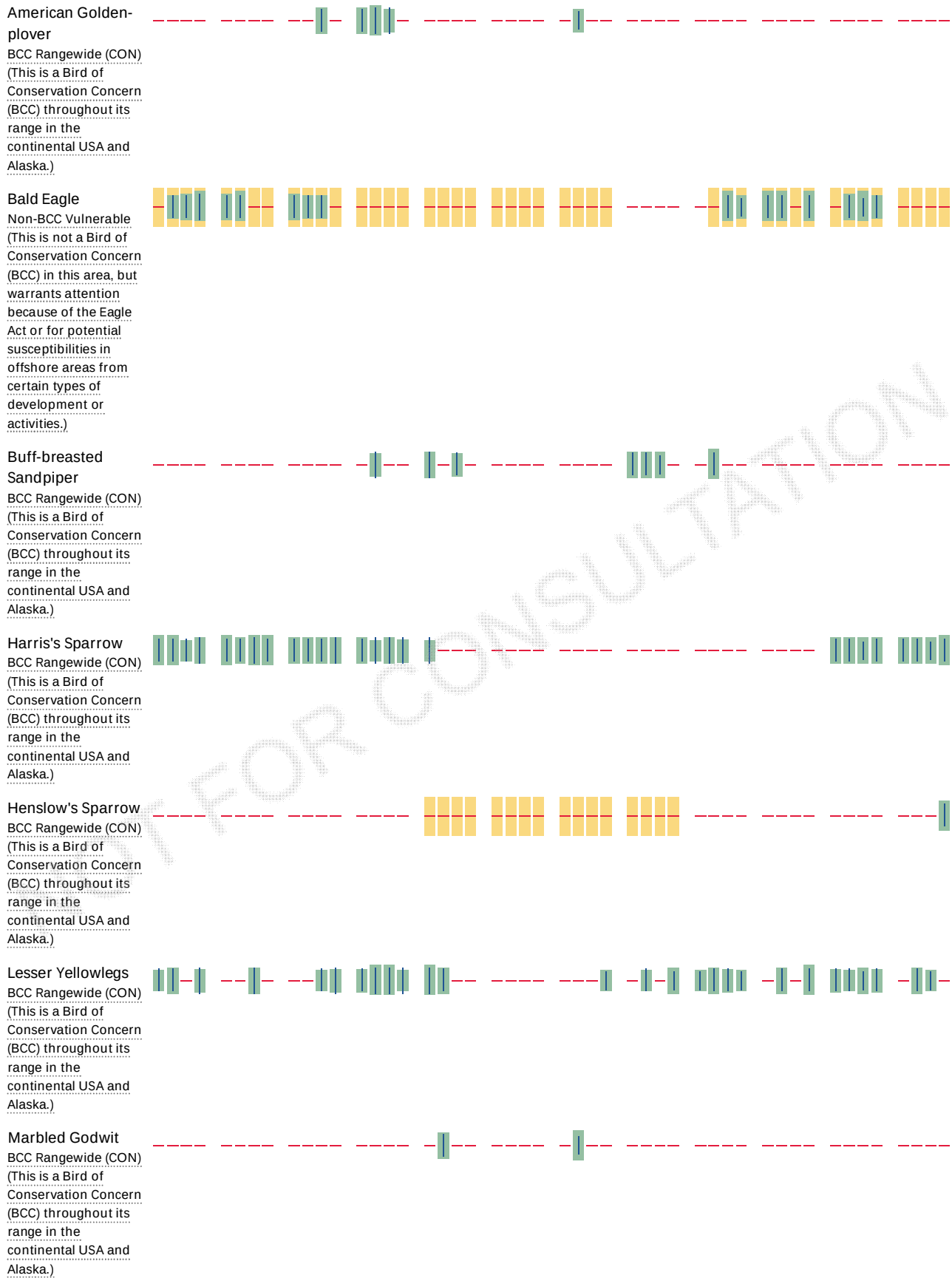
No Data (—)

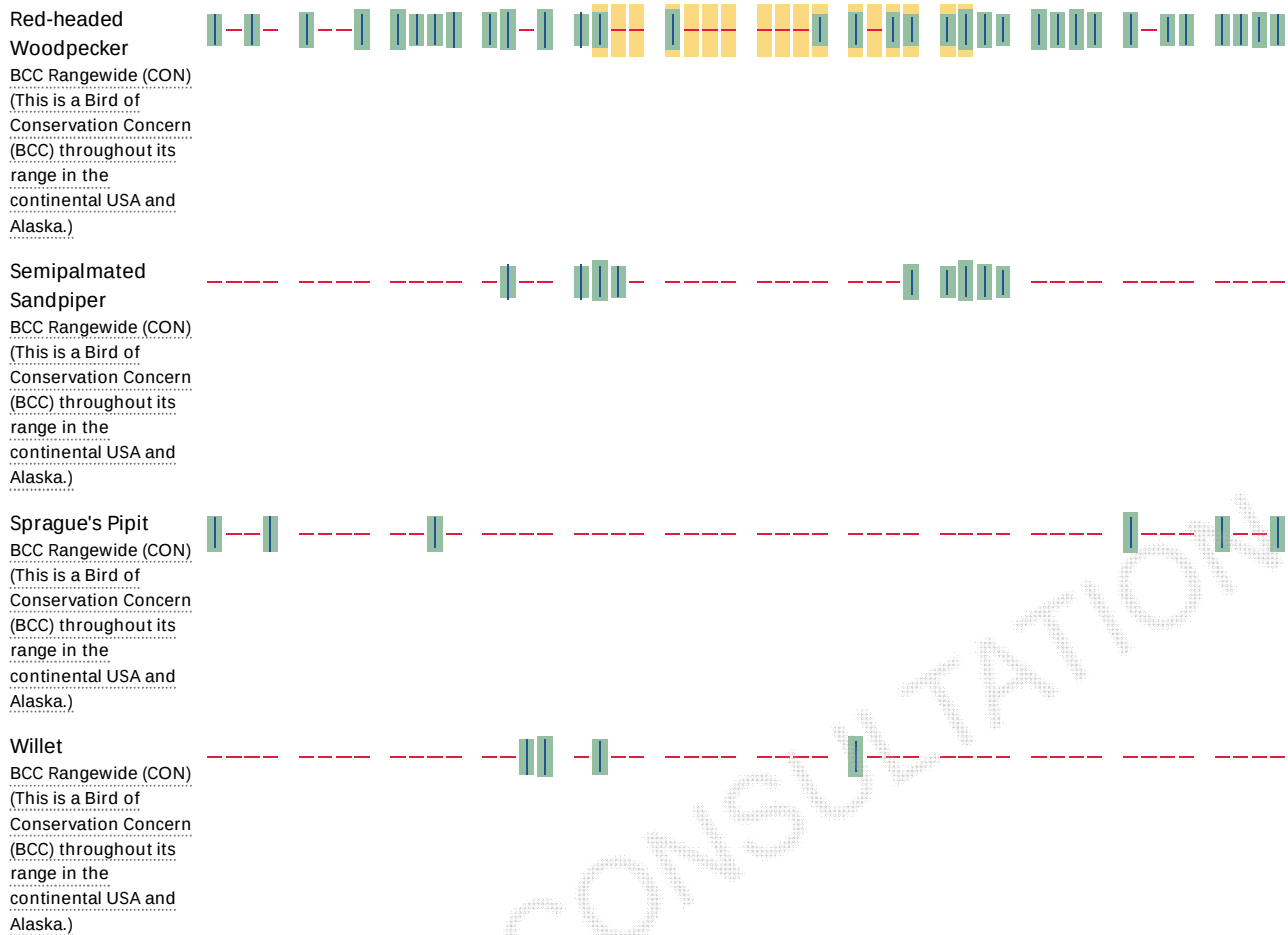
A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information.







Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Implementation of these measures is particularly important when birds are most likely to occur in the project area. When birds may be breeding in the area, identifying the locations of any active nests and avoiding their destruction is a very helpful impact minimization measure. To see when birds are most likely to occur and be breeding in your project area, view the Probability of Presence Summary. [Additional measures](#) and/or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the migratory birds potentially occurring in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) and other species that may warrant special attention in your project location.

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#) and is queried and filtered to return a list of those birds reported as occurring in the counties which your project intersects, and that have been identified as warranting special attention because they are a BCC species in that area, an eagle ([Eagle Act](#) requirements may apply), or a species that has a particular vulnerability to offshore activities or development.

Again, the Migratory Bird Resource list includes only a subset of birds that may occur in your project area. It is not representative of all birds that may occur in your project area. To get a list of all birds potentially present in your project area, please visit the [E-bird Explore Data Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available. To learn more about how the probability of presence graphs are produced and how to interpret them, go to the Probability of Presence Summary and then click on the "Tell me about these graphs" link.

How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: The [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird entry on your migratory bird species list indicates a breeding season, it is probable that the bird breeds in your project's counties at some point within the timeframe specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

What are the levels of concern for migratory birds?

Migratory birds delivered through IPaC fall into the following distinct categories of concern:

1. "BCC Rangewide" birds are [Birds of Conservation Concern](#) (BCC) that are of concern throughout their range anywhere within the USA (including Hawaii, the Pacific Islands, Puerto Rico, and the Virgin Islands);
2. "BCC - BCR" birds are BCCs that are of concern only in particular Bird Conservation Regions (BCRs) in the continental USA; and
3. "Non-BCC - Vulnerable" birds are not BCC species in your project area, but appear on your list either because of the [Eagle Act](#) requirements (for eagles) or (for non-eagles) potential susceptibilities in offshore areas from certain types of development or activities (e.g. offshore energy development or longline fishing).

Although it is important to try to avoid and minimize impacts to all birds, efforts should be made, in particular, to avoid and minimize impacts to the birds on this list, especially eagles and BCC species of rangewide concern. For more information on conservation measures you can implement to help avoid and minimize migratory bird impacts and requirements for eagles, please see the FAQs for these topics.

Details about birds that are potentially affected by offshore projects

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review.

Alternately, you may download the bird model results files underlying the portal maps through the [NOAA NCCOS Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#) project webpage.

Bird tracking data can also provide additional details about occurrence and habitat use throughout the year, including migration. Models relying on survey data may not include this information. For additional information on marine bird tracking data, see the [Diving Bird Study](#) and the [nanotag studies](#) or contact [Caleb Spiegel](#) or [Pam Loring](#).

What if I have eagles on my list?

If your project has the potential to disturb or kill eagles, you may need to [obtain a permit](#) to avoid violating the BGEPA should such impacts occur.

Facilities

Wildlife refuges and fish hatcheries

REFUGE AND FISH HATCHERY INFORMATION IS NOT AVAILABLE AT THIS TIME

Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

WETLAND INFORMATION IS NOT AVAILABLE AT THIS TIME

This can happen when the National Wetlands Inventory (NWI) map service is unavailable, or for very large projects that intersect many wetland areas. Try again, or visit the [NWI map](#) to view wetlands at this location.

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the

geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

NOT FOR CONSULTATION

APPENDIX H

TPWD Annotated List of Rare Species for Denton County

DENTON COUNTY

BIRDS

		Federal Status	State Status
American Peregrine Falcon	<i>Falco peregrinus anatum</i>	DL	T
year-round resident and local breeder in west Texas, nests in tall cliff eyries; also, migrant across state from more northern breeding areas in US and Canada, winters along coast and farther south; occupies wide range of habitats during migration, including urban, concentrations along coast and barrier islands; low-altitude migrant, stopovers at leading landscape edges such as lake shores, coastlines, and barrier islands.			
Arctic Peregrine Falcon	<i>Falco peregrinus tundrius</i>	DL	
migrant throughout state from subspecies' far northern breeding range, winters along coast and farther south; occupies wide range of habitats during migration, including urban, concentrations along coast and barrier islands; low-altitude migrant, stopovers at leading landscape edges such as lake shores, coastlines, and barrier islands.			
Bald Eagle	<i>Haliaeetus leucocephalus</i>	DL	T
found primarily near rivers and large lakes; nests in tall trees or on cliffs near water; communally roosts, especially in winter; hunts live prey, scavenges, and pirates food from other birds			
Henslow's Sparrow	<i>Ammodramus henslowii</i>		
wintering individuals (not flocks) found in weedy fields or cut-over areas where lots of bunch grasses occur along with vines and brambles; a key component is bare ground for running/walking			
Peregrine Falcon	<i>Falco peregrinus</i>	DL	T
both subspecies migrate across the state from more northern breeding areas in US and Canada to winter along coast and farther south; subspecies (F. p. anatum) is also a resident breeder in west Texas; the two subspecies' listing statuses differ, F.p. tundrius is no longer listed in Texas; but because the subspecies are not easily distinguishable at a distance, reference is generally made only to the species level; see subspecies for habitat.			
Red Knot	<i>Calidris canutus rufa</i>	T	
Red knots migrate long distances in flocks northward through the contiguous United States mainly April-June, southward July-October. A small plump-bodied, short-necked shorebird that in breeding plumage, typically held from May through August, is a distinctive and unique pottery orange color. Its bill is dark, straight and, relative to other shorebirds, short-to-medium in length. After molting in late summer, this species is in a drab gray-and-white non-breeding plumage, typically held from September through April. In the non-breeding plumage, the knot might be confused with the omnipresent Sanderling. During this plumage, look for the knot's prominent pale eyebrow and whitish flanks with dark barring. The Red Knot prefers the shoreline of coast and bays and also uses mudflats during rare inland encounters. Primary prey items include coquina clam (<i>Donax</i> spp.) on beaches and dwarf surf clam (<i>Mulinia lateralis</i>) in bays, at least in the Laguna Madre. Wintering Range includes- Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. Habitat: Primarily seacoasts on tidal flats and beaches, herbaceous wetland, and Tidal flat/shore.			

DENTON COUNTY

BIRDS

		Federal Status	State Status
Sprague's Pipit	<i>Anthus spragueii</i>		
only in Texas during migration and winter, mid September to early April; short to medium distance, diurnal migrant; strongly tied to native upland prairie, can be locally common in coastal grasslands, uncommon to rare further west; sensitive to patch size and avoids edges.			
Western Burrowing Owl	<i>Athene cunicularia hypugaea</i>		
open grasslands, especially prairie, plains, and savanna, sometimes in open areas such as vacant lots near human habitation or airports; nests and roosts in abandoned burrows			
White-faced Ibis	<i>Plegadis chihi</i>		T
prefers freshwater marshes, sloughs, and irrigated rice fields, but will attend brackish and saltwater habitats; nests in marshes, in low trees, on the ground in bulrushes or reeds, or on floating mats			
Whooping Crane	<i>Grus americana</i>	LE	E
potential migrant via plains throughout most of state to coast; winters in coastal marshes of Aransas, Calhoun, and Refugio counties			
Wood Stork	<i>Mycteria americana</i>		T
forages in prairie ponds, flooded pastures or fields, ditches, and other shallow standing water, including salt-water; usually roosts communally in tall snags, sometimes in association with other wading birds (i.e. active heronries); breeds in Mexico and birds move into Gulf States in search of mud flats and other wetlands, even those associated with forested areas; formerly nested in Texas, but no breeding records since 1960			

MAMMALS

		Federal Status	State Status
Plains spotted skunk	<i>Spilogale putorius interrupta</i>		
catholic; open fields, prairies, croplands, fence rows, farmyards, forest edges, and woodlands; prefers wooded, brushy areas and tallgrass prairie			
Red wolf	<i>Canis rufus</i>	LE	E
extirpated; formerly known throughout eastern half of Texas in brushy and forested areas, as well as coastal prairies			

MOLLUSKS

		Federal Status	State Status
Louisiana pigtoe	<i>Pleurobema riddellii</i>		T
streams and moderate-size rivers, usually flowing water on substrates of mud, sand, and gravel; not generally known from impoundments; Sabine, Neches, and Trinity (historic) River basins			
Sandbank pocketbook	<i>Lampsilis satura</i>		T
small to large rivers with moderate flows and swift current on gravel, gravel-sand, and sand bottoms; east Texas, Sulfur south through San Jacinto River basins; Neches River			
Texas heelsplitter	<i>Potamilus amphichaenus</i>		T
quiet waters in mud or sand and also in reservoirs. Sabine, Neches, and Trinity River basins			

DENTON COUNTY**MOLLUSKS**

Federal Status

State Status

Texas pigtoe*Fusconaia askewi*

T

rivers with mixed mud, sand, and fine gravel in protected areas associated with fallen trees or other structures; east Texas River basins, Sulphur River, Cypress Creek, Sabine through Trinity rivers as well as San Jacinto River

REPTILES

Federal Status

State Status

Texas garter snake*Thamnophis sirtalis annectens*

wet or moist microhabitats are conducive to the species occurrence, but is not necessarily restricted to them; hibernates underground or in or under surface cover; breeds March-August

Texas horned lizard*Phrynosoma cornutum*

T

open, arid and semi-arid regions with sparse vegetation, including grass, cactus, scattered brush or scrubby trees; soil may vary in texture from sandy to rocky; burrows into soil, enters rodent burrows, or hides under rock when inactive; breeds March-September

Timber rattlesnake*Crotalus horridus*

T

swamps, floodplains, upland pine and deciduous woodlands, riparian zones, abandoned farmland; limestone bluffs, sandy soil or black clay; prefers dense ground cover, i.e. grapevines or palmetto

PLANTS

Federal Status

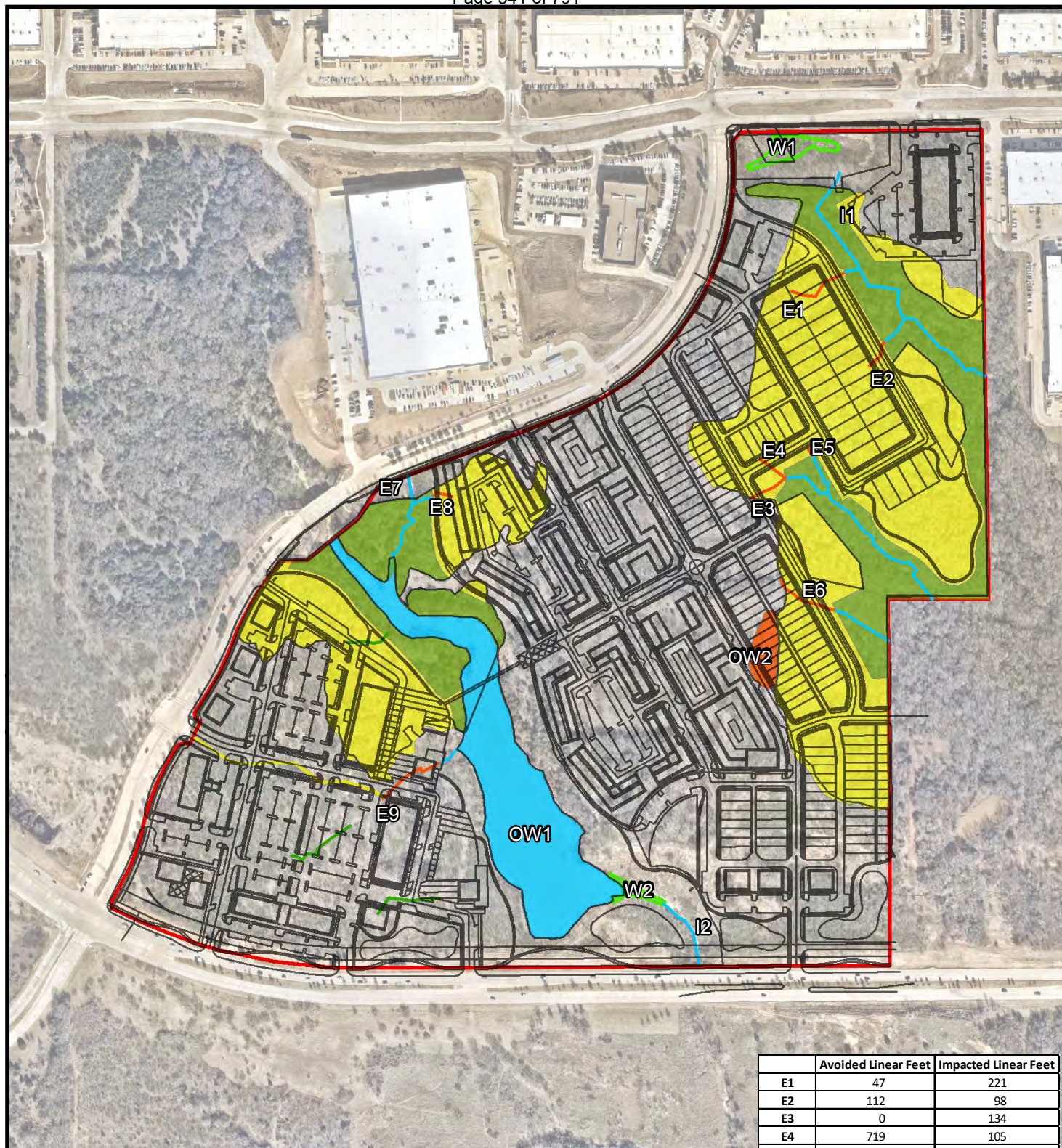
State Status

Glen Rose yucca*Yucca necopina*

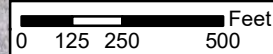
Texas endemic; grasslands on sandy soils and limestone outcrops; flowering April-June

Topeka purple-coneflower*Echinacea atrorubens*

GLOBAL RANK: G3; Occurring mostly in tallgrass prairie of the southern Great Plains, in blackland prairies but also in a variety of other sites like limestone hillsides; Perennial; Flowering Jan-June; Fruiting Jan-May

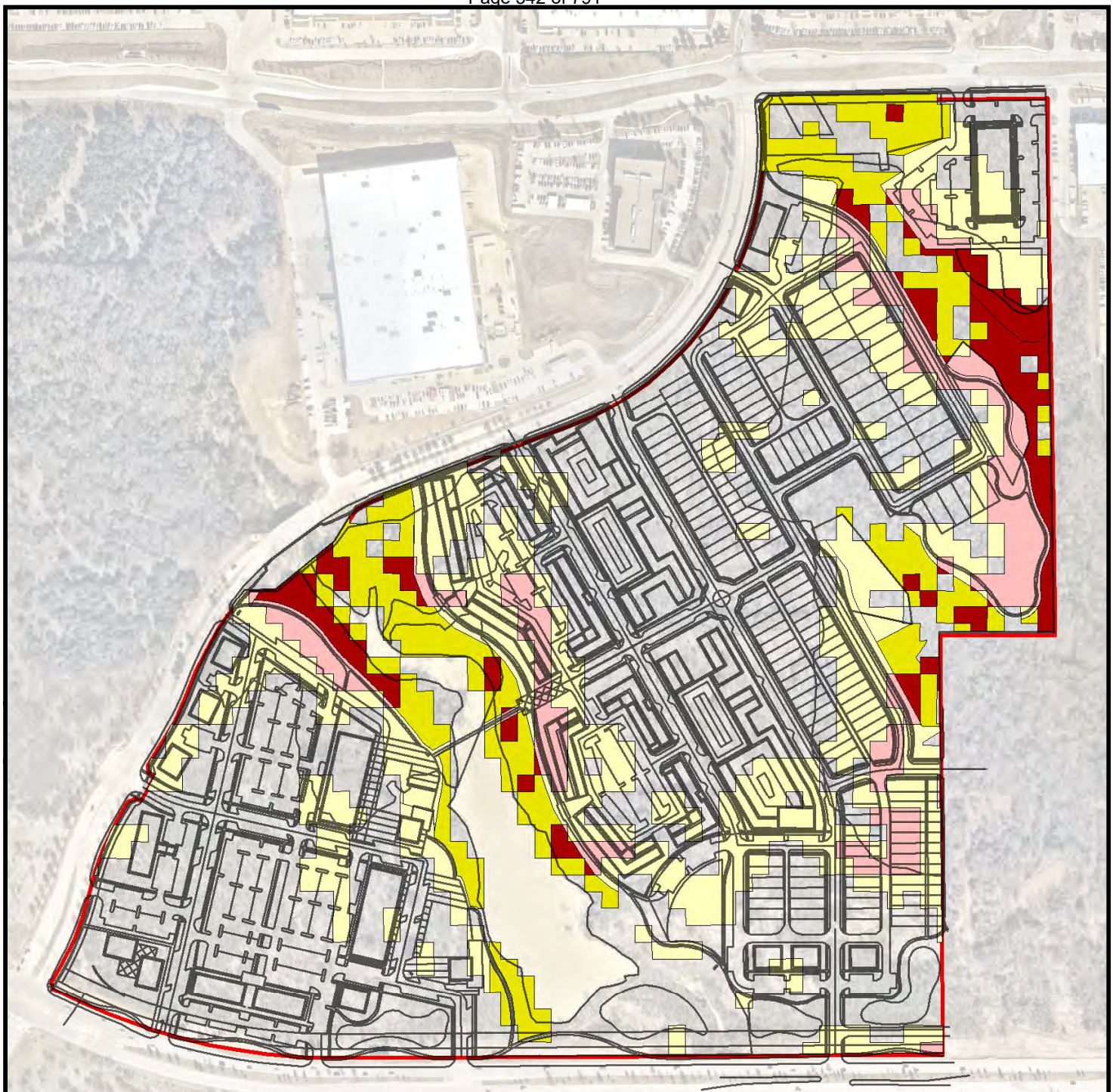


	Avoided Linear Feet	Impacted Linear Feet
E1	47	221
E2	112	98
E3	0	134
E4	719	105
E5	148	26
E6	206	226
E7	331	0
E8	70	82
E9	68	254
I1	1028	0
I2	253	0



Legend

- Site Plan
- Avoided Streams, 2,982-linear feet
- Impacted Streams, 1,147-linear feet
- Impacted Upland Drainage, 707-linear feet
- Impacted Non-Stream Linear Features, 637
- Avoided Upland Habitat, 11.3-acres
- Impacted Upland Habitat, 28.7-acres
- Impacted Open Water, 0.4-acres
- Avoided Open Water, 6.0-acres
- Avoided Wetlands, 0.4-acres
- Study Area, 122-acres

**Legend**

— Site Plan

ESA Slope Impacts

- Slopes 5% to 12%, Impacted (28.1-acres)
- Slopes 12% and Greater, Impacted (7.2-acres)
- Slopes 5% to 12%, Avoided (10.0-acres)
- Slopes 12% and Greater, Avoided (4.7-acres)
- Study Area, 122-acres

0 125 250 500 Feet

SHEET

6

DATE: 03/28/2019

DESIGN: AMB

DRAWN: AMB

CHECKED: MMC

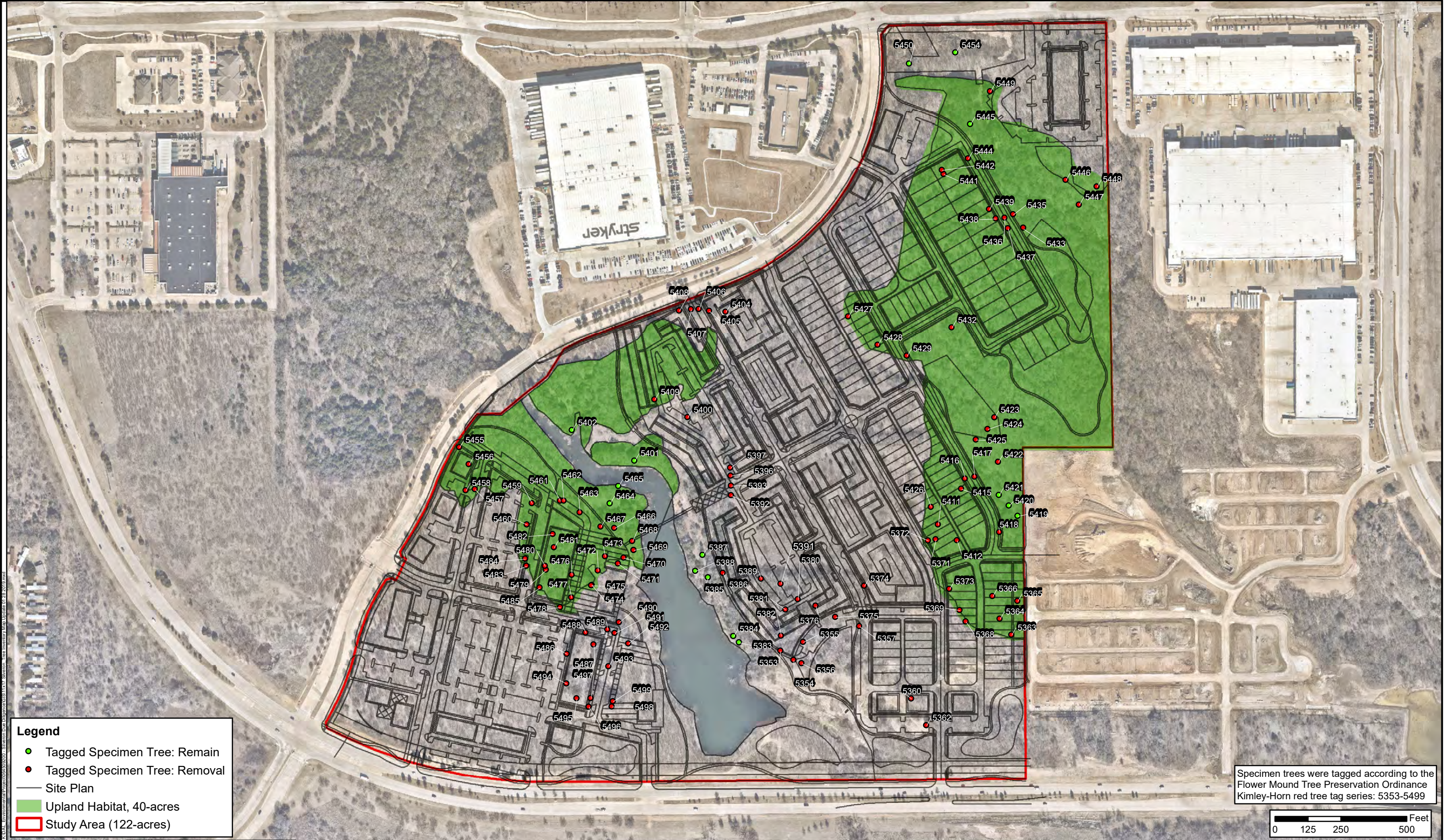
KHA NO.: 064509200

Slope Impacts Map

Aerial Date: January 2017

Silveron Mixed-UseFlower Mound,
Denton County, Texas**Kimley»Horn**

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



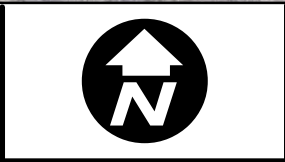
SHEET	DATE:	03/28/2019
1	DESIGN:	AMB
	CHECKED:	LDC
	KHA NO.:	064509200

Specimen Tree Inventory with Concept Site Plan

Quad Name: Grapevine

Silveron Mixed-Use

Flower Mound, Denton County, Texas



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Flower Mound, Denton County, Texas

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TAG#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	MULTIPLE-STEMMED	Remain / Remove	Upland Habitat (Y/N)
5353	28.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5354	23.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5355	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5356	26.2	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5357	23.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5360	25.9	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remove	N
5362	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5363	20.3	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5364	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5365	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5366	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5368	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5369	19.5	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5371	22.2	post oak	<i>Quercus stellata</i>	Declining	Multi	Remove	Y
5372	24.1	cedar elm	<i>Ulmus crassifolia</i>	Declining	Multi	Remove	Y
5373	25.1	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Forked	Remove	Y
5374	25.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5375	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5376	23.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5380	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5381	23.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5382	28.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5383	26.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	N
5384	22.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	N
5385	23.4	post oak	<i>Quercus stellata</i>	Declining	Multi	Remain	N
5386	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5387	22.0	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	N
5388	19.6	blackjack oak	<i>Quercus marilandica</i>	Declining	Single	Remain	N
5389	24.3	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remove	N
5391	23.7	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	N
5392	29.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5393	28.3	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5396	28.1	blackjack oak	<i>Quercus marilandica</i>	Declining	Multi	Remove	N
5397	19.1	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Forked	Remove	N
5400	29.7	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5401	23.6	blackjack oak	<i>Quercus marilandica</i>	Healthy	Single	Remain	Y
5402	25.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y
5404	22.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5405	25.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5406	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5407	24.8	blackjack oak	<i>Quercus marilandica</i>	Healthy	Single	Remove	N
5408	23.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5409	33.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5411	24.9	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5412	24.4	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5415	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5416	22.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5417	22.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5418	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5419	22.2	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	Y
5420	29.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y
5421	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y

Flower Mound, Denton County, Texas

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TAG#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	MULTIPLE-STEMMED	Remain / Remove	Upland Habitat (Y/N)
5422	23.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5423	24.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5424	19.7	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5425	24.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5426	22.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5427	24.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5428	22.1	blackjack oak	<i>Quercus marilandica</i>	Declining	Multi	Remove	Y
5429	25.1	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remove	Y
5432	28.7	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5433	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5435	23.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5436	23.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5437	26.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5438	23.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5439	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5441	24.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5442	22.7	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	Y
5444	23.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5445	20.8	post oak	<i>Quercus stellata</i>	Declining	Single	Remain	Y
5446	22.2	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5447	18.5	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5448	25.8	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5449	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5450	31.9	post oak	<i>Quercus stellata</i>	Healthy	Forked	Remain	N
5454	25.1	post oak	<i>Quercus stellata</i>	Declining	Single	Remain	N
5455	23.3	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5456	22.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5457	31.6	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5458	28.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5459	23.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5460	22.0	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5461	22.9	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5462	22.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5463	20.8	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5464	24.7	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remain	Y
5465	24.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remain	Y
5466	22.7	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5467	27.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5468	22.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5469	26.9	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	Y
5470	23.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5471	22.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5472	23.7	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5473	20.8	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5474	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5475	22.1	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5476	27.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5477	27.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5478	28.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5479	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5480	24.6	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5481	26.1	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	Y
5482	22.0	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y

TAG#	DBH	COMMON NAME	SCIENTIFIC NAME	CONDITION	MULTIPLE-STEMMED	Remain / Remove	Upland Habitat (Y/N)
5483	19.0	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Single	Remove	Y
5484	19.0	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	Y
5485	27.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	Y
5486	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5487	22.2	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5488	20.7	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	N
5489	19.9	cedar elm	<i>Ulmus crassifolia</i>	Healthy	Multi	Remove	N
5490	22.2	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5491	19.7	cedar elm	<i>Ulmus crassifolia</i>	Declining	Single	Remove	N
5492	22.1	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N
5493	27.4	post oak	<i>Quercus stellata</i>	Declining	Single	Remove	N
5494	24.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5495	24.3	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5496	22.8	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5497	23.4	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5498	22.5	post oak	<i>Quercus stellata</i>	Healthy	Single	Remove	N
5499	28.9	post oak	<i>Quercus stellata</i>	Healthy	Multi	Remove	N

- Kimley-Horn red tree tag series: 5353-5499
- Specimen trees were tagged according to the Flower Mound Tree Preservation Ordinance*
- Multiple trunk trees are measured by adding the diameter of the largest stem with one-half of the diameter of each additional stems, all measured at DBH.
- * Specimen trees are defined as any tree listed in the town's small protected tree list that measures 13-inches or more at DBH, medium protected tree list that measures 19-inches or more at DBH, or large protected tree list that measures 25-inches or more at DBH. Post oaks are designated a specimen tree if they measure 22-inches or greater at DBH.

- 1 SIGN 1 - COMMUNITY MONUMENT SIGN
- 2 SIGN 2 - COMMUNITY ENTRY SIGN
- 3 SIGN 3 - COMMUNITY MULTI TENENT SIGN
- 4 SIGN 4 - TRAIL SIGN

An aerial photograph of a development site, overlaid with a white line drawing of the proposed layout. The site is bounded by Lakeside Pkwy to the north, Silveron Road to the west, and Long Prairie Road to the south. The layout includes several large rectangular buildings, numerous smaller rectangular units, and extensive parking areas. Nine blue circular callouts with white numbers are placed on the map: three '3's and six '4's. The '3's are located at the bottom-left, bottom-center, and bottom-right corners of the site. The '4's are located along the western and northern edges, and in the central-eastern portion of the site. The surrounding area includes existing industrial buildings, parking lots, and undeveloped land with trees.

EXHIBIT FOR ZPD 17-0013

Owner /Applicant :

Planner / Landscape Architect:

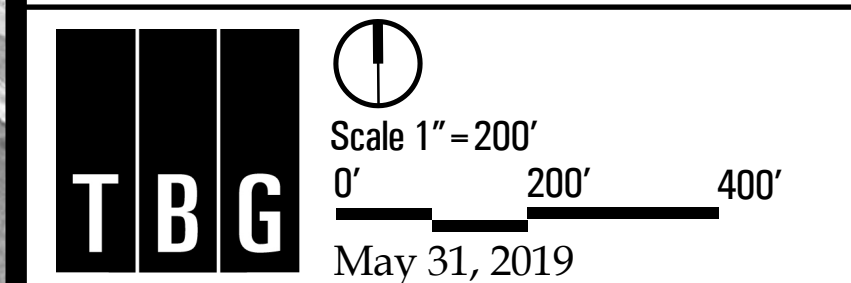
Engineer / Surveyor:

Location Map



Name	Description
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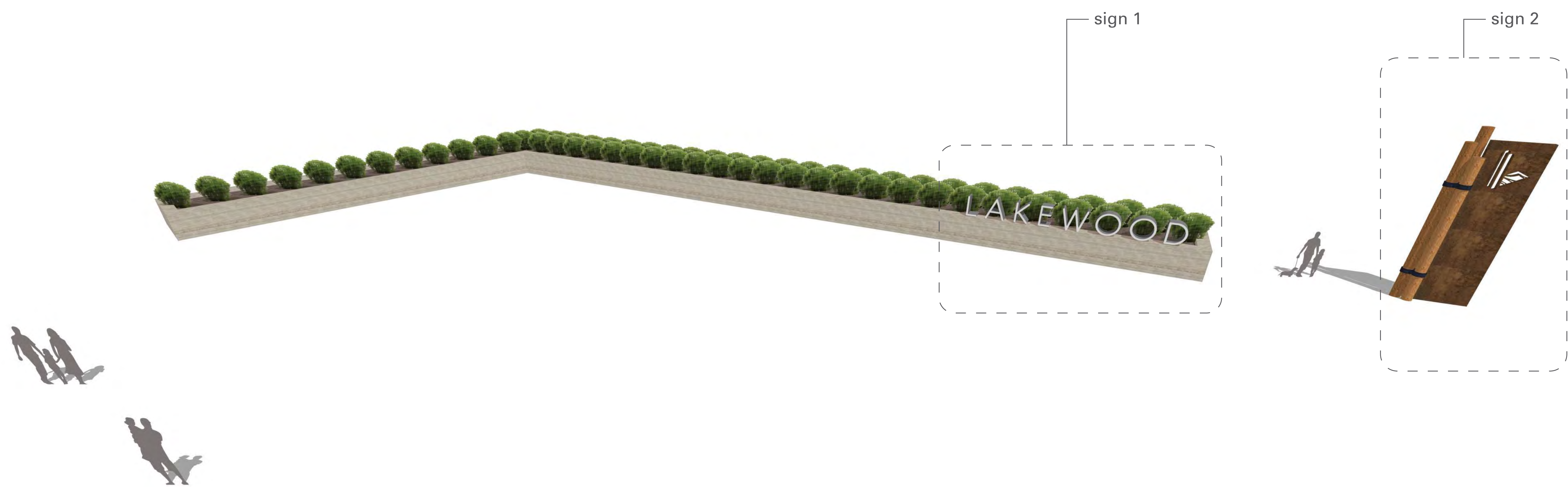


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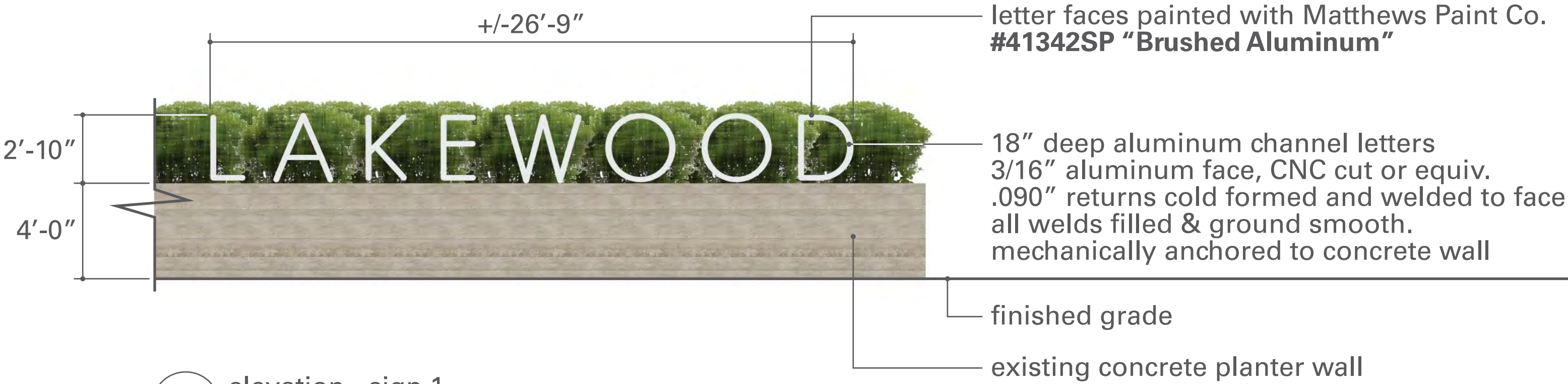
sign 1

Ground Sign Requirements - Sign 1				
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	10'	7'
Max. Width	Sec. 86-67 (2)	10'	30'	27'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	100 sf/side	81 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	15'	15'+
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	60'	60'+
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	120'	120'+
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	N/A

Ground Sign Requirements - Sign 2				
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	20'	20'
Max. Width	Sec. 86-67 (2)	10'	10'	7'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	100 sf/side	90 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	15'	15'+
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	60'	60'+
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	120'	120'+
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



2 overall perspective
scale: nts



1 elevation - sign 1
scale: 1/4" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

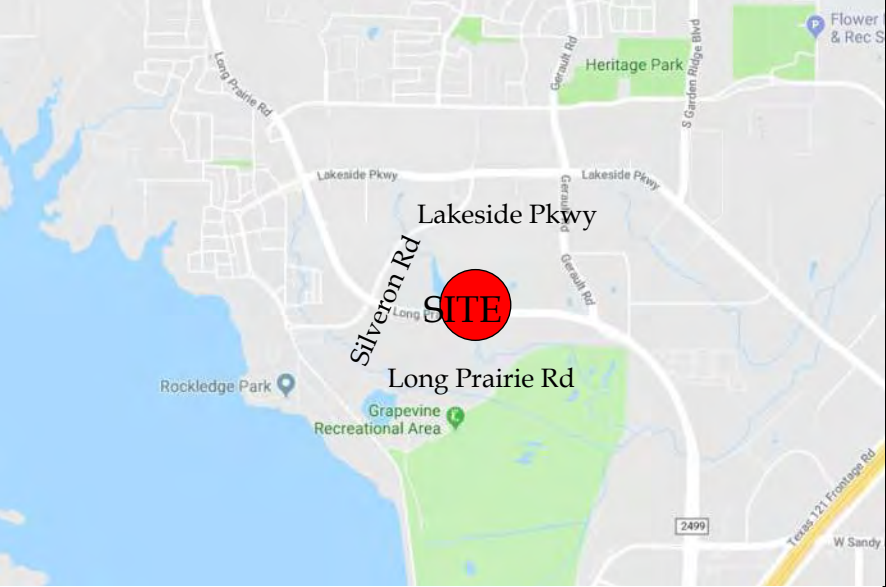
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map

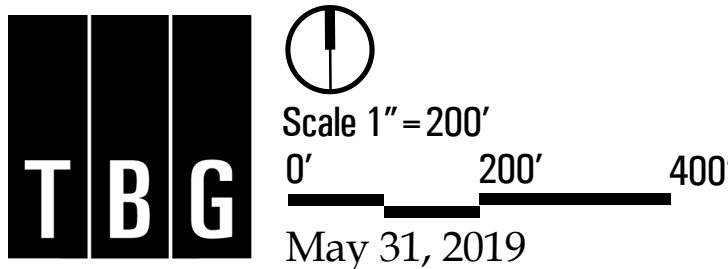


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sign 1 and 2



1 entrance gateway elevation
scale: 1/2" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

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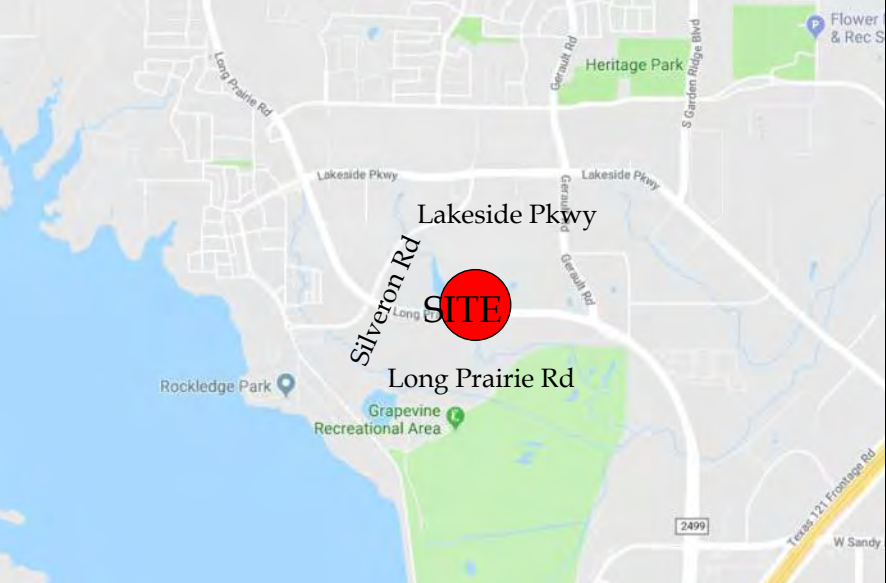
Planner / Landscape Architect:

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TBG

Scale 1" = 200'

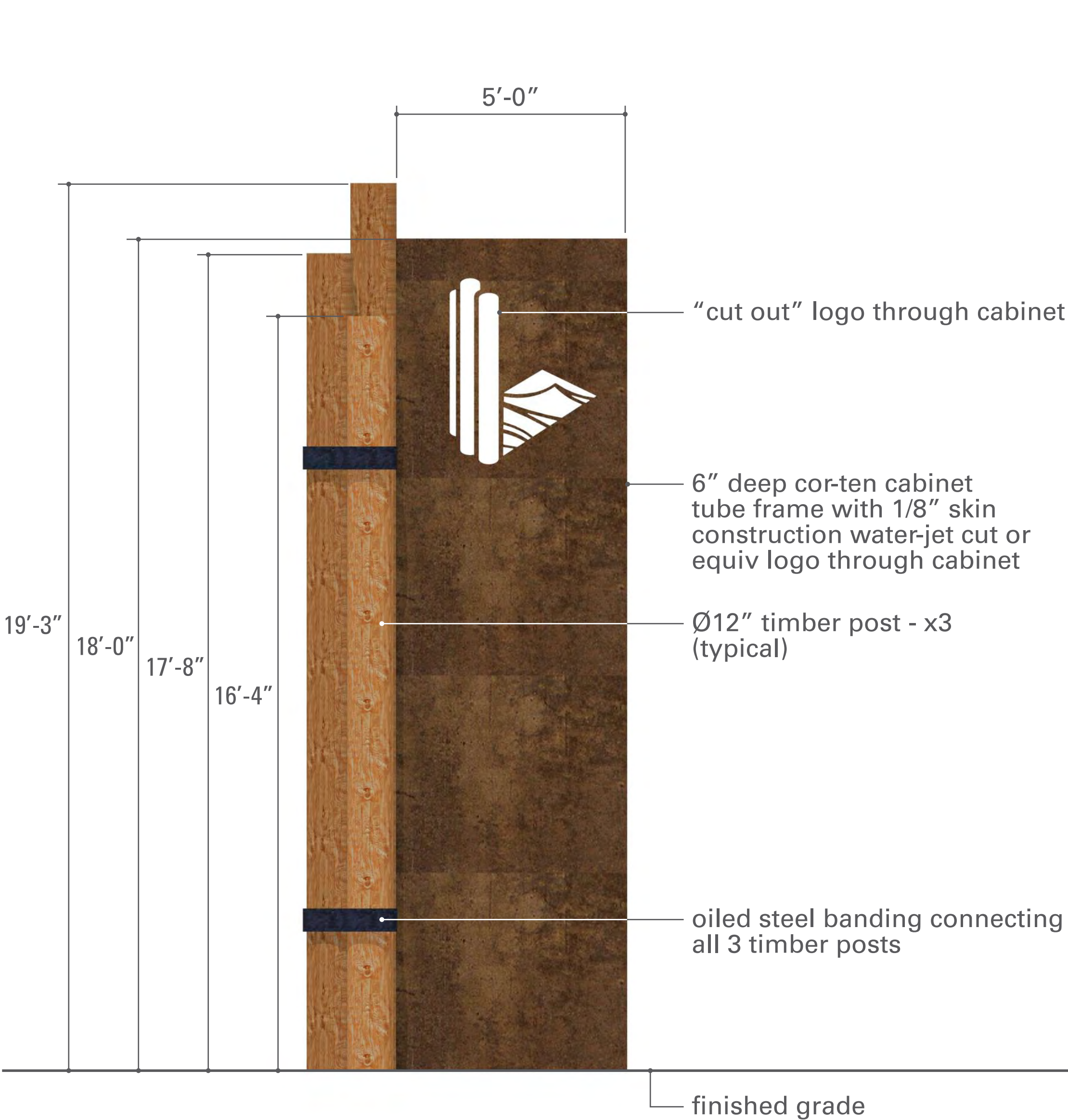
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May 31, 2019

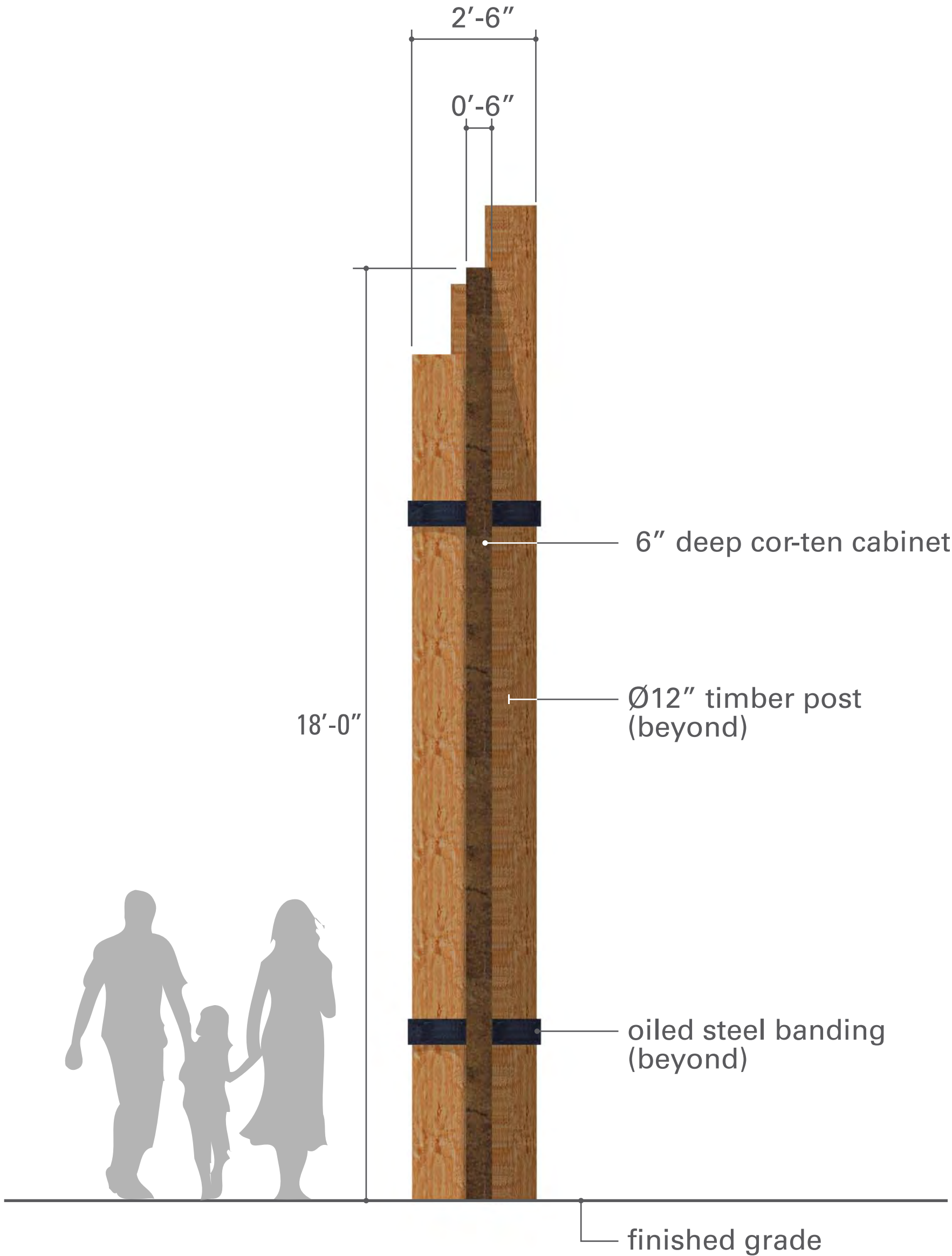
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sign 2

Ground Sign Requirements - Sign 2				
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	20'	20'
Max. Width	Sec. 86-67 (2)	10'	10'	7'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	100 sf/side	90 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	15'	15'+
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	60'	60'+
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	120'	120'+
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



1 elevation - pylon
scale: 1/2" = 1'-0"



2 side view - pylon
scale: 1/2" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

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Center II
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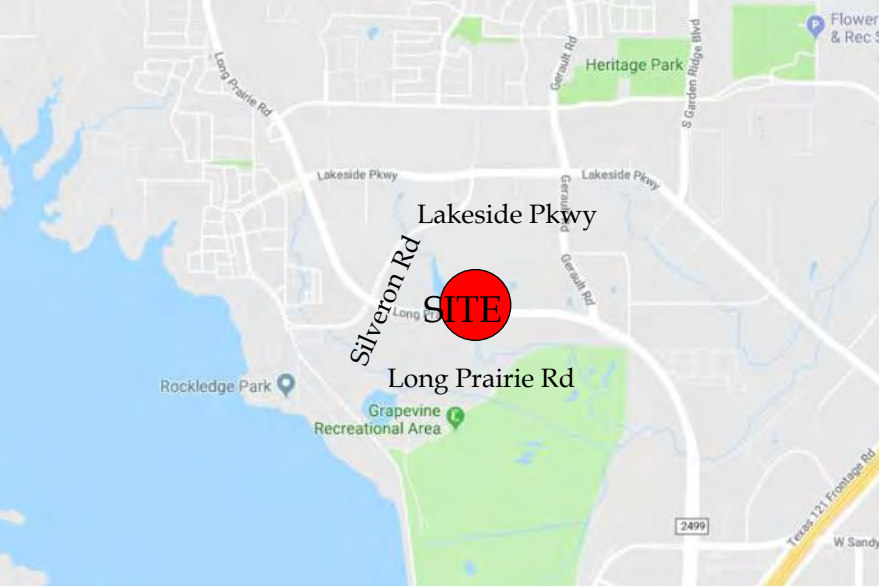
Planner / Landscape Architect:

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TBG

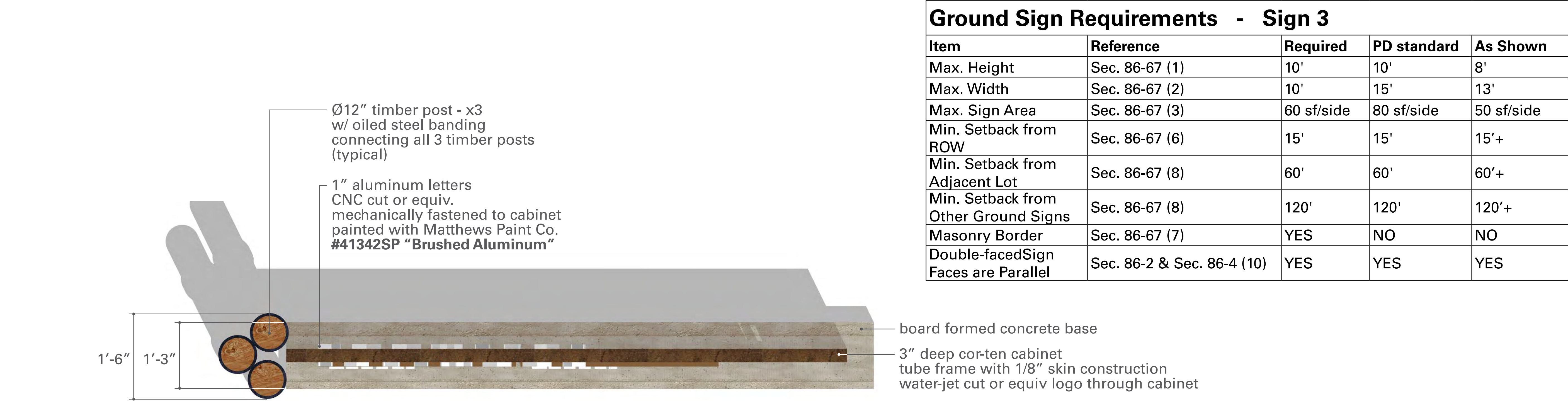
Scale 1" = 200'

0' 200' 400'

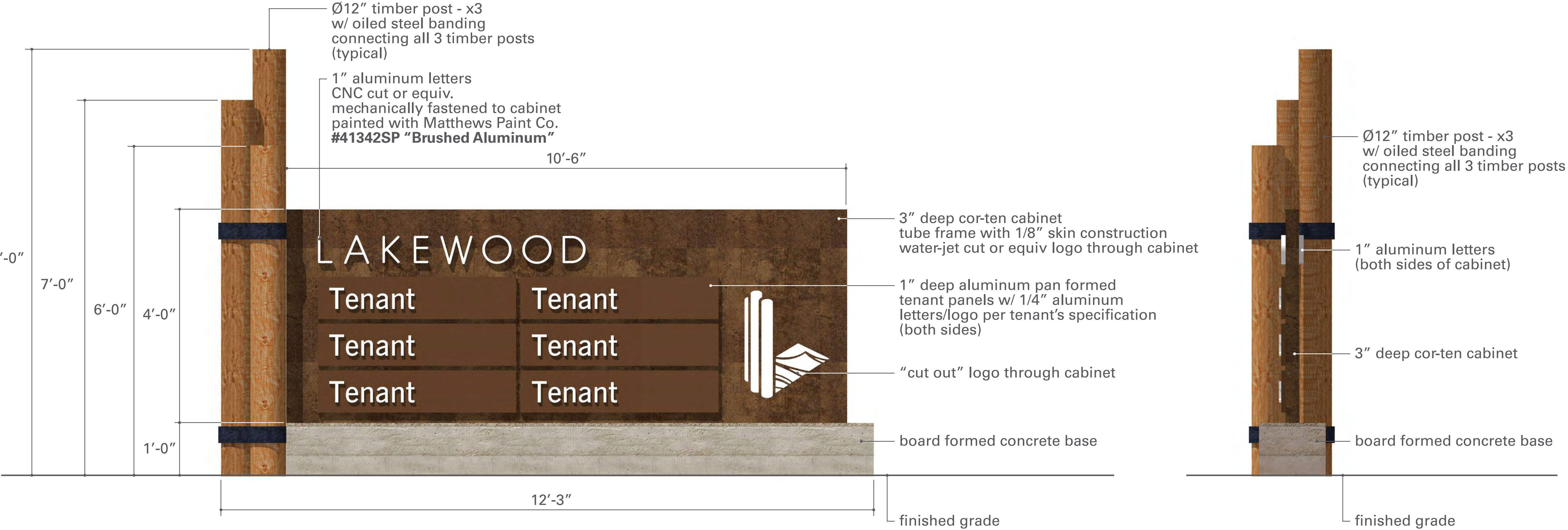
May 31, 2019

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sign 3



3 plan
scale: 1" = 1'-0"



1 elevation
scale: 1" = 1'-0"

2 side view
scale: 1" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

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TBG

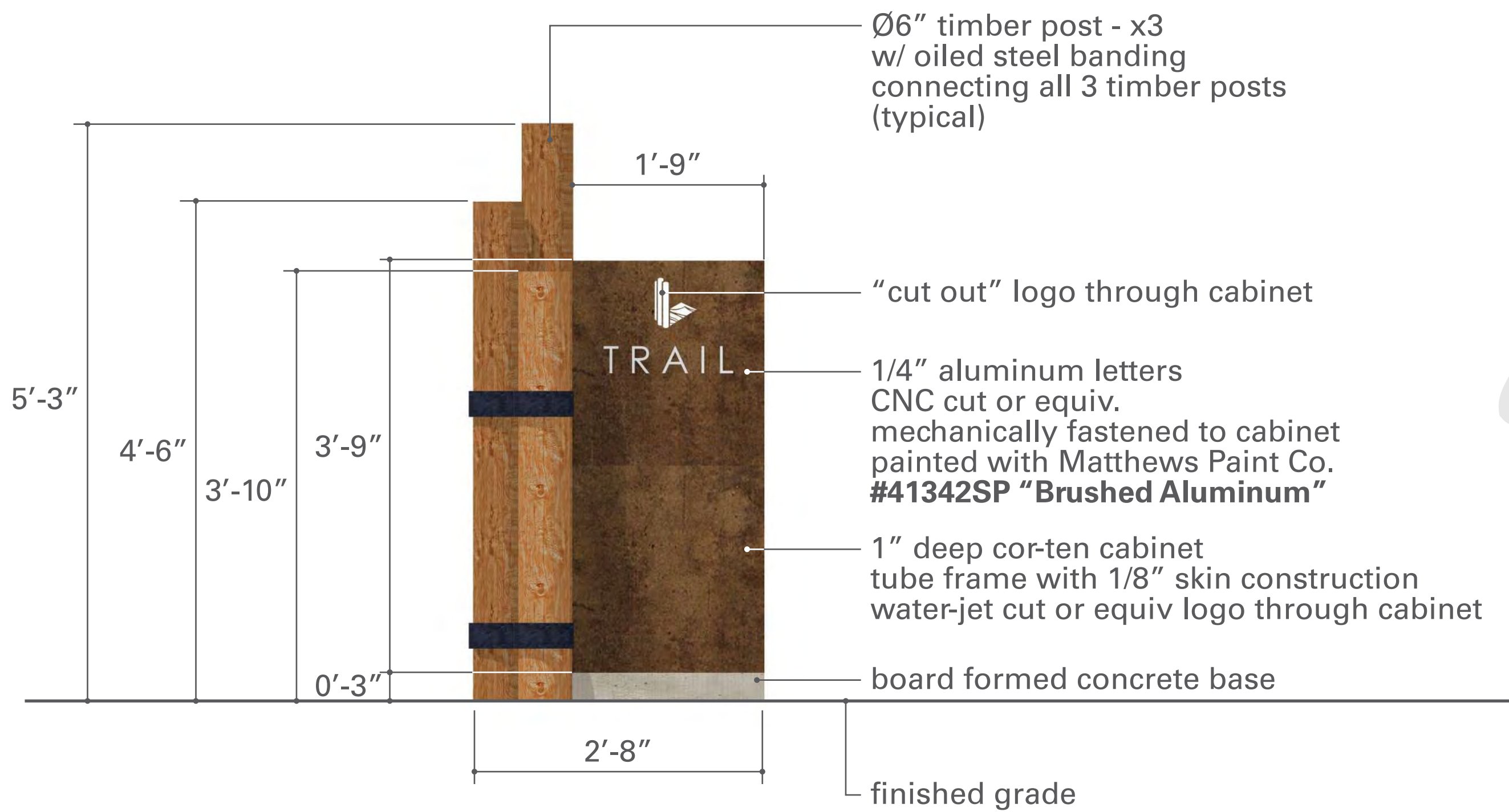
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0' 200' 400'

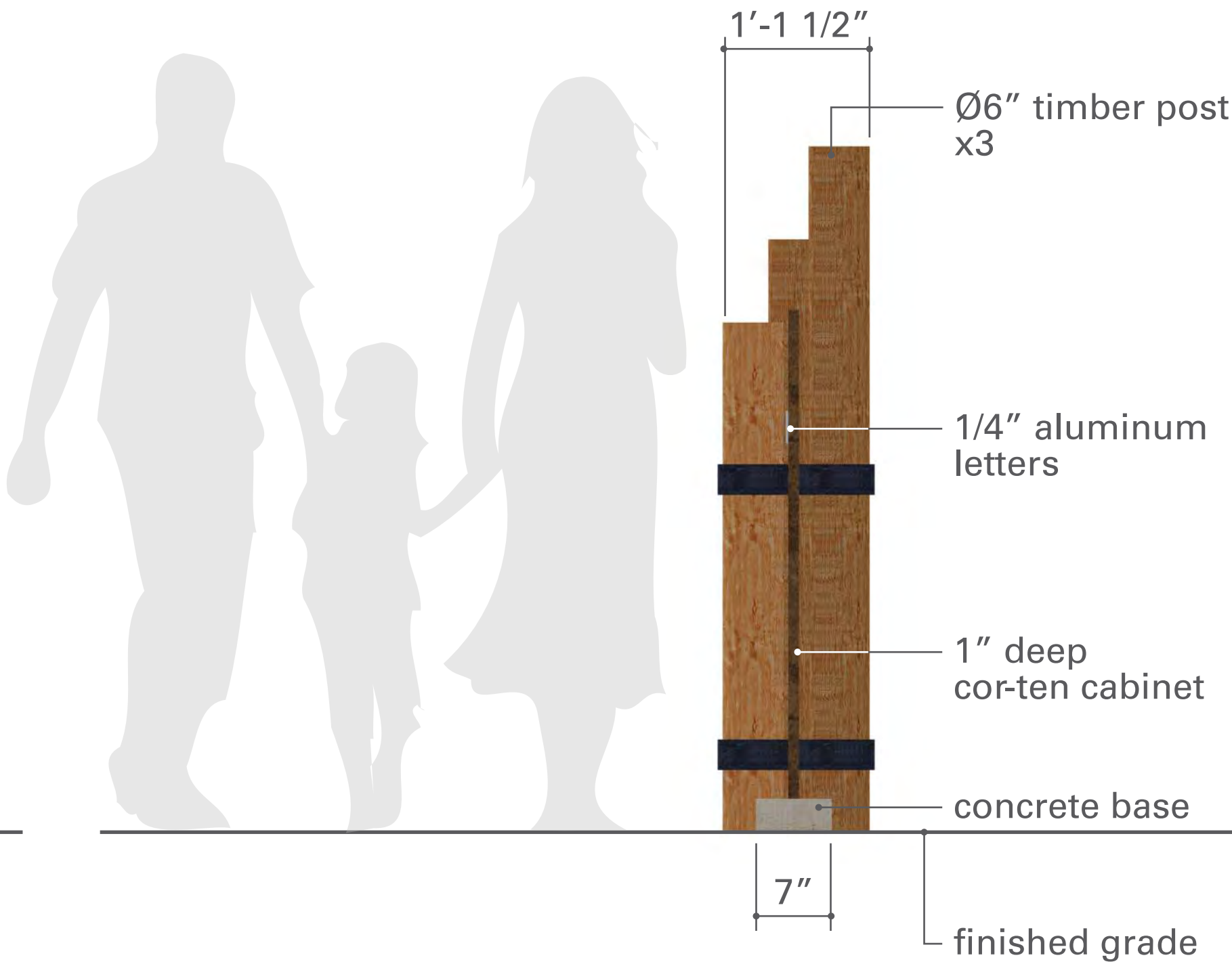
May 31, 2019

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sign 4



1 elevation - trailhead
scale: 1" = 1'-0"



2 side view - trailhead
scale: 1" = 1'-0"



3 perspective - trailhead
scale: nts

Ground Sign Requirements - Sign 4

Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	5'	4'
Max. Width	Sec. 86-67 (2)	10'	2'	2'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	10 sf/side	8 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	0'	TBD
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	0'	TBD
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	0'	TBD
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

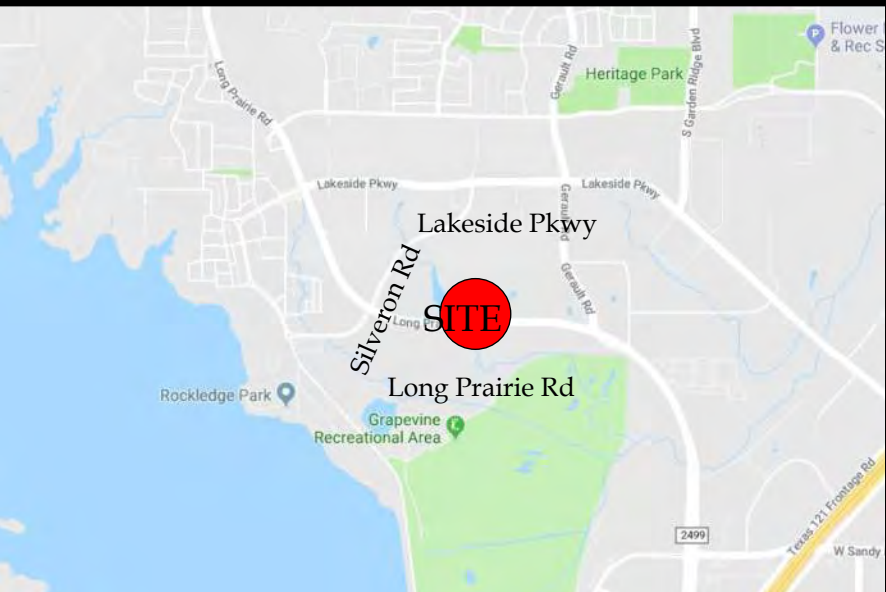
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map

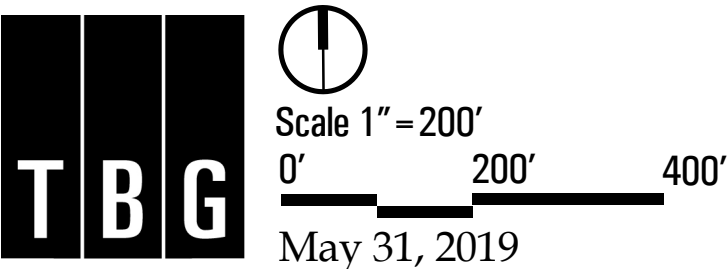


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Conceptual Signage Plan	Proposed signage elevations

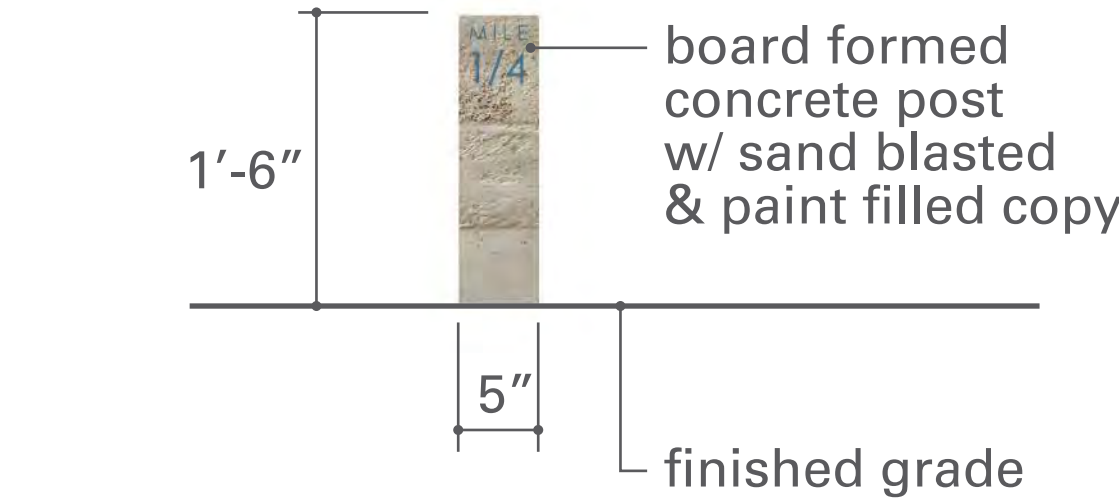
General Note

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signs 5 and 6



4 elevation - mile marker
scale: 1" = 1'-0"



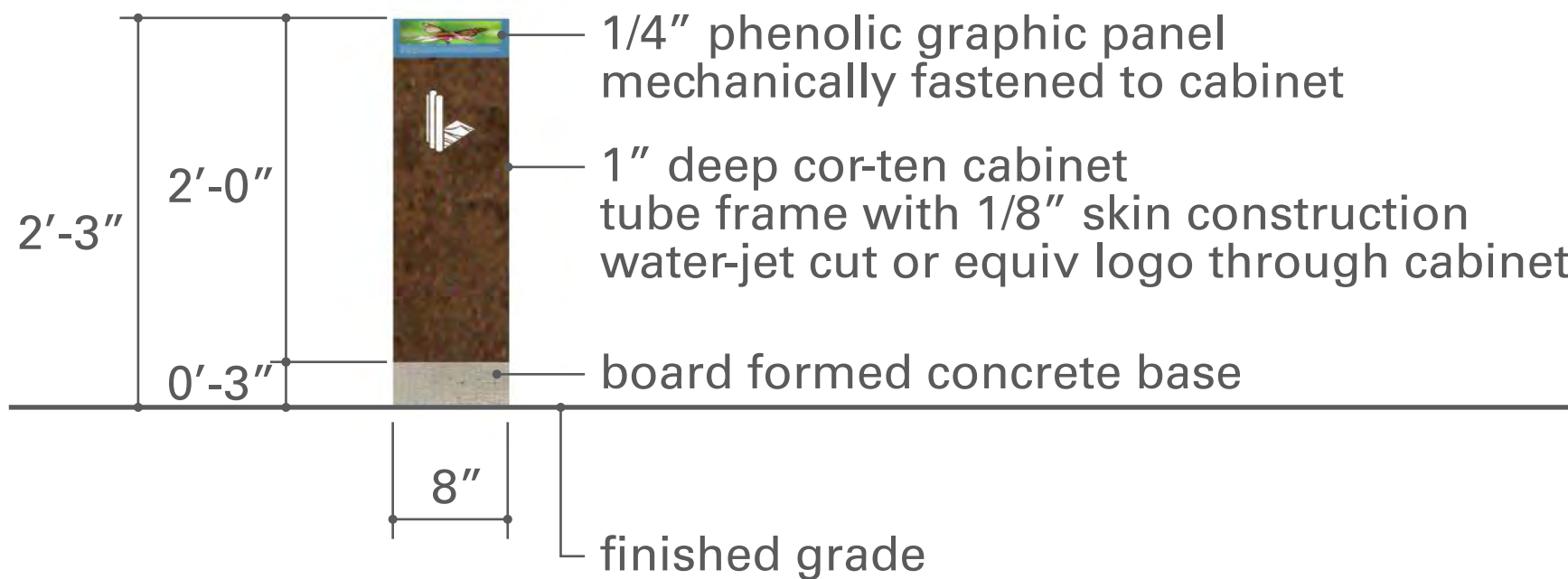
5 plan - mile marker
scale: 1" = 1'-0"



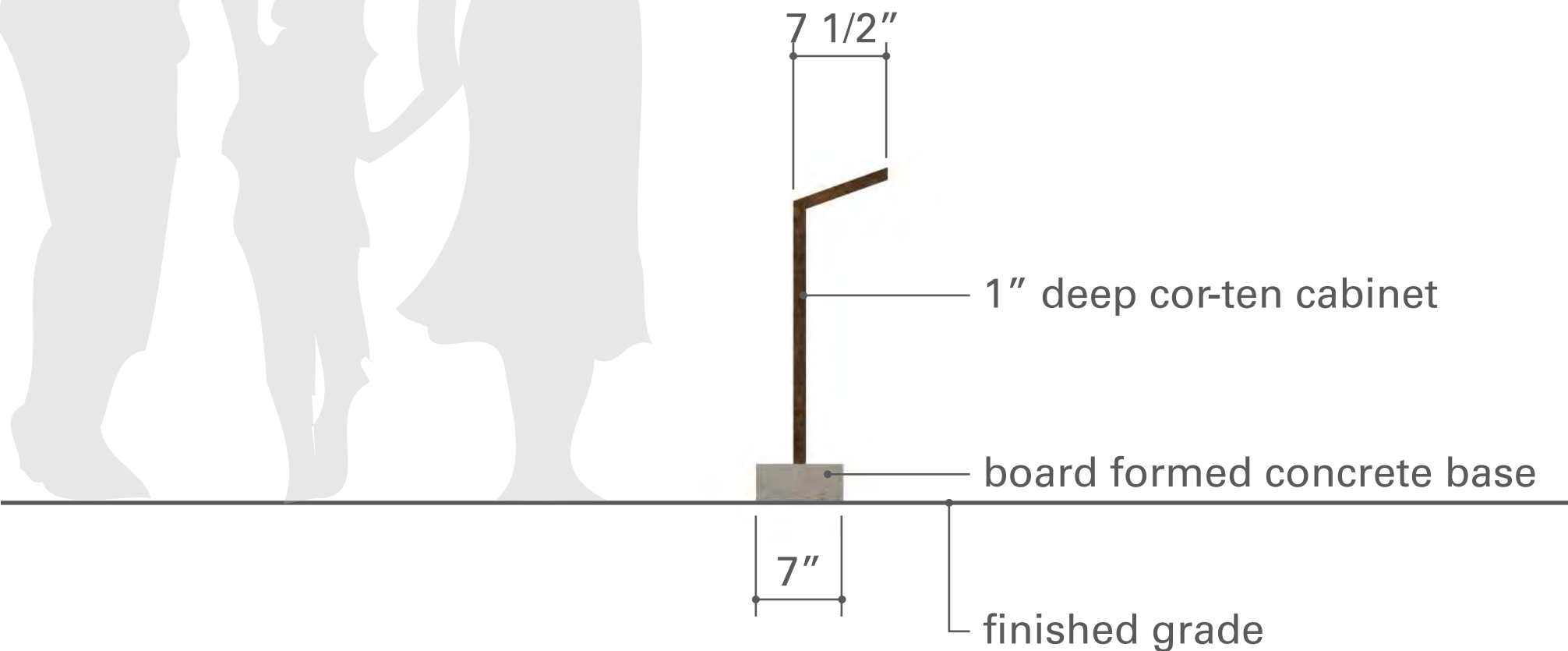
6 perspective - mile marker
scale: nts

Ground Sign Requirements - Sign 6			No Permit Required	
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	2'	2'
Max. Width	Sec. 86-67 (2)	10'	1'	0.7'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	2 sf/side	2 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	0'	TBD
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	0'	TBD
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	0'	TBD
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES

Ground Sign Requirements - Sign 5			No Permit Required	
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	3'	3'
Max. Width	Sec. 86-67 (2)	10'	1'	1'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	3 sf/side	3 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	0'	TBD
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	0'	TBD
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	0'	TBD
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



1 elevation - interpretive
scale: 1" = 1'-0"



2 side view - interpretive
scale: 1" = 1'-0"



3 perspective - interpretive
scale: nts

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

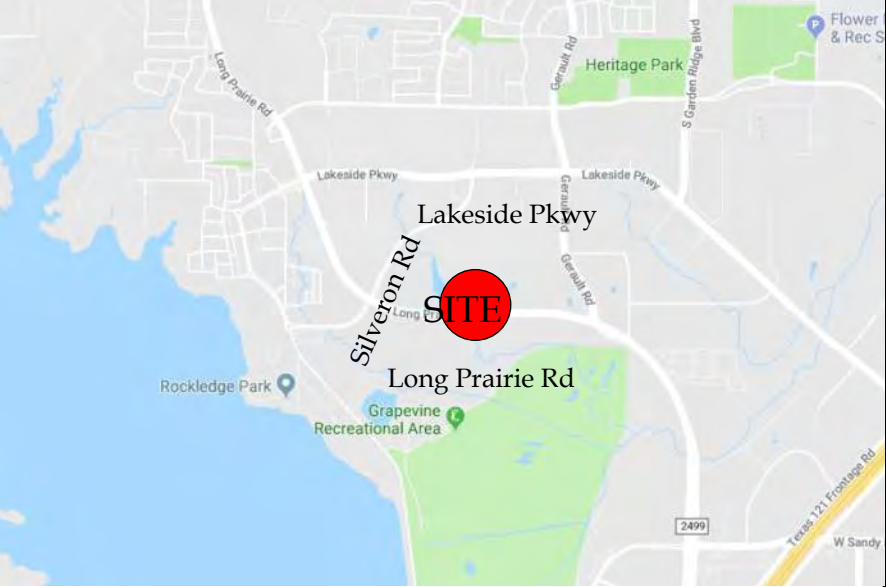
Planner / Landscape Architect:

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Engineer / Surveyor:

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Location Map

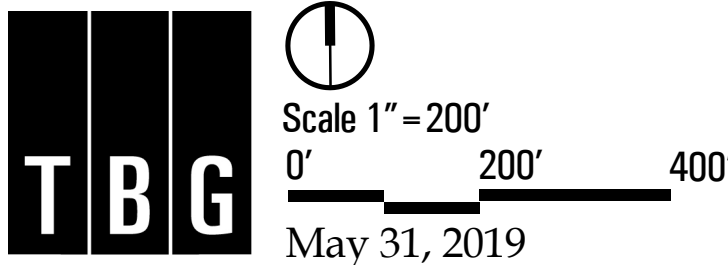


Reference sheet

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General Note

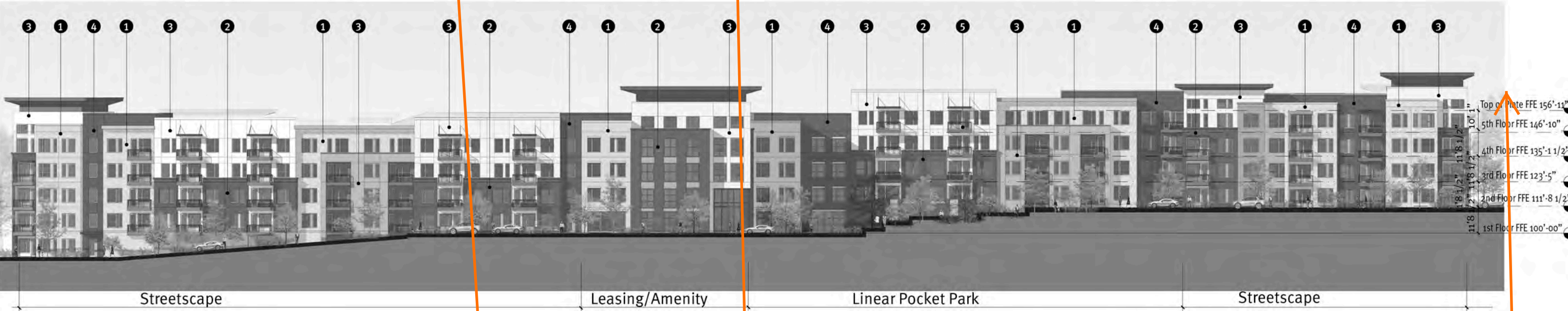
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01 Building 1
East Elevation-Colored



02 Building 1
East Elevation-Black&white

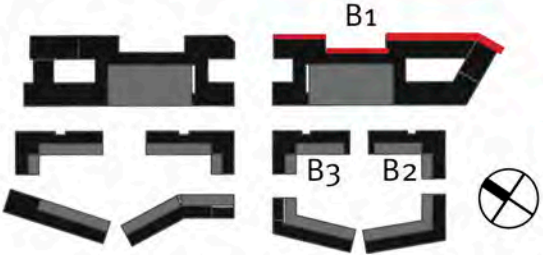
this is quite interesting, in a good way. while there is repetition of 'modules', the various materials and finishes create a bit of excitement

again, see previous comments.
lacking the introduction of additional vertical design pieces

for the commercial, there is a material/finish sample sheet
not finding one for the mf.

need peak height, all facades

	East B1
Primary Masonry totals(Min. 80%)	82%
Brick s.f. (as applicable)	28%
Stone s.f. (as applicable)	22%
Stucco s.f. (as applicable)	32%
Tilt Wall s.f. (as applicable)Ⓜ	
Secondary Masonry totals max. 20%)	18%
EIFS s.f. (as applicable)	
Hardiplank s.f. (as applicable)Ⓜ	18%
Detail any additional (as applicable)	





01 Building 1
West Elevation-Colored



02 Building 1
West Elevation-Black&white

	West B1
Primary Masonry totals(Min. 80%)	84%
Brick s.f. (as applicable)	29%
Stone s.f. (as applicable)	7%
Stucco s.f. (as applicable)	48%
Tilt Wall s.f. (as applicable)Ⓜ	
Secondary Masonry totals max. 20%	16%
EIFS s.f. (as applicable)	
Hardiplank s.f. (as applicable)Ⓜ	16%
Detail any additional (as applicable)	

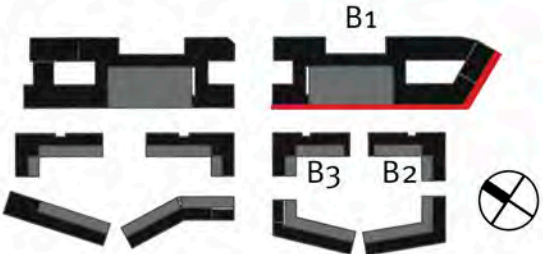
- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing
- 6 Painted Precast Concrete



Flower Mound
Flower Mound, TX



Elevation



04.17.20192018051.00 KM

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Registered Architect of State of Texas, Registration No. 17828



01 Building 2
East Elevation-Colored

03 Building 3
East Elevation-Colored



01 Building 2
East Elevation-Black&white

03 Building 3
East Elevation-Black&white

need a peak height dimension, all facades

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing

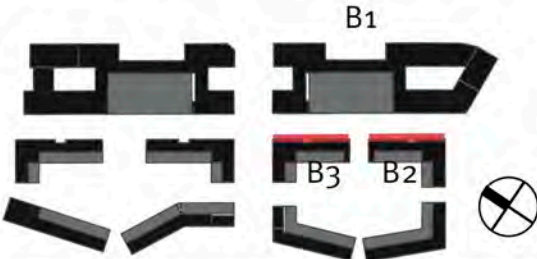


Flower Mound
Flower Mound, TX



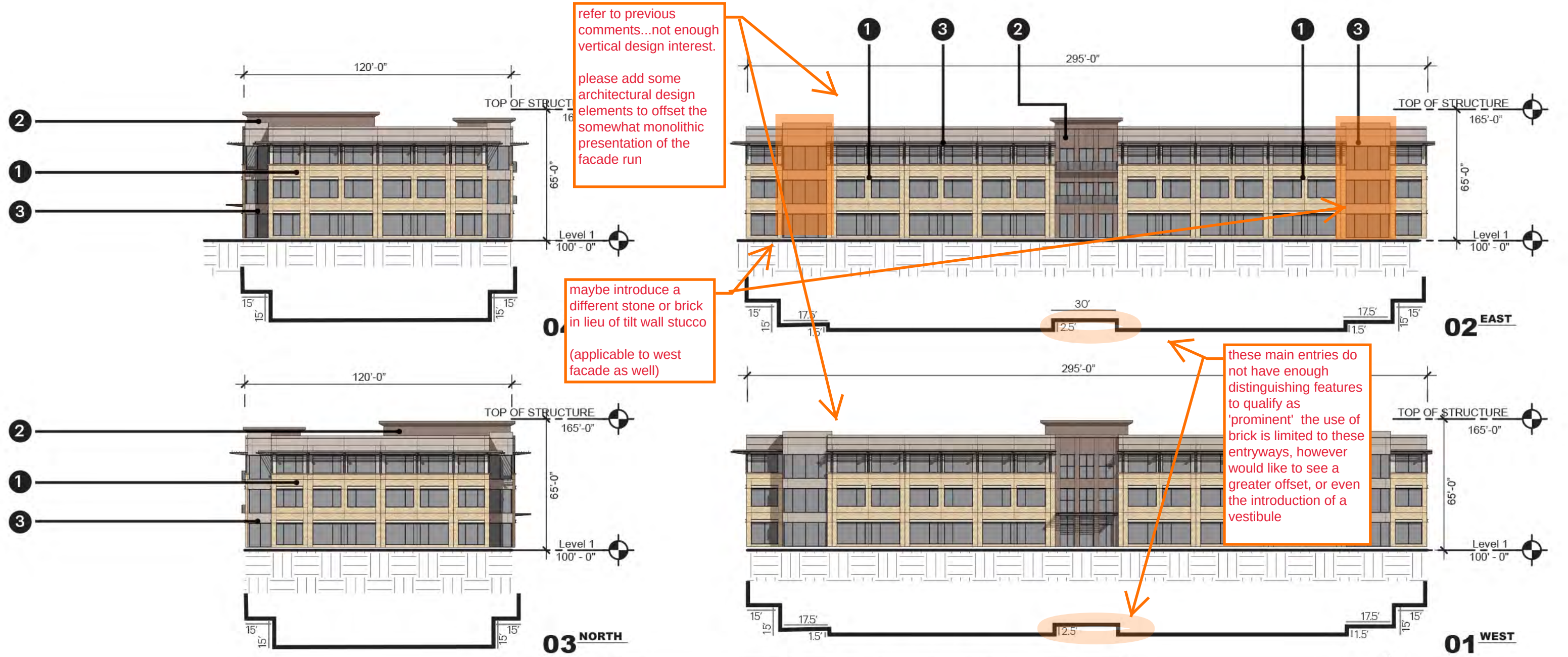
Elevation

	East B2	East B3
Primary Masonry totals(Min. 80%)	83%	83%
Brick s.f. (as applicable)	26%	26%
Stone s.f. (as applicable)	25%	25%
Stucco s.f. (as applicable)	32%	32%
Tilt Wall s.f. (as applicable)Ⓜ		
Secondary Masonry totals max. 20%)	17%	17%
EIFS s.f. (as applicable)		
Hardiplank s.f. (as applicable)Ⓜ	17%	17%
Detail any additional (as applicable)		

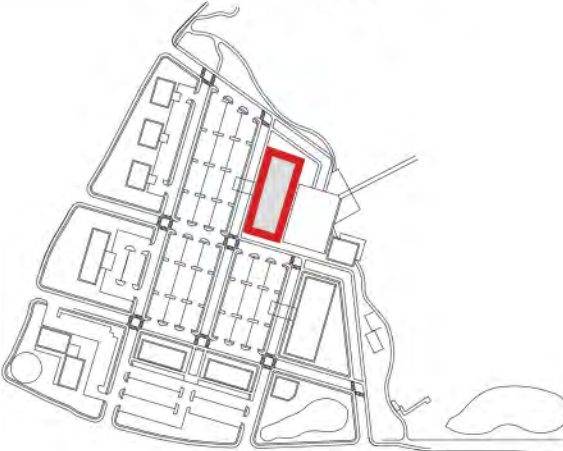


04.17.20192018051.00 KM

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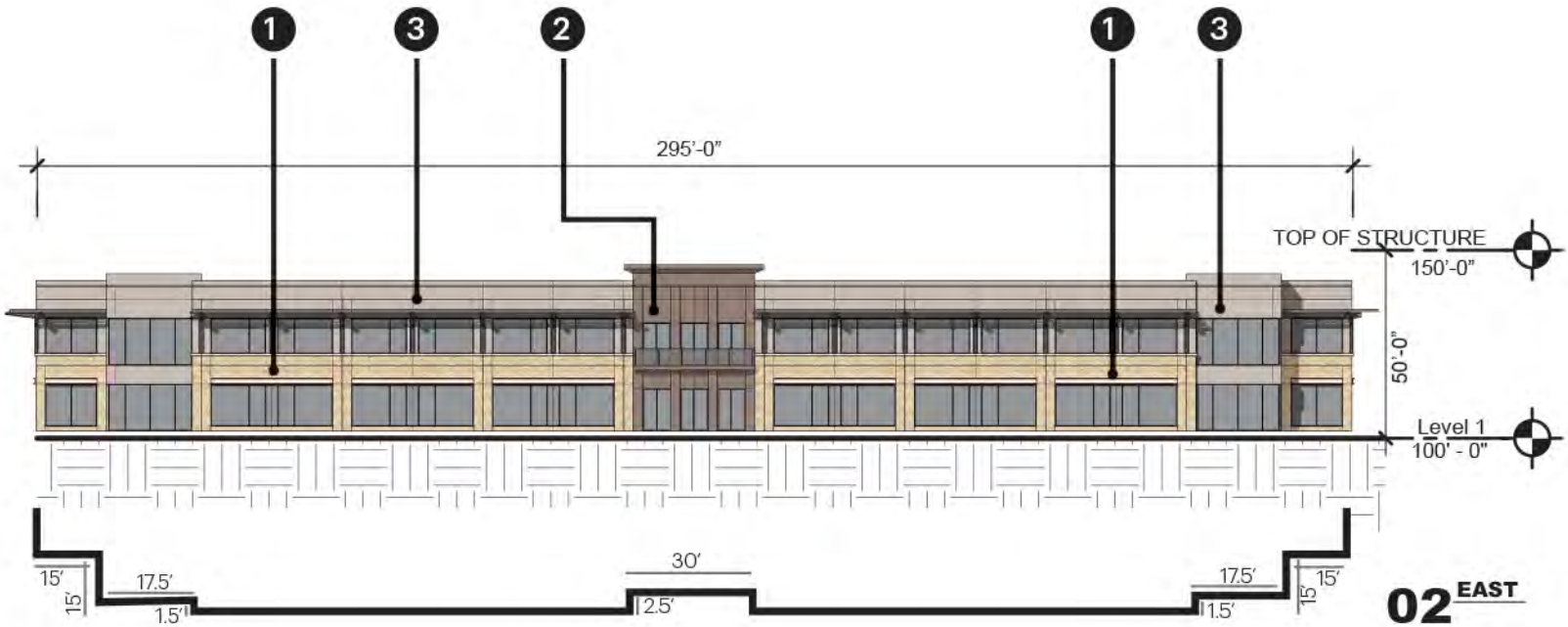
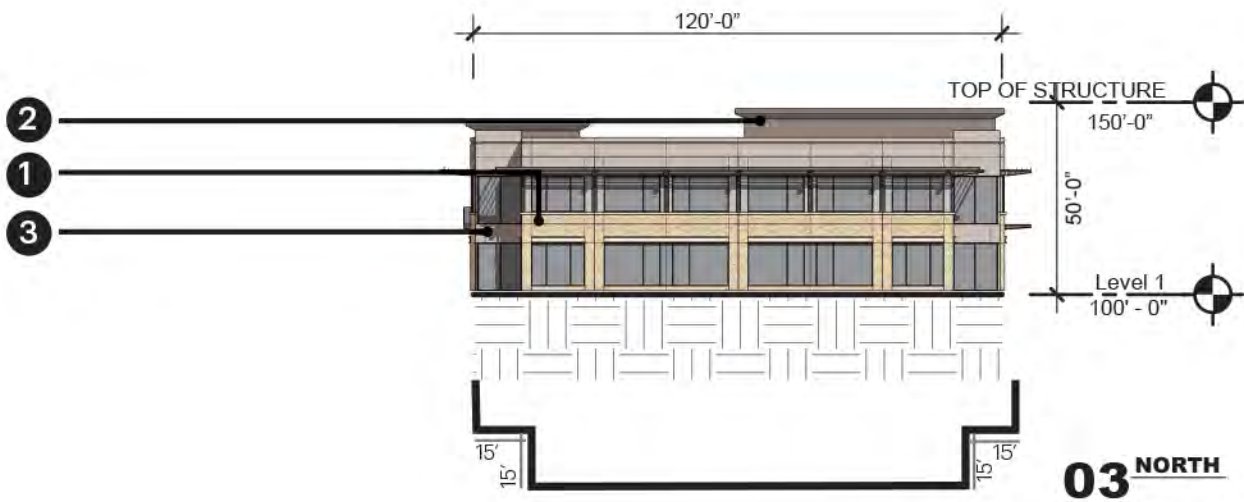
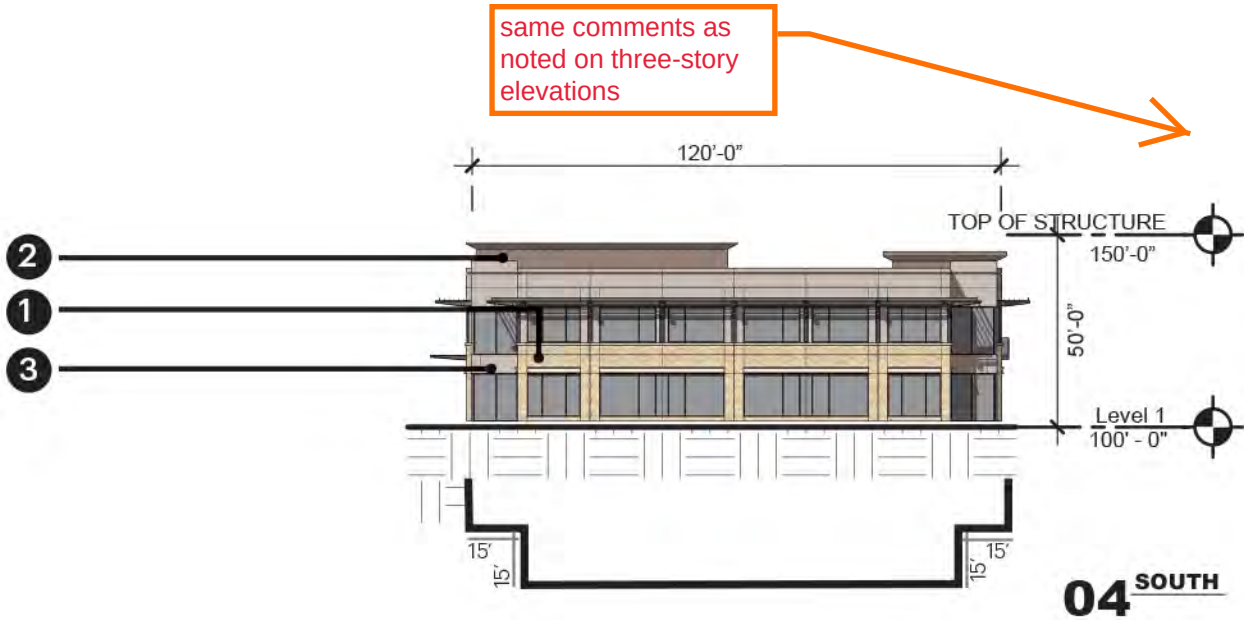


		North	South	East	West
1.	Total Facade S.F.	5,357 SF	5,357 SF	12,903 SF	13,115 SF
2.	Facade S.F. (exclusive of doors and windows)	3,139 SF	3,139 SF	7,371 SF	7,493 SF
3.	Doors and Windows S.F.	2,218 SF	2,218 SF	5,532 SF	5,632 SF
4.	Primary Masonry totals (Min. 80%)	3,139 SF & 100% of 2	3,139 SF & 100% of 2	7,371 SF & 100% of 2	7,493 SF & 100% of 2
	• Brick s.f. (as applicable)	322 SF & 10% OF 4	322 SF & 10% OF 4	662 SF & 9% OF 4	814 SF & 11% OF 4
	• Stone s.f. (as applicable)	1,235 SF & 39% OF 4	1,235 SF & 39% OF 4	3,395 SF & 46% OF 4	3,395 SF & 45% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)	1,582 SF & 51% OF 4	1,582 SF & 51% OF 4	3,314 SF & 45% OF 4	3,284 SF & 44% OF 4
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				



1 STONE VENEER 2 B ALL
ARCHITECTURE, DESIGN, COLORS A ALL SUBSEQUENT BUILDINGS
WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS LISTED.

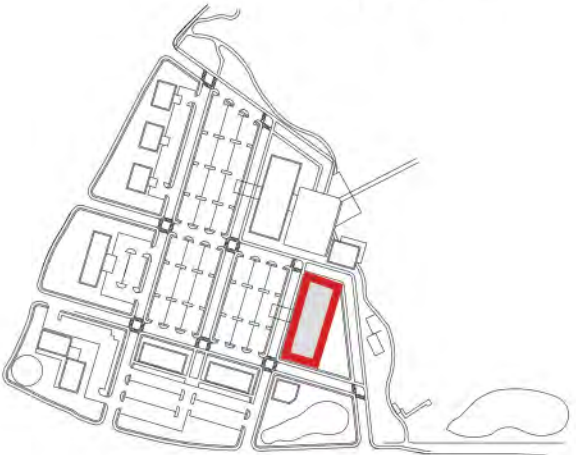
see above...this is a very high percentage for an office building. Please consider using a formliner design...we have a good example of one that is a faux stone design if needed



		North	South	East	West
1.	Total Facade S.F.	3,826 SF	3,826 SF	8,976 SF	9,188 SF
2.	Facade S.F. (exclusive of doors and windows)	2,262 SF	2,262 SF	5,107 SF	5,233 SF
3.	Doors and Windows S.F.	1,564 SF	1,564 SF	3,869 SF	3,955 SF
4.	Primary Masonry totals (Min. 80%)	2,262 SF & 100% of 2	2,262 SF & 100% of 2	5,107 SF & 100% of 2	5,233 SF & 100% of 2
	• Brick s.f. (as applicable)	322 SF & 14% OF 4	322 SF & 14% OF 4	508 SF & 10% OF 4	630 SF & 12% OF 4
	• Stone s.f. (as applicable)	726 SF & 32% OF 4	726 SF & 32% OF 4	1,417 SF & 28% OF 4	1,417 SF & 27% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)	1,214 SF & 54% OF 4	1,214 SF & 54% OF 4	3,182 SF & 62% OF 4	3,186 SF & 61% OF 4
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				

1 STONE VENEER 2 BRICK 3 TILT WALL

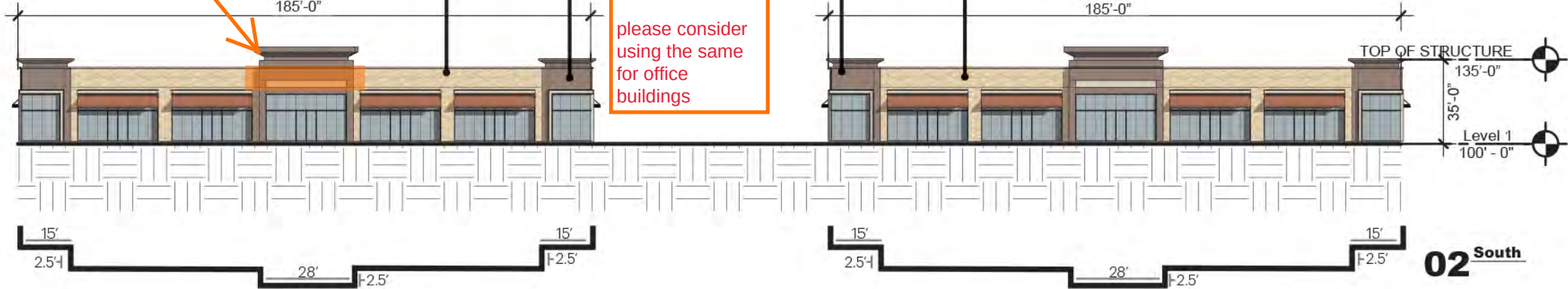
ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.



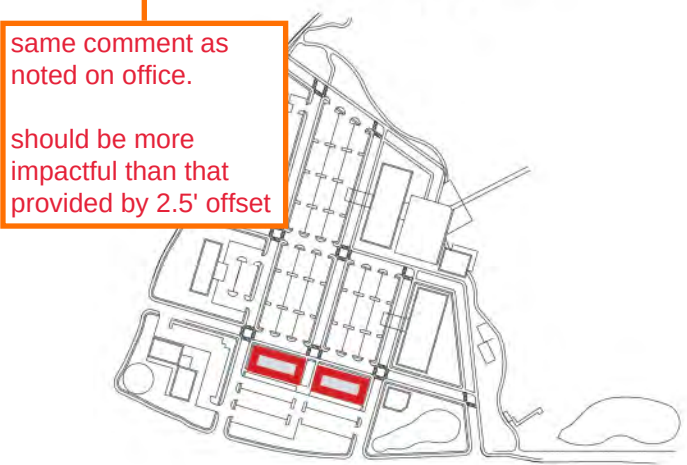


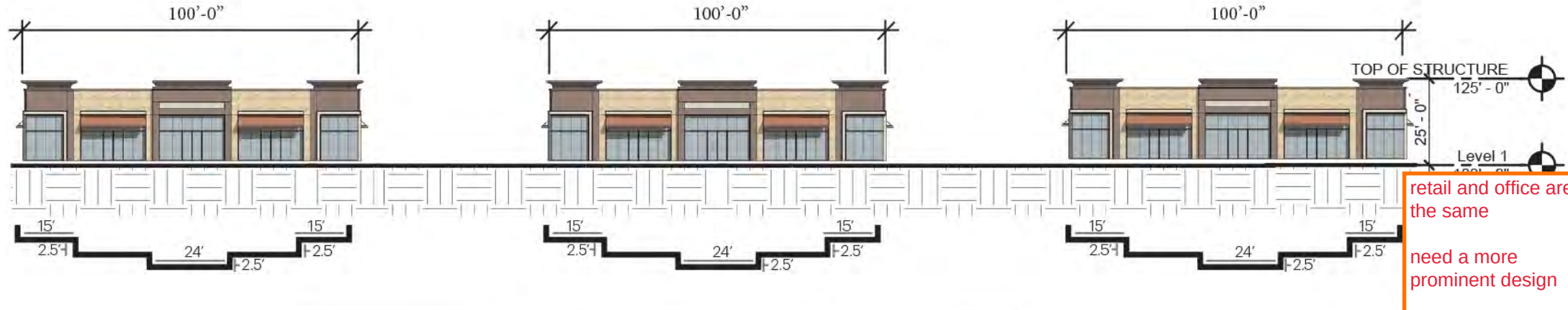
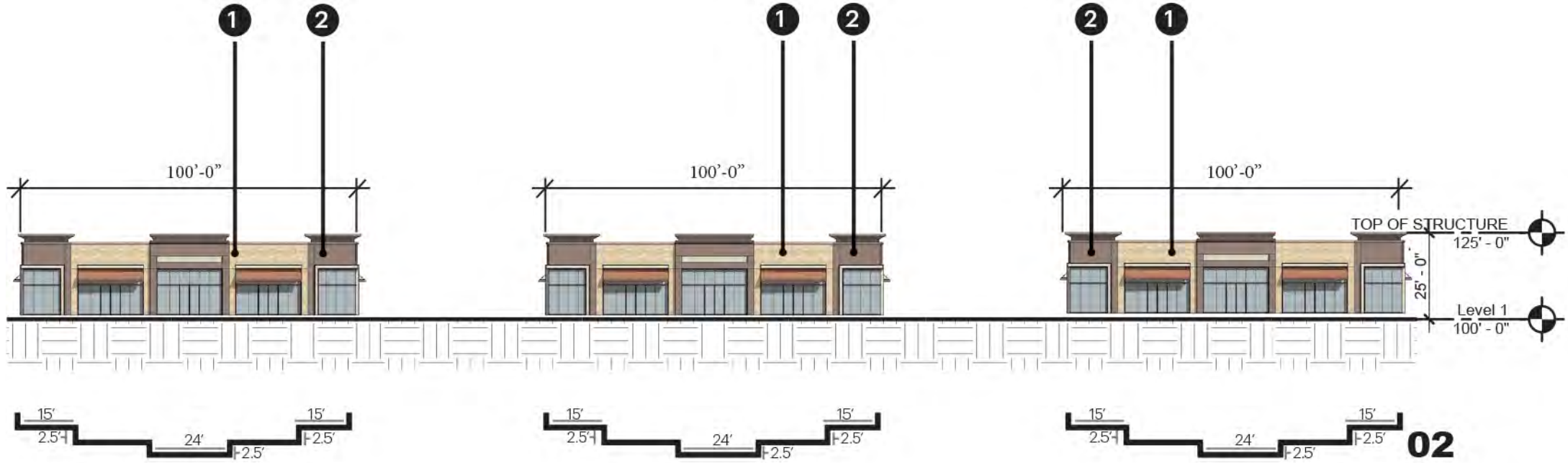
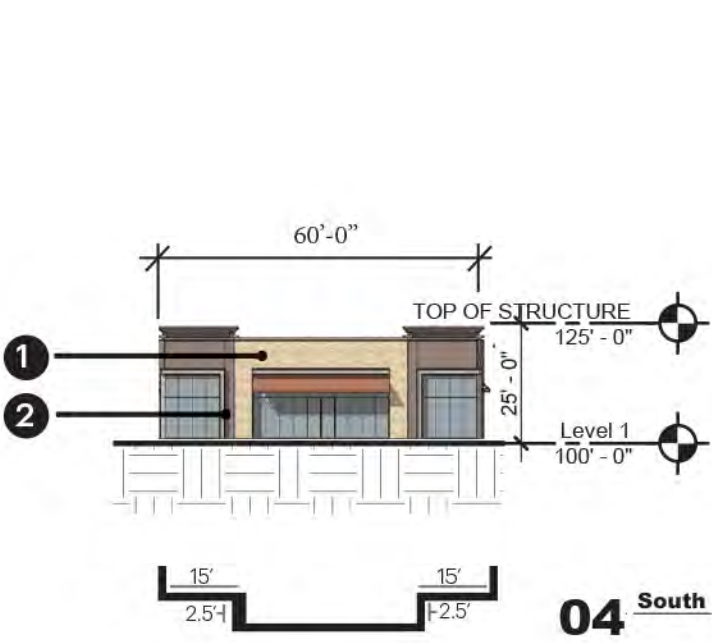
1 STONE VENEER 2 BRICK

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		North	South	East	West
1.	Total Facade S.F.	3,803 SF	3,803 SF	1,614 SF	1,614 SF
2.	Facade S.F. (exclusive of doors and windows)	1,815 SF	1,815 SF	858 SF	858 SF
3.	Doors and Windows S.F.	1,988 SF	1,988 SF	756 SF	756 SF
4.	Primary Masonry totals (Min. 80%)	1,815 SF & 100% of 2	1,815 SF & 100% of 2	858 SF & 100% of 2	858 SF & 100% of 2
	• Brick s.f. (as applicable)	336 SF & 19% OF 4	336 SF & 19% OF 4	336 SF & 39% OF 4	336 SF & 39% OF 4
	• Stone s.f. (as applicable)	1,479 SF & 81% OF 4	1,248 SF & 81% OF 4	522 SF & 61% OF 4	522 SF & 61% OF 4
	• Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardplank s.f. (as applicable)				
	• Detail any additional (as applicable)				





retail and office are the same

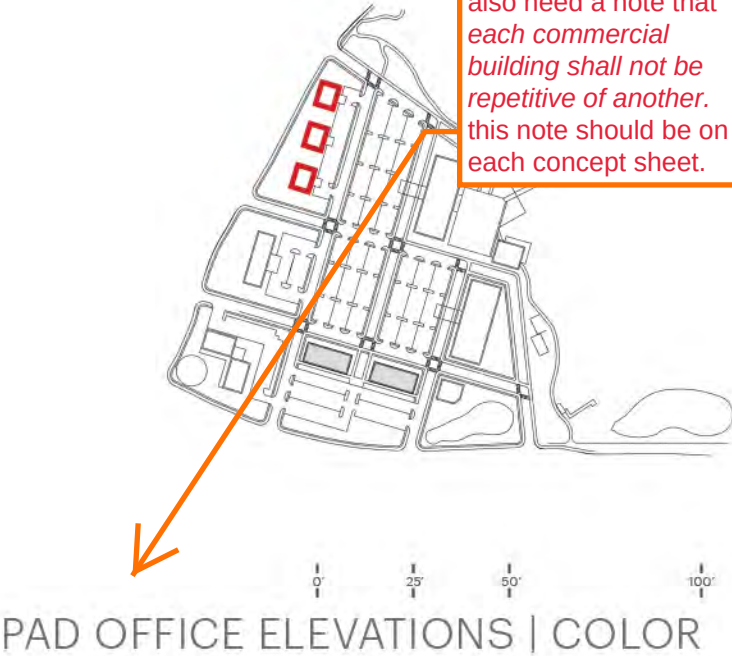
need a more prominent design

also need a note that each commercial building shall not be repetitive of another. this note should be on each concept sheet.

		North	South	East	West
1.	Total Facade S.F.	1,393 SF	1,393 SF	2,080 SF	2,080 SF
2.	Facade S.F. (exclusive of doors and windows)	697 SF	697 SF	1,022 SF	1,022 SF
3.	Doors and Windows S.F.	696 SF	696 SF	1,058 SF	1,058 SF
4.	Primary Masonry totals (Min. 80%)	697 SF & 100% of 2	697 SF & 100% of 2	1,022 SF & 100% of 2	1,022 SF & 100% of 2
	• Brick s.f. (as applicable)	282 SF & 40% OF 4	282 SF & 40% OF 4	282 SF & 27% OF 4	282 SF & 27% OF 4
	• Stone s.f. (as applicable)	415 SF & 60% OF 4	415 SF & 60% OF 4	740 SF & 73% OF 4	740 SF & 73% OF 4
	• Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
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	• Detail any additional (as applicable)				

1 STONE VENEER 2 BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.





STONE - CORONADO 8”
CLASSIC JERUSALEM
SAHARA BEIGE



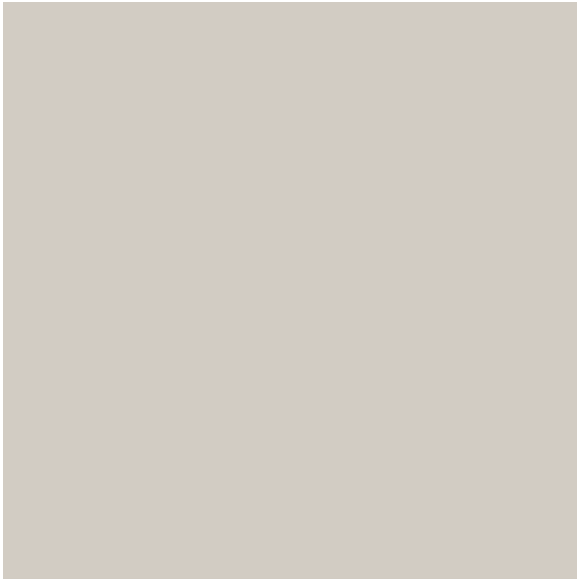
BRICK 1 - ACME - MUSHROOM
BROWN



RAILING, DOORS, WINDOW
AND DOOR TRIM, METAL
AWNING AND METAL TRIM
SW7048 URBANE BRONZE

these various masonry products and paint options are so close, it makes the previously offered comments more critical.

would like to see more contrast so the interplay b/t application can be enhanced where you want it on a particular commercial building



STONE HEADER AND BASE
FINISH TO MATCH STONE



SW 7024 FUNCTIONAL GRAY
TILT UP WALL

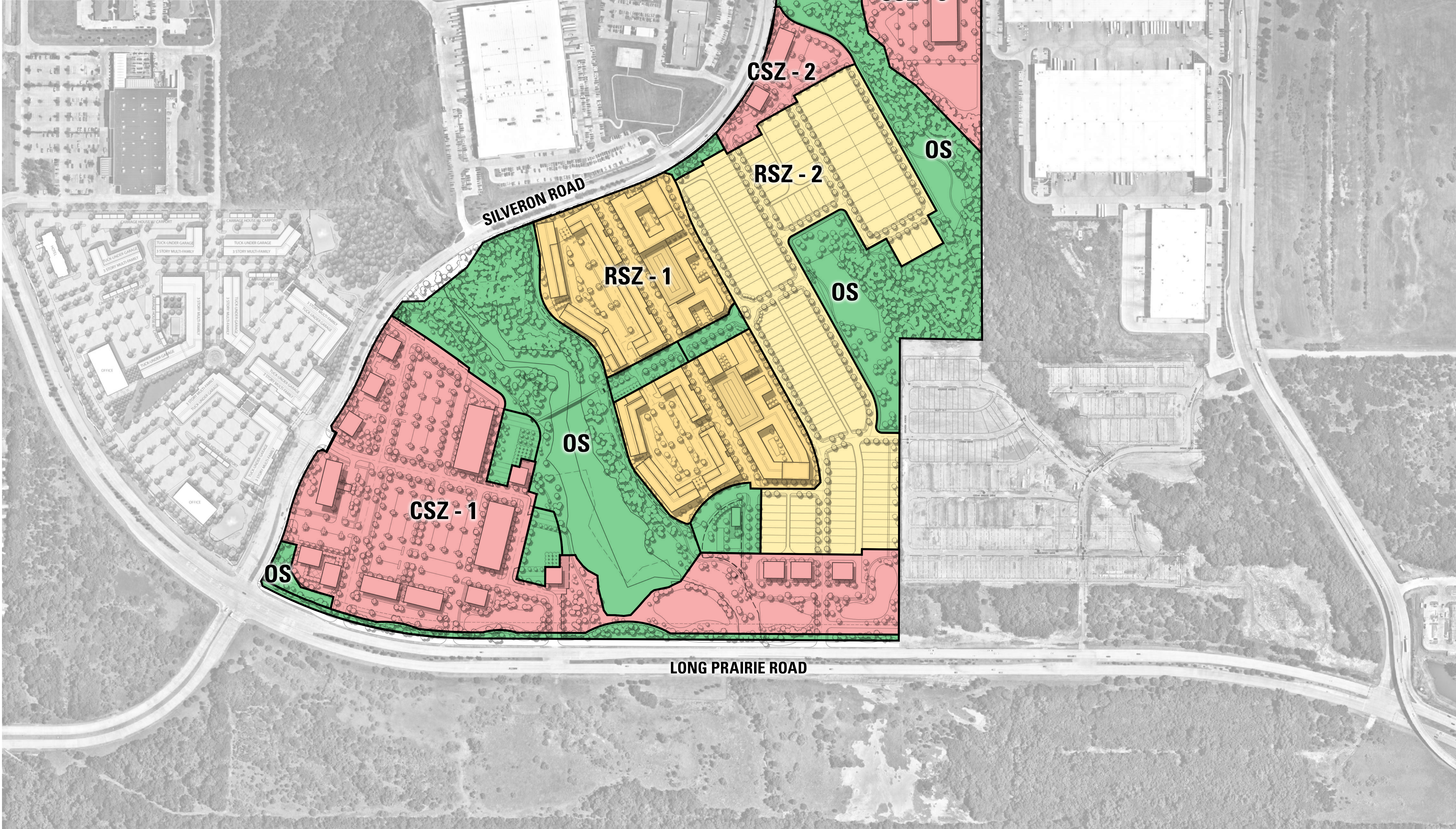


STONE HEADER AND BASE
FINISH TO MATCH BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS
WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.

LEGEND

	LAND USE	GROSS AREA	PERCENTAGE
	COMMERCIAL (CSZ)	42.3 ACRES	34.6%
	URBAN RESIDENTIAL (RSZ-1)	19.4 ACRES	34.9%
	SINGLE FAMILY RESIDENTIAL (RSZ-2)	23.2ACRES	
	OPEN SPACE	37.2 ACRES	30.5%
	TOTAL:	122.1 ACRES	100%



LAKEWOOD

LAND USE PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

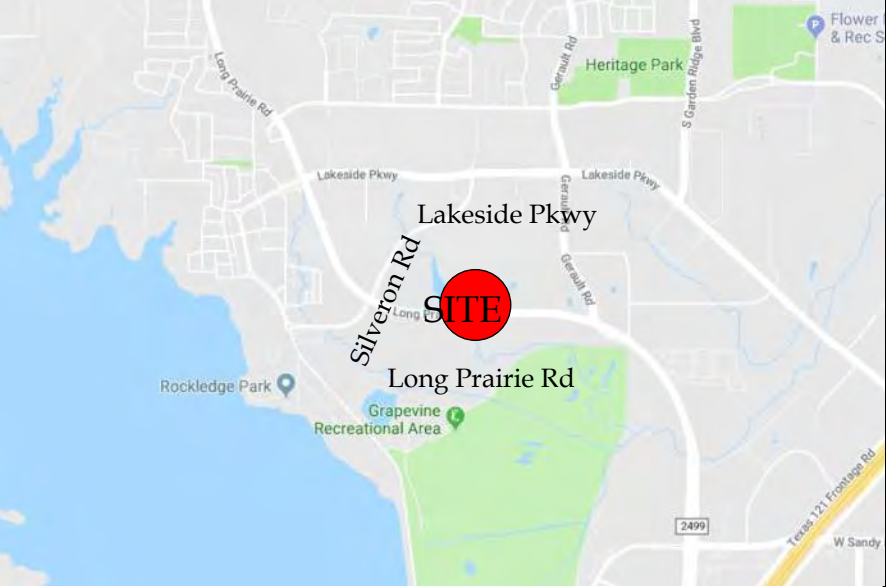
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map



Reference sheet

Name	Description
Land Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location of trails.
Open Space Amenity Key	Shows open space with labels that is referenced in planned development, shows matrix of proposed type of amenities in each open space area and the quantities
Vehicular Network	Shows proposed street network, street types and cross sections, location of utility, enlargement of trail, enlargement of lots that have landscape easement in front yard, enlargement of street tree detail.
Concept Plan - Black and White	Detail drafted site plan with building summary
Conceptual Landscape Plan	Detail drafted landscape plan with landscape requirement compliance chart.
Conceptual Signage Plan	Proposed signage elevations

General Note

All plans are conceptual in nature and subject to change based on site and development conditions.

TBG

Scale 1" = 200'

0' 200' 400'

May 31, 2019

The information shown is based on the best information available and is subject to change without notice.

LEGEND

OFFICE/ HOTEL

COMMERCIAL

MULTI-FAMILY RESIDENTIAL

SINGLE FAMILY RESIDENTIAL



LAKEWOOD

CONCEPT PLAN

EXHIBIT FOR **ZPD 17-0013**

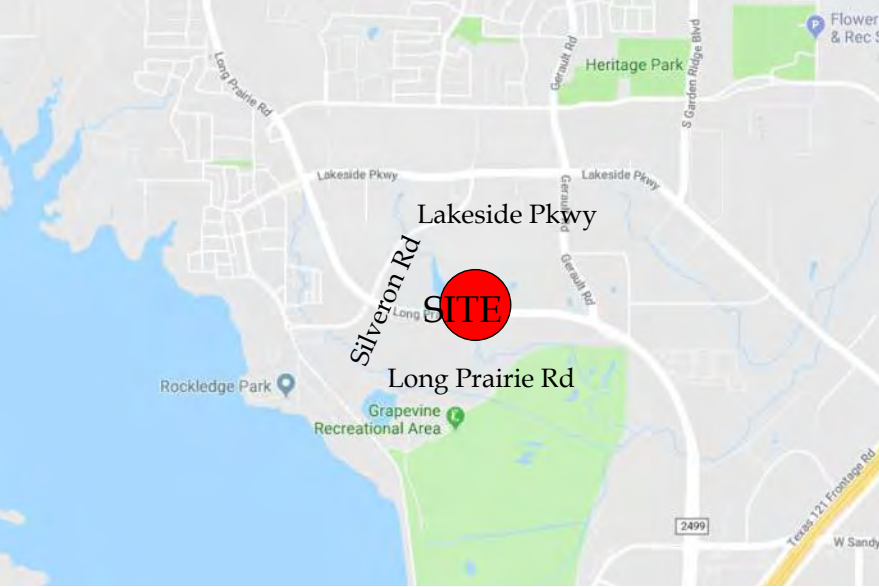
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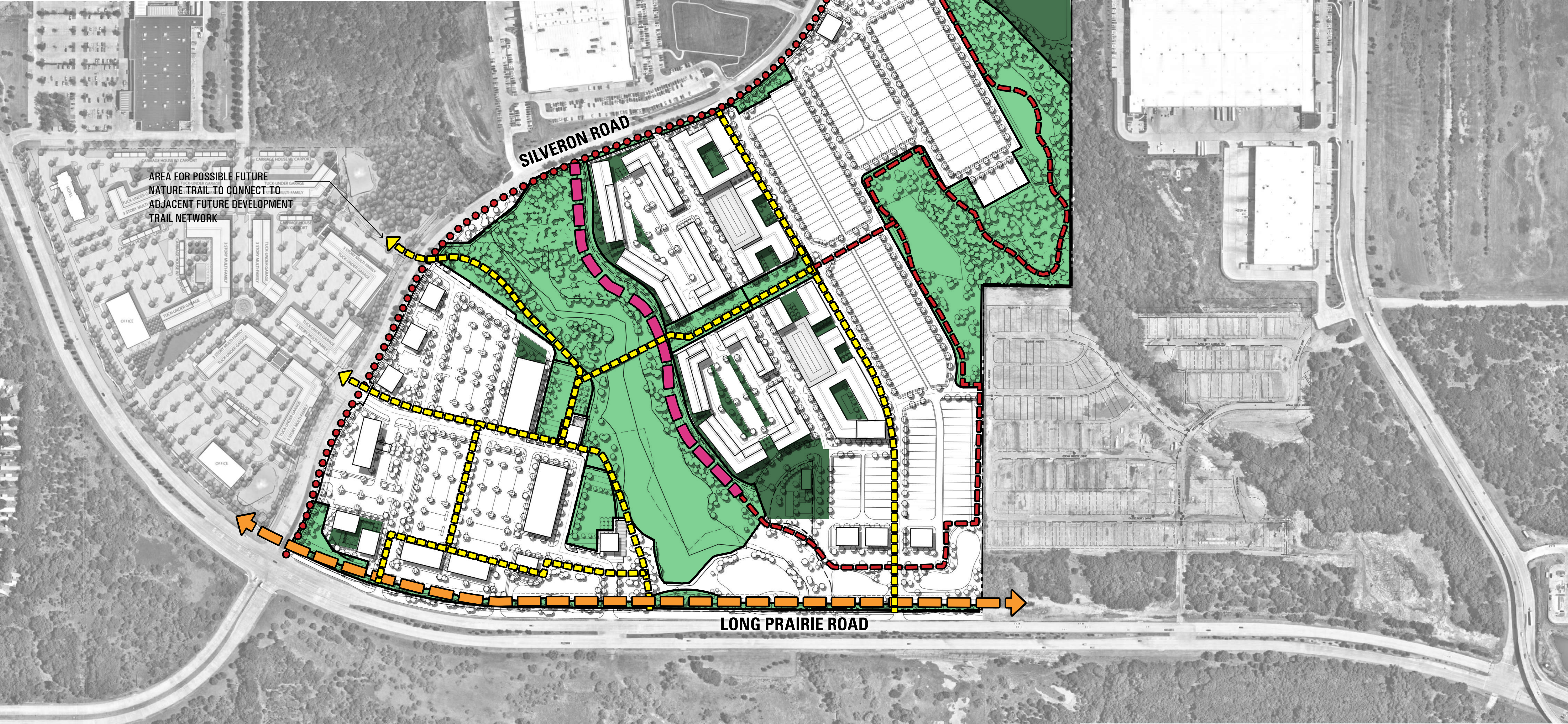
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LEGEND

SYMBOL	TYPE	MINIMUM WIDTH	GROSS AREA
	SILVERON TRAIL	EXISTING	
	LAKESIDE SIDEWALK	6'	
	ACCESS WALKWAYS	6'	
	AUXILIARY TRAILS	6'	
	TOWN MULTI-USE TRAIL	8'	
	FIRE LANE TRAIL	12'	
	PUBLIC ACCESS OPEN SPACE		35.6 ACRES
	PRIVATE ACCESS OPEN SPACE		6.3 ACRES



NOTE: FINAL LOCATION OF WALKS AND WIDTH TO BE DETERMINED AT TIME OF SITE PLAN SUBMITTAL BASED ON EXISTING CONDITIONS.

LAKEWOOD

OPEN SPACE & TRAIL ACCESS PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

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5054 Development
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LEGEND

- OS-1, LAND MARK CORNER
- OS-2, GREEN
- OS-3, LAWN
- OS-4, NATURAL AREA
- OS-5, COURTYARD
- OS-6, SQUARE
- OS-7, RECREATION DETENTION
- OS-8, PRIVATE
- OS-9, POCKET PARK
- OS-10, TRAIL EASEMENT



LAKEWOOD

OPEN SPACE AND PARK PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
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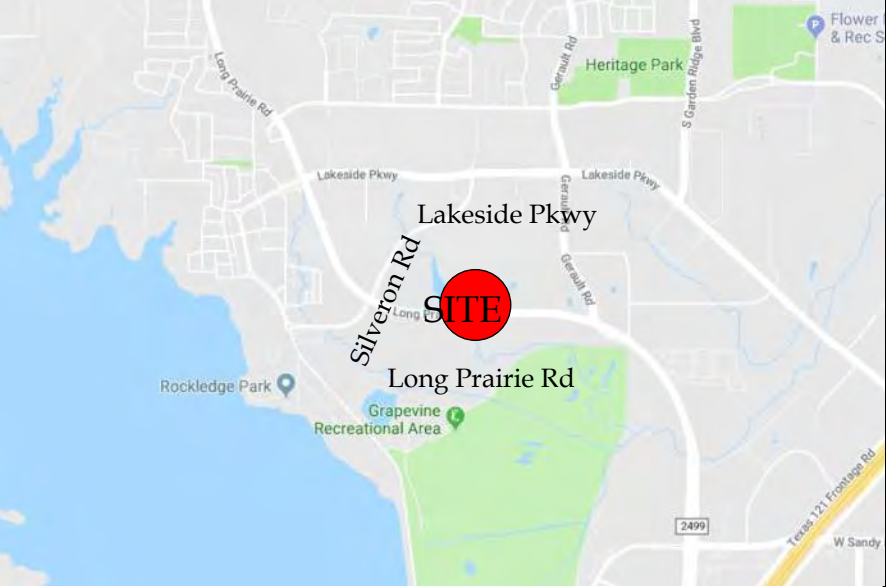
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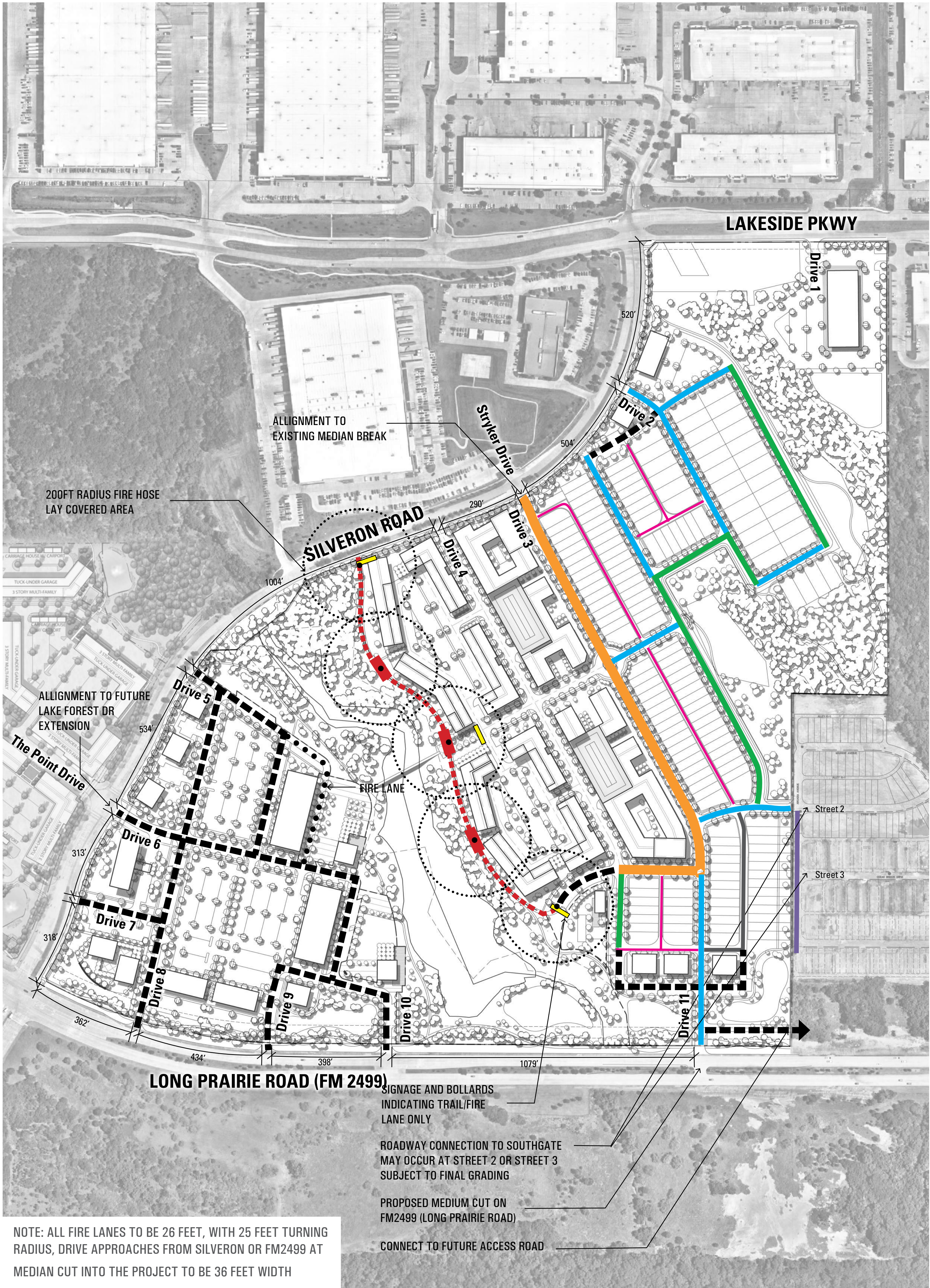
TBG

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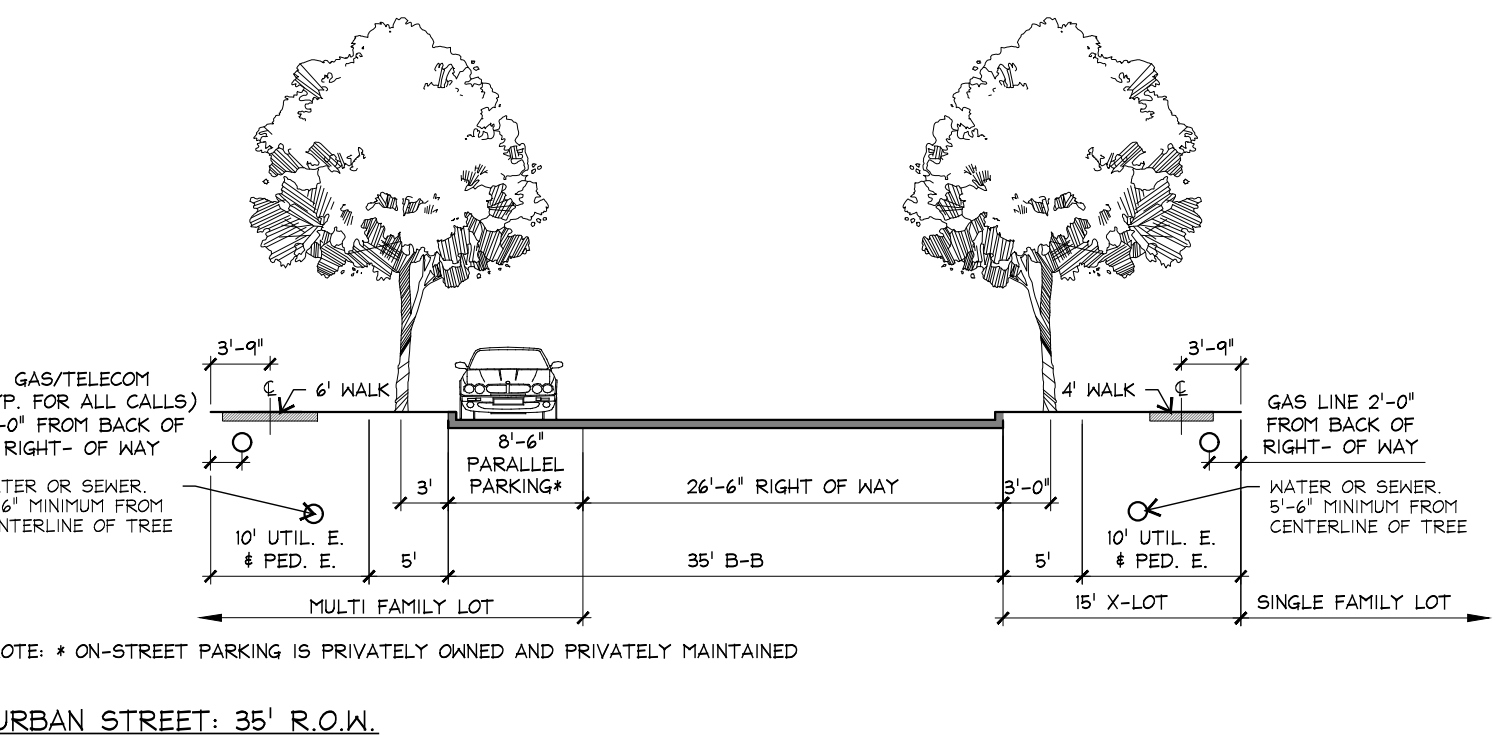
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May 31, 2019

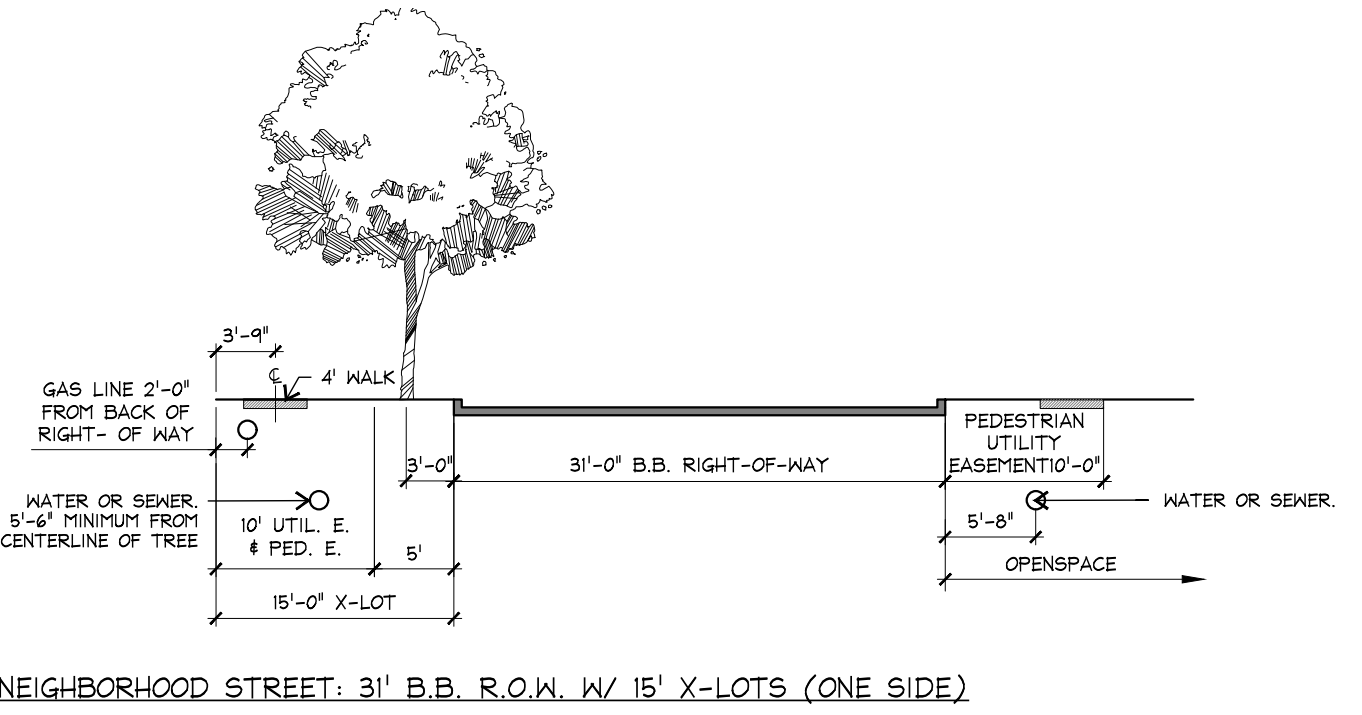
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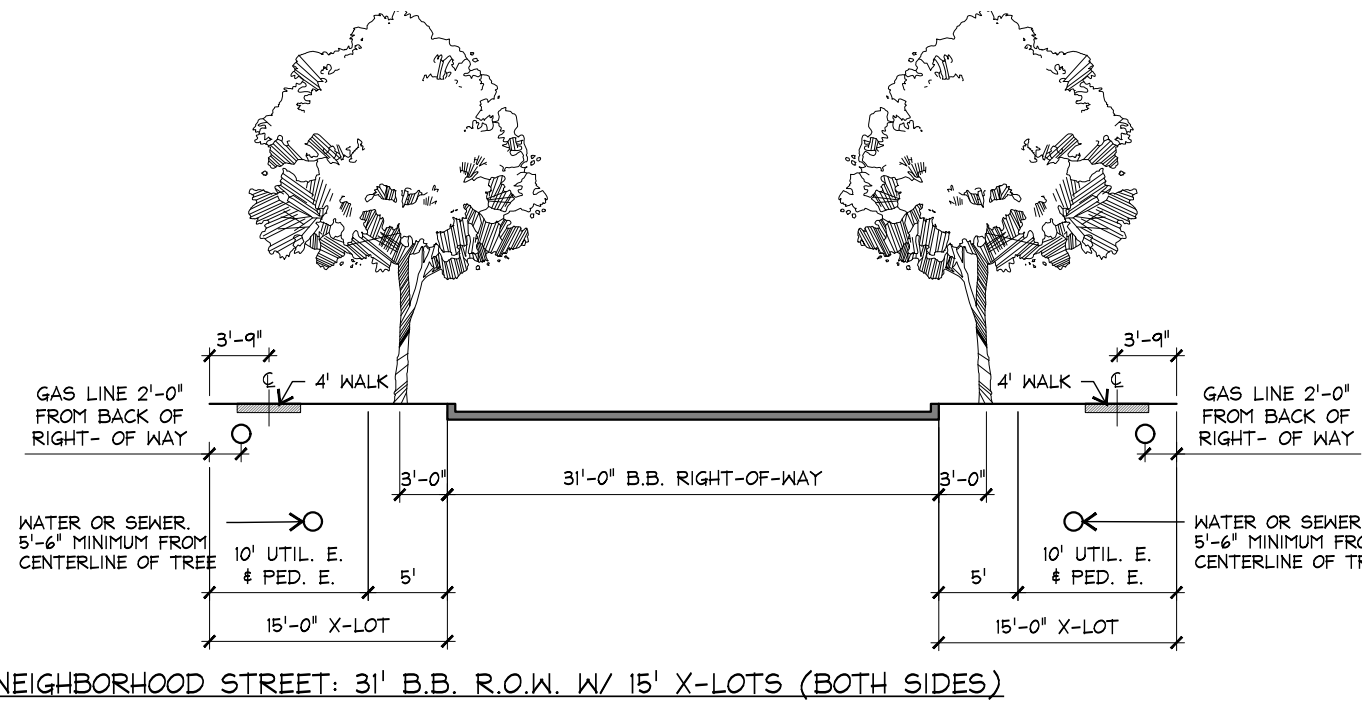
STREET A



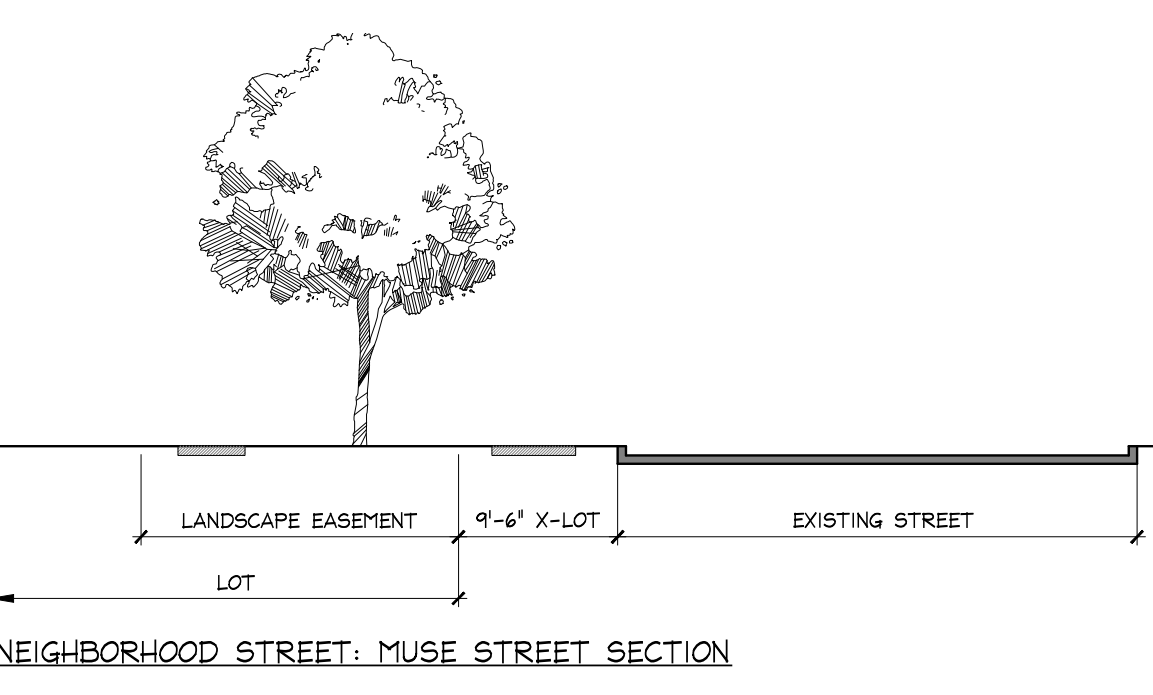
STREET B



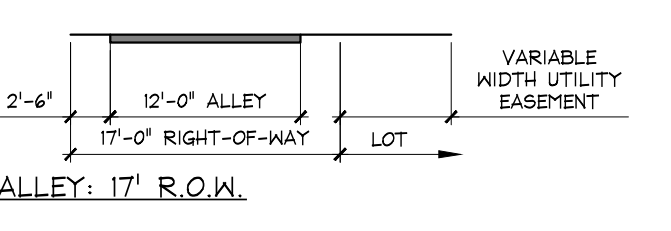
STREET C



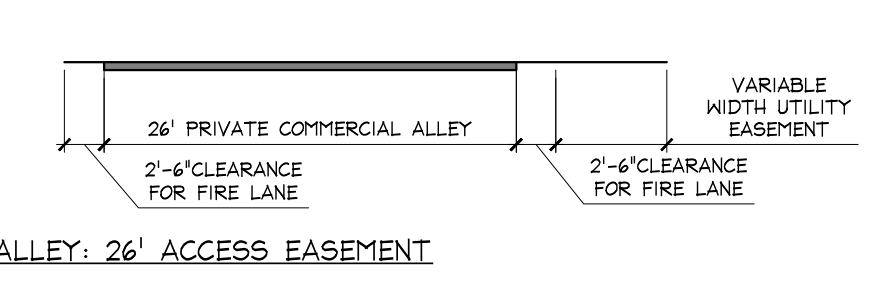
STREET D



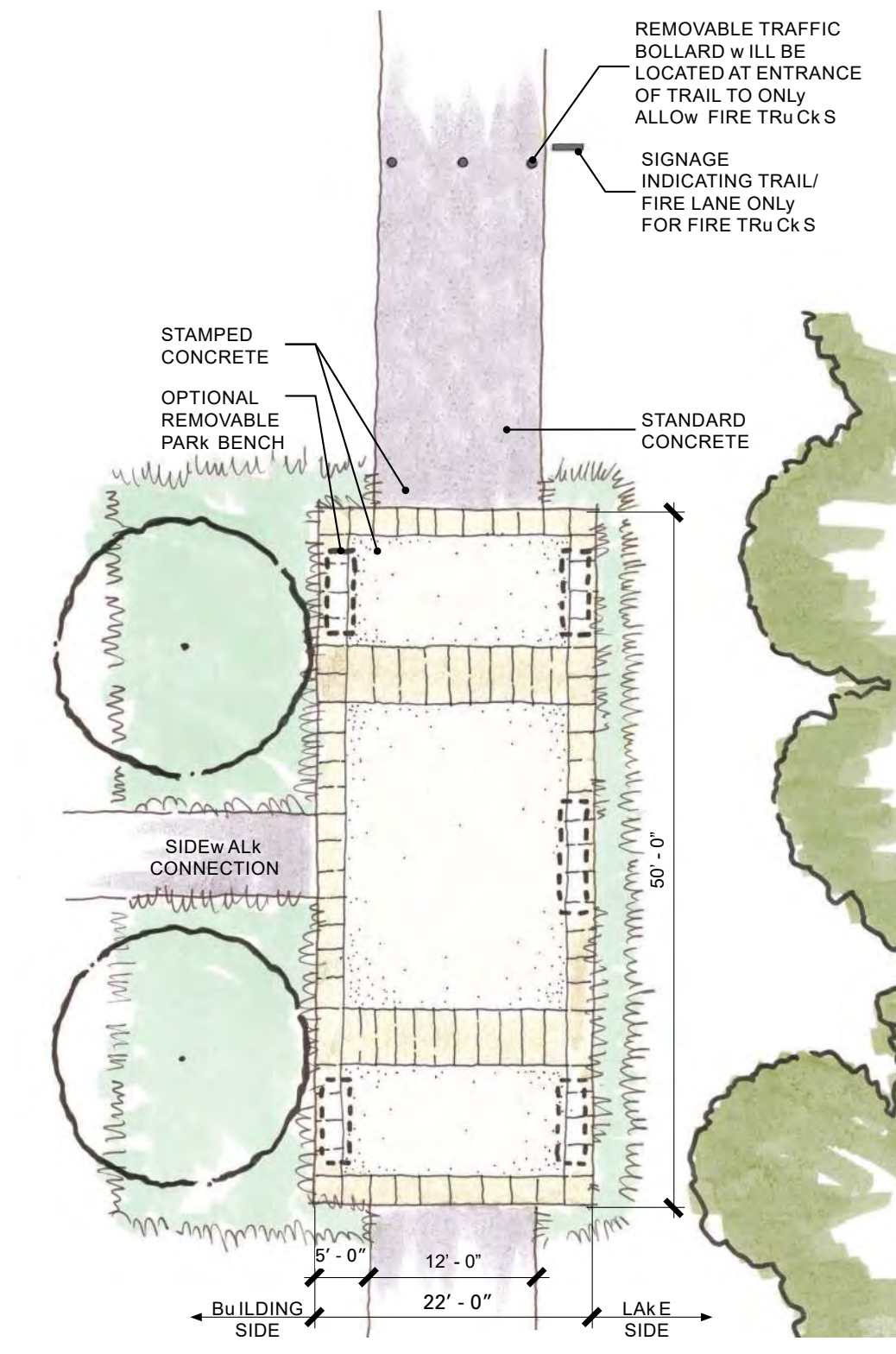
ALLEY E



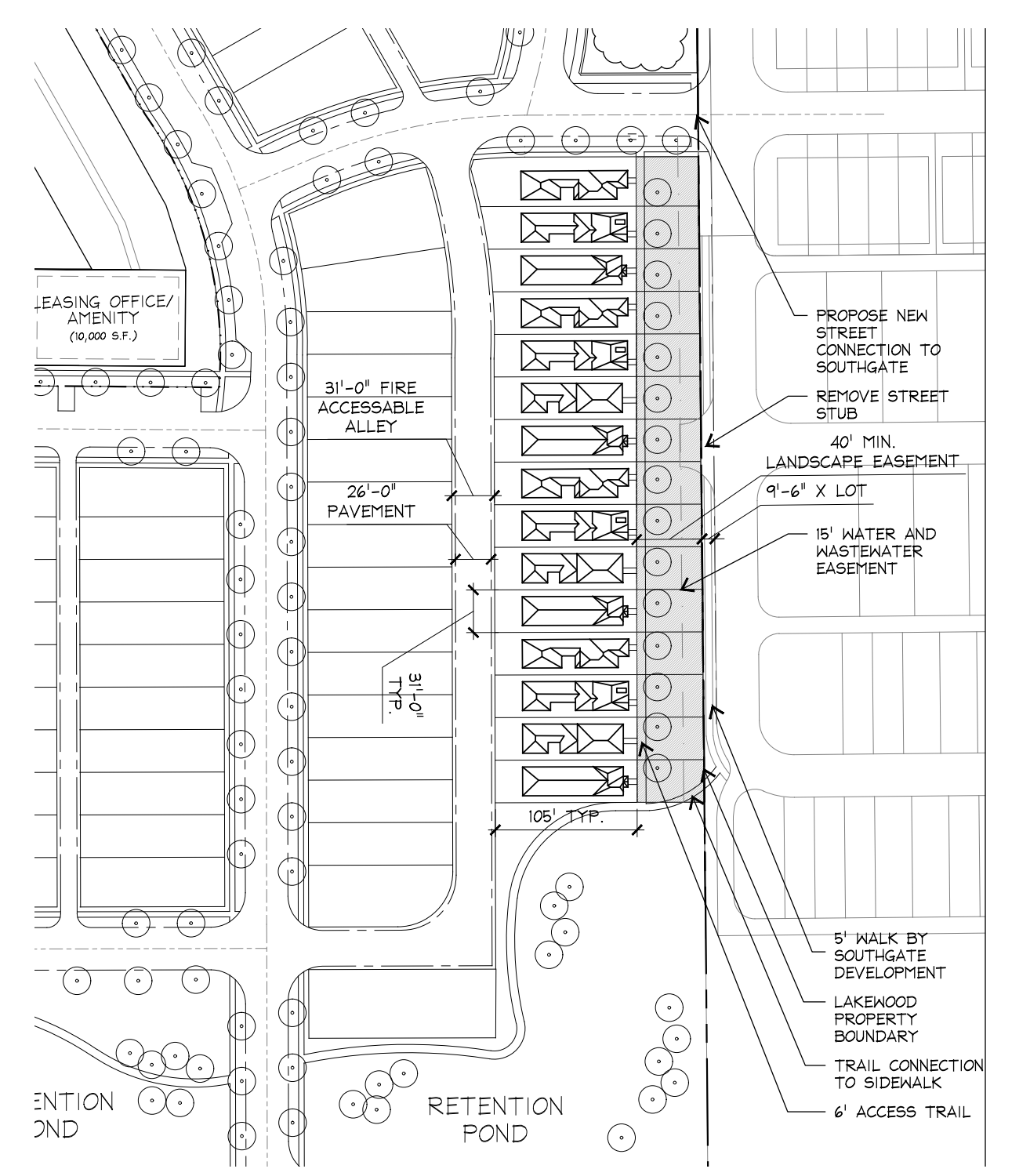
ALLEY F



- PRIVATE STREET WITH PUBLIC ACCESS EASEMENT, MINIMUM 26' WIDE STREET.
- 26' WIDE FIRE LANE
- SINGAGE AND BOLLARDS INDICATING TRAIL/FIRE LANE ONLY
- TRAIL/FIRE LANE ENLARGEMENT, SETUP AREA IS DETERMINED BY 200' FIRE HOSE LAY DISTANCE



STREET D PLAN VIEW ENLARGEMENT



LAKEWOOD

v EHICu LAR NETWORK

EXHIBIT FOR ZPD 17-0013

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VICINITY MAP

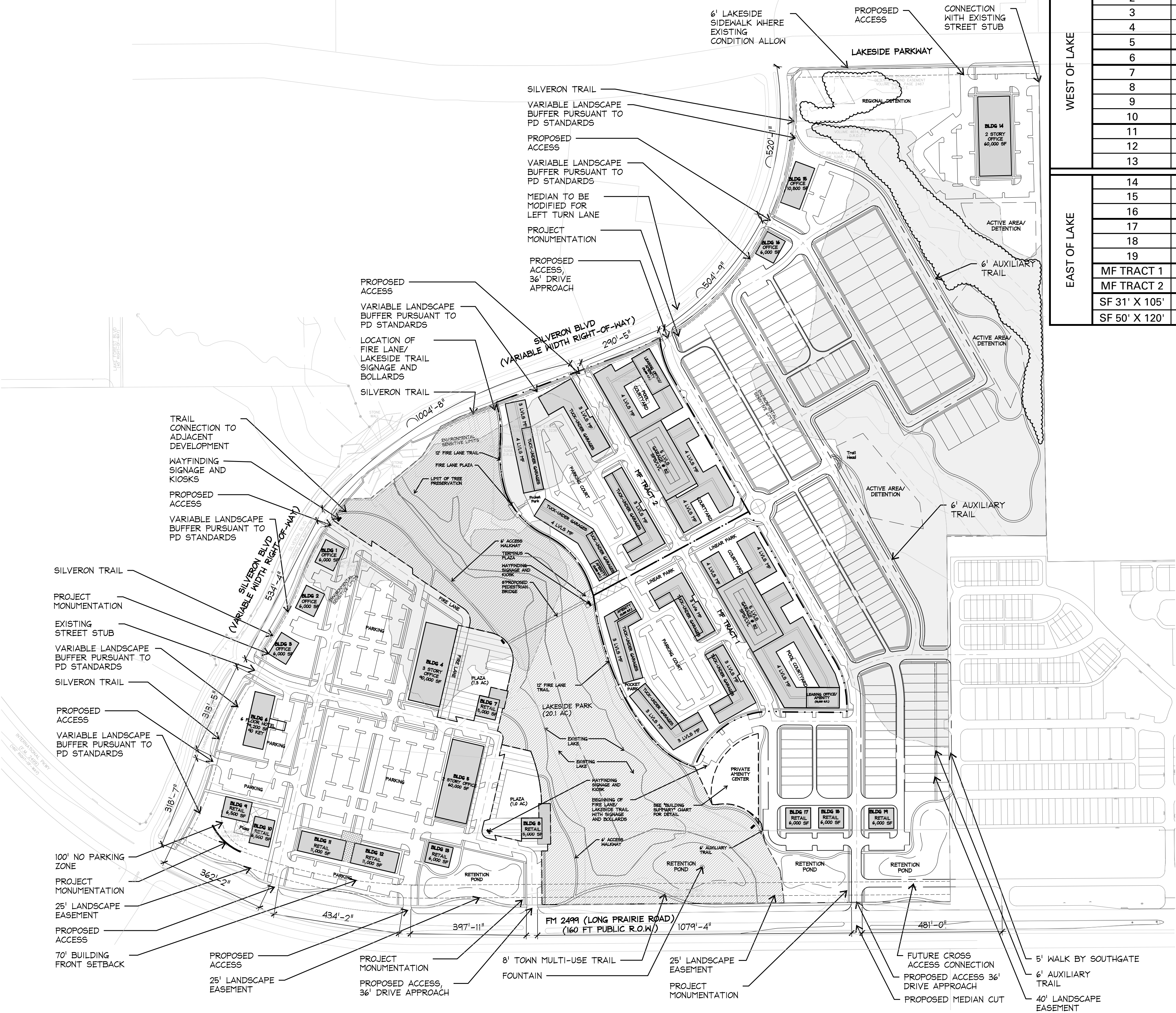


MASTER PLAN FEATURES	
LAND USE PLAN	LAKE SIDE BUSINESS DISTRICT / CAMPUS COMMERCIAL
PARKS AND TRAILS	REQUIRED MULTI USE TRAIL ALONG FM2499
THOROUGHFARE PLAN	FM 2499(MAJOR ARTERIAL),SILVEORN BLVD (URBAN MINOR ARTERIAL), LAKE SIDE PARKWAY (MAJOR ARTERIAL).
WATER PLAN	LAKE SIDE SERVICE AREA - 12" WATER ALONG FM 2499, 12" WATER ALONG SILVERON BLVD.
WASTEWATER PLAN	EXISTING 8" GRAVITY SANITARY SEWER MAIN IN SILVERON BLVD, EXISTING 12" GRAVITY SANITARY SEWER MAIN IN LAKE SIDE PKWY, EXISTING 18" GRAVITY SANITARY SEWER MAIN SOUTH OF THE DEVELOPMENT.
ECONOMIC IMPACT	\$250 MILLION AD VALOREM; HOTEL AND ADDITIONAL REVENUE STREAMS TBD.

ALL FIRE LANES TO BE 26 FEET WIDE, WITH 25 FEET TURNING RADIUS. DRIVE APPROACHES FROM SILVERON OR FM2499 AT MEDIAN CUT INTO THE PROJECT TO BE 36 FEET WIDTH WITH 25' TURNING RADIAS.

SEE OPEN SPACE AND TRAIL ACCESS PLAN FOR ALL TRAIL LOCATIONS AND WIDTH.

AREA	BLDG #	LAND USE	SUQARE FOOTAGE	NUMBER OF STORIES	UNITS	CITY PARKING RATIO	CITY PARKING REQ.	TOTAL PARKING REQUIRED	TOTAL PARKING PROVIDED	TOTAL SF/ UNITS
WEST OF LAKE	1	OFFICE	6,000	1	NA	1 / 300 SF	20	1069	1070	168,000
	2	OFFICE	6,000	1	NA	1 / 300 SF	20			
	3	OFFICE	6,000	1	NA	1 / 300 SF	20			
	4	OFFICE	90,000	3	NA	1 / 300 SF	300			
	5	OFFICE	60,000	2	NA	1 / 300 SF	200			
	6	HOTEL	79,200	6	90 KEYS	1 / 1 KEY	90			79,200
	7	RETAIL/REST.	5,000	1	NA	1 / 75 SF	67			23,000
	8	RETAIL/REST.	5,000	1	NA	1 / 75 SF	67			
	9	RETAIL/REST.	6,500	1	NA	1 / 75 SF	87			
	10	RETAIL/REST.	6,500	1	NA	1 / 75 SF	87			
	11	RETAIL	11,000	1	NA	1 / 250 SF	44			28,000
	12	RETAIL	11,000	1	NA	1 / 250 SF	44			
	13	RETAIL	6,000	1	NA	1 / 250 SF	24			
EAST OF LAKE	14	OFFICE	60,000	2	NA	1 / 300 SF	200	328	330	76,800
	15	OFFICE	10,800	1	NA	1 / 300 SF	36			
	16	OFFICE	6,000	1	NA	1 / 300 SF	20			
	17	RETAIL	6,000	1	NA	1 / 250 SF	24			
	18	RETAIL	6,000	1	NA	1 / 250 SF	24			18,000
	19	RETAIL	6,000	1	NA	1 / 250 SF	24			
	MF TRACT 1	MULTI - FAMILY	NA	4	421	1.5 / UN.	632	1275	1276	850
	MF TRACT 2	MULTI - FAMILY	NA	4	429	1.5 / UN.	644			
	SF 31' X 105'	SINGLE FAMILY	NA	2	128	NA	NA			164
	SF 50' X 120'	SINGLE FAMILY	NA	2	36	NA	NA			



- NOTES:
- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE
 - ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
 - DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIAL OF THE MAIN BUILDING.
 - DUMPSTER SCREENING WALL REQUIRES SEPARATE BUILDING PERMIT.
 - SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGN DEPICTED ON THE SUBJECT SITE PLAN/ ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.
 - RETAINING WALLS 4 FEET IN HEIGHT OR TALLER, INCLUDING FOOTINGS, WILL REQUIRE A SEPARATE BUILDING PERMIT THROUGH THE BUILDING DEPARTMENT. RETAINING WALLS 6' IN HEIGHT LOCATED IN THE SINGLE FAMILY WILL BE MAINTAINED BY THE HOA.
 - LOCATIONS OF ALL OUTDOOR SEATING AREAS, GATHERING AREAS, DINING AREAS, AND PERMEABLE OPEN SPACE AREAS MAY BE REVISED DURING SITE PLAN REVIEW FOR EACH BUILDING.
 - BUILDING FOOTPRINTS, GROSS AREA, AND PROJECTED USE MAY BE REVISEDIN THE SITE PLAN APPLICATION

PROJECT NAME: LAKEWOOD
STREET ADDRESS: UNPLATTED, NOT ASSIGNED
SITE AREA: 122.1 AC
EXISTING ZONING: PD 31
EXISTING LAND USE: CAMPUS COMMERCIAL

LAKEWOOD

CONCEPT PLAN
- BLACK AND WHITE

EXHIBIT FOR **ZPD 17-0013**

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

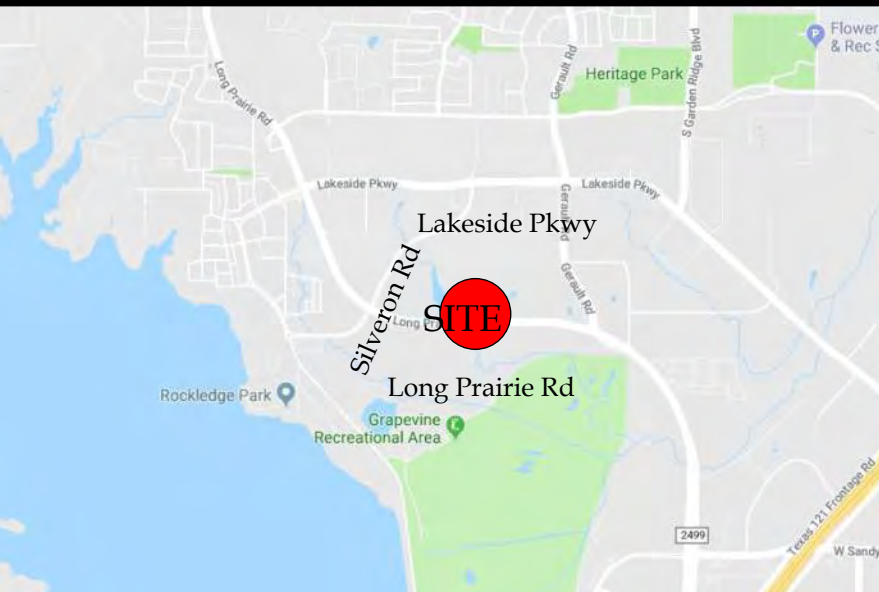
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
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Engineer / Surveyor:

Kimley-Horn.
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Location Map



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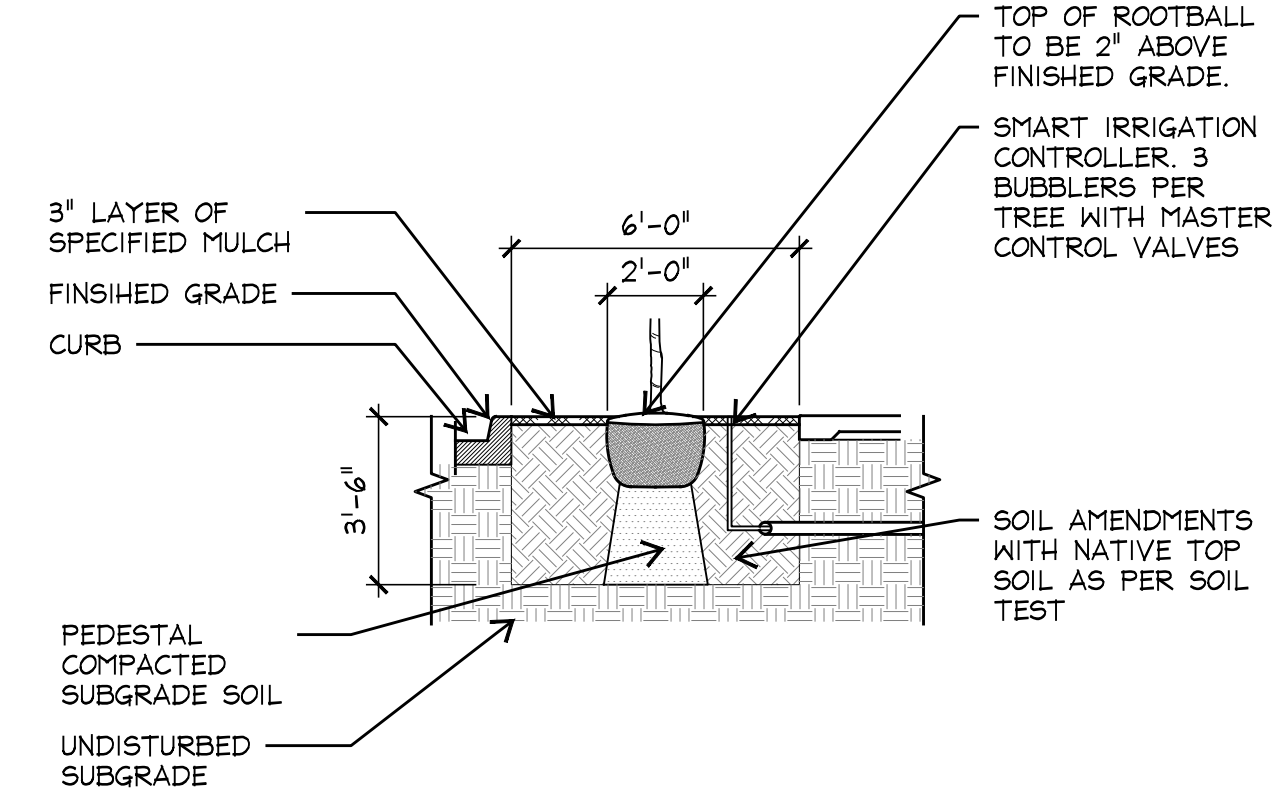
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TBG

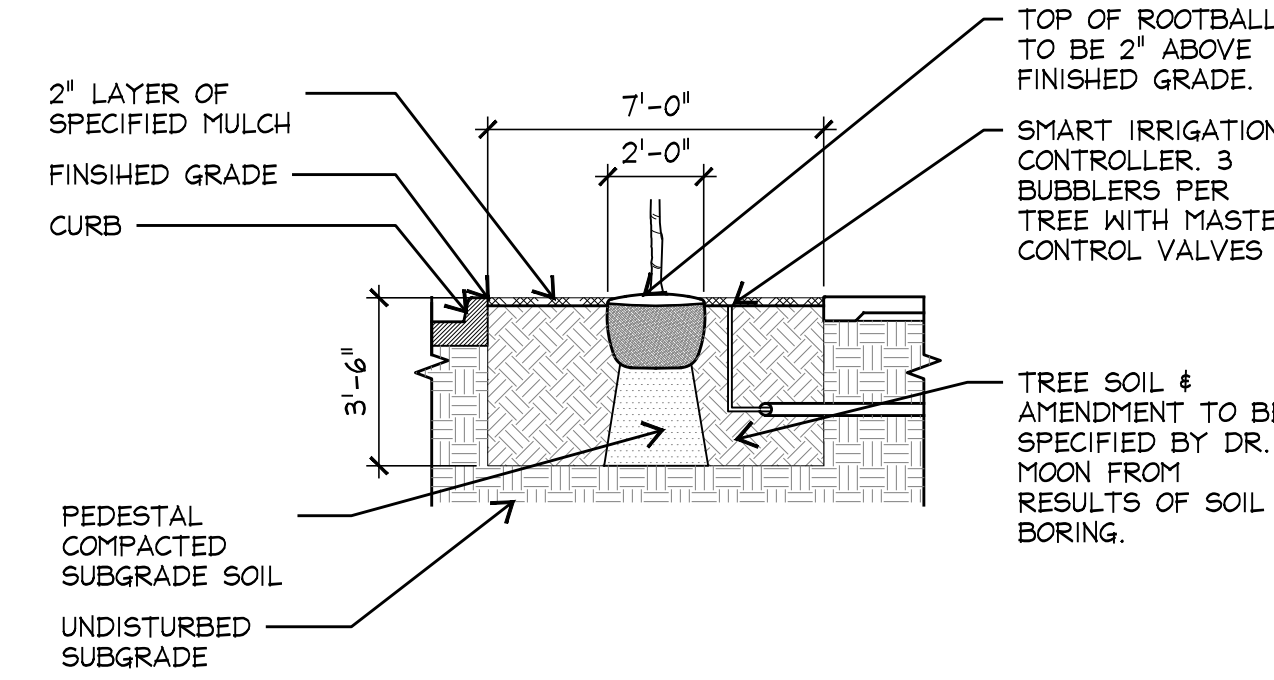
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0' 200' 400'
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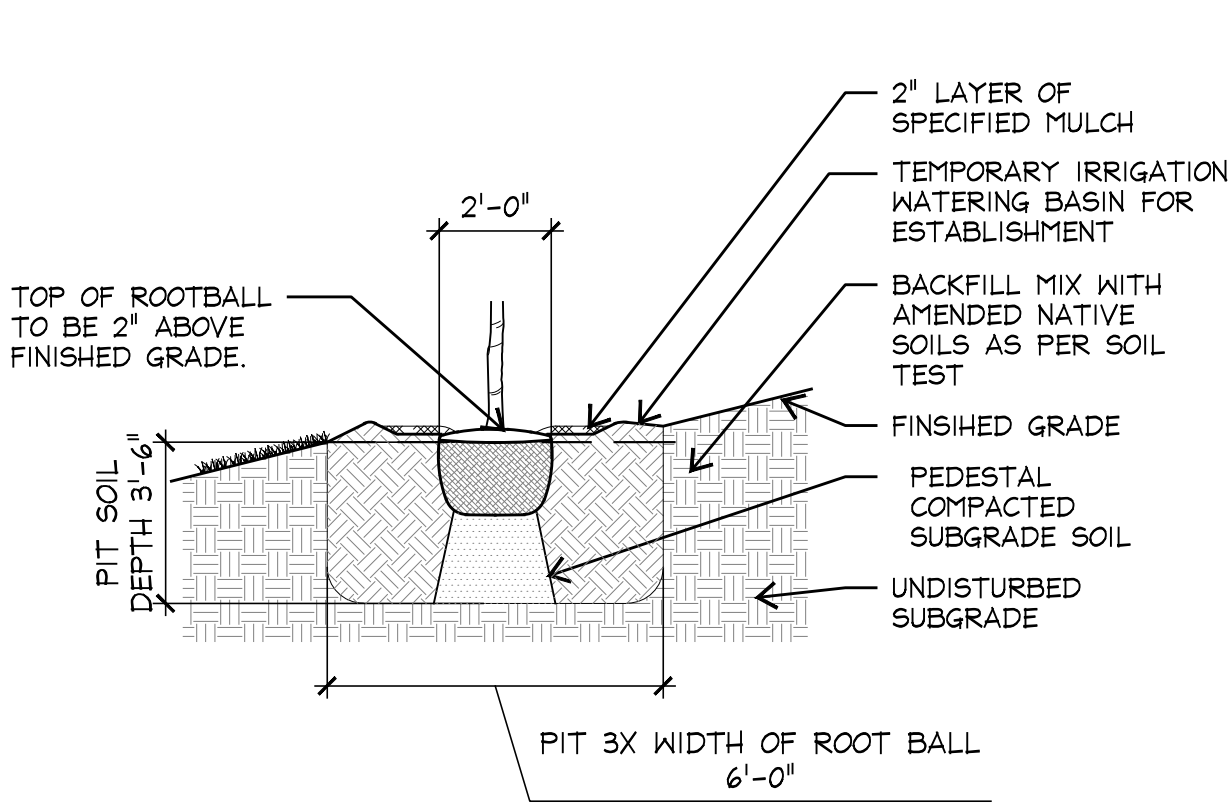
6'X8' ADJACENT TO CURB

PLAN SCALE: 1/4"=1'-0"



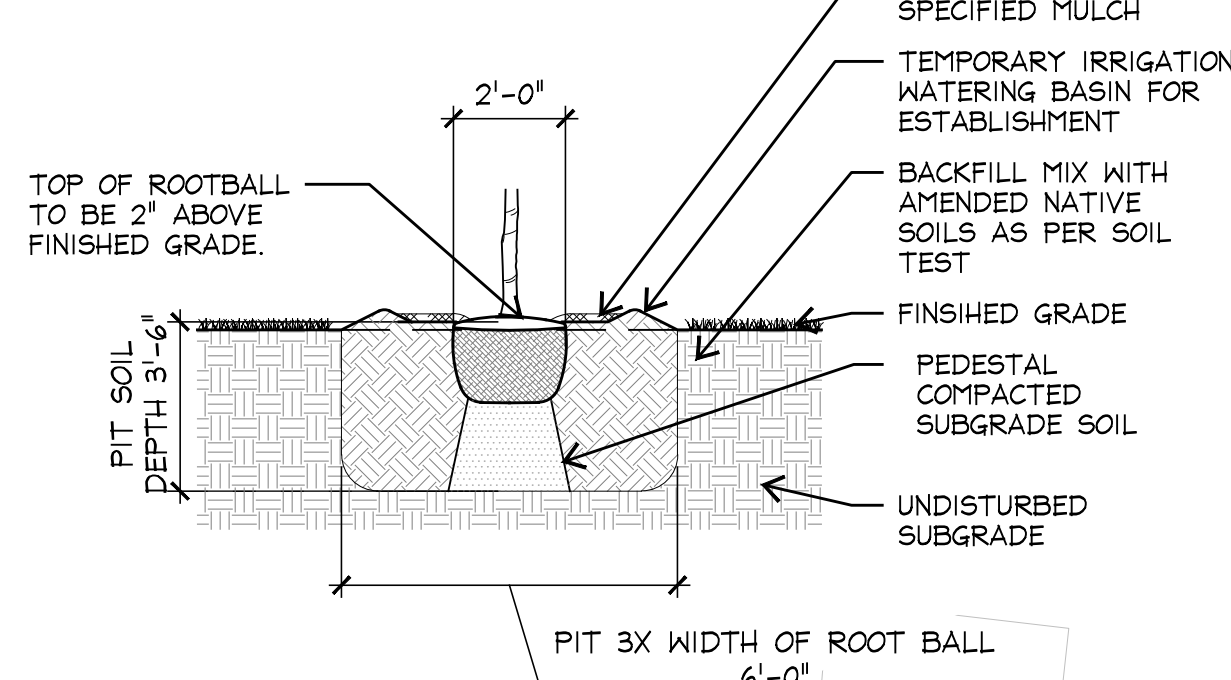
7'X7' ADJACENT TO CURB

SECTION SCALE: 1/4"=1'-0"



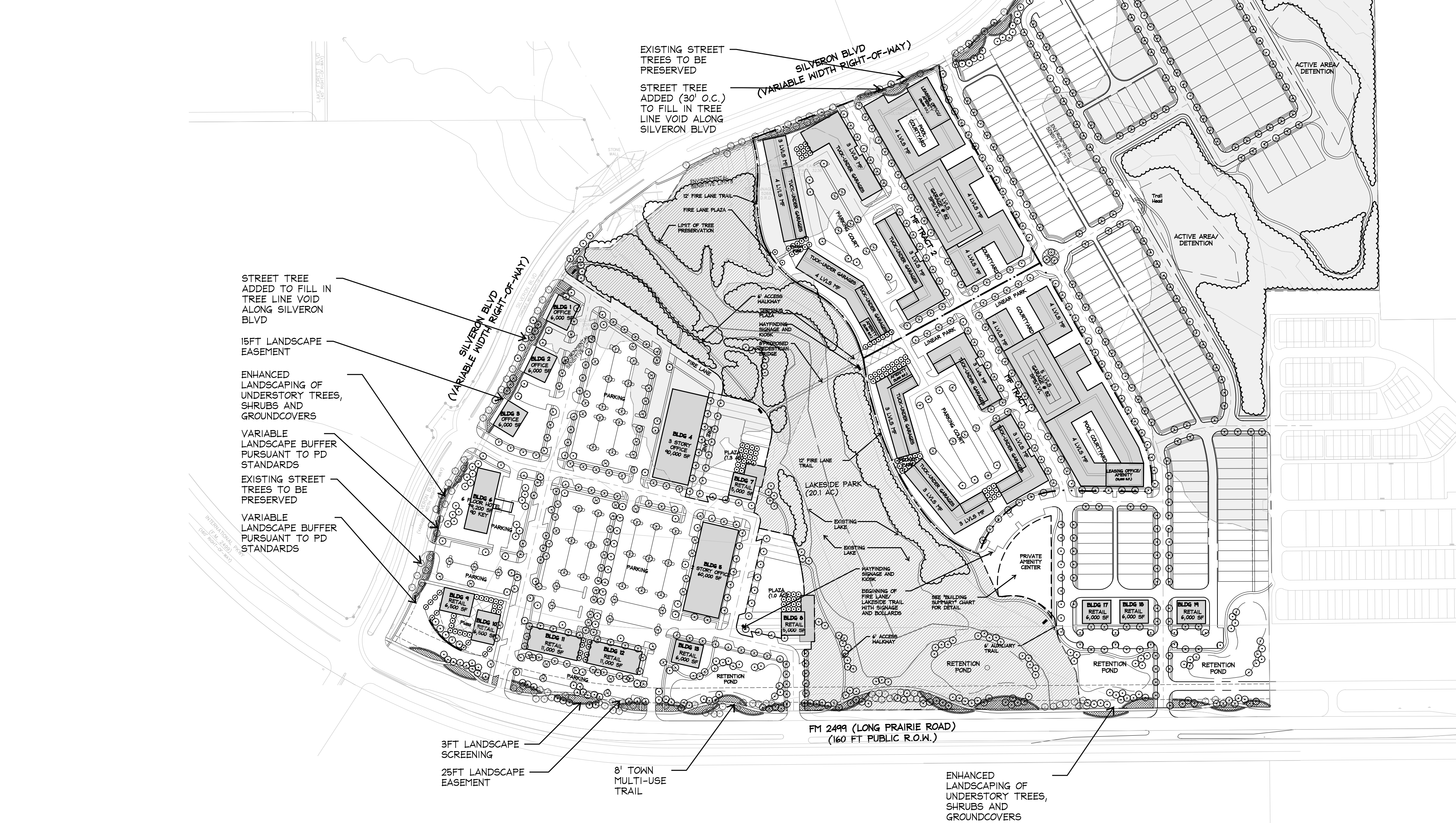
TREES PLANTED ON 4:1 SLOPES

PLAN SCALE: 1/4"=1'-0"



TREES PLANTED IN OPEN AREAS

SECTION SCALE: 1/4"=1'-0"



PLANTING NOTES:

- EXCEPT AS NOTED, ALL PLANTINGS SHALL COMPLY WITH CURRENT LOCAL ORDINANCES AND GUIDELINES FOR THE TOWN OF FLOWER MOUND.
- REFER TO R24.0 FOR ADDITIONAL NOTES AND INFORMATION PERTAINING TO TREE SURVEY AND MITIGATION.
- REFER TO R22.0 FOR CONCEPTUAL OPEN SPACE AND PEDESTRIAN CIRCULATION.
- THIS PLAN IS FOR PLANTING LOCATIONS ONLY AND ALL PLANT MATERIAL SHALL BE SPACED AND LOCATED PER PLAN.
- THE PROPERTY OWNER AND/OR LESSEE SHALL MAINTAIN ALL LANDSCAPE MATERIALS AND LANDSCAPE AREAS IN ACCORDANCE WITH THE APPROVED LANDSCAPE PLAN. MAINTENANCE SHALL INCLUDE WATERING, WEEDING, MOWING, FERTILIZING, TREATING, MULCHING AND PRUNING, REMOVAL AND REPLACEMENT OF DEAD OR DISEASED TREES AND SHRUBS. MAINTENANCE SHALL BE PERFORMED ON A REGULAR BASIS IN ORDER TO MAINTAIN PLANT VIGOR AND STABILITY AND TO PRESENT A NEAT AND WELL-KEPT APPEARANCE AT ALL TIMES.
- FINAL TREE LOCATIONS TO BE DETERMINED DURING FINAL PLAT.

LANDSCAPE REQUIREMENT COMPLIANCE TOWN OF FLOWER MOUND, TEXAS			
STREET YARD LANDSCAPING			
NOTE			
THERE ARE NO STREET YARDS BETWEEN THE STREET BUFFER AND THE BUILDINGS			
STREET YARD TREES			
NOTE			
THERE ARE NO STREET YARDS BETWEEN THE STREET BUFFER AND THE BUILDINGS, EXCEPT WITH THE PARKING LOTS.			
STREET BUFFER WIDTH			
ROAD NAME	REQUIRED WIDTH	PROVIDED WIDTH	NOTE
FM 2499	25FT BUFFER WIDTH	25FT BUFFER WIDTH	
SILVERON BLVD	VARIES LANDSCAPE BUFFER PURSUANT TO PD STANDARDS	VARIES LANDSCAPE BUFFER PURSUANT TO PD STANDARDS	
LAKESIDE PRKY	0FT BUFFER WIDTH	0FT BUFFER WIDTH	THE DETENTION EASEMENT ABUTS THE LAKESIDE ROW LEAVING NO ROOM FOR A STREET BUFFER WITHOUT ALTERING THE EASEMENT AND CHANGING THE TOPOGRAPHY AND REPLACING THE DETENTION CAPACITY.
STREET BUFFER TREES			
STANDARD	STREET FRONTAGE	REQUIRED	PROVIDED
1 PER 30 LF	FM 2499 = 2,737 LF	92 TREES (3" CAL.)	92 TREES (3" CAL.)
1 PER 30 LF	SILVERON BLVD. = TBD	30 TREES MINIMUM (3" CAL.)	30 TREES (3" CAL.) (45 EXISTING)
1 PER 30 LF	LAKESIDE PRKY = 300 LF	10 TREES (3" CAL.)	10 TREES (3" CAL.)
PARKING AREA LANDSCAPE			
STANDARD	NUMBER OF PARKING SPACES	REQUIRED	PROVIDED
90SF PER 12 SPACES	+/- 1660 SPACES	12,449 SF	12,449 SF
PARKING AREA TREES			
STANDARD	NUMBER OF PARKING SPACES	REQUIRED	PROVIDED
1 TREE PER 20 SPACES	+/- 1660 SPACES	83 TREES (3" CAL.)	83 TREES (3" CAL.)
OPEN SPACE AREA			
STANDARD	NUMBER OF UNITS	REQUIRED	PROVIDED
MULTI-FAMILY: 2.78AC/ 100 UNITS	850 UNITS	23.6 ACRES	24 ACRES
SINGLE-FAMILY: 3.36 AC/ 100 UNITS	164 UNITS	5.7 ACRES	7 ACRES
PRIMARY 25.4%	122 ACRES	29.7 ACRES	+/-31 ACRES
STREET BUFFER MITIGATION TREE CREDITS			
STANDARD	STREET FRONTAGE	PRESERVED TREES	TREE CREDITS
1 PRESERVED PROTECTED / SPECIMEN TREE = 1 TREE CREDIT	FM 2499	TBD	TBD
	SILVERON BLVD	TBD	TBD
	LAKESIDE PRKY	TBD	TBD
BUILDABLE AREA TREE PRESERVATION CREDITS			
STANDARD	LOCATION	PRESERVED TREES	TREE CREDITS
EACH PROTECTED TREE = 1 TREE CREDIT	TBD	TBD	XX CREDITS
UPLAND HABITAT/ RIPARIAN HABITAT PRESERVATION CREDITS			
STANDARD	AREA		TREE CREDITS
XX TREE CREDITS PER ACRE OF PRESERVED PROTECTED / SPECIMEN TREES	X ACRES		XX CREDITS
LEGEND			
PLANT SYMBOL	SIZE		
	PROPOSED TREE: 3" CALIPER		
	EXISTING TREE TO REMAIN		
	ENHANCED LANDSCAPING OF UNDERSTORY TREES, SHRUBS AND GROUNDCOVER.		
	ENVIRONMENTALLY SENSITIVE AREA		

LAKEWOOD

CONCEPTUAL LANDSCAPE PLAN

EXHIBIT FOR **ZPD 17-0013**

Development Team

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Location Map

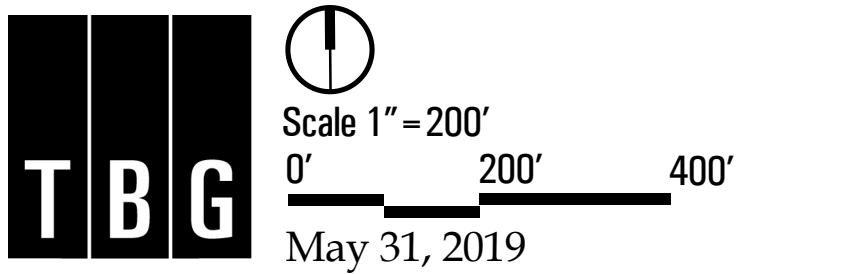


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LAKEWOOD

CONCEPTUAL PERSPECTIVE

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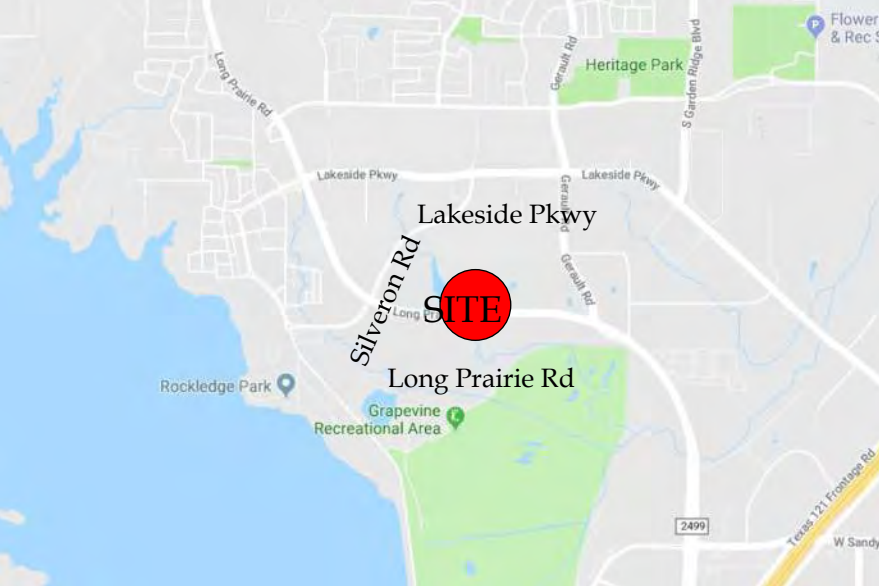
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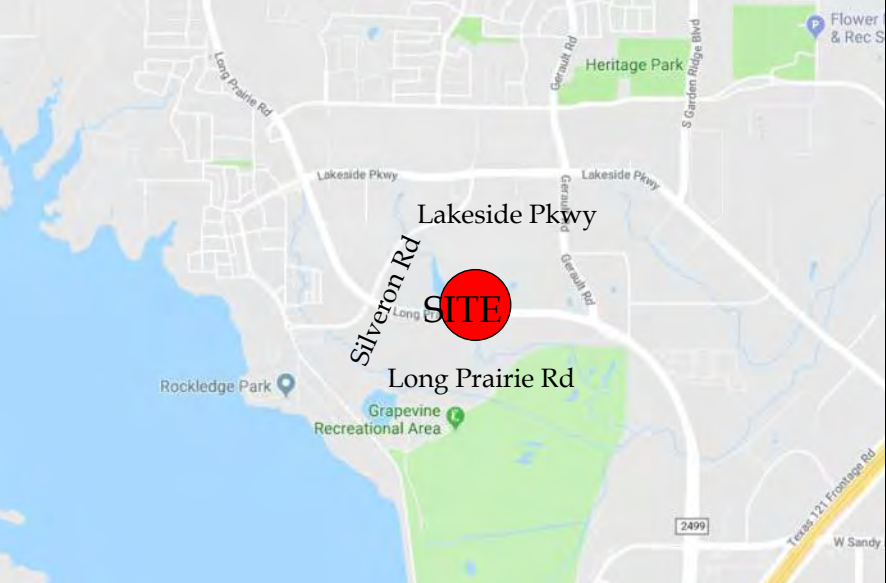
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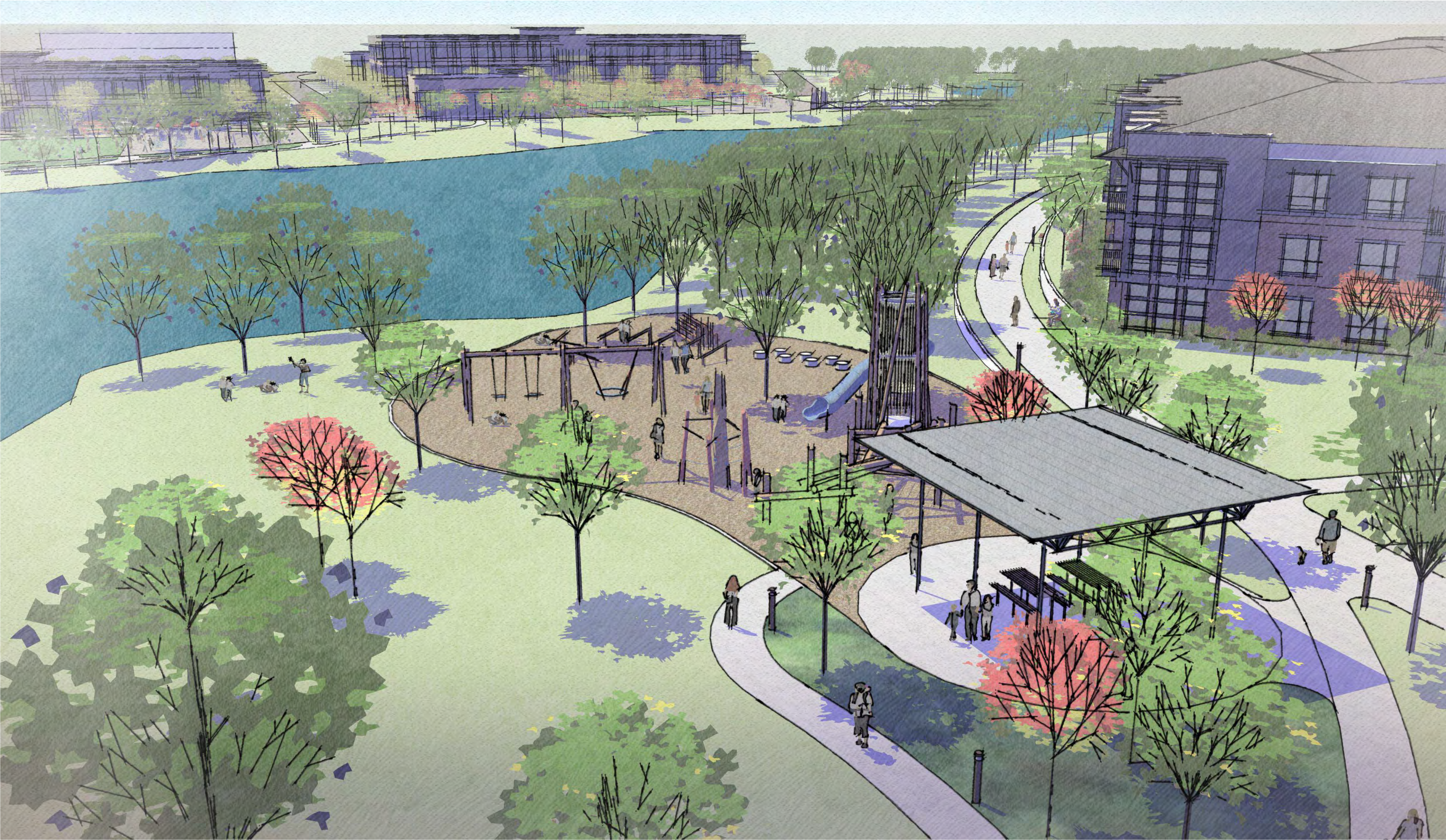
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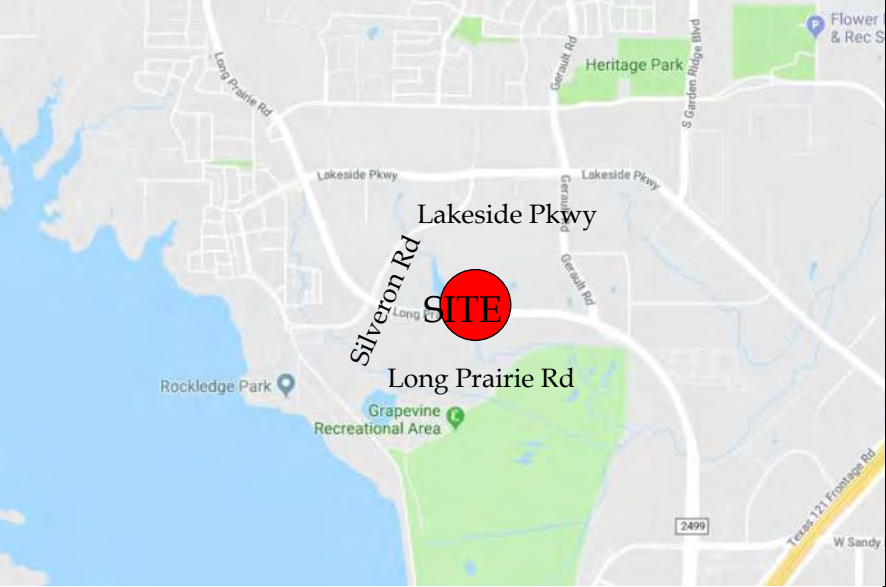
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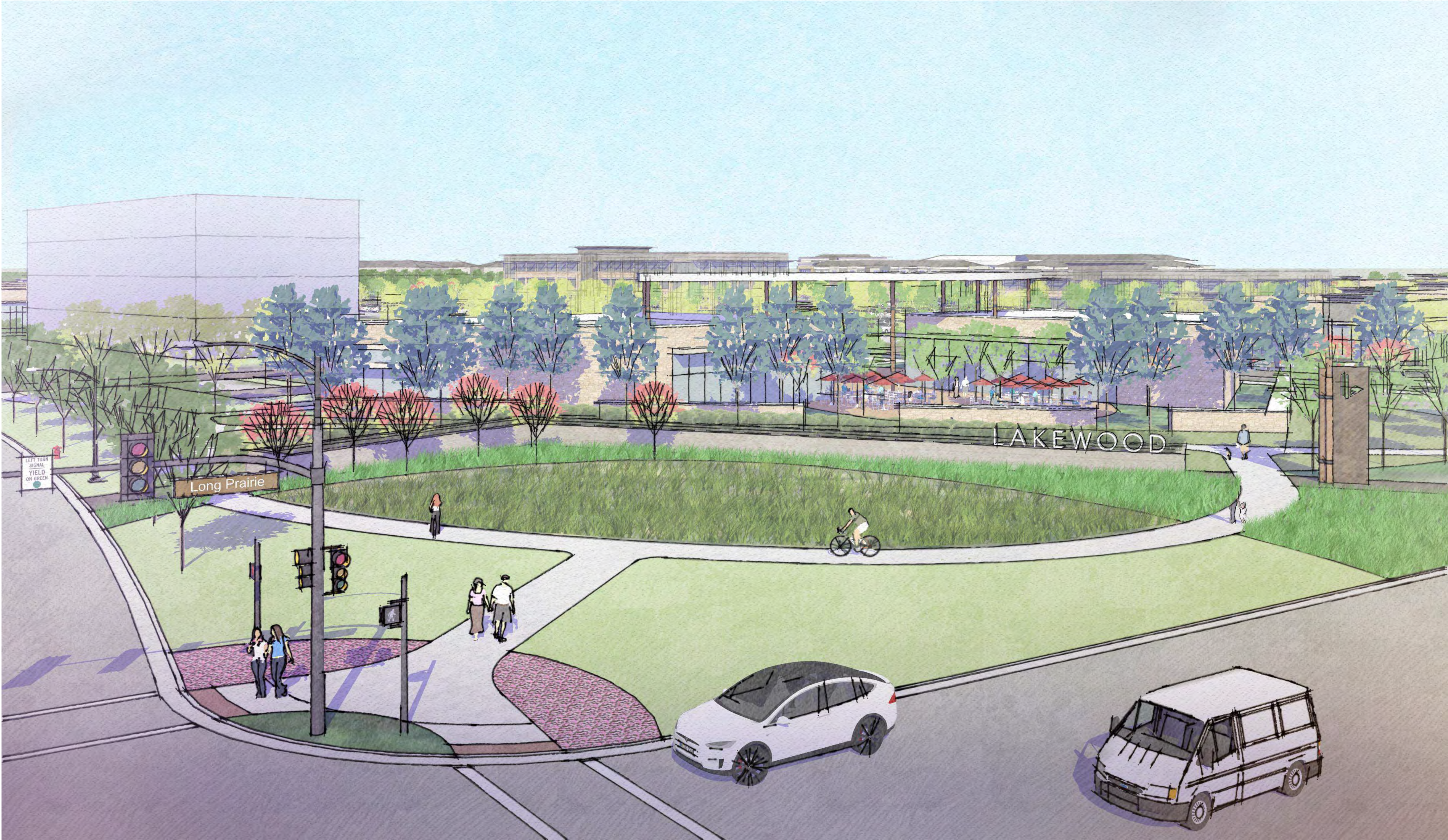
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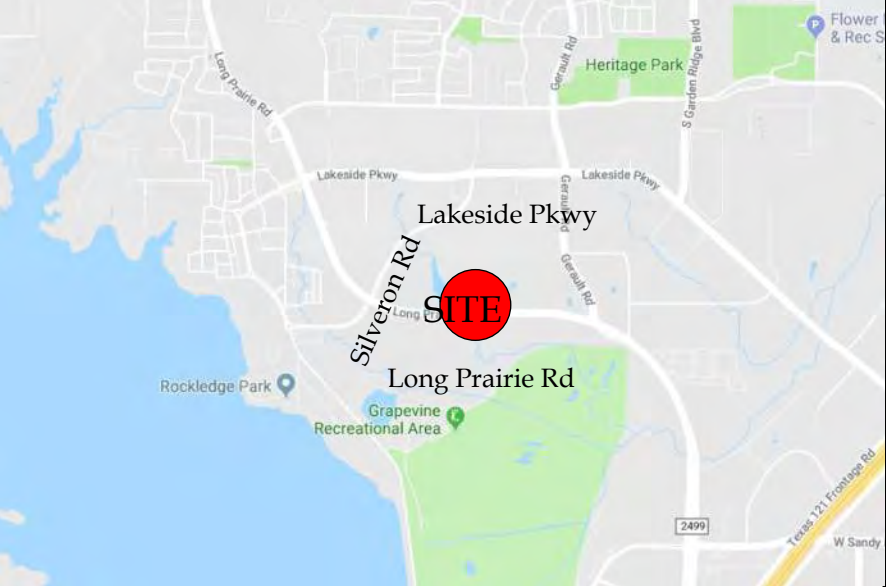
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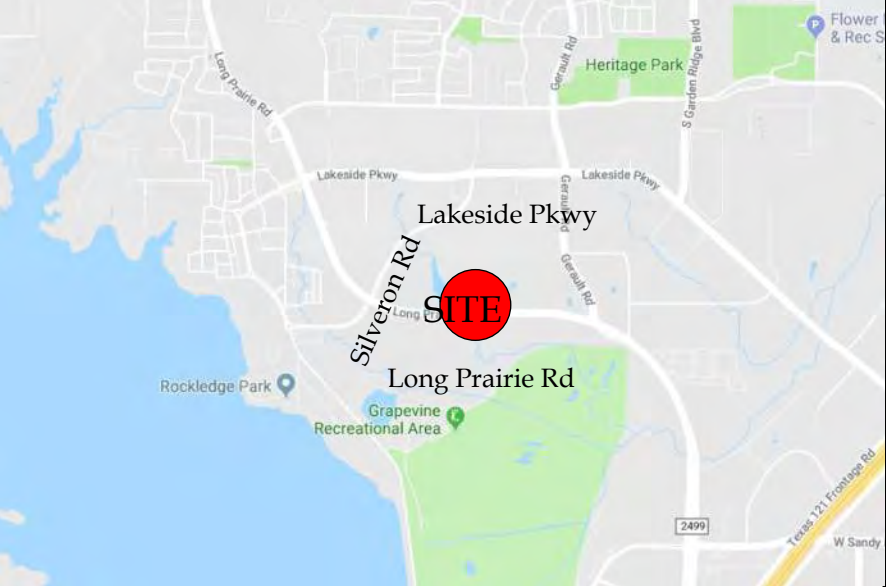
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PROJECT DATA

MF Tract 1

MF Units (avg. 950 s.f. / unit):	427 units
Leasing/Amenity:	12,000 s.f.
Retail:	1,000 s.f.
Parking Provided:	
4.5 lvl. Garage:	369 sps
Surface:	235 sps
Tuck-under:	71 sps
Total:	675 sps (1.6 sps/unit)
Site Area:	10.08 acres
Density:	42.36 units/acres

MF Tract 2

MF Units (avg. 950 s.f. / unit):	423 units
Leasing/Amenity:	12,000 s.f.
Retail:	1,000 s.f.
Parking Provided:	
5 lvl. Garage:	410 sps
Surface:	216 sps
Tuck-under:	88 sps
Total:	714 sps (1.69 sps/unit)
Site Area:	10.42 acres
Density:	40.60 units/acres

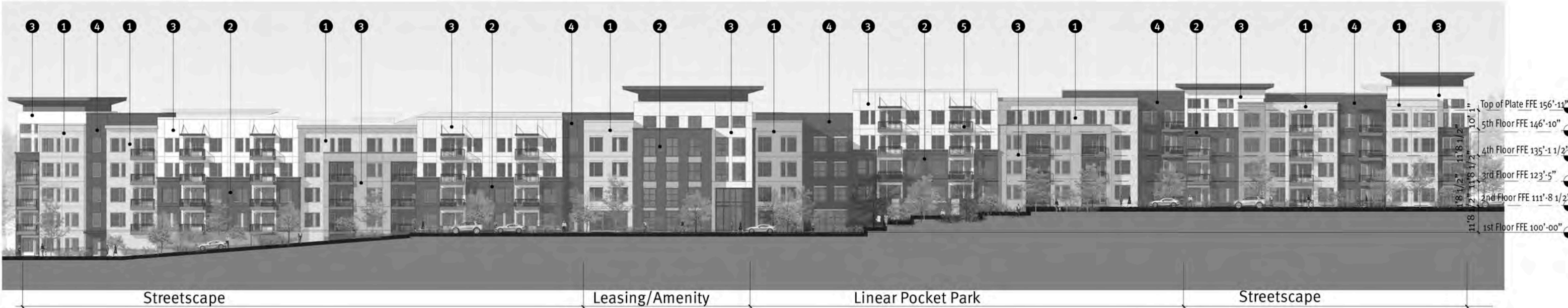
Total (MF Tract 1+2)

MF Units (avg. 950 s.f. / unit):	850 units
Leasing/Amenity:	24,000 s.f.
Retail:	2,000 s.f.
Parking Provided:	
Garage:	779 sps
Surface:	451 sps
Tuck-under:	159 sps
Total:	1,389 sps
Site Area:	20.5 acres
Density:	41.46 units/acres





01 Building 1
East Elevation-Colored



02 Building 1
East Elevation-Black&white

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing

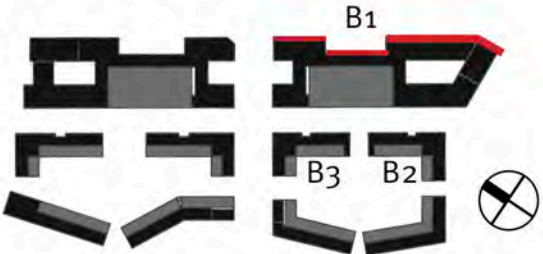


Flower Mound
Flower Mound, TX



	East B1
Primary Masonry totals(Min. 80%)	82%
Brick s.f. (as applicable)	28%
Stone s.f. (as applicable)	22%
Stucco s.f. (as applicable)	32%
Tilt Wall s.f. (as applicable)	
Secondary Masonry totals max. 20%)	18%
EIFS s.f. (as applicable)	
Hardiplank s.f. (as applicable)	18%
Detail any additional (as applicable)	

Elevation



04.17.20192018051.00 KM

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Registered Architect of State of Texas, Registration No. 17828



01 Building 1
West Elevation-Colored



02 Building 1
West Elevation-Black&white

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing
- 6 Painted Precast Concrete

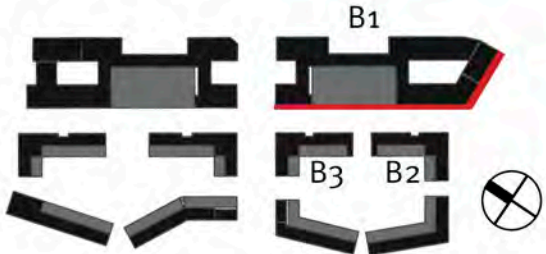


Flower Mound
Flower Mound, TX



	West B1
Primary Masonry totals(Min. 80%)	84%
Brick s.f. (as applicable)	29%
Stone s.f. (as applicable)	7%
Stucco s.f. (as applicable)	48%
Tilt Wall s.f. (as applicable)	
Secondary Masonry totals max. 20%	16%
EIFS s.f. (as applicable)	
Hardiplank s.f. (as applicable)	16%
Detail any additional (as applicable)	

Elevation



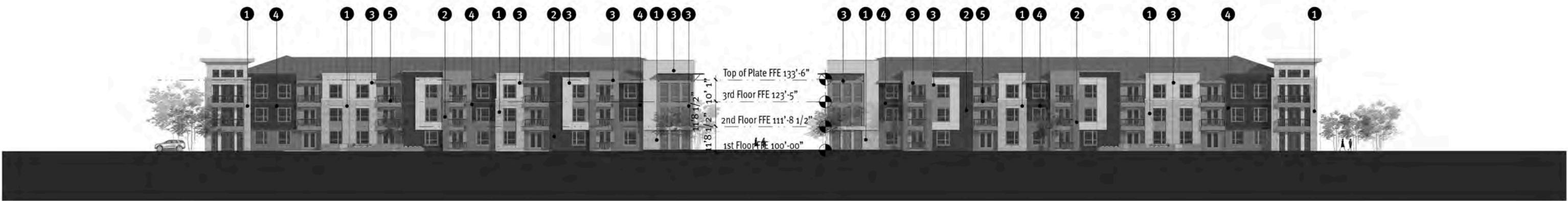
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01 Building 2
East Elevation-Colored

03 Building 3
East Elevation-Colored



01 Building 2
East Elevation-Black&white

03 Building 3
East Elevation-Black&white

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing

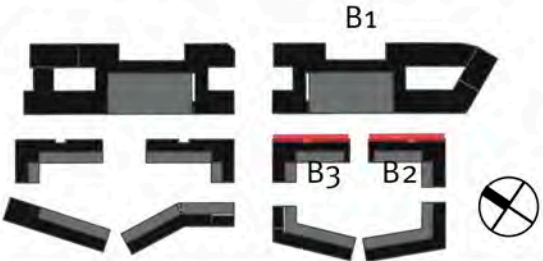


Flower Mound
Flower Mound, TX



Elevation

	East B2	East B3
Primary Masonry totals(Min. 80%)	83%	83%
Brick s.f. (as applicable)	26%	26%
Stone s.f. (as applicable)	25%	25%
Stucco s.f. (as applicable)	32%	32%
Tilt Wall s.f. (as applicable)Ⓜ		
Secondary Masonry totals max. 20%)	17%	17%
EIFS s.f. (as applicable)		
Hardiplank s.f. (as applicable)Ⓜ	17%	17%
Detail any additional (as applicable)		

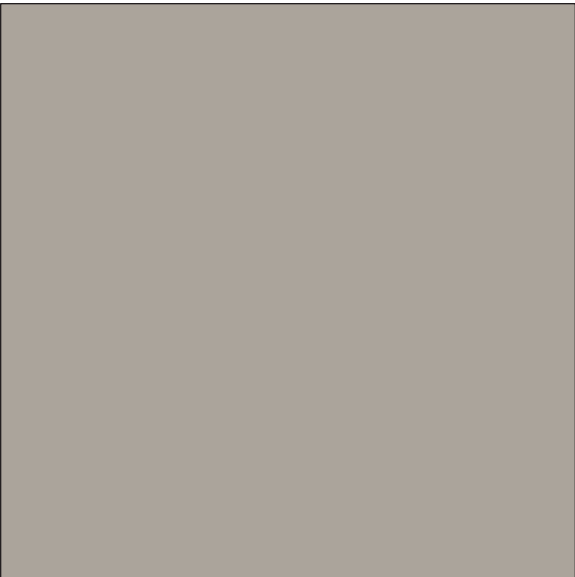




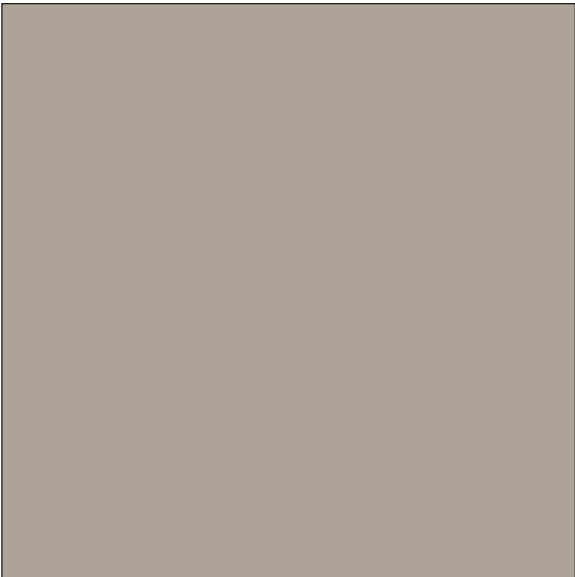
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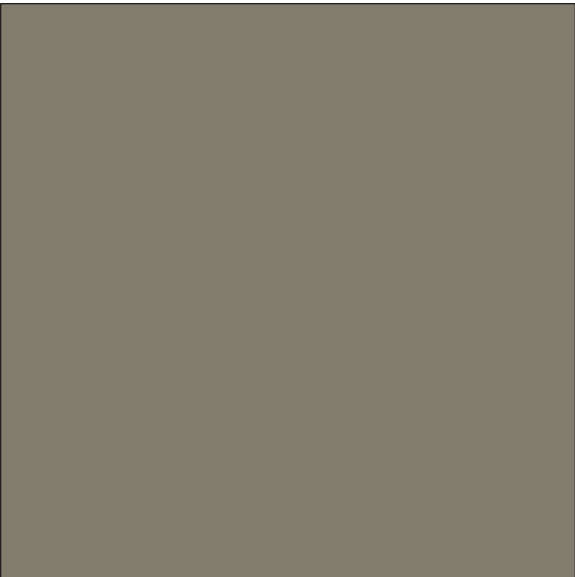
BRICK 1 - ACME - MUSHROOM BROWN



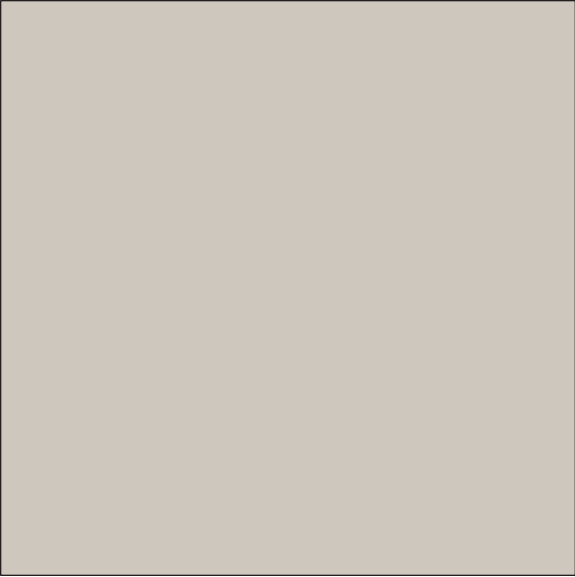
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SW 7024 FUNCTIONAL GRAY



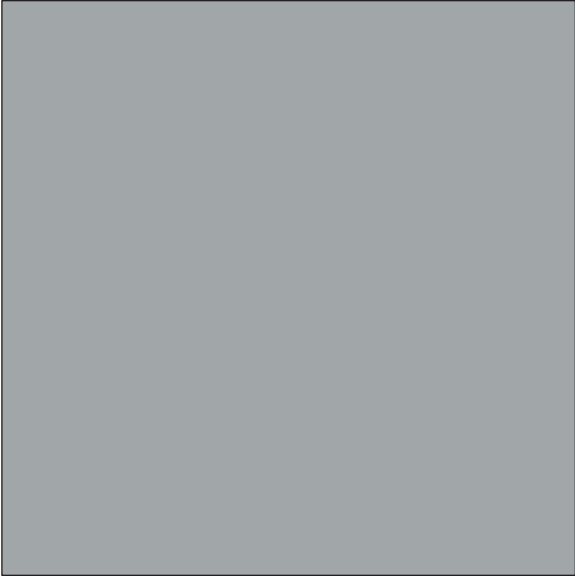
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SW 6038 MEGA GRIEGE



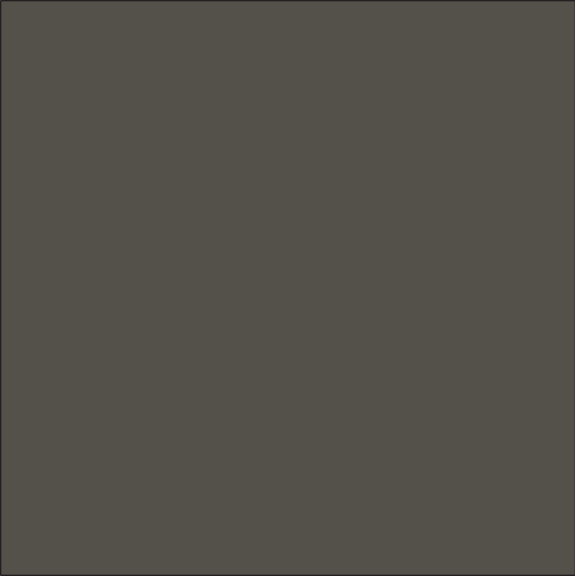
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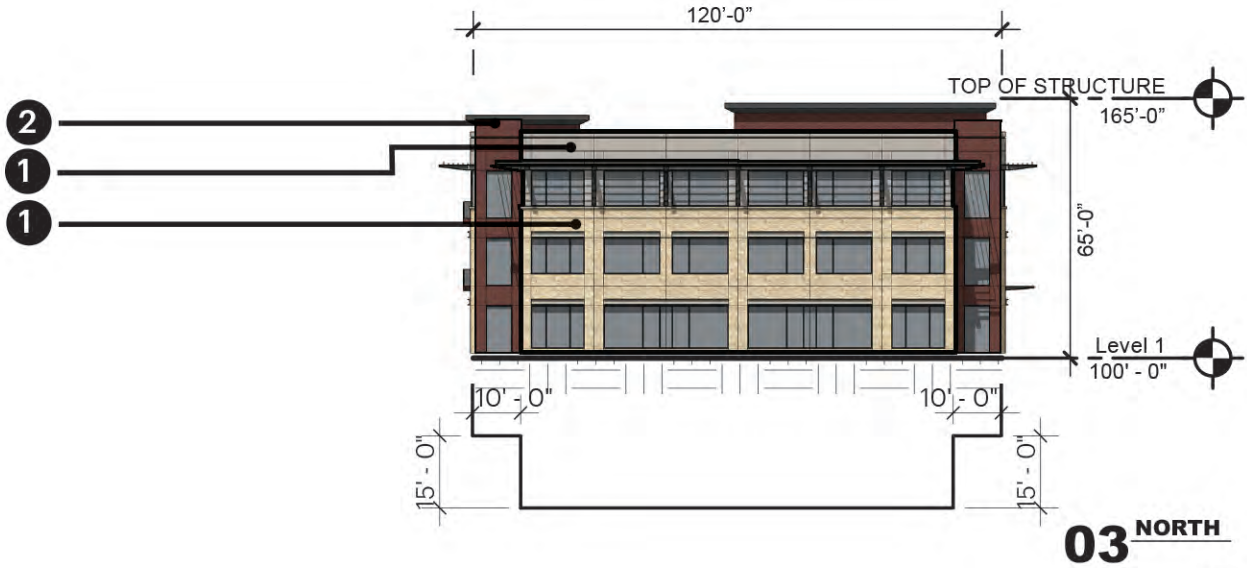
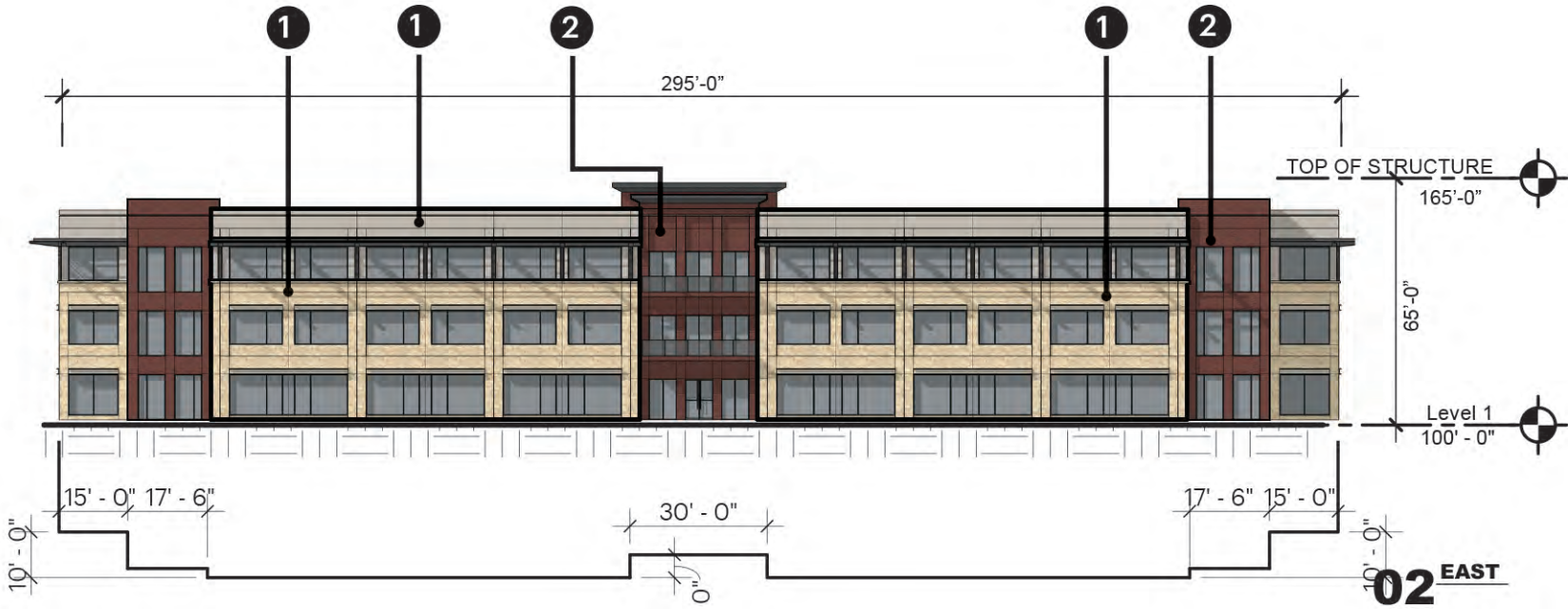
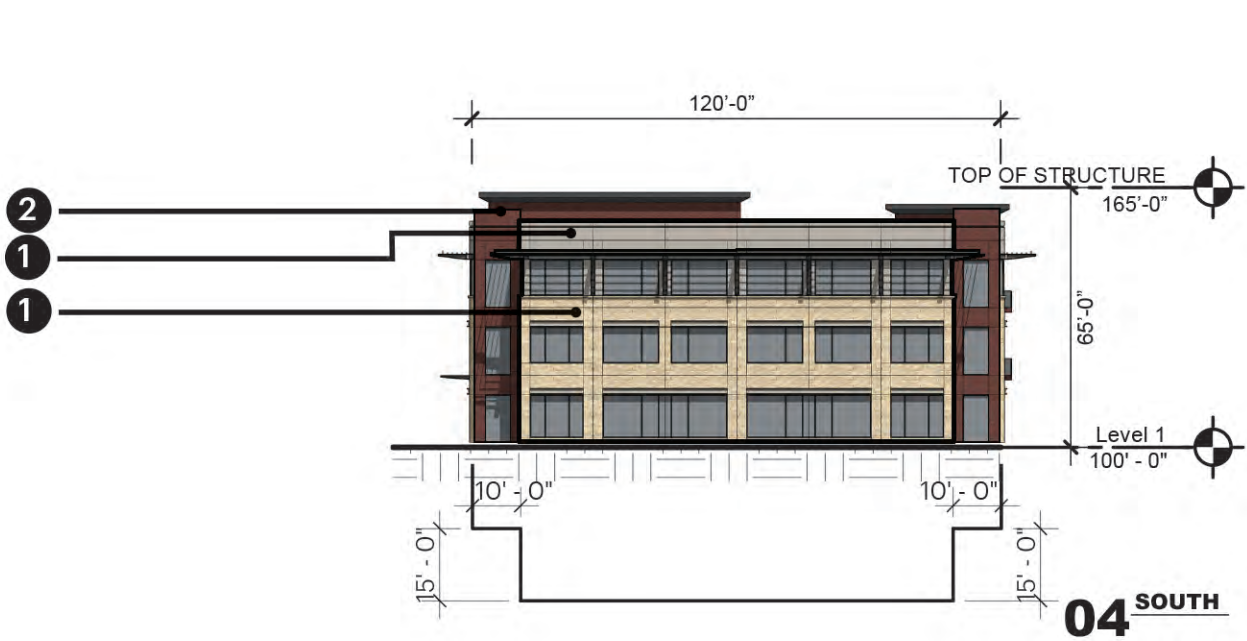
STUCCO 2-
SW 6063 ALPACA



8” SIDING-
SW 7073 NETWORK GRAY



RAILING, DOORS, WINDOW AND DOOR TRIM,
METAL AWNING AND METAL TRIM AND MTL.COP-
ING/FLASHING- SW 7048 URBANE BRONZE



		North	South	East	West
1.	Total Facade S.F.	5,357 SF	5,357 SF	12,903 SF	13,115 SF
2.	Facade S.F. (exclusive of doors and windows)	3,139 SF	3,139 SF	7,371 SF	7,493 SF
3.	Doors and Windows S.F.	2,218 SF	2,218 SF	5,532 SF	5,632 SF
4.	Primary Masonry totals (Min. 80%)	3,139 SF & 100% of 2	3,139 SF & 100% of 2	7,371 SF & 100% of 2	7,493 SF & 100% of 2
	• Brick s.f. (as applicable)	660 SF & 20% OF 4	660 SF & 20% OF 4	1,742 SF & 24% OF 4	1,894 SF & 25% OF 4
	• Stone s.f. (as applicable)	2,659 SF & 80% OF 4	2,659 SF & 80% OF 4	5,629 SF & 76% OF 4	5,629 SF & 75% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				

1 STONE VENEER 2 BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

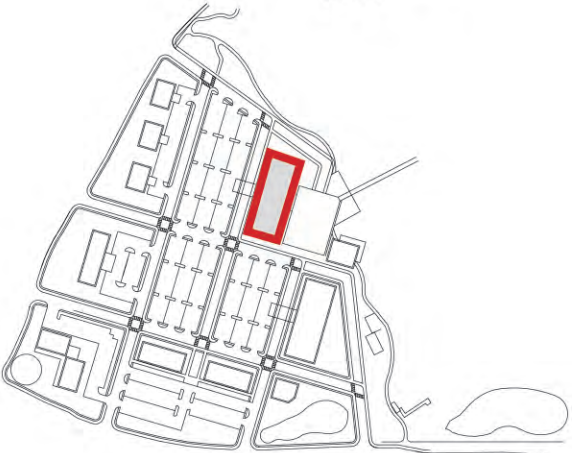
LAKESWOOD

FLOWER MOUND, TEXAS #00253.010

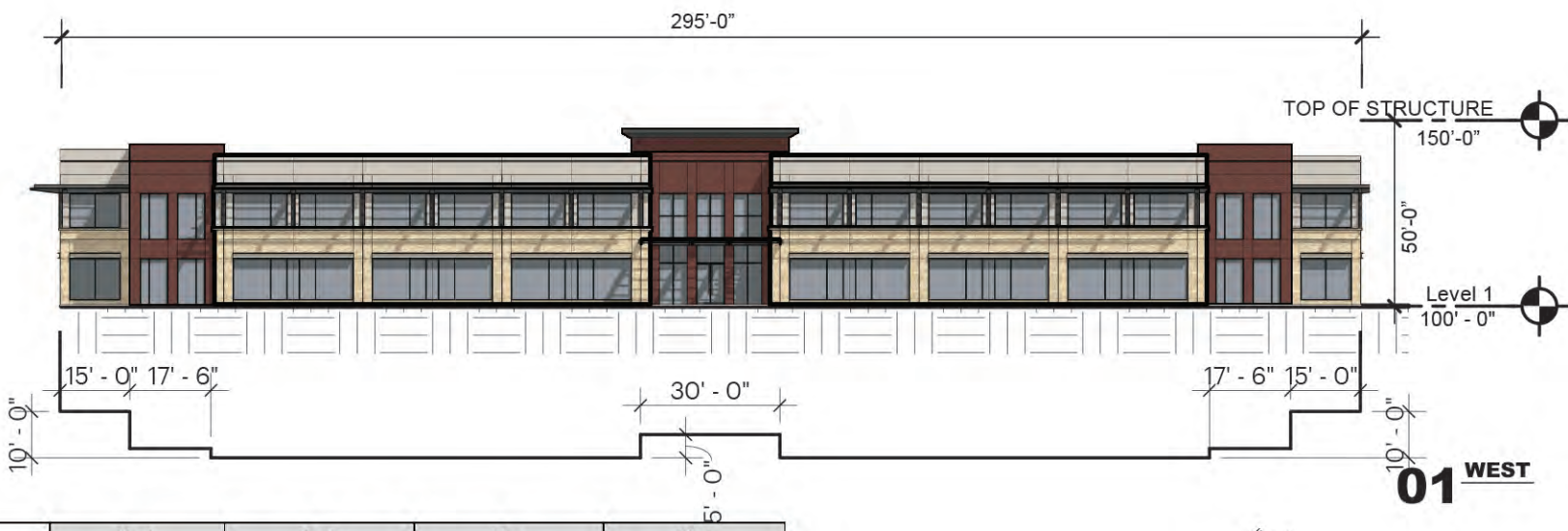
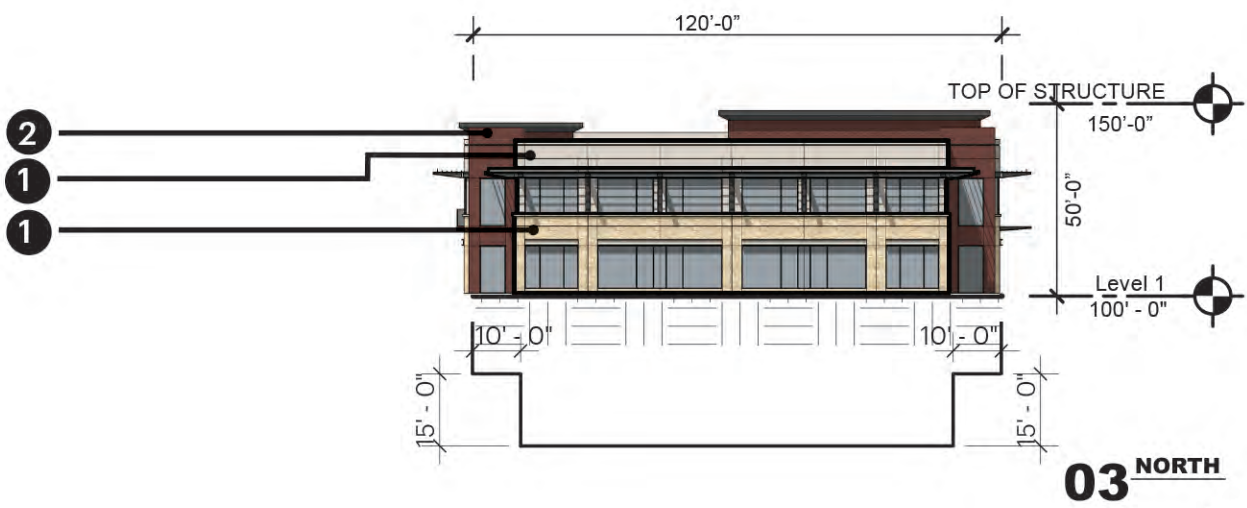
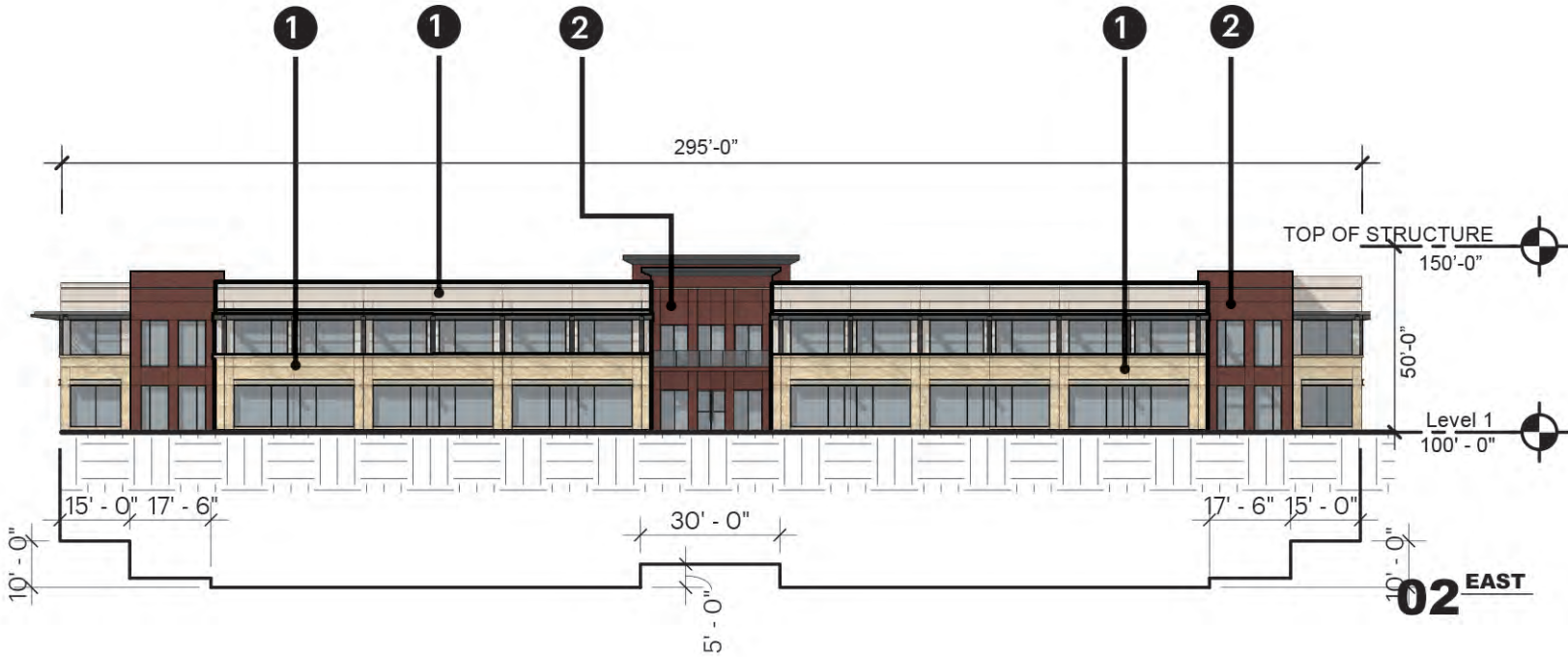
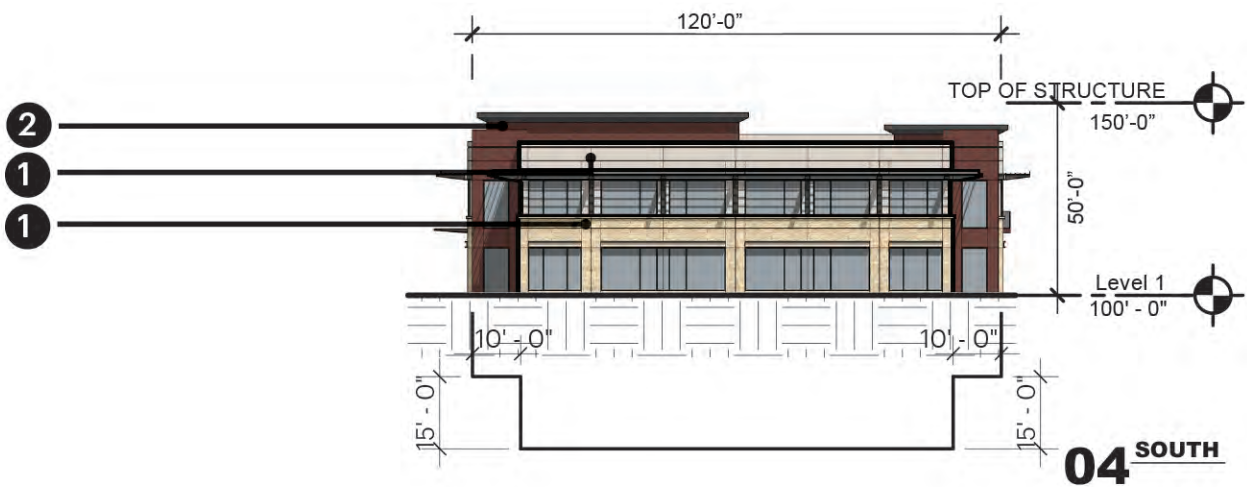
LINCOLN
PROPERTY
COMPANY

HKS

MAY 9, 2019



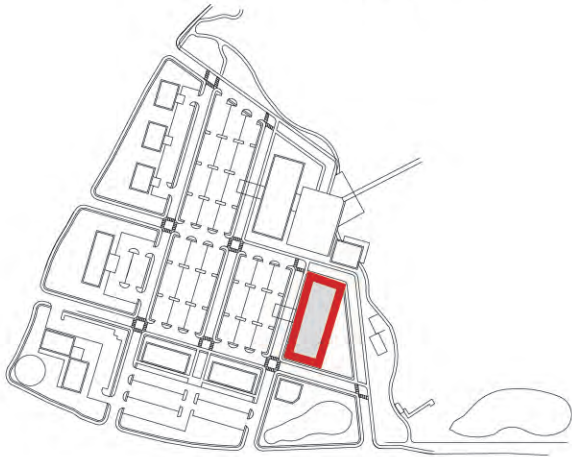
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OFFICE 1 ELEVATIONS

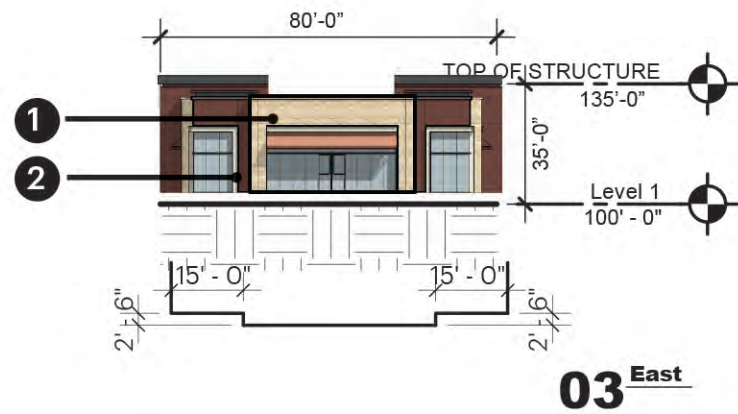
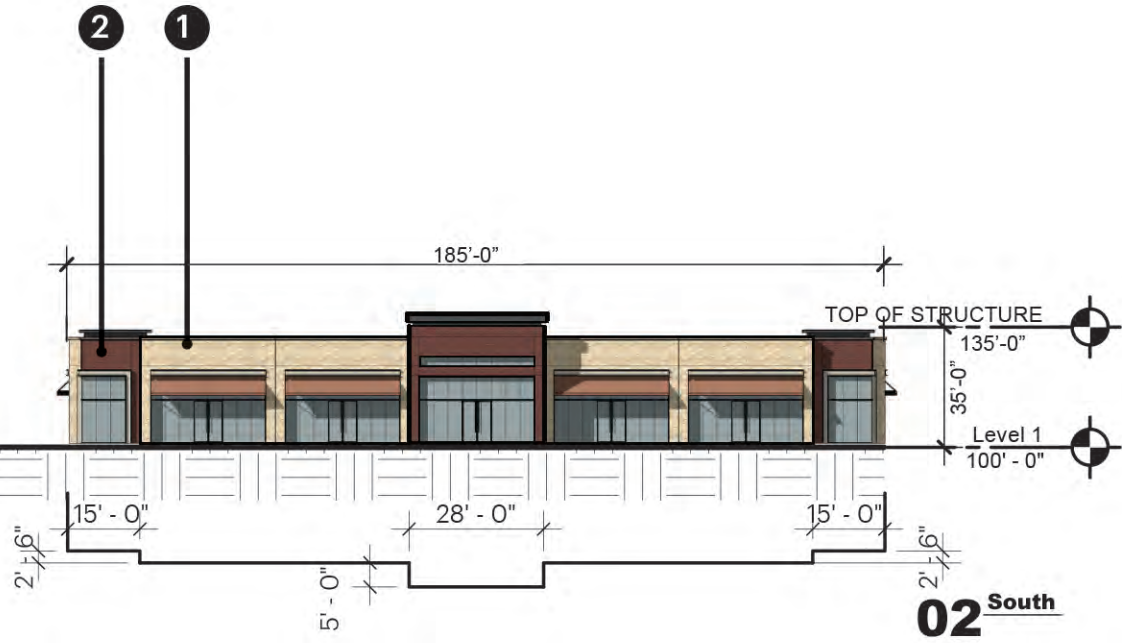
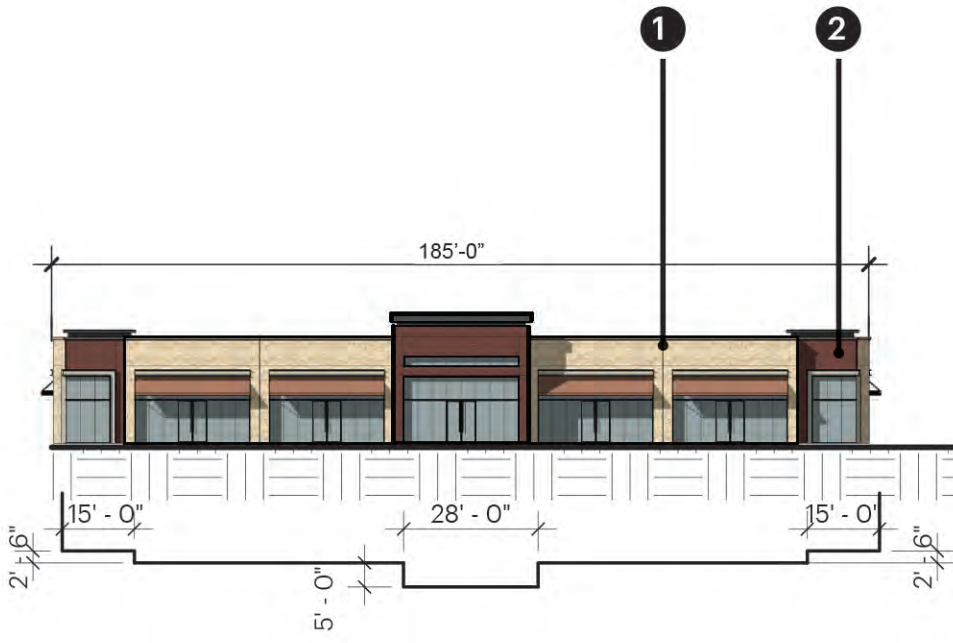
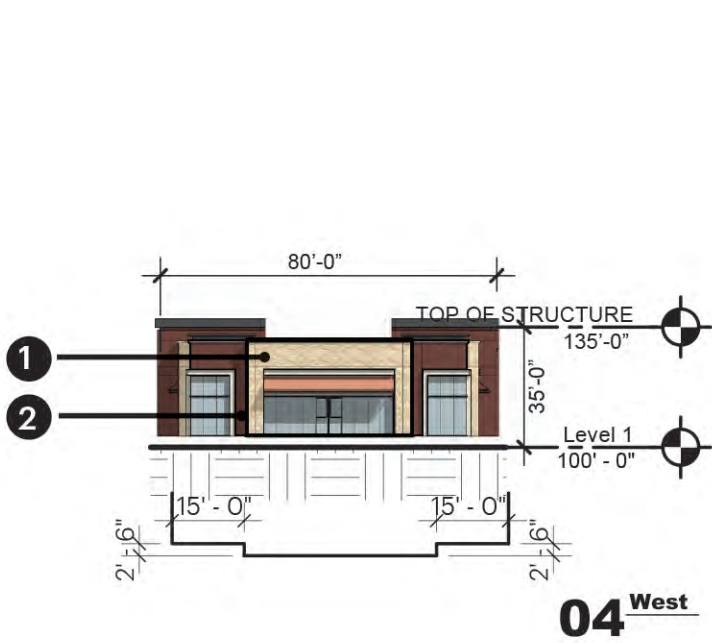


- 1
- STONE VENEER
- 2
- BRICK
- 3
- TILT WALL

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	3,826 SF	3,826 SF	8,976 SF	9,188 SF
2.	Facade S.F. (exclusive of doors and windows)	2,262 SF	2,262 SF	5,107 SF	5,233 SF
3.	Doors and Windows S.F.	1,564 SF	1,564 SF	3,869 SF	3,955 SF
4.	Primary Masonry totals (Min. 80%)	2,262 SF & 100% of 2	2,262 SF & 100% of 2	5,107 SF & 100% of 2	5,233 SF & 100% of 2
	• Brick s.f. (as applicable)	500 SF & 22% OF 4	500 SF & 22% OF 4	1,288 SF & 25% OF 4	1,410 SF & 26% OF 4
	• Stone s.f. (as applicable)	1,762 SF & 78% OF 4	1,762 SF & 78% OF 4	3,819 SF & 75% OF 4	3,823 SF & 74% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				

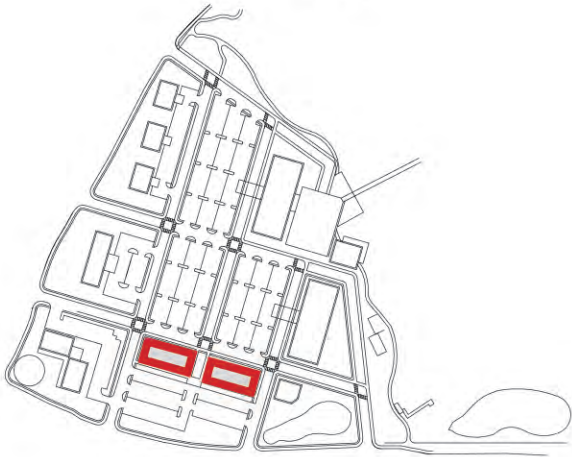


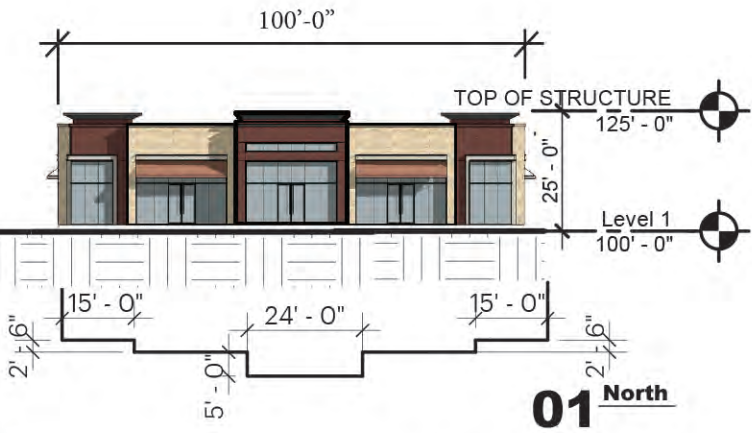
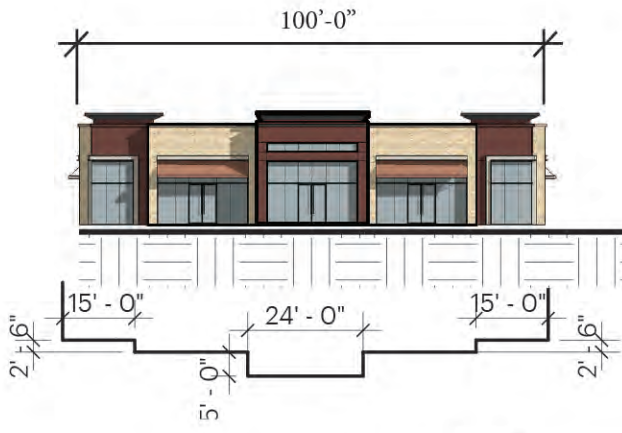
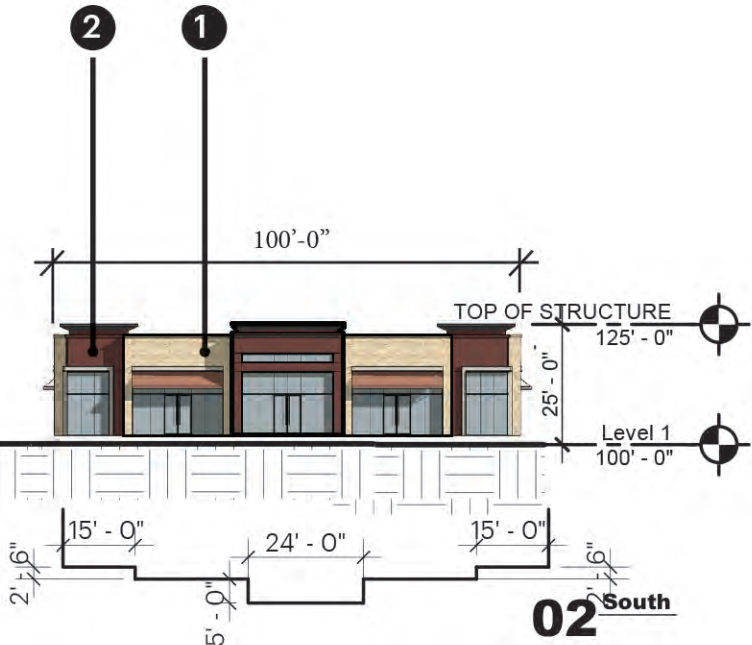
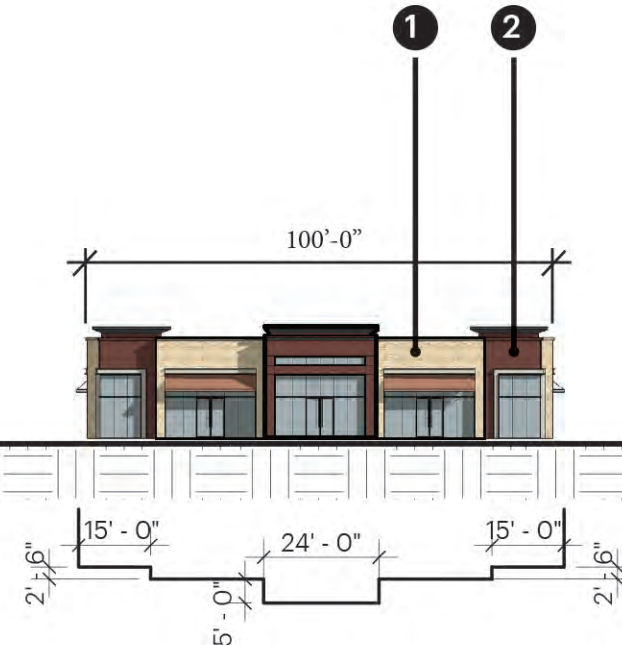
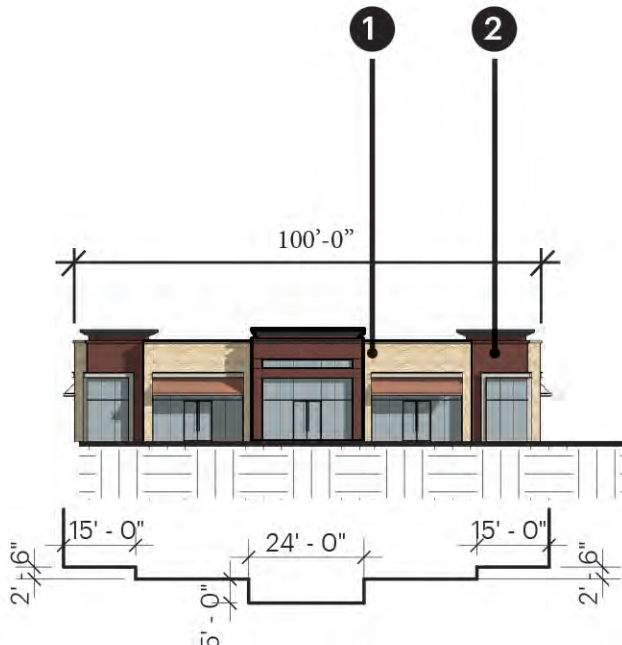
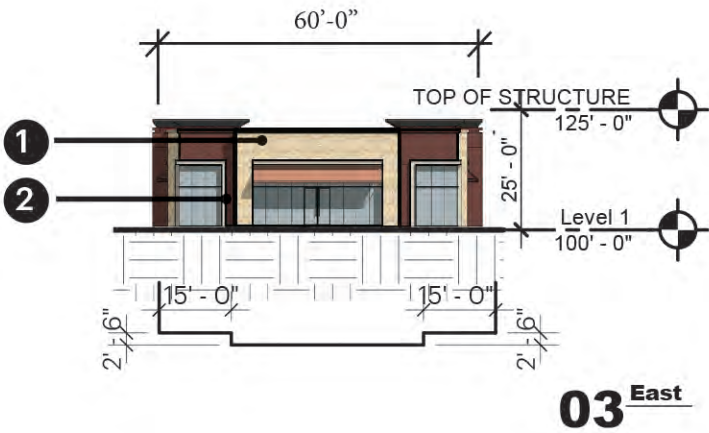
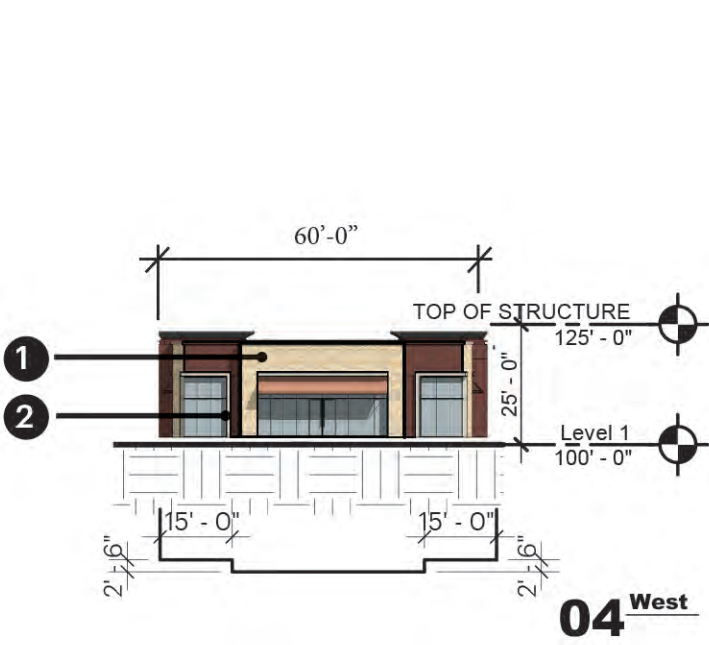


- 1 STONE VENEER 2 BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	3,803 SF	3,803 SF	1,614 SF	1,614 SF
2.	Facade S.F. (exclusive of doors and windows)	1,815 SF	1,815 SF	858 SF	858 SF
3.	Doors and Windows S.F.	1,988 SF	1,988 SF	756 SF	756 SF
4.	Primary Masonry totals (Min. 80%)	1,815 SF & 100% of 2	1,815 SF & 100% of 2	858 SF & 100% of 2	858 SF & 100% of 2
	• Brick s.f. (as applicable)	336 SF & 19% OF 4	336 SF & 19% OF 4	336 SF & 39% OF 4	336 SF & 39% OF 4
	• Stone s.f. (as applicable)	1,479 SF & 81% OF 4	1,248 SF & 81% OF 4	522 SF & 61% OF 4	522 SF & 61% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				

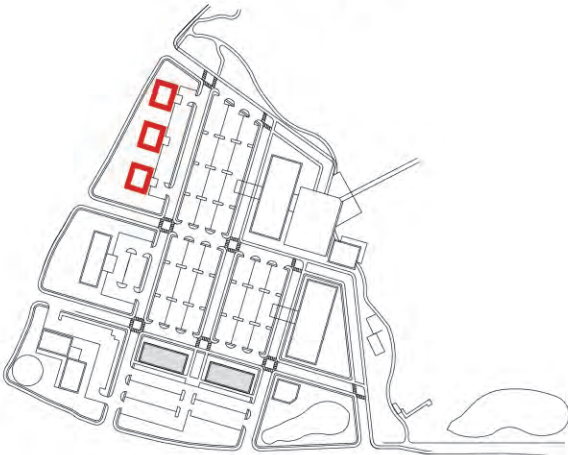




- 1 STONE VENEER 2 BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	1,393 SF	1,393 SF	2,080 SF	2,080 SF
2.	Facade S.F. (exclusive of doors and windows)	697 SF	697 SF	1,022 SF	1,022 SF
3.	Doors and Windows S.F.	696 SF	696 SF	1,058 SF	1,058 SF
4.	Primary Masonry totals (Min. 80%)	697 SF & 100% of 2	697 SF & 100% of 2	1,022 SF & 100% of 2	1,022 SF & 100% of 2
	• Brick s.f. (as applicable)	282 SF & 40% OF 4	282 SF & 40% OF 4	282 SF & 27% OF 4	282 SF & 27% OF 4
	• Stone s.f. (as applicable)	415 SF & 60% OF 4	415 SF & 60% OF 4	740 SF & 73% OF 4	740 SF & 73% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				



0' 25' 50' 100'
PAD OFFICE ELEVATIONS



**STONE - CORONADO 8”
CLASSIC JERUSALEM
SAHARA BEIGE**



BRICK 1 - ACME



**METAL ACCENTS - BRUSHED
STAINLESS STEEL**



**SMOOTH CREAM STONE -
STONE SOURCE**



**METAL PANEL AT STONE TO
MATCH**

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS
WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.

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- A. DEFINITIONS
- B. USE STANDARDS
- C. BUILDING STANDARDS
- D. MULTIFAMILY GROUND FLOOR DESIGN
- E. LANDSCAPE, HARDSCAPE, & SCREENING STANDARDS
- F. ACCESS PARKING AND LOADING STANDARDS
- G. TRAIL, SIDEWALK, & CROSSWALK STANDARDS
- H. OPEN SPACE
- I. RESIDENTIAL ARCHITECTURAL STANDARDS
- J. NON-RESIDENTIAL ARCHITECTURAL STANDARDS
- K. EXCEPTIONS & WAIVERS
- L. MISCELLANEOUS STANDARDS
- M. PARKLAND DEDICATION AND PARK DEVELOPMENT FEE STANDARDS
- N. SIGNAGE
- O. ADMINISTRATION

APPENDIX A: TREE PLANTING RECOMMENDATIONS

APPENDIX B: LIST OF EXHIBITS

Exhibit “B”**Development Standards****Planned Development District - 163 (PD-163)****Lakewood**

The development on the property comprising approximately 122.1 acres of land within the corporate limits of the Town of Flower Mound (“Town”) shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

Development of the Campus Commercial District area designated on Exhibit “C”, comprised of approximately 122.1 acres, shall be in compliance with all regulations applicable to the Campus Commercial District (CC) uses contained in the Town’s Land Development Regulations as amended, except as otherwise provided in this Ordinance.

A) DEFINITIONS.

- 1) DWELLING, SINGLE-FAMILY DETACHED means a single dwelling unit, other than a mobile home, located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract, and may be platted with required alley access or without alley access.
- 2) EXTENDED STAY HOTEL means a type of hotel establishment designed to accommodate extended stays, with financial consideration being calculated on a nightly, weekly or monthly basis.
- 3) NONRESIDENTIAL USES means any Permitted Use, Specific Use, or Temporary Use in this Planned Development, exclusive of the following:
 - I) Dwelling, single-family detached.
 - II) Multifamily.

B) USE STANDARDS.

- 1) Permitted Uses. Except as provided in this section, uses listed as Permitted Uses in the Campus Commercial District (CC) in the Town’s Zoning Ordinance may be permitted in this Planned Development.
 - (a) The following additional uses are permitted in this Planned Development.
 - (i) Dwelling, single-family detached.
 - (ii) Multifamily.
 - (iii) Retail, single tenant (25,000 SF but less than 50,000 SF).
 - (iv) Retail, single tenant (50,000 SF but less than 75,000 SF).
 - (v) Drugstore or pharmacy.
 - (vi) Health club or athletic club.
 - (vii) Office-Showroom /Warehouse
- 2) Specific Uses. Except as provided in this section, the uses listed as Specific Uses in Campus Commercial District (CC) in the Town’s Zoning Ordinance, may be permitted in this Planned Development with a Specific Use Permit (SUP) approved by the Town Council.

I) The following specific uses are permitted in this Planned Development subject to approved SUP:

(a) Restaurant, drive-through window

3) Temporary Uses. The uses listed as Temporary Uses in the Campus Commercial District (CC) in the Town's Zoning Ordinance may be permitted in this Planned Development only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of the Land Development Code, "Temporary Use Permits".

4) Prohibited Uses. The following uses are prohibited in this Planned Development:

I) Extended Stay Hotel

C) BUILDING STANDARDS.

1) Setbacks.

I) Long Prairie Road.

(a) Between Silveron Boulevard and Drive 8 (as labeled in Exhibit C).

(i) Minimum building setback shall be 25 feet.

(ii) Except as provided in this subparagraph, off-street parking is prohibited within 25 feet of the property line.

(iii) No off-street parking is permitted within 100 feet of the intersection with Silveron Boulevard.

(b) East of Drive 8.

(i) Minimum building setback shall be 70 feet.

(ii) Off-street parking is prohibited within 25 feet of the property line.

II) Silveron Boulevard.

(a) Between Long Prairie Road and Drive 7 as labeled in Exhibit C).

(i) Except as provided in this subparagraph, no minimum building setback.

(ii) Except as provided in this subparagraph, off-street parking is prohibited within 25 feet of the property line.

(iii) No off-street parking is permitted within 100 feet of the intersection with Long Prairie Road.

(b) Between Drive 7 and Lakeside Parkway.

(i) Except as provided in this subparagraph, build-to-line shall be 25 feet. A minimum of 60% of a building's front façade shall be located within the build-to line.

(ii) Except as provided in this section, off-street parking is prohibited within 25 feet of the property line.

(c) Silveron Boulevard Thoroughfare Plan Amendment. Upon Town Council approval of a Thoroughfare Plan Amendment to revise the street profile for Silveron Boulevard providing for on-street parking, the Director of Development Services shall have the authority to consider a revised build-to-line or a revised setback during site plan application for any building fronting the street.

III) Lakeside Parkway.

(a) There shall be a minimum building setback of 60 feet.

(b) Off-street parking is prohibited within 25 feet of the property line.

IV) Additional setbacks not regulated by Section C (1) (a), (b), and (c) of this ordinance.

(a) Dwelling, single-family detached (with required alley access).

- (i) Front yard. Except as provided in this paragraph, the minimum front yard setback shall be 15 feet.
 - (ii) Porches may encroach a maximum of 8 feet into the front yard.
 - (iii) Side yard.
 - (iv) There shall be no minimum side yard setback on one side of the lot and a minimum side yard setback of five feet on the other side of the lot.
 - (v) Rear yard. Except as provided in this paragraph, the minimum rear yard setback shall be 18 feet, subject to required installation of automatic remote garage door openers.
- (b) Dwelling, single-family detached (without required alley access).
 - (i) Front yard. Except as provided in this paragraph, the minimum front yard setback shall be 20 feet.
 - ◆ Porches may encroach a maximum of 10 feet into the front yard.
 - (ii) Side yard. The minimum side yard setback shall be 5 feet.
 - (iii) Rear yard. The minimum rear yard setback shall be 15 feet.
- (c) Multifamily.
 - (i) Front yard. There shall be no minimum front yard setback.
 - (ii) Side yard. There shall be no minimum side yard setback.
 - (iii) Rear yard. There shall be no minimum rear yard setback.
- (d) Nonresidential Uses.
 - (i) Front yard. There shall be no minimum front yard setback.
 - (ii) Side yard. There shall be no minimum side yard setback.
 - (iii) Rear yard. There shall be no minimum rear yard setback.
- V) Minimum lot area per dwelling or dwelling unit.
 - (i) Dwelling, single-family detached (with required alley access).
 - ◆ The minimum lot area per dwelling shall be 3,000 square feet.
 - (ii) Dwelling, single-family detached (without required alley access).
 - ◆ The minimum lot area per dwelling shall be 5,000 square feet.
 - (iii) Multifamily.
 - ◆ The minimum lot area per dwelling unit shall be 920 square feet.
 - (iv) Nonresidential uses.
 - ◆ There shall be no minimum lot area.
- VI) Minimum lot width.
 - (a) Dwelling, single-family detached (with required alley access).
 - (i) The minimum lot width shall be 30 feet.
 - (b) Dwelling, single-family detached (without required alley access).
 - (i) The minimum lot width shall be 50 feet.
 - (c) Multifamily.
 - (i) There shall be no minimum width.
 - (d) Nonresidential uses.
 - (i) There shall be no minimum lot width.
- VII) Minimum floor area per unit.
 - (a) Dwelling, single-family detached (with required alley access).
 - (i) The minimum floor area per dwelling unit shall be 1,300 square feet.

- (b) Dwelling, single-family detached (without required alley access).
 - (i) The minimum floor area per dwelling unit shall be 1,800 square feet.
- (c) Multifamily.
 - (i) The minimum floor area per dwelling unit shall be 520 square feet.
- (d) Nonresidential uses.
 - (i) There shall be no minimum floor area.

VIII) Maximum Lot Coverage.

- (a) Dwelling, single-family detached (with required alley access).
 - (i) The maximum lot coverage shall be 70 percent.
- (b) Dwelling, single-family detached (without required alley access).
 - (i) The maximum lot coverage shall be 70 percent.
- (c) Multifamily.
 - (i) The maximum lot coverage shall be 60 percent.
- (d) Nonresidential uses.
 - (i) The maximum lot coverage shall be 80 percent.

IX) Maximum floor area ratio.

- (a) Dwelling, single-family detached (with required alley access).
 - (i) There shall be no maximum floor area requirement.
- (b) Dwelling, single-family detached (without required alley access).
 - (i) There shall be no maximum floor area requirement.
- (c) Multifamily.
 - (i) There shall be no maximum floor area requirement.
- (d) Nonresidential uses.
 - (i) There shall be no maximum floor area requirement.

X) Maximum Height.

- (a) Dwelling, single-family detached (with required alley access).
 - (i) The maximum height of buildings and structures shall be three stories or 35 feet.
- (b) Dwelling, single-family detached (without required alley access).
 - (i) The maximum height of buildings and structures shall be three stories or 35 feet.
- (c) Multifamily.
 - (i) Except as provided in this paragraph, the maximum height of occupied buildings and structures shall be five stories or 70 feet.
 - (ii) For a parking structure that provides required off-street parking for a multifamily use, the maximum height of the parking structure shall be six stories or 70 feet.
- (d) Nonresidential uses.
 - (i) The maximum height of buildings and structures shall be ten stories or 120 feet.

D) MULTIFAMILY GROUND FLOOR DESIGN.

- 1) For purposes of this paragraph, a surface parking lot that is either a platted lot or part of a platted lot is not considered an access easement.
- 2) A minimum of 50 percent of the ground floor units of each building façade fronting a public street or access easement shall have individual entries accessed directly from the sidewalk.
- 3) Sidewalk entries to individual units shall provide at least one of the following design components:
 - l) Stoop.

- II) Step(s).
 - III) Landing.
 - IV) Patio with perimeter railing or low wall, not to exceed 4 feet above the patio floor.
 - V) Awning, canopy, or marquee (minimum seven-foot clearance above sidewalk)
 - VI) Planter
 - 4) Stoops, steps, patios, planters, retaining walls, benches, pots, raised planters, sculptures, cabanas and other decorative landscape items may be located within the required setback with no projection limitation, subject to maintaining a minimum unobstructed sidewalk width of four feet.
 - 5) Transformers and other utility equipment located in front of the building shall be screened from view from the public right-of-way, and from public open spaces by screen walls or landscape screening.
 - 6) Balconies, bay windows, awnings, signs, and entryways affixed to the building or part of the foundation may project up to five feet into required setback with a minimum of eight feet of clearance above the sidewalk.
 - 7) If during site plan application, it is determined that existing or proposed utility placement, easements, or other engineering constraints prevent compliance with 2(d) for any unit(s), the Director of Planning will make a determination and recommend options for alternative compliance with this subparagraph.
 - 8) Except for ground level units that provide direct access from the sidewalk, all other dwelling units shall be accessed from an interior corridor.
 - 9) A minimum of 2,000 SF per phase, shall be allocated to public, non-residential ancillary uses.
- E) LANDSCAPE, HARDSCAPE, & SCREENING STANDARDS.**
- 1) Street Buffer Setbacks. Refer to Section C.1 for minimum street setbacks. The area between the property line and the setback shall constitute the arterial buffer. Buffers along Silveron Boulevard shall be either 25' in front of parking lots or 0' in front of buildings.
 - 2) Street Buffer Landscaping.
 - I) Long Prairie Road.
 - (a) Tree plantings shall be provided at a ratio of one tree for each 30 linear feet of the buffer.
 - (b) The Town Entrance Landscape Design, including the curvilinear planting edge, as depicted in the Town's Urban Design Master Plan, shall be required along Long Prairie Road.
 - II) Silveron Boulevard.
 - (a) Between Silveron Boulevard and any surface parking:
 - (i) Tree plantings shall be provided at a ratio of one tree for each 30 linear feet of the buffer.
 - (ii) Subject to approval by the Director at the time of site plan submittal, required tree plantings may be equally spaced or clustered.
 - (b) Between Silveron Boulevard and any building that does not have any surface parking between the street and the building, no additional trees shall be required.
 - III) Lakeside Parkway.
 - (a) Due to existing slope and easement constraints, no additional street buffer plantings within the existing drainage easement shall be required.

3) Trees.

- I) Street trees may not be located within the public right-of-way without the approval of the Town's Public Works Department, and if permitted, shall be planted in accordance with the recommendations and specifications of a professional arborist, subject to approval by the Director.
- II) Public street Rights-of-way serving residential lots shall have a community lot, owned by the residential association, not less than 15 feet in width, located between the curb and the front lot line. Within the community lot, trees shall be planted at the rate of at least 1 tree per lot.
- III) Amended soils shall be utilized for each tree required as provided in Appendix A herein.
- IV) No trees are required within the FM 2499 (Long Prairie Road) ROW.
- V) Parking Lot Trees.
 - (a) Except as provided in subsection e of this paragraph, a minimum of one tree for each 20 parking spaces shall be provided.
 - (b) Except as provided in subsection e of this paragraph, each parking space shall be located within 50 feet of a tree.
 - (c) Parking area trees that are required to be located within 50 feet of a parking space and are located within the limits of underground detention shall be located elsewhere within the same parking lot area. The final location of any relocated tree shall be determined during site plan approval.
 - (d) Parking lot trees shall be planted in landscape islands, each of which contains a minimum of 160 square feet.
 - (e) If a parking lot island is encumbered by utility easements or utility equipment, trees may also be located elsewhere within the same parking lot area.
 - (f) Trees planted approximately 30 feet on center, in conformance with tree planting details on the Conceptual Landscape Plan in Exhibit C, shall be required in private parking lots consisting of a drive aisle with parallel parking adjacent to the curb.

4) Retaining walls.

- I) Retaining walls are limited to a maximum of 15 feet in height as measured from the finished grade at the bottom of the wall to the finished grade at the top of the wall.

5) Roundabout.

- I) The roundabout shall have one large tree of at least 8-inch caliper, or a group of at least 3 trees of at least 4-inch caliper, planted in the center of the roundabout as a visual focal point.
- II) The species selection, shall be determined by the Developer's arborist, subject to Town approval.

6) Dwelling, single-family detached.

- I) Except as provided in this paragraph, the required tree planting requirements as provided in Section 94-65 of the Town Code shall apply to this planned development.
- II) Planting of required trees is not required on the lot, provided that trees are planted in accordance with paragraph E.3.II.

7) Disturbed Areas.

- l) Landscaping of disturbed and re-graded areas within Public Open Spaces, including detention areas and areas adjacent to retaining walls, shall be re-established and maintained with turf and trees. The following standards shall apply.
 - (a) Disturbed areas of 5% slope or less, turf, hydro-mulch, or drought resistant grasses shall be established in the disturbed areas and irrigated with rotors near the top of the bank of the detention basins, or irrigated as approved by the Town.
 - (b) Disturbed areas greater than 5% slope shall be planted with trees at the rate of ten trees per acre. Ground shall be covered with turf, hydro-mulch, native grasses, ground cover plantings, or mulch. Subject to Town approval of the Landscape Plan, whips may be planted at the rate of 100 whips per acre in lieu of ten trees per acre.
 - (c) Trees planted in disturbed areas, three-inch caliper or greater, shall qualify for mitigation credits. .
- 8) Wet Detention
 - I) Except as provided in this paragraph, wet detention areas shall comply with Town standards.
 - II) Perimeter banks of a wet detention area shallower than a 4:1 slope shall be stabilized with vegetation, hydro-mulch, or aquatic plants to prevent erosion.
 - III) Perimeter banks exceeding 4:1 slope will be stabilized with stone retaining walls where visible to the public or grouted rip rap where not visible to the public.
 - IV) Pond health shall be maintained with aeration bubblers or fountains.
 - V) At least one detention pond shall have a fountain visible from Long Prairie Road.

F) ACCESS, PARKING, AND LOADING STANDARDS.

- 1) PARKING. Except as provided in this section, off-street parking shall be provided as outlined in the Town of Flower Mound Land Development Regulations. Parking for this development shall use the following standards:
 - I) Multifamily.
 - (a) Except as provided in this subparagraph, an average of one and one-half spaces for each dwelling unit or the minimum parking requirement for the following,
 - (b) A minimum of one space for each one-bedroom unit.
 - (c) A minimum of two spaces for each two bedroom and three-bedroom unit.
 - (d) Tuck-under parking spaces located within the multifamily building footprint shall count towards the required parking.
- 2) The development will be subject to an overall reciprocal easement agreement granting cross-access and cross-parking for the entire non-residential development. For purposes of this subparagraph, cross-parking shall include structured parking and podium parking. A copy of said agreement will be provided to the Town of Flower Mound with the Record Plat for the development.
- 3) On-street parking within the boundary of the Planned Development is permitted in the locations shown on Exhibit "C" and may be considered in required off-street parking calculations.
- 4) Surface Parking Lots.
 - I) Except as provided in this paragraph, surface parking areas shall be located behind buildings.
 - II) For Building Numbers 11 and 12, the location for surface parking lots shall be provided as shown on Exhibit "C".

5) Structured Parking.

- I) The Design of the parking structure shall incorporate materials, fenestrations, and other architectural features that are consistent with the building(s) which the parking serves, and shall include vertical elements such as reveals, projecting ribs and offsets and is applicable on all facades fronting public ROW's or public open spaces.
- II) Except for point(s) of ingress/egress, openings in the parking structure facade fronting a public right of way shall not exceed 60 percent of the total facade area for each level of parking and shall be designed in such a manner to screen headlights. Parking structure facades that do not front on public rights-of-way may use metal or cable railings in lieu of masonry walls.
- III) On all facades fronting public rights-of-way or public open spaces, elevators and stair shafts shall be topped with a gabled roof or other architectural accent. Exterior stairs are prohibited.
- IV) On all facades fronting public rights of way or public open spaces, any level of podium parking above street level shall not exceed 60 percent of the total facade with openings in the parking structure façade.
- V) Any ingress/egress to a parking structure or podium parking area shall not be visible from Long Prairie Road.
- VI) Multifamily Structured Parking shall comply with the standards above for all elevations not wrapped by buildings as shown in Exhibit E.

6) Access Management: The access drives from the perimeter arterial roadways shall comply with the Town's Access Management regulations with the sole exception of the emergency access drive on Silveron Boulevard. The emergency access drive on Silveron Boulevard connects to the designated fire lane which is closed to all public vehicular traffic, and shall not be counted as an access point for the purpose of calculating spacing of access drives.

- I) Internal Streets: Street sections (Type A, B, C, D, E, and F) for all internal streets and alleys are shown on the attached Exhibit C.
- II) For streets without striped on-street parking, the public ROW shall extend from back-of-curb to back-of-curb.
- III) For streets with striped on-street parking, the public ROW shall include only the travel lanes and shall exclude the on-street parking.
- IV) For residential alleys, the public ROW shall be a minimum of 17 feet and paving shall be a minimum 12 feet in width.
- V) For Mutual Access Easements, the public utilities shall be located in easements in accordance with the Town of Flower Mound Land Development Regulations.

7) Loading and waste areas.

- I) All loading areas must be designed so as to not be visible from Long Prairie Road, Lakeside Parkway, and Silveron Boulevard.
- II) Enclosed dumpster areas must be located as to not be visible from Long Prairie Road and Silveron Boulevard.

G) TRAIL, SIDEWALK, & CROSSWALK STANDARDS.

1) Sidewalks.

- I) Except as provided in this paragraph, sidewalks adjacent to streets shall have a minimum width of four feet and shall be paved with concrete.
- II) Lakeside Parkway.

- (a) The sidewalk extension within the south side of the Lakeside Parkway right-of-way shall have a minimum width of six feet and shall be paved with concrete.
- 2) Trails.
 - I) The network of trails and minimum trail requirements are located and identified on the Trail Map in Exhibit "C".
 - II) Town Multi-use Trail. The minimum eight-foot-wide regional trail generally parallel to FM 2499 shall comply with Town Trail Standards and shall be subject to a Public Access Easement.
 - III) Silveron Trail. The existing sidewalk and trail within the Silveron Boulevard right-of-way shall remain.
 - IV) Access Walkways.
 - (a) The minimum walkway width shall be six feet and shall be paved with concrete.
 - (b) Exceptions to the paving standard may be permitted by the Director of Planning through the Site Plan application process.
 - (c) The Access Walkways shall be subject to a public access easement.
 - V) Auxiliary Trails.
 - (a) The minimum walkway width shall be six feet, shall be constructed with all-weather paving, and shall be required to connect to the generally flat areas of the detention basins.
 - (b) The Auxiliary Trails shall be subject to a public access easement.
 - VI) Fire Lane Trail.
 - (a) The minimum walkway width shall be 12 feet, subject to the review and approval of the Fire Department.
 - (b) The Trail shall be subject to a public access easement.
 - VII) Nature Trails.
 - (a) A nature trail shall be located within the northern portion of OS-4, within the Corps Mitigation Easement.
 - (b) The minimum trail width shall be four feet, with a natural surface, as constructed as close to existing grade as possible, in accordance with the restrictions of the Corps Mitigation Easement.
 - (c) The overall length shall be no less than 500 linear feet.
 - (d) Final trail design shall be approved during the site plan review for Phase 2 of the Multifamily development.

H) OPEN SPACE.

- 1) Public Open Space
 - I) All Public Open Space shall generally be located where shown on Exhibit C, and shall be subject to a Public Access Easement.
 - II) The minimum furnishings and amenity requirements for each individual Public Open Space are identified in Exhibit C.
- 2) Private Open Space
 - I) Private Open Space shall not be open to the general public and shall be privately owned and privately maintained. This shall include amenities for the exclusive use of the Multifamily or Single-Family residents.

- 3) Open Space Listing: The following list of Open Spaces outlines the minimum requirements for each of the proposed Open Spaces and parks proposed for the Lakewood Planned Development District. The list shall be used in conjunction with the Concept Plan in Exhibit C.
 - I) A large number of trees are required for the mitigation of Specimen Trees, estimated to be approximately 648 trees. It is the intent of the development to mitigate on-site and to plant the required trees in the public open spaces, common areas, and commercial amenities.
 - II) All proposed Open Spaces shall be privately owned and privately maintained.
 - III) The acreage identified in each open space is an estimate based on current information. The final acreage may vary as much as 20% from the individual acreage listed, but the total of all open space shall total at least 34 acres. Each Site Plan submittal shall include a tabulation of the running total of the acreage of public open space.
- 4) OS-1: Acreage Approximately 0.6 acres
 - I) Park Type: Landmark Corner
 - II) This Landmark Corner is intended to serve as a landmark entryway for Flower Mound and to the Lakewood Planned Development District and act as a placemaking area through the use of restaurants tied to outdoor courtyards accessed by patrons of Lakewood venues. The site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the Town trail and the public trail network
 - (c) Refer to the PD documents for signage and perspectives of this area.
 - (d) 500 Square feet for outdoor courtyard
 - (e) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (f) 1,500 square feet for shrub, groundcover and seasonal color
 - (g) Minimum of (2) Seating benches and (1) trash receptacle.
 - (h) Irrigated
- 5) OS-2: Acreage approximately 0.9 acres
 - I) Park Type: Green
 - II) This Green anchors the west end of the pedestrian bridge and is intended to be an active pedestrian space for gathering with an urban feel. It shall accommodate large gatherings, exercise groups, food trucks and lake viewing. This space is adjacent to one of the lakeside restaurants, an office building and the existing lake. The site shall be professionally maintained. Please refer to PD document of open space maps and design perspectives of these areas.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) 5,000 square foot event lawn
 - (d) 1000 square feet for outdoor plaza with decorative hardscape
 - (e) 500 square foot minimum shade structure
 - (f) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.

- (g) 1,000 square feet for shrub, groundcover and seasonal color
 - (h) Signage: Minimum of 1 Park identification sign, (1) wayfinding markers, (1) trail marker
 - (i) Minimum of (8) Seating benches and (2) trash receptacles.
 - (j) Minimum of (8) bollard lights
 - (k) Irrigated
 - (l) Adjacent to proposed restaurant patio
- 6) OS-3: Acreage: approximately 0.9 acres
- I) Park Type: Lawn
 - II) This Lawn is intended to be an active pedestrian space for gathering that has an urban feel, but softer with more turf and less paving than OS-2. This space is adjacent to one of the lakeside restaurants, office buildings and existing lake. The site will be professionally maintained. Please refer to PD document of open space maps and design perspectives of these areas.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the trail network
 - (c) 15,000 square foot event lawn
 - (d) Minimum 500 square feet for outdoor plaza with decorative hardscape, including colored or stamped concrete
 - (e) Minimum 500 square foot shade structure
 - (f) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (g) Minimum of 1,500 square feet for shrub, groundcover and seasonal color
 - (h) Signage: Minimum of 1 Park identification sign, (1) wayfinding markers, (1) trail marker
 - (i) Minimum of (8) Seating benches and (2) trash receptacles (1) pet waste station
 - (j) Minimum of (8) bollard lights in lawn
 - (k) Irrigated
 - (l) Adjacent to proposed restaurant patio
- 7) OS-4: Acreage: approximately 16.1 acres
- I) Park Type: Natural Open Space
 - II) This natural open space is intended to be publicly accessed by Flower Mound residents to enjoy the tremendous asset of the existing lake. This space ties together all portions of the Lakewood Planned Development District. The site will be a combination of manicured and natural areas based on the existing character of the land surrounding the lake. Please refer to PD document of open space plans and images of this area. A portion of OS-4 is subject to a conservation easement by the Army Corps of Engineers.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network with continuous concrete trail around the lake. Refer to open space and trail plan for trail general location, types and sizes of various trails.
 - (c) Bollard lighting for the proposed trail at the minimum ratio 1 light per 250 feet. Bollards will be placed around the natural playground and restaurants plazas on the west side of the project.

- (d) Pedestrian bridge, 8' wide, connects OS-5 and O-S2. This bridge will include string lights and gateway columns on each end to make the bridge the centerpiece of the Lakewood Planned Development District. The terminus of each plaza will define both ends of the bridge.
 - (e) Public parking shall be located in three areas near the perimeter of OS-4.
 - (f) Playground placed in a natural setting with a minimum 200 SF shade structure as shown in the proposed perspective
 - (g) Minimum of one overlook location with seating for lake viewing
 - (h) Minimum of 500 feet of nature trail on the north side of the park
 - (i) A minimum of 3 picnic tables on concrete pads
 - (j) Park benches or other seating spaced at least every quarter mile along the trail
 - (k) Trash receptacles and pet waste stations placed every half mile along trail and near picnic tables
 - (l) Signage: Minimum of 1 Park identification sign, 3 wayfinding markers, 2 educational maps and trail markers
 - (m) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (n) Irrigated manicured areas where deemed appropriate by developer's landscape architect within the southwest portion of the open space
 - (o) Lake Edge Condition: The standard for the condition of the lake edge shall conform to the following standards
 - (p) The southwestern portion of the lake, outside the Corps Mitigation Easement, shall have a mowed edge allowing pedestrian access to the majority of the lake edge.
 - (q) The northern and eastern portion of the lake, within the Corps Mitigation Easement, shall be cleaned to the extent permitted. The lake edge shall be mowed where possible and permitted and shall not be fenced.
- 8) OS-5: Acreage approximately 0.8 acres
- I) Park Type: Courtyard
 - II) This Courtyard anchors the east end of the pedestrian bridge. This space is a transition space designed with flexibility to accommodate the pedestrian and bike traffic merging in this area. It is intended to be a gathering area and transition into the Esplanade and can be used as a public picnic area or informal, outdoor work area. The site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Minimum 500 square feet of outdoor plaza with decorative hardscape, including colored or stamped concrete
 - (d) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (e) Minimum of 300 square feet for shrub, groundcover and seasonal color
 - (f) Signage: minimum of (1) directory map, (1) wayfinding markers, (1) trail marker
 - (g) Minimum of (4) Seating benches and (2) trash receptacles.
 - (h) Bike repair station

- (i) Minimum of (8) bollard lights
 - (j) Irrigated
- 9) OS-6: Acreage: approximately 0.6 acres
 - I) Park Type: Square
 - II) This Square, or Esplanade, is a wide linear open space, approximately 50' in width, connecting the single-family residential community to the commercial amenities and services. The intent of this space is to connect the western office, restaurants and retail population to the eastern residential side of the development over the pedestrian bridge. This linear open space will also act as a festival street that can be closed to traffic for community events and can be programmed for pop-up vendors, food trucks, art fairs and other events. The site shall be designed to accommodate tent setup. The site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Minimum of 500 square feet for outdoor plaza with decorative hardscape, including colored or stamped concrete
 - (d) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (e) 5,000 square feet of lawn or decomposed granite to accommodate tent setup
 - (f) On-street parking for public and for food truck access.
 - (g) Trees to be planted behind curbs with parallel parking in conformance with E.6.V.f.
 - (h) Minimum of 300 square feet for shrub, groundcover and seasonal color
 - (i) Minimum of (4) Seating benches and (2) trash receptacles.
 - (j) Street lighting
 - (k) String lights along esplanade for evening use.
 - (l) Minimum of (4) sets of al fresco dining tables.
 - (m) Irrigated
- 10) OS-7: Acreage: approximately 13.6 acres
 - I) Park Type: Recreation / Detention
 - II) This recreational space is a dual-purpose space for both active and passive recreation as well as detention. The site will be accessed with paved trails into the detention areas that shall be designed for active recreation and other uses. The detention part of the site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Minimum 100 square foot overlook at terminus of east/west street from the roundabout
 - (d) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.

- (e) Concrete trails will be required to be contained within the open space area for 50% of their total length and the remaining 50% can be adjacent to the public right of way to gain access for the residents, subject to review of the parks department.
 - (f) Detention Areas will be designed to promote active play. The bottom portion of the detention areas will be designed to be sloped at 5% or less to drain water off the fields and shall include a paved pilot channel to drain excess water away from the fields in dry conditions. Detention areas will be designed to Town drainage standards, and shall have maximum 4:1 side slopes.
 - (g) Signage: Minimum of (1) Park identification, (2) wayfinding markers, (2) trail markers
 - (h) Minimum of (4) Seating benches, (2) trash receptacles, (2) pet waste stations.
 - (i) Irrigated with rotors at or near the top of the bank of the detention areas
- 11) OS-8: Acreage: approximately 1.6 acres
- I) Park Type: Private HOA facility
 - II) This recreational and meeting space serves the single-family residents of the Lakewood Planned Development District. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Private area, No public easement
 - (b) Connected to the public trail network
 - (c) Swimming Pool
 - (d) Parking
 - (e) Meeting and event rooms
- 12) OS-9: Acreage: approximately 0.3 acres
- I) Park Type: Pocket Park
 - II) This Pocket Park can be directly accessed from the public trail located within the Silveron ROW. This space separates the single family lots from the Silveron ROW and provides a rest area for pedestrians walking or jogging along Silveron. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (d) Signage: Minimum of (1) wayfinding marker, (1) trail marker
 - (e) Minimum of (1) bench, (1) trash receptacles
 - (f) Irrigated turf and beds.
- 13) OS-10: Acreage: approximately 1.8 acres
- I) Park Type: Town Trail
 - II) This Town Trail shall comply with the specifications and requirements for installation of the Town Trail along the FM 2499 ROW. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement, width varies from 25' to 70'. The minimum Town Trail required width is 14' with an 8' concrete pavement.

- (b) Connected to the public trail network
- (c) Trees shall be planted in accordance with Town Trail requirements and in general compliance with Conceptual Landscape Plan in Exhibit C and Section I.1. whichever is more restrictive
- (d) Signage: (3) trail markers
- (e) Park benches or other seating spaced at least every quarter mile along the trail
- (f) Trash receptacles and pet waste stations placed every half mile along trail

I) RESIDENTIAL ARCHITECTURAL STANDARDS.

- 1) Dwelling, Single-family detached. NOTE: These architectural standards apply whether or not alley access is required.
 - I) Roof Pitch shall be between 6/12 and 12/12 slope, excluding patios, porches and porticos.
 - II) Where garage doors face the street, or are part of the front façade, the garage doors shall be carriage style decorative doors.
 - III) For purposes of this paragraph, Primary Materials consists of brick, stone, cast stone, stucco, EIFS, and cementitious siding.
 - IV) Except as provided in this paragraph, each dwelling that faces a street or access easement, shall contain not less than 80 percent Primary Materials for any portion of a façade that faces a street or access easement.
 - V) For all other facades, each dwelling shall contain not less than 80 percent Primary Materials, calculated as an aggregate for all facades exclusive of paragraph I.1.IV. above.
- 2) Multifamily.
 - I) For purposes of this paragraph, Primary Materials consist of brick, stone, cast stone, stucco.
 - II) For purposes of this paragraph, Secondary Materials consist of the following:
 - (a) EIFS
 - (b) Cementitious siding
 - III) Stucco shall not exceed 80 percent of any one façade.
 - IV) Except as provided in this paragraph, each dwelling that faces a street or access easement, shall contain not less than 80 percent Primary Materials for any portion of a façade that faces a street or access easement.
 - V) For all other facades, each dwelling shall contain not less than 80 percent Primary Materials, calculated as an aggregate for all facades exclusive of paragraph I.2.IV. above.

J) NONRESIDENTIAL ARCHITECTURAL STANDARDS.

- 1) For purposes of this paragraph, Primary Materials consist of the following:
 - I) brick
 - II) stone
 - III) cast stone
 - IV) stucco, limited to 80 percent per facade.
- 2) For purposes of this paragraph, Secondary Materials consist of the following:
 - I) EIFS
 - II) Cementitious siding
- 3) Each building façade exclusive of doors and windows shall utilize not less than 80 percent Primary Materials on exterior facades.

K) EXCEPTIONS AND WAIVERS

- 1) The following exceptions and waivers to the Town's Ordinances shall apply to this planned development.
 - I) Compatibility buffers and setbacks between residential and commercial lots:
Compatibility buffers and setbacks between residential and commercial lots shall comply with the following standards:
 - (a) If the commercial occupancy is an office structure 15,000 SF or less, no compatibility buffers or setbacks shall be required.
 - (b) If the commercial occupancy is a retail occupancy 10,000 SF or less, no compatibility buffers or setbacks shall be required.
 - (c) If the commercial occupancy exceeds these limits, or if the commercial occupancy is a restaurant, then the compatibility buffers and setbacks shall comply with the Town's Compatibility Buffer-Section 82.302 and Compatibility Setback-82-303.
- 2) Meritorious Architecture-Urban Design Plan, Section 1.2. The proposed architecture is unique and shall be deemed as 'meritorious' regarding Façade Materials of Urban Design Plan. Commercial buildings may exceed 50 percent doors and windows per facade.
- 3) Pitched Roofs – Urban Design Plan Section 12.1: A Waiver to the pitched roof requirement of buildings less than 15,000 SF may be considered by the Town Council provided that said buildings are part of a large-scale development, not adjacent to single family residences.
- 4) A Waiver pursuant to Section 98-151 is granted. The Waiver is limited to Section 98-147, Topographical Slope Protection. All other elements of Chapter 98 Subdivision F remain in force.
 - I) While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four foot (4') or greater in height shall be designed by a professional engineer licensed by the State of Texas. Retaining walls exceeding fifteen feet (15') in height are prohibited except on a showing that the property owner will suffer undue hardship in the development of an individual lot in the absence of such a fifteen foot (15') tall retaining wall.

L) MISCELLANEOUS STANDARDS.

- 1) RENDERINGS. All site plan applications submitted for approval shall comply with the depiction of buildings, landscaping, open space areas (public and private), sidewalk and crosswalk detail, and elevations as shown on Exhibit "C".
- 2) ELEVATIONS.
 - I) There shall be a unified design theme consistent with the attached elevations. Buildings shall use a combination of textures and materials that complement the design theme. Entrances to buildings shall be clearly identified to pedestrians and motorists and shall be accentuated by the use of canopies, porticos, recessed wall planes, overhangs or other similar features that are compatible with the architectural style. Parapets or screening are required on flat roofs so that any roof top equipment is not visible from the street right-of-way.
 - II) The conceptual elevations attached to this ordinance denote building numbers that correspond with the anticipated respective location(s) for a use or mix of uses provided on the conceptual site plan. The reference to building numbers shall ensure that, for example, a multifamily building shall comply with the corresponding conceptual elevation (i.e., Typical Multifamily Building). As such, if a site plan application is submitted for a use (or uses) in a different location than that shown on the conceptual site plan, then the corresponding elevation shall apply.

3) DENSITY.

I) Dwelling, single-family detached.

(a) Maximum number of dwelling units is one hundred sixty-four (164).

II) Multifamily.

(a) Maximum number of residential dwelling units is eight hundred fifty (850).

4) MULTIFAMILY. Except for ground level units that provide direct access to the sidewalk, all other dwelling units shall be accessed from an internal corridor.

5) HOTEL. Hotel developments shall be subject to the following conditions:

I) Shall provide at least three amenities from the list below:

(a) Pool

(b) Spa/sauna

(c) Weight room/fitness center

(d) Playground

(e) Sports court

(f) Plaza/atrium

(g) Game room

(h) Conference room (1,000 square foot minimum)

(i) Full-service restaurant (minimum seating capacity of 35)

(j) Shall maintain five (5) percent of the lot area as open space, exclusive of required setbacks, buffers, and parking areas, but including amenities from the above list, except for Conference room and Full-service restaurant.

(k) Shall provide staff on-site 24 hours a day.

(l) The entrance to each room shall be gained from an interior corridor, except first floor units, which may have direct access from an interior courtyard or swimming pool area instead of, or in addition to, hallway access.

(m) A porte-cochere or covered area must be provided immediately adjacent to the entrance with a registration desk. The porte-cochere or covered area must be sufficient to accommodate the temporary parking of at least two (2) vehicles parked side by side for guests checking in and out.

II) Prior to, or concurrent with, the submittal of a site plan for the hotel, approval of an amendment to the Planned Development District shall be required. The said amendment shall provide written standards and conceptual elevations for the hotel.

6) OFFICE-SHOWROOM/WAREHOUSE. This use is only permitted by right within 1,000 feet of Lakeside Parkway.

7) RESTAURANT DRIVE-IN WINDOW.

a. A drive-in window in conjunction with a restaurant is only permitted subject to either of the following provisions:

i. A restaurant, general with a minimum floor area of 3,000 square feet, and developed in a single tenant retail building.

ii. A restaurant, general located within a multi-tenant retail building.

8) PHASING

A. Intent and phasing: The phasing of the development is intended to ensure that certain portions of the commercial and open space improvements are developed in conjunction with the residential development. For the purposes of this Section 4.A, the following phrases shall be defined as follows:

I) "Commencement of Construction" shall mean:

- (a) the construction plans for the commercial buildings, and certain open spaces, have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and
- (b) all necessary permits permitting the commencement of construction of the commercial buildings, and certain open spaces, have been issued by all applicable governmental authorities; and
- (c) mobilization, grading or excavation of the approved and permitted commercial property has begun.

II) "Completion of Construction of a shell building" means construction for the particular use has reached the point that, in accordance with the Town's Code of Ordinances, the Town's Building Official has, or is able to, issue a shell building final and that is located within a subdivision that has achieved Subdivision Acceptance.

III) "Completion of Open Space" (OS) shall mean that construction of utilities, landscaping, irrigation, amenities as defined in the associated Park Standards in Section H, and any other elements shown on the approved site plan are completed.

IV) "Subdivision Acceptance" shall mean that the subdivision has met all of the requirements outlined in Chapter 90 Article V of the Town's Code of Ordinances and the Town has issued a letter accepting the subdivision. This phrase may also be styled as "accept the subdivision."

V) "Multi-family" (MF) shall mean residential development located in areas designated as Urban Residential (RSZ-1) on the Lakewood Land Use Plan, Exhibit C.

VI) "Single-family" (SF) shall mean residential development located in areas designated as Single Family Residential (RSZ-2) on the Lakewood Land Use Plan, Exhibit C.

B. Phase 1:

- I) During the 1st phase, 429 MF units and 77 SF homes may be constructed subject to the requirements of this Section 4.B.
- II) Prior to the issuance of any permits for the construction of 429 MF units and 77 SF homes: 1) Commencement of Construction of a minimum of 50,000 square feet of commercial development must occur, which must include Buildings 9 and 10, which upon Completion of Construction of a shell building must comprise a minimum of 13,000 square feet in size; and 2) Commencement of Construction of OS-1 and OS-10 (as modified below), must occur. Hotel uses shall not be calculated toward meeting the minimum square footage of commercial

development in the first Phase. The issuance of permits for the construction of 429 MF units and 77 SF homes shall also be conditioned upon compliance with Section 4.B (III) and 4.B (IV), below.

- III) The Town shall not issue building finals for the 429 MF units until there is Completion of Open Space of OS-5, OS-6, OS-4 (as modified below), and OS-10 (as modified below).
 - (a) Completion of Open Space OS-4 shall exclude the fire lane trail north of the Pedestrian Bridge but includes a 6' wide temporary asphalt trail, and shall exclude the Nature Trail and associated improvements.
 - (b) Completion of Open Space OS-10 shall include construction of the corner segment between Silveron Boulevard and Drive 8, and construction of the segment between Drive 10 and Drive 11 on Long Prairie Road.
- IV) The Town shall not accept the first SF subdivision and shall not issue building permits for 77 SF homes until the following has been completed:
 - (a) Completion of Open Space OS-8, OS-4 (as modified below), and OS-10 (as modified below).
 - (i) Completion of Open Space OS-4 shall exclude the fire lane trail north of the Pedestrian Bridge but include a 6' wide temporary asphalt trail, and shall exclude the Nature Trail and identified in the Park Standards in Section H.
 - (ii) Completion of Open Space OS-10 shall include the segment between Drive 11 and the east property line.

C. Phase 2:

- I) The Town shall not issue any permits for the construction of the remaining MF units and remaining SF homes until the following has been completed:
 - (a) Completion of Construction of a shell building(s) for 50,000 square feet of commercial development, which must include Buildings 9 and 10, and Completion of Open Space OS-1 and OS-10 (as conditioned above); and
 - (b) Commencement of Construction of an additional 50,000 square feet of commercial improvements anywhere within the PD district for a total of 100,000 square feet of commercial improvements. The additional 50,000 square feet of commercial improvements in the second phase may include a hotel structure.
- II) In addition to the requirements set forth in Section 4.B (I) the Town shall not issue any permits for the construction of the remaining MF units unless the fire lane trail in OS-4 has been included in the Development Plan and is completed concurrently with all required fire lanes for the Phase. In addition, the Town shall not accept the subdivision intended for the remaining MF units until the nature trail in OS-4 has been completed.

III) In addition to the requirements set forth in Section 4.B (I) the Town shall not accept the subdivision intended for the remaining SF homes until there is Completion of Open Space OS-7, OS-8 and OS-9.

D. Single Phase Option: In lieu of the sequential development of Phases 1 and 2 described above, the following combined single phase development process may be employed:

I) The Town shall not issue site development permits for the construction of the first 429 MF units or the first single-family residential subdivision until there is Commencement of Construction of a minimum of 100,000 square feet of commercial structures, which at a minimum, must include Buildings 9 and 10, which upon Completion of Construction of a shell building must comprise a minimum of 13,000 square feet in size; and, until there is Commencement of Construction of OS-1 and OS-10.

II) The Town shall not issue building finals for the first 429 MF units until there is Completion of Open Space OS-1, OS-4, OS-5, OS-6, and OS-10.

III) The Town shall not issue any permits for the construction of the remaining MF units until there is Completion of Construction of Shell Buildings consisting of a minimum of 100,000 square feet of commercial structures. The minimum 100,000 square feet of commercial space required by this Section 4.D (III) must include Completion of Construction of a Shell Building for Buildings 9 and 10. The minimum square footage for Buildings 9 and 10 must be 13,000 square feet, total.

IV) The Town shall not accept the first SF subdivision and shall not issue any permits for the construction of the SF homes until there is Completion of Open Space OS-4, OS-7, OS-8, OS-9, and OS-10.

V) Model home permits may be issued prior to Completion of the Open Spaces. The issuance of model home permits shall be subject to the Town's model home ordinance.

E. Additional Phasing Requirements

I) Whenever Buildings 4 and 7 commence construction, OS-2 must be developed concurrently, and completed with the first building.

II) Whenever Buildings 5 and 8 commence construction, OS-3 must be developed concurrently, and completed with the first building.

III) The Town shall not accept the first SF subdivision until the required drainage and access improvements associated with Phase 1 are completed. The required access improvements shall include the roadway connection between Long Prairie Road and Silveron Boulevard identified as Street A and Street C between Drives 11 and 3. The required drainage improvements shall include required detention area(s). If the required detention areas are located in OS-7, they may be constructed independent of the requirement to later complete the park requirements for OS-7, as described in the Park Standards in Section H.

- IV) Any remaining segments of OS-10 shall be completed in conjunction with the development of adjacent commercial buildings such as buildings 11, 12, 13, 17, 18, and 19 as would be required under site plan approval.
- 9) PLAN REVIEW. Building permit applications may be submitted for commercial and residential buildings concurrently without regard to the phasing requirements to commence construction, set forth above. However, commercial and residential construction must be done in accordance with the phasing requirements set forth above.
- 10) ENVIRONMENTAL PROTECTION PLAN. This Planned Development is subject to an approved Environmental Protection Plan.
- 11) GRADING PERMITS. Subsequent to the approval of the first record plat, the Applicant shall be permitted to process a grading permit to allow the grading and clearing of the portion of the development required to balance the cut and fill to complete the first phase of the development, subject to the following conditions:
- I) The limits of the proposed grading shall be included in the Record Plat;
 - II) The graded area outside the limits of the proposed landscape plan shall be stabilized, irrigated with temporary irrigation, and planted with turf sufficient to prevent soil erosion.

- 12) DRAINAGE. A comprehensive drainage study is required to be conducted prior to approval of first record plat.
- 13) TREE PROTECTION PLAN. This Planned Development is subject to an approved Protection Plan, to be submitted with the site plan application.
- 14) TREE MITIGATION.
 - I) Mitigation trees, 3-inch caliper of greater, to be selected from the Town's approved tree mitigation and replacement tree planting list, and trees listed in Appendix A and approved by the Town.
 - II) Except as provided in this paragraph, trees planted within this planned development shall be counted towards required tree mitigation:
 - (a) Trees planted on single family lots.
 - (b) Trees required by Section E (2), Street Buffer Landscaping.
 - (c) Required parking lot trees.
 - (d) Ornamental trees.

M) PARK LAND DEDICATION AND PARK DEVELOPMENT FEE STANDARDS.

- 1) Credit for Park Dedication requirements, as calculated in accordance with Section 90-443 of the Flower Mound Code of Ordinances shall be granted for each acre or portion of an acre of all Public Open Space identified on Exhibit C, Open Space and Trail Plan.
- 2) Park Development Fees shall be calculated in accordance with Section 90-446 of the Flower Mound Code of Ordinances. The Developer shall be solely responsible for construction of all improvements within the Open Spaces and Trail Easements.
- 3) Credit for Park Development Fees shall be granted for direct and indirect costs for design and construction of the Public Open Spaces, as submitted and approved by Town Council and as documented by receipts, in accordance with Section 90-446(c) of the Flower Mound Code of Ordinances. Specifically, credit shall be given for all costs associated with improving public open space including the construction of the pedestrian bridge, furnishings and equipment, removal of underbrush and invasive species in natural areas, and the public trail network excluding trails required in the Town's Trails Master Plan. Reimbursable costs exclude costs for grading, clearing and turf establishment.
- 4) Credit for Park Development Fees shall not exceed the amount calculated for total units in accordance with Section 90-443 of the Flower Mound Code of Ordinances, based on the residential dwelling unit count for the overall development.
- 5) The required minimum Public Open Space shall be based upon 3.36 acres per 100 dwelling units.
- 6) Public Open Space shall comply with the Open Space requirements in Section H to qualify for credit and/or reimbursement of Park Development Fees and/or Park Dedication Fees.
- 7) The Town's review and approval process of the proposed public open spaces qualifying for Park Development credit shall be reviewed in accordance with the Town's standard review and approval of building permits and certificates of occupancy.

N) SIGNAGE.

- 1) Except as provided in this paragraph, all signage shall meet the Town's Sign Ordinance. Where noted, reference is made to the respective sign's location within the Planned Development which is depicted on the location map attached to Exhibit "F".

- 2) The following identifies those provisions that may deviate from Chapter 86 of the Land Development Regulations. Wall signs and various ground signs shall be permitted as shown on Exhibit "F", and shall be subject to the following standards:
- I) Ground Sign 1.
 - (a) The height shall not exceed 10 feet.
 - (b) The sign area shall not exceed 100 square feet.
 - (c) A masonry border is not required.
 - (d) Sign shall be single-faced.
 - II) Ground Sign 2.
 - (a) The height shall not exceed 20 feet.
 - (b) The sign area of each face shall not exceed 100 square feet.
 - (c) A masonry border is not required.
 - III) Ground Sign 3.
 - (a) The sign height shall not exceed 10' feet.
 - (b) The sign width shall not exceed 15' feet
 - (c) The sign area shall not exceed 98 square feet per side.
 - (d) A masonry border is not required.
 - IV) Ground Sign 4.
 - (a) The sign height shall not exceed 5' feet.
 - (b) The sign width shall not exceed 2' feet
 - (c) The sign area shall not exceed 10 square feet per side.
 - (d) A masonry border is not required.
 - V) Ground Sign 5.
 - (a) The sign height shall not exceed 3' foot.
 - (b) The sign width shall not exceed 1' feet
 - (c) The sign area shall not exceed 3 square feet per side.
 - (d) A masonry border is not required.
 - (e) No permit shall be required.
 - VI) Ground Sign 6.
 - (a) The sign width height shall not exceed 2' feet.
 - (b) The sign height width shall not exceed 1' feet
 - (c) The sign area shall not exceed 2 square feet per side.
 - (d) A masonry border is not required
 - (e) No permit shall be required.
 - VII) Building Signs
 - (a) In multi-story office or mixed-use buildings, a primary or single occupant may add signage identifying the building. This sign is in addition to ground floor tenant wall signs if applicable.
 - (b) The sign area of Building signs shall not exceed 240 square feet.
 - (c) The height shall not exceed 6 feet.
 - (d) The width shall not exceed 50 feet.
 - (e) Only one sign per building facade is permitted
 - VIII) Wall Signs: Shall comply with Section 86-68 of the Town's Sign Ordinance
 - IX) Tenant Blade Signs

- (a) Permitted only for office, retail or restaurant uses.
- (b) Maximum of one per tenant.
- (c) The height shall not exceed three feet.
- (d) The width shall not exceed five feet.
- (e) The sign area shall not exceed 15 square feet (per side if a double-faced sign).
- (f) The sign may encroach into the sidewalk area subject to maintaining a minimum clearance of eight feet above the sidewalk
- (g) The sign may be internally or externally illuminated and must not create a glare onto a building or the sidewalk.

O) ADMINISTRATION.

- 1) There shall be established a Property Owners' Association (POA). Said association shall file Covenants, Conditions, and Restrictions (CC&Rs) in the Denton County Real Property Records and in the Tarrant County Real Estate Records prior to the first building permit issued and said POA shall be responsible for the maintenance of the following items included within the Record Plat:
 - I) Landscape buffers along Long Prairie Road and Silveron Boulevard.
 - II) Publicly accessible open space areas.
 - III) Striping of parking spaces and pedestrian crosswalks outside of public rights-of-way.
 - IV) Cross-access and cross-parking agreements, if applicable.
 - V) Trails and pedestrian bridges.
 - VI) Other items as listed in the CC&Rs.

APPENDIX A: TREE PLANTING RECOMMENDATIONS

On Site Soil Storage and Amendment:

Areas to be graded for site development will have vegetation removed and the topsoil from the site stockpiled and used for planting trees and soil preparation for beds and turf.

Current soil tests were taken from the site and sent to Wallace Laboratories in California. It is recommended that the native soil be amended by adding:

- Calcium Ammonium Nitrate 27-0-0 at the rate of 1/8 pound per cubic yard; Triple Superphosphate 0-45-0 at the rate of 1/8 pound per cubic yard; Kelly's Capsulated Agricultural Gypsum at the rate of 1/4 pound per cubic yard; BioSol 7-2-1 at the rate of 1/8 pound per cubic yard to add in humate and Mycorrhizae; and Organic Matter 10% by volume, sufficient for 4% organic matter.
- Stockpiling Topsoil: Location for stockpiling of topsoil shall be identified on construction plans. Where stockpiles of topsoil are greater than 5,000 cubic yards, are greater than 4 feet above rough grade and have side slopes greater than 4:1, the stockpile shall be covered with a breathable material and watered on occasion. Where stockpiles are less than 5,000 CY, or less than 4' above rough grade, or have side slopes less than 4:1, the stockpile shall be hydro-mulched.

Taking Delivery of Trees:

- Trees shall have a single, straight trunk with no wounds or torn bark on trunk.
- Canopies of trees shall have no dead wood or broken branches.
- Trees should not have coarse, circling roots that are visible on top of the rootball. Trees with circling roots on the surface of the rootball shall be rejected.
- Trunk diameter (caliper) shall meet ANSI rootball size and tree size.
- During shipping, trees need adequate moisture provided to rootballs and trees should be covered to protect from dehydration.
- Trees should only be handled by the rootball. Never lift trees with straps around trunks damaging the trunk.
- On all thin bark trees, bark protection shall be provided with tree wrap. Tree wraps shall be removed within 1 year after planting.
- Trees shall be kept upright when delivered and not laid on the ground to prevent sunscald on trunks.
- Trees shall receive adequate water at all times to keep roots alive.

Planting Details: (refer to details in Exhibit C)

- At planting, remove container, nursery stakes, burlap, string from around trunk and any ties from top of rootball.
- At planting, remove any excess soil from top of rootball to expose tree root flare.
- Measure rootball width and depth before planting to adjust planting pit for size of rootball.
- Excavate planting pit 3 times wider than rootball width or 7 feet wide by 7 feet long or 6 feet wide by 8 feet long.
- Excavate planting pit 1½ to 2 inches shallower than rootball depth.
- Set the tree rootball on undisturbed soil or compacted soil to prevent tree from sinking after planting. This tree pedestal should be the same width as the tree rootball to support the tree at a height of 16 inches.
- Excavate the planting hole 16 inches deeper on all sides of tree in undisturbed soil to accommodate drainage and keep water away from tree rootball.
- Scarify the edges of the planting pit. Leave no slick soil sides on the planting pit.
- Set tree as per tree planting diagram and orient for best appearance for review and final orientation by review of the Landscape Architect before filling in around tree.
- Adjust trees in pit so that after full settlement has occurred, the natural grade at the base of trees is 1 1/2" to 2" above the adjacent finish grade.
- If container tree roots are circling, cut the rootball in 3 equally spaced places, ½" to 1" deep, to prevent roots from continuing to circle and girdle tree.
- Each tree shall have 176 cubic feet of amended soil used in planting pit and 624 cubic feet of uncompacted soil.
- For fill, use native soil amended or topsoil amended as per soil tests
- When filling around tree, place soil into pit in 6" lifts. Firmly compact soil around roots to avoid air pockets and water after each lift.
- Install a raised ring of soil 4" high and 8" wide around rootball circumference to direct water into the rootball. Make sure tree rootball is wet after planting.
- Cover raised ring and soil surface around tree with a 2" layer of double ground mulch. Keep mulch 2 inches away from tree trunk.
- Irrigation installed around tree shall be controlled with a master control valve and operated with a Smart Controller to conserve water and to monitor for leaks. Irrigation plans shall be submitted to the Town for review.

- Do not stake tree if it can support itself. Trees smaller in size than 5-inch caliper normally need to be staked. Trees larger than 5-inch caliper do not.
- If staking is needed, stake trees with concrete anchors installed into sidewalk and curb edges to secure tree. Use guys that protect bark of tree when anchoring. All staking material must be removed within 6 months after planting.

Recommended Deep Root / Non-Invasive Trees

Acer buergerianum, Trident Maple, 25' to 30' height, 20' to 30' spread
 Acer grandidentatum, Bigtooth Maple. 40' height. 35' spread
 Acer truncatum, Shantung Maple, 20' height, 20' spread
 Carpinus betulus var. Fastigiata, Pyramidal European Hornbeam, 35' to 45' height, pyramidal 25' spread
 Crataegus marshalli, Parsley Hawthorn. 20' to 25' height, 15' to 20' spread
 Crataegus phaenopyrum, Washington Hawthorn. 25' height, 25' spread
 Gleditsia triacanthos var. Inermis, Thornless Honeylocust, 50' height, 35' spread
 Gleditsia triacanthos var. Inermis 'Suncole', Sunburst Thorniest Honeylocust, 30' height, 30' spread
 Koelreuteria paniculata, Goldenrain tree, 30' height, 30' spread
 Lagerstroemia indica var. Arapaho, Arapaho Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Basham's Party Pink, Basham's Party Pink Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Biloxi, Biloxi Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Byer's White, Byer's White Crape Myrtle. 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Carolina Beauty, Carolina Beauty Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Catawba, Catawba Crape Myrtle, 15' height, 10' spread
 Lagerstroemia indica var. Choctaw, Choctaw Crape Myrtle, 5' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Comanche, Comanche Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Dallis Red, Dallis Red Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Dynamite, Dynamite Crape Myrtle. 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Lipin, Lipin Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Miami, Miami Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Muskogee, Muskogee Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Natchez, Natches Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Near East, Near East Crape Myrtle. 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. New Snow, New Snow Crape Myrtle, 10' to 15' height, 10' to 15' spread.
 Lagerstroemia indica var. Potomac, Potomac Crape Myrtle. 5' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Osage, Osage Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Raspberry Sundae, Raspberry Sundae Crape Myrtle, 15' to 20'

height, 10' to 15' spread

Lagerstroemia indica var. Red Rocket, Red Rocket Crape Myrtle. 20' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Sarah's Favorite, Sarah's Favorite Crape Myrtle, 20' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Seminole, Seminole Crape Myrtle. 15' to 20' height, 10' to 15' spread

Lagerstroemia indica var. Sioux, Sioux Crape Myrtle, 12' to 15' height, 10' to 12' spread

Lagerstroemia indica var. Tuscarora, Tuscororo Crape Myrtle. 20' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Tuskegee, Tuskegee Crape Myrtle. 15' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Yuma, Yuma Crape Myrtle, 15' to 20' height, 10' to 15' spread

Lagerstroemia indica var. Byers White, Byers White Crape Myrtle, 15' to 20' height, 10' to 15' spread

Magnolia grandiflora var. Alta, Alto Magnolia, 20' height, 9' spread

Magnolia grandiflora var. Little Gem. 20' height. 10' spread

Quercus canbyi, Canby Oak. 30' height, 30' spread

Quercus laceyia. Lacey Oak, 30' height, 30' spread

Quercus lyrata, Overcup Oak. 45' height, 35' spread

Quercus macrocarpa, Bur Oak, 60' height. 60' spread

Quercus muhlenbergii, Chinquapin Oak, 40' height, 30' spread

Quercus texan, Texas Red Oak, 50' height, 40' spread

Rhamnus caroliniana, Carolina Buckthorn, 15' height, 15' spread

Rhus lanceolata, Prairie Flameleaf Sumac. 20' height, 20' spread

Sophora affinis, Eve's Necklace, 15' height, 10' spread

Sophora secundiflora, Texas Mountain Laurel, 15' height, 10' spread

Ulmus crassifolia, Cedar Elm. 45' to 55' height, 35' to 45' spread

Ulmus parvifolia var. Emerald Prairie, Emerald Prairie Elm. 40' height, 30' spread

Ulmus parvifolia var. Everclear, Everclear Elm. 40' height, 15' spread

Ungnadia speciosa, Mexican Buckeye, 15' to 20' height, 8' to 12' spread

APPENDIX B: LIST OF EXHIBITS

EXHIBIT A: Legal description

EXHIBIT B: Planned Development Standards

EXHIBIT C: Concept Plan

- Land Use Plan
- Concept Plan
- Open Space & Trail Access Plan
- Open space & Park Plan
- Vehicular Network
- Concept Plan, Black & White
- Conceptual Landscape Plan
- Conceptual Perspective 1
- Conceptual Perspective 2
- Conceptual Perspective 3
- Conceptual Perspective 4
- Conceptual Perspective 5
- Conceptual Perspective 6

EXHIBIT D: Conceptual Engineering

- Storm Water & Drainage Plan A
- Storm Water & Drainage Plan B
- Water & wastewater Plan A
- Water & wastewater Plan b

EXHIBIT E1: Elevations, Multifamily

- JPI Plan
- JPI Building 1 Front Elevation
- JPI Building 1 Rear Elevation
- JPI Building 2 & 3 Front Elevation
- JPI Material Board

EXHIBIT E2: Elevations Commercial

- LPC Building Office 1 Elevations
- LPC Building Office 2 Elevations
- LPC Buildings Retail Elevations
- LPC Buildings Pad Office Elevations
- LPC Material Board

EXHIBIT F: Comprehensive Sign Plan

- Sign Plan
- Sign 1
- Sign 1 & Sign 2 Elevation
- Sign 2
- Sign 3
- Sign 4
- Signs 5 & 6



GREEN BRICK
PARTNERS

Mr. Chuck Russell
Town Planner
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

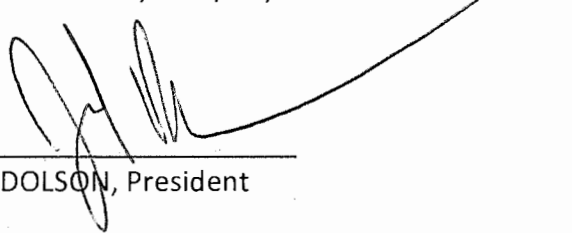
Mr. Russell,

I am writing in support of Lakewood, a mixed use development that is being considered by Planning and Zoning on August 26, 2019. This property has been planned for corporate offices for years with no results.

Lakewood is directly adjacent to our Southgate project and will be a great asset to our development by providing open space and increasing the opportunities to attract additional retail and office users to the area. Lakewood will be a great mixed use project that will support the Town's goals for Lakeside Business district and improve the existing tax base.

This team of will bring a high-quality project and the combination or office, retail, hospitality and residential is the best use of this property.

JBGL Chateau, LLC
A Texas limited liability company

By: 
JED DOLSON, President

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 122.01 ACRES OF LAND SITUATED IN THE J. KNIGHT SURVEY, ABSTRACT NO. 692, FROM PLANNED DEVELOPMENT DISTRICT NO. 31 (PD-31) TO PLANNED DEVELOPMENT DISTRICT NO. 163 (PD-163) WITH BOTH NON-RESIDENTIAL AND RESIDENTIAL USES, IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as 122.01 acres of land situated in the J. Knight Survey, Abstract Number 692, have filed an application for a Zoning amendment to change the zoning from Planned Development District No. 31 (PD-31) to Planned Development District No. 163 (PD-163) with both non-residential and residential uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on August 26, 2019, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 16, 2019, with respect to the proposed planned development district as described herein; and,

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

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

ORDINANCE NO. _____**Page 2****SECTION 1**

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

122.01 acres of land situated in the J. Knight Survey, Abstract Number 692, Denton County, Texas, and Tarrant County, Texas, and more fully described in Exhibit "A" hereto.

Planned Development District No. 163 (PD-163) with both non-residential and residential uses.

SECTION 2

The development standards, conceptual site plan, conceptual landscape plan, conceptual open space and trail access plan, conceptual open space and park plan, conceptual elevations and perspectives, vehicular network, and comprehensive sign package of the proposed Planned Development District No. 163 (PD-163), attached hereto as Exhibits "B," "C," "D," "E," "F," "G," and "H," each incorporated herein for all purposes allowed by law, are hereby approved as the development standards, conceptual site plan, conceptual landscape plan, conceptual open space and pedestrian circulation plan, conceptual elevations, street type sections, architectural imagery package, and renderings for this Planned Development District No. 163 (PD-163).

SECTION 3

The official map of the Town of Flower Mound is amended and the Executive Director of Development Services is directed to revise the official zoning map to reflect the approved Planned Development District No. 163 (PD-163), as set forth above.

SECTION 4

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

SECTION 5

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

SECTION 6

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

ORDINANCE NO. _____**Page 3**

Ordinance of any such unconstitutional section, paragraph, sentence, clause or phrase.

SECTION 7

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

SECTION 8

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

SECTION 9

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

SECTION 10

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 16TH DAY OF SEPTEMBER, 2019.

APPROVED:

Steve Dixon, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

Exhibit A

LEGAL DESCRIPTION:

BEING a tract of land located in the J. KNIGHT SURVEY, ABSTRACT NO. 692, Town of Flower Mound, Denton and Tarrant Counties, Texas and being a part of a tract of land described as Tract 1 in Deed to Daldav Associates, L.P., recorded in Document Number 99-111390, Deed Records, Denton County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the intersection of the north line of International Parkway (Farm-to-Market Road 2499), a 160 foot right-of-way, with the east line of Silveron Boulevard, a variable width right-of-way;

THENCE Northerly, with said east line, the following sixteen (16) courses and distances:

North 16 degrees 16 minutes 19 seconds West, a distance of 20.84 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 29 degrees 43 minutes 30 seconds East, a distance of 34.45 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the beginning of a non-tangent curve to the left having a central angle of 16 degrees 48 minutes 37 seconds, a radius of 906.00 feet and a chord bearing and distance of North 21 degrees 19 minutes 01 seconds East, 264.86 feet;

Northerly, with said curve to the left, an arc distance of 265.82 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the beginning of a reverse curve to the right having a central angle of 19 degrees 20 minutes 26 seconds, a radius of 794.00 feet and a chord bearing and distance of North 22 degrees 34 minutes 55 seconds East, 266.75 feet;

Northeasterly, with said curve to the right, an arc distance of 268.02 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 32 degrees 15 minutes 09 seconds East, a distance of 23.28 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 75 degrees 13 minutes 07 seconds East, a distance of 21.96 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

South 62 degrees 51 minutes 58 seconds East, a distance of 18.10 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 26 degrees 32 minutes 47 seconds East, a distance of 90.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 62 degrees 44 minutes 12 seconds West, a distance of 20.15 feet to an "X" found in concrete for corner;

North 14 degrees 37 minutes 00 seconds West, a distance of 20.51 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 32 degrees 15 minutes 09 seconds East, a distance of 87.68 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the beginning of a curve to the left having a central angle of 11 degrees 56 minutes 34 seconds, a radius of 894.99 feet and a chord bearing and distance of North 26 degrees 16 minutes 52 seconds East, 186.21 feet;

Northeasterly, with said curve to the left, an arc distance of 186.55 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the beginning of a reverse curve to the right having a central angle of 16 degrees 18 minutes 36 seconds, a radius of 955.00 feet and a chord bearing and distance of North 28 degrees 27 minutes 53 seconds East, 270.94 feet;

Exhibit A

Northeasterly, with said curve to the right, on arc distance of 271.86 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the beginning of a non-tangent curve to the right having a central angle of 05 degrees 02 minutes 49 seconds, a radius of 600.00 feet and a chord bearing and distance of North 39 degrees 08 minutes 33 seconds East, 52.83 feet;

Northeasterly, with said curve to the right, on arc distance of 52.85 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 88 degrees 08 minutes 05 seconds East, a distance of 90.00 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner;

North 50 degrees 42 minutes 34 seconds East, a distance of 103.42 feet to a point for corner in the approximate centerline of a creek;

THENCE Southeasterly, with said approximate centerline, the following nineteen (19) courses and distances:

South 05 degrees 57 minutes 37 seconds East, leaving said east line, a distance of 16.34 feet to a point for corner;

South 18 degrees 57 minutes 50 seconds East, a distance of 37.44 feet to a point for corner;

South 52 degrees 26 minutes 17 seconds East, a distance of 58.08 feet to a point for corner;

South 40 degrees 36 minutes 14 seconds East, a distance of 100.72 feet to a point for corner;

South 39 degrees 38 minutes 39 seconds East, a distance of 64.76 feet to a point for corner;

South 50 degrees 27 minutes 30 seconds East, a distance of 78.24 feet to a point for corner;

South 31 degrees 15 minutes 06 seconds East, a distance of 53.56 feet to a point for corner;

South 85 degrees 40 minutes 32 seconds East, a distance of 208.02 feet to a point for corner;

South 64 degrees 39 minutes 34 seconds East, a distance of 64.57 feet to a point for corner;

South 06 degrees 04 minutes 01 seconds East, a distance of 57.67 feet to a point for corner;

South 03 degrees 47 minutes 53 seconds West, a distance of 146.19 feet to a point for corner;

South 15 degrees 17 minutes 02 seconds East, a distance of 245.57 feet to a point for corner;

South 23 degrees 37 minutes 34 seconds East, a distance of 494.72 feet to a point for corner;

North 68 degrees 01 minutes 08 seconds East, a distance of 120.58 feet to a point for corner;

South 85 degrees 15 minutes 40 seconds East, a distance of 110.75 feet to a point for corner;

South 72 degrees 56 minutes 28 seconds East, a distance of 150.87 feet to a point for corner;

South 42 degrees 37 minutes 59 seconds East, a distance of 116.75 feet to a point for corner;

Exhibit A

South 25 degrees 15 minutes 15 seconds East, a distance of 37.64 feet to a point for corner;

South 04 degrees 17 minutes 31 seconds East, a distance of 82.73 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner in the above mentioned north line;

THENCE South 89 degrees 33 minutes 50 seconds West, with said north line, a distance of 1,127.47 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" found for corner at the beginning of a non-tangent curve to the right having a central angle of 27 degrees 56 minutes 23 seconds, a radius of 1,829.86 feet and a chord bearing and distance of North 76 degrees 28 minutes 15 seconds West, 883.50 feet, from which point a Texas Department of Transportation brass disk in concrete found bears South 00 degrees 19 minutes 32 seconds East, a distance of 160.00 feet;

THENCE Westerly, continuing with said north line and with said curve to the right, an arc distance of 892.31 feet to the POINT OF BEGINNING and containing 35.470 acres of land, more or less.

LEGAL DESCRIPTION:

BEING a tract of land located in the J. KNIGHT SURVEY, ABSTRACT NO. 692, Town of Flower Mound, Denton and Tarrant Counties, Texas and being all of a tract of land described as Tract 4 in Deed to KG Legacy Capital Investments, LLC, recorded in Document Number 2007-45111 and Document Number 2007-47997, Deed Records, Denton County, Texas and recorded in Document Number D207139731, Deed Records, Tarrant County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod with a yellow plastic cap stamped "BRITTAIN&CRAWFORD" found in the North right-of-way line of International Parkway (Farm-to-Market Road 2499), a 160 foot right-of-way, at the Southeast corner of said Tract 4 and the Southwest corner of a tract of land described as Tract A in Deed to D-F Fund VI, LLC, recorded in Document Number 98-105272, Deed Records, Denton County, Texas;

THENCE South 89 degrees 33 minutes 50 seconds West, along said North right-of-way line, a distance of 662.78 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 04 degrees 17 minutes 31 seconds West, leaving said North right-of-way line, a distance of 82.73 feet to a point for corner;

THENCE North 25 degrees 15 minutes 15 seconds West, a distance of 37.64 feet to a point for corner;

THENCE North 42 degrees 37 minutes 59 seconds West, a distance of 118.75 feet to a point for corner;

THENCE North 72 degrees 56 minutes 28 seconds West, a distance of 150.87 feet to a point for corner;

THENCE North 85 degrees 15 minutes 40 seconds West, a distance of 110.75 feet to a point for corner;

THENCE South 68 degrees 01 minutes 08 seconds West, a distance of 120.58 feet to a point for corner;

THENCE North 23 degrees 37 minutes 34 seconds West, a distance of 494.72 feet to a point for corner;

THENCE North 15 degrees 17 minutes 02 seconds West, a distance of 245.57 feet to a point for corner;

THENCE North 03 degrees 47 minutes 53 seconds East, a distance of 146.19 feet to a point for corner;

THENCE North 06 degrees 04 minutes 01 seconds West, a distance of 57.57 feet to a point for corner;

THENCE North 64 degrees 39 minutes 34 seconds West, a distance of 61.57 feet to a point for corner;

THENCE North 85 degrees 40 minutes 32 seconds West, a distance of 208.02 feet to a point for corner;

THENCE North 31 degrees 15 minutes 06 seconds West, a distance of 53.56 feet to a point for corner;

THENCE North 50 degrees 27 minutes 30 seconds West, a distance of 78.24 feet to a point for corner;

THENCE North 39 degrees 38 minutes 39 seconds West, a distance of 64.75 feet to a point for corner;

THENCE North 40 degrees 36 minutes 14 seconds West, a distance of 100.72 feet to a point for corner;

THENCE North 52 degrees 26 minutes 17 seconds West, a distance of 58.08 feet to a point for corner;

THENCE North 16 degrees 57 minutes 50 seconds West, a distance of 37.44 feet to a point for corner;

THENCE North 05 degrees 57 minutes 37 seconds West, a distance of 16.34 feet to a point for corner in the East right-of-way line of Silveron Boulevard, a variable width right-of-way;

THENCE Northeasterly, along said East right-of-way line, the following six (6) courses and distances:

Exhibit A

North 50 degrees 42 minutes 34 seconds East, a distance of 122.26 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 32 degrees 09 minutes 29 seconds East, a distance of 122.44 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a non-tangent curve to the right having a central angle of 09 degrees 07 minutes 34 seconds, a radius of 600.00 feet and a chord bearing and distance of North 64 degrees 33 minutes 35 seconds East, 95.47 feet;

Northeasterly, along said curve to the right, an arc distance of 95.57 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 69 degrees 07 minutes 22 seconds East, a distance of 584.73 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner at the beginning of a curve to the left having a central angle of 75 degrees 55 minutes 18 seconds, a radius of 895.00 feet and a chord bearing and distance of North 31 degrees 09 minutes 43 seconds East, 1,101.07 feet;

Northeasterly, along said curve to the left, an arc distance of 1,185.95 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

North 38 degrees 40 minutes 05 seconds East, a distance of 42.71 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner in the South right-of-way line of Lakeside Parkway, a 120 foot right-of-way, at the beginning of a non-tangent curve to the right having a central angle of 03 degrees 30 minutes 10 seconds, a radius of 940.03 feet and a chord bearing and distance of North 87 degrees 25 minutes 48 seconds East, 57.46 feet;

THENCE Easterly, along said South right-of-way line and along said curve to the right, an arc distance of 57.47 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "BRITTAIN&CRAWFORD" found for corner;

THENCE North 89 degrees 10 minutes 53 seconds East, continuing along said South right-of-way line, a distance of 769.48 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "BRITTAIN&CRAWFORD" found for corner;

THENCE South 00 degrees 19 minutes 22 seconds East, leaving said South right-of-way line, a distance of 301.19 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 01 degrees 12 minutes 00 seconds East, a distance of 410.08 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE South 00 degrees 58 minutes 39 seconds East, a distance of 902.52 feet to a 6 inch Metal Fence Post found for corner in the North line of said Tract A;

THENCE North 89 degrees 40 minutes 45 seconds West, a distance of 342.39 feet to a 6 inch Metal Fence Post found at the Northwest corner of said Tract A;

THENCE South 00 degrees 31 minutes 59 seconds East, a distance of 1,259.33 feet to the POINT OF BEGINNING and containing 86.557 acres of land, more or less.

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- A. DEFINITIONS
- B. USE STANDARDS
- C. BUILDING STANDARDS
- D. MULTIFAMILY GROUND FLOOR DESIGN
- E. LANDSCAPE, HARDSCAPE, & SCREENING STANDARDS
- F. ACCESS PARKING AND LOADING STANDARDS
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- I. RESIDENTIAL ARCHITECTURAL STANDARDS
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APPENDIX A: TREE PLANTING RECOMMENDATIONS

APPENDIX B: LIST OF EXHIBITS

Exhibit "B"

Development Standards

Planned Development District - 163 (PD-163)

Lakewood

The development on the property comprising approximately 122.1 acres of land within the corporate limits of the Town of Flower Mound ("Town") shall be in accordance with the Town of Flower Mound *Master Plan* and the Land Development Regulations of the Town of Flower Mound, Texas, as amended, and shall be subject to the following conditions and requirements:

Development of the Campus Commercial District area designated on Exhibit "C", comprised of approximately 122.1 acres, shall be in compliance with all regulations applicable to the Campus Commercial District (CC) uses contained in the Town's Land Development Regulations as amended, except as otherwise provided in this Ordinance.

A) DEFINITIONS.

- 1) DWELLING, SINGLE-FAMILY DETACHED means a single dwelling unit, other than a mobile home, located on a lot or separate building tract and having no physical connection to a building located on any other lot or tract, and may be platted with required alley access or without alley access.
- 2) EXTENDED STAY HOTEL means a type of hotel establishment designed to accommodate extended stays, with financial consideration being calculated on a nightly, weekly or monthly basis.
- 3) NONRESIDENTIAL USES means any Permitted Use, Specific Use, or Temporary Use in this Planned Development, exclusive of the following:
 - I) Dwelling, single-family detached.
 - II) Multifamily.

B) USE STANDARDS.

- 1) Permitted Uses. Except as provided in this section, uses listed as Permitted Uses in the Campus Commercial District (CC) in the Town's Zoning Ordinance may be permitted in this Planned Development.
 - (a) The following additional uses are permitted in this Planned Development.
 - (i) Dwelling, single-family detached.
 - (ii) Multifamily.
 - (iii) Retail, single tenant (25,000 SF but less than 50,000 SF).
 - (iv) Retail, single tenant (50,000 SF but less than 75,000 SF).
 - (v) Drugstore or pharmacy.
 - (vi) Health club or athletic club.
 - (vii) Office-Showroom /Warehouse
- 2) Specific Uses. Except as provided in this section, the uses listed as Specific Uses in Campus Commercial District (CC) in the Town's Zoning Ordinance, may be permitted in this Planned Development with a Specific Use Permit (SUP) approved by the Town Council.

- I) The following specific uses are permitted in this Planned Development subject to approved SUP:
 - (a) Restaurant, drive-through window
- 3) Temporary Uses. The uses listed as Temporary Uses in the Campus Commercial District (CC) in the Town's Zoning Ordinance may be permitted in this Planned Development only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of the Land Development Code, "Temporary Use Permits".
- 4) Prohibited Uses. The following uses are prohibited in this Planned Development:
 - I) Extended Stay Hotel
- C) BUILDING STANDARDS.**
 - 1) Setbacks.
 - I) Long Prairie Road.
 - (a) Between Silveron Boulevard and Drive 8 (as labeled in Exhibit C).
 - (i) Minimum building setback shall be 25 feet.
 - (ii) Except as provided in this subparagraph, off-street parking is prohibited within 25 feet of the property line.
 - (iii) No off-street parking is permitted within 100 feet of the intersection with Silveron Boulevard.
 - (b) East of Drive 8.
 - (i) Minimum building setback shall be 70 feet.
 - (ii) Off-street parking is prohibited within 25 feet of the property line.
 - II) Silveron Boulevard.
 - (a) Between Long Prairie Road and Drive 7 as labeled in Exhibit C).
 - (i) Except as provided in this subparagraph, no minimum building setback.
 - (ii) Except as provided in this subparagraph, off-street parking is prohibited within 25 feet of the property line.
 - (iii) No off-street parking is permitted within 100 feet of the intersection with Long Prairie Road.
 - (b) Between Drive 7 and Lakeside Parkway.
 - (i) Except as provided in this subparagraph, build-to-line shall be 25 feet. A minimum of 60% of a building's front façade shall be located within the build-to line.
 - (ii) Except as provided in this section, off-street parking is prohibited within 25 feet of the property line.
 - (c) Silveron Boulevard Thoroughfare Plan Amendment. Upon Town Council approval of a Thoroughfare Plan Amendment to revise the street profile for Silveron Boulevard providing for on-street parking, the Director of Development Services shall have the authority to consider a revised build-to-line or a revised setback during site plan application for any building fronting the street.
 - III) Lakeside Parkway.
 - (a) There shall be a minimum building setback of 60 feet.
 - (b) Off-street parking is prohibited within 25 feet of the property line.
 - IV) Additional setbacks not regulated by Section C (1) (a), (b), and (c) of this ordinance.
 - (a) Dwelling, single-family detached (with required alley access).

- (i) Front yard. Except as provided in this paragraph, the minimum front yard setback shall be 15 feet.
 - (ii) Porches may encroach a maximum of 8 feet into the front yard.
Side yard. There shall be no minimum side yard setback on one side of the lot and a minimum side yard setback of five feet on the other side of the lot.
 - (iii) Rear yard. Except as provided in this paragraph, the minimum rear yard setback shall be 18 feet, subject to required installation of automatic remote garage door openers.
- (b) Dwelling, single-family detached (without required alley access).
 - (i) Front yard. Except as provided in this paragraph, the minimum front yard setback shall be 20 feet.
 - ◆ Porches may encroach a maximum of 10 feet into the front yard.
 - (ii) Side yard. The minimum side yard setback shall be 5 feet.
 - (iii) Rear yard. The minimum rear yard setback shall be 15 feet.
- (c) Multifamily.
 - (i) Front yard. There shall be no minimum front yard setback.
 - (ii) Side yard. There shall be no minimum side yard setback.
 - (iii) Rear yard. There shall be no minimum rear yard setback.
- (d) Nonresidential Uses.
 - (i) Front yard. There shall be no minimum front yard setback.
 - (ii) Side yard. There shall be no minimum side yard setback.
 - (iii) Rear yard. There shall be no minimum rear yard setback.
- V) Minimum lot area per dwelling or dwelling unit.
 - (i) Dwelling, single-family detached (with required alley access).
 - ◆ The minimum lot area per dwelling shall be 3,000 square feet.
 - (ii) Dwelling, single-family detached (without required alley access).
 - ◆ The minimum lot area per dwelling shall be 5,000 square feet.
 - (iii) Multifamily.
 - ◆ The minimum lot area per dwelling unit shall be 920 square feet.
 - (iv) Nonresidential uses.
 - ◆ There shall be no minimum lot area.
- VI) Minimum lot width.
 - (a) Dwelling, single-family detached (with required alley access).
 - (i) The minimum lot width shall be 30 feet.
 - (b) Dwelling, single-family detached (without required alley access).
 - (i) The minimum lot width shall be 50 feet.
 - (c) Multifamily.
 - (i) There shall be no minimum width.
 - (d) Nonresidential uses.
 - (i) There shall be no minimum lot width.
- VII) Minimum floor area per unit.
 - (a) Dwelling, single-family detached (with required alley access).
 - (i) The minimum floor area per dwelling unit shall be 1,300 square feet.

- (b) Dwelling, single-family detached (without required alley access).
 - (i) The minimum floor area per dwelling unit shall be 1,800 square feet.
 - (c) Multifamily.
 - (i) The minimum floor area per dwelling unit shall be 520 square feet.
 - (d) Nonresidential uses.
 - (i) There shall be no minimum floor area.
- VIII) Maximum Lot Coverage.
- (a) Dwelling, single-family detached (with required alley access).
 - (i) The maximum lot coverage shall be 70 percent.
 - (b) Dwelling, single-family detached (without required alley access).
 - (i) The maximum lot coverage shall be 70 percent.
 - (c) Multifamily.
 - (i) The maximum lot coverage shall be 60 percent.
 - (d) Nonresidential uses.
 - (i) The maximum lot coverage shall be 80 percent.
- IX) Maximum floor area ratio.
- (a) Dwelling, single-family detached (with required alley access).
 - (i) There shall be no maximum floor area requirement.
 - (b) Dwelling, single-family detached (without required alley access).
 - (i) There shall be no maximum floor area requirement.
 - (c) Multifamily.
 - (i) There shall be no maximum floor area requirement.
 - (d) Nonresidential uses.
 - (i) There shall be no maximum floor area requirement.
- X) Maximum Height.
- (a) Dwelling, single-family detached (with required alley access).
 - (i) The maximum height of buildings and structures shall be three stories or 35 feet.
 - (b) Dwelling, single-family detached (without required alley access).
 - (i) The maximum height of buildings and structures shall be three stories or 35 feet.
 - (c) Multifamily.
 - (i) Except as provided in this paragraph, the maximum height of occupied buildings and structures shall be five stories or 70 feet.
 - (ii) For a parking structure that provides required off-street parking for a multifamily use, the maximum height of the parking structure shall be six stories or 70 feet.
 - (d) Nonresidential uses.
 - (i) The maximum height of buildings and structures shall be ten stories or 120 feet.

D) MULTIFAMILY GROUND FLOOR DESIGN.

- 1) For purposes of this paragraph, a surface parking lot that is either a platted lot or part of a platted lot is not considered an access easement.
- 2) A minimum of 50 percent of the ground floor units of each building façade fronting a public street or access easement shall have individual entries accessed directly from the sidewalk.
- 3) Sidewalk entries to individual units shall provide at least one of the following design components:
 - I) Stoop.

- II) Step(s).
- III) Landing.
- IV) Patio with perimeter railing or low wall, not to exceed 4 feet above the patio floor.
- V) Awning, canopy, or marquee (minimum seven-foot clearance above sidewalk)
- VI) Planter
- 4) Stoops, steps, patios, planters, retaining walls, benches, pots, raised planters, sculptures, cabanas and other decorative landscape items may be located within the required setback with no projection limitation, subject to maintaining a minimum unobstructed sidewalk width of four feet.
- 5) Transformers and other utility equipment located in front of the building shall be screened from view from the public right-of-way, and from public open spaces by screen walls or landscape screening.
- 6) Balconies, bay windows, awnings, signs, and entryways affixed to the building or part of the foundation may project up to five feet into required setback with a minimum of eight feet of clearance above the sidewalk.
- 7) If during site plan application, it is determined that existing or proposed utility placement, easements, or other engineering constraints prevent compliance with Section (D)(2) above for any unit(s), the Director of Planning will make a determination and recommend options for alternative compliance with this subparagraph.
- 8) Except for ground level units that provide direct access from the sidewalk, all other dwelling units shall be accessed from an interior corridor.
- 9) A minimum of 2,000 SF per phase, shall be allocated to public, non-residential ancillary uses.

E) LANDSCAPE, HARDSCAPE, & SCREENING STANDARDS.

- 1) Street Buffer Setbacks. Refer to Section C.1 for minimum street setbacks. The area between the property line and the setback shall constitute the arterial buffer. Buffers along Silveron Boulevard shall be either 25' in front of parking lots or 0' in front of buildings.
- 2) Street Buffer Landscaping.
 - I) Long Prairie Road.
 - (a) Tree plantings shall be provided at a ratio of one tree for each 30 linear feet of the buffer.
 - (b) The Town Entrance Landscape Design, including the curvilinear planting edge, as depicted in the Town's Urban Design Master Plan, shall be required along Long Prairie Road.
 - II) Silveron Boulevard.
 - (a) Between Silveron Boulevard and any surface parking:
 - (i) Tree plantings shall be provided at a ratio of one tree for each 30 linear feet of the buffer.
 - (ii) Subject to approval by the Director at the time of site plan submittal, required tree plantings may be equally spaced or clustered.
 - (b) Between Silveron Boulevard and any building that does not have any surface parking between the street and the building, no additional trees shall be required.
 - III) Lakeside Parkway.
 - (a) Due to existing slope and easement constraints, no additional street buffer plantings within the existing drainage easement shall be required.

3) Trees.

- I) Street trees may not be located within the public right-of-way without the approval of the Town's Public Works Department, and if permitted, shall be planted in accordance with the recommendations and specifications of a professional arborist, subject to approval by the Director.
- II) Public street Rights-of-way serving residential lots shall have a community lot, owned by the residential association, not less than 15 feet in width, located between the curb and the front lot line. Within the community lot, trees shall be planted at the rate of at least 1 tree per lot.
- III) Amended soils shall be utilized for each tree required as provided in Appendix A herein.
- IV) No trees are required within the FM 2499 (Long Prairie Road) ROW.
- V) Parking Lot Trees.
 - (a) Except as provided in subsection e of this paragraph, a minimum of one tree for each 20 parking spaces shall be provided.
 - (b) Except as provided in subsection e of this paragraph, each parking space shall be located within 50 feet of a tree.
 - (c) Parking area trees that are required to be located within 50 feet of a parking space and are located within the limits of underground detention shall be located elsewhere within the same parking lot area. The final location of any relocated tree shall be determined during site plan approval.
 - (d) Parking lot trees shall be planted in landscape islands, each of which contains a minimum of 160 square feet.
 - (e) If a parking lot island is encumbered by utility easements or utility equipment, trees may also be located elsewhere within the same parking lot area.
 - (f) Trees planted approximately 30 feet on center, in conformance with tree planting details on the Conceptual Landscape Plan in Exhibit C, shall be required in private parking lots consisting of a drive aisle with parallel parking adjacent to the curb.

4) Retaining walls.

- I) Retaining walls are limited to a maximum of 15 feet in height as measured from the finished grade at the bottom of the wall to the finished grade at the top of the wall.

5) Roundabout.

- I) The roundabout shall have one large tree of at least 8-inch caliper, or a group of at least 3 trees of at least 4-inch caliper, planted in the center of the roundabout as a visual focal point.
- II) The species selection, shall be determined by the Developer's arborist, subject to Town approval.

6) Dwelling, single-family detached.

- I) Except as provided in this paragraph, the required tree planting requirements as provided in Section 94-65 of the Town Code shall apply to this planned development.
- II) Planting of required trees is not required on the lot, provided that trees are planted in accordance with paragraph E.3.II.

7) Disturbed Areas.

- I) Landscaping of disturbed and re-graded areas within Public Open Spaces, including detention areas and areas adjacent to retaining walls, shall be re-established and maintained with turf and trees. The following standards shall apply.
 - (a) Disturbed areas of 5% slope or less, turf, hydro-mulch, or drought resistant grasses shall be established in the disturbed areas and irrigated with rotors near the top of the bank of the detention basins, or irrigated as approved by the Town.
 - (b) Disturbed areas greater than 5% slope shall be planted with trees at the rate of ten trees per acre. Ground shall be covered with turf, hydro-mulch, native grasses, ground cover plantings, or mulch. Subject to Town approval of the Landscape Plan, whips may be planted at the rate of 100 whips per acre in lieu of ten trees per acre.
 - (c) Trees planted in disturbed areas, three-inch caliper or greater, shall qualify for mitigation credits. .
- 8) Wet Detention
 - I) Except as provided in this paragraph, wet detention areas shall comply with Town standards.
 - II) Perimeter banks of a wet detention area shallower than a 4:1 slope shall be stabilized with vegetation, hydro-mulch, or aquatic plants to prevent erosion.
 - III) Perimeter banks exceeding 4:1 slope will be stabilized with stone retaining walls where visible to the public or grouted rip rap where not visible to the public.
 - IV) Pond health shall be maintained with aeration bubblers or fountains.
 - V) At least one detention pond shall have a fountain visible from Long Prairie Road.

F) ACCESS, PARKING, AND LOADING STANDARDS.

- 1) PARKING. Except as provided in this section, off-street parking shall be provided as outlined in the Town of Flower Mound Land Development Regulations. Parking for this development shall use the following standards:
 - I) Multifamily.
 - (a) Except as provided in this subparagraph, an average of one and one-half spaces for each dwelling unit or the minimum parking requirement for the following,
 - (b) A minimum of one space for each one-bedroom unit.
 - (c) A minimum of two spaces for each two bedroom and three-bedroom unit.
 - (d) Tuck-under parking spaces located within the multifamily building footprint shall count towards the required parking.
- 2) The development will be subject to an overall reciprocal easement agreement granting cross-access and cross-parking for the entire non-residential development. For purposes of this subparagraph, cross-parking shall include structured parking and podium parking. A copy of said agreement will be provided to the Town of Flower Mound with the Record Plat for the development.
- 3) On-street parking within the boundary of the Planned Development is permitted in the locations shown on Exhibit "C" and may be considered in required off-street parking calculations.
- 4) Surface Parking Lots.
 - I) Except as provided in this paragraph, surface parking areas shall be located behind buildings.
 - II) For Building Numbers 11 and 12, the location for surface parking lots shall be provided as shown on Exhibit "C".

5) Structured Parking.

- I) The Design of the parking structure shall incorporate materials, fenestrations, and other architectural features that are consistent with the building(s) which the parking serves, and shall include vertical elements such as reveals, projecting ribs and offsets and is applicable on all facades fronting public ROW's or public open spaces.
- II) Except for point(s) of ingress/egress, openings in the parking structure facade fronting a public right of way shall not exceed 60 percent of the total facade area for each level of parking and shall be designed in such a manner to screen headlights. Parking structure facades that do not front on public rights-of-way may use metal or cable railings in lieu of masonry walls.
- III) On all facades fronting public rights-of-way or public open spaces, elevators and stair shafts shall be topped with a gabled roof or other architectural accent. Exterior stairs are prohibited.
- IV) On all facades fronting public rights of way or public open spaces, any level of podium parking above street level shall not exceed 60 percent of the total facade with openings in the parking structure façade.
- V) Any ingress/egress to a parking structure or podium parking area shall not be visible from Long Prairie Road.
- VI) Multifamily Structured Parking shall comply with the standards above for all elevations not wrapped by buildings as shown in Exhibit E.

6) Access Management: The access drives from the perimeter arterial roadways shall comply with the Town's Access Management regulations with the sole exception of the emergency access drive on Silveron Boulevard. The emergency access drive on Silveron Boulevard connects to the designated fire lane which is closed to all public vehicular traffic, and shall not be counted as an access point for the purpose of calculating spacing of access drives.

- I) Internal Streets: Street sections (Type A, B, C, D, E, and F) for all internal streets and alleys are shown on the attached Exhibit C.
- II) For streets without striped on-street parking, the public ROW shall extend from back-of-curb to back-of-curb.
- III) For streets with striped on-street parking, the public ROW shall include only the travel lanes and shall exclude the on-street parking.
- IV) For residential alleys, the public ROW shall be a minimum of 17 feet and paving shall be a minimum 12 feet in width.
- V) For Mutual Access Easements, the public utilities shall be located in easements in accordance with the Town of Flower Mound Land Development Regulations.

7) Loading and waste areas.

- I) All loading areas must be designed so as to not be visible from Long Prairie Road, Lakeside Parkway, and Silveron Boulevard.
- II) Enclosed dumpster areas must be located as to not be visible from Long Prairie Road and Silveron Boulevard.

G) TRAIL, SIDEWALK, & CROSSWALK STANDARDS.

1) Sidewalks.

- I) Except as provided in this paragraph, sidewalks adjacent to streets shall have a minimum width of four feet and shall be paved with concrete.
- II) Lakeside Parkway.

- (a) The sidewalk extension within the south side of the Lakeside Parkway right-of-way shall have a minimum width of six feet and shall be paved with concrete.
- 2) Trails.
 - I) The network of trails and minimum trail requirements are located and identified on the Trail Map in Exhibit "C".
 - II) Town Multi-use Trail. The minimum eight-foot-wide regional trail generally parallel to FM 2499 shall comply with Town Trail Standards and shall be subject to a Public Access Easement.
 - III) Silveron Trail. The existing sidewalk and trail within the Silveron Boulevard right-of-way shall remain.
 - IV) Access Walkways.
 - (a) The minimum walkway width shall be six feet and shall be paved with concrete.
 - (b) Exceptions to the paving standard may be permitted by the Director of Planning through the Site Plan application process.
 - (c) The Access Walkways shall be subject to a public access easement.
 - V) Auxiliary Trails.
 - (a) The minimum walkway width shall be six feet, shall be constructed with all-weather paving, and shall be required to connect to the generally flat areas of the detention basins.
 - (b) The Auxiliary Trails shall be subject to a public access easement.
 - VI) Fire Lane Trail.
 - (a) The minimum walkway width shall be 12 feet, subject to the review and approval of the Fire Department.
 - (b) The Trail shall be subject to a public access easement.
 - VII) Nature Trails.
 - (a) A nature trail shall be located within the northern portion of OS-4, within the Corps Mitigation Easement.
 - (b) The minimum trail width shall be four feet, with a natural surface, as constructed as close to existing grade as possible, in accordance with the restrictions of the Corps Mitigation Easement.
 - (c) The overall length shall be no less than 500 linear feet.
 - (d) Final trail design shall be approved during the site plan review for Phase 2 of the Multifamily development.

H) OPEN SPACE.

- 1) Public Open Space
 - I) All Public Open Space shall generally be located where shown on Exhibit C, and shall be subject to a Public Access Easement.
 - II) The minimum furnishings and amenity requirements for each individual Public Open Space are identified in Exhibit C.
- 2) Private Open Space
 - I) Private Open Space shall not be open to the general public and shall be privately owned and privately maintained. This shall include amenities for the exclusive use of the Multifamily or Single-Family residents.

- 3) Open Space Listing: The following list of Open Spaces outlines the minimum requirements for each of the proposed Open Spaces and parks proposed for the Lakewood Planned Development District. The list shall be used in conjunction with the Concept Plan in Exhibit C.
 - I) A large number of trees are required for the mitigation of Specimen Trees, estimated to be approximately 648 trees. It is the intent of the development to mitigate on-site and to plant the required trees in the public open spaces, common areas, and commercial amenities.
 - II) All proposed Open Spaces shall be privately owned and privately maintained.
 - III) The acreage identified in each open space is an estimate based on current information. The final acreage may vary as much as 20% from the individual acreage listed, but the total of all open space shall total at least 34 acres. Each Site Plan submittal shall include a tabulation of the running total of the acreage of public open space.
- 4) OS-1: Acreage Approximately 0.6 acres
 - I) Park Type: Landmark Corner
 - II) This Landmark Corner is intended to serve as a landmark entryway for Flower Mound and to the Lakewood Planned Development District and act as a placemaking area through the use of restaurants tied to outdoor courtyards accessed by patrons of Lakewood venues. The site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the Town trail and the public trail network
 - (c) Refer to the PD documents for signage and perspectives of this area.
 - (d) 500 Square feet for outdoor courtyard
 - (e) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (f) 1,500 square feet for shrub, groundcover and seasonal color
 - (g) Minimum of (2) Seating benches and (1) trash receptacle.
 - (h) Irrigated
- 5) OS-2: Acreage approximately 0.9 acres
 - I) Park Type: Green
 - II) This Green anchors the west end of the pedestrian bridge and is intended to be an active pedestrian space for gathering with an urban feel. It shall accommodate large gatherings, exercise groups, food trucks and lake viewing. This space is adjacent to one of the lakeside restaurants, an office building and the existing lake. The site shall be professionally maintained. Please refer to PD document of open space maps and design perspectives of these areas.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) 5,000 square foot event lawn
 - (d) 1000 square feet for outdoor plaza with decorative hardscape
 - (e) 500 square foot minimum shade structure
 - (f) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.

- (g) 1,000 square feet for shrub, groundcover and seasonal color
 - (h) Signage: Minimum of 1 Park identification sign, (1) wayfinding markers, (1) trail marker
 - (i) Minimum of (8) Seating benches and (2) trash receptacles.
 - (j) Minimum of (8) bollard lights
 - (k) Irrigated
 - (l) Adjacent to proposed restaurant patio
- 6) OS-3: Acreage: approximately 0.9 acres
- I) Park Type: Lawn
 - II) This Lawn is intended to be an active pedestrian space for gathering that has an urban feel, but softer with more turf and less paving than OS-2. This space is adjacent to one of the lakeside restaurants, office buildings and existing lake. The site will be professionally maintained. Please refer to PD document of open space maps and design perspectives of these areas.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the trail network
 - (c) 15,000 square foot event lawn
 - (d) Minimum 500 square feet for outdoor plaza with decorative hardscape, including colored or stamped concrete
 - (e) Minimum 500 square foot shade structure
 - (f) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (g) Minimum of 1,500 square feet for shrub, groundcover and seasonal color
 - (h) Signage: Minimum of 1 Park identification sign, (1) wayfinding markers, (1) trail marker
 - (i) Minimum of (8) Seating benches and (2) trash receptacles (1) pet waste station
 - (j) Minimum of (8) bollard lights in lawn
 - (k) Irrigated
 - (l) Adjacent to proposed restaurant patio
- 7) OS-4: Acreage: approximately 16.1 acres
- I) Park Type: Natural Open Space
 - II) This natural open space is intended to be publicly accessed by Flower Mound residents to enjoy the tremendous asset of the existing lake. This space ties together all portions of the Lakewood Planned Development District. The site will be a combination of manicured and natural areas based on the existing character of the land surrounding the lake. Please refer to PD document of open space plans and images of this area. A portion of OS-4 is subject to a conservation easement by the Army Corps of Engineers.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network with continuous concrete trail around the lake. Refer to open space and trail plan for trail general location, types and sizes of various trails.
 - (c) Bollard lighting for the proposed trail at the minimum ratio 1 light per 250 feet. Bollards will be placed around the natural playground and restaurants plazas on the west side of the project.

- (d) Pedestrian bridge, 8' wide, connects OS-5 and O-S2. This bridge will include string lights and gateway columns on each end to make the bridge the centerpiece of the Lakewood Planned Development District. The terminus of each plaza will define both ends of the bridge.
 - (e) Public parking shall be located in three areas near the perimeter of OS-4.
 - (f) Playground placed in a natural setting with a minimum 200 SF shade structure as shown in the proposed perspective
 - (g) Minimum of one overlook location with seating for lake viewing
 - (h) Minimum of 500 feet of nature trail on the north side of the park
 - (i) A minimum of 3 picnic tables on concrete pads
 - (j) Park benches or other seating spaced at least every quarter mile along the trail
 - (k) Trash receptacles and pet waste stations placed every half mile along trail and near picnic tables
 - (l) Signage: Minimum of 1 Park identification sign, 3 wayfinding markers, 2 educational maps and trail markers
 - (m) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (n) Irrigated manicured areas where deemed appropriate by developer's landscape architect within the southwest portion of the open space
 - (o) Lake Edge Condition: The standard for the condition of the lake edge shall conform to the following standards
 - (p) The southwestern portion of the lake, outside the Corps Mitigation Easement, shall have a mowed edge allowing pedestrian access to the majority of the lake edge.
 - (q) The northern and eastern portion of the lake, within the Corps Mitigation Easement, shall be cleaned to the extent permitted. The lake edge shall be mowed where possible and permitted and shall not be fenced.
- 8) OS-5: Acreage approximately 0.8 acres
- I) Park Type: Courtyard
 - II) This Courtyard anchors the east end of the pedestrian bridge. This space is a transition space designed with flexibility to accommodate the pedestrian and bike traffic merging in this area. It is intended to be a gathering area and transition into the Esplanade and can be used as a public picnic area or informal, outdoor work area. The site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Minimum 500 square feet of outdoor plaza with decorative hardscape, including colored or stamped concrete
 - (d) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (e) Minimum of 300 square feet for shrub, groundcover and seasonal color
 - (f) Signage: minimum of (1) directory map, (1) wayfinding markers, (1) trail marker
 - (g) Minimum of (4) Seating benches and (2) trash receptacles.
 - (h) Bike repair station

- (i) Minimum of (8) bollard lights
 - (j) Irrigated
- 9) OS-6: Acreage: approximately 0.6 acres
 - I) Park Type: Square
 - II) This Square, or Esplanade, is a wide linear open space, approximately 50' in width, connecting the single-family residential community to the commercial amenities and services. The intent of this space is to connect the western office, restaurants and retail population to the eastern residential side of the development over the pedestrian bridge. This linear open space will also act as a festival street that can be closed to traffic for community events and can be programmed for pop-up vendors, food trucks, art fairs and other events. The site shall be designed to accommodate tent setup. The site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Minimum of 500 square feet for outdoor plaza with decorative hardscape, including colored or stamped concrete
 - (d) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (e) 5,000 square feet of lawn or decomposed granite to accommodate tent setup
 - (f) On-street parking for public and for food truck access.
 - (g) Trees to be planted behind curbs with parallel parking in conformance with (E)(6).
 - (h) Minimum of 300 square feet for shrub, groundcover and seasonal color
 - (i) Minimum of (4) Seating benches and (2) trash receptacles.
 - (j) Street lighting
 - (k) String lights along esplanade for evening use.
 - (l) Minimum of (4) sets of al fresco dining tables.
 - (m) Irrigated
- 10) OS-7: Acreage: approximately 13.6 acres
 - I) Park Type: Recreation / Detention
 - II) This recreational space is a dual-purpose space for both active and passive recreation as well as detention. The site will be accessed with paved trails into the detention areas that shall be designed for active recreation and other uses. The detention part of the site will be professionally maintained. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Minimum 100 square foot overlook at terminus of east/west street from the roundabout
 - (d) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.

- (e) Concrete trails will be required to be contained within the open space area for 50% of their total length and the remaining 50% can be adjacent to the public right of way to gain access for the residents, subject to review of the parks department.
 - (f) Detention Areas will be designed to promote active play. The bottom portion of the detention areas will be designed to be sloped at 5% or less to drain water off the fields and shall include a paved pilot channel to drain excess water away from the fields in dry conditions. Detention areas will be designed to Town drainage standards, and shall have maximum 4:1 side slopes.
 - (g) Signage: Minimum of (1) Park identification, (2) wayfinding markers, (2) trail markers
 - (h) Minimum of (4) Seating benches, (2) trash receptacles, (2) pet waste stations.
 - (i) Irrigated with rotors at or near the top of the bank of the detention areas
- 11) OS-8: Acreage: approximately 1.6 acres
- I) Park Type: Private HOA facility
 - II) This recreational and meeting space serves the single-family residents of the Lakewood Planned Development District. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Private area, No public easement
 - (b) Connected to the public trail network
 - (c) Swimming Pool
 - (d) Parking
 - (e) Meeting and event rooms
- 12) OS-9: Acreage: approximately 0.3 acres
- I) Park Type: Pocket Park
 - II) This Pocket Park can be directly accessed from the public trail located within the Silveron ROW. This space separates the single family lots from the Silveron ROW and provides a rest area for pedestrians walking or jogging along Silveron. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement
 - (b) Connected to the public trail network
 - (c) Mitigation trees to be selected from the Town's approved tree mitigation and replacement tree planting list, and Appendix A herein and approved by the Town.
 - (d) Signage: Minimum of (1) wayfinding marker, (1) trail marker
 - (e) Minimum of (1) bench, (1) trash receptacles
 - (f) Irrigated turf and beds.
- 13) OS-10: Acreage: approximately 1.8 acres
- I) Park Type: Town Trail
 - II) This Town Trail shall comply with the specifications and requirements for installation of the Town Trail along the FM 2499 ROW. Please refer to PD document of open space plans and images of this area.
 - III) Park requirements:
 - (a) Public Access Easement, width varies from 25' to 70'. The minimum Town Trail required width is 14' with an 8' concrete pavement.

- (b) Connected to the public trail network
- (c) Trees shall be planted in accordance with Town Trail requirements and in general compliance with Conceptual Landscape Plan in Exhibit C and Section I.1. whichever is more restrictive
- (d) Signage: (3) trail markers
- (e) Park benches or other seating spaced at least every quarter mile along the trail
- (f) Trash receptacles and pet waste stations placed every half mile along trail

I) RESIDENTIAL ARCHITECTURAL STANDARDS.

- 1) Dwelling, Single-family detached. NOTE: These architectural standards apply whether or not alley access is required.
 - I) Roof Pitch shall be between 6/12 and 12/12 slope, excluding patios, porches and porticos.
 - II) Where garage doors face the street, or are part of the front façade, the garage doors shall be carriage style decorative doors.
 - III) For purposes of this paragraph, Primary Materials consists of brick, stone, cast stone, stucco, EIFS, and cementitious siding.
 - IV) Except as provided in this paragraph, each dwelling that faces a street or access easement, shall contain not less than 80 percent Primary Materials for any portion of a façade that faces a street or access easement.
 - V) For all other facades, each dwelling shall contain not less than 80 percent Primary Materials, calculated as an aggregate for all facades exclusive of paragraph I.1.IV. above.
- 2) Multifamily.
 - I) For purposes of this paragraph, Primary Materials consist of brick, stone, cast stone, stucco.
 - II) For purposes of this paragraph, Secondary Materials consist of the following:
 - (a) EIFS
 - (b) Cementitious siding
 - III) Stucco shall not exceed 80 percent of any one façade.
 - IV) Except as provided in this paragraph, each dwelling that faces a street or access easement, shall contain not less than 80 percent Primary Materials for any portion of a façade that faces a street or access easement.
 - V) For all other facades, each dwelling shall contain not less than 80 percent Primary Materials, calculated as an aggregate for all facades exclusive of paragraph I.2.IV. above.

J) NONRESIDENTIAL ARCHITECTURAL STANDARDS.

- 1) For purposes of this paragraph, Primary Materials consist of the following:
 - I) brick
 - II) stone
 - III) cast stone
 - IV) stucco, limited to 80 percent per facade.
- 2) For purposes of this paragraph, Secondary Materials consist of the following:
 - I) EIFS
 - II) Cementitious siding
- 3) Each building façade exclusive of doors and windows shall utilize not less than 80 percent Primary Materials on exterior facades.

K) EXCEPTIONS AND WAIVERS

- 1) The following exceptions and waivers to the Town's Ordinances shall apply to this planned development.
 - I) Buffers between residential and commercial lots: Buffers between residential and commercial lots shall comply with the following standards:
 - (a) If the commercial occupancy is an office structure 15,000 SF or less, no buffer shall be required.
 - (b) If the commercial occupancy is a retail occupancy 10,000 SF or less, no buffer shall be required.
 - (c) If the commercial occupancy exceeds these limits, or if the commercial occupancy is a restaurant, then the buffer shall comply with the Town's Compatibility Buffer-Section 82.302.
- 2) Meritorious Architecture-Urban Design Plan, Section 1.2. The proposed architecture is unique and shall be deemed as 'meritorious' regarding Façade Materials of Urban Design Plan. Commercial buildings may exceed 50 percent doors and windows per facade.
- 3) Pitched Roofs – Urban Design Plan Section 12.1: A Waiver to the pitched roof requirement of buildings less than 15,000 SF may be considered by the Town Council provided that said buildings are part of a large-scale development, not adjacent to single family residences.
- 4) A Waiver pursuant to Section 98-151 is granted. The Waiver is limited to Section 98-147, Topographical Slope Protection. All other elements of Chapter 98 Subdivision F remain in force.
 - I) While recognized as a potential BMP, the use of retaining walls should be kept to a minimum. Any retaining wall four foot (4') or greater in height shall be designed by a professional engineer licensed by the State of Texas. Retaining walls exceeding fifteen feet (15') in height are prohibited except on a showing that the property owner will suffer undue hardship in the development of an individual lot in the absence of such a fifteen foot (15') tall retaining wall.

L) MISCELLANEOUS STANDARDS.

- 1) RENDERINGS. All site plan applications submitted for approval shall comply with the depiction of buildings, landscaping, open space areas (public and private), sidewalk and crosswalk detail, and elevations as shown on Exhibit "C".
- 2) ELEVATIONS.
 - I) There shall be a unified design theme consistent with the attached elevations. Buildings shall use a combination of textures and materials that complement the design theme. Entrances to buildings shall be clearly identified to pedestrians and motorists and shall be accentuated by the use of canopies, porticos, recessed wall planes, overhangs or other similar features that are compatible with the architectural style. Parapets or screening are required on flat roofs so that any roof top equipment is not visible from the street right-of-way.
 - II) The conceptual elevations attached to this ordinance denote building numbers that correspond with the anticipated respective location(s) for a use or mix of uses provided on the conceptual site plan. The reference to building numbers shall ensure that, for example, a multifamily building shall comply with the corresponding conceptual elevation (i.e., Typical Multifamily Building). As such, if a site plan application is submitted for a use (or uses) in a different location than that shown on the conceptual site plan, then the corresponding elevation shall apply.
- 3) DENSITY.

- I) Dwelling, single-family detached.
 - (a) Maximum number of dwelling units is one hundred seventy (170).
- II) Multifamily.
 - (a) Maximum number of residential dwelling units is eight hundred fifty (850).
- 4) MULTIFAMILY. Except for ground level units that provide direct access to the sidewalk, all other dwelling units shall be accessed from an internal corridor.
- 5) HOTEL. Hotel developments shall be subject to the following conditions:
 - I) Shall provide at least three amenities from the list below:
 - (a) Pool
 - (b) Spa/sauna
 - (c) Weight room/fitness center
 - (d) Playground
 - (e) Sports court
 - (f) Plaza/atrium
 - (g) Game room
 - (h) Conference room (1,000 square foot minimum)
 - (i) Full-service restaurant (minimum seating capacity of 35)
 - II) Shall maintain five (5) percent of the lot area as open space, exclusive of required setbacks, buffers, and parking areas, but including amenities from the above list, except for Conference room and Full-service restaurant.
 - III) Shall provide staff on-site 24 hours a day.
 - IV) The entrance to each room shall be gained from an interior corridor, except first floor units, which may have direct access from an interior courtyard or swimming pool area instead of, or in addition to, hallway access.
 - (j) A porte-cochere or covered area must be provided immediately adjacent to the entrance with a registration desk. The porte-cochere or covered area must be sufficient to accommodate the temporary parking of at least two (2) vehicles parked side by side for guests checking in and out.
 - V) Prior to, or concurrent with, the submittal of a site plan for the hotel, approval of an amendment to the Planned Development District shall be required. The said amendment shall provide written standards and conceptual elevations for the hotel.
- 6) OFFICE-SHOWROOM/WAREHOUSE. This use is only permitted by right within 1,000 feet of Lakeside Parkway.
- 7) RESTAURANT DRIVE-IN WINDOW.
 - a. A drive-in window in conjunction with a restaurant is only permitted subject to either of the following provisions:
 - i. A restaurant, general with a minimum floor area of 3,000 square feet, and developed in a single tenant retail building.
 - ii. A restaurant, general located within a multi-tenant retail building.

8) PHASING

- A. Intent and phasing: The phasing of the development is intended to ensure that certain portions of the commercial and open space improvements are developed in

conjunction with the residential development. For the purposes of this Section 8.A, the following phrases shall be defined as follows:

- I) "Commencement of Construction" shall mean:
 - (a) the construction plans for the commercial buildings, and certain open spaces, have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; and
 - (b) all necessary permits permitting the commencement of construction of the commercial buildings, and certain open spaces, have been issued by all applicable governmental authorities; and
 - (c) mobilization, grading or excavation of the approved and permitted commercial property has begun.
- II) "Completion of Construction of a shell building" means construction for the particular use has reached the point that, in accordance with the Town's Code of Ordinances, the Town's Building Official has, or is able to, issue a shell building final and that is located within a subdivision that has achieved Subdivision Acceptance.
- III) "Completion of Open Space" (OS) shall mean that construction of utilities, landscaping, irrigation, amenities as defined in the associated Park Standards in Section H, and any other elements shown on the approved site plan are completed.
- IV) "Subdivision Acceptance" shall mean that the subdivision has met all of the requirements outlined in Chapter 90 Article V of the Town's Code of Ordinances and the Town has issued a letter accepting the subdivision. This phrase may also be styled as "accept the subdivision."
- V) "Multi-family" (MF) shall mean residential development located in areas designated as Urban Residential (RSZ-1) on the Lakewood Land Use Plan, Exhibit C.
- VI) "Single-family" (SF) shall mean residential development located in areas designated as Single Family Residential (RSZ-2) on the Lakewood Land Use Plan, Exhibit C.

B. Phase 1:

- I) During the 1st phase, 429 MF units and 77 SF homes may be constructed subject to the requirements of this Section 8.B.
- II) Prior to the issuance of any permits for the construction of 429 MF units and 77 SF homes: 1) Commencement of Construction of a minimum of 50,000 square feet of commercial development must occur, which must include Buildings 9 and 10, which upon Completion of Construction of a shell building must comprise a minimum of 13,000 square feet in size; and 2) Commencement of Construction of OS-1 and OS-10 (as modified below), must occur. Hotel uses shall not be calculated toward meeting the minimum square footage of commercial development in the first Phase. The issuance of permits for the construction of 429 MF units and 77 SF homes shall also be conditioned upon compliance with

Section 8.B (III) and 8.B (IV), below.

- III) The Town shall not issue building finals for the 429 MF units until there is Completion of Open Space of OS-5, OS-6, OS-4 (as modified below), and OS-10 (as modified below).
 - (a) Completion of Open Space OS-4 shall exclude the fire lane trail north of the Pedestrian Bridge but includes a 6' wide temporary asphalt trail, and shall exclude the Nature Trail and associated improvements.
 - (b) Completion of Open Space OS-10 shall include construction of the corner segment between Silveron Boulevard and Drive 8, and construction of the segment between Drive 10 and Drive 11 on Long Prairie Road.
- IV) The Town shall not accept the first SF subdivision and shall not issue building permits for 77 SF homes until the following has been completed:
 - (a) Completion of Open Space OS-8, OS-4 (as modified below), and OS-10 (as modified below).
 - (i) Completion of Open Space OS-4 shall exclude the fire lane trail north of the Pedestrian Bridge but include a 6' wide temporary asphalt trail, and shall exclude the Nature Trail and identified in the Park Standards in Section H.
 - (ii) Completion of Open Space OS-10 shall include the segment between Drive 11 and the east property line.

C. Phase 2:

- I) The Town shall not issue any permits for the construction of the remaining MF units and remaining SF homes until the following has been completed:
 - (a) Completion of Construction of a shell building(s) for 50,000 square feet of commercial development, which must include Buildings 9 and 10, and Completion of Open Space OS-1 and OS-10 (as conditioned above); and
 - (b) Commencement of Construction of an additional 50,000 square feet of commercial improvements anywhere within the PD district for a total of 100,000 square feet of commercial improvements. The additional 50,000 square feet of commercial improvements in the second phase may include a hotel structure.
- II) In addition to the requirements set forth in Section 8.C (I) the Town shall not issue any permits for the construction of the remaining MF units unless the fire lane trail in OS-4 has been included in the site development permit and is completed concurrently with all required fire lanes for the Phase. In addition, the Town shall not accept the subdivision intended for the remaining MF units until the nature trail in OS-4 has been completed.
- III) In addition to the requirements set forth in Section 8.C (I) the Town shall not accept the subdivision intended for the remaining SF homes until there is Completion of Open Space OS-7, OS-8 and OS-9.

D. Single Phase Option: In lieu of the sequential development of Phases 1 and 2 described above, the following combined single phase development process may be employed:

- I) The Town shall not issue site development permits for the construction of the first 429 MF units or the first single-family residential subdivision until there is Commencement of Construction of a minimum of 100,000 square feet of commercial structures, which at a minimum, must include Buildings 9 and 10, which upon Completion of Construction of a shell building must comprise a minimum of 13,000 square feet in size; and, until there is Commencement of Construction of OS-1 and OS-10.
- II) The Town shall not issue building finals for the first 429 MF units until there is Completion of Open Space OS-1, OS-4, OS-5, OS-6, and OS-10.
- III) The Town shall not issue any permits for the construction of the remaining MF units until there is Completion of Construction of Shell Buildings consisting of a minimum of 100,000 square feet of commercial structures. The minimum 100,000 square feet of commercial space required by this Section 8.D (III) must include Completion of Construction of a Shell Building for Buildings 9 and 10. The minimum square footage for Buildings 9 and 10 must be 13,000 square feet, total.
- IV) The Town shall not accept the first SF subdivision and shall not issue any permits for the construction of the SF homes until there is Completion of Open Space OS-4, OS-7, OS-8, OS-9, and OS-10.
- V) Model home permits may be issued prior to Completion of the Open Spaces. The issuance of model home permits shall be subject to the Town's model home ordinance.

E. Additional Phasing Requirements

- I) Whenever Buildings 4 and 7 commence construction, OS-2 must be developed concurrently, and completed with the first building.
- II) Whenever Buildings 5 and 8 commence construction, OS-3 must be developed concurrently, and completed with the first building.
- III) The Town shall not accept the first SF subdivision until the required drainage and access improvements associated with Phase 1 are completed. The required access improvements shall include the roadway connection between Long Prairie Road and Silveron Boulevard identified as Street A and Street C between Drives 11 and 3. The required drainage improvements shall include required detention area(s). If the required detention areas are located in OS-7, they may be constructed independent of the requirement to later complete the park requirements for OS-7, as described in the Park Standards in Section H.
- IV) Any remaining segments of OS-10 shall be completed in conjunction with the development of adjacent commercial buildings such as buildings 11, 12, 13, 17, 18, and 19 as would be required under site plan approval.

F. Plan Review:

Building permit applications may be submitted for commercial and residential buildings concurrently without regard to the phasing requirements to commence construction, set forth above. However, commercial and residential construction must be done in accordance with the phasing requirements set forth above.

- 9) ENVIRONMENTAL PROTECTION PLAN. This Planned Development is subject to an approved Environmental Protection Plan.
- 10) GRADING PERMITS. Subsequent to the approval of the first record plat, the Applicant shall be permitted to process a grading permit to allow the grading and clearing of the portion of the development required to balance the cut and fill to complete the first phase of the development, subject to the following conditions:
 - V) The limits of the proposed grading shall be included in the Record Plat;
 - VI) The graded area outside the limits of the proposed landscape plan shall be stabilized, irrigated with temporary irrigation, and planted with turf sufficient to prevent soil erosion.

- 11) DRAINAGE. A comprehensive drainage study is required to be conducted prior to approval of first record plat.
- 12) TREE PROTECTION PLAN. This Planned Development is subject to an approved Protection Plan, to be submitted with the site plan application.
- 13) TREE MITIGATION.
 - V) Mitigation trees, 3-inch caliper or greater, to be selected from the Town's approved tree mitigation and replacement tree planting list, and trees listed in Appendix A and approved by the Town.
 - VI) Except as provided in this paragraph, trees planted within this planned development shall be counted towards required tree mitigation:
 - (j) Trees planted on single family lots.
 - (k) Trees required by Section E (2), Street Buffer Landscaping.
 - (l) Required parking lot trees.
 - (m) Ornamental trees.

M) PARK LAND DEDICATION AND PARK DEVELOPMENT FEE STANDARDS.

- 1) Credit for Park Dedication requirements, as calculated in accordance with Section 90-443 of the Flower Mound Code of Ordinances shall be granted for each acre or portion of an acre of all Public Open Space identified on Exhibit C, Open Space and Trail Plan.
- 2) Park Development Fees shall be calculated in accordance with Section 90-446 of the Flower Mound Code of Ordinances. The Developer shall be solely responsible for construction of all improvements within the Open Spaces and Trail Easements.
- 3) Credit for Park Development Fees shall be granted for direct and indirect costs for design and construction of the Public Open Spaces, as submitted and approved by Town Council and as documented by receipts, in accordance with Section 90-446(c) of the Flower Mound Code of Ordinances. Specifically, credit shall be given for all costs associated with improving public open space including the construction of the pedestrian bridge, furnishings and equipment, removal of underbrush and invasive species in natural areas, and the public trail network excluding trails required in the Town's Trails Master Plan. Reimbursable costs exclude costs for grading, clearing and turf establishment.
- 4) Credit for Park Development Fees shall not exceed the amount calculated for total units in accordance with Section 90-443 of the Flower Mound Code of Ordinances, based on the residential dwelling unit count for the overall development.
- 5) The required minimum Public Open Space shall be based upon 3.36 acres per 100 dwelling units.
- 6) Public Open Space shall comply with the Open Space requirements in Section H to qualify for credit and/or reimbursement of Park Development Fees and/or Park Dedication Fees.
- 7) The Town's review and approval process of the proposed public open spaces qualifying for Park Development credit shall be reviewed in accordance with the Town's standard review and approval of building permits and certificates of occupancy.

N) SIGNAGE.

- 1) Except as provided in this paragraph, all signage shall meet the Town's Sign Ordinance. Where noted, reference is made to the respective sign's location within the Planned Development which is depicted on the location map attached to Exhibit "F".

- 2) The following identifies those provisions that may deviate from Chapter 86 of the Land Development Regulations. Wall signs and various ground signs shall be permitted as shown on Exhibit "F", and shall be subject to the following standards:
- V) Ground Sign 1.
 - (j) The height shall not exceed 10 feet.
 - (k) The sign area shall not exceed 100 square feet.
 - (l) A masonry border is not required.
 - (m) Sign shall be single-faced.
 - VI) Ground Sign 2.
 - (j) The height shall not exceed 20 feet.
 - (k) The sign area of each face shall not exceed 100 square feet.
 - (l) A masonry border is not required.
 - VII) Ground Sign 3.
 - (j) The sign height shall not exceed 10' feet.
 - (k) The sign width shall not exceed 15' feet
 - (l) The sign area shall not exceed 98 square feet per side.
 - (m) A masonry border is not required.
 - VIII) Ground Sign 4.
 - (j) The sign height shall not exceed 5' feet.
 - (k) The sign width shall not exceed 2' feet
 - (l) The sign area shall not exceed 10 square feet per side.
 - (m) A masonry border is not required.
 - IX) Ground Sign 5.
 - (j) The sign height shall not exceed 3' foot.
 - (k) The sign width shall not exceed 1' feet
 - (l) The sign area shall not exceed 3 square feet per side.
 - (m) A masonry border is not required.
 - (n) No permit shall be required.
 - X) Ground Sign 6.
 - (j) The sign width height shall not exceed 2' feet.
 - (k) The sign height width shall not exceed 1' feet
 - (l) The sign area shall not exceed 2 square feet per side.
 - (m) A masonry border is not required
 - (n) No permit shall be required.
 - XI) Building Signs
 - (j) In multi-story office or mixed-use buildings, a primary or single occupant may add signage identifying the building. This sign is in addition to ground floor tenant wall signs if applicable.
 - (k) The sign area of Building signs shall not exceed 240 square feet.
 - (l) The height shall not exceed 6 feet.
 - (m) The width shall not exceed 50 feet.
 - (n) Only one sign per building facade is permitted
 - XII) Wall Signs: Shall comply with Section 86-68 of the Town's Sign Ordinance
 - XIII) Tenant Blade Signs

- (j) Permitted only for office, retail or restaurant uses.
- (k) Maximum of one per tenant.
- (l) The height shall not exceed three feet.
- (m) The width shall not exceed five feet.
- (n) The sign area shall not exceed 15 square feet (per side if a double-faced sign).
- (o) The sign may encroach into the sidewalk area subject to maintaining a minimum clearance of eight feet above the sidewalk
- (p) The sign may be internally or externally illuminated and must not create a glare onto a building or the sidewalk.

O) ADMINISTRATION.

- 1) There shall be established a Property Owners' Association (POA). Said association shall file Covenants, Conditions, and Restrictions (CC&Rs) in the Denton County Real Property Records and in the Tarrant County Real Estate Records prior to the first building permit issued and said POA shall be responsible for the maintenance of the following items included within the Record Plat:
 - I) Landscape buffers along Long Prairie Road and Silveron Boulevard.
 - II) Publicly accessible open space areas.
 - III) Striping of parking spaces and pedestrian crosswalks outside of public rights-of-way.
 - IV) Cross-access and cross-parking agreements, if applicable.
 - V) Trails and pedestrian bridges.
 - VI) Other items as listed in the CC&Rs.

APPENDIX A: TREE PLANTING RECOMMENDATIONS**On Site Soil Storage and Amendment:**

Areas to be graded for site development will have vegetation removed and the topsoil from the site stockpiled and used for planting trees and soil preparation for beds and turf.

Current soil tests were taken from the site and sent to Wallace Laboratories in California. It is recommended that the native soil be amended by adding:

- Calcium Ammonium Nitrate 27-0-0 at the rate of 1/8 pound per cubic yard; Triple Superphosphate 0-45-0 at the rate of 1/8 pound per cubic yard; Kelly's Capsulated Agricultural Gypsum at the rate of 1/4 pound per cubic yard; BioSol 7-2-1 at the rate of 1/8 pound per cubic yard to add in humate and Mycorrhizae; and Organic Matter 10% by volume, sufficient for 4% organic matter.
- Stockpiling Topsoil: Location for stockpiling of topsoil shall be identified on construction plans. Where stockpiles of topsoil are greater than 5,000 cubic yards, are greater than 4 feet above rough grade and have side slopes greater than 4:1, the stockpile shall be covered with a breathable material and watered on occasion. Where stockpiles are less than 5,000 CY, or less than 4' above rough grade, or have side slopes less than 4:1, the stockpile shall be hydro-mulched.

Taking Delivery of Trees:

- Trees shall have a single, straight trunk with no wounds or torn bark on trunk.
- Canopies of trees shall have no dead wood or broken branches.
- Trees should not have coarse, circling roots that are visible on top of the rootball. Trees with circling roots on the surface of the rootball shall be rejected.
- Trunk diameter (caliper) shall meet ANSI rootball size and tree size.
- During shipping, trees need adequate moisture provided to rootballs and trees should be covered to protect from dehydration.
- Trees should only be handled by the rootball. Never lift trees with straps around trunks damaging the trunk.
- On all thin bark trees, bark protection shall be provided with tree wrap. Tree wraps shall be removed within 1 year after planting.
- Trees shall be kept upright when delivered and not laid on the ground to prevent sunscald on trunks.
- Trees shall receive adequate water at all times to keep roots alive.

Planting Details: (refer to details in Exhibit C)

- At planting, remove container, nursery stakes, burlap, string from around trunk and any ties from top of rootball.
- At planting, remove any excess soil from top of rootball to expose tree root flare.
- Measure rootball width and depth before planting to adjust planting pit for size of rootball.
- Excavate planting pit 3 times wider than rootball width or 7 feet wide by 7 feet long or 6 feet wide by 8 feet long.
- Excavate planting pit 1½ to 2 inches shallower than rootball depth.
- Set the tree rootball on undisturbed soil or compacted soil to prevent tree from sinking after planting. This tree pedestal should be the same width as the tree rootball to support the tree at a height of 16 inches.
- Excavate the planting hole 16 inches deeper on all sides of tree in undisturbed soil to accommodate drainage and keep water away from tree rootball.
- Scarify the edges of the planting pit. Leave no slick soil sides on the planting pit.
- Set tree as per tree planting diagram and orient for best appearance for review and final orientation by review of the Landscape Architect before filling in around tree.
- Adjust trees in pit so that after full settlement has occurred, the natural grade at the base of trees is 1 1/2 " to 2" above the adjacent finish grade.
- If container tree roots are circling, cut the rootball in 3 equally spaced places, ½" to 1" deep, to prevent roots from continuing to circle and girdle tree.
- Each tree shall have 176 cubic feet of amended soil used in planting pit and 624 cubic feet of uncompacted soil.
- For fill, use native soil amended or topsoil amended as per soil tests
- When filling around tree, place soil into pit in 6" lifts. Firmly compact soil around roots to avoid air pockets and water after each lift.
- Install a raised ring of soil 4" high and 8" wide around rootball circumference to direct water into the rootball. Make sure tree rootball is wet after planting.
- Cover raised ring and soil surface around tree with a 2" layer of double ground mulch. Keep mulch 2 inches away from tree trunk.
- Irrigation installed around tree shall be controlled with a master control valve and operated with a Smart Controller to conserve water and to monitor for leaks. Irrigation plans shall be submitted to the Town for review.

- Do not stake tree if it can support itself. Trees smaller in size than 5-inch caliper normally need to be staked. Trees larger than 5-inch caliper do not.
- If staking is needed, stake trees with concrete anchors installed into sidewalk and curb edges to secure tree. Use guys that protect bark of tree when anchoring. All staking material must be removed within 6 months after planting.

Recommended Deep Root / Non-Invasive Trees

Acer buergerianum, Trident Maple, 25' to 30' height, 20' to 30' spread
 Acer grandidentatum, Bigtooth Maple, 40' height, 35' spread
 Acer truncatum, Shantung Maple, 20' height, 20' spread
 Carpinus betulus var. Fastigiata, Pyramidal European Hornbeam, 35' to 45' height, pyramidal 25' spread
 Crataegus marshalli, Parsley Hawthorn, 20' to 25' height, 15' to 20' spread
 Crataegus phaenopyrum, Washington Hawthorn, 25' height, 25' spread
 Gleditsia triacanthos var. Inermis, Thornless Honeylocust, 50' height, 35' spread
 Gleditsia triacanthos var. Inermis 'Suncole', Sunburst Thorniest Honeylocust, 30' height, 30' spread
 Koeleria paniculata, Goldenrain tree, 30' height, 30' spread
 Lagerstroemia indica var. Arapaho, Arapaho Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Basham's Party Pink, Basham's Party Pink Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Biloxi, Biloxi Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Byer's White, Byer's White Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Carolina Beauty, Carolina Beauty Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Catawba, Catawba Crape Myrtle, 15' height, 10' spread
 Lagerstroemia indica var. Choctaw, Choctaw Crape Myrtle, 5' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Comanche, Comanche Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Dallis Red, Dallis Red Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Dynamite, Dynamite Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Lipin, Lipin Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Miami, Miami Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Muskogee, Muskogee Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Natchez, Natches Crape Myrtle, 20' to 25' height, 15' to 20' spread
 Lagerstroemia indica var. Near East, Near East Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. New Snow, New Snow Crape Myrtle, 10' to 15' height, 10' to 15' spread
 Lagerstroemia indica var. Potomac, Potomac Crape Myrtle, 5' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Osage, Osage Crape Myrtle, 15' to 20' height, 10' to 15' spread
 Lagerstroemia indica var. Raspberry Sundae, Raspberry Sundae Crape Myrtle, 15' to 20'

height, 10' to 15' spread

Lagerstroemia indica var. Red Rocket, Red Rocket Crape Myrtle. 20' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Sarah's Favorite, Sarah's Favorite Crape Myrtle, 20' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Seminole, Seminole Crape Myrtle. 15' to 20' height, 10' to 15' spread

Lagerstroemia indica var. Sioux, Sioux Crape Myrtle, 12' to 15' height, 10' to 12' spread

Lagerstroemia indica var. Tuscarora, Tuscororo Crape Myrtle. 20' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Tuskegee, Tuskegee Crape Myrtle. 15' to 25' height, 15' to 20' spread

Lagerstroemia indica var. Yuma, Yuma Crape Myrtle, 15' to 20' height, 10' to 15' spread

Lagerstroemia indica var. Byers White, Byers White Crape Myrtle, 15' to 20' height, 10' to 15' spread

Magnolia grandiflora var. Alta, Alto Magnolio, 20' height, 9' spread

Magnolia grandiflora var. Little Gem. 20' height. 10' spread

Quercus canbyi, Canby Oak. 30' height, 30' spread

*Quercus lacey*ii. Lacey Oak, 30' height, 30' spread

Quercus lyrata, Overcup Oak. 45' height, 35' spread

Quercus macrocarpa, Bur Oak, 60' height. 60' spread

Quercus muhlenbergii, Chinquapin Oak, 40' height, 30' spread

Quercus texan, Texas Red Oak, 50' height, 40' spread

Rhamnus caroliniana, Carolina Buckthorn, 15' height, 15' spread

Rhus lanceolata, Prairie Flameleaf Sumac. 20' height, 20' spread

Sophora affinis, Eve's Necklace, 15' height, 10' spread

Sophora secundiflora, Texas Mountain Laurel, 15' height, 10' spread

Ulmus crassifolia, Cedar Elm. 45' to 55' height, 35' to 45' spread

Ulmus parvifolia var. Emerald Prairie, Emerald Prairie Elm. 40' height, 30' spread

Ulmus parvifolia var. Everclear, Everclear Elm. 40' height, 15' spread

Ungnadia speciosa, Mexican Buckeye, 15' to 20' height, 8' to 12' spread

APPENDIX B: LIST OF EXHIBITS

EXHIBIT A: Legal description

EXHIBIT B: Planned Development Standards

EXHIBIT C: Concept Plan

- Land Use Plan
- Concept Plan
- Open Space & Trail Access Plan
- Open space & Park Plan
- Vehicular Network
- Concept Plan, Black & White
- Conceptual Landscape Plan
- Conceptual Perspective 1
- Conceptual Perspective 2
- Conceptual Perspective 3
- Conceptual Perspective 4
- Conceptual Perspective 5
- Conceptual Perspective 6

EXHIBIT D: Conceptual Engineering

- Storm Water & Drainage Plan A
- Storm Water & Drainage Plan B
- Water & wastewater Plan A
- Water & wastewater Plan b

EXHIBIT E1: Elevations, Multifamily

- JPI Plan
- JPI Building 1 Front Elevation
- JPI Building 1 Rear Elevation
- JPI Building 2 & 3 Front Elevation
- JPI Material Board

EXHIBIT E2: Elevations Commercial

- LPC Building Office 1 Elevations
- LPC Building Office 2 Elevations
- LPC Buildings Retail Elevations
- LPC Buildings Pad Office Elevations
- LPC Material Board

EXHIBIT F: Comprehensive Sign Plan

- Sign Plan
- Sign 1
- Sign 1 & Sign 2 Elevation
- Sign 2
- Sign 3
- Sign 4
- Signs 5 & 6

VICINITY MAP

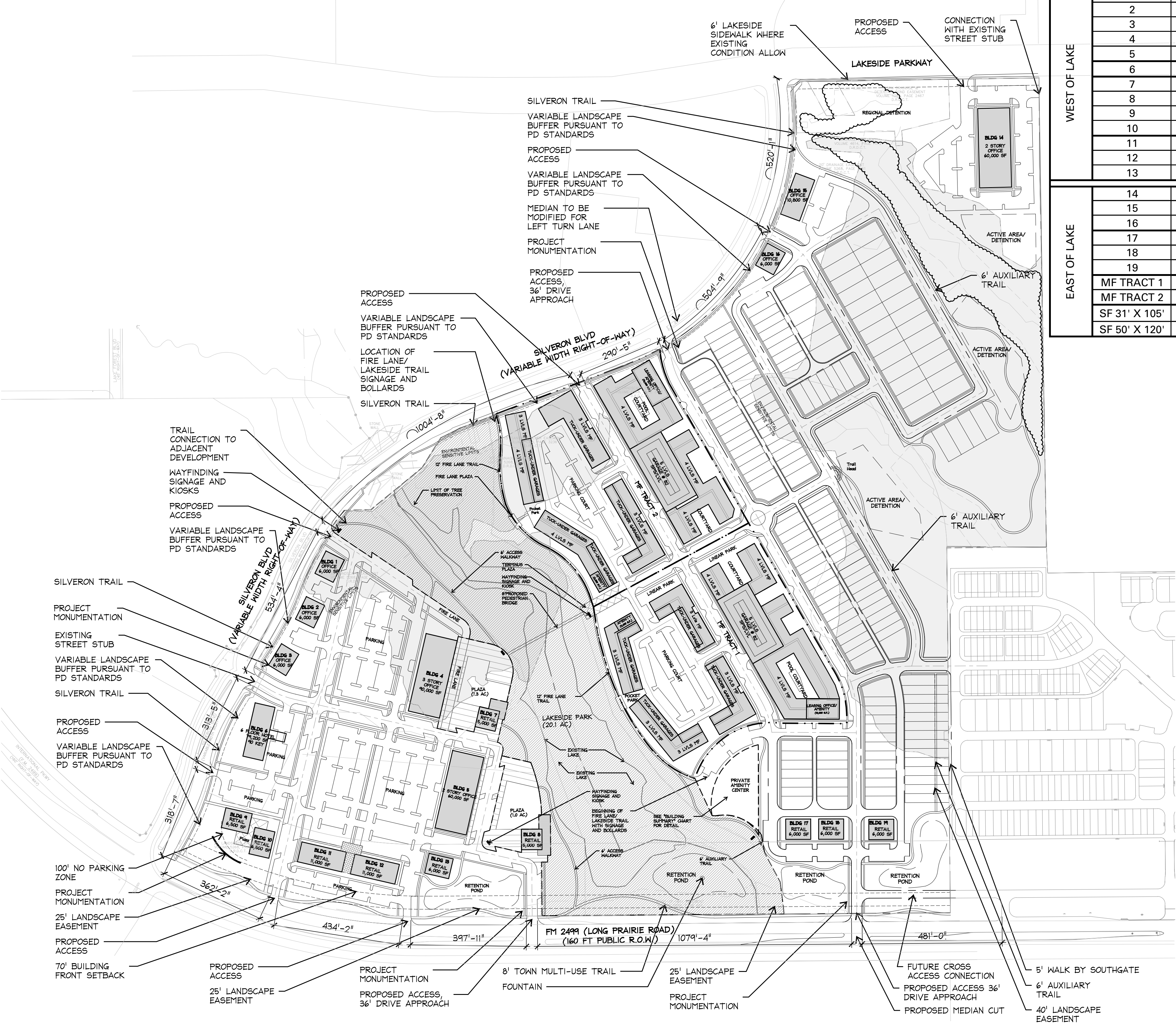


MASTER PLAN FEATURES	
LAND USE PLAN	LAKESIDE BUSINESS DISTRICT / CAMPUS COMMERCIAL
PARKS AND TRAILS	REQUIRED MULTI USE TRAIL ALONG FM2499
THOROUGHFARE PLAN	FM 2499(MAJOR ARTERIAL),SILVEORN BLVD (URBAN MINOR ARTERIAL), LAKESIDE PARKWAY (MAJOR ARTERIAL).
WATER PLAN	LAKESIDE SERVICE AREA - 12" WATER ALONG FM 2499, 12" WATER ALONG SILVERON BLVD.
WASTEWATER PLAN	EXISTING 8" GRAVITY SANITARY SEWER MAIN IN SILVERON BLVD, EXISTING 12" GRAVITY SANITARY SEWER MAIN IN LAKESIDE PKWY, EXISTING 18" GRAVITY SANITARY SEWER MAIN SOUTH OF THE DEVELOPMENT.
ECONOMIC IMPACT	\$250 MILLION AD VALOREM; HOTEL AND ADDITIONAL REVENUE STREAMS TBD.

ALL FIRE LANES TO BE 26 FEET WIDE, WITH 25 FEET TURNING RADIUS. DRIVE APPROACHES FROM SILVERON OR FM2499 AT MEDIAN CUT INTO THE PROJECT TO BE 36 FEET WIDTH WITH 25' TURNING RADIAS.

SEE OPEN SPACE AND TRAIL ACCESS PLAN FOR ALL TRAIL LOCATIONS AND WIDTH.

AREA	BLDG #	LAND USE	SUQARE FOOTAGE	NUMBER OF STORIES	UNITS	CITY PARKING RATIO	CITY PARKING REQ.	TOTAL PARKING REQUIRED	TOTAL PARKING PROVIDED	TOTAL SF/ UNITS
WEST OF LAKE	1	OFFICE	6,000	1	NA	1 / 300 SF	20	1069	1070	168,000
	2	OFFICE	6,000	1	NA	1 / 300 SF	20			
	3	OFFICE	6,000	1	NA	1 / 300 SF	20			
	4	OFFICE	90,000	3	NA	1 / 300 SF	300			
	5	OFFICE	60,000	2	NA	1 / 300 SF	200			
	6	HOTEL	79,200	6	90 KEYS	1 / 1 KEY	90			79,200
	7	RETAIL/REST.	5,000	1	NA	1 / 75 SF	67			23,000
	8	RETAIL/REST.	5,000	1	NA	1 / 75 SF	67			
	9	RETAIL/REST.	6,500	1	NA	1 / 75 SF	87			
	10	RETAIL/REST.	6,500	1	NA	1 / 75 SF	87			
	11	RETAIL	11,000	1	NA	1 / 250 SF	44			28,000
	12	RETAIL	11,000	1	NA	1 / 250 SF	44			
	13	RETAIL	6,000	1	NA	1 / 250 SF	24			
EAST OF LAKE	14	OFFICE	60,000	2	NA	1 / 300 SF	200	328	330	76,800
	15	OFFICE	10,800	1	NA	1 / 300 SF	36			
	16	OFFICE	6,000	1	NA	1 / 300 SF	20			
	17	RETAIL	6,000	1	NA	1 / 250 SF	24			
	18	RETAIL	6,000	1	NA	1 / 250 SF	24			18,000
	19	RETAIL	6,000	1	NA	1 / 250 SF	24			
	MF TRACT 1	MULTI - FAMILY	NA	4	421	1.5 / UN.	632			850
	MF TRACT 2	MULTI - FAMILY	NA	4	429	1.5 / UN.	644			
	SF 31' X 105'	SINGLE FAMILY	NA	2	128	NA	NA	NA	NA	164
	SF 50' X 120'	SINGLE FAMILY	NA	2	36	NA	NA	NA	NA	



- NOTES:
- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS ARE SUBJECT TO BUILDING OFFICIAL APPROVAL.
 - ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE
 - ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
 - DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIAL OF THE MAIN BUILDING.
 - DUMPSTER SCREENING WALL REQUIRES SEPARATE BUILDING PERMIT.
 - SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGN DEPICTED ON THE SUBJECT SITE PLAN/ ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.
 - RETAINING WALLS 4 FEET IN HEIGHT OR TALLER, INCLUDING FOOTINGS, WILL REQUIRE A SEPARATE BUILDING PERMIT THROUGH THE BUILDING DEPARTMENT. RETAINING WALLS 6' IN HEIGHT LOCATED IN THE SINGLE FAMILY WILL BE MAINTAINED BY THE HOA.
 - LOCATIONS OF ALL OUTDOOR SEATING AREAS, GATHERING AREAS, DINING AREAS, AND PERMEABLE OPEN SPACE AREAS MAY BE REVISED DURING SITE PLAN REVIEW FOR EACH BUILDING.
 - BUILDING FOOTPRINTS, GROSS AREA, AND PROJECTED USE MAY BE REVISEDIN THE SITE PLAN APPLICATION

PROJECT NAME: LAKEWOOD
STREET ADDRESS: UNPLATTED, NOT ASSIGNED
SITE AREA: 122.1 AC
EXISTING ZONING: PD 31
EXISTING LAND USE: CAMPUS COMMERCIAL

LAKEWOOD

CONCEPT PLAN
- BLACK AND WHITE

EXHIBIT FOR **ZPD 17-0013**

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

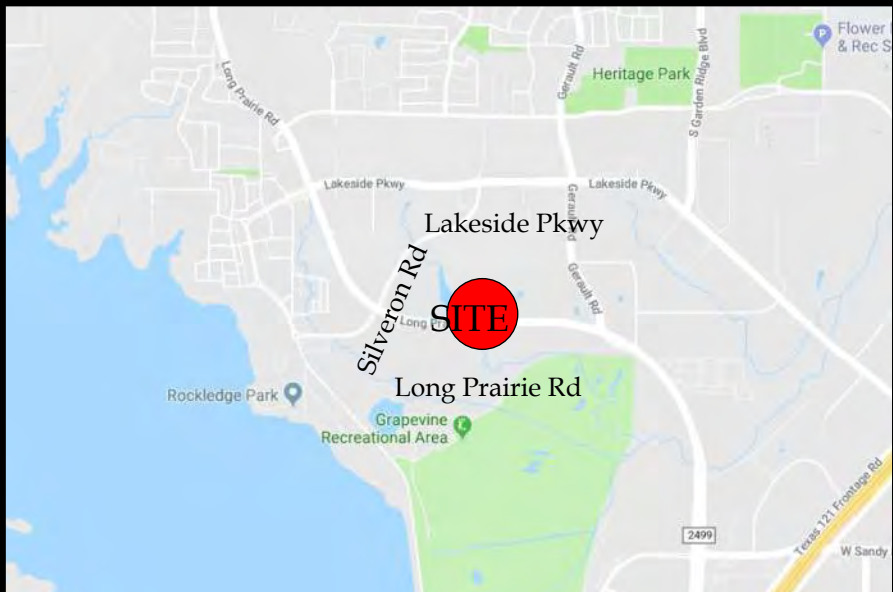
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map

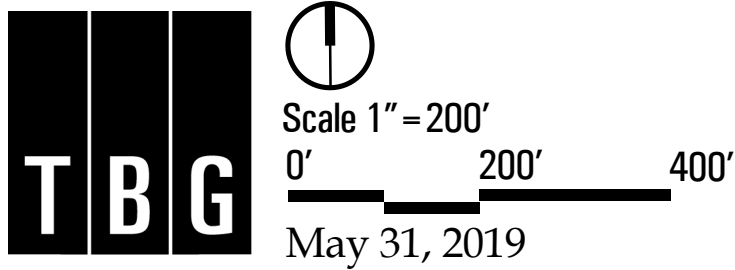


Reference sheet

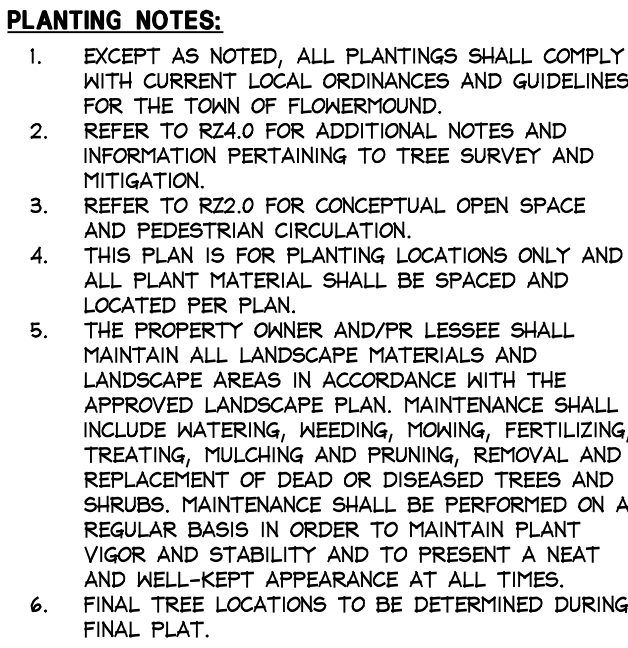
Name	Description
Land Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location of trails.
Open Space Amenity Key	Shows open space with labels that is referenced in planned development, shows matrix of proposed type of amenities in each open space area and the quantities
Vehicular Network	Shows proposed street network, street types and cross sections, location of utility, enlargement of trail, enlargement of lots that have landscape easement in front yard, enlargement of street tree detail.
Concept Plan - Black and White	Detail drafted site plan with building summary
Conceptual Landscape Plan	Detail drafted landscape plan with landscape requirement compliance chart.
Conceptual Signage Plan	Proposed signage elevations

General Note

All plans are conceptual in natural and subject to change based on site and development conditions.

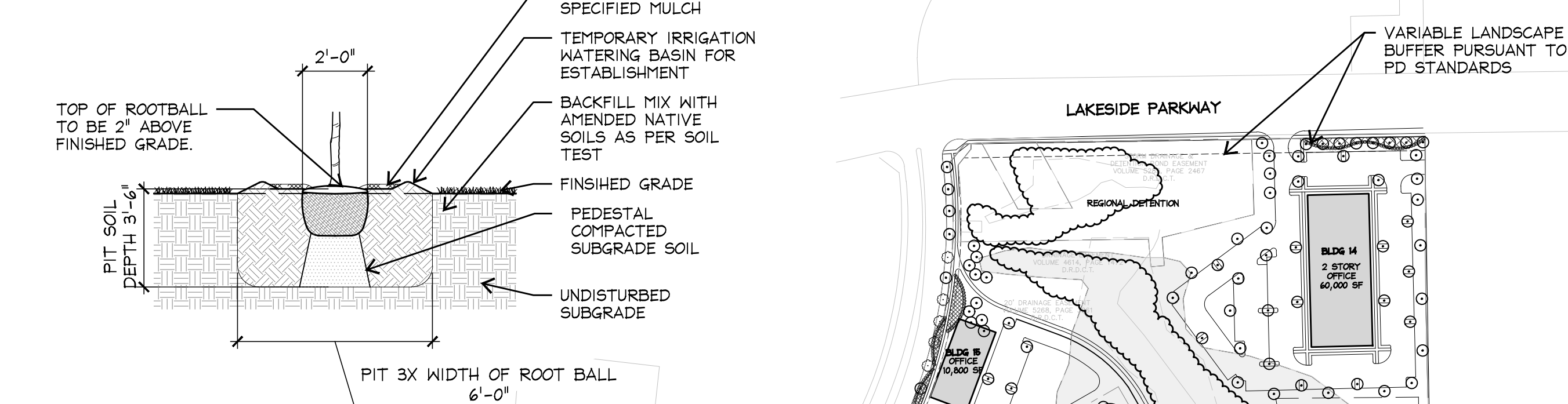


The information shown is based on the best information available and is subject to change without notice.



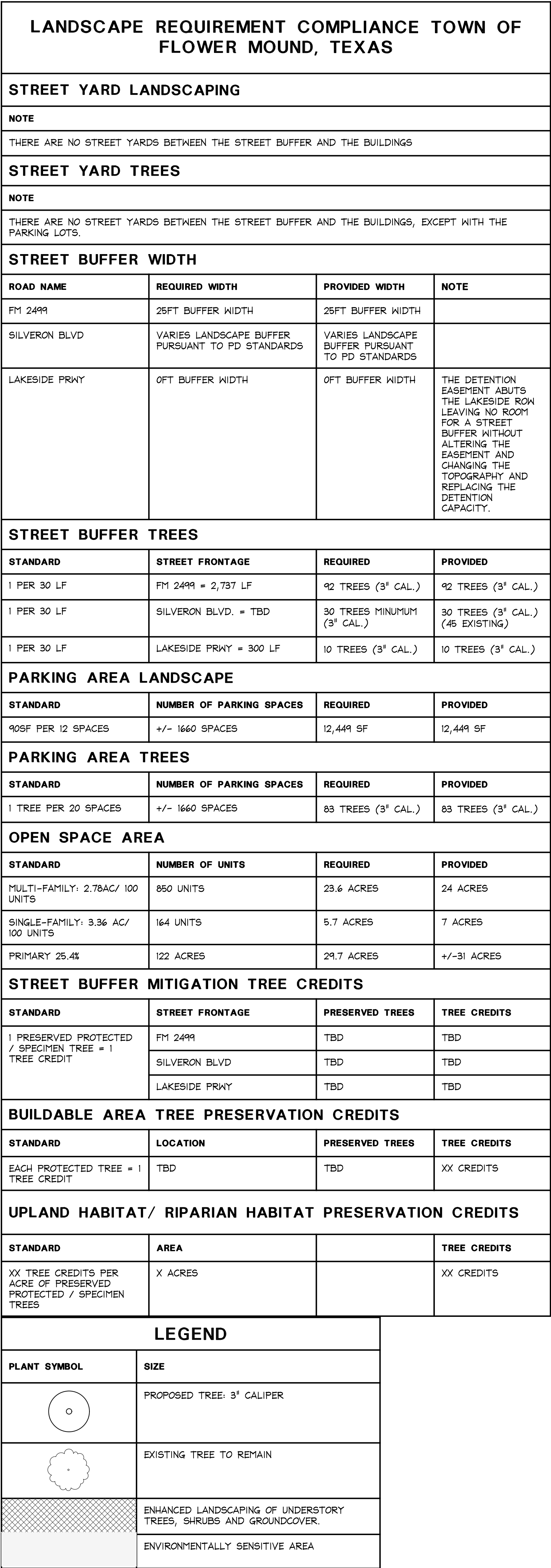
TREES PLANTED ON 4:1 SLOPES

PLAN SCALE: 1/4"=1'-0"



TREES PLANTED IN OPEN AREAS

SECTION SCALE: 1/4"=1'-0"

EXHIBIT FOR **ZPD 17-0013**

Owner /Applicant :

Planner / Landscape Architect:

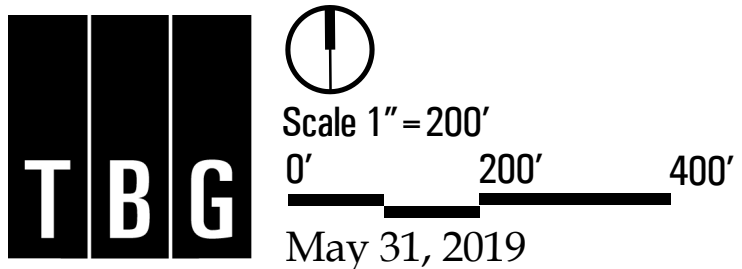
Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

[illegible]

Name	Description
Open Space and Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location, of trails.
Open Space Amenity Key	Shows open space with labels that are referenced in planned development, shows a matrix of proposed type of amenities in each open space area and the quantities
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Conceptual Signage Plan	Proposed signage elevations

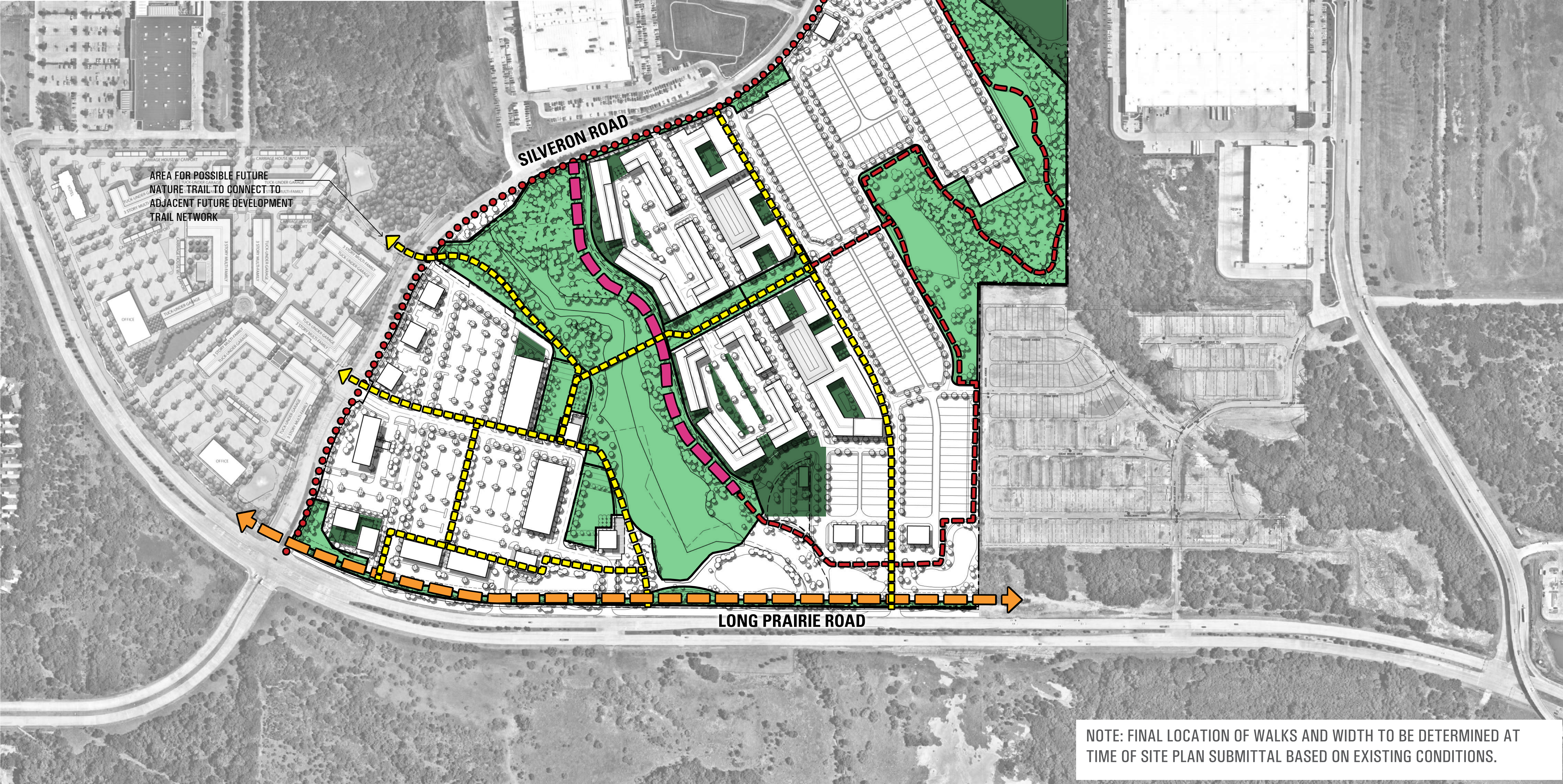
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LEGEND

SYMBOL	TYPE	MINIMUM WIDTH	GROSS AREA
	SILVERON TRAIL	EXISTING	
	LAKESIDE SIDEWALK	6'	
	ACCESS WALKWAYS	6'	
	AUXILIARY TRAILS	6'	
	TOWN MULTI-USE TRAIL	8'	
	FIRE LANE TRAIL	12'	
	PUBLIC ACCESS OPEN SPACE		35.6 ACRES
	PRIVATE ACCESS OPEN SPACE		6.3 ACRES



NOTE: FINAL LOCATION OF WALKS AND WIDTH TO BE DETERMINED AT TIME OF SITE PLAN SUBMITTAL BASED ON EXISTING CONDITIONS.

LAKEWOOD

OPEN SPACE & TRAIL ACCESS PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

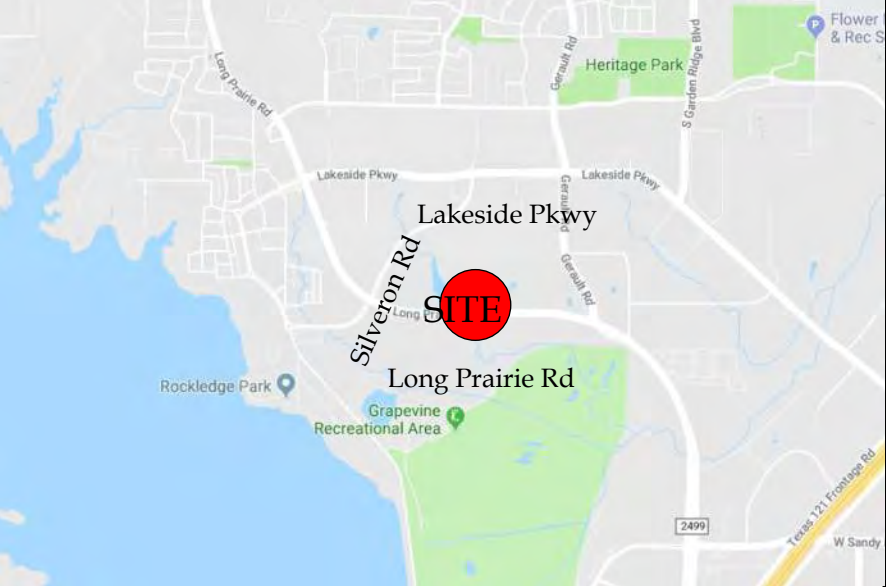
Planner / Landscape Architect:

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2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
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Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map



Reference sheet

Name	Description
Land Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location of trails.
Open Space Amenity Key	Shows open space with labels that is referenced in planned development, shows matrix of proposed type of amenities in each open space area and the quantities
Vehicular Network	Shows proposed street network, street types and cross sections, location of utility, enlargement of trail, enlargement of lots that have landscape easement in front yard, enlargement of street tree detail.
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Conceptual Signage Plan	Proposed signage elevations

General Note

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Scale 1" = 200'

0' 200' 400'

May 31, 2019

The information shown is based on the best information available and is subject to change without notice.

LEGEND

- OS-1, LAND MARK CORNER
- OS-2, GREEN
- OS-3, LAWN
- OS-4, NATURAL AREA
- OS-5, COURTYARD
- OS-6, SQUARE
- OS-7, RECREATION DETENTION
- OS-8, PRIVATE
- OS-9, POCKET PARK
- OS-10, TRAIL EASEMENT



LAKESWOOD

OPEN SPACE
AND PARK PLAN

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

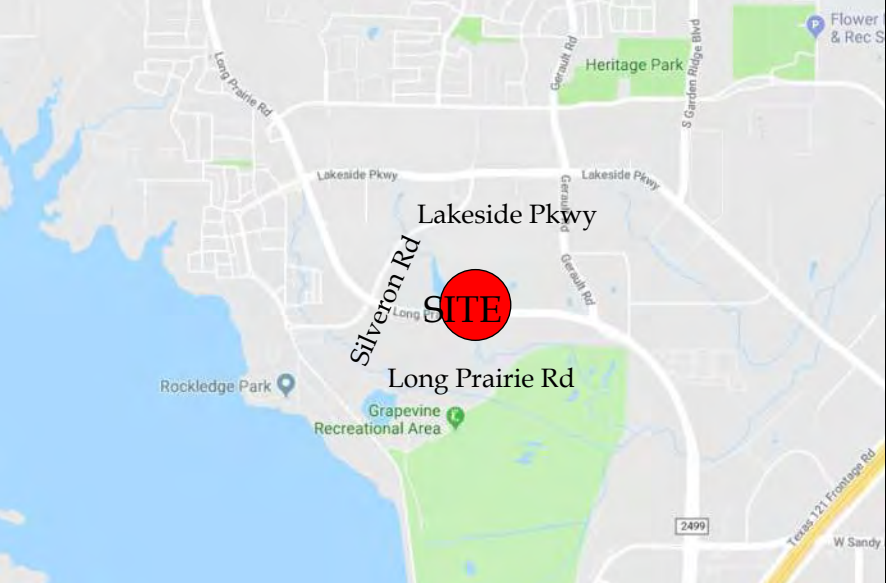
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
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Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
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Location Map



Reference sheet

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Conceptual Signage Plan	Proposed signage elevations

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TBG

Scale 1" = 200'

0' 200' 400'

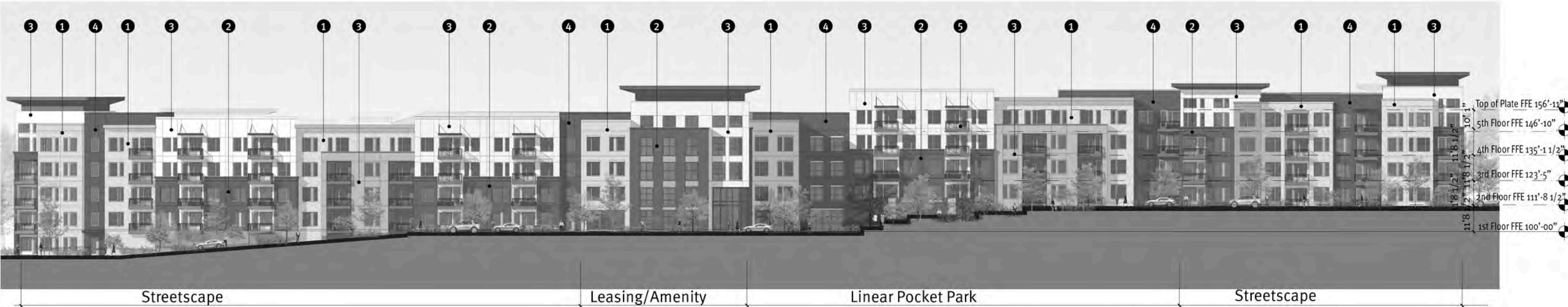
May 31, 2019

The information shown is based on the best information available and is subject to change without notice.



01

Building 1
East Elevation-Colored



02

Building 1
East Elevation-Black&white

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing

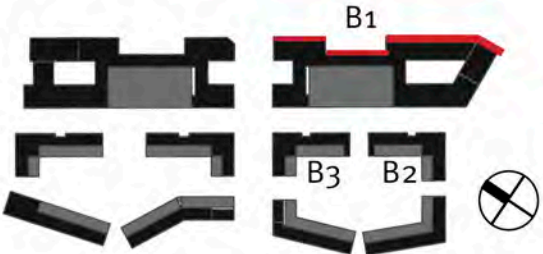


Flower Mound
Flower Mound, TX



Elevation

	East B1
Primary Masonry totals(Min. 80%)	82%
Brick s.f. (as applicable)	28%
Stone s.f. (as applicable)	22%
Stucco s.f. (as applicable)	32%
Tilt Wall s.f. (as applicable)Ⓜ	
Secondary Masonry totals max. 20%)	18%
EIFS s.f. (as applicable)	
Hardiplank s.f. (as applicable)Ⓜ	18%
Detail any additional (as applicable)	



04.17.20192018051.00 KM

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Registered Architect of State of Texas, Registration No. 17828



01

Building 1
West Elevation-Colored



02

Building 1
West Elevation-Black&white

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing
- 6 Painted Precast Concrete

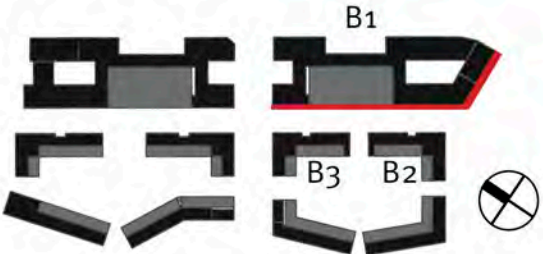


Flower Mound
Flower Mound, TX



	West B1
Primary Masonry totals(Min. 80%)	84%
Brick s.f. (as applicable)	29%
Stone s.f. (as applicable)	7%
Stucco s.f. (as applicable)	48%
Tilt Wall s.f. (as applicable)	
Secondary Masonry totals max. 20%	16%
EIFS s.f. (as applicable)	
Hardiplank s.f. (as applicable)	16%
Detail any additional (as applicable)	

Elevation



04.17.2019	2018051.00 KM
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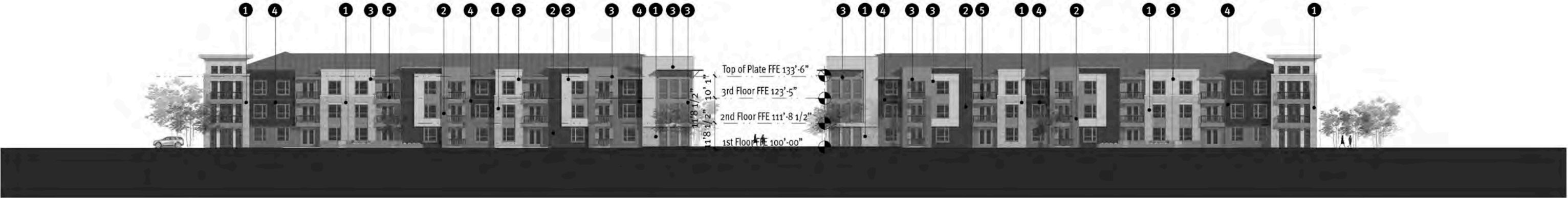


01

Building 2
East Elevation-Colored

03

Building 3
East Elevation-Colored



01

Building 2
East Elevation-Black&white

03

Building 3
East Elevation-Black&white

- 1 Stone Veneer
- 2 Brick
- 3 Stucco
- 4 Cementitious Panel
- 5 Picket Railing

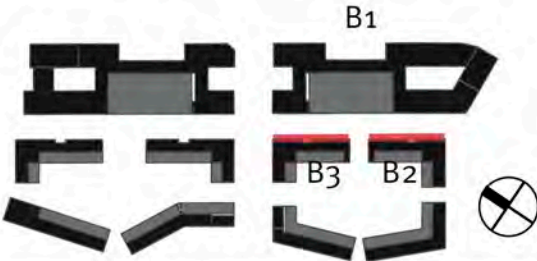


Flower Mound
Flower Mound, TX



Elevation

	East B2	East B3
Primary Masonry totals(Min. 80%)	83%	83%
Brick s.f. (as applicable)	26%	26%
Stone s.f. (as applicable)	25%	25%
Stucco s.f. (as applicable)	32%	32%
Tilt Wall s.f. (as applicable)Ⓜ		
Secondary Masonry totals max. 20%)	17%	17%
EIFS s.f. (as applicable)		
Hardiplank s.f. (as applicable)Ⓜ	17%	17%
Detail any additional (as applicable)		

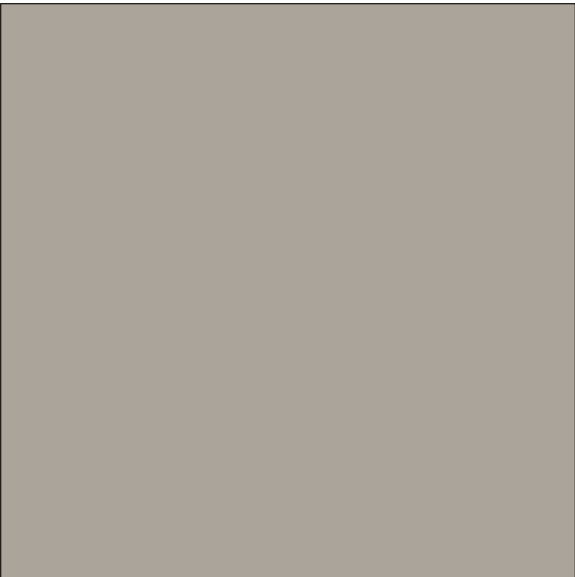




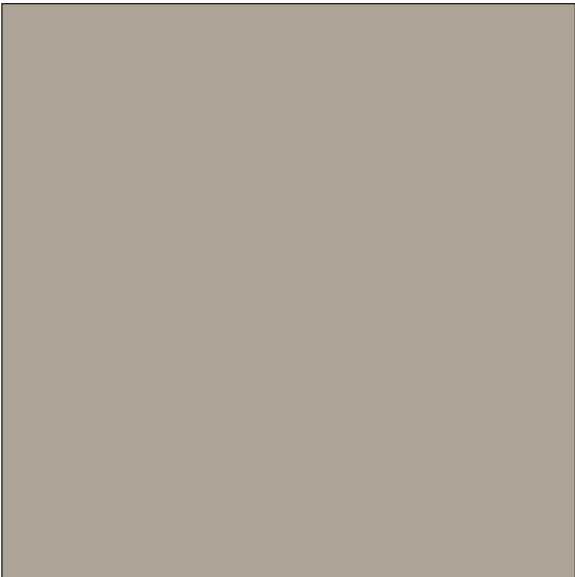
STONE - CORONADO - 8” CLASSIC JERUSALEM SAHARA BEIGE



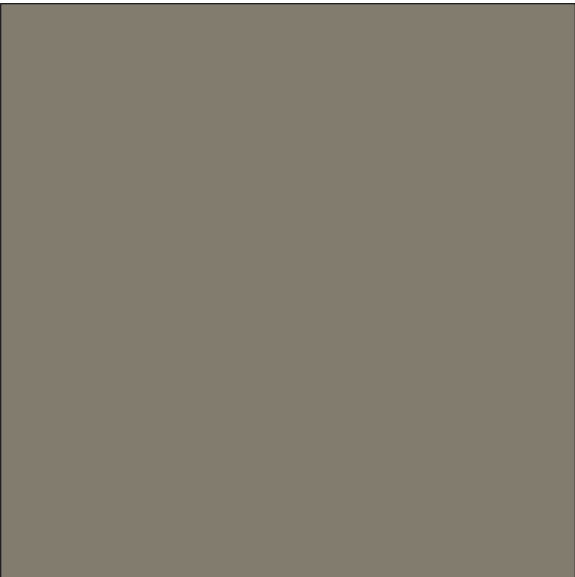
BRICK 1 - ACME - MUSHROOM BROWN



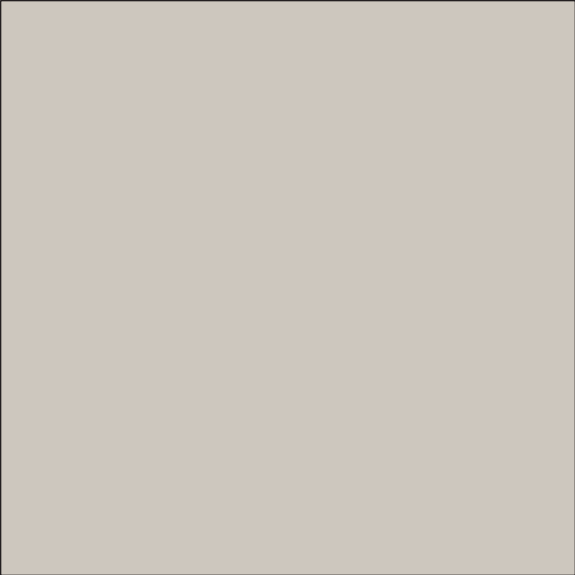
STUCCO 1-
SW 7024 FUNCTIONAL GRAY



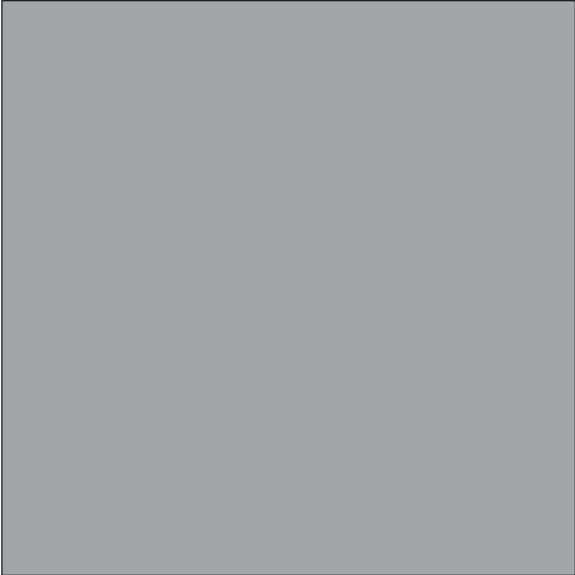
CEMENTITIOUS PANEL
SW 6038 MEGA GRIEGE



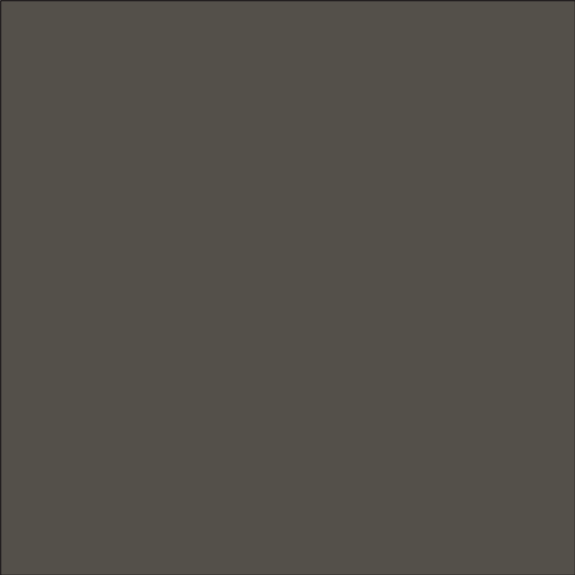
CEMENTITIOUS PANEL- SW 7046 ANONYMOUS



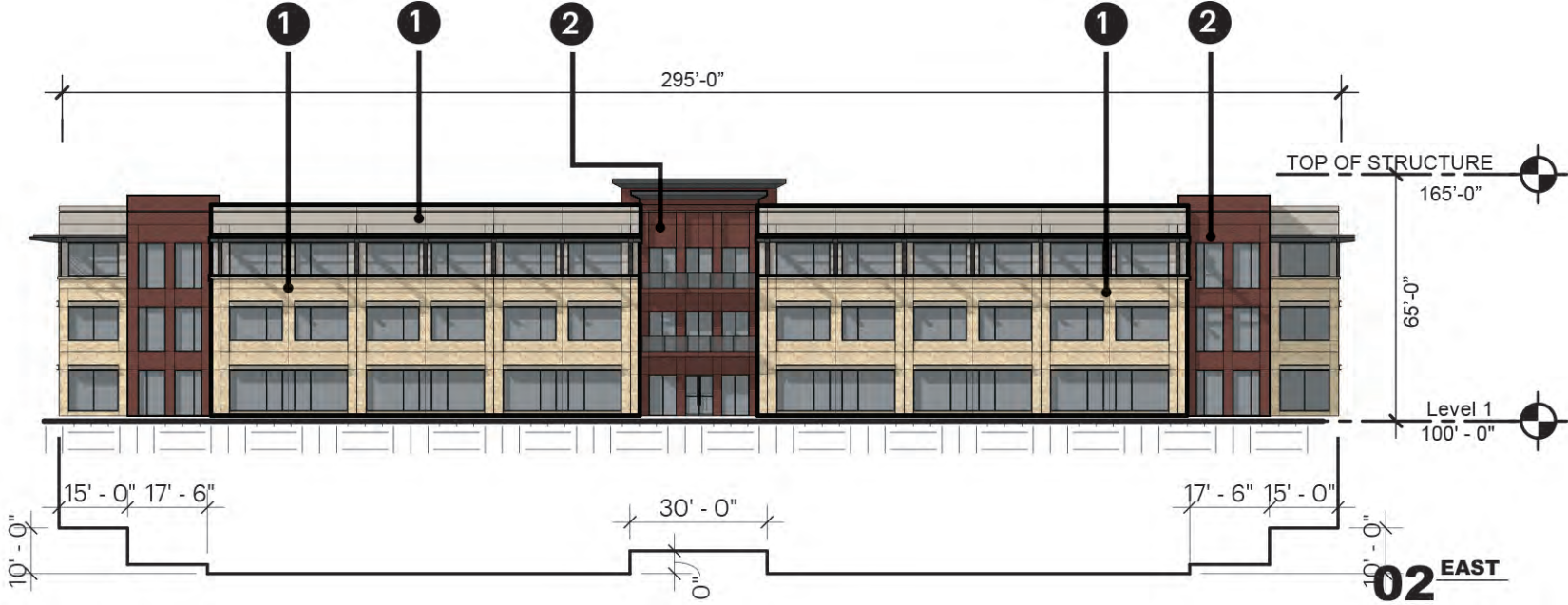
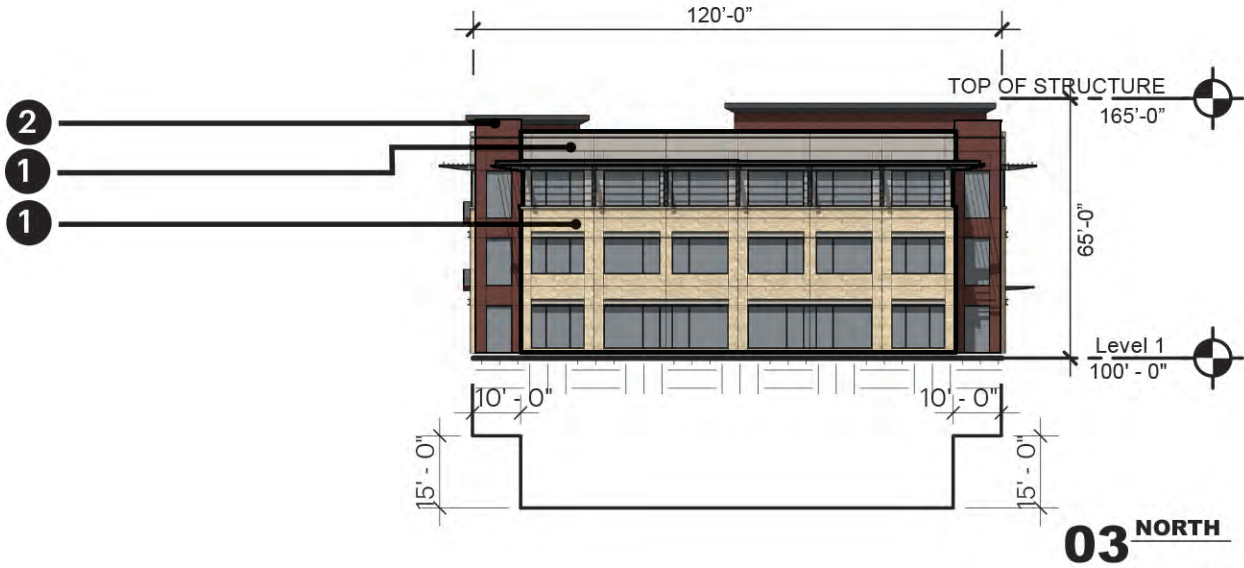
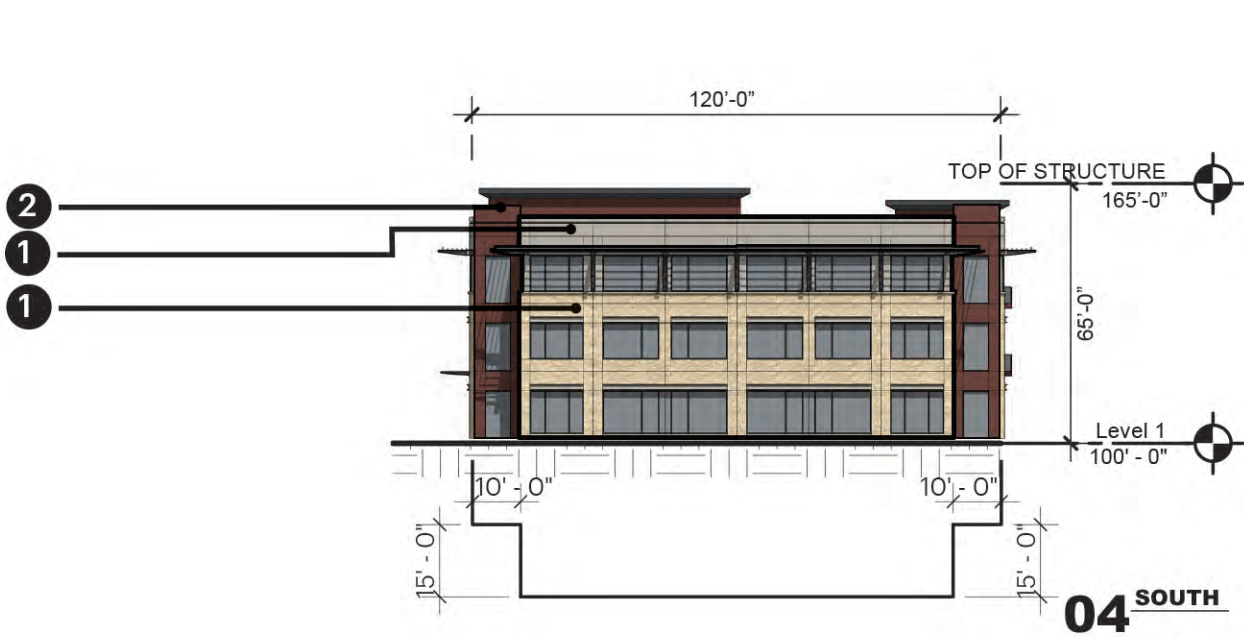
STUCCO 2-
SW 6063 ALPACA



8” SIDING-
SW 7073 NETWORK GRAY



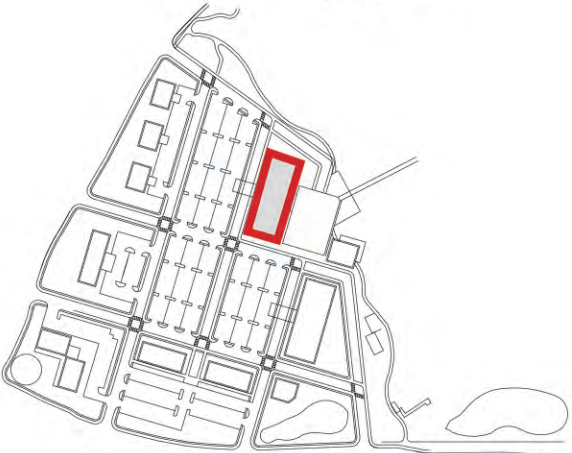
RAILING, DOORS, WINDOW AND DOOR TRIM,
METAL AWNING AND METAL TRIM AND MTL.COP-
ING/FLASHING- SW 7048 URBANE BRONZE

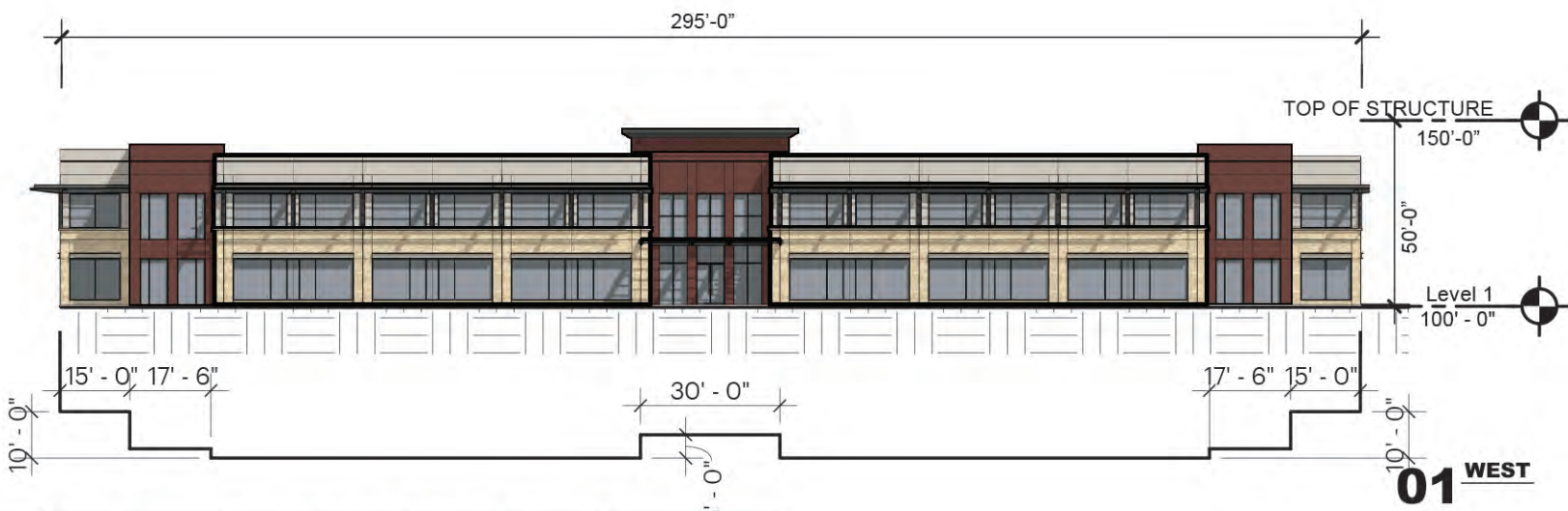
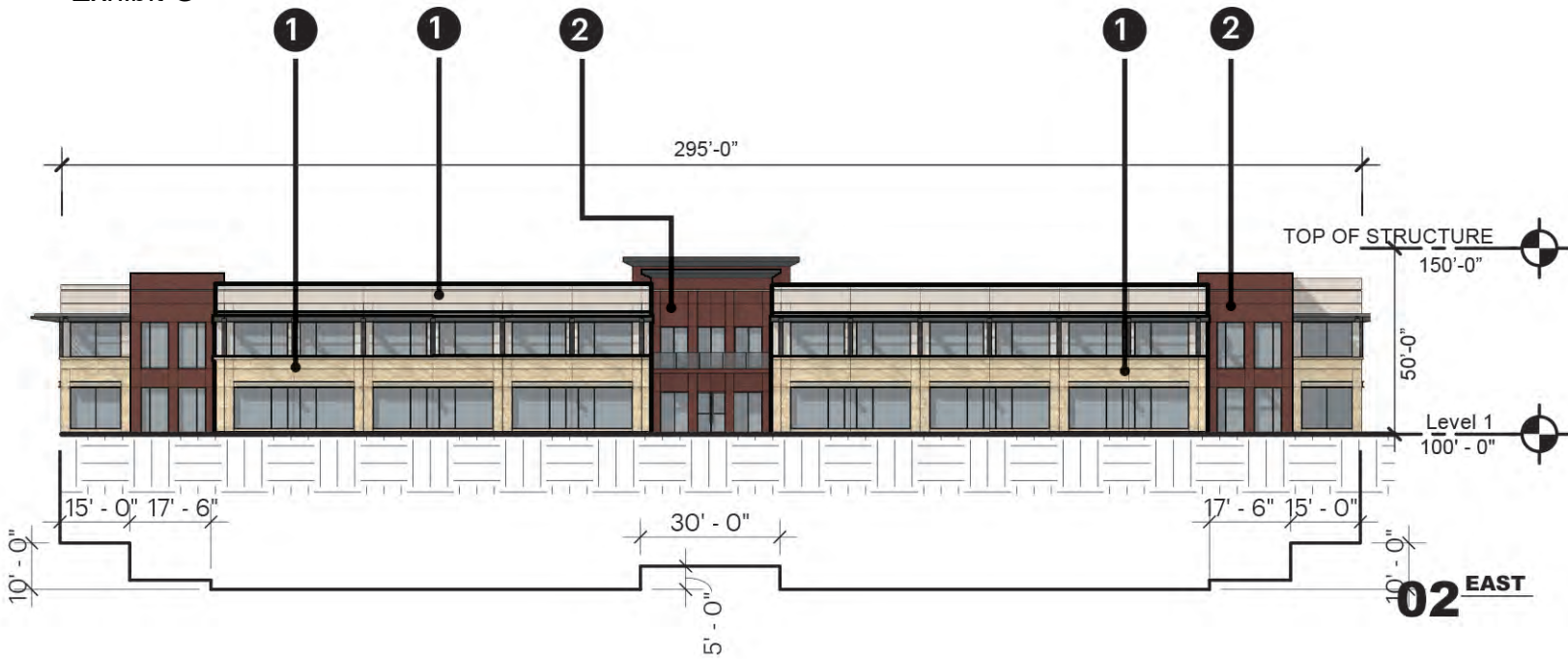
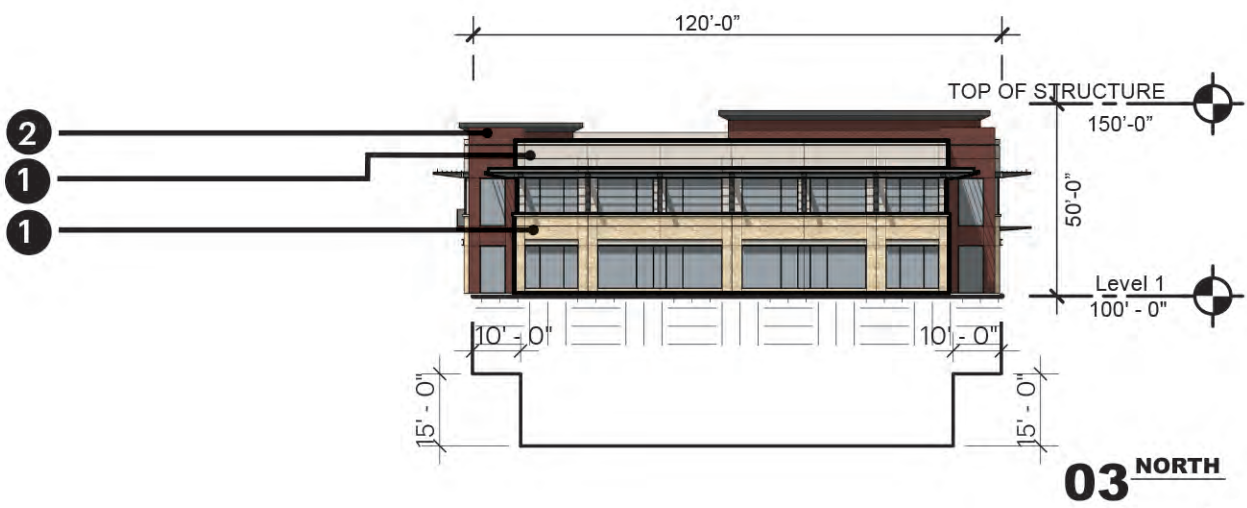
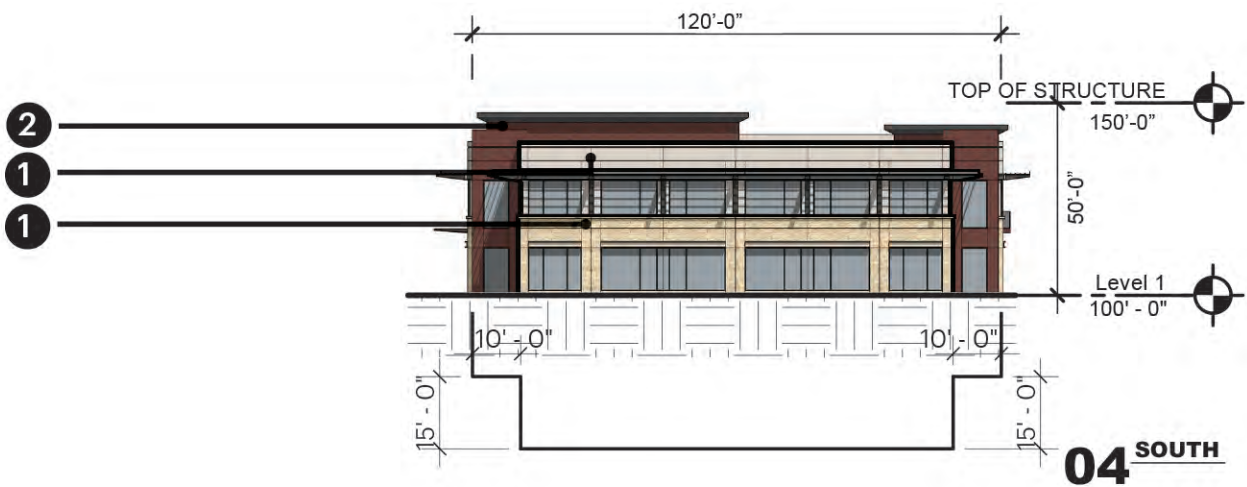


- 1
- STONE VENEER
- 2
- BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	5,357 SF	5,357 SF	12,903 SF	13,115 SF
2.	Facade S.F. (exclusive of doors and windows)	3,139 SF	3,139 SF	7,371 SF	7,493 SF
3.	Doors and Windows S.F.	2,218 SF	2,218 SF	5,532 SF	5,632 SF
4.	Primary Masonry totals (Min. 80%)	3,139 SF & 100% of 2	3,139 SF & 100% of 2	7,371 SF & 100% of 2	7,493 SF & 100% of 2
	• Brick s.f. (as applicable)	660 SF & 20% OF 4	660 SF & 20% OF 4	1,742 SF & 24% OF 4	1,894 SF & 25% OF 4
	• Stone s.f. (as applicable)	2,659 SF & 80% OF 4	2,659 SF & 80% OF 4	5,629 SF & 76% OF 4	5,629 SF & 75% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				

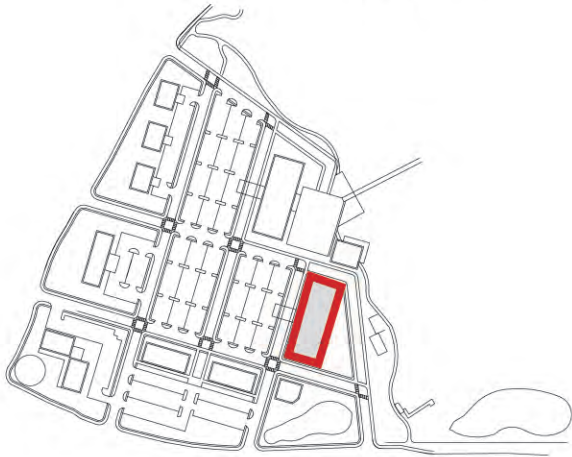


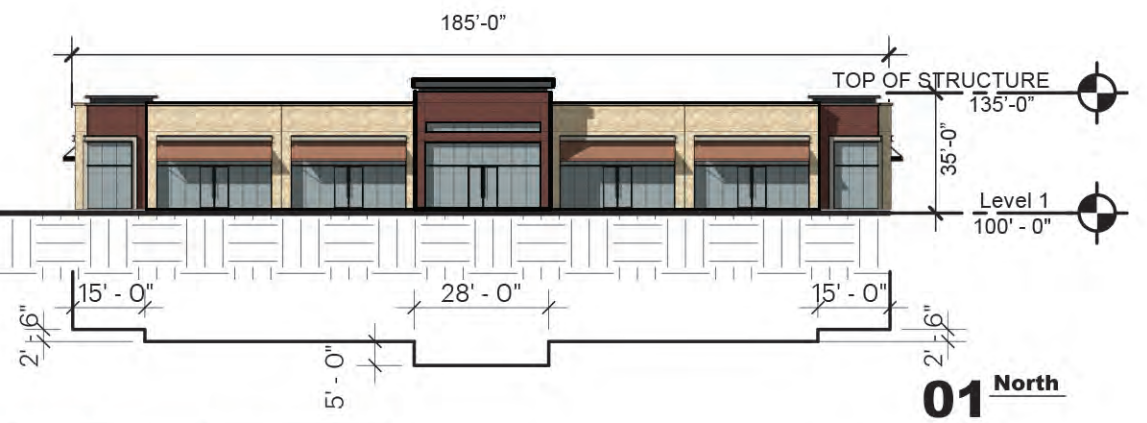
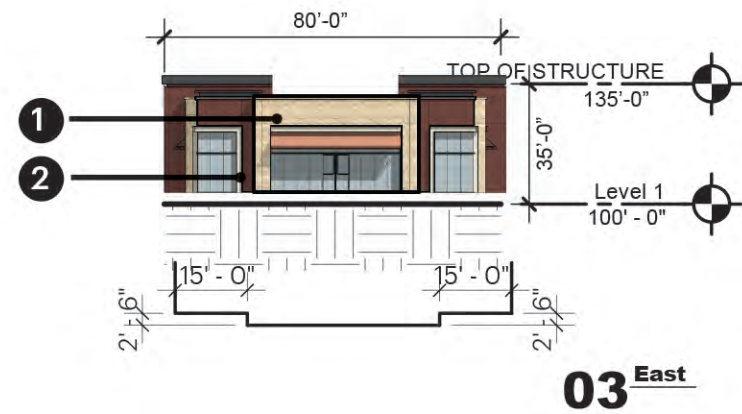
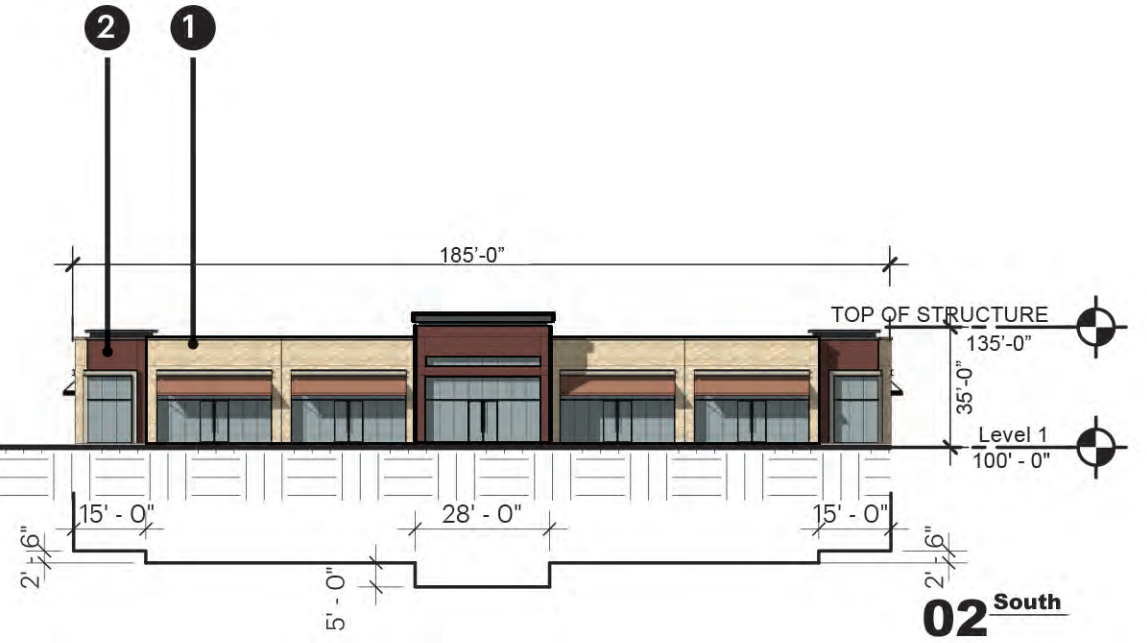
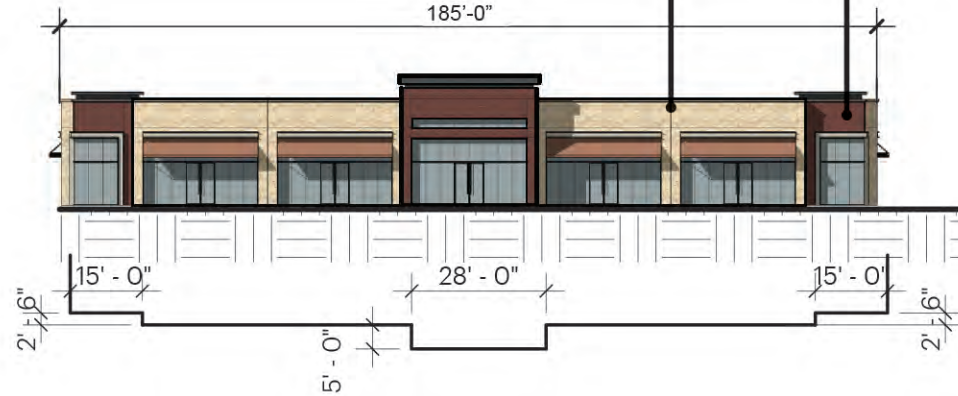
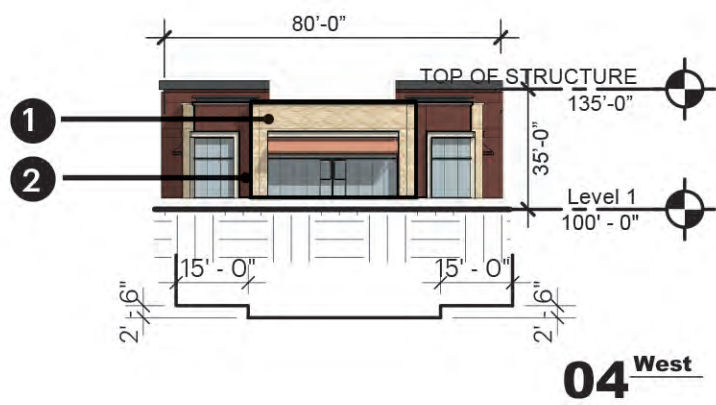


- 1
- STONE VENEER
- 2
- BRICK
- 3
- TILT WALL

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	3,826 SF	3,826 SF	8,976 SF	9,188 SF
2.	Facade S.F. (exclusive of doors and windows)	2,262 SF	2,262 SF	5,107 SF	5,233 SF
3.	Doors and Windows S.F.	1,564 SF	1,564 SF	3,869 SF	3,955 SF
4.	Primary Masonry totals (Min. 80%)	2,262 SF & 100% of 2	2,262 SF & 100% of 2	5,107 SF & 100% of 2	5,233 SF & 100% of 2
	• Brick s.f. (as applicable)	500 SF & 22% OF 4	500 SF & 22% OF 4	1,288 SF & 25% OF 4	1,410 SF & 26% OF 4
	• Stone s.f. (as applicable)	1,762 SF & 78% OF 4	1,762 SF & 78% OF 4	3,819 SF & 75% OF 4	3,823 SF & 74% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				

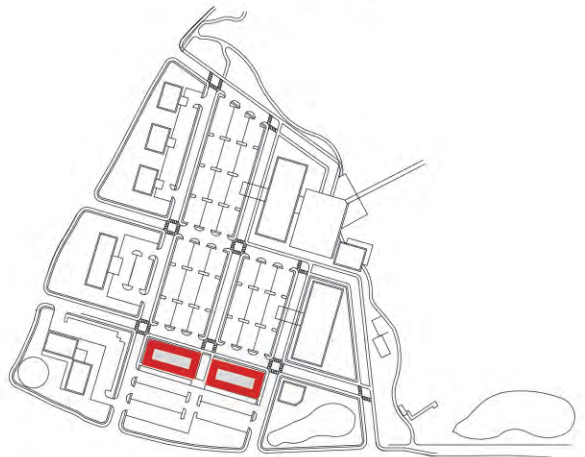




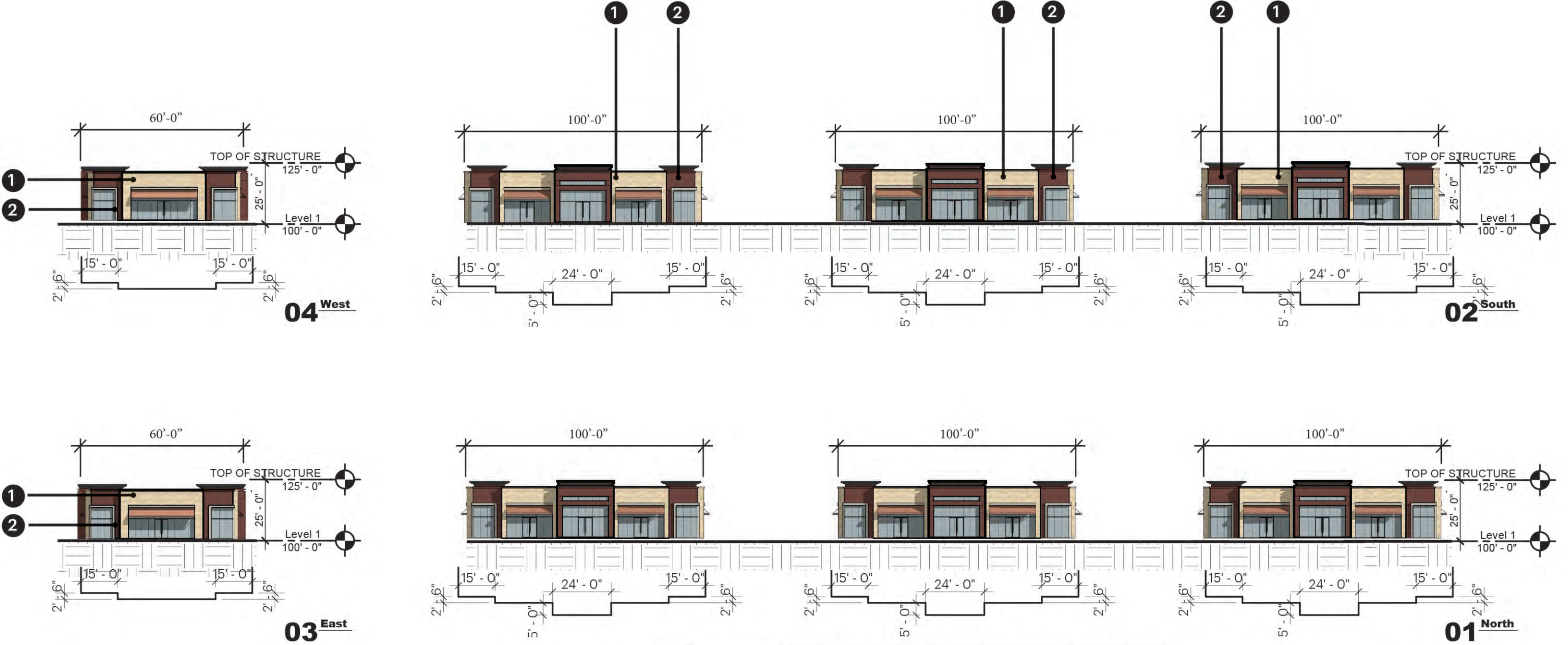
- 1 STONE VENEER 2 BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS
WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	3,803 SF	3,803 SF	1,614 SF	1,614 SF
2.	Facade S.F. (exclusive of doors and windows)	1,815 SF	1,815 SF	858 SF	858 SF
3.	Doors and Windows S.F.	1,988 SF	1,988 SF	756 SF	756 SF
4.	Primary Masonry totals (Min. 80%)	1,815 SF & 100% of 2	1,815 SF & 100% of 2	858 SF & 100% of 2	858 SF & 100% of 2
	• Brick s.f. (as applicable)	336 SF & 19% OF 4	336 SF & 19% OF 4	336 SF & 39% OF 4	336 SF & 39% OF 4
	• Stone s.f. (as applicable)	1,479 SF & 81% OF 4	1,248 SF & 81% OF 4	522 SF & 61% OF 4	522 SF & 61% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				



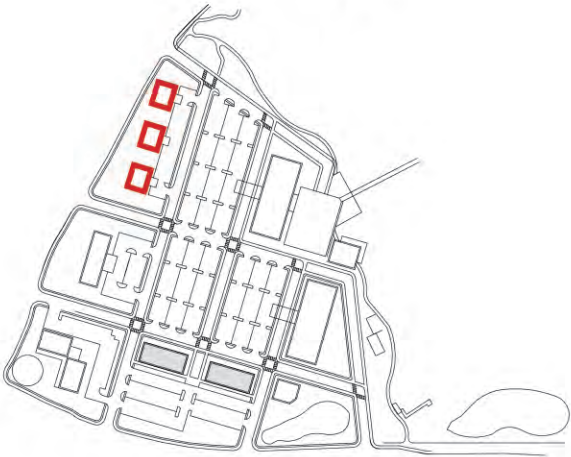
0' 25' 50' 100'
RETAIL ELEVATIONS



1 STONE VENEER 2 BRICK

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.
* EACH COMMERCIAL BUILDING SHALL NOT BE REPETITIVE OF ANOTHER. *

		North	South	East	West
1.	Total Facade S.F.	1,393 SF	1,393 SF	2,080 SF	2,080 SF
2.	Facade S.F. (exclusive of doors and windows)	697 SF	697 SF	1,022 SF	1,022 SF
3.	Doors and Windows S.F.	696 SF	696 SF	1,058 SF	1,058 SF
4.	Primary Masonry totals (Min. 80%)	697 SF & 100% of 2	697 SF & 100% of 2	1,022 SF & 100% of 2	1,022 SF & 100% of 2
	• Brick s.f. (as applicable)	282 SF & 40% OF 4	282 SF & 40% OF 4	282 SF & 27% OF 4	282 SF & 27% OF 4
	• Stone s.f. (as applicable)	415 SF & 60% OF 4	415 SF & 60% OF 4	740 SF & 73% OF 4	740 SF & 73% OF 4
	• *Stucco s.f. (as applicable)				
	• Tilt Wall s.f. (as applicable)				
5.	Secondary Masonry totals (max. 20%)	of 2	of 2	of 2	of 2
	• EIFS s.f. (as applicable)				
	• Hardiplank s.f. (as applicable)				
	• Detail any additional (as applicable)				



0' 25' 50' 100'
PAD OFFICE ELEVATIONS



STONE - CORONADO 8"
CLASSIC JERUSALEM
SAHARA BEIGE



BRICK 1 - ACME



METAL ACCENTS - BRUSHED
STAINLESS STEEL



SMOOTH CREAM STONE -
STONE SOURCE



METAL PANEL AT STONE TO
MATCH

ARCHITECTURE, DESIGN, COLORS AND CONSTRUCTION OF ALL SUBSEQUENT BUILDINGS
WILL SUBSTANTIALLY CONFORM TO THE ELEVATIONS DEPICTED.

LAKEWOOD

CONCEPTUAL PERSPECTIVE

EXHIBIT FOR **ZPD 17-0013**

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

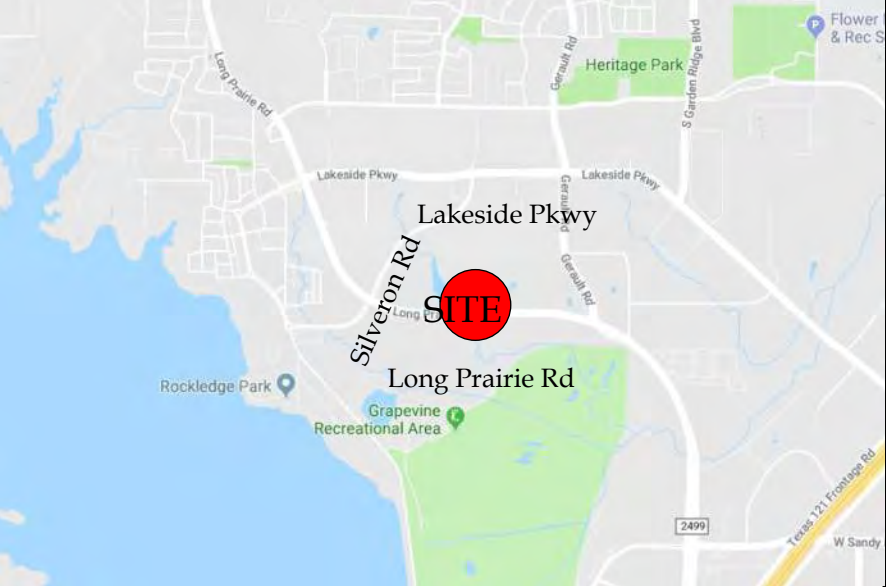
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map



Reference sheet

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General Note

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TBG

Scale 1" = 200'

0'200'400'

May 31, 2019

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LAKEWOOD

CONCEPTUAL PERSPECTIVE

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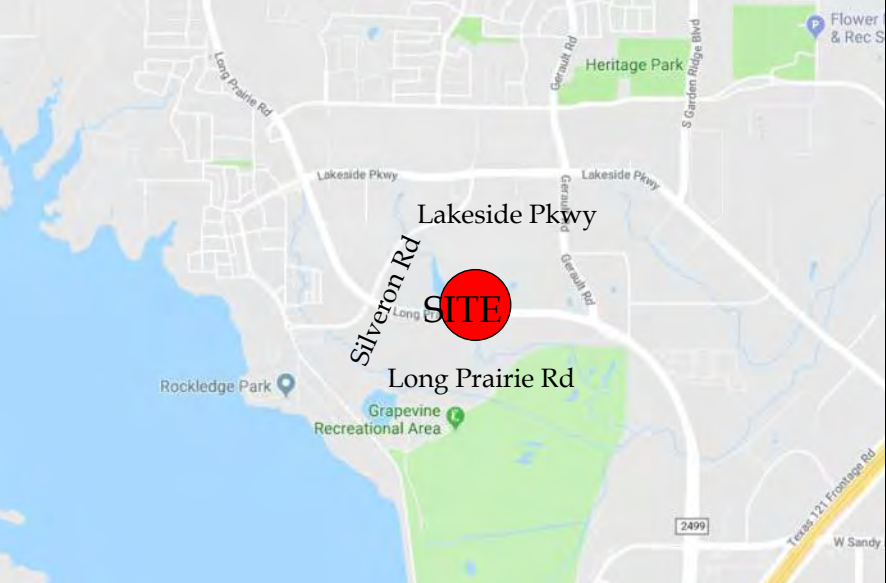
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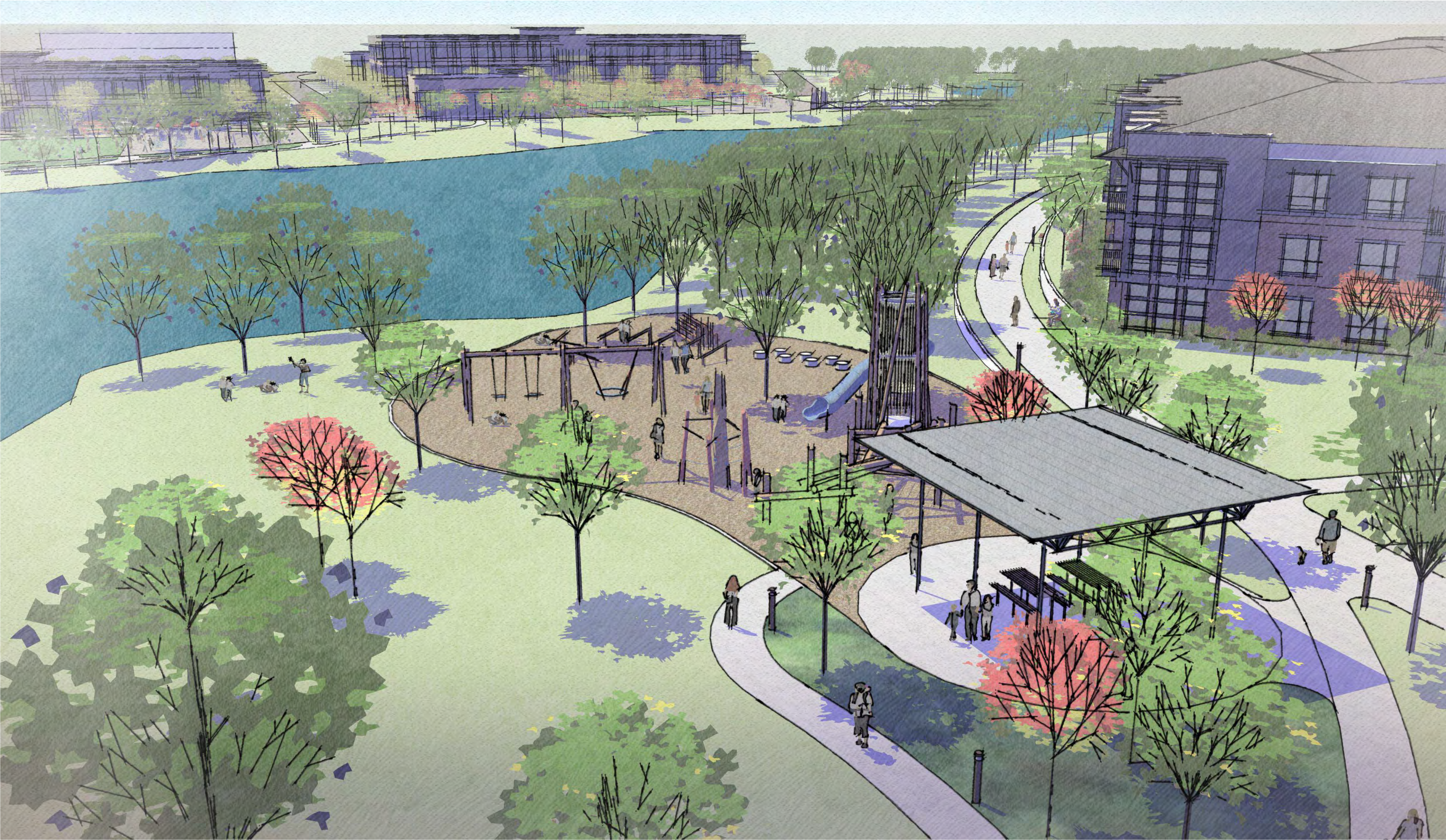
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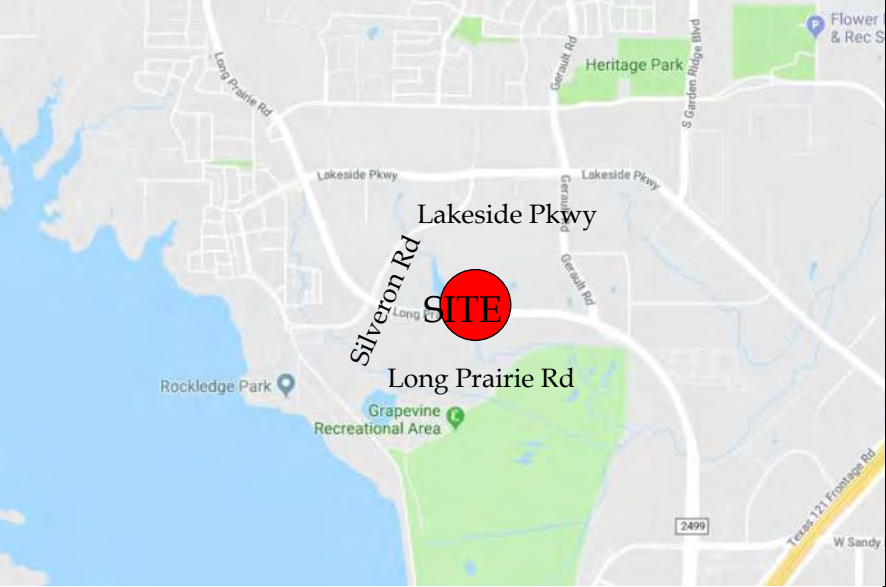
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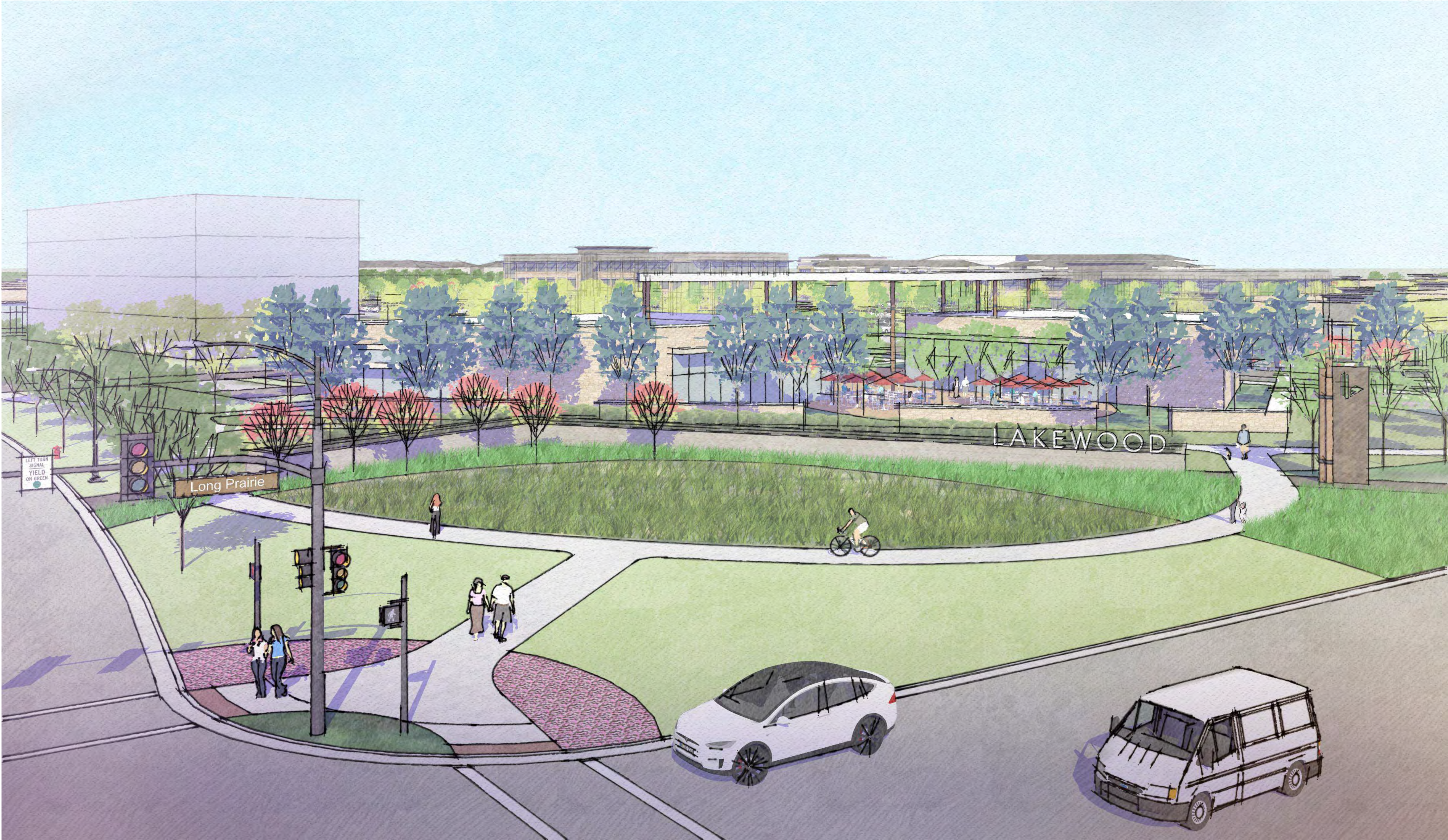
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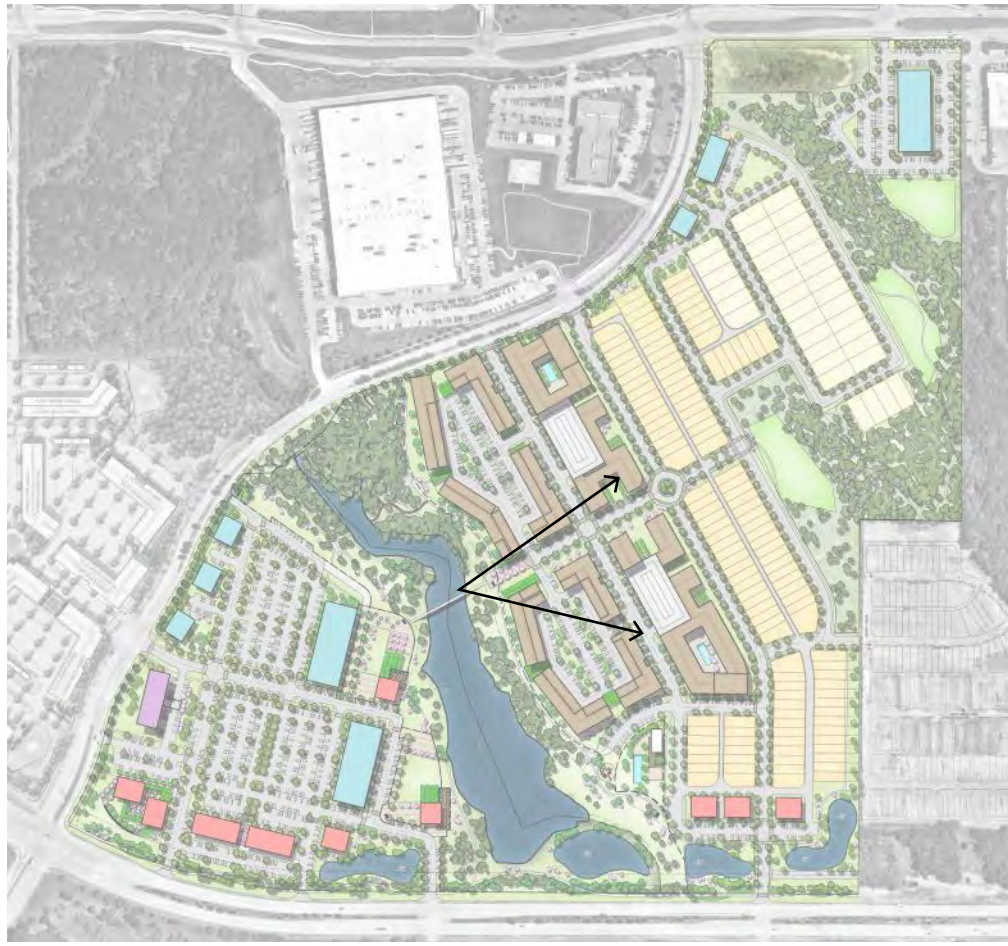
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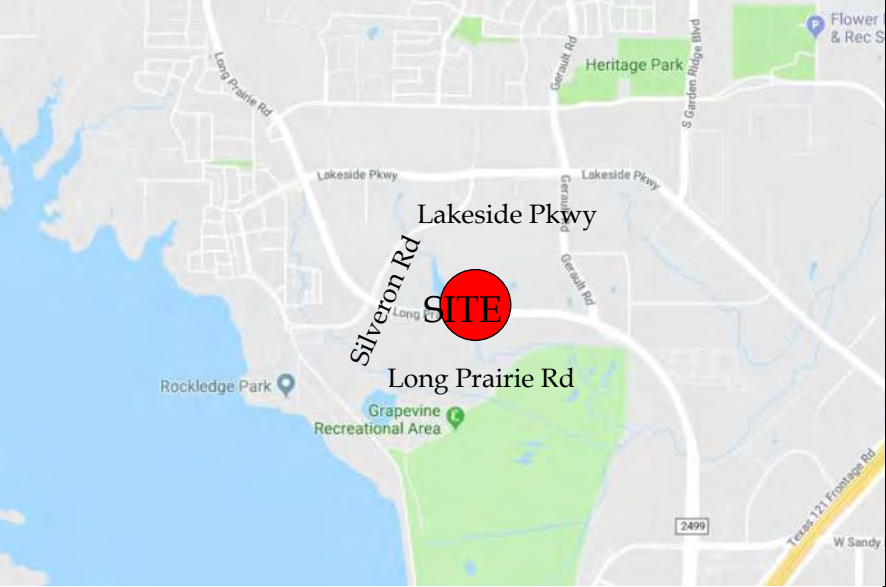
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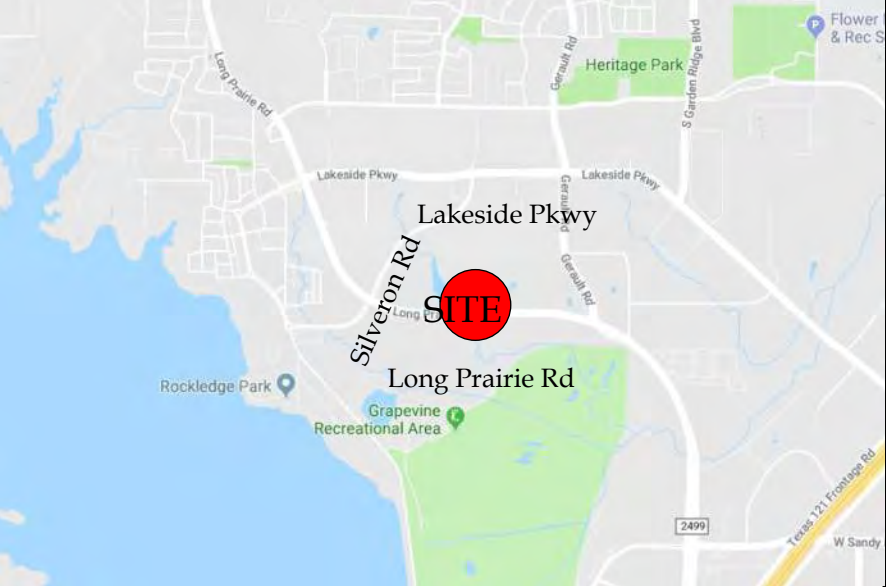
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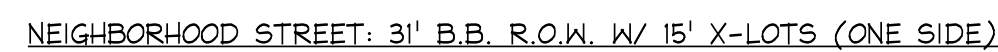
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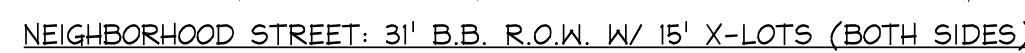
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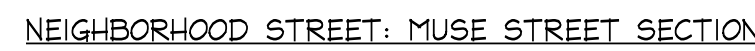




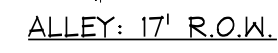
100







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-
- REMOVABLE TRAFFIC BOLLARD WILL BE LOCATED AT ENTRANCE OF TRAIL TO ONLY ALLOW FIRE TRUCKS
- SIGNAGE INDICATING TRAIL/ FIRE LANE ONLY FOR FIRE TRUCKS
- STAMPED CONCRETE
- OPTIONAL REMOVABLE PARK BENCH
- STANDARD CONCRETE
- 50'-0"
- 5'-0"
- 12'-0"
- 22'-0"
- BUILDING SIDE
- LAKE SIDE
- SIDEWALK CONNECTION

v EHICu LAR NETWORK

EXHIBIT FOR **ZPD 17-0013**

Development Team

Owner /Applicant :

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5054 Development

Center II

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Dallas, TX 75254

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13455 Noel Road, Two Galleria

Tower

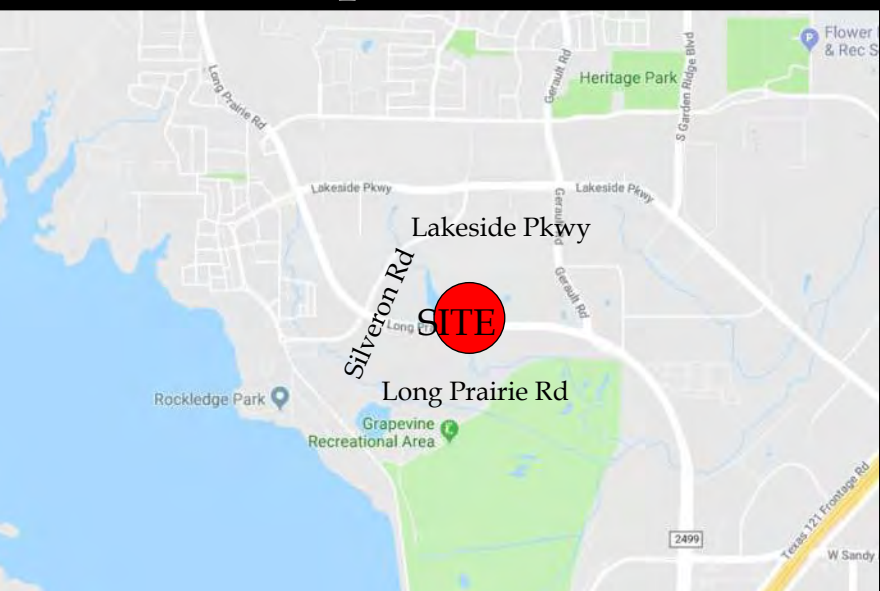
Suite 700

Dallas, Texas 7525

Contact: Brad Moss, P.E.

Phone: 972-770-1300

Location Map

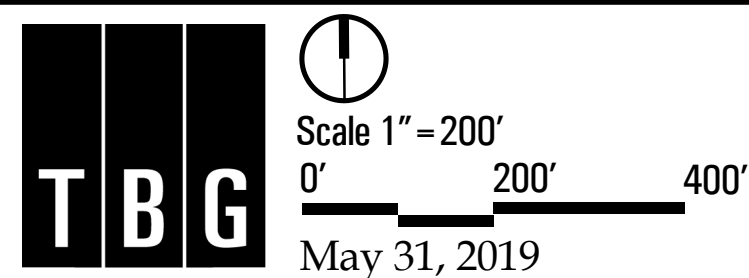


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LEGEND

- 1 SIGN 1 - COMMUNITY MONUMENT SIGN
- 2 SIGN 2 - COMMUNITY ENTRY SIGN
- 3 SIGN 3 - COMMUNITY MULTI TENANT SIGN
- 4 SIGN 4 - TRAIL SIGN

Note: Sign 5 (Educational Sign) and Sign 6 (Mile Marker) to be located along community trails, exact location to be determined at detail site plan submission.



LAKEWOOD

CONCEPTUAL
SINGAGE LOCATION

EXHIBIT FOR ZPD 17-0013

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
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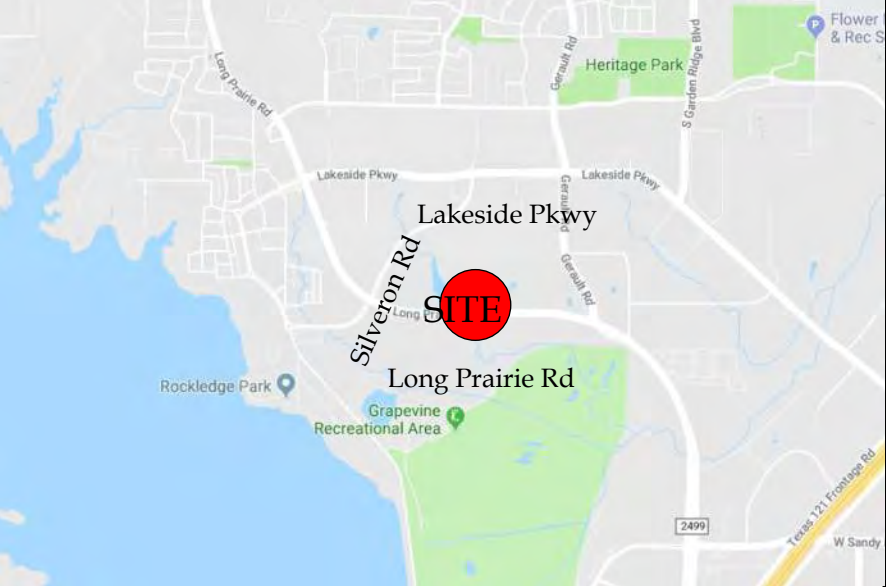
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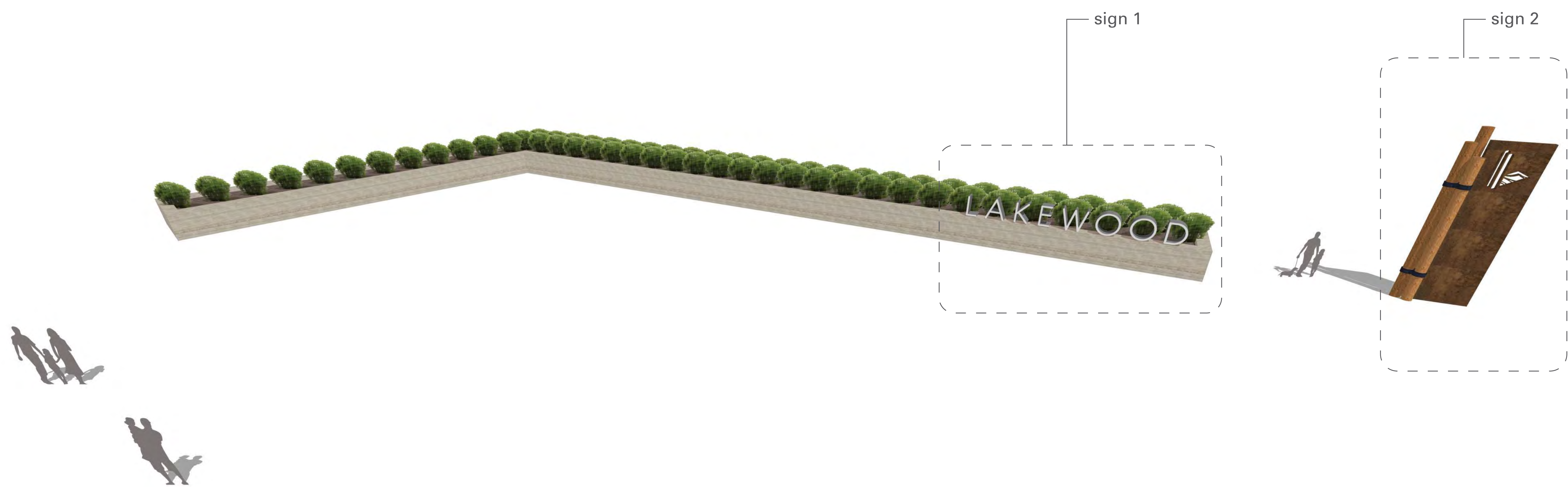
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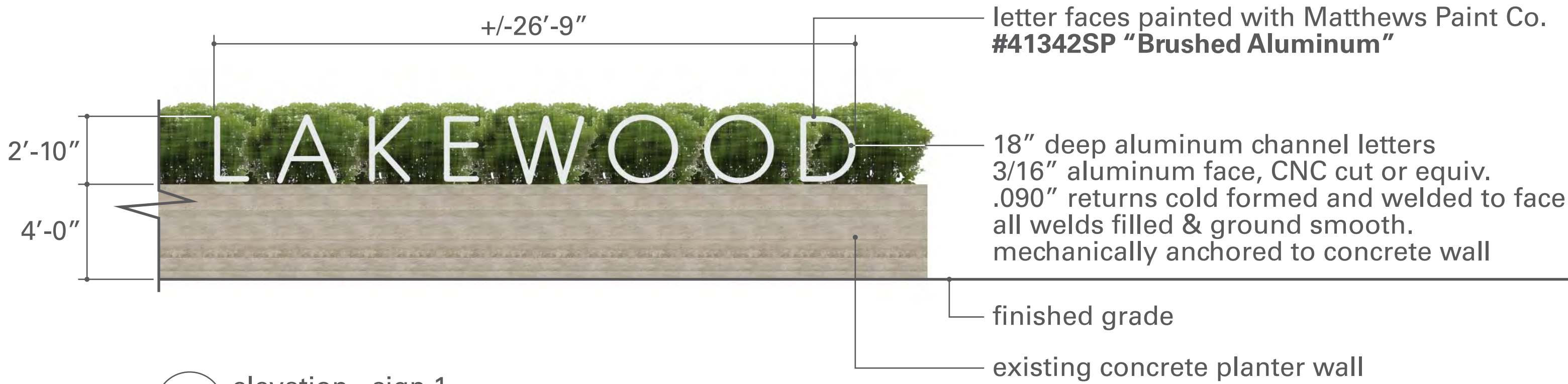
sign 1

Ground Sign Requirements - Sign 1				
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	10'	7'
Max. Width	Sec. 86-67 (2)	10'	30'	27'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	100 sf/side	81 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	15'	15'+
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	60'	60'+
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	120'	120'+
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	N/A

Ground Sign Requirements - Sign 2				
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	20'	20'
Max. Width	Sec. 86-67 (2)	10'	10'	7'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	100 sf/side	90 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	15'	15'+
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	60'	60'+
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	120'	120'+
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



2 overall perspective
scale: nts



1 elevation - sign 1
scale: 1/4" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
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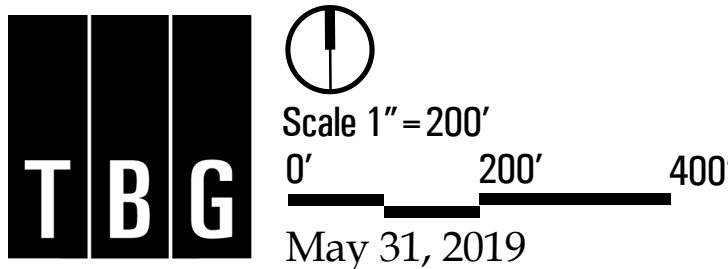


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sign 1 and 2



1 entrance gateway elevation
scale: 1/2" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

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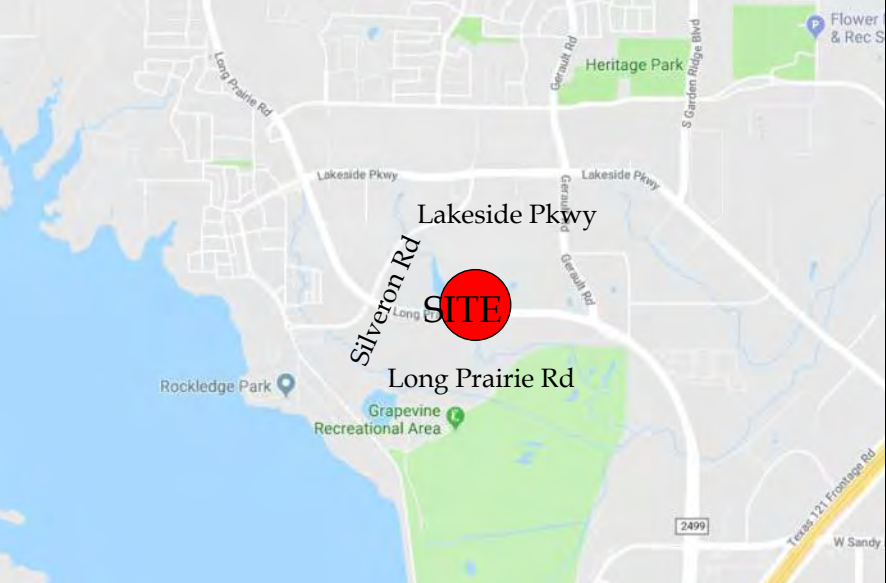
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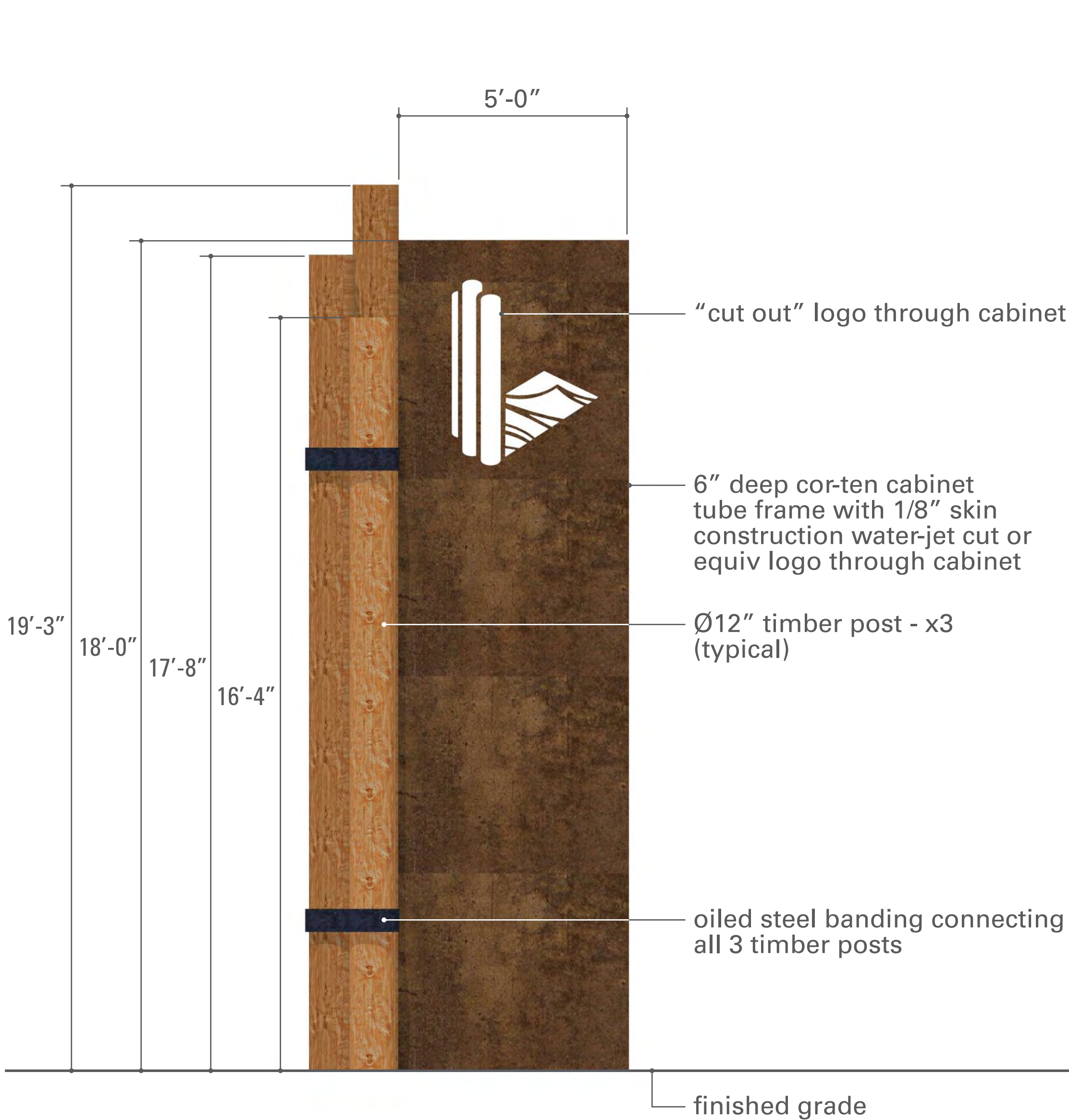
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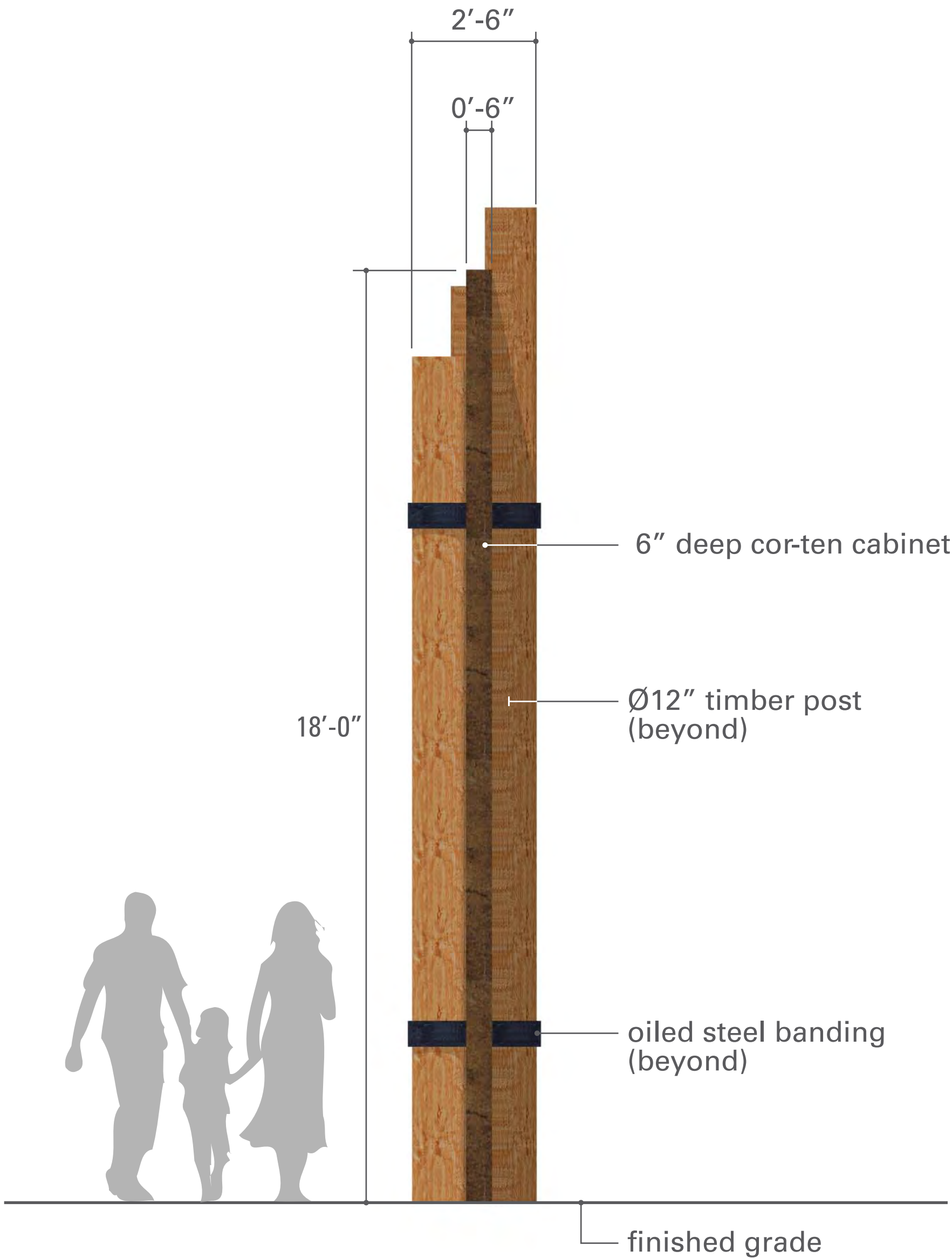
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Ground Sign Requirements - Sign 2

Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	20'	20'
Max. Width	Sec. 86-67 (2)	10'	10'	7'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	100 sf/side	90 sf/side
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Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



1 elevation - pylon
scale: 1/2" = 1'-0"



2 side view - pylon
scale: 1/2" = 1'-0"

LAKEWOOD

CONCEPTUAL
SIGNAGE PLAN

Development Team

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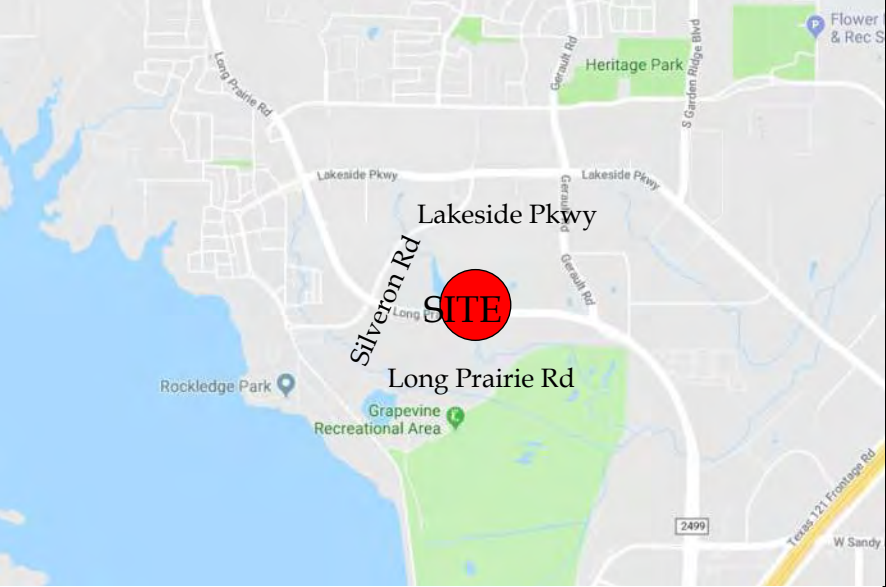
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Open Space Amenity Key	Shows open space with labels that is referenced in planned development, shows matrix of proposed type of amenities in each open space area and the quantities
Vehicular Network	Shows proposed street network, street types and cross sections, location of utility, enlargement of trail, enlargement of lots that have landscape easement in front yard, enlargement of street tree detail.
Concept Plan - Black and White	Detail drafted site plan with building summary
Conceptual Landscape Plan	Detail drafted landscape plan with landscape requirement compliance chart.
Conceptual Signage Plan	Proposed signage elevations

General Note

All plans are conceptual in nature and subject to change based on site and development conditions.

TBG

Scale 1" = 200'

0' 200' 400'

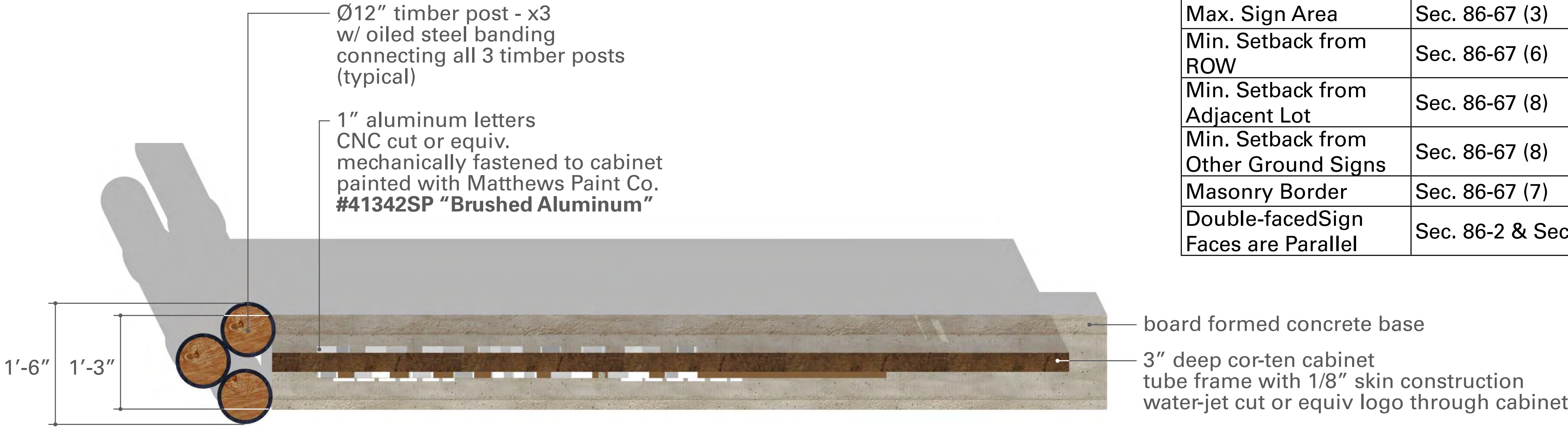
May 31, 2019

The information shown is based on the best information available and is subject to change without notice.

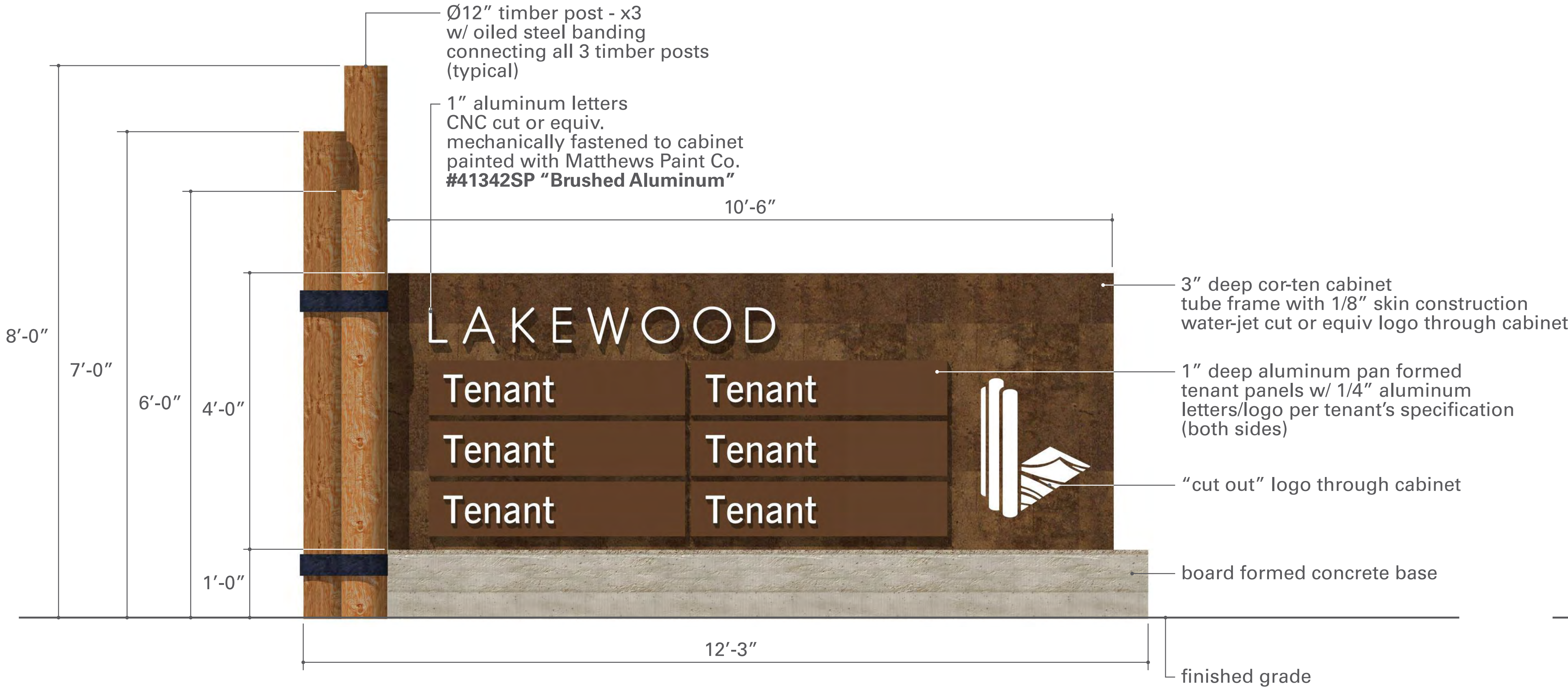
sign 3

Ground Sign Requirements - Sign 3

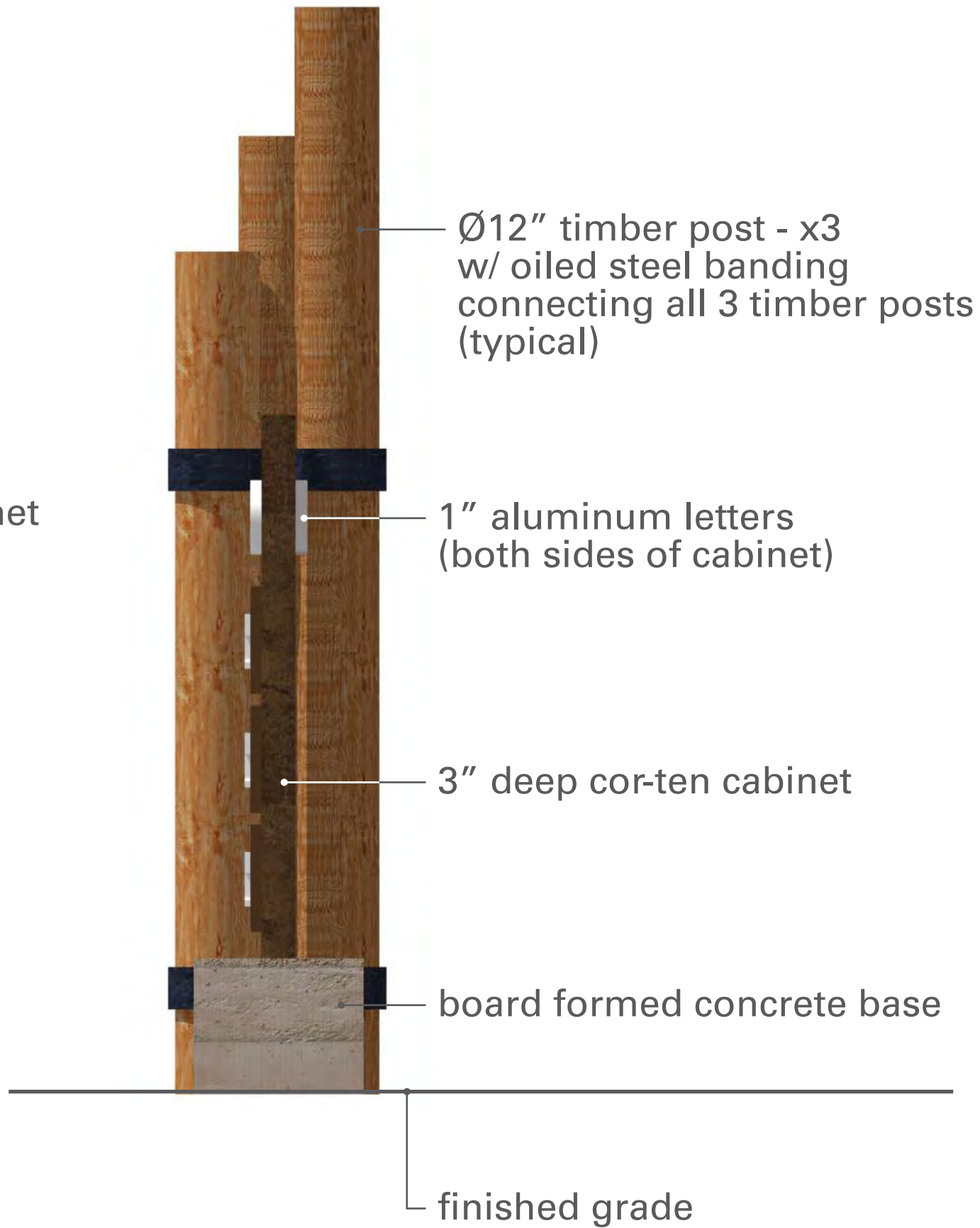
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	10'	8'
Max. Width	Sec. 86-67 (2)	10'	15'	13'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	80 sf/side	50 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	15'	15'+
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	60'	60'+
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	120'	120'+
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



3 plan
scale: 1" = 1'-0"



1 elevation
scale: 1" = 1'-0"



2 side view
scale: 1" = 1'-0"

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map

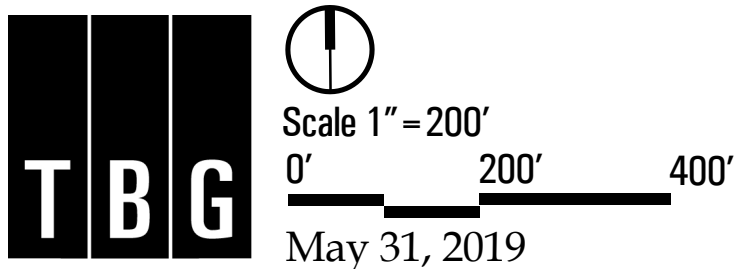


Reference sheet

Name	Description
Land Use Plan	Shows proposed land use and acreages
Concept Plan	Color rendered conceptual master plan
Open Space & Trail Access Plan	Shows types of proposed open space with acreage and proposed different type, width, location of trails.
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Conceptual Signage Plan	Proposed signage elevations

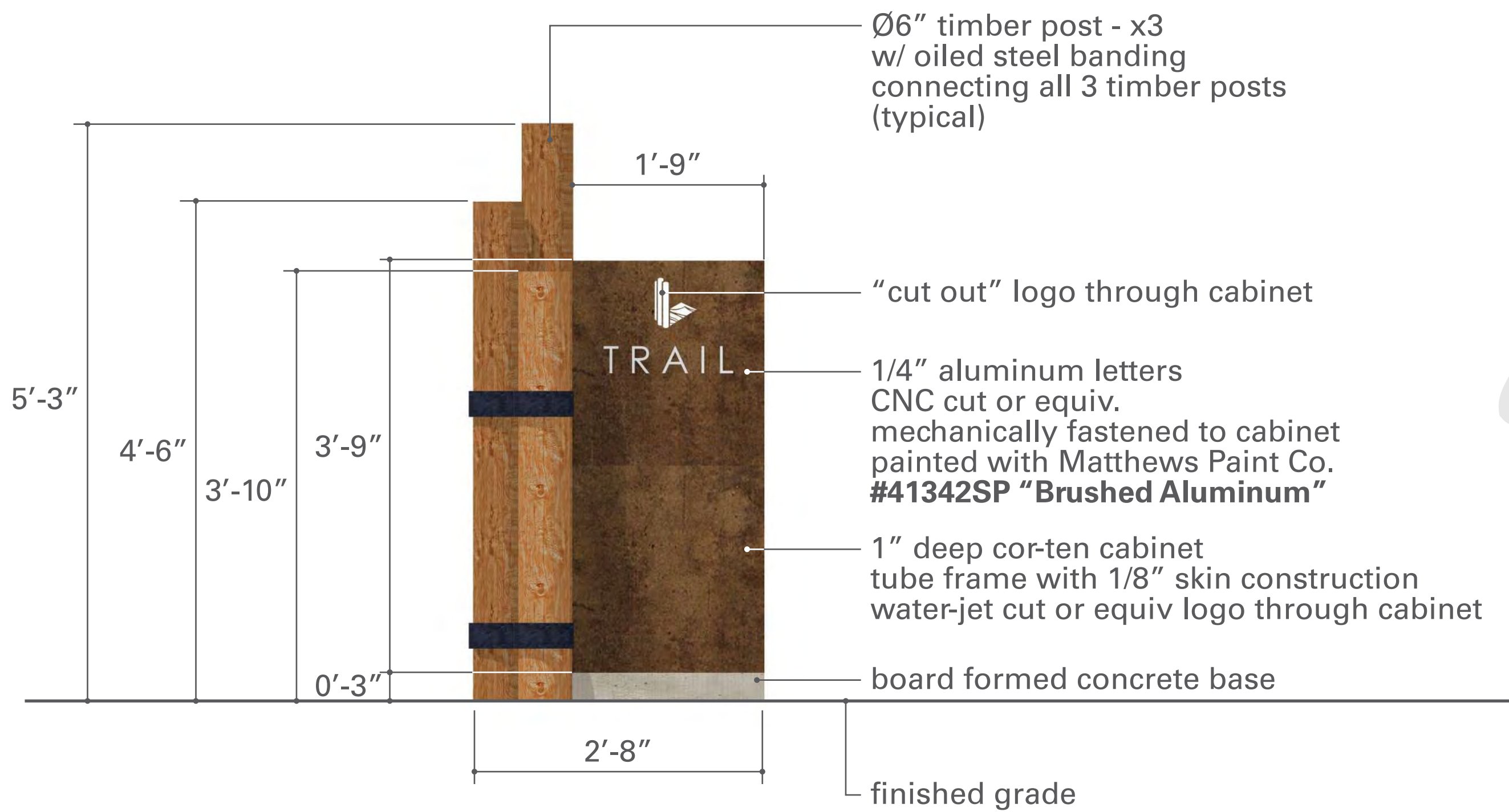
General Note

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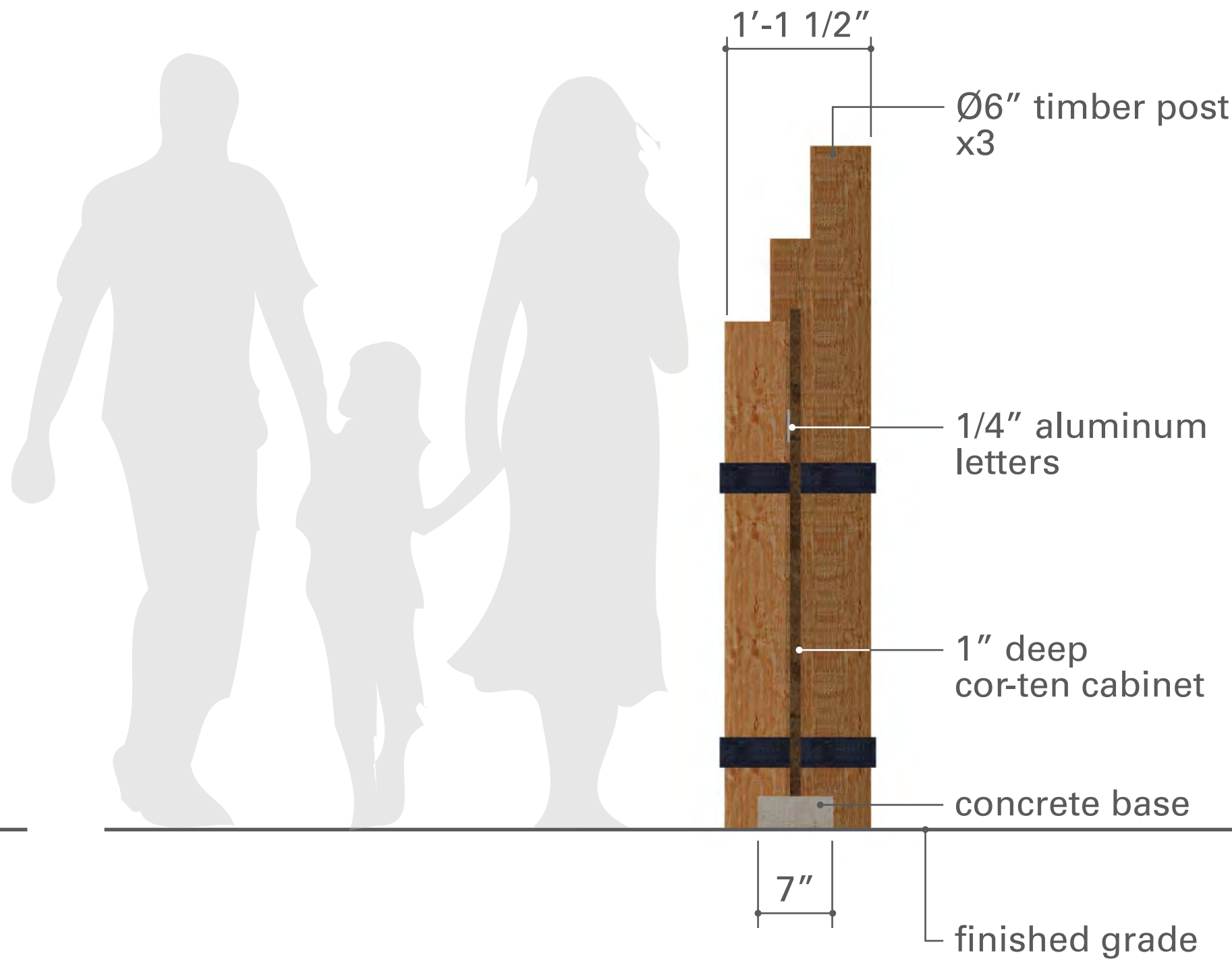


The information shown is based on the best information available and is subject to change without notice.

sign 4



1 elevation - trailhead
scale: 1" = 1'-0"



2 side view - trailhead
scale: 1" = 1'-0"



3 perspective - trailhead
scale: nts

Ground Sign Requirements - Sign 4				
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	5'	4'
Max. Width	Sec. 86-67 (2)	10'	2'	2'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	10 sf/side	8 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	0'	TBD
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	0'	TBD
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	0'	TBD
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development
Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

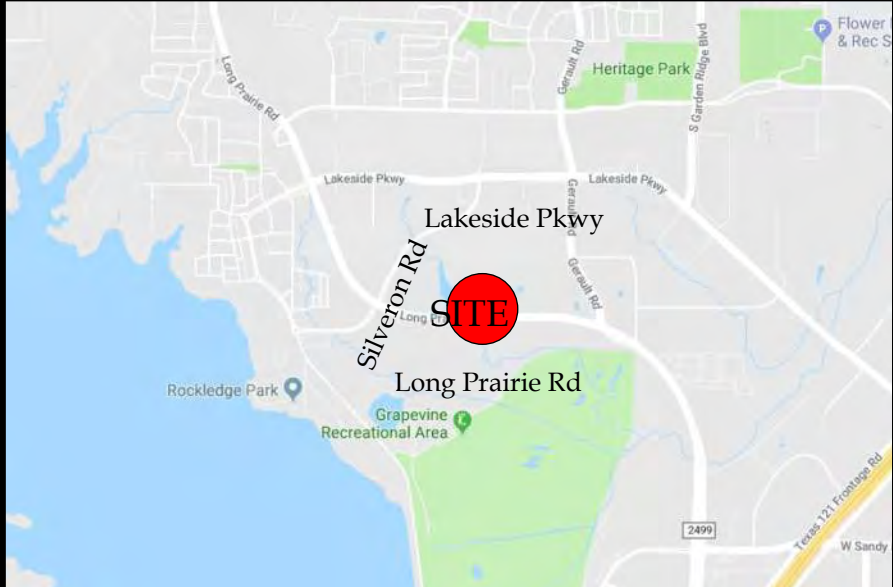
Planner / Landscape Architect:

TBG Partners Inc.
2001 Bryan Street, Suite 1450.
Dallas, TX 75201
Contact: Mark Meyer
Phone: 214-744-0757

Engineer / Surveyor:

Kimley-Horn.
13455 Noel Road, Two Galleria Tower
Suite 700
Dallas, Texas 75251
Contact: Brad Moss, P.E.
Phone: 972-770-1300

Location Map

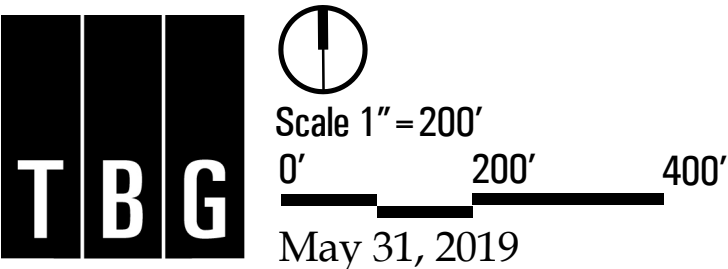


Reference sheet

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Conceptual Signage Plan	Proposed signage elevations

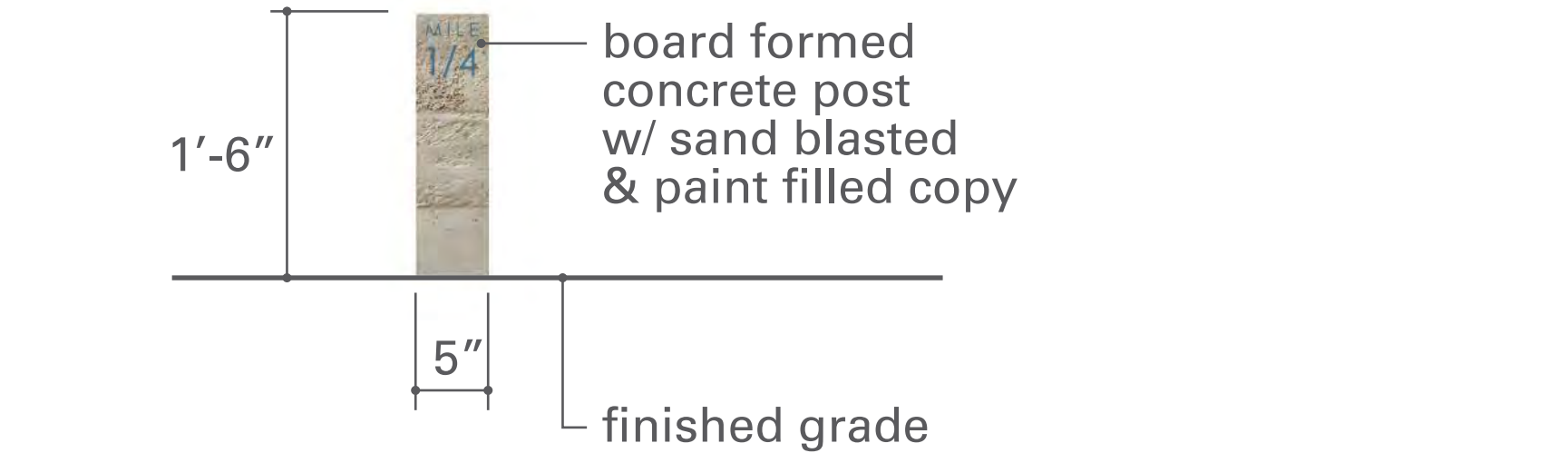
General Note

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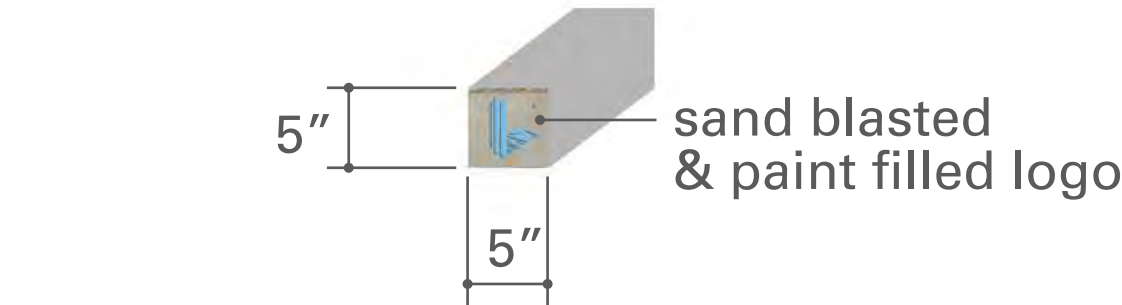


The information shown is based on the best information available and is subject to change without notice.

signs 5 and 6



4 elevation - mile marker
scale: 1" = 1'-0"



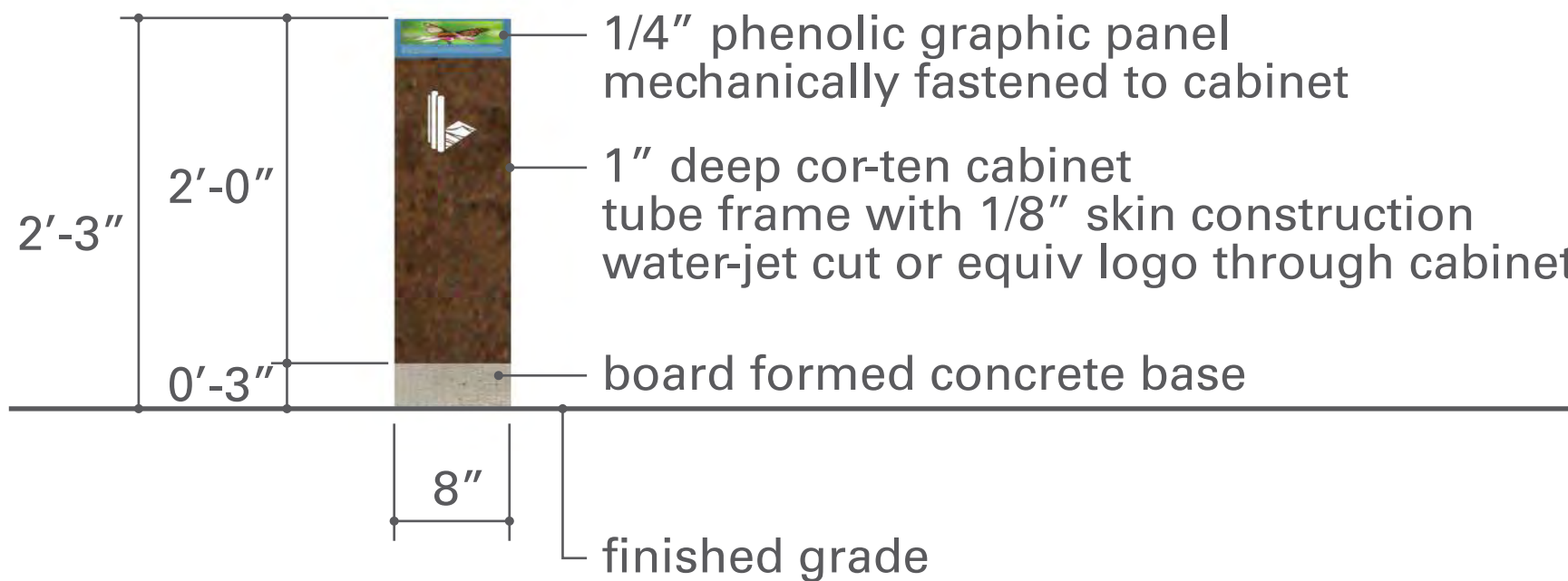
5 plan - mile marker
scale: 1" = 1'-0"



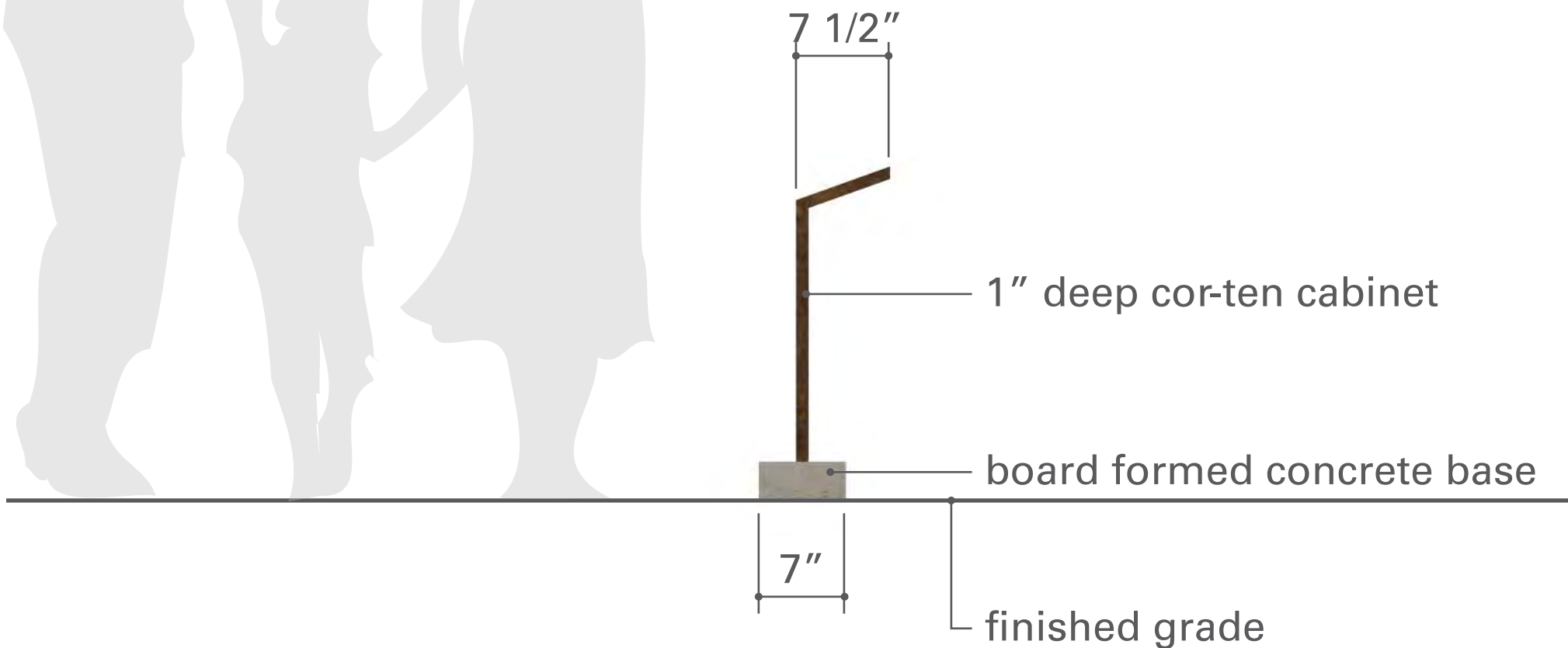
6 perspective - mile marker
scale: nts

Ground Sign Requirements - Sign 6			No Permit Required	
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	2'	2'
Max. Width	Sec. 86-67 (2)	10'	1'	0.7'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	2 sf/side	2 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	0'	TBD
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	0'	TBD
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	0'	TBD
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES

Ground Sign Requirements - Sign 5			No Permit Required	
Item	Reference	Required	PD standard	As Shown
Max. Height	Sec. 86-67 (1)	10'	3'	3'
Max. Width	Sec. 86-67 (2)	10'	1'	1'
Max. Sign Area	Sec. 86-67 (3)	60 sf/side	3 sf/side	3 sf/side
Min. Setback from ROW	Sec. 86-67 (6)	15'	0'	TBD
Min. Setback from Adjacent Lot	Sec. 86-67 (8)	60'	0'	TBD
Min. Setback from Other Ground Signs	Sec. 86-67 (8)	120'	0'	TBD
Masonry Border	Sec. 86-67 (7)	YES	NO	NO
Double-facedSign Faces are Parallel	Sec. 86-2 & Sec. 86-4 (10)	YES	YES	YES



1 elevation - interpretive
scale: 1" = 1'-0"



2 side view - interpretive
scale: 1" = 1'-0"



3 perspective - interpretive
scale: nts

LAKEWOOD

CONCEPTUAL SIGNAGE PLAN

Development Team

Owner/Applicant :

PS Silveron/RMR LP
5054 Development Center II
14160 North Dallas Parkway Suite 750
Dallas, TX 75254
Contact: Jim Wills
Phone: 214-354-3931

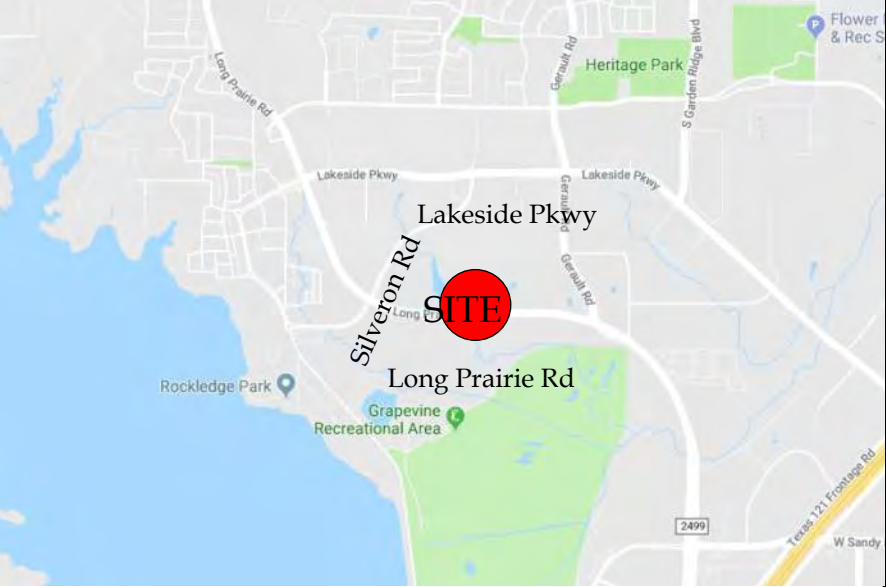
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Dallas, TX 75201
Contact: Mark Meyer
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Location Map



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General Note

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DEVELOPMENT AGREEMENT FOR Lakewood

THIS DEVELOPMENT AGREEMENT FOR Lakewood ("Agreement") is made and entered into this ____ day of September 2019, by and between the Town of Flower Mound, Texas (the "Town"), and PSSilveron/RMR LP as Agent, a California limited partnership ("Developer").

WITNESSETH:

WHEREAS, Lakewood Project ("Project") is a unique development encompassing approximately 122 acres in Flower Mound and described by metes and bounds on Exhibit 1 ; and

WHEREAS, the Town and Developer wish to address various development issues related to the Project and to provide for the payment of certain fees and construction of certain infrastructure, among other matters; and

WHEREAS, the Town's SMARTGrowth Program requires that certain levels of key public services and infrastructure necessary to serve a new development project be in place before amendments to the Town's zoning ordinances, and approval of any development plan, record plat or site plan may be granted; and

WHEREAS, the Project is zoned PD 163; and

WHEREAS, the Town and Developer desire to address (1) infrastructure and related concerns associated with the Project due to its location, (2) project phasing, (3) the anticipated sanitary sewer improvements to be constructed at and near the Project necessitated by the development of the Project and other surrounding developments, and (4) the concern for the public health, safety and welfare due to the foregoing; and

WHEREAS, the Town and the Developer acknowledge that the foregoing issues along with other issues, if not addressed through a development agreement will very likely result in the Project's failure of the Town's SMARTGrowth Program; and

WHEREAS, The Town's SMARTGrowth Program, Section 98-74(b) requires the analysis of large multi-phase projects over 100 acres in area to include a development agreement that addresses the timing of the infrastructure construction and phasing; and

WHEREAS, due to the unique nature of large scale project with a mixture of uses, coupled with the recognition that such developments offer challenges to traditional zoning methods and standard land use assumptions and practices, the Town and Developer acknowledge that it is in the best interests of all parties that these issues be addressed in this Agreement while acknowledging that projects like this develop over many years; and

WHEREAS, the Town and Developer wish to expand the Town's parks and open space amenities without expending additional funds from the Town's general revenue for capital improvements or for ongoing maintenance of parks and open spaces within the Project; and

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Developer covenant and agree as follows:

1. **Project Subject to Town Ordinances.** The Project, or any portion thereof, at all times shall be developed and constructed in accordance with all applicable Town ordinances and agreements related to the Project, and shall be subject to said ordinances and agreements, as such now exist or may hereafter be amended and/or approved by the Town. Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve Developer from its responsibilities for the construction of public improvements under applicable development ordinances of the Town. The PD 163 Concept Plan is attached as Exhibit 2.
2. **Town's SMARTGrowth Program:** If, in relation to this project, the first record plat is scheduled to be reviewed by the Planning and Zoning Commission prior to October 1, 2019, either a wastewater capacity analysis must be completed for the area impacted by the subject plat and shown to pass SMARTGrowth requirements, or the Developer may elect to pay for the Pump Upgrade for the Southside Lift Station themselves at this time, with the understanding that the funds would be credited back in future sewer impact fees. The Town agrees that either option satisfied SMARTGrowth requirements.
3. **Upland Habitat Mitigation** – Developer agrees to pay upland habitat mitigation in accordance with ordinance 94-39(b). The current estimate of those fees net of habitat preservation credits is \$255,000, as established within the approved Environmental Protection Plan (EPP). These fees will be due at the time of preconstruction meeting authorizing grading or construction activities to occur on the lot or site. In cases where a preconstruction meeting is not required, all fees or payments shall be made prior to the issuance of a building permit for the lot or site in accordance with 94-39.
4. **Captions and Headings.** The captions and headings of the Sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement nor shall they be employed to interpret or aid in the construction of this Agreement.
5. **Covenant Running with the Land.** This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future, and it is the intent of this Agreement, and the parties so acknowledge, that all phases of the Project shall be subject to this Section of this Agreement.
6. **Applicable Laws and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Agreement shall lie in Denton County, Texas.
7. **Notices.** Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028
Attn: Town Manager's Office

If to Developer: PS Silveron/RMR LP
212 S Palm Ave
Alhambra, Ca 91801

8. **Attorneys' Fees.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Agreement and the Parties agree that this Agreement is not subject to Subchapter 1 of Chapter 271 of the Texas Local Government Code.
9. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
10. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
11. **Filing in Denton County Deed Records; Covenant Running with the Land.** This Agreement or a memorandum thereof shall be filed in the deed records of Denton, Texas. Upon any sale or other transfer of any ownership rights in Lakewood, Developer shall notify the Town in writing of such sale or transfer within thirty (30) days of such sale or transfer, provided, however, no notice shall be required for the sale of a lot for which a record plat has been approved and recorded in the deed records. This Agreement shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer and all others holding any interest now or in the future with the exception of the purchaser of a lot for which a record plat has been approved and recorded in the deed records and on which a residence has been constructed (a "Fully Improved Lot").
12. **Binding Obligation.** The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind Developer to same. Further, this Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest in Lakewood now or in the future with the exception of the purchaser of a Fully Improved Lot.
13. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.
14. **Default.** No party shall be in default of provisions under this Agreement until notice of the alleged failure of such party to perform has been given as provided herein (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such party

has been given ten (10) days after the written notice in the case of the default of a payment obligation, and in all other cases a reasonable time, to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than ten (10) days after written notice of the alleged failure has been given).

15. **Roughly Proportionate Determination under Texas Law.** Developer has been represented by legal counsel in the negotiation of this Agreement and has been advised regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the specific exactions required by the Town and agreed to by Developer in this Agreement are roughly proportionate to the anticipated impact of the development of Lakewood in accordance with applicable Town ordinances. Developer hereby waives and releases the Town from any and all liability under §212.904 of the Texas Local Government Code, as amended, with respect to Developer's construction and payment obligations under this Agreement.
16. **Rough Proportionality Determination under Federal Law.** Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and chapter 395 of the Texas Local Government Code in regard to its construction and payment obligations under this Agreement. Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements, if any, mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of such agreements. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims.
17. **Release; Estoppel Certificates.** From time to time upon written request of Developer to the Town Manager, the Town Manager may execute, in recordable form, a release of any provision of this Agreement if the Town Manager and Town Attorney determine Developer has fully satisfied the provision to be released. From time to time upon written request of Developer to the Town Manager, the Town Manager may execute a written estoppel certificate identifying any obligations of Developer under this Agreement that are in default or, with the giving of notice or passage of time, would be in default; and stating, to the extent true, that to the best knowledge and belief of the Town, Developer is in compliance with its duties and obligations under such agreements.
18. **Exhibits.** The following exhibits are attached hereto and incorporated into this Agreement for all purposes:

- | | |
|-----------|---|
| Exhibit 1 | Metes and Bounds Description of Lakewood Property in the Town of Flower Mound |
| Exhibit 2 | PD 163 Concept Plan |

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: _____

Name: Steve Dixon
Mayor, Town of Flower Mound**STATE OF TEXAS** §

§

COUNTY OF DENTON §

This instrument was acknowledged before me on this the ____ day of _____, 2019 by Steve Dixon, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

Notary Public, State of Texas**DEVELOPER:**

PSSilveron/RMR LP

By: _____

Name: _____
Authorized Signatory**STATE OF TEXAS** §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 2019 by _____, Authorized Signatory of PSSilveron/RMR LP, a California limited partnership, on behalf of said limited partnership.

Notary Public, State of Texas

From: KENDRA

Sent: Tuesday, August 27, 2019 5:22 PM

To: Chuck Russell <chuck.russell@flower-mound.com>; Lexin Murphy <lexin.murphy@flower-mound.com>

Cc: Jim Wills; Anderson, Art

Subject: Lakewood Council Hearing

Chuck and Lexin,

We are reviewing the comments from last night's P&Z hearing and are reviewing some options. To give everyone adequate time to review any changes we may make, we'd like to move our Council hearing to September 16th.

In the past I've been allowed to take cases back to P&Z after denial to review changes. Is that still an option and if so what would the process be for doing that?

Thanks,
Kendra Stephenson
Portmanteau Consulting
phone:
fax:
conference line:

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and destroy this email. Finally, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

Chuck Russell
Flower Mound Town Planner
2121 Cross Timbers Road
Flower Mound, TX 75028

September 11, 2019

Dear Mr. Russell,

Lakewood is a proposed 122 acre mixed-use development that we believe meets the vision and intent of the Town's Lakeside Business District. The property is currently zoned Campus Commercial under PD-31.

The Lakewood proposal is similar to other recent projects approved in the area, but we believe the design and benefits exceeds those of the other developments. This letter briefly highlights the factors that should be considered when reviewing the Lakewood proposal.

The developer of the property has been part of the ownership for over 20 years and has actively worked with the Town to develop the Lakeside District as outlined in the Master Plan. During this time the owner participated in and continued to pay for their share of the public improvements to the area through the Chapter 380 agreements entered into in 2000.

In 2013, the Town realized that the district vision needed to be amended as the development of the desired office uses was not occurring despite an overall robust office market in DFW. Beginning with the establishment of the original Master Plan in 2000 and since the Master Plan update in 2013, the property owner has worked to bring development that meets the Town's stated goals to the property and has worked as a partner with the Town. The proposed development reflects the goals outlined in the Master Plan as updated in 2013.

The proposal we have put forward for approval is the culmination of many months work by the development team in conjunction with Town Staff. The project has evolved through months of review and revision to address all of the concerns that have been raised; and we believe it is a better project because of this assessment and analysis. The resulting Lakewood project we believe maximizes capturing the vision of the Town and the uniqueness of the site. We have brought together a development team with the knowledge, extensive background and body of work that ensures that the project can be built as proposed, to Flower Mound's exacting standards.

The starting point for developing the Lakewood plan was the land itself. Specifically, we developed a detailed understanding of how the property is unique to the Lakeside Business District and specifically the Campus Commercial area. The 5-acre spring-fed lake is iconic to the area. It is dominated by steep topography from north to south and west to east. It has mature tree stands and other natural features and is impacted by drainage regulations and area detention. Additionally, the property is surrounded by developed projects that establish a need to address adjacency issues.

The Lakewood development proposal respects and works to incorporate the unique natural features in a manner that preserves the land's integrity while creatively dealing with both the natural challenges and the challenges created by adjacent development. In order to accomplish this, various modifications to Flower Mound's standard zoning districts are required. These are included in the submitted development standards.

A main design tenant of the project was to preserve the beauty of the lake and open it up to the residents of Flower Mound and visitors to Lakewood. This is in keeping with the original intent for the property going back to the early and mid 2000's. Just as important, we are confident that the proposal meets the intent of what the Town has asked of landowners and developers in the Lakeside Business District.

Specifically, the Lakeside Business District / Campus Commercial text of the Master Plan lays out the intent of development in this area:

"Lakeside Business District Land Use Categories:

Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District's Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences."

Our proposal has a mixture of office, retail, residential and open space uses that has been designed respecting the natural features of the site as required by the Master Plan. Lakewood also complies with the three elements of the Districts Vision and provides for exemplary and enduring quality and design by proposing high development standards and industry leading development partners.

Further, the proposed development meets the Town's stated desires for the Campus Commercial District as outlined during the Town Council's 2017 retreat. Those ideas stressed office development, design in context of the natural environment, and limiting high density residential along FM 2499.

The following table shows the land uses for the other developments approved in the area as compared to the proposal for the Lakewood development:

Land Use by Development

Development	Southgate	The Point	Lakeside DFW	Lakewood (pending)
Total Acres	108	33.4	155.8	122.1
Open Space	7%	16%	10%	30.5%
Commercial	33%	26%	16%	34.6%
Mixed Commercial / Residential	19%	3%	14%	0%
Residential	41%	43%	60%	34.9%
Total Residential & Mixed Use	60%	46%	74%	34.9%

The Lakewood development has by far the largest amount of open space and retained environmental features compared to the other developments. This is a benefit for residents (both current and future), employees and guests of the district. The plan also shows the greatest concentration of office uses within the district. Our commitment is to build Class A buildings with one of the premier office developers within the DFW area. Our office development partner will be announced in the near future.

Additional features and elements (including requirements for landscaping and other urban design standards) are contained in the Master Plan text for the Campus Commercial district. The proposed plan meets or exceeds all of the requirements of the district including provisions for roadways, landscaping, architecture, trees and natural features, parks and floodplains and trails. This is detailed in the various standards and zoning exhibits submitted to the Town Staff.

The proposal meets the purpose and intent of the Campus Commercial zoning district regulations:

Sec. 98-841. - Purpose and intent.

"The CC campus commercial district is designed primarily to accommodate a variety of large scale campus commercial developments such as corporate offices, office parks, hotels, resorts and similar uses in a planned campus setting. Retail, restaurant, hotel and similar uses serving the campus commercial uses could be appropriate if they are planned as integral elements of the developments. In addition to the use and area regulations of this division, development in the CC campus commercial district shall be in compliance with all other applicable provisions of this chapter."

This text mirrors that of the Master Plan and as stated above we meet this standard. And finally, we believe the application meets the purpose and intent of the Planned Development (PD) regulations as outlined in the following text from Flower Mound's Code of Ordinances.

Sec. 98-811. - Purpose and intent.

"The PD planned development district (PD) is designed to permit flexibility and encourage a more creative, efficient and aesthetically desirable design and placement of buildings, open spaces and circulation patterns by allowing a mixture or combination of uses and to best utilize special site features such as topography, size and shape. A planned development district may be used to permit new or innovative concepts in land utilization not permitted by other zoning districts in this Code. While greater flexibility is given to allow special conditions or restrictions that would not otherwise allow the development to occur, the requirements

established herein ensure against the misuse of such increased flexibility. It is intended for application in all land use designations on the land use map of the master plan, provided that the uses and development standards proposed are consistent with the stated goals of the town's master plan."

In conclusion, we ask the Town Council to approve this proposal as it meets all of the standards stated for developments in the Lakeside Business District. Taken from the Town's PD standards, the following is the criteria for approval:

Sec. 98-813. - Criteria for approval.

"In approving the planned development district, the town council may impose conditions relative to the quality and standards of development. Based upon the concept plan, the planning and zoning commission and town council shall determine whether the PD district should be established, taking into account the following criteria:

- (1) The proposed planned development district is consistent with the town's, vision, goals, objectives, and policies adopted in the master plan;
- (2) Proposed uses and project design are compatible with existing and planned adjoining uses and the character of the neighborhood in which the project is located;
- (3) Adequate public facilities required to be installed by the developer will be provided in a timely manner to support each phase of the development in accordance with the SMARTGrowth program;
- (4) Proposed uses and development standards are consistent with the purposes of the base zoning district, where applicable; and
- (5) The proposed phasing of development is consistent with the overall growth and development of the town.

As discussed above and demonstrated in the master plan and zoning information provided to the Town, the Lakewood development complies with the Lakeside Business District and should be approved by the Town. Specifically, objectively evaluating the development based the five criteria listed above, demonstrates the proposed development should be approved. We believe this development will be a benefit to the Town, the future residents, employees and guests of the district. The proposed concept plan will protect and integrates the existing natural features and will provide an improved and substantial tax base for the Town. And finally, our development team and partners include the premier firms in the DFW Metroplex and nationwide. Working with us and our development partners, the Town can be assured of the quality of the development moving forward.



TOWN COUNCIL AGENDA ITEM NO. 27

REGULAR ITEM

DATE: September 16, 2019

FROM: Chuck Russell, Town Planner

ITEM: Public Hearing to consider a request for Specific Use Permit No. 456 (SUP19-0001 - RaceTrac) to permit a convenience store with gasoline sales, with an exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, an exception to Section IV.C.5. of the Town's Engineering Design Criteria regarding the requirement for a wet detention pond, an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design, a waiver to the Architectural Standards in the Town's Urban Design Plan regarding roof pitch and a deviation to the required parking standard pursuant to Section 82-73 of the Code of Ordinances, and to consider adopting an ordinance providing for said amendment. The property is generally located east of Long Prairie Road and south of Spinks Road. *(The Planning and Zoning Commission recommended denial by a vote of 4 to 3 at its September 9, 2019, meeting.)*

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. Pursuant to the applicable sections of the Town's code of ordinances, the applicant may appeal a denial recommendation by the Planning and Zoning Commission to the Town Council by filing a request in writing within ten days of the action by the Planning and Zoning Commission. Staff received an e-mail from the applicant on September 10, 2019, appealing the denial recommendation by the Planning and Zoning Commission [see Attachment A(3)].

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance
3. Appeal E-mail

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

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



PLANNING AND ZONING COMMISSION

AGENDA ITEM NO: 6

REGULAR ITEM

DATE: September 9, 2019

FROM: Chuck Russell, Town Planner

ITEM: **Public Hearing to consider an ordinance granting Specific Use Permit No. 456 (SUP19-0001 - RaceTrac) to permit a convenience store with gasoline sales, with an exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances, an exception to Section IV.C.5. of the Town's Engineering Design Criteria regarding the requirement for a wet detention pond, 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 regarding roof pitch. The property is generally located east of Long Prairie Road and south of Spinks Road.**

I. ITEM SUMMARY

This application has been reviewed by DRC and has been scheduled for consideration by the Planning and Zoning Commission. There are exceptions and a waiver request to the Town's regulations as well as unresolved items which necessitate special consideration by the Commission (see Analysis below).

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this application is to request approval of a Specific Use Permit (SUP-456) for a 5,411-square-foot convenience store with gasoline sales. The property is located within Planned Development District No. 38 (PD-38) for Commercial District-2 (C-2) uses. The C-2 zoning district requires Town Council approval of an SUP for a convenience store with gasoline sales. The site is currently undeveloped and is approximately 1.74 acres in size and is part of a larger 17.68 acre tract of land.

As part of the request, the applicant has requested certain exceptions, a waiver and a deviation to the Code of Ordinances and Urban Design Standards. There are also unresolved items. In summary, the items are listed below. Section III of the staff report below provides additional information as needed.

Exceptions:

- **Driveway Spacing:** An exception to Section 32-3 of the Town Code regarding driveway spacing in order to construct a driveway on Spinks Road less than 250

linear feet from another proposed driveway. The proposed spacing is 172 linear feet.

- **Retention Pond:** An exception to Section IV.C.5. of the Town's Engineering Design Criteria requirement to provide a wet retention pond with a fountain. The applicant is proposing a temporary dry detention area.
- **Meritorious Design:** Exception to Section 2.1 of the Town's Urban Design standards to permit development that has meritorious quality and design. It is staff's position that the current building design constitutes "franchise architecture" which means the design and construction of building for which the tenants and/or uses are readily recognizable solely by the buildings' architectural elevations, colors, materials, other architectural elements and/or the arrangement thereof.

Waiver:

- **Roof Pitch:** Waiver to Section 12.1 of the Town's Urban Design standards requiring roofs of non-residential buildings 15,000 square feet or less to reflect hip and/or gable styles that replicate residential scale and pitch.

Deviation:

- **Parking:** deviation to Section 82-73 of the Town's Code of Ordinances to exceed required parking by greater than 20 percent (5 parking spaces)

Unresolved Items:

- **Driveway Spacing:** Staff is not in support of the proposed "right in, right out" second driveway on Spinks Road. In addition to not meeting the Town's spacing requirements, other similar developments have demonstrated the second driveway is not necessary.
- **Truck Turning Movements:** Staff is concerned that large delivery trucks will have a difficult time maneuvering within the site in order to enter and exit back on to Long Prairie Road. Staff is also concerned the trucks will utilize Spinks Road for access which is not a designated truck route in the Town.

The proposed concept plan depicts a one-story building and a fuel island canopy with 8 pumps. Access to the lot will be from Long Prairie Road and Spinks Road (two driveways proposed) via mutual access drive easements that will serve several future lots within the larger development. The proposed store will have 32 parking spaces, which exceeds the allowable deviation by five spaces. The proposed landscape plan provides the required 25-foot-wide buffer along both Long Prairie Road and Spinks Road.

The existing zoning for the subject property (PD-38) was approved by Town Council in February of 1986. As is similar to other PD's approved during this time, the ordinance requires submittal of an overall site plan for a Tract being developed **in part or in whole**. Since the proposed use is a part of a larger tract, an overall site plan was submitted by the applicant depicting a potential build-out of the entire tract (Attachment A(4)). This is a non-regulatory plan and the actual development of the remainder of the parent tract will be determined at site plan or when/if the parent tract is rezoned.

At their August 26, 2019 meeting, the Planning and Zoning Commission (P&Z) conducted a work session regarding the subject request. The P&Z meeting may be viewed here:

<http://flowermoundtx.swagit.com/play/08262019-1303/7/>

III. REQUESTED EXCEPTION, WAIVER AND DEVIATION

A. Exception to Architectural Standards (Meritorious Design)

The Urban Design Plan provides Architectural Standards for non-residential buildings in the Town with the intent of creating developments of “enduring and exemplary quality and design.” The purpose of these standards is to encourage building design of meritorious quality throughout the Town and prohibit franchise architecture. Some of the architectural standards addressed are building materials, colors, roof pitch, pedestrian scale, entry points, and building orientation. As allowed by the Urban Design Plan, an applicant can request a waiver to certain Architectural Standards if their proposal is determined to have meritorious quality and design.

Section 2.1 of the Urban Design standards state:

To ensure that the character and quality of retail and commercial buildings or structures contribute to desired community character objectives, franchise architecture is prohibited. The term "franchise architecture" means the design and construction of buildings for which the tenants and/or uses are readily recognizable solely by the buildings' architectural elevations, colors, materials, other architectural elements and/or the arrangement thereof.

It is staff's opinion that the proposed elevations still constitute franchise architecture. It should be noted however, that significant modifications have been made since the initial submittal to improve the proposed elevations.

B. Waiver to Architectural Standards (Roof Pitch)

Section 12.1 of the Town's Urban Design standards states:

Roofs and Parapets

12.1. Roofs of non-residential buildings 15,000 square feet or less are to reflect hip and/or gable styles that replicate residential scale and pitch. In designing a residential scaled roof for non-residential buildings 15,000 square feet or less, the goal shall be a roof that provides for characteristic roof pitches/slopes of residential homes in the Town of Flower Mound (6/12 to 9/12 slope) and high steeply-pitched and/or expansive roof pitches/slopes shall be avoided. The Town Council may approve, upon recommendation from the Planning and Zoning Commission a waiver to this request for individual projects. Such requests should only be contemplated in areas that are not adjacent to residences, are part of large-scale developments, and provide architectural detail to soften the appearance of large, tall vertical walls.

The proposed commercial building is less than 15,000 square feet and is proposed to have a primarily flat non-pitched roof, which necessitates Council approval of the proposed waiver. Please refer to the proposed elevations in Attachment B(1).

C. Deviation to computing parking and loading requirements:

Section 82-73 of the Town's Code of Ordinances provides for alternative off-street parking requirements that reduce or exceed required parking by greater than 20 percent:

Deviation of required spaces. The amount of parking can be reduced or increased by 20 percent. Deviations in excess of 20 percent must be accompanied by a parking study and approved by the town council. Any approved parking in excess of 20 percent must be mitigated. Mitigation can be achieved by the use of pervious paving, increased landscaping, increased stormwater treatment, or other method to reduce the impact of the increased parking.

The required parking for the proposed use per Town Code is 1 space per 250 square feet of building area. 5,411 sq. ft. equals 22 required spaces. The Town Code allows a deviation of 20% which would grant the applicant ability to have up to 27 spaces. The applicant is proposing 32 parking spaces which are 5 spaces over the allowed 20% deviation. Please refer to Attachment A(6) for the applicant's rationale for the request as well as their proposed mitigation for the additional parking spaces.

IV. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all rezoning requests. At the time this report was written, staff had received no correspondence in support and six correspondence in opposition to the project. All written correspondence was sent directly to the Planning and Zoning Commission according to the new public communication process.

V. ATTACHMENTS**A. Background Information**

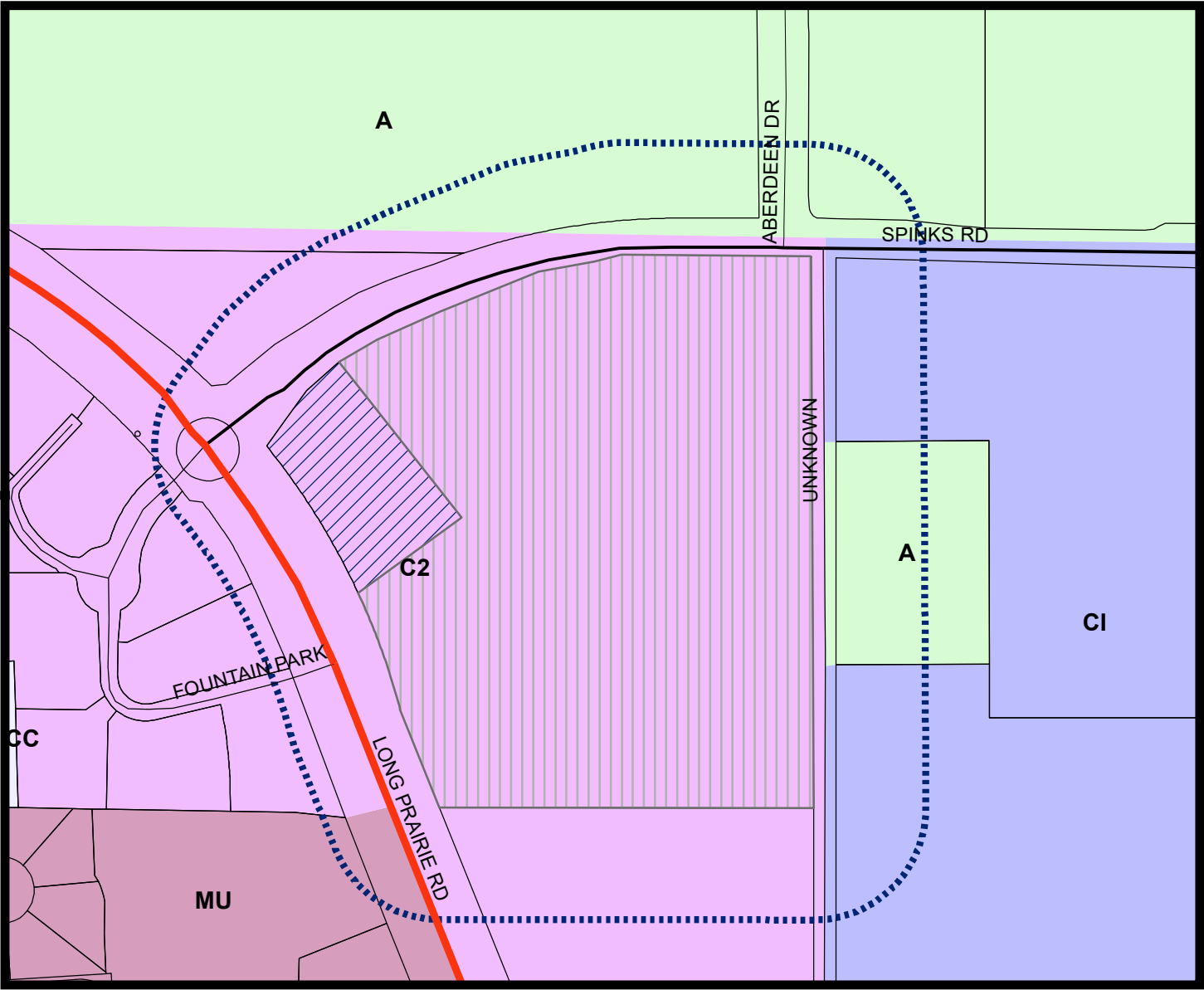
1. Vicinity Map
2. Letter of Intent
3. TIA
4. Non-regulatory Comprehensive Site Plan
5. Existing PD-38 Ordinance
6. Parking Study

B. Application Details

1. Specific Use Permit Package

Vicinity Map

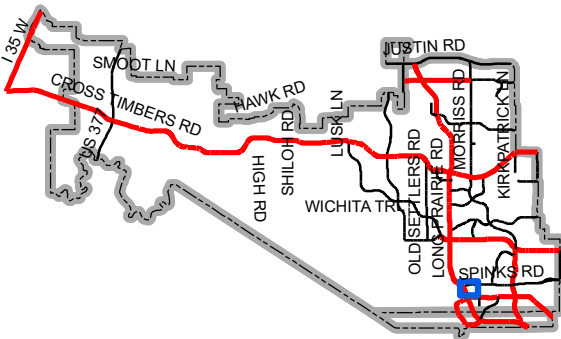
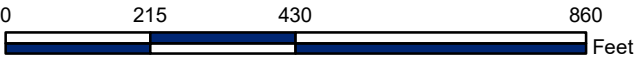
Reference Project: SUP19-0001



LEGEND

- Agriculture
- Campus Commercial
- Campus Industrial
- Commercial 2
- Mixed Use

- SUP Boundary
- Parcel Boundary
- 200 ft Notification Buffer around Property



Map Location



January 8th, 2019
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

Council Members,

RaceTrac Petroleum, Inc. is pleased to announce a proposed state-of-the-art convenience store and fuel facility at the intersection of Highway 2499 and Spinks Road.

RaceTrac Petroleum, Inc. is a family-owned, privately held corporation operating approximately 700 stores in 12 states. RaceTrac currently operates 110 stores in the Dallas Fort-Worth metroplex, and is excited to bring its latest offer to the Town of Flower Mound.

The proposed site at the southeast corner of Highway 2499 and Spinks Road is zoned PD-38 with a C-2 base zoning. RaceTrac Petroleum, Inc. is requesting a Specific Use Permit to allow for a convenience store and fuel facility on the 1.7 acre site.

The proposed site plan for the project is composed of RaceTrac's latest prototypical convenience store building as well as eight multi-product dispensers underneath a fuel canopy (16 individual fueling positions). The proposed landscape plan combines the use of street trees, screening shrubs, seeding, and a variety of other miscellaneous plants.

RaceTrac prides itself on being able to become an integral part of each community it enters into, and this store will be no different. One example of this is that RaceTrac invites all uniformed members of the local law enforcement and fire department to enjoy complimentary beverages throughout the day. Additionally, this store is expected to add 25 jobs to the local employment base.

If you should have any questions or concerns regarding the items included in this application, please do not hesitate to contact the project manager for this site directly, Andrew Malzer (706-288-7672, amalzer@racetrac.com).

Kind Regards,

Andrew Malzer
Engineering Project Manager

**TRAFFIC IMPACT STUDY FOR
RACETRAC
FLOWER MOUND, TEXAS**

Prepared for:

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

Prepared by:



LEE ENGINEERING

3030 LBJ Freeway, Suite 1660
Dallas, Texas 75234
Phone: (972) 248-3006
Fax: (972) 248-3855

August 2019



08/27/2019

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INTRODUCTION

This traffic study was conducted to analyze the traffic impacts of the proposed RaceTrac that will be located on the southeast corner of the intersection of Long Prairie Road (FM 2499) and Spinks Road in Flower Mound, Texas. The specific focus of this study was to determine the impact that traffic generated by the proposed development would have on the adjacent intersections and at the proposed site access points.

The proposed development will consist of a gas station with 16 fueling positions and a 5,411 square-foot convenience store. Based on the discussions with the Town, the Build-Out year for the proposed development was assumed to be 2020. A vicinity map of the study area is shown in **Figure 1** and a site plan for the proposed development is shown in **Figure 2**. The following elements were included in the study:

Data Collection

- Ã Obtained the proposed site plan, information related to planned roadway improvements, and other relevant information.
- Ã Obtained 2018 AM and PM peak period turning movement counts for the intersections of Long Prairie Road (FM 2499) at Spinks Road and at Lakeside Parkway from the Town of Flower Mound.

Traffic Analysis

- Ã Assessed the general accessibility of the site.
- Ã Estimated the number of trips that will be generated by the proposed development.
- Ã Estimated the directional distribution of traffic approaching/departing the proposed development.
- Ã Assigned the estimated traffic to the area roadways and site access points.
- Ã Performed capacity analyses for the study area intersections under the following traffic conditions:
 - Ã Existing conditions
 - Ã Background traffic conditions at the proposed site Build-Out (2020)
 - Ã Total (background + site) traffic conditions at the proposed site Build-Out
- Ã Performed link capacity analysis along the study roadways.
- Ã Evaluated the need for deceleration lanes at the site access points and study area intersections.

Recommendations

- Ã Determined if any roadway improvements are needed to accommodate projected traffic generated by the proposed development.

Documentation

- Ã Prepared a report documenting the study procedures and results.

Figure 1. Vicinity Map of the Study Area





SITE ACCESSIBILITY

Site accessibility describes the ease with which vehicles can get to and from a development. A site's accessibility is affected by the geographical location of the development with respect to other activity areas, the roadway system, and physical restraints such as rivers or lakes.

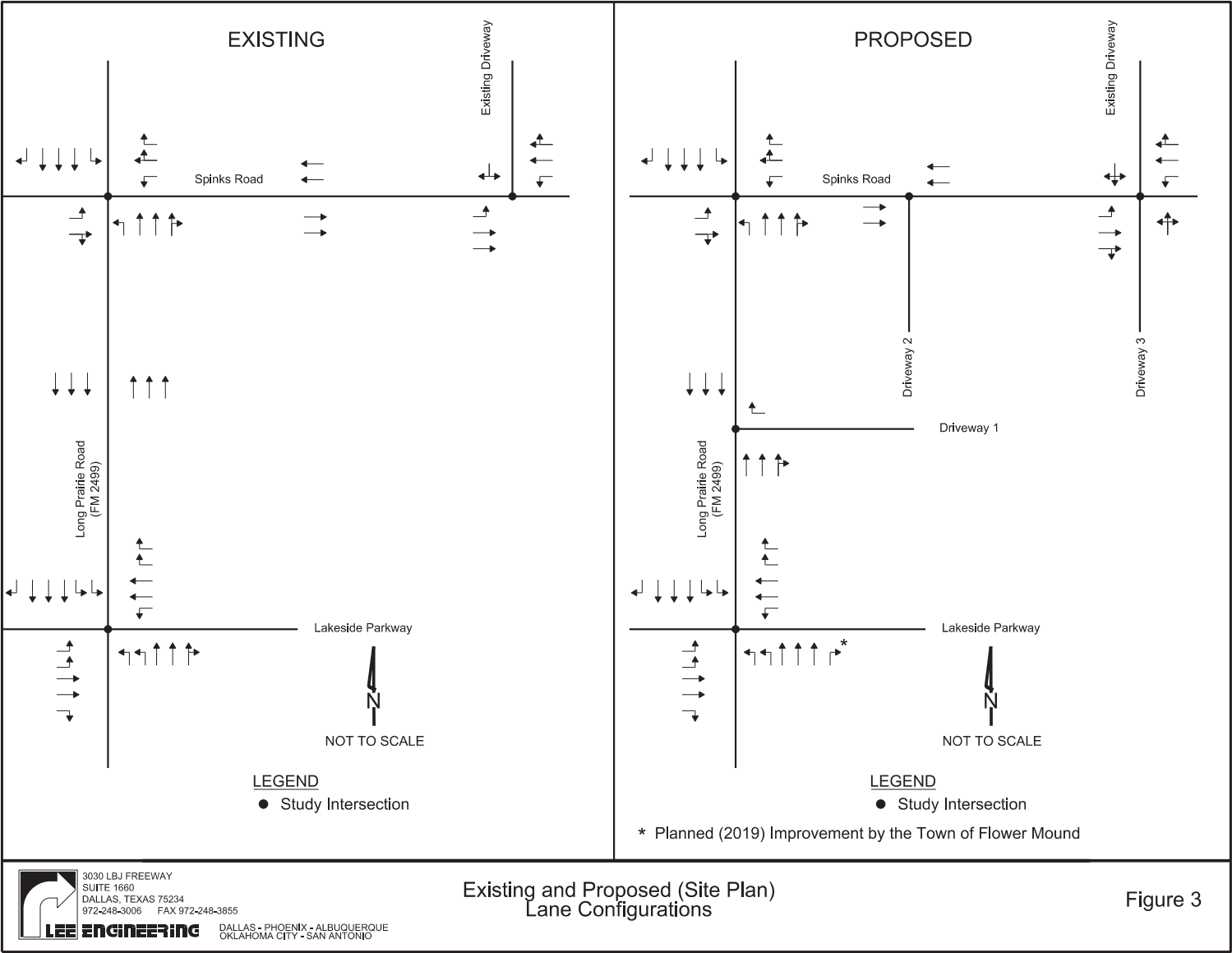
The proposed development will be located on the southeast corner of the intersection of Long Prairie Road (FM 2499) and Spinks Road in Flower Mound, Texas. Access to the proposed development will be provided via one Right-in/Right-Out (RIRO) driveway (Driveway 1) on Long Prairie Road (FM 2499). One entry-only driveway (Driveway 2) and one full access driveway (Driveway 3) will provide access from Spinks Road.

The existing and proposed (as shown in the site plan) lane configurations for the study area roadways and intersections are shown in **Figure 3**. A brief description of each area roadway is provided below:

Long Prairie Road (FM 2499) – Long Prairie Road (FM 2499) borders the proposed development to the west and is a six-lane divided roadway with a posted speed limit of 55 mph. This roadway is classified as a Major Arterial in the 2018 Town of Flower Mound Thoroughfare Plan.

Spinks Road – Spinks Road borders the proposed development to the north. It is a four-lane divided roadway with a posted speed limit of 35 mph. This roadway is classified as an Urban Minor Arterial in the 2018 Town of Flower Mound Thoroughfare Plan.

Lakeside Parkway – Lakeside Parkway is a four-lane divided roadway with a posted speed limit of 45 mph. This roadway is classified as a Major Arterial in the 2018 Town of Flower Mound Thoroughfare Plan.



PROPOSED DEVELOPMENT

The proposed development is a gas station with 16 fueling positions and a 5,411 square-foot convenience store. Based on the discussions with the Town, the Build-Out year of the proposed development will be 2020.

The number of trips generated by a development is a function of the type and quantity of the land use within the development. The number of vehicle trips generated by the proposed development were estimated based on the trip generation rates and equations provided in the publication entitled *Trip Generation Manual, Tenth Edition*, by the Institute of Transportation Engineers (ITE). Estimates of the number of trips generated by the proposed development were made for the AM and PM peak hours, as well as on a daily basis. The trip generation rates/equations used for this development and the resulting number of trips generated by this development are shown in **Table 1**.

Table 1. Trip Generation Characteristics for Proposed Development

Rates/Equations ¹										
Description	ITE Code	Average Weekday			AM Peak Hour			PM Peak Hour		
Super Convenience Market/Gas Station	960	T = 230.52*(X)			T = 28.08*(X)			T = 22.96*(X)		
Super Convenience Market/Gas Station Pass-by Trip Percentage	960	--			76%			76%		
Directional Split ²										
Super Convenience Market/Gas Station	960	50/50			50/50			50/50		
Number of Trips										
Land Use	Variable ³ (X)	Average Weekday			AM Peak Hour			PM Peak Hour		
		Total	In	Out	Total	In	Out	Total	In	Out
Super Convenience Market/Gas Station Total Trips	16	3,688	1,844	1,844	450	225	225	368	184	184
Super Convenience Market/Gas Station Pass-by Trips					342	171	171	280	140	140
Total Trips		3,688	1,844	1,844	450	225	225	368	184	184
Total Pass-by Trips					342	171	171	280	140	140
TOTAL NEW TRIPS		3,688	1,844	1,844	108	54	54	88	44	44

¹T = Trips Ends; X = fueling Positions; ²XX / YY = % entering vehicles / % exiting vehicles

When a motorist makes an intermediate stop at an adjacent land use during their journey to their primary trip destination, they are said to have made a pass-by trip. Pass-by trips are not new traffic generated by a development as these trips are attracted out of the existing traffic streams adjacent to the site. The *ITE Trip Generation Handbook* publishes average pass-by rates for different land uses based on studies at similar types of developments.

For a super convenience market/gas station land use, information in this Handbook indicates a pass-by rate of 76% during the AM and PM peak hours. As a result, the majority of traffic generated by the proposed RaceTrac during the AM and PM peak hours is projected to be traffic that is already traveling on the adjacent roadways and passing by this site.

TRAFFIC VOLUMES

Existing Traffic Volumes

The AM and PM peak period turning movement count data for the intersections of Long Prairie Road (FM 2499) at Spinks Road and Lakeside Parkway were obtained from the Town of Flower Mound. The Town had collected these counts on Wednesday, August 29, 2018. Year 2018 was considered as the existing condition based on the discussions with the Town. **Figure 4** shows the existing traffic counts.

Background Traffic Volumes

Historical 24-hour traffic volume data for Long Prairie Road (FM 2499) near the study area was obtained from TxDOT's Statewide Planning Map and from the Town of Flower Mound. Significant variability was observed in the TxDOT data. Therefore, the following 24-hour traffic volume data shown in **Table 2** was used to estimate the average annual growth rate.

Table 2. Historical Traffic Volumes and Estimated Average Annual Growth Rate

Year	Location
	Long Prairie Road (FM 2499) north of Spinks Road
2016 (TxDOT)	43,916
2019 (TOFM)	49,175
Annual Growth Rate	4%

Based on the data shown in Table 2, an annual growth rate of four percent (4%) was used to estimate the projected traffic volumes at site Build-Out (2020). The Build-Out year (2020) background traffic volumes are also provided in Figure 4.



TRIP DISTRIBUTION AND ASSIGNMENT

Trip Distribution

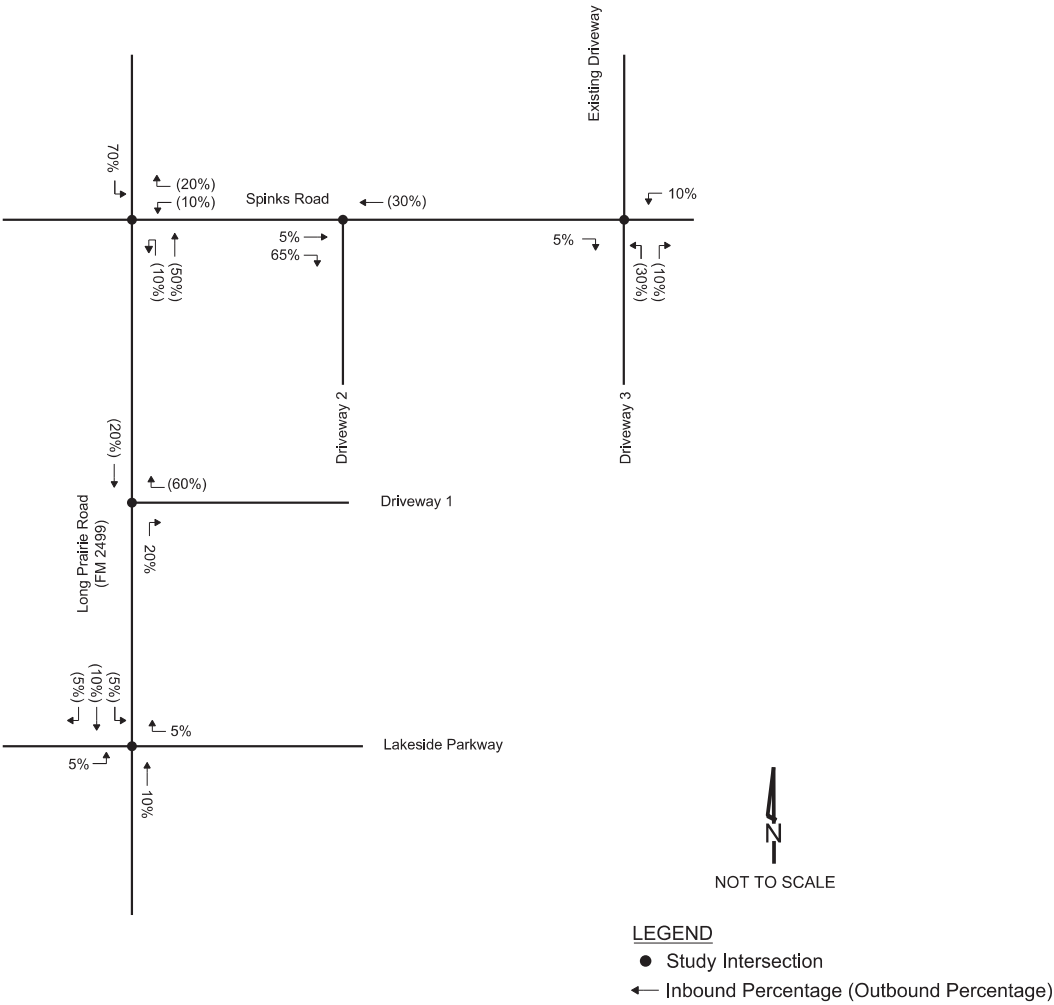
The existing traffic volumes and roadways in the area, along with the proposed site layout, were used to determine the directions from which traffic would approach and depart the proposed development. The assumed directional distribution for non-pass-by trips is provided in **Figure 5**. The assumed directional distribution for pass-by trips is provided in **Figure 6**.

Site Traffic Volumes

Traffic volumes predicted to be generated by the proposed development were assigned to the area roadways and site access points based on the directional distributions identified in Figures 5 and 6. The estimated non-pass-by site generated traffic volumes for the AM and PM peak hours are shown in **Figure 7**. The estimated pass-by site generated traffic volumes for the AM and PM peak hours are shown in **Figure 8**. **Figure 9** shows total site generated traffic volumes for the AM and PM peak hours (pass-by + non-pass-by).

Total Traffic Volumes

Total (background + site) peak hour traffic volumes at Build-Out year (2020) of the proposed development were obtained by adding the Build-Out year (2020) Background traffic volumes (Figure 4) to the total site generated traffic volumes (Figure 9) and are shown in **Figure 10**.



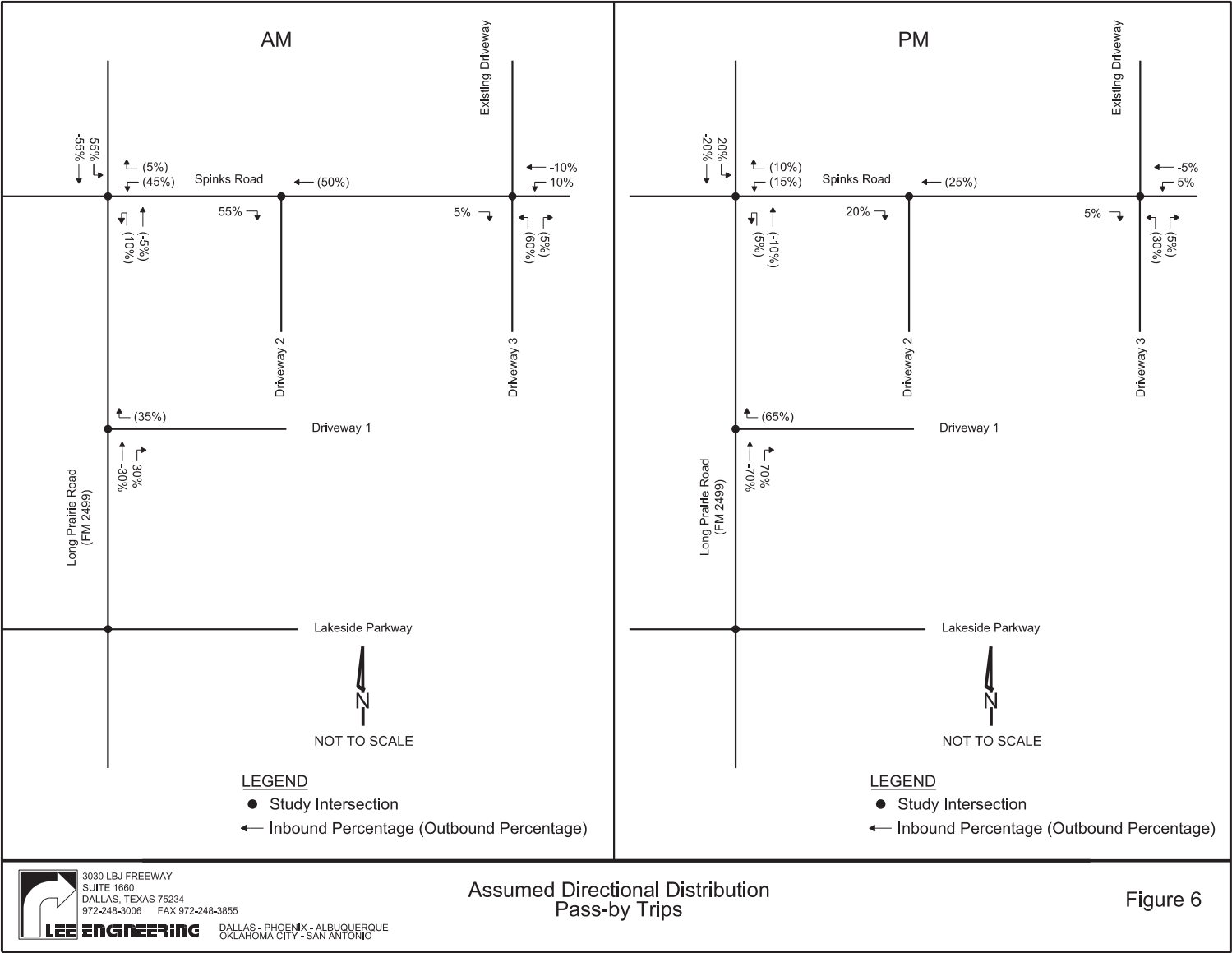
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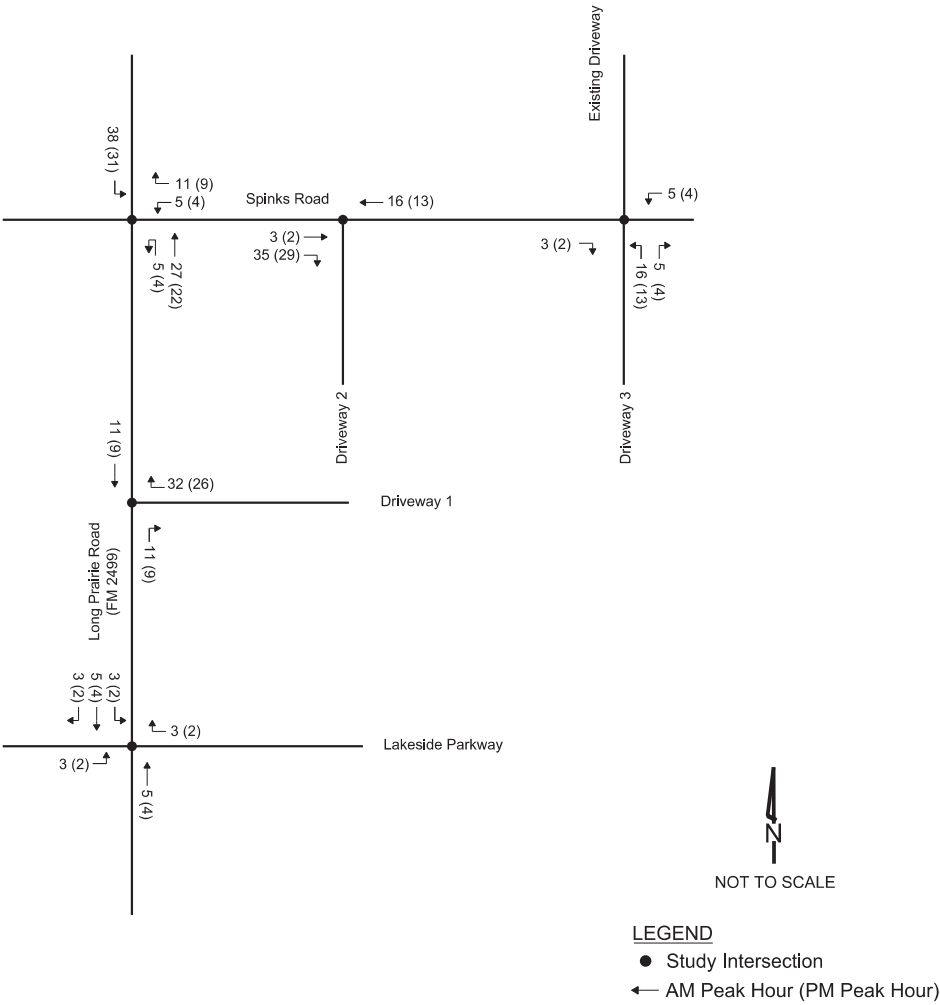
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Assumed Directional Distribution
Non-pass-by Trips

Figure 5





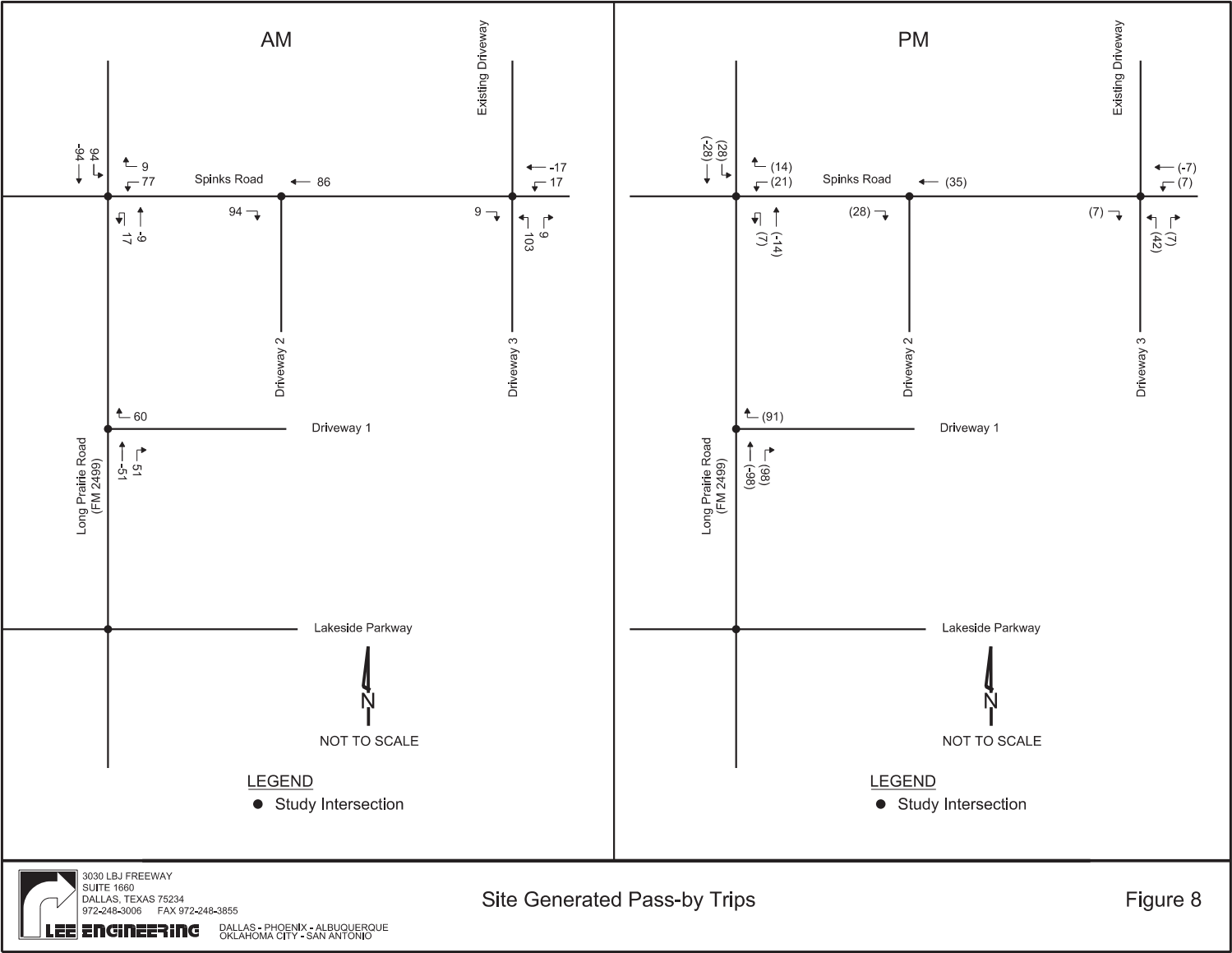
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Site Generated Non-pass-by Trips

Figure 7



Site Generated Pass-by Trips

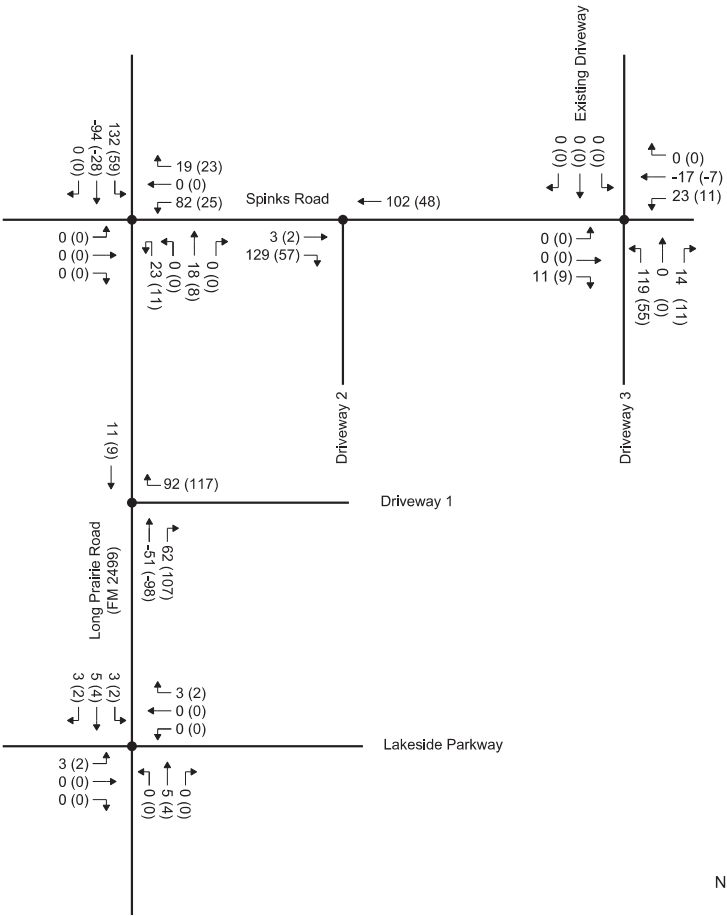
Figure 8



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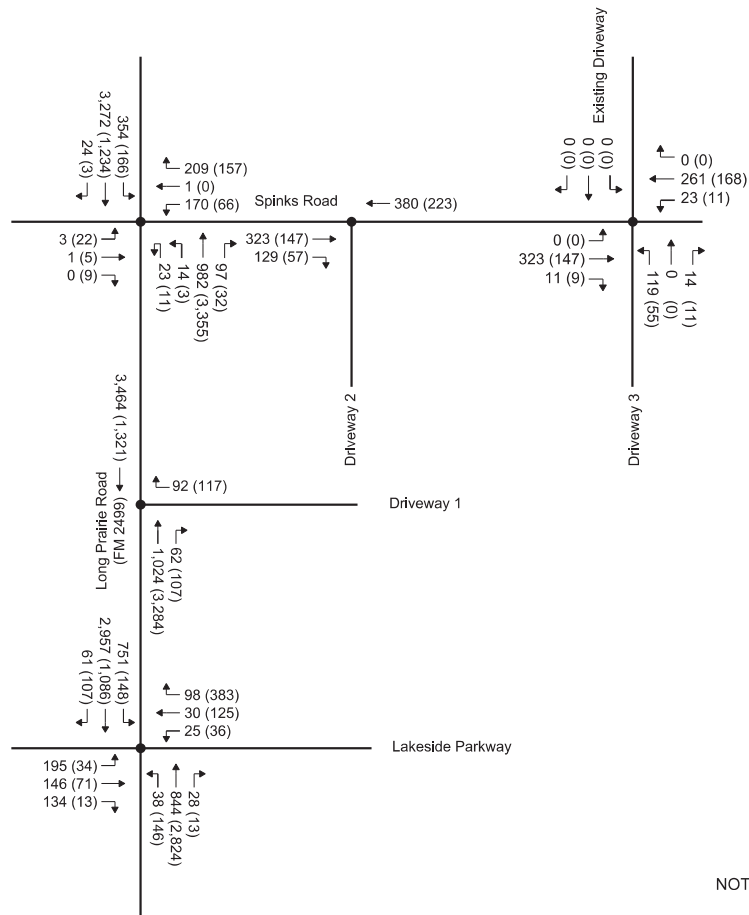


NOT TO SCALE

LEGEND
● Study Intersection
← AM Peak Hour (PM Peak Hour)

Total Site Generated Peak Hour Traffic Volumes

Figure 9



NOT TO SCALE

LEGEND
 ● Study Intersection
 ← AM Peak Hour (PM Peak Hour)



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Build-Out Year (2020) Total Peak hour Traffic Volumes

Figure 10

INTERSECTION CAPACITY ANALYSES

The Level of Service (LOS) of an intersection is a qualitative measure of capacity and operating conditions and is directly related to vehicle delay. The LOS criteria for a signalized intersection are shown in **Table 3**. LOS is given a letter designation from A to F, with LOS A representing very short delays (less than 10 seconds of average control delay per vehicle) and LOS F representing very long delays (more than 80 seconds of average control delay per vehicle). LOS C, ranging from 20.1 to 35 seconds of average control delay per vehicle, is considered the limit of acceptable operation in the Town of Flower Mound.

For unsignalized intersections, the levels of service, as shown in **Table 4**, are defined by average control delay in seconds per vehicle. LOS C (ranging from 15.1 to 25.0 seconds of average delay per vehicle) is considered the limit of acceptable operation for an unsignalized intersection in the Town of Flower Mound.

Capacity analyses were conducted for the study area intersections under the following analysis scenarios:

- Existing (2018) Traffic Conditions
- Build-Out Year (2020) Background Traffic Conditions
- Build-Out Year (2020) Total Traffic Conditions

The intersection capacity analyses were conducted using HCM methodologies in the *Synchro 10* traffic analysis software package. For existing and background conditions, the existing lane configurations provided in Figure 3 were used. For total conditions, the proposed lane configurations provided in Figure 3 were used.

Additional performance measures such as volume to capacity (v/c) ratios and queue lengths also provide an indication of operations. For example, at two-way stop controlled intersections, main street traffic volumes may impose longer average delays for a small number of side-street vehicles, thus creating vehicle delays which correspond to a poor level of service. Motorists and agencies will typically accept longer delays (LOS D to F) if gaps in the traffic stream are anticipated within a reasonable timeframe and the side street traffic volumes do not warrant a traffic signal.

Table 3: Level of Service Criteria for Signalized Intersections

Level-of-Service (LOS)	Average Control Delay (seconds/vehicle)	Description
A	≤ 10.0	Very low vehicle delays, free flow, signal progression extremely favorable, most vehicles arrive during given signal phase.
B	10.1 to 20.0	Good signal progression, more vehicles stop and experience higher delays than for LOS A.
C	20.1 to 35.0	Stable flow, fair signal progression, significant number of vehicles stop at signals.
D	35.1 to 55.0	Congestion noticeable, longer delays and unfavorable signal progression, many vehicles stop at signals.
E	55.1 to 80.0	Limit of acceptable delay, unstable flow, poor signal progression, traffic near roadway capacity, frequent cycle failures.
F	> 80.0	Unacceptable delays, extremely unstable flow and congestion, traffic exceeds roadway capacity, stop-and-go conditions.

SOURCE: *Highway Capacity Manual, HCM 2010*, Transportation Research Board, 2010

Table 4: Level of Service Criteria for Unsignalized Intersections

Level-of-Service (LOS)	Average Control Delay (seconds/vehicle)	Description
A	≤ 10.0	No delays at intersections with continuous flow of traffic. Uncongested operations: high frequency of long gaps available for all left and right turning traffic. No observable queues.
B	10.1 to 15.0	No delays at intersections with continuous flow of traffic. Uncongested operations: high frequency of long gaps available for all left and right turning traffic. No observable queues.
C	15.1 to 25.0	Moderate delays at intersections with satisfactory to good traffic flow. Light congestion; infrequent backups on critical approaches.
D	25.1 to 35.0	Increased probability of delays along every approach. Significant congestion on critical approaches, but intersection functional. No standing long lines formed.
E	35.1 to 50.0	Heavy traffic flow condition. Heavy delays probable. No available gaps for cross-street traffic or main street turning traffic. Limit of stable flow.
F	> 50.0	Unstable traffic flow. Heavy congestion. Traffic moves in forced flow condition. Average delays greater than one minute highly probable. Total breakdown.

SOURCE: *Highway Capacity Manual, HCM 2010*, Transportation Research Board, 2010

Existing and Background Traffic Conditions

The lane configurations shown in Figure 3 and the traffic volumes shown in Figures 4 were used for these analyses. **Table 5** presents the analysis results for the study intersections under Existing (2018) and Build-Out year (2020) Background traffic conditions. Traffic generated by the proposed development is not included in any of the analysis results in Table 5. The shaded cells indicate approaches which are predicted to operate beyond an acceptable level of service (LOS C).

Table 5: Capacity Analysis Results – Existing and Background Traffic Conditions

Long Prairie Road (FM 2499) and Spinks Road (Signalized)						
Scenario	Peak Hour	Intersection	EB	WB	NB	SB
Existing (2018) Conditions	AM	7.8 (A) ¹	65.8 (E)	38.3 (D)	1.5 (A)	7.3 (A)
	PM	9.3 (A)	51.6 (D)	16.0 (B)	10.7 (B)	3.9 (A)
Build-Out Year (2020) Background Conditions*	AM	9.8 (A)	65.5 (E)	38.6 (D)	1.4 (A)	10.0 (B)
	PM	14.2 (B)	51.3 (D)	16.5 (B)	17.9 (B)	3.9 (A)
Long Prairie Road (FM 2499) and Lakeside Parkway (Signalized)						
Scenario	Peak Hour	Intersection	EB	WB	NB	SB
Existing (2018) Conditions	AM	43.8 (D)	66.6 (E)	34.0 (C)	20.9 (C)	46.8 (D)
	PM	28.0 (C)	54.7 (D)	29.7 (C)	32.0 (C)	15.9 (B)
Build-Out Year (2020) Background Conditions*	AM	28.5 (C)	68.3 (E)	34.9 (C)	27.3 (C)	23.5 (C)
	PM	33.0 (C)	55.7 (E)	33.8 (C)	39.8 (D)	15.7 (B)

¹ Delay in seconds/vehicle (Level of Service); * Split adjustments

Under the Existing (2018) conditions, the intersection of Long Prairie Road (FM 2499) and Spinks Road operates at LOS C or better while the intersection of Long Prairie Road (FM 2499) and Lakeside Parkway operates beyond LOS C during the AM peak hour.

The intersections of Long Prairie Road (FM 2499) at Spinks Road and Lakeside Parkway are predicted to operate at LOS C under the Build-Out year (2020) background conditions.

Total Traffic Conditions

To evaluate the conditions of the study area under Build-Out year (2020) Total traffic conditions, the study area intersections were analyzed in Synchro 10 using the proposed lane configurations (Figure 3) and the projected Build-Out year (2020) Total traffic volumes (Figure 10). **Table 6** presents the capacity analysis results for total traffic conditions at Build-Out.

Table 6: Capacity Analysis Results –Total Traffic Conditions at Build-Out

Long Prairie Road (FM 2499) and Spinks Road (Signalized)						
Scenario	Peak Hour	Intersection	EB	WB	NB	SB
Build-Out Year (2020) Total Conditions	AM	15.8 (B)	63.0 (E)	45.5 (D)	5.6 (A)	15.8 (B)
	PM	24.6 (C)	51.5 (D)	23.8 (C)	30.6 (C)	9.3 (A)
Long Prairie Road and Driveway 1 (Side Street Stop Controlled)						
Scenario	Peak Hour	Intersection ¹	EBL	WB	NBR	SBL
Build-Out Year (2020) Total Conditions	AM	--	--	17.6 (C) ²	0.0 (A)	--
	PM	--	--	79.8 (F) V/C=0.79 [6]	0.0 (A)	--
Long Prairie Road (FM 2499) and Lakeside Drive (Signalized)						
Scenario	Peak Hour	Intersection	EB	WB	NB	SB
Build-Out Year (2020) Total Conditions	AM	26.1 (C)	68.5 (E)	34.4 (C)	27.4 (C)	20.1 (C)
	PM	33.7 (C)	56.1 (E)	34.3 (C)	40.7 (D)	15.8 (B)
Spinks Road and Driveway 3 (Side Street Stop Controlled)						
Scenario	Peak Hour	Intersection	EBL	WBL	NB	SB
Build-Out Year (2020) Total Conditions	AM	--	0.0 (A)	8.1 (A)	17.3 (C)	0.0 (A)
	PM	--	0.0 (B)	7.4 (A)	10.0 (B)	0.0 (A)

¹ HCM methodology does not provide intersection-wide delay/level of service for TWSC analysis; ² Delay in seconds/vehicle (Level of Service); V/C = volume to capacity ratio; [##] = 95th percentile queue length

As shown in Table 6, all study area intersections are predicted to operate at LOS C or better during the AM and PM peak hours under total traffic conditions at the site build out. All site driveway approaches are predicted to operate at LOS C or better during the AM and PM peak hours except for the westbound approach of Driveway 1 during the PM peak hour. However, the v/c ratio for the westbound approach of Driveway 1 indicates that the volume is not predicted to exceed the capacity. Based on the site layout, the motorists at Driveway 1 have the option to use Driveway 3 if delays become unacceptable at Driveway 1.

LINK ANALYSIS

Link analysis was performed for major roadway links present in the study area. The Town of Flower Mound Thoroughfare Plan classifies Long Prairie Road (FM 2499) and Lakeside Parkway as Major Arterial. Spinks Road is classified as an Urban Minor Arterial in the Town's Thoroughfare Plan. **Table 7** presents the link analysis results, based on the roadway capacities identified in the Town of Flower Mound's "*Smart Growth Manual*".

Table 7. Study Area Roadway Link Analyses

Roadway	Direction	Roadway Capacity in vph/lane (LOS)	Existing (2018) Volume (vph/lane) and LOS		Build-Out (2020) Background (vph/lane) and LOS		Build-Out (2020) Total (vph/lane) and LOS	
			AM	PM	AM	PM	AM	PM
Long Prairie Road (FM 2499) Between Spinks Road and Driveway 1	NB	780-880 (C) 880-990 (D)	331 (<C)	1,042 (E)	358 (<C)	1,127 (>E)	372 (<C)	1,134 (>E)
	SB	990-1100 (E)	1,064 (E)	404 (<C)	1,151 (>E)	437 (<C)	1,155 (>E)	440 (<C)
Long Prairie Road (FM 2499) Between Driveway 1 and Lakeside Parkway	NB	780-880 (C) 880-990 (D)	347 (<C)	996 (E)	375 (<C)	1,077 (E)	379 (<C)	1,080 (E)
	SB	990-1100 (E)	1,158 (>E)	411 (<C)	1,253 (>E)	444 (<C)	1,256 (>E)	447 (<C)
Spinks Road Between Long Prairie Road (FM 2499) and Driveway 2	EB	620-700 (C) 700-775 (D)	148 (<C)	67 (<C)	160 (<C)	72 (<C)	226 (<C)	102 (<C)
	WB	775-875 (E)	129 (<C)	81 (<C)	139 (<C)	88 (<C)	190 (<C)	112 (<C)
Spinks Road Between Driveway 2 and Driveway 3	EB	620-700 (C) 700-775 (D)	148 (<C)	67 (<C)	160 (<C)	72 (<C)	161 (<C)	74 (<C)
	WB	775-875 (E)	129 (<C)	81 (<C)	139 (<C)	88 (<C)	190 (<C)	112 (<C)
Lakeside Parkway East of Long Prairie Road (FM 2499)	EB	620-700 (C) 700-775 (D)	427 (<C)	107 (<C)	461 (<C)	115 (<C)	463 (<C)	116 (C)
	WB	775-875 (E)	70 (<C)	251 (<C)	75 (<C)	271 (<C)	77 (<C)	272 (<C)

As shown in Table 7, all study area roadway segments are predicted to operate at LOS C or better except for the southbound Long Prairie Road (FM 2499) segments during the AM peak hour and the northbound Long Prairie Road (FM 2499) segments during the PM peak hour under existing, background and total conditions.

ACCESS MANAGEMENT ANALYSIS

As part of this study, access management analyses were performed to consider the need for deceleration lanes as well as to determine if adequate driveway spacing and intersection sight distances are provided for the proposed site driveways.

Access Spacing

The locations of the proposed site access points were evaluated against the Town of Flower Mound's and TxDOT's current access spacing criteria. **Table 8** provides the proposed spacing for the site access points.

Based on the guidelines provided in *TxDOT's Access Management Policy and Criteria*, 425 feet of access spacing is required roadways with the posted speed limit of 50 mph or higher such as Long Prairie Road (FM 2499).

Based on the guidelines provided in *The Town of Flower Mound Access Management Policy and Criteria*, 360 feet of access spacing is required for major arterials and collectors with the assumed operating speed of 45 mph.

Based on the guidelines provided in *The Town of Flower Mound Access Management Policy and Criteria*, 250 feet of access spacing is required for minor arterials and collectors with the assumed operating speed of 35 mph.

Table 8: Access Point Spacing Evaluation

Along	Between	Required Spacing	Proposed Spacing	Meets Requirement?
Long Prairie Road (FM 2499)	Spinks Road and Driveway 1	425 feet (TxDOT)	377 feet	No
		360 feet (TOFM)*		Yes*
Spinks Road	Long Prairie Road (FM 2499) and Driveway 2	250 feet	250 feet	Yes
Spinks Road	Driveway 2 and Driveway 3	250 feet	172 feet	No

* based on Town's *Access Management Policy and Criteria* for major arterials

As presented in Table 8, Driveway 1 does not meet TxDOT's access spacing criteria. However, it does meet the Town's criteria.

Driveway 2 also meets the Town's access spacing criteria.

Driveway 3 does not meet the Town's access spacing criteria.

Auxiliary Lane Analysis

The proposed site driveways were analyzed to determine the need for right turn deceleration lanes. Guidelines in TxDOT's *Access Management Manual* state that:

- **For roadways with a posted speed limit less than or equal to 45 mph, a right turn deceleration lane should be considered when peak right turn volumes are greater than 60 vehicles per hour.**
- **For roadways with a posted speed limit greater than 45 mph, a right turn deceleration lane should be considered when peak right turn volumes are greater than 50 vehicles per hour.**

Guidelines in *Town of Flower Mound Access Management Policy and Criteria* state that right turn deceleration lanes are required at all driveways served by a median opening and all driveways with a projected peak-hour right-turn entering volume of 50 vehicles or more. In addition, the Town's *Design Criteria* states that a right turn deceleration lanes and left-turn bays are required at any intersection of collectors and arterials as shown on the *Town of Flower Mound Thoroughfare Plan*.

Table 9 summarizes the projected right turn volumes under Build-Out year (2020) Total traffic conditions.

Table 9: Right Turn Deceleration Lane Analysis Results

Intersection	Approach	Speed Limit (mph)	Threshold (vph)	Volume (vph) AM (PM)	Meets Town's Requirements?
Driveway 1 at Long Prairie Road (FM 2499)	NB	55	50	62 (107)	Yes
Driveway 2 at Spinks Road	EB	35	50	129 (57)	Yes
Driveway 3 at Spinks Road	EB	35	50	11 (9)	Yes (Served by a median opening)
Intersection of Long Prairie Road (FM 2499) and Spinks Road (Major and Urban Minor Arterial Intersection)	NB	55	50	97 (32) *	Yes

* = The proposed development does not add any traffic to this movement

As shown in Table 9, right turn deceleration lanes are required at Driveways 1, 2 and 3. A northbound right turn deceleration lane is also warranted at the intersection Long Prairie Road (FM 2499) and Spinks Road, based on the Town's criteria. Based on the assumed directional distribution shown in figures 5 and 6, the proposed RaceTrac development is not predicted to add any traffic to the northbound right turn movement at the intersection of Long Prairie Road (FM 2499) and Spinks Road.

Based on the criteria specified in TxDOT's *Roadway Design Manual*, the proposed northbound right turn deceleration lane along Long Prairie Road (FM 2499) at Driveway 1 needs to be 540 feet long. This deceleration lane length includes 510 feet of deceleration length (with 100 feet of taper) and 30 feet of storage. Figure 3-4 of TxDOT's *Roadway Design Manual* indicates that the curb radius is included in the total length.

The proposed northbound right turn deceleration lane at the intersection of Long Prairie Road (FM 2499) and Spinks Road also needs to be 540 feet long. However, the available spacing between Spinks Road and Driveway 1 along Long Prairie Road (FM 2499) is 377 feet. Using 20 mph speed differential allowed by TxDOT's *Roadway Design Manual*, the required deceleration length can be reduced to 345 feet. With 345 feet of deceleration lane and 30 feet of storage, the proposed northbound right turn deceleration lane at the intersection of Long Prairie Road (FM 2499) and Spinks Road should be 375 feet long. Given the need for adequate tangent length before the taper, there is not adequate space to provide a turn lane of 375 feet long. Therefore, a turn lane should be designed to maximize the length available for deceleration and storage. A variance will be needed from TxDOT for this turn lane.

Based on the criteria specified in Town's *Design Criteria and Construction Standards*, a right turn deceleration lane along minor arterials like Spinks Road needs to be 160 feet long including a 110 feet of deceleration length (with 100 feet of taper) and 50 feet of storage. Therefore, a 160-foot long right turn deceleration lanes are needed at Driveways 2 and 3.

The proposed spacing between Driveway 2 and Driveway 3 along Spinks Road is 174 feet including curb radii. The Town's *Design Criteria and Construction Standards* indicates that curb radii are not included in total deceleration lane length. Therefore, a 160-foot long eastbound right turn deceleration lane cannot be provided at Driveway 3. The proposed site plan shows a 355-foot long continuous right turn deceleration lane serving Driveways 2 and 3 along Spinks Road.

Lee Engineering recommends owner install and maintain Do Not Enter (R5-1) signs and directional arrow pavement marking to ensure that Driveway 2 functions as an entry-only driveway.

Intersection Sight Distance

As part of this traffic analysis, the available and required intersection sight distances for motorists accessing the adjacent roadways from the proposed development site driveways were analyzed. The sight distance required at each proposed site driveway was estimated using the procedures developed by the American Association of State Highway and Transportation Officials (AASHTO) and published in the 2011 edition of *A Policy on Geometric Design of Highways and Streets*. At these locations, the motorist should be able to see if and when adequate gaps exist to perform their desired maneuver. **Table 10** presents the required and available sight distance for vehicles exiting at the proposed development driveways.

Table 10: Sight Distance Evaluation

Major Roadway	Long Prairie Road (FM 2499)	Spinks Road
Posted Speed Limit	55 mph	35 mph
Minor Roadway	Driveway 1	Driveway 3
Design Vehicle	Passenger Car	Passenger Car
Required Intersection Sight Distance	530'	440'
Available Sight Distance to the Left	>1000'	465
Available Sight Distance to the Right	N/A	600'
Available > Required		
To the Left	Yes	Yes
To the Right	N/A	Yes

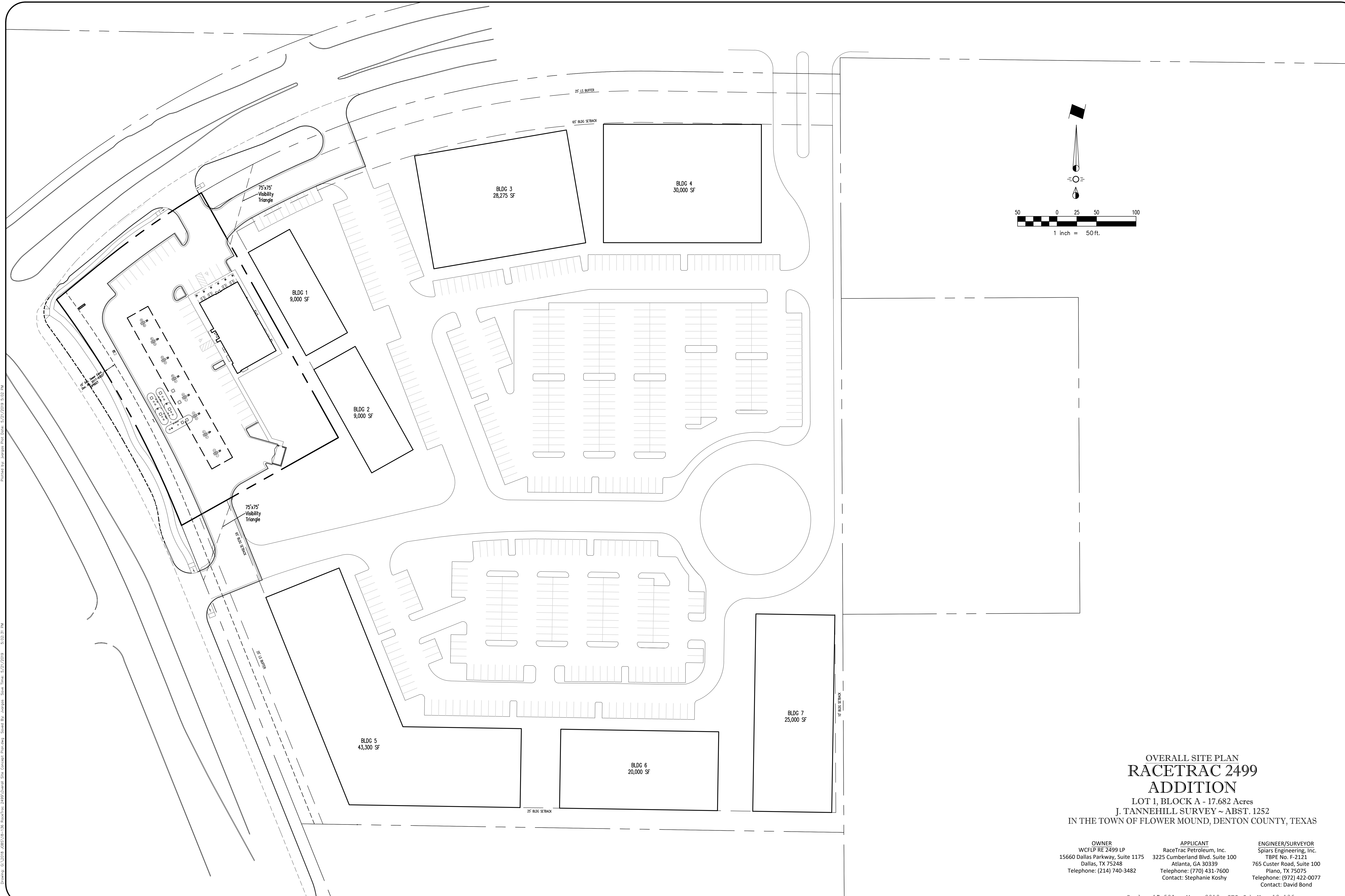
The field investigation results indicate that adequate sight distance is predicted to be available at the proposed site access points.

CONCLUSIONS AND RECOMMENDATIONS

Based on this traffic study, the following conclusions and recommendations can be made:

- The proposed development is predicted to generate approximately 3,688 daily trips with 450 trips during the AM peak hour and 368 trips during the PM peak hour.
- Capacity Analysis:
 - Signalized intersections of Long Prairie Road (FM 2499) at Spinks Road and Lakeside Parkway operate at LOS C or better under the existing conditions except the intersection of Long Prairie Road (FM 2499) and Lakeside Parkway during the AM peak hour.
 - Signalized intersections of Long Prairie Road (FM 2499) at Spinks Road and Lakeside Parkway are predicted to operate at LOS C or better under the Build-Out year (2020) Background and Total Traffic conditions with modified splits.
 - All site driveway approaches are predicted to operate at LOS C or better under the Build-Out year (2020) Total Traffic conditions except for the westbound approach of Driveway 1 during the PM peak hour. The v/c ratio indicates that the volume is not predicted to exceed the capacity for this approach. The motorists at Driveway 1 have an option to use Driveway 3 if the delay becomes unacceptable.
 - Link capacity analysis results indicate that all study area roadway segments are predicted to operate at LOS C or better except for the southbound Long Prairie Road (FM 2499) segments during the AM peak hour and the northbound Long Prairie Road (FM 2499) segments during the PM peak hour under existing, background and total conditions.
- Access Management:
 - Based on the site plan provided, spacing between Spinks Road and Driveway 1 does not meet TxDOT's minimum spacing criteria. However, Driveway 1 meets the Town's minimum spacing criteria. Spacing between Long Prairie Road (FM 2499) and Driveway 2 meets the Town's criteria. Spacing between Driveways 2 and 3 does not meet the Town's minimum spacing criteria.
 - Right turn deceleration lanes are warranted for all site driveways. Right turn deceleration lane is also warranted for the northbound approach at the intersection of Long Prairie Road (FM 2499) and Spinks Road. Based on the assumed direction distribution, the proposed development is not predicted to add any traffic to the northbound right turn movement at the intersection of Long Prairie Road (FM 2499) and Spinks Road.

- Adequate spacing is not available between Spinks Road and Driveway 1 to accommodate a 375-foot long right turn deceleration lane for the northbound approach of Long Prairie Road (FM 2499) at Spinks Road. A variance from TxDOT will be needed for this right turn deceleration lane.
- Owner shall install and maintain Do Not Enter (R5-1) signs and directional arrow pavement marking to ensure that Driveway 2 functions as an entry-only driveway.
- At the time of the site visit and under the existing conditions, adequate sight distance is predicted to be provided for passenger cars exiting the site driveways.



Plotted by: Jorgas Plot Date: 5/21/2019 5:02 PM
Drawing G:\2018\085\18-136 RaceTrac 2499\Overall Site Concept Planning Speed By: Jorgas Save Time: 5/21/2019 5:02:31 PM

OVERALL SITE PLAN
RACETRAC 2499
ADDITION
LOT 1, BLOCK A - 17.682 Acres
J. TANNEHILL SURVEY ~ ABST. 1252
IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS

OWNER WCFLP RE 2499 LP 15660 Dallas Parkway, Suite 1175 Dallas, TX 75248 Telephone: (214) 740-3482	APPLICANT RaceTrac Petroleum, Inc. 3225 Cumberland Blvd. Suite 100 Atlanta, GA 30339 Telephone: (770) 431-7600 Contact: Stephanie Koshy	ENGINEER/SURVEYOR Spiars Engineering, Inc. TBPE No. F-2121 765 Custer Road, Suite 100 Plano, TX 75075 Telephone: (972) 422-0077 Contact: David Bond
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TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 17-86

AN ORDINANCE AMENDING ORDINANCE NO. 1-75, THE ZONING ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, GRANTING A ZONING CHANGE ON A CERTAIN TRACT OF LAND WITHIN THE TOWN OF FLOWER MOUND, TEXAS BEING APPROXIMATELY 32.294 ACRES OF LAND IN THE J. TANNEHILL SURVEY, ABSTRACT NO. 1252, DENTON COUNTY, TEXAS, AS MORE FULLY DESCRIBED IN EXHIBIT "A", ORDERING A CHANGE IN THE USE OF SAID TRACT OF LAND AS PARTICULARLY DESCRIBED HEREIN FROM A, AGRICULTURAL DISTRICT TO PD, PLANNED DEVELOPMENT DISTRICT NO. 38 FOR C-2, COMMERCIAL DISTRICT-2 USES IN ACCORDANCE WITH THE REQUIREMENTS STATED IN THE EXHIBITS ATTACHED HERETO AND INCORPORATED HEREIN, AND WITH THE SPECIFIC REQUIREMENTS CONTAINED IN THIS ORDINANCE, AND WITH A COMPREHENSIVE SITE PLAN OF THE DEVELOPMENT; PROVIDING A SEVERABILITY CLAUSE; DETERMINING THAT THE PUBLIC INTEREST, MORALS AND GENERAL WELFARE DEMAND THE ZONING CHANGES AND AMENDMENTS HEREIN MADE; PROVIDING FOR A PENALTY NOT TO EXCEED THE SUM OF ONE THOUSAND DOLLARS (\$1,000.00) AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, application was made to amend the official Zoning District Map of the Town of Flower Mound, Texas, by making application for the same with the Planning and Zoning Commission of the Town of Flower Mound, Texas, as required by State statutes and the Zoning Ordinance of the Town of Flower Mound, Texas, and all the legal requirements, conditions and pre-requisites having been complied with, the case having come before the Town Council of the Town of Flower Mound, Texas, after all legal notices, requirements, conditions and pre-requisites having been complied with; and

WHEREAS, the Developer and Owner, the Planning and Zoning Commission and the Town Council all agree the Tract located west of Farm-to-Market Road 2499 in this Planned Development District is best suited for development in accordance with the campus commercial concept described on the Flower Mound Land Use and Thoroughfare Plan adopted by Ordinance No. 80-85 on the 23rd day of December, 1985, and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, at a public hearing called by the Town Council did consider the following factors in making a determination as to whether these requested changes should be granted or denied; safety of the motoring public and the pedestrians using the facilities in the area immediately surrounding the sites; safety from fire hazards and damages, noise producing elements and glare of the vehicular and stationary lights and effect of such lights on established character of the neighborhood, location, lighting and types of signs and relation of signs to traffic control and adjacent property, street size and adequacy of width for traffic reasonably expected to be generated by the proposed use around the site and in the immediate neighborhood, adequacy of parking as determined by requirements of

this ordinance for off-street parking facilities, location of ingress and egress points for parking and off-street loading spaces, and protection of public health by surfacing on all parking areas to control dust, effect on the promotion of health and the general welfare, effect on light and air, the effect on the overcrowding of the land, the effect on the concentration of population, the effect on the transportation, water, sewerage, schools, parks and other public facilities; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, at a public hearing called by the Town Council of the Town of Flower Mound, Texas, did consider the following factors in making a determination as to whether the requested changes should be granted or denied; effect on the congestion of the streets, the fire hazards, panics and other dangers possibly present in the securing of safety from same, the effect on the promotion of health and the general welfare, effect on adequate light and air, the effect on the transportation; water, sewerage, schools, parks and other public facilities; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, further considered among other things the character of the districts and their peculiar suitability for particular uses and the view to conserve the value of the buildings, encourage the most appropriate use of land throughout this Town; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas does find that there is a public necessity for the zoning changes, that the public demands them, that the public interest clearly requires the amendments, that the zoning changes do not unreasonably invade the rights of those who bought or improved property with reference to the classification which existed at the time their original investment was made; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, does find that the changes in zoning lessen the congestion in the streets, helps secure safety from fire, panic and other dangers; promotes the health and the general welfare; provides adequate light and air; prevents the over-crowding of land; avoids undue concentration of population; facilitates the adequate provisions of transportation, water, sewerage, schools, parks and other public requirements; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, has determined that there is a necessity and need for the changes in zoning and has also found and determined that there has been a change in the conditions of the property surrounding and in close proximity to the tract of land requested for a change since the tract of land was originally classified and therefore feels that the respective changes in zoning classification for the tract of land are needed, are called for, and are in the best interest of the public at large, the citizens of the Town of Flower Mound, Texas, and helps promote the general health, safety and welfare of the community.

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

Section 1. That all of the above premises are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.

Section 2. That Ordinance No. 1-75, the Zoning Ordinance of the Town of Flower Mound, Texas passed on January 9, 1975, as originally adopted and amended, is hereby amended and changed in the following particulars and all other existing Sections, Subsections, Paragraphs, Sentences, Definitions, Phrases and Words of said Zoning Ordinance are not amended, but remain intact and are hereby ratified, verified and affirmed.

A. That the allowed use of a tract of land being approximately 32.294 acres of land in the J. Tannehill Survey, Abstract No. 1252, and the M. L. Cowan Survey, Abstract No. 1637, Denton County, Texas as more particularly described in Exhibit "A" attached hereto and incorporated herein, which in accordance with the Zoning Ordinance, Ordinance No. 1-75 is presently zoned A, Agricultural District is changed to PD, Planned Development District No. 38 for C-2, Commercial District-2 uses in accordance with the requirements stated in the Exhibits attached hereto and incorporated herein, and with the specific requirements contained in this Ordinance, and with the comprehensive site plan of the development.

Section 3. That a zoning map, a copy of which is attached hereto as Exhibit "C" and incorporated herein, showing the general layout of Planned Development District No. 38 was submitted by the Developer and Owner and reviewed and approved by the Town Council upon the recommendation of the Planning and Zoning Commission for approval as a general development plan.

Section 4. That a comprehensive site plan which shall be in substantial conformity with the general development plan shown in Exhibit "C" shall be submitted by the Developer and Owner as required by the Zoning Ordinance, Ordinance No. 1-75 for each Tract in this Planned Development District and shall be approved by the Planning and Zoning Commission and the Town Council and filed as part of this Ordinance prior to the issuance of any Building Permit in each such Tract in this Planned Development District.

Section 5. That the herein described property shall be used only in the manner and for the purpose provided by the Zoning Ordinance, Ordinance No. 1-75, as amended herein by the granting of this Planned Development District.

Section 6. That the development of the herein described property shall be developed in accordance with all PD, Planned Development District regulations as provided by the Zoning Ordinance, Ordinance No. 1-75, except as otherwise provided by this Ordinance.

Section 7. That in carrying out the development of this PD, Planned Development District, the development conditions shall be conditions precedent to the granting of any Certificate of Occupancy as required in the Zoning Ordinance, Ordinance No. 1-75.

Section 8. The Town Manager is hereby directed to correct the official zoning district maps of the Town of Flower Mound, Texas, to reflect the herein changes in zoning.

Section 9. That in all other respects the use of the property herein above described shall be subject to all the applicable regulations contained in said Zoning Ordinance and all other applicable and pertinent ordinances for the Town of Flower Mound, Texas.

THE TOWN OF FLOWER MOUND
SEAL
TEXAS

SEAL
APPROVED

Exhibit "A"

9.600 Acre Tract:

SITUATED in Denton County, Texas, in the J. Tannehill Survey, Abstract No. 1252, being a resurvey of the 9.550 acre Tract A described in a deed from Dorothy D. Coker, Executrix to Charles J. Wilson dated December 15, 1970, recorded in Volume 612, Page 618, of the Denton County Deed Records, being described by metes and bounds as follows:

BEGINNING at an iron pin set at the northeast corner of said 9.550 acre tract, in the west R.O.W. line of Farm Road No. 2499, same being the southeast corner of the 0.116 acre of land described in a deed from Joseph B. Coker and wife, Dorothy D. Coker to the town of Flower Mound dated September 13, 1965, recorded in Volume 531, Page 173, of the Denton County Deed Records; a water tower is located on said 0.116 acre tract;

THENCE southerly with said west R.O.W. line as follows:

South $53^{\circ}34'36''$ east, 233.8 feet to a broken concrete R.O.W.

marker at the point of curvature of a curve to the right, from which the radius center lies south $36^{\circ}25'24''$ west, 909.93 feet;

THENCE with said curve to the right, an arc of 861.93 feet around a central angle of $54^{\circ}16'23''$ to a concrete R.O.W. marker at the point of tangency of said curve;

THENCE south $0^{\circ}41'47''$ west 37.5 feet to an iron pin set at the southeast corner of said 9.550 acre tract for a corner;

THENCE north $87^{\circ}55'47''$ west 498.84 feet with the south line of said 9.550 acre tract and with an established fence to an iron pin set at the south, southwest corner of said 9.550 acre tract for a corner; same being the southeast corner of a 1.00 acre tract described in a deed from Flanagan to Greener dated September 27, 1973, recorded in Volume 686, Page 586, of the Denton County Deed Records;

THENCE north $0^{\circ}24'$ west, 261.11 feet with the east line of said 1.00 acre tract to an iron pin set for a corner at the northeast corner of said 1.00 acre tract;

THENCE north $87^{\circ}49'21''$ west, with the north line of said 1.00 acre tract passing an iron pin set at 146.66 feet and continuing in all 166.66 feet to an iron pin set at the northwest corner of said 1.00 acre tract and the west, southwest corner of said 9.550 acre tract for a corner; same being in the center of a north-south gravel road;

THENCE north $0^{\circ}34'05''$ west, 632.89 feet with the west line of said 9.550 acre tract and the center of said gravel road to an iron pin set at the northwest corner of said 9.550 acre tract for a corner; same being the southwest corner of said 0.116 acre tract;

THENCE north $89^{\circ}23'14''$ east, 115.89 feet with the north line of said 9.550 acre tract and with the south line of said 0.116 acre tract, along a line on the south side of a chain link fence to the PLACE OF BEGINNING and containing 9.600 acres of land, more or less.

24.6246 Acre Tract:

SITUATED in Denton County, Texas, in the J. Tannehill Survey, Abstract No. 1252, being a resurvey of the 24.623 acre Tract B described in a deed from Dorothy D. Coker, Executrix to Charles J. Wilson dated December 15, 1970, recorded in Volume 612, Page 618, of the Denton County Deed Records, being described by metes and bounds as follows:

BEGINNING at an iron pin set at the northeast corner of said 24.623 acre tract, in the center of an east-west gravel road at the junction of the center of a dirt road from the south;

THENCE south $0^{\circ}47'$ west, 1021.06 feet with the east line of said 24.623 acre tract and with the center of said dirt road to an iron pin set at the southeast corner of said 24.623 acre tract for a corner;

THENCE north $88^{\circ}02'17''$ west, with the south line of said 24.623 acre tract and with an established fence passing an iron pin set at 30.0 feet and continuing in all 857.49 feet to an iron pin set at the southwest corner of said 24.623 acre tract, in the east R.O.W. line of Farm Road No. 2499 for a corner;

THENCE northerly with the west line of said 24.623 acre tract and with said east R.O.W. line as follows:

North $0^{\circ}41'47''$ east, 40.0 feet to an iron pipe set beside a damaged R.O.W. marker at the point of curvature of a curve to the left, from which the radius center bears north $89^{\circ}18'13''$ west, 999.93 feet;
THENCE with said curve to the left, an arc of 947.18 feet around a central angle of $54^{\circ}16'23''$ to a concrete R.O.W. marker at the point of tangency of said curve;
THENCE north $53^{\circ}34'36''$ west, 315.7 feet to an iron pin set at the northwest corner of said 24.623 acre tract for a corner;
THENCE south $88^{\circ}01'57''$ east, 1531.54 feet with the north line of said 24.623 acre tract and with the center of said gravel road to the PLACE OF BEGINNING and containing 24.6246 acres of land, more or less.

EXHIBIT "B"

The development on the tract of land described in Exhibit "A" shall be in accordance with the comprehensive site plan of the development as required by the Zoning Ordinance of the Town of Flower Mound, Texas, Ordinance No. 1-75, and shall be subject to the following conditions and requirements:

1. Development Standards - East Tract

- A. The tract designated on Exhibit "C" as the East Tract consisting of approximately 23.578 acres located on the north and south sides of Spinks Road and located on the east side of Farm-to-Market Road 2499 shall be developed only for C-2, Commercial District-2 uses.
- B. Development of the East Tract shall be in compliance with all regulations applicable to C-2, Commercial District-2 contained in the Zoning Ordinance of the Town, Ordinance No. 1-75, as amended, except as otherwise provided in paragraph 3 of this Exhibit B.

2. Development Standards - West Tract

- A. The tract designated on Exhibit "C" as the West Tract consisting of approximately 8.716 acres located on the west side of Farm-to-Market Road 2499 shall be developed only for C-2, Commercial District-2 uses except that the following enumerated uses shall be prohibited throughout the West Tract:
 - 1. Amusement, Commercial (Outdoor)
 - 2. Animal Pound (Public or Private)
 - 3. Auto Glass, Seat Cover or Muffler Shop
 - 4. Auto Leasing (when not accessory use)
 - 5. Auto Parts and Accessory Sales (Indoor)
 - 6. Auto Repair Garage
 - 7. Auto Rental (when not accessory use)
 - 8. Bait and Sporting Goods (Sales)
 - 9. Bottling Works
 - 10. Building Material Yard and Construction Office
 - 11. Bus Station or Terminal
 - 12. Cabinet and Upholstery Shop
 - 13. Carnival or Circus (Temporary)
 - 14. Cleaning, Dyeing or Laundry Plant
 - 15. Contractor Storage or Equipment Yard
 - 16. Dance Hall, Public
 - 17. Engine, Motor Repair
 - 18. Greenhouse (Wholesale)
 - 19. Greenhouse or Plant Nursery (Retail Sales) (No Contract Work)
 - 20. Household Appliance Service and Repair
 - 21. Kennel
 - 22. Lithographic Shop
 - 23. Motorcycle or Scooter Sales and Service
 - 24. New or Used Car Auto Sales (Outdoor Lot)
 - 25. Outside Sales

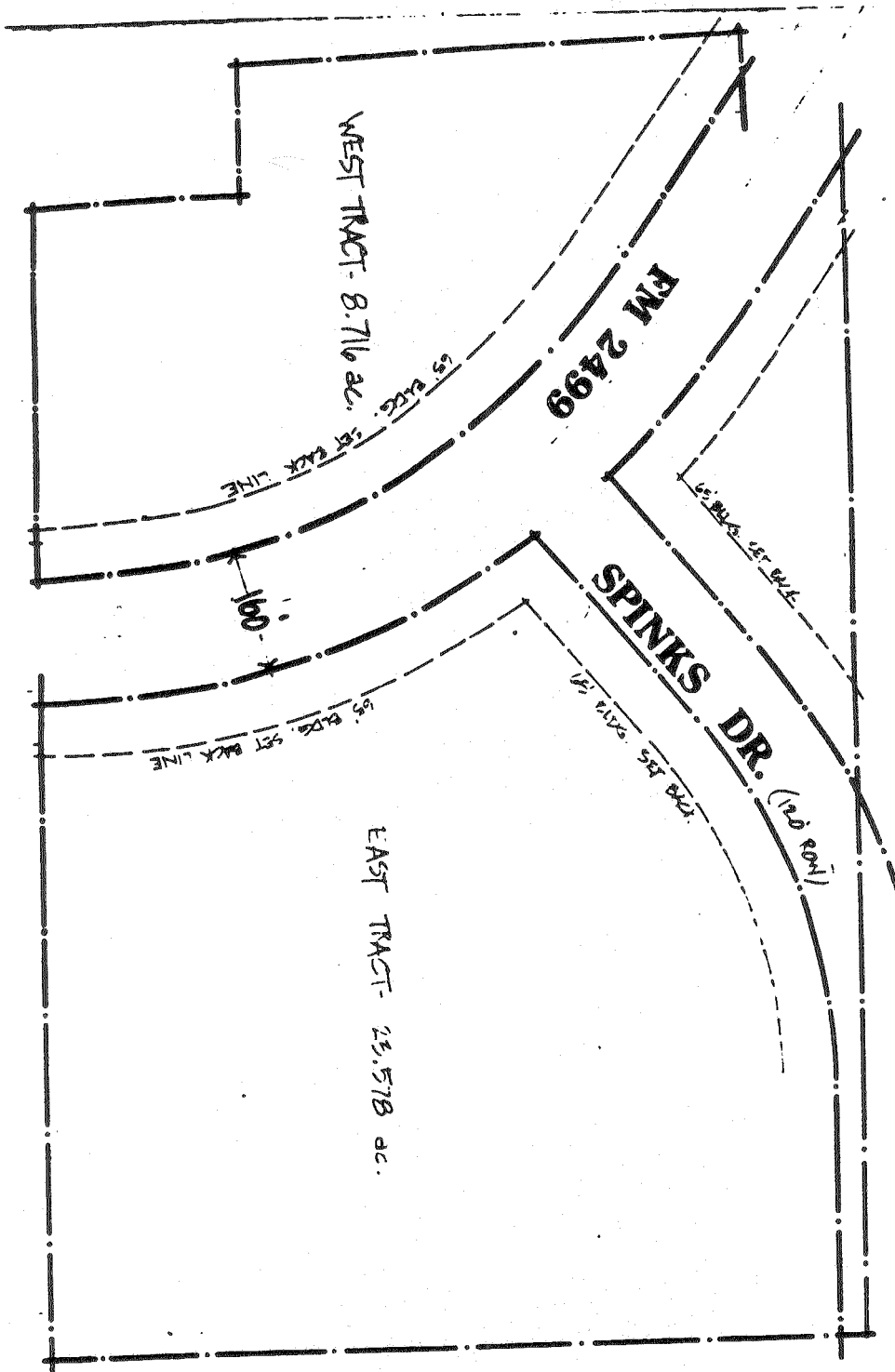
26. Paint Shop
27. Plumbing Shop
28. Restaurant or Eating Place (Drive-In Service)
29. Restaurant or Eating Place (Drive-In and Inside)
30. Second Hand Store
31. Storage or Hauling Company
32. Tires, Batteries, Shocks, Brakes, Etc. (work inside)
33. Tool Rental (Domestic Equipment)
34. Truck Freight Terminal
35. Truck and/or Bus Leasing
36. Truck Sales
37. Upholstery, Tops, Fabric, Carpet Shop
38. Veterinarian Hospital (Outside Animal Pens)

- B. Development of the West Tract shall be generally in accordance with the campus commercial concept described on the Flower Mound Land Use and Thoroughfare Plan adopted by Ordinance No. 80-85 on the 23rd day of December, 1985, and in all events shall be in compliance with all regulations applicable to C-2, Commercial District-2 contained in the Zoning Ordinance of the Town, Ordinance No. 1-75, as amended, except as otherwise provided in paragraph 3 of this Exhibit B.

3. Development Standards - General Requirements (East and West Tracts)

- A. An overall site plan for a Tract being developed in part or in whole, including internal circulation streets, proposed lot layouts, proposed fire lanes, and utility easements shall be submitted prior to or simultaneously with the submission of any comprehensive site plan for any area within the respective Tract being developed.
- B. Access points of ingress/egress from any major street or thoroughfare into either of the Tracts shall be determined at the time the overall site plan for the respective Tract is submitted for approval by the Town Planning and Zoning Commission.
- C. Developer and Owner agree that all ingress and egress from any major street or thoroughfare shall be limited in number in a manner approved by the Town Planning and Zoning Commission to allow and maintain such streets as free flowing arterials to the greatest extent possible.
- D. The Town reserves the right to realign Spinks Road if determined by the Planning and Zoning Commission and the Town Council to be necessary.
- E. A minimum of fifteen percent (15%) of the net area shall be landscaped and irrigated with an automatic sprinkler system installed in a manner approved by the Town Planning and Zoning Commission.
- F. Native trees shall be preserved whenever possible and no tree eight inches (8") in caliper or greater shall be removed unless noted on the site plan and approved by the Town Planning and Zoning Commission.

- G. All utilities, dumpsters and mechanical units shall be screened from public view in a manner approved by the building official.
- H. A minimum sixty-five foot (65') building setback shall be provided from the right-of-way of all major and secondary streets. The first twenty-five feet (25') shall be landscaped and irrigated with an automatic sprinkler system installed in a manner approved by the Town Planning and Zoning Commission. No parking shall be allowed in the first twenty-five feet (25') measured from the property line.



ZONING CASE Z-1-86
A 32.294 Acre
PLANNED DEVELOPMENT
FLOWER MOUND, TEXAS

OWNER:
IIA, Inc.
 12655 North Central Expressway
 Suite 800
 Dallas, Texas

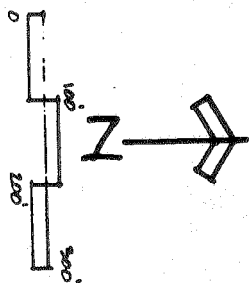


EXHIBIT "C"

Proposed Zoning: Commercial Two/PD



200 Galleria Pkwy, Suite 900 Atlanta, Ga 30339

To whom it may concern:

This letter is to request a deviation from the number of parking spaces required at the proposed RaceTrac convenience store at the Southeast corner of Spinks Rd. and Hwy 2499. The parking requirements for this use are calculated in the Development Standards Chapter 82 of the Town of Flower Mound Code of Ordinances.

The RaceTrac site plan currently shows 32 proposed parking spaces. Per the previously referenced parking requirements, a maximum of 27 parking spaces are allowed.

Due to the nature of the expanded food, drink, and convenience products offered within the proposed store, RaceTrac is requesting a deviation of five additional parking spaces for this site.

RaceTrac believes that these five additional parking spaces will better accommodate the proposed use and to allow its guests to enjoy a more convenient and efficient experience. This includes utilization of the attached covered patio that serves as an added-feature to the proposed building structure.

The need for additional parking is emphasized when examining two of RaceTrac's other nearby stores, known as Justin Rd. and Grapevine Mills, respectively.

The Justin Rd. store has 20 parking spaces but was built over 18 years ago. The convenience industry has changed significantly in that time, which is reflected in the building and site being proposed. In contrast, the Grapevine Mills store was opened less than two months ago and has 38 parking spaces. This is more reflective of the quantity of spaces that are necessary to properly serve our guests given the high quality food and drink products, in addition to other traditional convenience store offers.

In order to mitigate for these additional five parking spaces, enhanced buffer landscaping is proposed along both frontages of the site.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Cunningham', with a long, sweeping horizontal line extending to the right.

Drew Cunningham
Senior Engineering Project Manager

CCD# 2017-52204
OPRDCT

SPINKS ROAD
120' Public R.O.W. per deed
Doc. No. 94-R0081673 OPRDCT
Town of Flower Mound Maintenance

R=1085.92'
D=8°31'03"
L=161.43'
CB=N 54°49'50" E
CD=161.28'

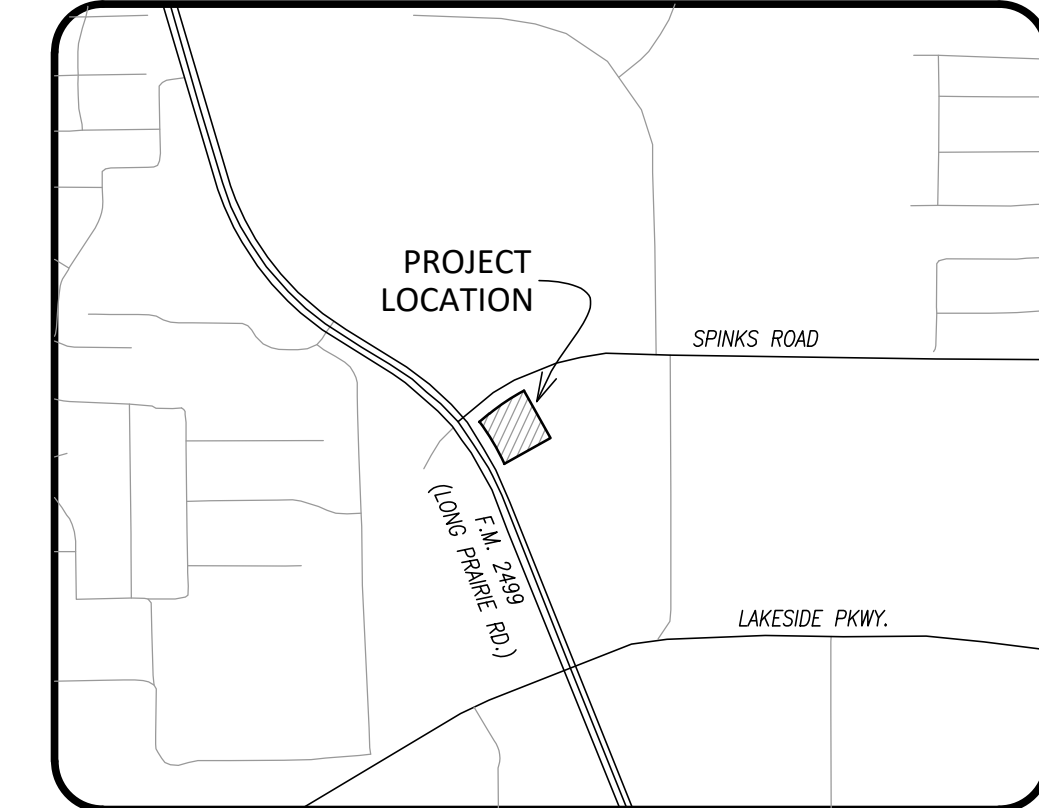
R=1225.92'
D=14°42'31"
L=314.71'
CB=N 29°14'57" W
CD=213.65'

R=1225.92'
D=14°42'31"
L=314.71'
CB=N 29°14'57" W
CD=213.65'

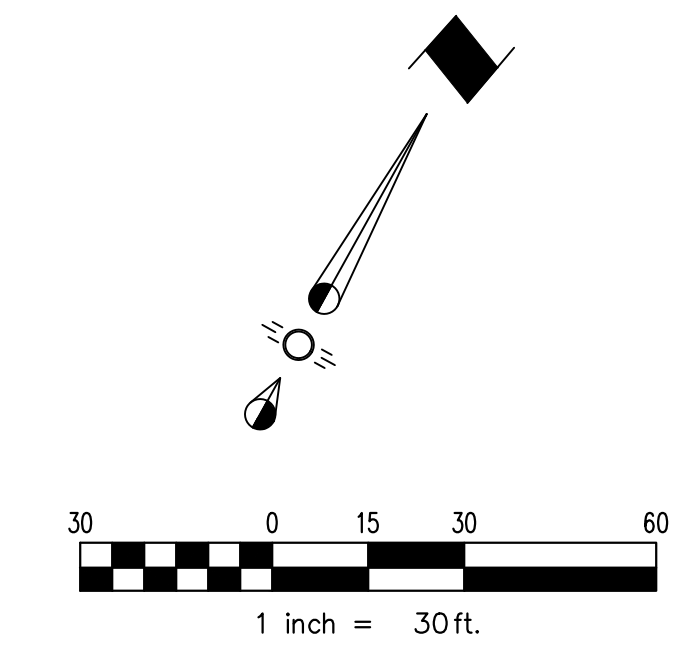
6 60°45'23" W ~ 227.62'

WCFLP RE 2499, LP
Remainder of Tract 1
Doc. No. 2017-90782 OPRDCT
Denton CAD No. 225933

WCFLP RE 2499, LP
Remainder of Tract 1
Doc. No. 2017-90782 OPRDCT
Denton CAD No. 225933



LOCATION MAP
1" = 300'



Note:
No delivery trucks of any kind, including fuel tanker trucks, will be allowed on Spinks Road.

Note:
All Dimensions are to Face-of-Curb/Edge of stripe or face of building unless otherwise noted.

Note:
Handicap parking is provided in accordance with ADA standards.

- Note:
1. All retaining/detaining walls, turn-down curbs, tree retaining walls shall be clad in a material to complement the materials and colors within this development.
 2. All ground based HVAC shall be screened with live screening or a masonry enclosure. Any masonry enclosure shall be clad in the same material as the main building.
 3. All roof-mounted mechanical units and/or equipment shall be screened from view.
 4. Dumpster screening wall shall be clad in a material to match the materials on the main building.
 5. Dumpster screening wall requires a separate building permit.
 6. Signs require a separate building permit. Any signs depicted on the site plan or elevations are not approved as a part of this review and must comply with all applicable Town regulations.

SITE DATA TABLE		
Physical Address		
Gross Site Area	1.738 Ac. / 75,715 Sq. Ft.	
Net Site Area	1.738 Ac. / 75,715 Sq. Ft.	
Zoning	PD-38	
Current use	Vacant	
Lot Coverage Data		
• Building Coverage	18.7% / 14,185 Sq. Ft.	
• Impervious Area	33.6% / 25,434 Sq. Ft.	
• Pervious Area	66.4% / 50,281 Sq. Ft.	
Parking Summary		
Surface Parking		
• Retail	27 Sp.	32 Sp.
Total Parking	27 Sp.	32 Sp.
Building Data		
• Building	1 story	
• Peak Height	23'-0"	
• Mean Height	19'-0"	
• Total Square Footage	5,411 Sq. Ft.	

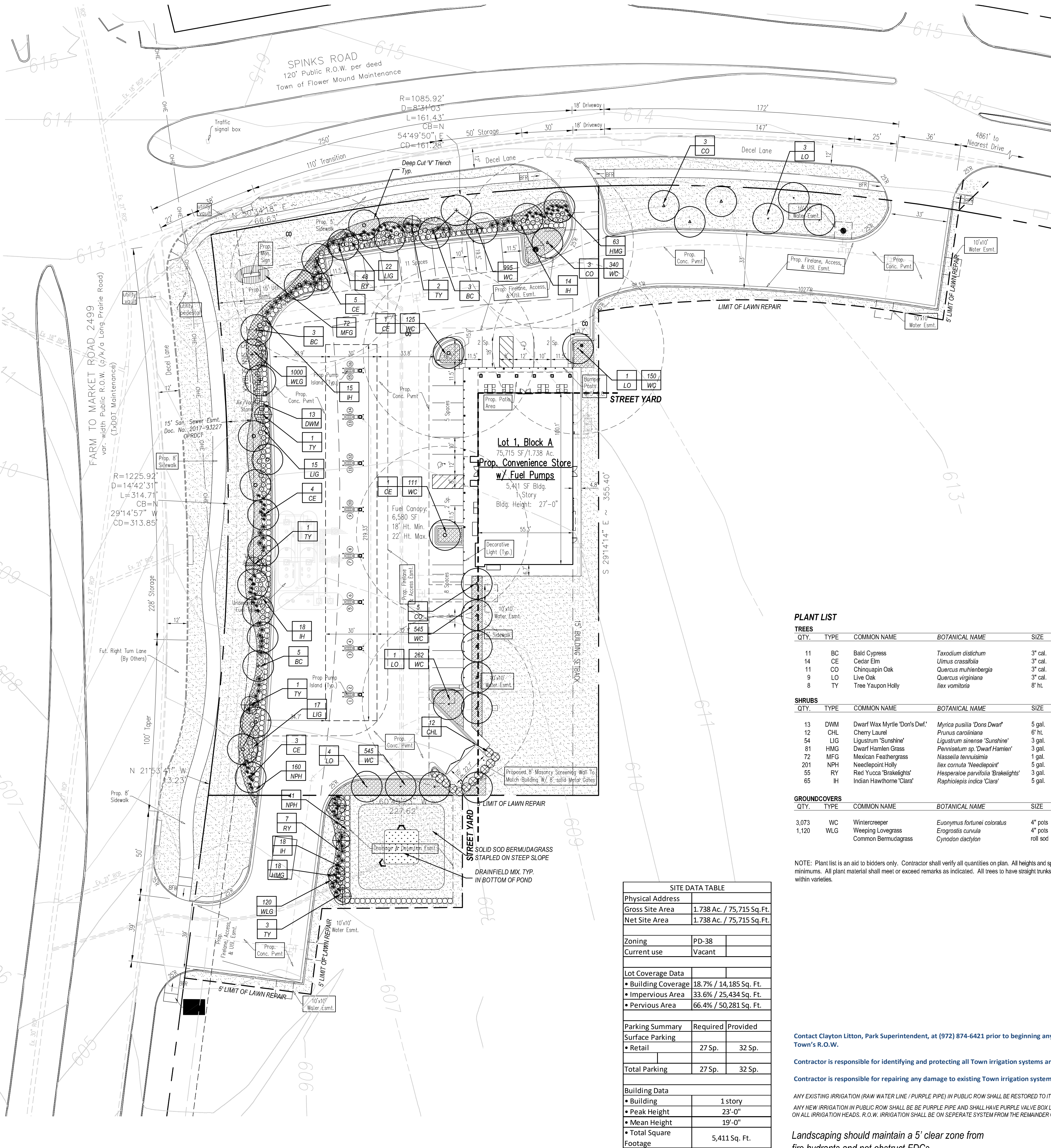
LEGEND
BFR BARRIER FREE RAMP

CONCEPTUAL SITE PLAN
**RACETRAC 2499
ADDITION**
LOT 1, BLOCK A - 1.738 Acres
J. TANNEHILL SURVEY ~ ABST. 1252
IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS

OWNER WCFLP RE 2499 LP 15660 Dallas Parkway, Suite 1175 Dallas, TX 75248 Telephone: (214) 740-3482	APPLICANT RaceTrac Petroleum, Inc. 3225 Cumberland Blvd. Suite 100 Atlanta, GA 30339 Telephone: (770) 431-7600 Contact: Stephanie Koshy	ENGINEER/SURVEYOR Spiars Engineering, Inc. TBPE No. F-2121 765 Custer Road, Suite 100 Plano, TX 75075 Telephone: (972) 422-0077 Contact: David Bond
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Printed by: Brian Pitt Date: 9/4/2019 9:07 AM

Drawing: P:\Projects\2018\MT Flower Mound\MTT\100.dwg Saved By: Matti Saw Time: 8/23/2019 3:55:50 PM



DRAINFIELD MIX LAWN NOTES

1. Installation of Drainfield Mix to be performed by hydro-seeding.
2. Final grades to be smooth and level free of debris, rocks over 1" and shall have no ruts or depressions, grading per civil plans.
3. Install the following mix at the specified rate of 90 pounds acre or per manufacturers recommendations.
4. Seed mix available from Native American Seed: 1 800 728 4093.

LANDSCAPE TABULATIONS

STREETYARD
Requirements: 20% of Streetyard to be landscape
(1) tree per 2,500 s.f. for streetyards
10,000 and 110,000 s.f. plus 10 trees

FM 2499 (50,346 s.f.)
Required 10,069 s.f. (20%)
(20) trees plus 10 = (30) trees
Provided 11,914 s.f.
(30) trees, 3" cal.

Spinks (8,534 s.f.)
Required 1,706 s.f. (20%)
(9) trees
Provided 2,751 s.f.
(9) trees, 3" cal.

PARKING LOT (31 spaces)
Requirements: (1) tree, 3" cal., per 10 spaces
90 s.f. per ea. 12 spaces
Required (3) trees, 3" cal.
240 s.f.
Provided (6) trees, 3" cal.
2,275 s.f.

STREET BUFFER
Requirements: (1) tree, 3" cal., per 30 l.f.
FM 2499: 314.71 l.f.
Required (10) trees, 3" cal.
Spinks: 228.06 l.f.
Required (8) trees, 3" cal.
Provided (14) trees, 3" cal.
Provided (8) trees, 3" cal.

50' radius: tree to parking space

PLANT LIST

TREES					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
11	BC	Bald Cypress	Taxodium distichum	3" cal.	container grown, 13' ht., 4'-5' spread min.
14	CE	Cedar Elm	Ulmus crassifolia	3" cal.	container grown, 13' ht., 4'-5' spread min.
11	CO	Chinquapin Oak	Quercus muhlenbergia	3" cal.	container grown, 13' ht., 4'-5' spread min.
9	LO	Live Oak	Quercus virginiana	3" cal.	container grown, 13' ht., 4'-5' spread min.
8	TY	Tree Yaupon Holly	Ilex vomitoria	8' ht.	B&B, 3-5 cane, no cross cuning

SHRUBS					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
13	DWM	Dwarf Wax Myrtle 'Dons Dwarf'	Myrica pusilla 'Dons Dwarf'	5 gal.	container, full plant, 36" o.c.
12	CHL	Cherry Laurel	Prunus caroliniana	6" ht.	container, full to base, 5' o.c.
54	LIG	Ligustrum 'Sunshine'	Ligustrum sinense 'Sunshine'	3 gal.	container, full plant, 36" o.c.
81	HMG	Dwarf Hamlen Grass	Pennisetum sp. 'Dwarf Hamlen'	3 gal.	container, full top of container, 36" o.c.
72	MFG	Mexican Feathergrass	Nassella tenuissima	1 gal.	container, full top of container, 18" o.c.
201	NPH	Needlepoint Holly	Ilex cornuta 'Needlepoint'	5 gal.	container, full plant, 36" o.c.
55	RY	Red Yucca 'Brakeights'	Hesperaloe parvifolia 'Brakeights'	3 gal.	container, full plant, 36" o.c.
65	IH	Indian Hawthorne 'Clara'	Raphiolepis indica 'Clara'	5 gal.	container, full plant, 36" o.c.

GROUNDCOVERS					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
3,073	WC	Wintercreeper	Euonymus fortunei coloratus	4" pots	container, (3) 12" runners min. 12" o.c.
1,120	WLG	Weeping Lovegrass	Eragrostis curvula	4" pots	container, full top of container, 12" o.c.
		Common Bermudagrass	Cynodon dactylon	roll sod	solid sod, refer to notes

NOTE: Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. All plant material shall meet or exceed remarks as indicated. All trees to have straight trunks and be matching within varieties.

SITE DATA TABLE	
Physical Address	
Gross Site Area	1.738 Ac. / 75,715 Sq. Ft.
Net Site Area	1.738 Ac. / 75,715 Sq. Ft.
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Current use	Vacant
Lot Coverage Data	
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• Impervious Area	33.6% / 25,434 Sq. Ft.
• Pervious Area	66.4% / 50,281 Sq. Ft.
Parking Summary	Required Provided
Surface Parking	
• Retail	27 Sp. 32 Sp.
Total Parking	27 Sp. 32 Sp.
Building Data	
• Building	1 story
• Peak Height	23'-0"
• Mean Height	19'-0"
• Total Square Footage	5,411 Sq. Ft.

Landscape should maintain a 5' clear zone from fire hydrants and not obstruct FDCs.

HYDROMULCH NOTES

1. Contractor shall scarify, rip, loosen all areas to be hydromulched to a minimum depth of 4" prior to topsoil and hydromulch installation.
2. Fiber: Shall be one hundred (100%) percent Wood Cellulose Fiber, delivered to the site in its original unopened container, 'Conweb' or equal.
3. Fiber Tack: Shall be delivered to the site in its original unopened container, and shall be 'Terra-Tack one', as manufactured by Growers, Inc., or equal.
4. Use a 4x8' batter board against all beds areas.
5. If installation occurs between September 1 and April 1, all hydromulch areas to be Winter Ryegrass, at a rate of four (4) pounds per one thousand (1000) square feet. Contractor shall be required to re-hydromulch with Bermudagrass the following growing season.
6. In the event ryegrass is necessary due to time of year installation, it shall be the responsibility of the contractor to scalp existing grass, bag clippings, and scarify soil to a depth of 1" prior to permanent lawn grass installation.
7. All lawn areas to be hydromulched, shall have one hundred (100%) percent coverage prior to final acceptance.
8. Contractor shall maintain all lawn areas until final acceptance. This shall include but not be limited to: mowing, watering, weeding, cultivating, cleaning, and replacing dead or bare areas to keep plants in a vigorous, healthy condition.
9. Contractor shall guarantee establishment of an acceptable turf area and shall provide replacement from local supply as necessary.

LANDSCAPE NOTES

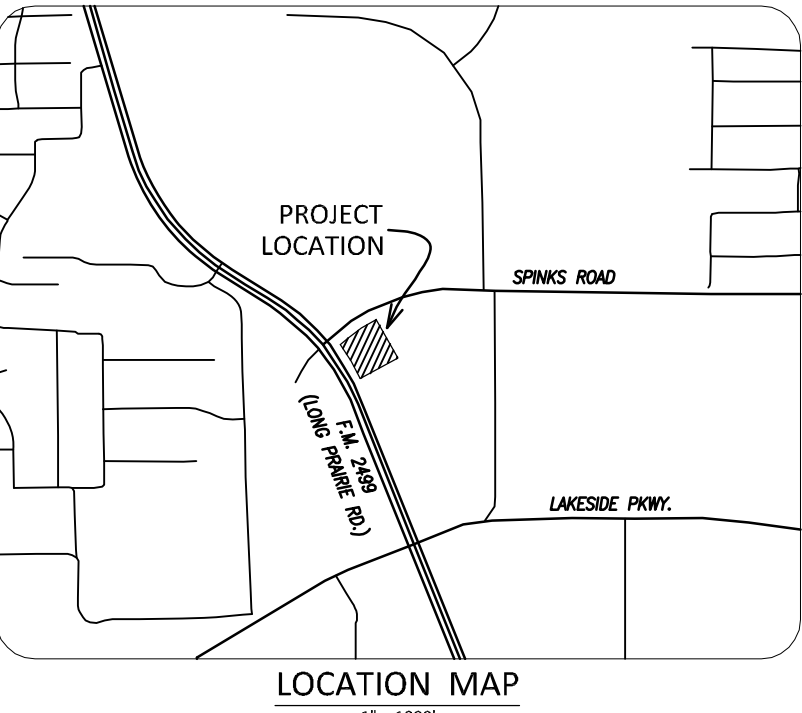
1. Contractor shall verify all existing and proposed site elements and notify Architect of any discrepancies. Survey data of existing conditions was supplied by others.
2. Contractor shall locate all existing underground utilities and notify Architect of any conflicts. Contractor shall exercise caution when working in the vicinity of underground utilities.
3. Contractor is responsible for obtaining all required landscape and irrigation permits.
4. Contractor to provide a minimum 2% slope away from all structures.
5. All planting beds and lawn areas to be separated by steel edging. No steel to be installed adjacent to sidewalks or curbs.
6. All landscape areas to be 100% irrigated with an underground automatic irrigation system and shall include rain and freeze sensors.
7. All lawn areas to be Solid Sod Bermudagrass, unless otherwise noted on the drawings.

MAINTENANCE NOTES

1. The Owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscape.
2. All landscape shall be maintained in a neat and orderly manner at all times. This shall include mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to landscape maintenance.
3. All landscape areas shall be kept free of trash, litter, weeds and other such material or plants not part of this plan.
4. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.
5. All plant material which dies shall be replaced with plant material of equal or better value.
6. Contractor shall provide separate bid proposal for one year's maintenance to begin after final acceptance.

GRAPHIC PLANT LEGEND

	CEDAR ELM		WEEPING LOVEGRASS
	LIVE OAK		WINTERCREEPER
	BALD CYPRESS		MEXICAN FEATHER GRASS
	CHINQUAPIN OAK		LAWN BERMUDAGRASS
	TREE YAUPON HOLLY		
	CHERRY LAUREL		
	DWARF WAX MYRTLE		
	NEEDLEPOINT HOLLY		
	RED YUCCA 'BRAKEIGHTS'		
	INDIAN HAWTHORNE 'CLARA'		
	SUNSHINE LIGUSTRUM		
	DWARF HAMLEN GRASS		



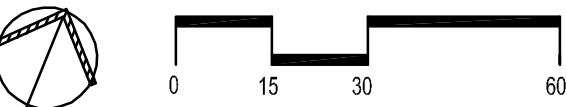
GENERAL LAWN NOTES

1. Fine grade areas to achieve final contours indicated on civil plans.
2. Adjust contours to achieve positive drainage away from buildings. Provide uniform rounding at top and bottom of slopes and other breaks in grade. Correct irregularities and areas where water may stand.
3. All lawn areas to receive solid sod shall be left in a maximum of 1" below final finish grade. Contractor to coordinate operations with on-site Construction Manager.
4. Imported topsoil shall be natural, friable soil from the region, known as bottom and soil, free from lumps, clay, toxic substances, roots, debris, vegetation, stones, containing no salt and black to brown in color.
5. All lawn areas to be fine graded, irrigation trenches completely settled, and finish grade approved by the Owner's Construction Manager or Architect prior to installation.
6. All rocks 3/4" diameter and larger, dirt clods, sticks, concrete spoils, etc. shall be removed prior to placing topsoil and any lawn installation.
7. Contractor shall provide (1") one inch of imported topsoil on all areas to receive lawn.

SOLID SOD NOTES

1. Fine grade areas to achieve final contours indicated. Leave areas to receive topsoil 3" below final desired grade in planting areas and 1" below final grade in turf areas.
2. Adjust contours to achieve positive drainage away from buildings. Provide uniform rounding at top and bottom of slopes and other breaks in grade. Correct irregularities and areas where water may stand.
3. All lawn areas to receive solid sod shall be left in a maximum of 1" below final finish grade. Contractor to coordinate operations with on-site Construction Manager.
4. Contractor to coordinate with on-site Construction Manager for availability of existing topsoil.
5. Plant sod by hand to cover indicated area completely. Insure edges of sod are touching. Top dress joints by hand with topsoil to fill voids.
6. Roll grass areas to achieve a smooth, even surface, free from unnatural undulations.
7. Water sod thoroughly as sod operation progresses.
8. Contractor shall maintain all lawn areas until final acceptance. This shall include, but not limited to: mowing, watering, weeding, cultivating, cleaning and replacing dead or bare areas to keep plants in a vigorous, healthy condition.
9. Contractor shall guarantee establishment of an acceptable turf area and shall provide replacement from local supply if necessary.
10. If installation occurs between September 1 and March 1, all sod areas to be over-seeded with Winter Ryegrass, at a rate of (4) pounds per one thousand (1000) square feet.

01 LANDSCAPE PLAN
SCALE: 1" = 30'-0"



LANDSCAPE PLAN
RACETRAC 2499
ADDITION

LOT 1, BLOCK A - 1.738 Acres
J. TANNEHILL SURVEY ~ ABST. 1252

IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS

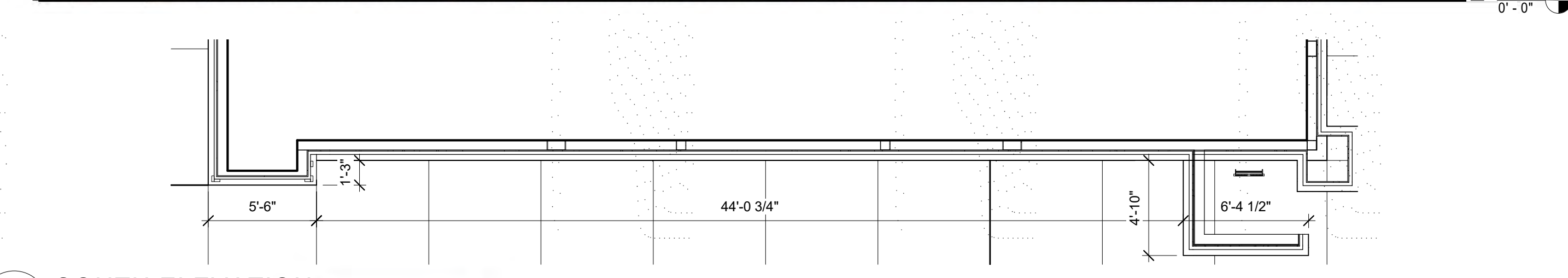
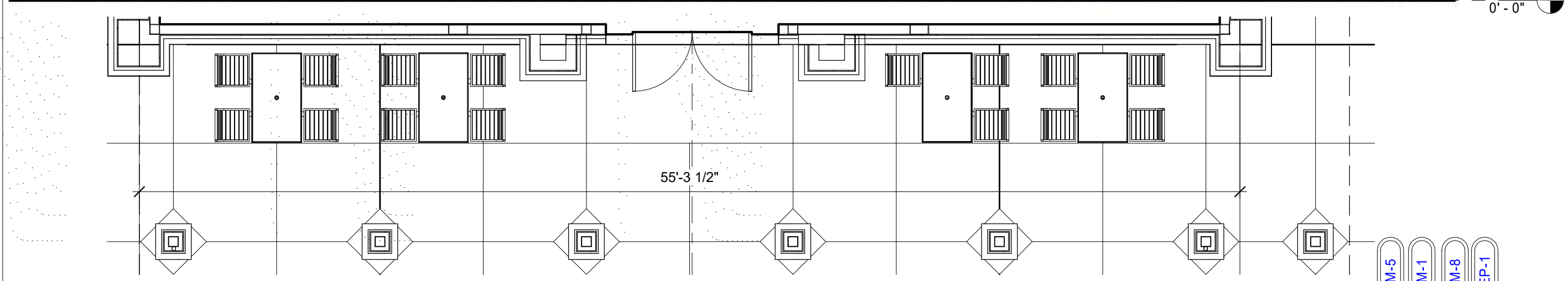


smr
landscape architects, inc.
1708 N. Griffin Street
Dallas, Texas 75202
Tel 214.871.0983
Fax 214.871.0545
Email smr@smr-las.com

OWNER
WCF LP RE 2499 LP
15660 Dallas Parkway, Suite 1175
Dallas, TX 75248
Telephone: (214) 740-3482
Contact: Matthew Gallo

APPLICANT
RaceTrac Petroleum, Inc.
3225 Cumberland Blvd. Suite 100
Atlanta, GA 30339
Telephone: (770) 431-7600
Contact: Andrew Malzer

ENGINEER/SURVEYOR
Sparks Engineering, Inc.
TBPE No. F-2121
765 Custer Road, Suite 100
Plano, TX 75075
Telephone: (972) 422-0077
Contact: David Bond



MATERIAL CALCULATIONS				
	NORTH (SIDE ENTRY)	SOUTH (NON-ENTRY)	EAST (REAR)	WEST (FRONT)
1. TOTAL FACADE S.F.	1,299	1,348	2,221	2,324
2. FACADE S.F. (EXCLUSIVE OF DOORS AND WINDOWS)	1,102	1,274	2,061	1,975
3. DOORS AND WINDOWS S.F.	197	74	160	349
4. PRIMARY MASONRY TOTALS (MIN. 80%)	881 (80%)	1,021 (80%)	1,648 (80%)	1,573 (80%)
BRICK S.F.	854 (77%)	981 (77%)	1,500 (73%)	1,504 (76%)
STONE S.F.	27 (3%)	148 (7%)	148 (7%)	69 (4%)
5. SECONDARY MASONRY TOTALS (MAX. 20%)	221 (20%)	253 (20%)	413 (20%)	402 (20%)
EIFS S.F.	20 (2%)	51 (4%)	152 (8%)	60 (3%)
HARDPLANK S.F.	0	75 (6%)	15 (0%)	221 (11%)
METAL S.F.	201 (18%)	127 (10%)	246 (12%)	121 (6%)

EXTERIOR MATERIAL SCHEDULE		
AWNING	ALUMINUM AWNING	SELECTED BY RACETRAC
AW-1	-	-
BRICK	LAREDO BRICK	MORTAR COLOR "LIGHT BUFF"
BR-1	BORAL	MOUNT RUSHMORE
BR-2	BORAL	MOUNT RUSHMORE
CAST STONE	MATCH BORAL TUSCAN LINTEL CHAMPAGNE	COLOR 1102 NATURAL STONE; MORTAR COLOR "LIGHT BUFF"; SEAL WITH (SL-5) SEALANT.
CS-1	CONTINENTAL CAST STONE OR APPROVED OTHER	-
CEMENT BOARD	ARTISAN V-GROOVE SIDING	PAINT SHERWIN WILLIAMS QUIVER TAN #6151
HP-1	JAMES HARDIE	-
EIFS	STO THERM CI	"FINE FINISH" APPLICATION; COLOR TO MATCH SW #6113 "INTERACTIVE CREAM"
EF-1	STO	"FINE FINISH" APPLICATION; COLOR TO MATCH SW #6094 "SENSATIONAL SAND"
EF-2	STO	-
GLAZING	1" NON-IMPACT RATED INSULATED GLAZING	CLIMATE ZONES 2 OR 3. IGU AT STOREFRONT 0.28 U-FACTOR, SHGC PF>0.25-0.27 (1/4" PPG SOLARBAN 70-XL LOW-E #2 +1/2" AIR +1/4" CLEAR) OR APPROVED ALTERNATE
GL-1	1" NON-IMPACT RATED ACID ETCHED INSULATED GLAZING	CLIMATE ZONES 2 OR 3. IGU AT STOREFRONT 0.28 U-FACTOR, SHGC PF>0.25-0.27 (1/4" PPG SOLARBAN 70-XL LOW-E #2 +1/2" AIR +1/4" CLEAR SATIN ETCH #3) OR APPROVED ALTERNATE
GL-2	-	-
METAL	PREFINISHED 4" 2-PIECE COMPRESSION METAL COVER	METAL TO MATCH STOREFRONT COLOR DARK BRONZE
M-1	COLOR DARK BRONZE.	METAL TO MATCH STOREFRONT COLOR DARK BRONZE
M-2	VISTAWALL (OR APPROVED ALTERNATE)	PREFINISHED DARK BRONZE ANODIZED ALUMINUM AA-M2C22A44
M-3	ALCOA	REYNOBOND PE
M-5	VERSATEX	WP4 TONGUE AND GROOVE
M-7	ENGLERT SERIES 2000 SNAP-LOCK STANDING SEAM, 24-GA GALVALUME	COLORWELD 500 "CLASSIC BRONZE" PAINT INTERACTIVE CREAM
M-8	-	STANDING SEAM ROOF; COLOR TO MATCH SW #6171 "CHATROOM"
PAINT	SHERWIN WILLIAMS	EXTERIOR PAINT TO SW #7020 "BLACK FOX"
EP-1	-	-
ROOFING	50 MIL MEMBRANE ROOFING SYSTEM	WHITE; MECHANICALLY FASTENED
DURO	DUROLAST	-
WINDOW FILM	WINDOW FILM, 3M PRESTIGE 70 SOLAR FILM	-
WF-1	WINDOW FILM, OPAQUE	SEE A600 FOR WINDOW FILM LOCATIONS
WF-2	-	-

RaceTrac.
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DESIGN PROFESSIONALS

GPD GROUP
Professional Corporation
520 S. MAIN STREET, STE 2531
AKRON, OH 44311

ISSUE/REVISION RECORD	
DATE	DESCRIPTION
11/02/18	PRELIM. PACKAGE
02/25/19	PRELIM. PACKAGE
03/08/19	PRELIM. PACKAGE
03/18/19	PRELIM. PACKAGE
4/18/19	PRELIM. PACKAGE
4/30/19	PRELIM. PACKAGE
6/20/19	PRELIM. PACKAGE
07/24/19	PRELIM. PACKAGE

RaceTrac.
RACETRAC PETROLEUM, INC.
200 GALLERIA PARKWAY SOUTHEAST
SUITE 900
ATLANTA, GEORGIA 30339
(770) 431-7600

PROJECT NAME

SPINKS

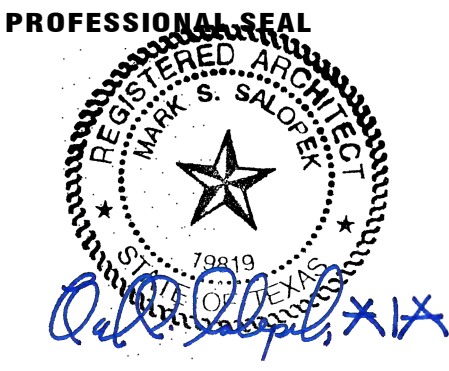
SPINKS @2499 TX
GPD Group, Professional Corporation
Texas Registration No. 19819

RACETRAC STORE NUMBER
#1376

PROTOTYPE SERIES 5.5K 2.0
2019 LH MO 0105

PLAN MODIFICATION NOTICE
SPB NO. 0105 DATE 02/19/19

STANDARD PLAN BULLETINS (SPB) MODIFY THE PROTOTYPE SERIES SET NOTED ABOVE. THE LISTED SPB REPRESENTS THE LATEST MODIFICATION INCORPORATED TO THIS PROTOTYPE SERIES SET AT ORIGINAL RELEASE. THE ISSUE/REVISION RECORD COLUMN ABOVE LISTS ANY REVISIONS OR SPB INCORPORATED IN THIS SET AFTER THE ORIGINAL RELEASE. CONTACT RACETRAC ENGINEERING AND CONSTRUCTION FOR ANY SUBSEQUENT BULLETINS NOT INCORPORATED HEREIN.



PROJECT NUMBER
2018157.43

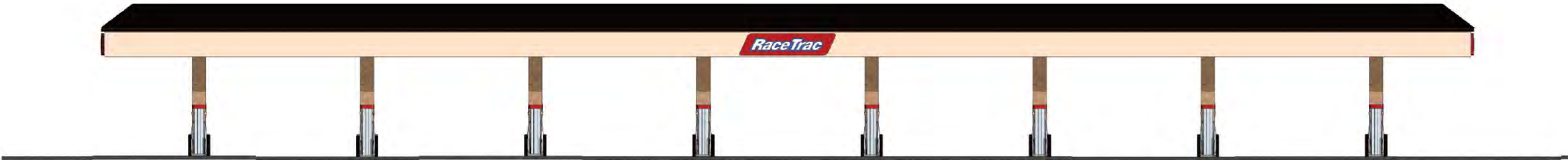
SHEET TITLE

CONCEPTUAL ELEVATIONS

SHEET NUMBER

300X

"This submittal is for general informational purposes only and is preliminary in nature. As such, any other use or reliance is strictly prohibited."



2 CANOPY FRONT ELEVATION
1/8" = 1'-0"



1 CANOPY ELEVATION
1/8" = 1'-0"



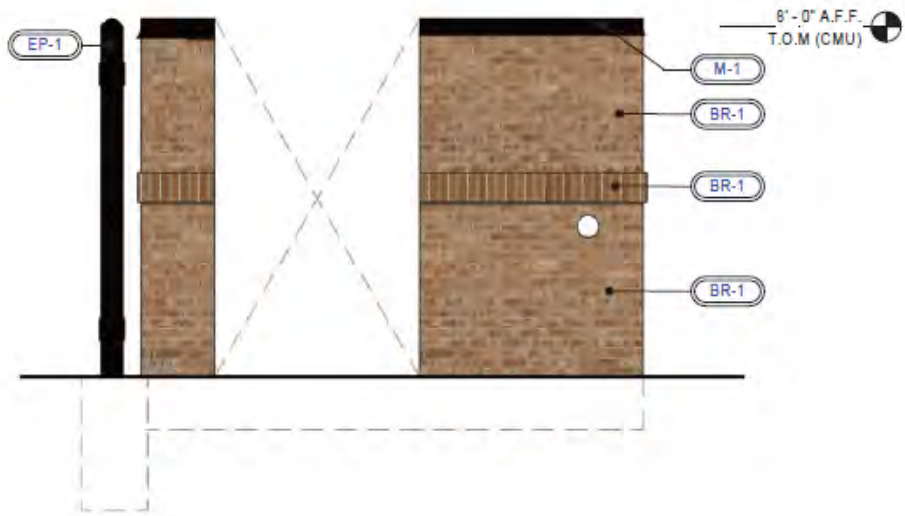
FUEL CANOPY FINISH SCHEDULE			
ID	MANUF.	MATERIAL	COMMENTS
BR-2	BORAL	MOUNT RUSHMORE	MORTAR COLOR "LIGHT BUFF"
EF-2	STO	STO THERM CI	"FINE FINISH" APPLICATION; COLOR TO MATCH SW #0094 "SENSATIONAL SAND"
FASCIA			
RED	-		REFER TO SPECIFICATION CHART ON SHEET C100
WHITE	-		8" WHITE STRIPE
METAL			
M-5	ALCOA	REYNOBOND PE	COLORWELD 500 "CLASSIC BRONZE"
PAINT			
EP-1	SHERWIN WILLIAMS	EXTERIOR PAINT TO SW #7020 "BLACK FOX"	
STANDARD CANOPY FASCIA COLOR SPECIFICATION CHART			
COLOR CALLOUT	CANOPY MANUFACTURER	STANDARD COLOR SPECIFICATION	
"TAN"	LANE CANOPIES	ETT TAN FASCIA	
	McGEE CANOPIES	ETT TAN FASCIA	
	MADISON CANOPIES	PUEBLO TAN FASCIA	
"RED"	LANE CANOPIES	TRD RED FASCIA	
	McGEE CANOPIES	TRD RED FASCIA - PROGRAM RED	
	MADISON CANOPIES	PROGRAM RED FASCIA	

"This submittal is for general informational purposes only and is preliminary in nature. As such, any other use or reliance is strictly prohibited."

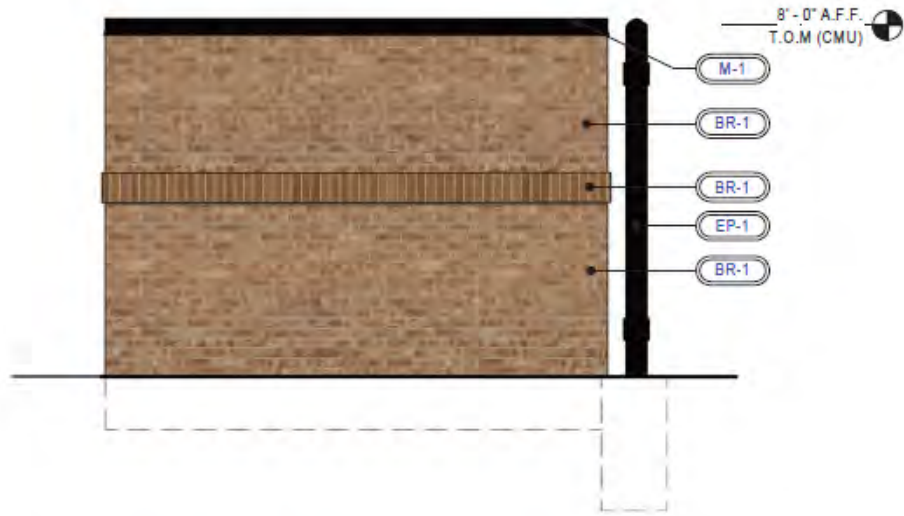
DUMPSTER FINISH SCHEDULE			
ID	MANUF.	MATERIAL	COMMENTS
BRICK			
BR-1	BORAL	LAREDO BRICK	MORTAR COLOR "LIGHT BUFF"
METAL			
M-1		PREFINISHED 4" 2-PIECE COMPRESSION METAL COVER	METAL TO MATCH STOREFRONT COLOR DARK BRONZE
M-10		METAL GATE W/ SOLID METAL BACKING FINISHED TO MATCH EXTERIOR PAINT TO SW #7020 "BLACK FOX"	
PAINT			
EP-1	SHERWIN WILLIAMS	EXTERIOR PAINT TO SW #7020 "BLACK FOX"	



5 DUMPSTER ENCLOSURE FRONT ELEVATION
3/8" = 1'-0"



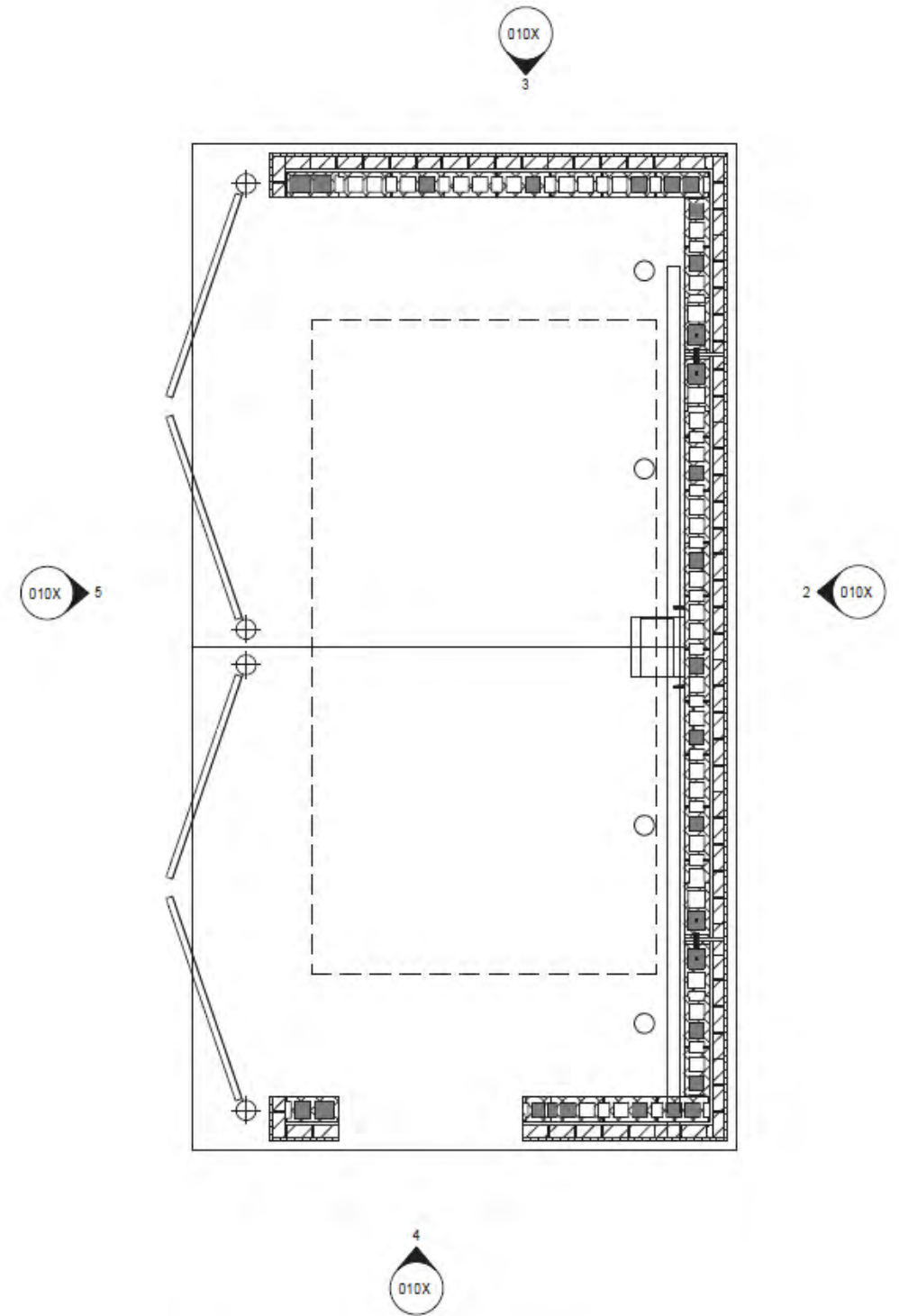
4 DUMPSTER ENCLOSURE LEFT ELEVATION
3/8" = 1'-0"



3 DUMPSTER ENCLOSURE RIGHT ELEVATION
3/8" = 1'-0"



2 DUMPSTER ENCLOSURE REAR ELEVATION
3/8" = 1'-0"



1 DUMPSTER ENCLOSURE PLAN
3/8" = 1'-0"

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 456 (SUP-456) FOR A CONVENIENCE STORE WITH GASOLINE SALES ON CERTAIN PROPERTY DESCRIBED AS 1.738 ACRES OF LAND AND BEING A TRACT OF LAND SITUATED IN THE J. TANNEHILL SURVEY, ABSTRACT NO. 1252 AND ZONED PLANNED DEVELOPMENT DISTRICT NO. 38 (PD-38) WITH COMMERCIAL DISTRICT-2 (C-2) USES; GRANTING AN EXCEPTION TO SECTION 32-3 OF THE TOWN'S CODE OF ORDINANCES, "ACCESS MANAGEMENT POLICY AND CRITERIA" REGARDING DRIVEWAY SPACING; AN EXCEPTION TO SECTION IV.C.5. OF THE TOWN'S ENGINEERING DESIGN CRITERIA REQUIREMENT TO PROVIDE A WET RETENTION POND; AN EXCEPTION TO SECTION 2.1 OF THE TOWN'S URBAN DESIGN STANDARDS TO PERMIT DEVELOPMENT THAT HAS MERITORIOUS QUALITY AND DESIGN; A WAIVER TO SECTION 12.1 OF THE TOWN'S URBAN DESIGN STANDARDS REQUIRING ROOFS OF NON-RESIDENTIAL BUILDINGS 15,000 SQUARE FEET OR LESS TO REFLECT HIP AND/OR GABLE STYLES THAT REPLICATE RESIDENTIAL SCALE AND PITCH; AND A DEVIATION TO SECTION 82-73 OF THE TOWN'S CODE OF ORDINANCES TO EXCEED REQUIRED PARKING BY GREATER THAN 20 PERCENT IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owner of the property described as 1.738 acres of land and being a tract of land situated in the J. Tannehill Survey, Abstract No. 1252 has filed an application for has filed an application for a Specific Use Permit for a convenience store with gasoline sales; and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on September 9, 2019, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 16, 2019, with respect to the Specific Use Permit described herein; and

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing

ORDINANCE NO. _____**Page 2**

with notice, publication and procedural requirements for the approval of a Specific Use Permit on the property.

WHEREAS, the Town Council finds that the amendment as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public.

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

SECTION 1

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

1.738 acres of land and being a tract of land situated in the J. Tannehill Survey, Abstract No. 1252, Denton County, Texas as more fully described in Exhibit "A" below.

Specific Use Permit No. 456 is hereby granted for a convenience store with gasoline sales, as more fully described in the exhibits attached hereto and incorporated herein

SECTION 2

The conceptual site plan, conceptual landscape plan, and conceptual elevations of the proposed convenience store with gasoline sales, attached hereto as Exhibits "B", "C", and "D" each incorporated herein for all purposes allowed by law, are hereby approved as the conceptual site plan, conceptual landscape plan, and conceptual elevations for this Specific Use Permit.

SECTION 3

The official map of the Town of Flower Mound is amended and the Director of Development Services is directed to revise the official zoning map to reflect the approved Specific Use Permit, as set forth above.

SECTION 4

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

SECTION 5

An exception to Section 32-3 of the Town Code regarding driveway spacing in order to construct a driveway on Spinks Road less than 250 linear feet from another driveway is hereby granted. The permitted spacing shall be 174 linear feet as shown on Exhibit "B".

ORDINANCE NO. _____**Page 3****SECTION 6**

An exception to Section IV.C.5. of the Town's Engineering Design Criteria requirement to provide a wet retention pond is hereby granted. A temporary dry detention area shall be provided as shown on Exhibit's "B" and "C".

SECTION 7

An exception to Section 2.1 of the Town's Urban Design standards is hereby granted to permit the proposed development that has meritorious quality and design as shown on Exhibit "D".

SECTION 8

A waiver to Section 12.1 of the Town's Urban Design standards requiring roofs of non-residential buildings 15,000 square feet or less is hereby granted to reflect hip and/or gable styles that replicate residential scale and pitch as shown on Exhibit "D".

SECTION 9

A deviation to Section 82-73 of the Town's Code of Ordinances is hereby granted to exceed required parking by greater than 20 percent as shown on Exhibit "B".

SECTION 10

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

SECTION 11

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

SECTION 12

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

ORDINANCE NO. _____

Page 4

SECTION 13

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

SECTION 14

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 15

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 16TH DAY OF SEPTEMBER, 2019.

APPROVED:

STEVE DIXON, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY

METES AND BOUNDS DESCRIPTION

BEING a tract of land situated in the J. Tannehill Survey, Abstract No. 1252, Town of Flower Mound, Denton County, Texas, being a portion of Tract I conveyed to WCFLP RE 2499, LP, according to the deed recorded in Doc. No. 2017-90782 of the Official Public Records, Denton County, Texas (OPRDCT), with the subject tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod with plastic cap stamped "SPIARSEN" set for the intersection of the south line of Spinks Road, a called 120 foot wide right-of-way, created by deed recorded in Document No. 94-R0081673 OPRDCT, with the east line of Farm to Market Road 2499, a variable width right-of-way (also known as Long Prairie Road), created by deed recorded in Volume 2284, Page 687, Deed Records, Denton County, Texas;

THENCE N 50°34'18" E, 66.63 feet along the south line of Spinks Road to a 1/2" iron rod with plastic cap found;

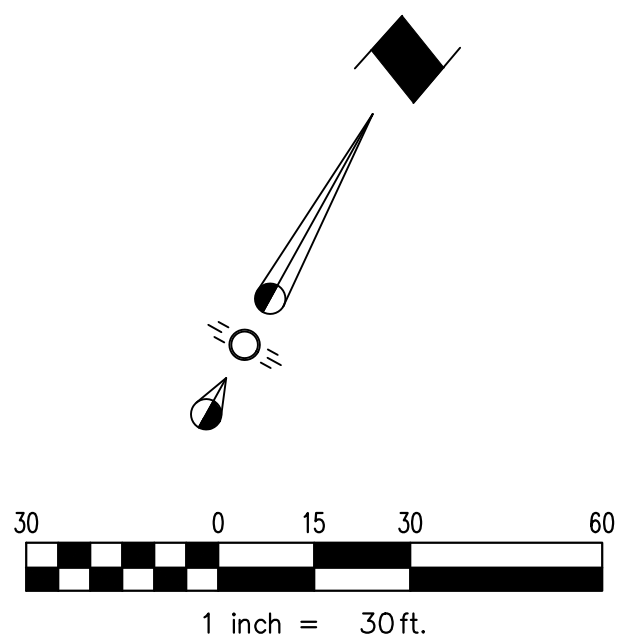
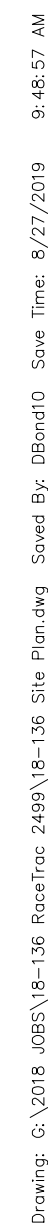
THENCE continuing along the south line of Spinks Road, around a tangent curve to the right having a central angle of 8°31'03", a radius of 1085.92 feet, a chord of N 54°49'50" E - 161.28 feet, an arc length of 161.43 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set, and from which a 1/2" iron rod found for corner bears N 75°00'52" E, 595.91 feet;

THENCE S 29°14'14" E, 355.40 feet departing said right-of-way, to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

THENCE S 60°45'23" W, 227.62 feet to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set on the east line of Farm to Market Road 2499, from which a 1/2" iron rod with plastic cap found bears S 21°53'41" E, 407.42 feet;

THENCE N 21°53'41" W, 13.23 feet along the east line of Farm to Market Road 2499 to a 1/2" iron rod with plastic cap stamped "SPIARSEN" set;

THENCE continuing along the east line of Farm to Market Road 2499, around a non-tangent curve to the left having a central angle of 14°42'31", a radius of 1225.92 feet, a chord of N 29°14'57" W - 313.85 feet, an arc length of 314.71 feet to the POINT OF BEGINNING with the subject tract containing 75,715 square feet or 1.738 acres of land.



LOCATION MAP

SITE DATA TABLE		
Physical Address		
Gross Site Area	1,738 Ac. / 75,715 Sq. Ft.	
Net Site Area	1,738 Ac. / 75,715 Sq. Ft.	
Zoning	PD-38	
Current use	Vacant	
Lot Coverage Data		
• Building Coverage	18.7% / 14,185 Sq. Ft.	
• Impervious Area	33.6% / 25,434 Sq. Ft.	
• Pervious Area	66.4% / 50,281 Sq. Ft.	
Parking Summary	Required	Provided
Surface Parking		
• Retail	27 Sp.	32 Sp.
Total Parking	27 Sp.	32 Sp.
Building Data		
• Building	1 story	
• Peak Height	23'-0"	
• Mean Height	19'-0"	
• Total Square Footage	5,411 Sq. Ft.	

Note:
No delivery trucks of any kind, including
fuel tanker trucks, will be allowed on
Spinks Road.

Note:
All Dimensions are to Face-of-Curb/Edge
of stripe or face of building unless
otherwise noted.

Note:
Handicap parking is provided in
accordance with ADA standards.

Note:

1. All retaining/detaining walls, turn-down curbs, tree retaining walls shall be clad in a material to complement the materials and colors within this development.
2. All ground based HVAC shall be screened with live screening or a masonry enclosure. Any masonry enclosure shall be clad in the same material as the main building.
3. All roof-mounted mechanical units and/or equipment shall be screened from view.
4. Dumpster screening wall shall be clad in a material to match the materials on the main building.
5. Dumpster screening wall requires a separate building permit.
6. Signs require a separate building permit. Any signs depicted on the site plan or elevations are not approved as a part of this review and must comply with all applicable Town regulations.

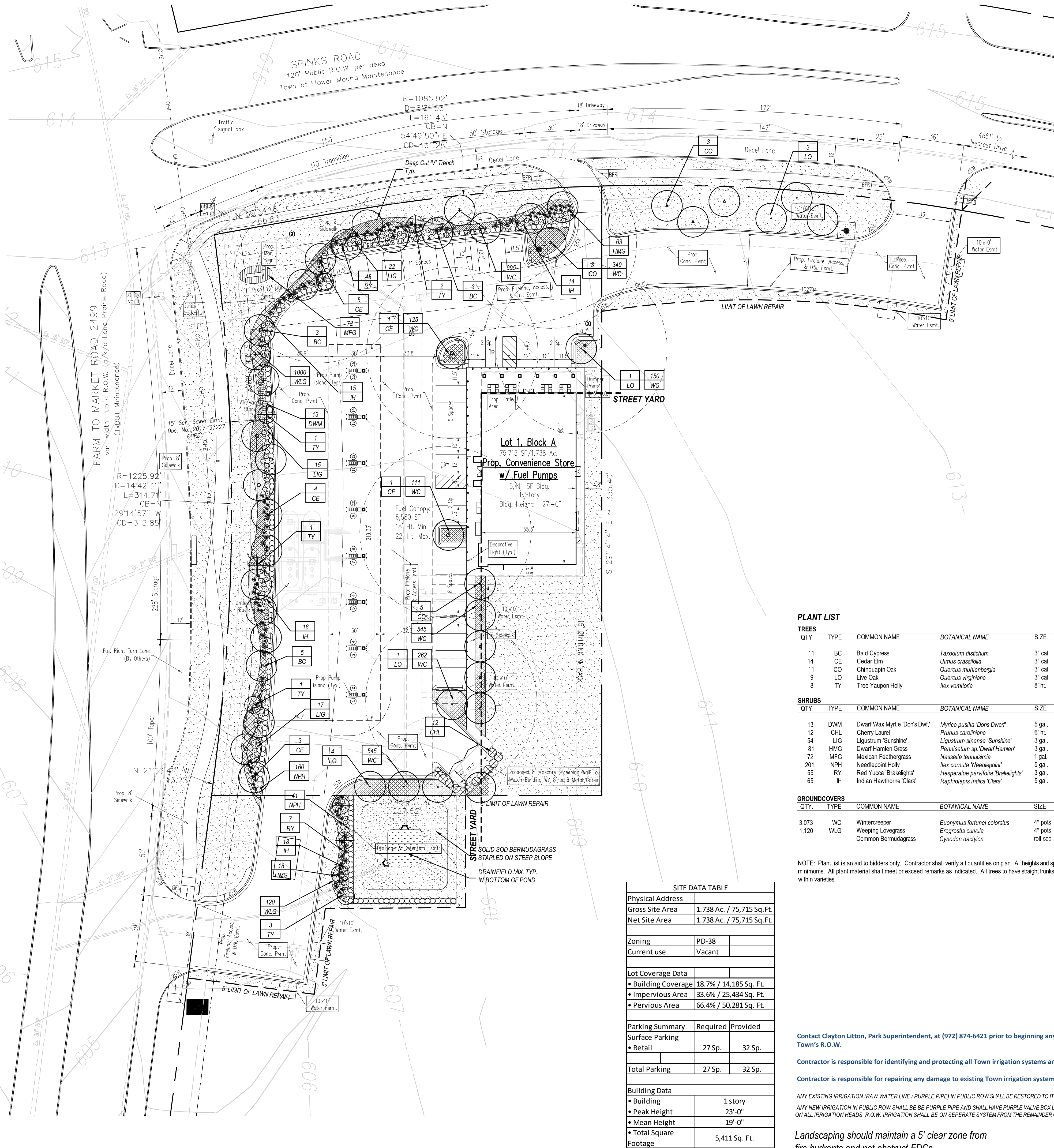
LEGEND

BFR BARRIER FREE RAMPS

CONCEPTUAL SITE PLAN
RACETRAC 2499
ADDITION

LOT 1, BLOCK A - 1.738 Acres
J. TANNEHILL SURVEY ~ ABST. 1252
IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS

OWNER	APPLICANT	ENGINEER/SURVEYOR
WCLP RE 2149 LP	RaceTrac Petroleum, Inc.	Spars Engineering, Inc.
15660 Dallas Parkway, Suite 1175	3225 Cumberland Blvd. Suite 100	TPBE No. F-2121
Dallas, TX 75248	Atlanta, GA 30339	765 Custer Road, Suite 100
Telephone: (214) 740-3482	Telephone: (770) 431-7600	Plano, TX 75075
	Contact: Stephanie Koshy	Telephone: (972) 422-0077
		Contact: David Bond



DRAINFIELD MIX LAWN NOTES

1. Installation of Drainfield Mix to be performed by hydro-seeding.
2. Final grades to be smooth and level free of debris, rocks over 1" and shall have no ruts or depressions, grading per civil plans.
3. Install the following mix at the specified rate of 90 pounds acre or per manufacturers recommendations.
4. Seed mix available from Native American Seed: 1 800 728 4093.

LANDSCAPE TABULATIONS

STREETYARD
Requirements: 20% of Streetyard to be landscape
(1) tree per 2,500 s.f. for streetyards
10,000 and 110,000 s.f. plus 10 trees

FM 2499 (50,346 s.f.)
Required 10,069 s.f. (20%)
(20) trees plus 10 = (30) trees
Provided 11,914 s.f.
(30) trees, 3" cal.

Spinks (8,534 s.f.)
Required 1,706 s.f. (20%)
(9) trees
Provided 2,751 s.f.
(9) trees, 3" cal.

PARKING LOT (31 spaces)
Requirements: (1) tree, 3" cal., per 10 spaces
90 s.f. per ea. 12 spaces
Required (3) trees, 3" cal.
240 s.f.
Provided (6) trees, 3" cal.
2,275 s.f.

STREET BUFFER
Requirements: (1) tree, 3" cal., per 30 l.f.
FM 2499: 314.71 l.f.
Required (10) trees, 3" cal.
Spinks: 228.06 l.f.
Required (8) trees, 3" cal.
Provided (14) trees, 3" cal.
Provided (8) trees, 3" cal.

50' radius: tree to parking space

PLANT LIST

TREES					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
11	BC	Bald Cypress	Taxodium distichum	3" cal.	container grown, 13' ht., 4'-5' spread min.
14	CE	Cedar Elm	Ulmus crassifolia	3" cal.	container grown, 13' ht., 4'-5' spread min.
11	CO	Chinquapin Oak	Quercus muhlenbergia	3" cal.	container grown, 13' ht., 4'-5' spread min.
9	LO	Live Oak	Quercus virginiana	3" cal.	container grown, 13' ht., 4'-5' spread min.
8	TY	Tree Yaupon Holly	Ilex vomitoria	8' ht.	B&B, 3-5 cane, no cross cuning

SHRUBS					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
13	DWM	Dwarf Wax Myrtle 'Dons Dwarf'	Myrica pusilla 'Dons Dwarf'	5 gal.	container, full plant, 36" o.c.
12	OHL	Cherry Laurel	Prunus caroliniana	6" ht.	container, full to base, 5' o.c.
54	LIG	Ligustrum 'Sunshine'	Ligustrum sinense 'Sunshine'	3 gal.	container, full plant, 36" o.c.
81	HMG	Dwarf Hamlen Grass	Pennisetum sp. 'Dwarf Hamlen'	3 gal.	container, full top of container, 36" o.c.
72	MFG	Mexican Feathergrass	Nassella tenuissima	1 gal.	container, full top of container, 18" o.c.
201	NPH	Needlepoint Holly	Ilex cornuta 'Needlepoint'	5 gal.	container, full plant, 36" o.c.
55	RY	Red Yucca 'Brakeights'	Hesperaloe parvifolia 'Brakeights'	3 gal.	container, full plant, 36" o.c.
65	IH	Indian Hawthorne 'Clara'	Raphiolepis indica 'Clara'	5 gal.	container, full plant, 36" o.c.

GROUNDCOVERS					
QTY.	TYPE	COMMON NAME	BOTANICAL NAME	SIZE	REMARKS
3,073	WC	Wintercreeper	Euonymus fortunei coloratus	4" pots	container, (3) 12" runners min. 12" o.c.
1,120	WLG	Weeping Lovegrass	Eragrostis curvula	4" pots	container, full top of container, 12" o.c.
		Common Bermudagrass	Cynodon dactylon	roll sod	solid sod, refer to notes

NOTE: Plant list is an aid to bidders only. Contractor shall verify all quantities on plan. All heights and spreads are minimums. All plant material shall meet or exceed remarks as indicated. All trees to have straight trunks and be matching within varieties.

SITE DATA TABLE	
Physical Address	
Gross Site Area	1.738 Ac. / 75,715 Sq. Ft.
Net Site Area	1.738 Ac. / 75,715 Sq. Ft.
Zoning	PD-38
Current use	Vacant
Lot Coverage Data	
• Building Coverage	18.7% / 14,185 Sq. Ft.
• Impervious Area	33.6% / 25,434 Sq. Ft.
• Pervious Area	66.4% / 50,281 Sq. Ft.
Parking Summary	Required Provided
• Surface Parking	
• Retail	27 Sp. 32 Sp.
Total Parking	27 Sp. 32 Sp.
Building Data	
• Building	1 story
• Peak Height	23'-0"
• Mean Height	19'-0"
• Total Square Footage	5,411 Sq. Ft.

Landscape should maintain a 5' clear zone from fire hydrants and not obstruct FDCs.

HYDROMULCH NOTES

1. Contractor shall scarify, rip, loosen all areas to be hydromulched to a minimum depth of 4" prior to topsoil and hydromulch installation.
2. Fiber: Shall be one hundred (100%) percent Wood Cellulose Fiber, delivered to the site in its original unopened container, 'Conweb' or equal.
3. Fiber Tack: Shall be delivered to the site in its original unopened container, and shall be 'Terra-Tack one', as manufactured by Growers, Inc., or equal.
4. Use a 4x8' batter board against all beds areas.
5. If installation occurs between September 1 and April 1, all hydromulch areas to be Winter Ryegrass, at a rate of four (4) pounds per one thousand (1000) square feet. Contractor shall be required to re-hydromulch with Bermudagrass the following growing season.
6. In the event ryegrass is necessary due to time of year installation, it shall be the responsibility of the contractor to scalp existing grass, bag clippings, and scarify soil to a depth of 1" prior to permanent lawn grass installation.
7. All lawn areas to be hydromulched, shall have one hundred (100%) percent coverage prior to final acceptance.
8. Contractor shall maintain all lawn areas until final acceptance. This shall include but not be limited to: mowing, watering, weeding, cultivating, cleaning, and replacing dead or bare areas to keep plants in a vigorous, healthy condition.
9. Contractor shall guarantee establishment of an acceptable turf area and shall provide replacement from local supply as necessary.

LANDSCAPE NOTES

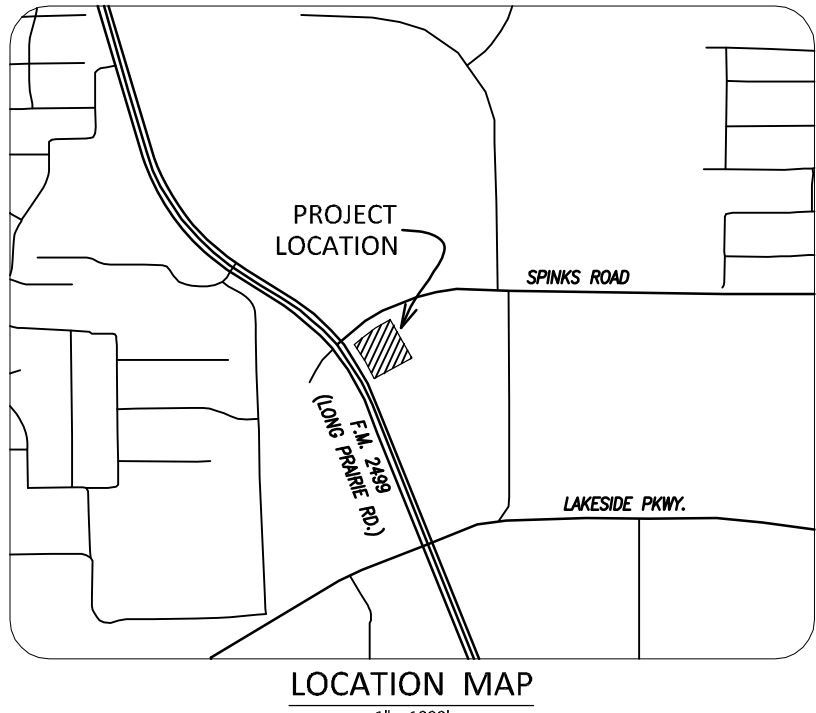
1. Contractor shall verify all existing and proposed site elements and notify Architect of any discrepancies. Survey data of existing conditions was supplied by others.
2. Contractor shall locate all existing underground utilities and notify Architect of any conflicts. Contractor shall exercise caution when working in the vicinity of underground utilities.
3. Contractor is responsible for obtaining all required landscape and irrigation permits.
4. Contractor to provide a minimum 2% slope away from all structures.
5. All planting beds and lawn areas to be separated by steel edging. No steel to be installed adjacent to sidewalks or curbs.
6. All landscape areas to be 100% irrigated with an underground automatic irrigation system and shall include rain and freeze sensors.
7. All lawn areas to be Solid Sod Bermudagrass, unless otherwise noted on the drawings.

MAINTENANCE NOTES

1. The Owner, tenant and their agent, if any, shall be jointly and severally responsible for the maintenance of all landscape.
2. All landscape shall be maintained in a neat and orderly manner at all times. This shall include mowing, edging, pruning, fertilizing, watering, weeding and other such activities common to landscape maintenance.
3. All landscape areas shall be kept free of trash, litter, weeds and other such material or plants not part of this plan.
4. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year.
5. All plant material which dies shall be replaced with plant material of equal or better value.
6. Contractor shall provide separate bid proposal for one year's maintenance to begin after final acceptance.

GRAPHIC PLANT LEGEND

	CEDAR ELM		WEEPING LOVEGRASS
	LIVE OAK		WINTERCREEPER
	BALD CYPRESS		MEXICAN FEATHER GRASS
	CHINQUAPIN OAK		LAWN BERMUDAGRASS
	TREE YAUPON HOLLY		
	CHERRY LAUREL		
	DWARF WAX MYRTLE		
	NEEDLEPOINT HOLLY		
	RED YUCCA 'BRAKEIGHTS'		
	INDIAN HAWTHORNE 'CLARA'		
	SUNSHINE LIGUSTRUM		
	DWARF HAMLEN GRASS		



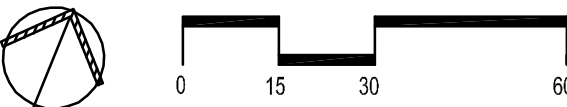
GENERAL LAWN NOTES

1. Fine grade areas to achieve final contours indicated on civil plans.
2. Adjust contours to achieve positive drainage away from buildings. Provide uniform rounding at top and bottom of slopes and other breaks in grade. Correct irregularities and areas where water may stand.
3. All lawn areas to receive solid sod shall be left in a maximum of 1" below final finish grade. Contractor to coordinate operations with on-site Construction Manager.
4. Imported topsoil shall be natural, friable soil from the region, known as bottom and soil, free from lumps, clay, toxic substances, roots, debris, vegetation, stones, containing no salt and black to brown in color.
5. All lawn areas to be fine graded, irrigation trenches completely settled, and finish grade approved by the Owner's Construction Manager or Architect prior to installation.
6. All rocks 3/4" diameter and larger, dirt clods, sticks, concrete spoils, etc. shall be removed prior to placing topsoil and any lawn installation.
7. Contractor shall provide (1") one inch of imported topsoil on all areas to receive lawn.

SOLID SOD NOTES

1. Fine grade areas to achieve final contours indicated. Leave areas to receive topsoil 3" below final desired grade in planting areas and 1" below final grade in turf areas.
2. Adjust contours to achieve positive drainage away from buildings. Provide uniform rounding at top and bottom of slopes and other breaks in grade. Correct irregularities and areas where water may stand.
3. All lawn areas to receive solid sod shall be left in a maximum of 1" below final finish grade. Contractor to coordinate operations with on-site Construction Manager.
4. Contractor to coordinate with on-site Construction Manager for availability of existing topsoil.
5. Plant sod by hand to cover indicated area completely. Insure edges of sod are touching. Top dress joints by hand with topsoil to fill voids.
6. Roll grass areas to achieve a smooth, even surface, free from unnatural undulations.
7. Water sod thoroughly as sod operation progresses.
8. Contractor shall maintain all lawn areas until final acceptance. This shall include, but not limited to: mowing, watering, weeding, cultivating, cleaning and replacing dead or bare areas to keep plants in a vigorous, healthy condition.
9. Contractor shall guarantee establishment of an acceptable turf area and shall provide replacement from local supply if necessary.
10. If installation occurs between September 1 and March 1, all sod areas to be over-seeded with Winter Ryegrass, at a rate of (4) pounds per one thousand (1000) square feet.

01 LANDSCAPE PLAN
SCALE: 1" = 30'-0"



LANDSCAPE PLAN
RACETRAC 2499
ADDITION

LOT 1, BLOCK A - 1.738 Acres
J. TANNEHILL SURVEY ~ ABST. 1252
IN THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS



smr
landscape architects, inc.
1708 N. Griffin Street
Dallas, Texas 75202
Tel 214.871.0983
Fax 214.871.0545
Email smr@smr-las.com

OWNER
WCF LP RE 2499 LP
15660 Dallas Parkway, Suite 1175
Dallas, TX 75248
Telephone: (214) 740-3482
Contact: Matthew Gallo

APPLICANT
RaceTrac Petroleum, Inc.
3225 Cumberland Blvd. Suite 100
Atlanta, GA 30339
Telephone: (770) 431-7600
Contact: Andrew Malzer

ENGINEER/SURVEYOR
Sparks Engineering, Inc.
TBPE No. F-2121
765 Custer Road, Suite 100
Plano, TX 75075
Telephone: (972) 422-0077
Contact: David Bond



4 NORTH ELEVATION
3/16" = 1'-0"



3 SOUTH ELEVATION
3/16" = 1'-0"



2 EAST ELEVATION
3/16" = 1'-0"



1 WEST ELEVATION
3/16" = 1'-0"

MATERIAL CALCULATIONS				
	NORTH (SIDE ENTRY)	SOUTH (NON-ENTRY)	EAST (REAR)	WEST (FRONT)
1. TOTAL FACADE S.F.	1,299	1,348	2,221	2,324
2. FACADE S.F. (EXCLUSIVE OF DOORS AND WINDOWS)	1,102	1,274	2,061	1,975
3. DOORS AND WINDOWS S.F.	197	74	160	349
4. PRIMARY MASONRY TOTALS (MIN. 80%)	881 (80%)	1,021 (80%)	1,648 (80%)	1,573 (80%)
BRICK S.F.	854 (77%)	981 (77%)	1,500 (73%)	1,504 (76%)
STONE S.F.	27 (3%)	148 (7%)	148 (7%)	69 (4%)
5. SECONDARY MASONRY TOTALS (MAX. 20%)	221 (20%)	253 (20%)	413 (20%)	402 (20%)
EIFS S.F.	20 (2%)	51 (4%)	152 (8%)	60 (3%)
HARDPLANK S.F.	0	75 (6%)	15 (0%)	221 (11%)
METAL S.F.	201 (18%)	127 (10%)	246 (12%)	121 (6%)

EXTERIOR MATERIAL SCHEDULE		
AWNING	ALUMINUM AWNING	SELECTED BY RACETRAC
AW-1	-	-
BRICK	LAREDO BRICK	MORTAR COLOR "LIGHT BUFF"
BR-1	BORAL	MOUNT RUSHMORE
BR-2	BORAL	MOUNT RUSHMORE
CAST STONE	MATCH BORAL TUSCAN	COLOR 1102 NATURAL STONE; MORTAR COLOR "LIGHT BUFF". SEAL WITH (SL-5) SEALANT.
CS-1	CONTINENTAL CAST STONE OR APPROVED OTHER	MATCH BORAL TUSCAN LINTEL CHAMPAGNE
CEMENT BOARD	ARTISAN V-GROOVE SIDING	PAINT SHERWIN WILLIAMS QUIVER TAN #6151
HP-1	JAMES HARDIE	PAINT SHERWIN WILLIAMS QUIVER TAN #6151
EIFS	STO	STO THERM CI
EF-1	STO	STO THERM CI
EF-2	STO	STO THERM CI
GLAZING	1" NON-IMPACT RATED INSULATED GLAZING	CLIMATE ZONES 2 OR 3. IGU AT STOREFRONT 0.28 U-FACTOR, SHGC PF>0.25-0.27 (1/4" PPG SOLARBAN 70-XL LOW-E #2 +1/2" AIR +1/4" CLEAR) OR APPROVED ALTERNATE
GL-1	1" NON-IMPACT RATED INSULATED GLAZING	CLIMATE ZONES 2 OR 3. IGU AT STOREFRONT 0.28 U-FACTOR, SHGC PF>0.25-0.27 (1/4" PPG SOLARBAN 70-XL LOW-E #2 +1/2" AIR +1/4" CLEAR) OR APPROVED ALTERNATE
GL-2	1" NON-IMPACT RATED ACID ETCHED INSULATED GLAZING	CLIMATE ZONES 2 OR 3. IGU AT STOREFRONT 0.28 U-FACTOR, SHGC PF>0.25-0.27 (1/4" PPG SOLARBAN 70-XL LOW-E #2 +1/2" AIR +1/4" CLEAR SATIN ETCH #3) OR APPROVED ALTERNATE
METAL	PREFINISHED 4" 2-PIECE COMPRESSION METAL COVER	METAL TO MATCH STOREFRONT COLOR DARK BRONZE
M-1	COLOR DARK BRONZE.	METAL TO MATCH STOREFRONT COLOR DARK BRONZE
M-2	VISTAWALL (OR APPROVED ALTERNATE)	FG-3000 STOREFRONT SYSTEM (OR APPROVED ALTERNATE)
M-3	ALCOA	REYNOBOND PE
M-5	VERSATEX	WP4 TONGUE AND GROOVE
M-7	ENGLERT SERIES 2000 SNAP-LOCK STANDING SEAM, 24-GA GALVALUME	STANDING SEAM ROOF; COLOR TO MATCH SW #6171 "CHATROOM"
M-8	PAINT	SHERWIN WILLIAMS EXTERIOR PAINT TO SW #7020 "BLACK FOX"
EP-1	DURO DUROLAST	50 MIL MEMBRANE ROOFING SYSTEM
ROOFING	WINDOW FILM	WINDOW FILM, 3M PRESTIGE 70 SOLAR FILM
WF-1	WINDOW FILM	OPAQUE
WF-2	WINDOW FILM	OPAQUE

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DESIGN PROFESSIONALS

GPD GROUP
Professional Corporation
520 S. MAIN STREET, STE 2531
AKRON, OH 44311

ISSUE/REVISION RECORD	
DATE	DESCRIPTION
11/02/18	PRELIM. PACKAGE
02/25/19	PRELIM. PACKAGE
03/08/19	PRELIM. PACKAGE
03/18/19	PRELIM. PACKAGE
4/18/19	PRELIM. PACKAGE
4/30/19	PRELIM. PACKAGE
6/20/19	PRELIM. PACKAGE
07/24/19	PRELIM. PACKAGE

RaceTrac.
RACETRAC PETROLEUM, INC.
200 GALLERIA PARKWAY SOUTHEAST
SUITE 900
ATLANTA, GEORGIA 30339
(770) 431-7600

PROJECT NAME

SPINKS

SPINKS @2499
TX
GPD Group, Professional Corporation
Texas Registration No. 19819

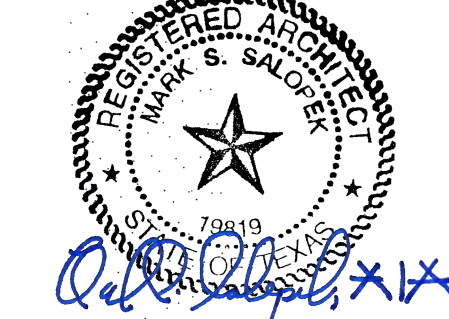
RACETRAC STORE NUMBER
#1376

PROTOTYPE SERIES 5.5K 2.0
2019 LH MO 0105

PLAN MODIFICATION NOTICE
SPB NO. 0105 DATE 02/19/19

STANDARD PLAN BULLETINS (SPB) MODIFY THE PROTOTYPE SERIES SET NOTED ABOVE. THE LISTED SPB REPRESENTS THE LATEST MODIFICATION INCORPORATED TO THIS PROTOTYPE SERIES SET AT ORIGINAL RELEASE. THE ISSUE/REVISION RECORD COLUMN ABOVE LISTS ANY REVISIONS OR SPB INCORPORATED IN THIS SET AFTER THE ORIGINAL RELEASE. CONTACT RACETRAC ENGINEERING AND CONSTRUCTION FOR ANY SUBSEQUENT BULLETINS NOT INCORPORATED HEREIN.

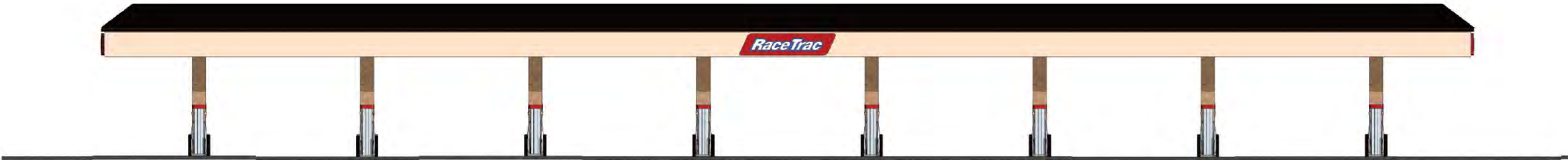
PROFESSIONAL SEAL



PROJECT NUMBER
2018157.43

SHEET TITLE
CONCEPTUAL ELEVATIONS

SHEET NUMBER
300X



2 CANOPY FRONT ELEVATION
1/8" = 1'-0"



1 CANOPY ELEVATION
1/8" = 1'-0"



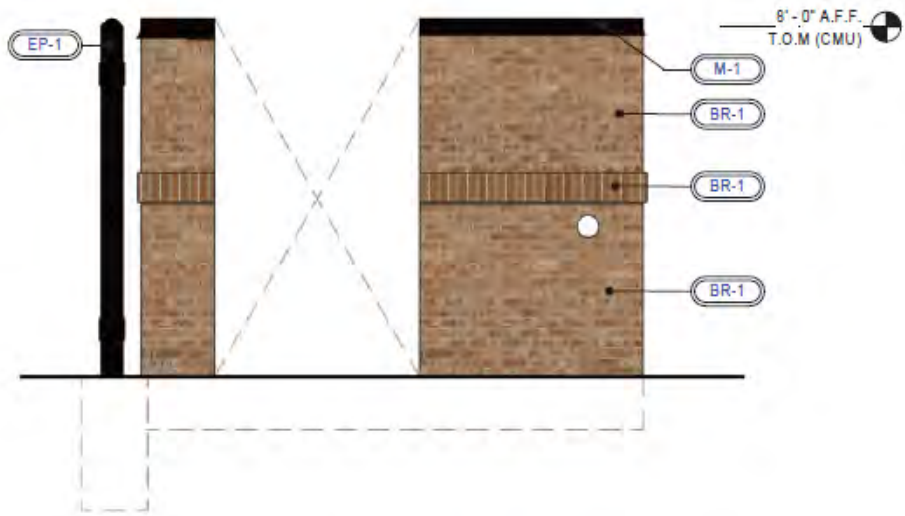
FUEL CANOPY FINISH SCHEDULE			
ID	MANUF.	MATERIAL	COMMENTS
BR-2	BORAL	MOUNT RUSHMORE	MORTAR COLOR "LIGHT BUFF"
EF-2	STO	STO THERM CI	"FINE FINISH" APPLICATION; COLOR TO MATCH SW #0094 "SENSATIONAL SAND"
FASCIA			
RED	-		REFER TO SPECIFICATION CHART ON SHEET C100
WHITE	-		8" WHITE STRIPE
METAL			
M-5	ALCOA	REYNOBOND PE	COLORWELD 500 "CLASSIC BRONZE"
PAINT			
EP-1	SHERWIN WILLIAMS	EXTERIOR PAINT TO SW #7020 "BLACK FOX"	
STANDARD CANOPY FASCIA COLOR SPECIFICATION CHART			
COLOR CALLOUT	CANOPY MANUFACTURER	STANDARD COLOR SPECIFICATION	
"TAN"	LANE CANOPIES	ETT TAN FASCIA	
	McGEE CANOPIES	ETT TAN FASCIA	
	MADISON CANOPIES	PUEBLO TAN FASCIA	
"RED"	LANE CANOPIES	TRD RED FASCIA	
	McGEE CANOPIES	TRD RED FASCIA - PROGRAM RED	
	MADISON CANOPIES	PROGRAM RED FASCIA	

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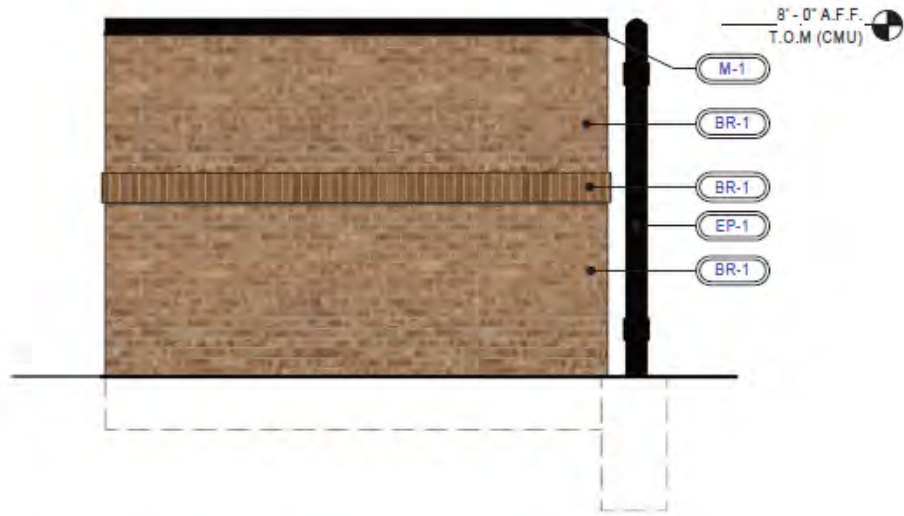
DUMPSTER FINISH SCHEDULE			
ID	MANUF.	MATERIAL	COMMENTS
BRICK			
BR-1	BORAL	LAREDO BRICK	MORTAR COLOR "LIGHT BUFF"
METAL			
M-1		PREFINISHED 4" 2-PIECE COMPRESSION METAL COVER	METAL TO MATCH STOREFRONT COLOR DARK BRONZE
M-10		METAL GATE W/ SOLID METAL BACKING FINISHED TO MATCH EXTERIOR PAINT TO SW #7020 "BLACK FOX"	
PAINT			
EP-1	SHERWIN WILLIAMS	EXTERIOR PAINT TO SW #7020 "BLACK FOX"	



5 DUMPSTER ENCLOSURE FRONT ELEVATION
3/8" = 1'-0"



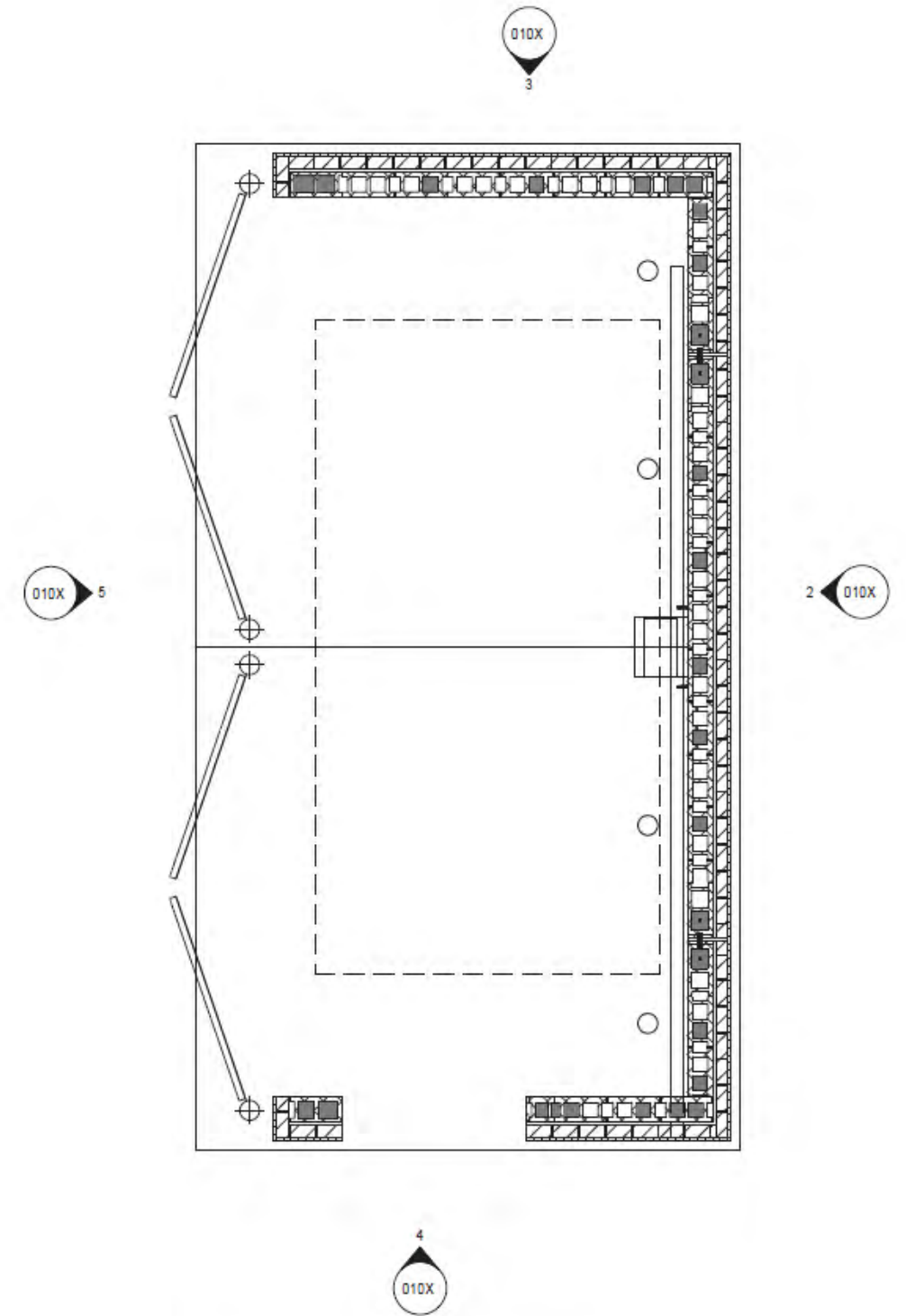
4 DUMPSTER ENCLOSURE LEFT ELEVATION
3/8" = 1'-0"



3 DUMPSTER ENCLOSURE RIGHT ELEVATION
3/8" = 1'-0"



2 DUMPSTER ENCLOSURE REAR ELEVATION
3/8" = 1'-0"



1 DUMPSTER ENCLOSURE PLAN
3/8" = 1'-0"

From: Drew Cunningham
Sent: Tuesday, September 10, 2019 2:13 PM
To: Chuck Russell <chuck.russell@flower-mound.com>
Cc: Stephanie Koshy; David Bond; Andrew Malzer; Kendra Stephenson; Tyler Barnett
Subject: Re: RaceTrac

We plan on moving forward to Council on the 16th. Thanks.

Sent from phone

On Sep 10, 2019, at 2:10 PM, Chuck Russell <chuck.russell@flower-mound.com> wrote:

All,

Based on the recommendation of denial at last night's Planning and Zoning Commission, please let me know as soon as possible if you intend to appeal this recommendation to Town Council or withdraw the application. You are already scheduled for the September 16, 2019 meeting, please confirm if you want to stay on this agenda. Please note that a super majority vote of the Council will be required to approve the application.

Also, if you intend to move forward, please repost the notification signs as soon as possible and send updated pictures of the signs to me.

Thank you, and please let me know if have any questions.

Chuck Russell, AICP
Town Planner
Planning Services Division
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028
972-874-6347
chuck.russell@flower-mound.com



TOWN COUNCIL AGENDA ITEM NO. 28

REGULAR ITEM

DATE: September 16, 2019

FROM: Chuck Russell, Town Planner

ITEM: **Public Hearing to consider a request for rezoning (ZPD19-0010 – Parker Square CSP Building 700) to amend the Comprehensive Sign Standards within Planned Development District No. 24 (PD-24) by allowing certain attached office tenant signs for Building 700, and consider adopting an ordinance providing for said amendment. The property is located north of Cross Timbers Road at 700 Parker Square Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 1 at its September 9, 2019, meeting.)**

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. At their September 9, 2019, P&Z meeting, the Commission recommended approval of the subject request with the condition that the sign panels remain satin black in color with white lettering. This language has been included in the Draft Ordinance.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

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

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



PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 5
REGULAR ITEM

DATE: September 9, 2019

FROM: Chuck Russell, Town Planner

ITEM: **Public Hearing to consider a request for rezoning (ZPD19-0010 – Parker Square CSP Building 700) to amend the Comprehensive Sign Standards within Planned Development District No. 24 (PD-24) by allowing certain attached office tenant signs for Building 700. The property is located north of Cross Timbers Road at 700 Parker Square Road.**

I. ITEM SUMMARY

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

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to amend the sign regulations within Planned Development District No. 24 (PD-24) for Parker Square. Specifically, the applicant is requesting to allow two attached tenant signs for one building (700 Parker Square). The proposed amendment will not affect the remainder of PD-24.

The subject building currently contains four tenant signs on the building's front facade (two on each side of the main entrance). These four signs are 1-foot, 6 inches tall by 4-feet wide. These signs were allowed under a Parker Square sign ordinance from 2004 that was repealed in 2007.

The applicant is proposing to replace the existing four tenant signs with two 80-inch tall by 4-foot wide tenant signs (1 on each side of the main entrance). This is an incremental increase of 20 inches of sign space on each side of the main entrance. The new signs will contain 16 changeable aluminum panels (8 per sign). Each panel will have a maximum height of 10 inches and width of 48 inches.

Section 86-68 Walls Signs of the Town Code states:

Nonresidential buildings (multitenant interior access).

a. One wall sign shall be permitted per building wall not to exceed two walls to identify a maximum of two tenants.

b. One additional wall sign shall be permitted, to be utilized as a "directory" sign to list building tenants, with uniform lettering and oriented so as not to be

readable from a public street. Such additional wall sign shall not exceed six feet in height, shall not exceed 18 square feet of sign area, shall not contain lettering exceeding two inches in height, and shall not be visible from any public street.

The proposed signs exceed the Town's maximum allowable height by 8 inches, allowable square footage by approximately 8.7 square feet, lettering exceeds two inches in height, and they are both visible from a public street.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all rezoning requests. At the time this report was written, staff had received no correspondence in support and no correspondence in opposition to the project.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent

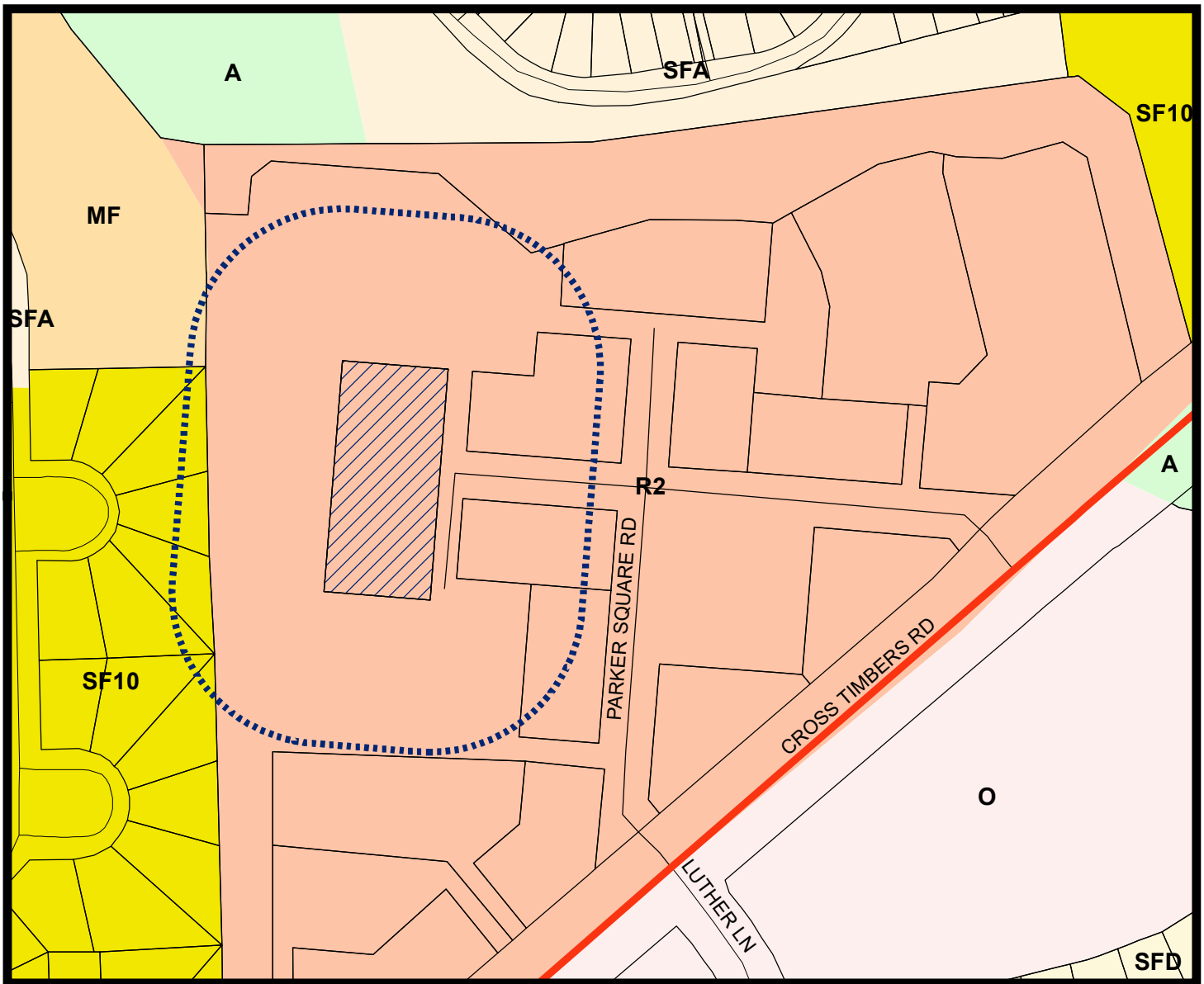
B. Application Details

1. Proposed Sign Package

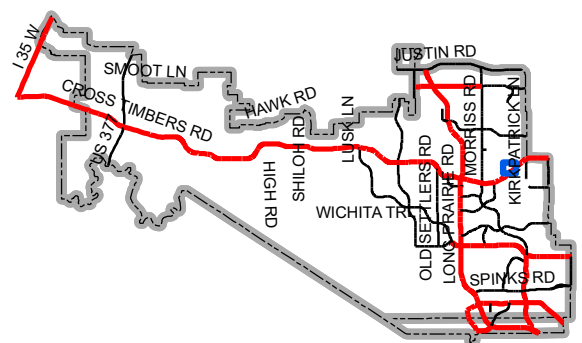
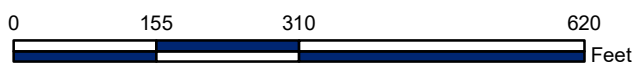
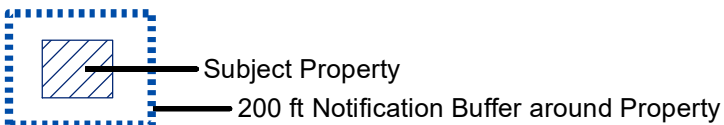
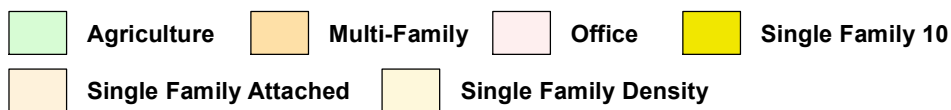


Vicinity Map

Reference Project: ZPD19-0010



LEGEND



Map Location

July 24, 2019

Bill Gravitt
543 Bennett Lane, Lewisville, TX 75057
940.368.9903

Letter of Intent

A. Proposed Rezoning

Gallery Custom Signs, on behalf of the building owner (Responsive Education Solutions) is submitting this letter to gain Town of Flower Mound approval to alter the main facade signage at 700 Parker Square. The reason for this request is to satisfy the need of the building owner to properly represent the presence of many newly acquired building tenants who have moved into the Flower Mound 700 Parker Square address. The building owner wishes to increase visibility to clients driving past the building by adding architecturally complimentary signs that enhance the stately look of 700 Parker Square.

The specific changes we are requesting are as follows:

- **Attached Document “A”:** “Parker Square Sign Standards”, Page 7, Section: **“Special Mounting Locations at Building 700”**.
 - Change the size of the current allowed signage from quantity (4) 1’6”H x 4’W tenant signs (2 on each side of the main entrance), spaced approximately 12” apart (a total of approximately 5 feet of space), to a new allowed size of (2) 80”H x 4’W tenant signs (1 on each side of the main entrance). This is an incremental increase of 20” of sign space on each side of the main entrance. The new signs will include quantity 8, 10”Hx48”W changeable aluminum panels, enclosed by a 1.25”W aluminum frame. **Please see attachments, “B”, and “C”** for a visual reference.

B. Existing Zoning Districts

- Four 1’6”H x 4’W fabricated aluminum sign panels with paint finish and applied dimensional border and lettering (2 on each side of the main entrance).

C. Define Acreage of Subject Property - Not Applicable

D. Indicate Phases of Development - proposed changes will be a one time change. No phases.

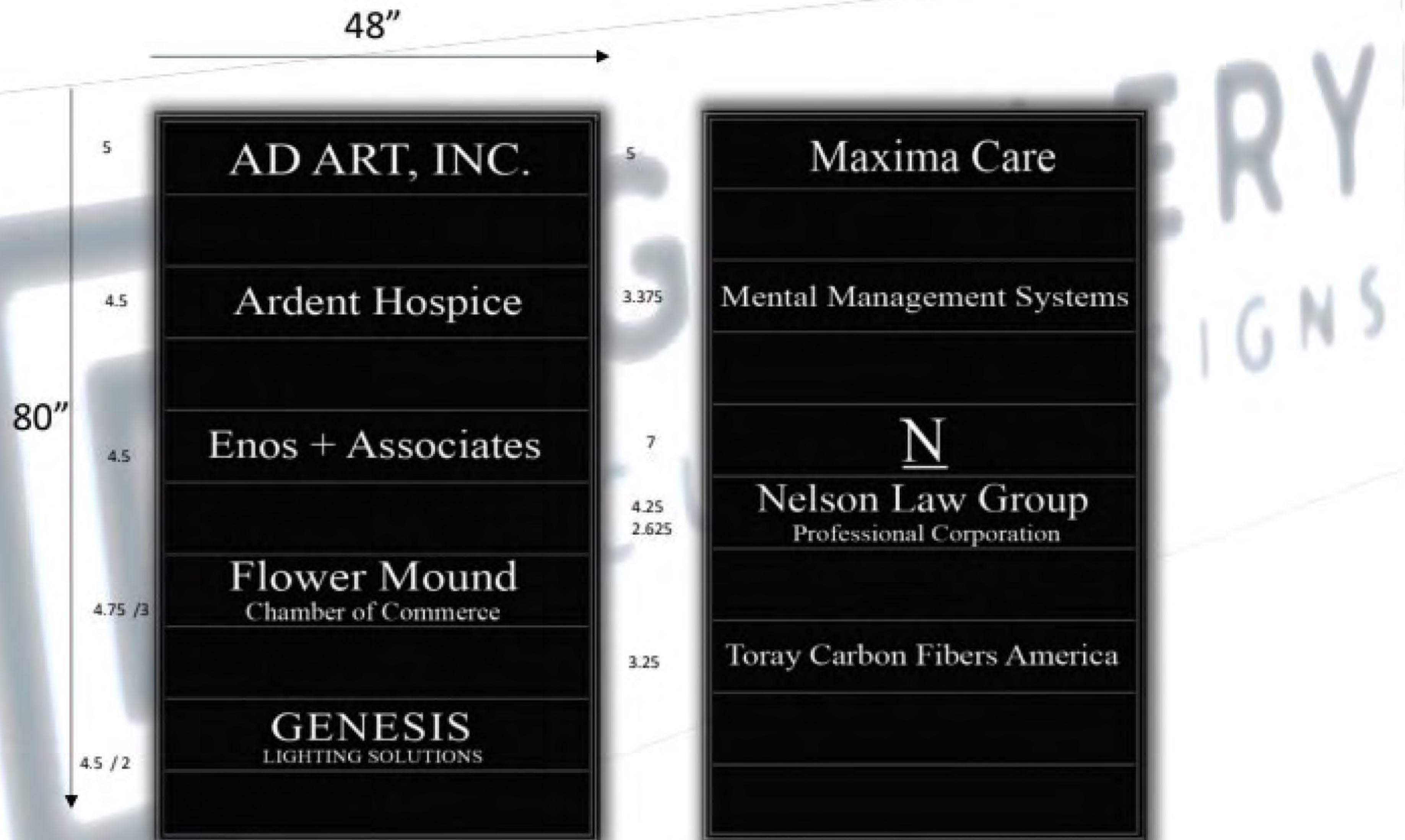
E. Special Considerations - this property is unique in this development in that it has an increasing number of tenants (up to 20 tenants), but the current signage criteria does not suit this number as it only allows for (4) total tenant signs. The building owner wishes to enhance the aesthetics of the building while increasing the functionality of the signage.

Current



Proposed





Materials: Extruded Aluminum Frame/Panels, All Weather UV Paint (Satin Black), Hidden Tamper Proof Fasteners, Mounted w/Corrosion Resistant Masonry Anchors (hidden)

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 80-03, WHICH AMENDED PLANNED DEVELOPMENT DISTRICT NO. 24 (PD-24) FOR (O) OFFICE DISTRICT AND (R-2) RETAIL DISTRICT-2 USES, BY AMENDING EXHIBIT "B" ON CERTAIN PROPERTY DESCRIBED AS LOT 4R, BLOCK 1, OF THE PARKER SQUARE ADDITION, BY ALLOWING CERTAIN ATTACHED TENNANT WALL SIGNS; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owner of the property described as Lot 4R, Block 1, of the Parker Square Addition has filed an application for a Zoning Planned Development amendment to amend Ordinance No. 80-03 for Planned Development District No. 24 (PD-24); and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on September 9, 2019, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 16, 2019, with respect to the Zoning Planned Development amendment described herein; and

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication and procedural requirements for the approval of a Zoning Planned Development amendment on the property.

WHEREAS, the Town Council finds that the amendment as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public.

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

ORDINANCE NO. _____**Page 2**

SECTION 1

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

Lot 4R, Block 1, of the Parker Square Addition, Denton County, Texas.

Exhibit "B," entitled "Development Standards," of Ordinance No. 80-03, is hereby amended in part by adding Section DD to allow for two 80-inch tall by 48-inch wide tenant signs (1 on each side of the front entrance of Building 700) as more fully described below and as shown on Exhibit "A" attached hereto and incorporated herein. Section DD shall read as follows:

- DD. Two 80-inch tall by 48-inch wide tenant signs (1 on each side of the front entrance of Building 700) as more fully described and shown on Exhibit "A" attached hereto and incorporated herein shall be permitted. The aluminum sign frame and panels shall be painted satin black with white lettering.

SECTION 2

The use of the property described above shall be subject to restrictions, terms and conditions contained in this Ordinance including Exhibit "A," attached hereto, as well as all applicable regulations contained in PD-24, the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

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

SECTION 4

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

SECTION 5

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

ORDINANCE NO. _____

Page 3

SECTION 6

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

SECTION 7

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 8

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 16TH DAY OF SEPTEMBER, 2019.

APPROVED:

STEVE DIXON, MAYOR**ATTEST:**

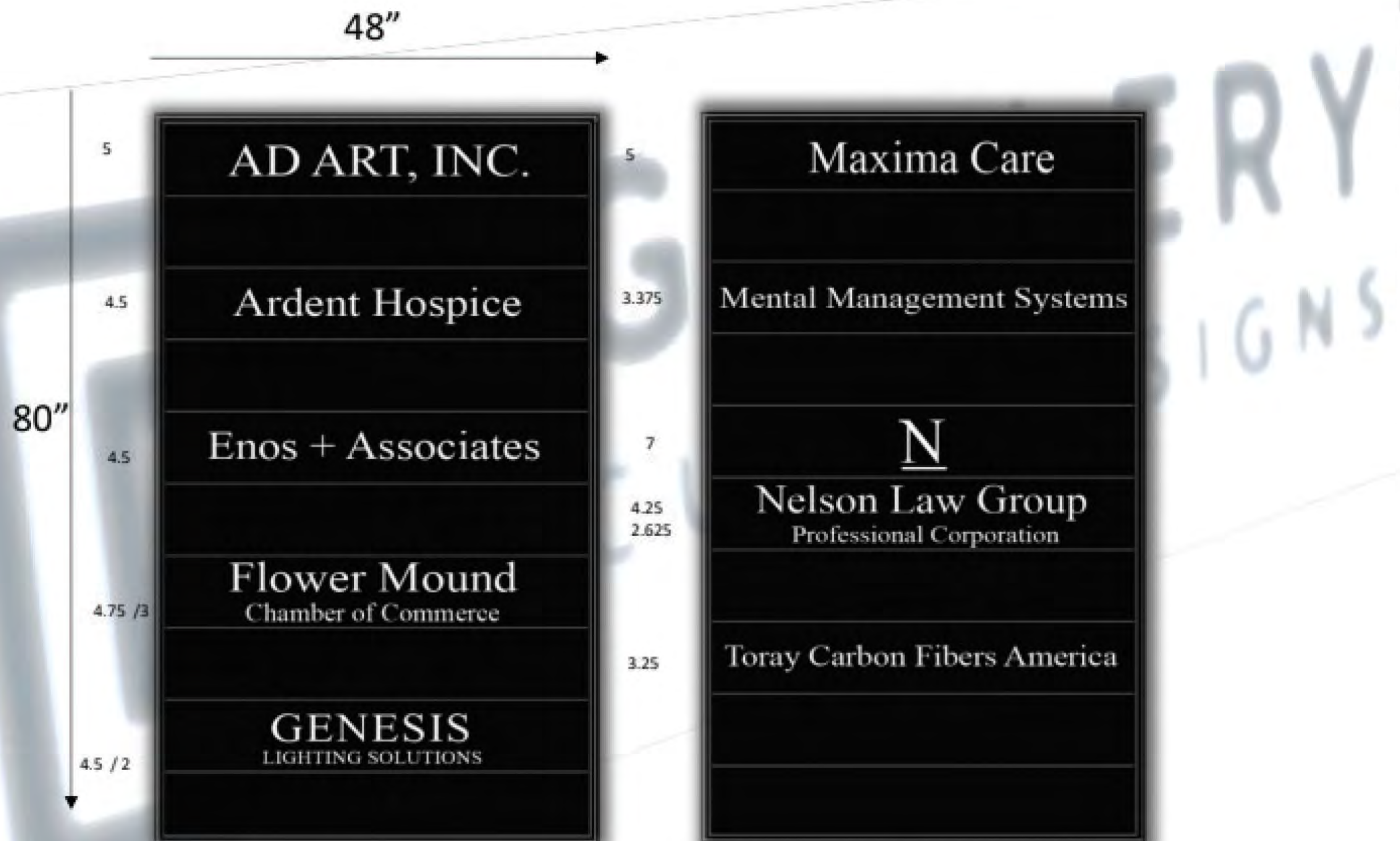
Theresa Scott, TOWN SECRETARY

Current



Proposed





Materials: Extruded Aluminum Frame/Panels, All Weather UV Paint (Satin Black),
Hidden Tamper Proof Fasteners, Mounted w/Corrosion Resistant Masonry Anchors (hidden)



TOWN COUNCIL AGENDA ITEM NO. 29

REGULAR ITEM

DATE: September 16, 2019

FROM: Poornima Kashyap, Senior Planner

ITEM: **Consider a request for a Site Plan (SP19-0017 – Valley Creek Church Parking Lot Expansion) to develop a parking lot addition with a request for a deviation to the required parking standard pursuant to Section 82-73 of the Code of Ordinances. The property is generally located south of Dixon Lane and east of Long Prairie Road. *(The Planning and Zoning Commission recommended approval of the site plan, by a vote of 7 to 0 at its September 9, 2019, meeting.)***

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report

LEGAL REVIEW: N/A

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



PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 3
REGULAR ITEM

DATE: September 9, 2019

FROM: Poornima Kashyap, Senior Planner

ITEM: Consider a request for a Site Plan (SP19-0017 – Valley Creek Church Parking Lot Expansion) to develop a parking lot addition with a request for a deviation to the required parking standard pursuant to Section 82-73 of the Code of Ordinances. The property is generally located south of Dixon Lane and east of Long Prairie Road.

I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission. There is a deviation request to the Town's regulations which necessitates special consideration by the Commission (see Analysis below).

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of this request is to obtain site plan approval for parking lot expansion for Valley Creek Church. The property is zoned Agricultural and is approximately 23.13 acres. As a part of the site plan expansion, the applicant is requesting a deviation to permit an increase in off-street parking that exceeds 20 percent of required parking for the Church use. See Section A for details.

A. Deviation to computing parking and loading requirements:

Section 82-73 of the Town's Code of Ordinances provides for alternative off-street parking requirements that reduce or exceed required parking by greater than 20 percent:

Deviation of required spaces. The amount of parking can be reduced or increased by 20 percent. Deviations in excess of 20 percent must be accompanied by a parking study and approved by the town council. Any approved parking in excess of 20 percent must be mitigated. Mitigation can be achieved by the use of pervious paving, increased landscaping, increased stormwater treatment, or other method to reduce the impact of the increased parking.

Parking study. A parking study required by this article shall be reviewed by the town along with any traffic engineering and planning data that are appropriate to the establishment of a parking requirement for the use proposed. A parking study, when required by this article, shall include, but not be limited to, estimates of parking requirements based on recommendations in studies such as those from the Urban

Land Institute, the Institute of Traffic Engineers, or the Traffic Institute, and based on data collected from uses or combinations of uses that are the same or comparable to the proposed use. Comparability shall be determined by density, scale, bulk, area, type of activity and location. The analysis must include a shared parking analysis based on the mixture of uses and corresponding peak demand. Specifically, the parking required for restaurants should be included in the study and be determined by the number, location, and type of restaurants proposed. The study shall document the source of data used to develop recommendations.

On April 9, 2001, the Planning and Zoning Commission approved a site plan for an approximately 34,754-square-foot Church building. Since then various development applications have been considered and approved for the subject property that included Church building expansion, parking expansions, and landscape and elevation amendments. The required parking for the Church is calculated at the ratio of one space per three seats in the auditorium. Per the town's code, where parking ratios are specified in terms of the number of seats, this shall be interpreted to mean maximum seating capacity as determined using the standards of the uniform building code or maximum. The maximum seating capacity of the main sanctuary is 2,143. Based on this number, the required parking is 714 spaces. With the allowable 20 percent deviation, the maximum number of parking spaces permitted on the site would be 856 spaces.

On December 10, 2012, the Town Council approved a site plan to expand Valley Creek Church with associated parking consisting of 694 spaces. Over the years, staff has administratively approved removal and addition of parking spaces which has been within the allowable limitations. The applicant is now proposing to add 240 net spaces with this site plan application for a total of 1067 cumulative spaces, which is 211 spaces over the allowable 20 percent (856 spaces) deviation. As required by the Town's parking standards, the applicant has provided a parking study to demonstrate the need for excess parking (see Attachment A(3)).

The landscape plan depicts existing and proposed landscape buffer and parking lot trees. For institutional uses such as churches and schools, parking lot trees are calculated at the ratio of one tree per 20 parking spaces. For any other non-residential uses, parking lot trees are calculated at the ratio of one tree per 10 spaces. In order to reduce the impact of the increased parking, the applicant is proposing increased landscaping as a means of mitigation. Since there is no specific standard for increased landscaping, staff suggested using one tree per 10 parking spaces for the number of parking spaces that is over the allowable 20 percent deviation. The applicant has provided 21 additional trees to satisfy the mitigation requirements for excess parking.

Required spaces	Existing spaces	w/Allowable deviation 20%	Proposed cumulative total	# of spaces over the allowable 20%
714	799	856	1067	1067-856 = 211

III. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Parking Study

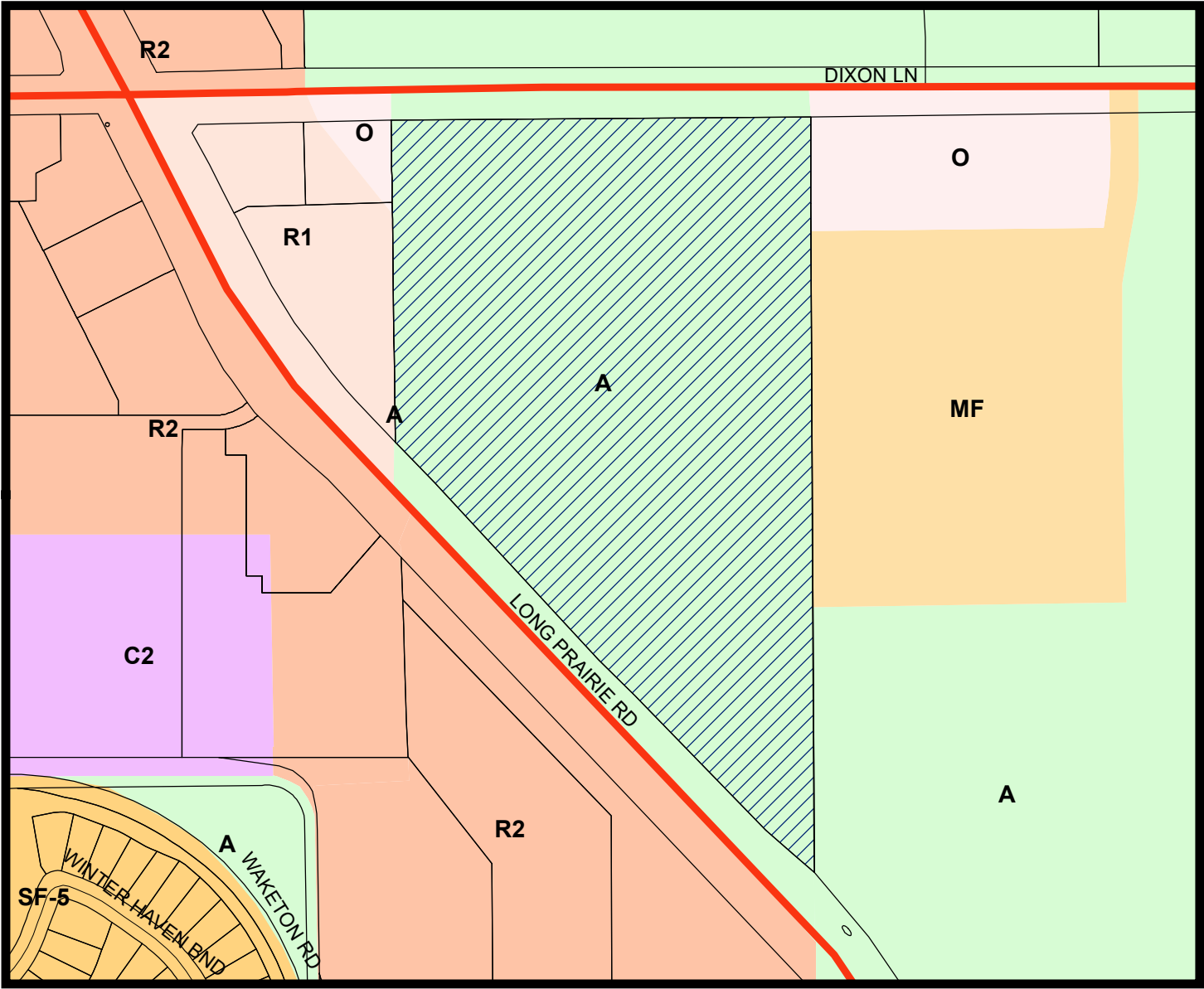
B. Application Details

1. Site Plan Package



Vicinity Map

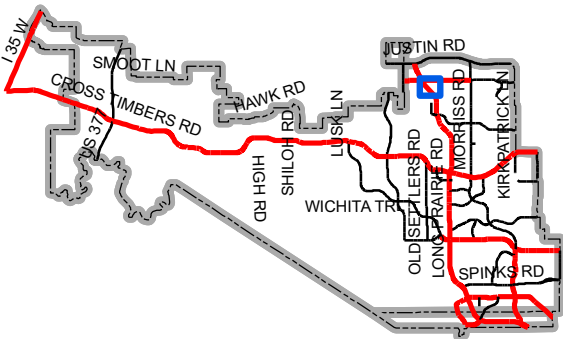
Reference Project: SP19-0017



LEGEND

- Agriculture
- Commercial 2
- Retail 2
- Single Family 5
- Multi-Family
- Office

Subject Property



Map Location



September 3, 2019

Planning Services Division
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

RE: Valley Creek Church Parking Expansion –Site Plan Application
G&A|McAdams Job Number 16292
Town of Flower Mound Permit Number: SP19-0017

To Whom It May Concern:

Please accept this letter, on behalf of Valley Creek Church, as an explanation of the proposed Site Plan Application. We are submitting, for review and approval, a Site Plan Application for a parking expansion to the existing church campus. The property is approximately 23.131 acres and is located on lot 1R of the Vista Ridge Church Addition. The existing campus has 799 parking spaces. The final configuration after this site plan will contain 1,067 parking spaces. The addition of 73 parking spaces has been previously approved by permit number ASP19-06035 on August 29, 2019. The remaining 240 spaces will be constructed under a separate permit. We are requesting exemption from the Town of Flower Mound Ordinance found in Sec. 82-74 stating 1 parking space per 3 seats in the main sanctuary. The required amount of parking spaces is 714 based on code however, with the new parking expansion we are 211 parking spaces over the required amount. Thus, we are requesting to allow for an exception for exceeding the allotted 20% deviation. Please refer to the parking study for more information.

The amendments to the site plan are as follows:

- 73 parking spaces along FM 2499 (previously approved with Permit ASP19-06035)
- 240 parking spaces along Dixon Road (constructed under separate permit)

Please feel free to contact me if you have any questions or comments regarding this submittal.

Sincerely,

A blue ink signature of Josh Barton, P.E., written in a cursive style.

Josh Barton, P.E.
cc. Mr. Brad Lanham

Valley Creek Church

Parking Study

Summary:

Valley Creek Church is a 23.131 acre site located southeast of FM 2499 and Dixon Lane. The site is currently zoned as Agriculture.

Base Code Parking Requirements:

The Town of Flower Mound requires 1 space per ever 3 seats in the main sanctuary. Per the table below (table 1), the existing building has sanctuary seating for 2,143 people, therefore the required amount of parking spaces is 714. There are two Sunday services held every Sunday, one at 9:30 am and one at 11:10 am. The second table (table 2) below is actual data gathered by the church over a six-week period. As you can see, there is an average of 3,842 attendees plus an average of 499 volunteers for both services. That is an average of 4,342 individuals onsite for both services. On average, the attendees to vehicle ratio is 1.5 to 2.0 on a typical weekend. There are currently 799 parking spaces on the site. We are planning on constructing 73 new parking spaces with the permit number ASP19-0066 previously approved on December 18,2018 (see included letter for more information), as well as construction 240 new parking spaces to be constructed under separate permit. The new total amount of parking spaces will be 1,067 and 28 of those spaces are to be designated as accessible parking spaces.

The table below represents a breakdown of the parking requirements based on Town code for Valley Creek Church:

Table 1			
Church Services	Parking Requirements	Total Seats/SF	# of Spaces
Main Sanctuary	1:3 Seats in Main Sanctuary	2,143 Seats	714

The table below shows the total count for Sunday worship services held within Valley Creek Church for a six-week period:

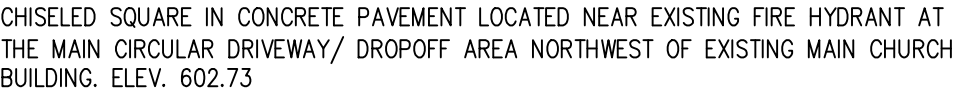
Table 2		
Worship Services	Service Team	Total
3854	489	4343
4042	501	4543
4401	525	4926
3784	481	4265
3606	506	4112
3369	493	3862

Conclusion:

As illustrated in the two tables and explained above, Valley Creek Church provides several different services for the community each week. The average attendance for a six-week period on a Sunday morning across two services (shown in table 2 above) would be 4,341. Each service is around the same size with approximately 2,170 attendees for each service. There is also an overlap in parking between the two services with people simply staying to visit with others. The peak number of vehicles present during the second Sunday service ranges from 1,247 to 1,663 far exceeding the existing 799 parking spaces. The church is requesting to add these two parking areas to meet their parking needs during normal and peak use. Thus, we are requesting to allow for an exception for exceeding the allotted 20% deviation from the required amount of spaces.



SITE DATA TABLE	
ADDRESS	5800 LONG PRAIRIE ROAD
AREA	23.131 ACRES; 1,007,586 SF
AREA	23.131 ACRES; 1,007,586 SF
	AGRICULTURAL
	CHURCH
ED	CHURCH
LOT COVERAGE DATA	
COVERAGE	1.76 ACRES; 76,665 SF
AREA	11.41 ACRES; 497,324 SF
AREA	9.96 ACRES; 433,901 SF
PARKING SUMMARY	
CHURCH - 1 SPACE PER 3 SEATS IN 2,143 AREA	714 SPACES
PARKING SPACES WITH THE ALLOWABLE 20%	856 SPACES
PARKING	799 SPACES
MOVE PARKING SPACES	45 SPACES
PERMIT ASP-06035	73 SPACES
PARKING	240 SPACES
BICAP PARKING	21 SPACES
INDICAP PARKING	7 SPACES
SPACES OVER THE ALLOWABLE 20% DEVIATION	211 SPACES
TOTAL NET PARKING SPACES	1067 SPACES
BUILDING DATA	
FLOORS	1
	42'-0"
	32'-0"
FLOOR FOOTAGE	76,860 SF
MASTER PLAN 2001 FEATURES	
MAN	OFFICE
IN PLAN	LONG PRAIRIE DISTRICT
RE PLAN	LONG PRAIRIE ROAD - MAJOR ARTERIAL DIXON LANE - URBAN MINOR ARTERIAL



1. THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
2. PARKING SPACE DIMENSIONS ARE 9'X17.5' (FACE OF CURB).
3. ALL MATERIALS, CONSTRUCTION, TESTING AND WORKSMANSHIP SHALL CONFORM TO THE TOWN OF FLOWER MOUND DESIGN CRITERIA, CONSTRUCTION STANDARDS, CONSTRUCTION DETAILS, AND THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION FOR NORTH CENTRAL TEXAS.
4. EXISTING FIRE LANES MUST REMAIN OPEN AT ALL TIME.

VALLEY

THIS DOCUMENT IS FOR
INTERIM REVIEW AND IS
NOT INTENDED FOR
CONSTRUCTION, BIDDING
OR PERMIT PURPOSES.
G&A | MCADAMS,
TBPE: 19762
JOSHUA M. BARTON,
P.E. #129227
DATE 9/5/2019

C4

OWNER/DEVELOPER
VALLEY CREEK CHURCH
5800 LONG PRAIRIE ROAD
FLOWER MOUND, TEXAS
Ph. (972) 691-9327
Contact: MIKE MARTINI



TOWN COUNCIL AGENDA ITEM NO. 30

REGULAR ITEM

DATE: September 16, 2019

FROM: Steve Allen, Utility Services Manager

ITEM: Consider approval of a Construction Agreement with Archer Western Construction, LLC, for the Wastewater Treatment Plant Rehabilitation Phase V, Solids Facility Improvements project, in the amount of \$9,199,060.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION:

On August 15, 2019, bids were received and opened for the Wastewater Treatment Plant Rehabilitation Phase V, Solids Facility Improvements project (Bid No. 2019-155-B). Archer Western Construction, LLC submitted the lowest qualified bid of the four responding bidders at a base bid of \$9,199,060.00.

Alan Plummer Associates, Inc. was selected to study current wastewater treatment plant sludge management practices, consider long term solutions, and present a report to outline recommendations. That evaluation concluded with a report, *Solids Facility Plan Final Report – April 2015*, outlining a phased approach to improve performance and efficiency of current disposal facilities and plan for the eventual closing of the Waste Management landfill in Lewisville.

The report recommended rehabilitating existing belt filter presses and other ancillary equipment as the first of three phases. The second phase involves the construction of new holding tanks, sludge thickening facilities, and modifications to aeration equipment. The final phase will include the construction of sludge drying equipment to further reduce the mass of dewatered solids. That reduction of mass will reduce the number of loads taken to landfills located at much greater distances than the landfill in Lewisville, or provide for the material to be used as a soil enhancer that the Town may be able to market, or use on parks and medians.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The treatment of wastewater solids is highly regulated by the Texas Commission on Environmental Quality (TCEQ). The plant solids handling facility is currently running at, or near capacity. Without approval of this project the treatment plant would find it increasingly difficult to maintain compliance with TCEQ regulations, nor would we be able to meet the growing demand for wastewater treatment capacity as the Town moves towards a projected build-out population of about 120,000 residents and the associated business and industry needed to support that population.

FISCAL IMPACT: \$9,199,060.00

Proposed Expenditure(Revenue):	Account Number(s):
\$9,199,060.00	630-970-98472 Utility

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

Total project cost is \$11,800,000. Funding sources are:

- Utility Debt \$ 11,800,000

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 this Construction Agreement.

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: 2019-155-B - Wastewater Treatment Plant Rehabilitation Phase V

Bid Opening: 8/15/2019 at 11:00 AM

Company	Total Bid
Archer Western Construction LLC	\$ 9,199,060.00
Bar Constructors, Inc	\$ 9,423,560.00
Gracon Construction Inc	\$ 9,556,810.00
Heritage Constructors, Inc	\$ 9,664,876.00

******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: August 15, 2019

TOWN OF FLOWER MOUND**WASTEWATER TREATMENT PLANT
REHABILITATION PHASE V - SOLIDS
FACILITY IMPROVEMENTS****Bid # 2019-155-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 16th day of September, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Archer Western Construction, LLC, a Limited Liability Company, 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:

**WASTEWATER TREATMENT PLANT
REHABILITATION PHASE V - SOLIDS
FACILITY IMPROVEMENTS,
Bid # 2019-155-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;

Agreement

CA-1

Construction

Rev. 06/18/18

- 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 **Nine Million, One Hundred Ninety-Nine Thousand, Sixty Dollars (\$9,199,060)** 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 Five Hundred Forty (540) calendar days, and final completion of Six Hundred (600) 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 coverages 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;

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars (\$250.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Fifty and Zero/One Hundredths Dollars (\$250.00) 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

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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 16th day of September, 2019.

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 Future Agenda Items



SCHEDULED	9/17/2019	Regular	Board and Commission Interviews (9/17 & 9/19).
	9/19/2019	Regular	Board and Commission Interviews (9/17 & 9/19).
	10/7/2019	Consent	Consider purchase and installation of audio/visual equipment for Central Fire Station Training Room from Data Projections in the amount of \$126,681.00.
		Consent	Windsor Roundabout Connection - Construction Award.
		Consent	Windsor Roundabout Connection - Testing Award.
		Consent	Consider approval of a Construction Agreement with Northstar Construction, LLC, for the 2018-19 Playground Replacements and the Lakewood Park - Pavilion projects, in the amount of \$63,510.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the purchase of creek bank stabilization and erosion control services from Knight Erosion Control, Inc., a sole source provider, for work associated with the Bakers Branch Stabilization at 621 Somerset Drive project, in the amount of \$391,568.00; and authorization for the Mayor to execute on behalf of the Town.
		Consent	Wastewater Treatment Plant Phase V - Testing Award
		Consent	Wastewater Treatment Plant Phase V - CCA
		Consent	Consider approval of a Professional Services Agreement with Nathan D. Maier Consulting Engineers, Inc., for the design phase services associated with the Sidewalk Links project, in the amount of \$60,000.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider purchase and installation of furniture and fixtures for Central Fire Station Administration offices from Plano Office Supply in the amount of \$133,860.97.
		Consent	Water & WW Master Plan & Impact Fee Update.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on September 16, 2019.
		Consent	Consider approval of an ordinance amending Chapter 70: Utilities by replacing Section 70-55, 70-56, 70-57, 70-58, and 70-59 of Article II, entitled "Water Services," with a new Section 70-55, 70-56, 70-57, 70-58, and 70-59 of Article II, entitled "Water Services," and to consider adopting an ordinance for said amendment.

SCHEDULED	10/7/2019	Consent	Consider approval of an ordinance amending Appendix A, "Fee Schedule," Referenced in Chapter 70: Utilities by adding a new Section 70-55, 70-57, 70-58, and 70-59 and omitting an existing Section 70-362 and to consider adopting an ordinance for said amendment.
		Consent	Consider approval of Whyburn Farm Drainage and Easement Agreement; and authorization for the Mayor to execute the same on behalf of the Town.
		Consent	Consider approval of Change Order No. 2 for the construction of Flower Mound Storage Warehouse project, amending the contract with MSB Constructors, Inc., to provide for an increase to the contract in the amount of \$61,670.80; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Town Council to consider nominees to be voted on by taxing jurisdictions for the Board of Directors for the Denton Central and Tarrant Appraisal Districts.
		Regular	Public Hearing to consider an application for a tree removal permit for six (6) specimen trees on property proposed for development as St. Philip the Apostle Catholic Church. The property is generally located at the southwest corner of Cross Timbers Road and Flower Mound Road. (The Environmental Conservation Commission recommended approval by a vote of X-X-X at its September 12, 2019, meeting).
		Regular	Public Hearing to consider an application for a tree removal permit for one (1) specimen tree on property proposed for development as Parkway Office Building. The property is generally located south of Gerault Road and east of Lakeside Parkway. (The Environmental Conservation Commission recommended approval by a vote of X-X-X at its September 12, 2019, meeting).
		Regular	Public Hearing to consider an application for a tree removal permit for one (1) specimen tree on property proposed for development as Block B, Lot 13, of Oakbridge at Flower Mound Phase 2. The property is generally located at 2233 Sullenberger Way. (The Environmental Conservation Commission recommended approval by a vote of X-X-X at its September 12, 2019, meeting).
	10/17/2019	Work Session	Joint work session with Town Council and the Parks Board.
	11/4/2019	Presentation	Proclamation to designate November as Arts Month in Flower Mound
		Consent	Kirkpatrick 3 - County ICA
		Consent	FM 2499 @ Silveron Traffic Signal Construction Award.

SCHEDULED	11/4/2019	Regular	Public Hearing for a request for rezoning (ZPD19-0006 – Parkway Office Lakeside) from Planned Development No. 83 (PD-83) with Campus Industrial District (CI) uses to Planned Development No. 174 (PD-174) with Campus Industrial District (CI) uses in compliance with the Campus Industrial land use designation within the Lakeside Business District Area Plan, including a Comprehensive Sign Package, with certain exceptions and modifications to the Code of Ordinances, with a request for a deviation to computing parking and loading requirements pursuant to Section 82-73 of the Code of Ordinances, and with an exception to the Architectural Standards of the Town's Urban Design Plan for meritorious design. The property is generally located south of Lakeside Parkway and east of Gerault Road. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its October 14, 2019, meeting.)
	11/18/2019	Consent	Placeholder: Nov. 5, 2019 Election canvass (DSTE)
	12/16/2019	Presentation	Announcement and Presentation of 2019 Outstanding Citizenship Award(s)