AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

12/2/2019

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

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

A. CALL MEETING TO ORDER

B. INVOCATION

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

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

D. PUBLIC COMMENT

To speak to Council during public comment, please fill out a comment form.

- **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. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

F. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects

G. 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).

H. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, December 16.

I. CONSENT ITEMS

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

1. Minutes 11/18- Consider approval of the minutes from a regular meeting of the Town Council held on November 18, 2019.

2. HUD 2018 CAPER- Consider approval of a resolution authorizing the adoption of the Program Year 2018 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.

3. Huntington-Ch 380/Tax Abate. Assignment- Consider approval of an Assignment of the Chapter 380 and Tax Abatement Agreement between the Town of Flower Mound and HIP DFW North DC IV LLC, to BTC III DFW North IV LLC; and authorization for the Mayor to execute same on behalf of the Town.

4. Axon Master Service Agreement- Consider approval of these purchase agreements from Axon Enterprise, Inc., for the acquisition of Axon Fleet in car video camera systems, Axon body worn camera licensing, and Axon electric control devices; and authorization for the Mayor to execute same on behalf of the Town.

5. 2020 Independence Fest- Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2020 Independence Fest (The Parks Board recommended approval by a vote of 6 to 0 at its November 7, 2019 meeting).

6. SIM Auxiliary's Elite Chef Competition- Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Elite Chef Competition fundraiser.

7. Disc Golf Fees- Consider approval of an ordinance amending Article II, “Park Regulations” of Chapter 54, “Parks and Recreations” of the Code of Ordinances by amending Section 54-2 to adopt regulations regarding the Disc Golf Course; amending appendix A “Fee Schedule”; providing this ordinance shall be cumulative of all ordinances; providing a severability clause; providing a penalty for violation hereof in accordance with Section 1-13 of the Code of Ordinances; providing for publication in the official newspaper; and providing an effective date (The Parks Board recommended approval by a vote of 6 to 0 at its May 2, 2019, regular meeting).

8. Youth Programs - Standards of Care- Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards.

9. Morriss Rd 20" WL Testing Award- Consider approval of a Professional Services Agreement with HVJ North Texas – Chelliah Consultants, Inc. to provide construction materials engineering and testing, for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) project, in the amount of $45,175.00; and authorization for the Mayor to execute same on behalf of the Town.

J. REGULAR ITEMS

Applicant has requested postponement to Dec. 16th

10. ZPD19-0009 - Windsor Professional Centre- **Public Hearing** to consider an ordinance for rezoning (ZPD19-0009 – Windsor Professional Centre) to amend Planned Development District No. 92 (PD-92) with Office District (O) uses, to add the Health club or athletic club use as a permitted use for Lot 4, only. The property is generally located north of Windsor Centre Drive and west of Long Prairie Road. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its November 11, 2019, meeting.)

11. Morriss Rd 20" WL Construction Award- Consider approval of a Construction Agreement with Western Municipal Construction of Texas, LLC., for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) project, in the amount of $1,640,384.00; and authorization for the Mayor to execute same on behalf of the Town.

12. Lakeside Crossing-Ch 380 Assignment- **Public Hearing** to consider an assignment of the Chapter 380 Agreement with Newstream Hotels & Resorts, LLC, (through Lakeside Crossing Land Partners, LP & Newstream Retail Partners-FM, LLC) to BI 43 LLC, for Lots 1-3, 6, 7, and 8x, and to BI 50 LLC, for Lots 4 & 5, and authorization for the Mayor to execute same on behalf of the Town.

K. BOARDS/COMMISSIONS (Pre-Council Room)

a. TIRZ appointment- Discuss and consider appointment of Chair to the Tax Increment Reinvestment Zone (TIRZ).

L. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, and 551.087 for consultation with attorney, and to discuss matters relating to real property, and economic development negotiations, as follows:

a. Consultation with Attorney.

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

b. Discuss and consider purchase, exchange, lease or value of real property for parks, 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.

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: November 26, 2019, at 10:46 a.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: December 2, 2019

FROM: Theresa Scott, Town Secretary

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

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

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:	Account Number(s):

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

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

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 18TH DAY OF NOVEMBER 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:

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

with the following member absent:

Steve Dixon	Mayor

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Tommy Dalton	Assistant Town Manager
Andrea Roy	Economic Development Director
Brian Waltenburg	Assistant Director of Engineering

A. CALL REGULAR MEETING TO ORDER

Mayor Pro Tem Sharma called the regular meeting to order at 6:01 p.m.

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

Chaplain Russ McNamer gave the invocation and Mayor Pro Tem Sharma 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.	Paul Stone, 4100 Broadway	Items 3 and 7

E. PRESENTATIONS

1. Small Business Saturday (November 30, 2019) Proclamation

   Ms. Roy recited the proclamation and Mayor Pro Tem Sharma presented it to her.

DRAFT

F. ANNOUNCEMENTS

Councilmember Bumgarner provided information about the Animal Services Paws and Claws annual fundraiser starting December 1st.
Councilmember Engel offered congratulations to both Flower Mound and Marcus High School football teams for making it into round 2 of the Texas high school playoffs.

Several members of Council expressed well wishes for a Happy Thanksgiving.

G. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update on the following projects:

1. Capital improvement projects

    - Peters Colony roundabout
    - Garden Ridge Bldg. thru lane

2. Economic Development projects

    - New businesses that are now open or coming soon

H. FUTURE AGENDA ITEMS

1. No request for future agenda items.

I. COORDINATION OF CALENDARS

A regular meeting is scheduled for Monday, December 2.

Mayor Pro Tem Sharma announced the above referenced meeting date. Deputy Mayor Pro Tem Forest indicated he will not be at that meeting.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on November 4, 2019.
2. Consider approval of an ordinance canvassing returns and declaring results of a Special election held November 5, 2019, for the purpose of considering a ballot proposition for the reauthorization of the municipal sales and use tax for street maintenance and repair in the Town of flower Mound at the rate of one-quarter of one present to continue providing revenue for maintenance and repair of municipal streets; and providing an effective date.

ORDINANCE NO. 57-19

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CANVASSING RETURNS AND DECLARING RESULTS OF A SPECIAL ELECTION HELD NOVEMBER 5, 2019, FOR THE PURPOSE OF CONSIDERING A BALLOT PROPOSITION FOR THE REAUTHORIZATION OF THE MUNICIPAL SALES AND USE TAX FOR STREET MAINTENANCE AND REPAIR IN THE TOWN OF FLOWER MOUND AT THE RATE OF ONE-QUARTER OF ONE PERCENT TO

DRAFT

CONTINUE PROVIDING REVENUE FOR MAINTENANCE AND REPAIR OF MUNICIPAL STREETS; AND PROVIDING AN EFFECTIVE DATE.

Item #3 pulled from consent

4. Consider approval of the purchase of (2) new 2020 Chevrolet Tahoe RWD 9C1 Police Pursuit Vehicles with Equipment Installed per Town of Flower Mound Specifications and Vendor Quote from Holiday Chevrolet and Upfit Equipment/Installation Quotes with Specifications from Defender Supply for Police Services in the amount of $114,265.00.
5. Consider approval of the purchase of (8) new Dodge Charger Police Pursuit Vehicles with Equipment Installed per Town of Flower Mound Specifications and Vendor Quote from Grapevine Dodge Chrysler Jeep and Upfit Equipment/Installation Quotes with Specifications from Defender Supply for Police Services in the amount of $245,264.00.
6. Consider approval of a Professional Services Agreement with Kimley Horn and Associates, Inc., to provide traffic signal designs for the FM 2499 at Chaparral Lane; FM 2499 at Churchill Drive; and Flower Mound Road at McKamy Creek Road projects in the amount of $57,000; and authorization for the Mayor to execute same on behalf of the Town.

Item #7 pulled from consent

8. Consider approval of a Professional Services Agreement for the design phase services for the Lift Station Improvements and Decommissioning Phase II project, with Plummer Associates, Inc., for $276,500; and authorization for the Mayor to execute same on behalf of the Town.

Deputy Mayor Pro Tem Forest moved to approve by consent Items 1-2, 4-6, 8, as presented in the agenda caption. Councilmember Bumgarner 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

3. Consider approval of a resolution adopting rules regarding the public's right to address the governing body, including Town Council and all boards and commissions.

   Mr. Meredith provided legal background regarding the right to speak rules as part of the new legislation. Ms. Scott provided background information about the current form language and why the submittal deadline changed from 6:10 to 6:00 p.m.

   Council Discussion

   There was Council discussion to modify the language in the resolution (Section 1; 2(a) as requested during public comment as follows:

   From: Turn in this form to the Town Secretary or Board Liaison before the time of the meeting is scheduled to begin

   To: Turn in this form to the Town Secretary or Board Liaison prior to the time the meeting is scheduled to begin and up to when the public comment portion of the meeting has concluded.

DRAFT

RESOLUTION NO. 26-19

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING RULES REGARDING THE PUBLIC'S RIGHT TO ADDRESS THE GOVERNMENTAL BODY, INCLUDING TOWN COUNCIL AND ALL BOARDS AND COMMISSIONS.

Councilmember Engel moved to approve as presented; however, with an amendment to 2(a) to adjust the time from turning the form in before the time the meeting is scheduled to begin up to when public comment has completed. Councilmember Bumgarner seconded the motion.

VOTE ON MOTION: *Motion passed*
AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER
NAYS: NONE

Item #7 pulled from consent

7. Consider approval of a Professional Services Agreement with Criado & Associates, Inc., for the design phase services associated with the Blue Ridge Trail Reconstruction project, in the amount of $48,880.00; and authorization for the Mayor to execute same on behalf of the Town.

   Mr. Waltenburg provided background information regarding the item, and he responded to questions from Council regarding:

   - How Blue Ridge Trail is a road reconstruction project and not a trail.

Councilmember Bumgarner moved to approve as presented. Deputy Mayor Pro Tem Forest seconded the motion.

VOTE ON MOTION: *Motion passed*
AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON
NAYS: NONE

9. Public Hearing to consider approval of an Agreed Termination of a Chapter 380 Agreement, Release of Lien, and Escrow Agreement, between the Town of Flower Mound and Old Town Development LLC, and authorization for the Mayor to execute same on behalf of the Town.

   Staff Presentation

   Ms. Roy gave a presentation identifying or noting:
   - Mi Dia project history
   - Old Town Development financing
   - Current request summary, including Chapter 380 termination, release of lien, and escrow agreement (revised)

   Mayor Pro Tem Sharma opened the public hearing for this item at 6:24 p.m. No one spoke. Mayor Pro Tem Sharma closed the public hearing at 6:24 p.m.

   Administrative Note: Public Hearing was satisfied at the November 4, 2019 Town Council meeting.

Motion passed

VOTE ON MOTION:
AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER
NAYS: NONE

DRAFT

10. Consider approval of a resolution casting the vote of the Town of Flower Mound, Texas, for the election of the Board of Directors of the Denton Central Appraisal District (DCAD).

Staff Presentation

Ms. Scott provided background information on the item and responded to questions from Council regarding:

- How close have the results been historically

Council Discussion

There was Council discussion regarding:

- What is the benefit for the Town in making these selections
- Possibility of dividing the votes amongst the Town of Flower Mound residents that were previously nominated
- How expanding the vote to more individuals dilutes the overall vote

Deputy Mayor Pro Tem Forest moved to approve the resolution as presented with the allocation of Flower Mound votes as follows:

Sharon Gentry – 40
Bryan Webb – 40
Mike Stallings - 39

Councilmember Pierson seconded the motion.

RESOLUTION NO. 27-19

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, CASTING THE TOWN OF FLOWER MOUND'S ONE HUNDRED NINETEEN (119) ALLOCATED VOTES FOR THE ELECTION OF THE BOARD OF DIRECTORS FOR THE DENTON CENTRAL APPRAISAL DISTRICT; AND PROVIDING FOR AN EFFECTIVE DATE.

VOTE ON MOTION: *Motion passed*
AYES: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON
NAYS: NONE

L./M. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 6:31 p.m. on November 18, 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 7:26 p.m. on November 18, 2019, to take action on the items as follows:

a. Consultation with Attorney.

DRAFT

1. Firefighter claim and settlement matters related thereto

Councilmember Engel moved to approve the settlement agreement as discussed in closed session. Deputy Mayor Pro Tem Forest seconded the motion.

VOTE ON MOTION: *Motion passed*
AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER
NAYS: NONE

2. Chapter 380 Agreement between the Town and Lakeside Crossing Land Partners, LP

   No action taken.

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.

   No action taken.

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.

   No action taken.

N. ADJOURN REGULAR MEETING

Mayor Pro Tem Sharma adjourned the meeting at 7:27 p.m. on Monday, November 18, 2019, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

_____
SANDEEP SHARMA, MAYOR PRO TEM

ATTEST:

_____
THERESA SCOTT, TOWN SECRETARY

DRAFT

TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: December 2, 2019

FROM: Brittni Barnett, Grants & Financial Analyst

ITEM: **Consider approval of a resolution authorizing the adoption of the Program Year 2018 Consolidated Annual Performance & Evaluation Report for the Community Development Block Grant; and authorization for the Mayor to execute same on behalf of the Town and submit to the U.S. Department of Housing and Urban Development.**

BACKGROUND INFORMATION: This item is to consider approval of a resolution adopting Flower Mound's Program Year 2018 Consolidated Annual Performance & Evaluation Report (CAPER). The CAPER is required under the Town's Community Development Block Grant (CDBG). It describes the Town's progress in carrying out the housing and community development strategies identified in the Program Year 2015-2019 Consolidated Plan, which was submitted to the U. S. Department of Housing and Urban Development (HUD) in August of 2015. In 2002, HUD recognized Flower Mound (the Town) as an Entitlement Community and awarded the Town a Community Development Block Grant (CDBG). Since that time, Flower Mound has received $3,720,898 in funding under this CDBG, which includes the total for the 2019 Program year.

Receipt of grant funding is conditioned upon Flower Mound implementing and adhering to the Consolidated Plan, which identifies long-term strategies and annual activities that assist the Town's low- and moderate-income residents. Flower Mound's Program Year 2018 Annual Plan was approved by the Town Council on August 6, 2018. During this period, the Council designated available CDBG funds to be used: (1) for planning and administration; (2) the Residential Rehabilitation Program; (3) the Minor Home Repair Program and (4) to subsidize a call-in transportation service for the Town's elderly and those with disabilities. The CAPER describes the ways in which the Town leveraged both federal and non-federal dollars to achieve these goals.

BOARD REVIEW/CITIZEN FEEDBACK: Grant staff held a public hearing on October 29, 2019 to discuss the CAPER. The CAPER was also available for public comment for 30 days. No comments were received.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Finance Review by: N/A

LEGAL REVIEW: Stacie White of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the resolution and the proposed Program Year 2018 CAPER as to form and legality.

ATTACHMENTS:
1. CAPER 2018 Resolution
2. Proposed Program Year 2018 CAPER

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

Attachment 1

RESOLUTION NO. _____

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 FLOWER MOUND'S PROGRAM YEAR 2018 CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID REPORT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, a Consolidated Annual Performance and Evaluation Report must be adopted by the Town of Flower Mound in fulfillment of the requirements of the Housing and Community Development Act of 1974, as amended, the National Affordable Housing Act of 1990, as amended, the Stewart B. McKinney Act of 1987, as amended, and 24 Code of Federal Regulations Part 91.520; and

WHEREAS, the Consolidated Annual Performance and Evaluation Report has been made available for public review and comment for a period of 30 business days; and

WHEREAS, Flower Mound Community Development Block Grant staff held a public hearing to allow for public comments regarding the Consolidated Annual Performance and Evaluation Report; and

WHEREAS, the Town Council of the Town of Flower Mound has determined that it is in the best interest of the residents of the Town to adopt the Consolidated Annual Performance and Evaluation Report for 2018 in order to comply with the requirements of the Housing and Community Development Act of 1974, as amended, the National Affordable Housing Act of 1990, as amended, the Stewart B. McKinney Act of 1987, as amended, and 24 Code of Federal Regulations Part 91.520, and to authorize the Mayor to execute said report on behalf of the Town of Flower Mound.

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 legislative and factual findings 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 of Flower Mound's Program Year 2018 Consolidated Annual Performance and Evaluation Report, attached hereto as "Attachment 2" is hereby adopted.

RESOLUTION NO. _____

SECTION 3

The Mayor is authorized to execute the Program Year 2018 Consolidated Annual Performance and Evaluation Report on behalf of the Town and submit it to the U. S. Department of Housing and Urban Development prior to December 31, 2019.

SECTION 4

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, ON THIS THE 2ND DAY OF DECEMBER, 2019.

APPROVED:

_____
Steve Dixon, MAYOR

ATTEST:

_____
Theresa Scott, TOWN SECRETARY

Program Year 2018

Consolidated Annual Performance & Evaluation Report (CAPER)

For the period
October 1, 2018 – September 30, 2019

Prepared for the U. S. Dept. of Housing and Urban Development (HUD)

GOALS AND OUTCOMES

Summary of Progress Narrative

The Consolidated Annual Performance and Evaluation Report contains information about the Town of Flower Mound's accomplishments during the fourth year of our community's five-year Consolidated Plan (2015-2019) for Housing and Community Development. The report reflects Flower Mound's implementation of outcome performance measurement requirements described in the Federal Register Notice dated March 7, 2006. It also provides a description of how our jurisdiction's program provided new or improved availability/accessibility, affordability, sustainability of decent housing; a suitable living environment; and economic opportunity for Flower Mound's low-and moderate-income residents.

The Town of Flower Mound is an entitlement community under the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) Program. During the 2018 Program Year (PY), October 1, 2018 through September 30, 2019, $192,892.00 in CDBG funds were made available to the Town of Flower Mound to further the objectives of our Consolidated Plan, which started in Program Year 2015 and will end in Program Year 2019. Additionally, the Town received $24,700.00 in Program Income from a rehabilitation household who sold their home before reaching their forgivable loan's maturity date.

Flower Mound expended $167,304.04 in CDBG funds and $58,458.16 in Program Income, and leveraged Town General funds during the year to help address identified housing, homeless, community development, anti-poverty and other special needs. The investments were allocated based on citizen input; research and analysis to identify service level weaknesses and areas of need; and Town Council goals and priorities. The Town's Program Year 2018 Annual Action Plan identified three specific objectives that were to be achieved during the year, using CDBG funds, and are reaffirmed in this annual report:

- Preserve the Town's existing housing stock through the Residential Rehabilitation Program and the Minor Home Repair Program.

- Offer transportation services for the Town's elderly who are 65 years or older and adults with severe disabilities who are 18 years or older.

- Carry out planning and program administration activities.

Assessment on the Use of Funds to Meet Highest Priorities Narrative

In PY 2018, the Town of Flower Mound accomplished the proposed outcomes and goals identified in the 2015-2019 Consolidated Plan and 2018 Annual Action Plan.

Preserve the Town's Existing Housing Stock:

- Residential Rehabilitation Program: Successfully completed three projects to assist low-to moderate-income homeowners with interior and exterior home rehabilitation.

- Minor Home Repair Program: Successfully completed two projects to assist low-to moderate-income homeowners with minor interior and exterior home repairs and began one additional project that will be completed in PY 2019.

Town-wide Transportation Service: Subsidized 1,210 one-way rides to 33 of the Town's elderly residents who are 65 or older or residents with severe disabilities who are 18 years or older.

Planning and Administration: Continued to fund the administration costs of the CDBG Program, including contract administration, publication of public notices, office equipment and supplies, planning, monitoring, and all other related expenses.

Assist Social Service and Cultural Arts Providers: Allocated $251,845 in Town General Funds to 20 agencies and organizations that are actively engaged in the provision of social services and cultural arts in Flower Mound.

RACIAL AND ETHNIC COMPOSITION OF FAMILIES ASSISTED

Narrative

The Town offers two housing rehabilitation programs, which accounted for about 79 percent of the total CDBG funding allocated to the Town in PY 2018. In PY 2018, five homes were rehabilitated using CDBG funds. Of the five households assisted, all five were white, one of which was Hispanic.

Additionally, the Town's transportation service helped subsidize 1,210 one-way rides to 33 of the Town's elderly residents who are 65 or older and/or residents with severe disabilities who are 18 years or older with CDBG funds. Of these riders, 32 were White (one of which was Hispanic), and one was African American.

An additional 1,251 rides were subsidized using a grant received by SPAN, the Town's contracted provider for the service. The additional funds allowed a total of 39 residents to be assisted through this program.

RESOURCES AND INVESTMENTS

Resources Made Available Narrative

In the 2015-2019 Consolidated Plan, the Town of Flower Mound identified the preservation of existing housing stock as a priority. The Town currently offers two housing rehabilitation programs that are funded by CDBG: the Minor Home Repair Program and the Residential Rehabilitation Program. These programs are not limited to a specific geographic area, but are only for low-to-moderate income homeowners that live within the Town of Flower Mound city limits. $151,992 or about 79 percent of the Town's total 2018 CDBG allocation was dedicated to housing rehabilitation projects for low-to-moderate income homeowners.

In PY 2018, the CDBG funding allocated for housing rehabilitation was:

- **63% for Residential Rehabilitation**

The Residential Rehabilitation Program is designed to assist low-and moderate-income homeowners in Flower Mound with the rehabilitation of their single-family, owner-occupied houses. The program pays for rehabilitation up to $60,000. In PY 2018, $121,992 was allocated for the program, and a total of three homes were completed.

- **16% for Minor Home Repair**

The Minor Home Repair Program is designed to assist low-and moderate-income homeowners in Flower Mound with minor repairs of their single-family, owner-occupied houses. The program pays for minor repairs up to $15,000. In PY 2018, $30,000 was allocated for the program. Two homes were repaired, and one additional project was started that will be completed in PY 2019.

Additionally, in the 2015-2019 Consolidated Plan, the Town of Flower Mound identified Town-wide transportation as a priority. The Town-wide transportation program provides transportation to locations within the Town of Flower Mound, the City of Lewisville and the City of Highland Village and is only for Town of Flower Mound residents age 65 or older and/or residents who are 18 or older with a severe disability. In PY 2018, $28,900 or 15 percent of the Town's total 2018 CDBG allocation was dedicated to the Town-wide Transportation Program. The Town contracts with Special Programs for Aging Needs (SPAN) to provide the service and, if needed, supplements the CDBG funds with Town General Funds.

The Town of Flower Mound received $24,700 in Program Income during PY 2018. These funds were recovered from the Town's home rehabilitation programs and were put toward home rehabilitation projects during the year.

Geographic Distribution and Location of Investments Narrative

Because of the limited size of the Town's allocation of CDBG funding, the Town's Community Development Block Grant Executive Advisory Committee decided not to target a certain area or region of the Town to focus its programming efforts. All of the activities implemented using CDBG funds are open to all qualified residents of Flower Mound and are intended to have a town-wide benefit.

Leveraging and Match Narrative

The Town of Flower Mound's Financial Services Division is the lead agency for the administration of CDBG funding. To effectively implement the Community Development Plan, Financial Services utilizes CDBG funds as well as resources allocated by the Town Council. The Town Council makes available more than $250,000 a year in General Fund resources to fund agencies that are actively engaged in the provision of social services and cultural arts in Flower Mound.

No publicly owned land or property was used to address the needs identified in the Town's plan.

There are no match requirements for CDBG funds.

AFFORDABLE HOUSING

Discuss the difference between goals and outcomes and problems encountered in meeting these goals.

The Town of Flower Mound proposed to use 79 percent of its 2018 CDBG allocation to fund the rehabilitation of homes owned and occupied by low-to-moderate income households. It was anticipated that two households would be served through the Town's Residential Rehabilitation Program and two households would be served through its new Minor Home Repair Program.

Three households were assisted through the Residential Rehabilitation Program, and two households were assisted through the Minor Home Repair Program. We also began one additional Minor Home Repair project that will be completed in the 2019 Program Year.

Discuss how these outcomes will impact future annual action plans.
The Town of Flower Mound will stay on track to meet its goals. In an effort to make up for only completing one of our two projected Minor Home Repair Projects in PY 2017 as well as in PY 2016, we plan to complete four projects in the 2019 Program Year (two of which have already begun) to get us back on track to meet our Consolidated Plan goal.

Narrative for Number of Persons Served at Each Income Level
The Town of Flower Mound expanded its housing rehabilitation program in PY 2015. The Minor Home Repair Program was instituted to provide an additional outlet for accomplishing the Town's goal of supplying decent, safe, sanitary and affordable housing; correcting health and safety hazards in deteriorated housing; and expanding the useful life of existing housing units. The addition of the Minor Home Repair program continued to allow the Town the opportunity to assist more low-and moderate income homeowners during PY 2018.

One hundred percent of all CDBG funding for the housing rehabilitation programs was dedicated to persons of low-to-moderate income. Five homes were completed in PY 2018. Of the five homes completed, 100% were occupied by moderate-income homeowners. Four of the five homes (80%) were owned by female head of households.

HOMELESS AND OTHER SPECIAL NEEDS

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

- **Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs:**
  Outreach to persons experiencing homelessness continued to be carried out by the Town's partners, such as Journey to Dream. Flower Mound continued to allocate a portion of its General Funds to support Journey to Dream and its efforts to provide support to a growing population of homeless teens, including life skills training and access to community resources. Additionally, the organization runs Kyle's Place, which is a transitional living program for homeless and foster youth. Aside from giving teens a safe place to sleep and basic necessities, Kyle's Place offers programs and the support homeless youth need to get back on their feet and succeed. In PY 2018, the Town allocated $251,845 of general funds to fund agencies that are actively engaged in the provision of social services and cultural arts in Flower Mound.

  The Town also continued its involvement with the Denton County Homeless Coalition (DCHC). DCHC conducts quarterly general body meetings and monthly steering committee meetings, both of which are attended by representatives from area cities, service providers and faith-based groups. The meetings provide a forum for problem solving, information sharing and referral services. Agencies that serve a wide variety of special needs in locations throughout the cities of Flower Mound, Lewisville and Denton regularly attend and participate. These meetings provide an opportunity for collaboration between the Town of Flower Mound and these organizations that work to assist the homeless and address their needs. The Town's Grants & Financial Analyst currently serves as the Coalition's Secretary.

- **Addressing the emergency shelter and transitional housing needs of homeless persons:**

The Town of Flower Mound does not receive Emergency Shelter Grant (ESG) funding. However, the Town continued to participate in the Denton County Homeless Coalition. This network of service providers and other relevant parties serves as a catalyst for developing and providing needed services to those individuals and families who are homeless or at risk of homelessness in the county, such as emergency shelter and transitional housing.

- **Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: likely to become homeless after being discharged from publically funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); and, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs:**
  The Town of Flower Mound made available $251,845 in General Fund resources to fund agencies that are actively engaged in the provision of social services and cultural arts in, and for, the residents of Flower Mound. Some of these organizations included Journey to Dream, an organization that provides support to a growing population of homeless teens, including life skills training and access to community resources; PediPlace, an organization that provides primary care pediatric health services to children with limited access to care; and Denton County Friends of the Family, an organization that provides supportive services to those impacted by relationship violence and sexual assault.

  Additionally, the Town of Flower Mound continued to participate in the Denton County Homeless Coalition. This network of service providers and other relevant parties serves as a catalyst for developing and providing needed services to those individuals and families who are homeless or at risk of homelessness in the county. The Town's Grants & Financial Analyst currently serves as the Coalition's Secretary.

- **Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again:**
  The Town continued its support of helping homeless and potentially homeless individuals by allocating General Funds to local social service agencies that are working to address this challenge, such as Journey to Dream. The Town also continued its participation in the Denton County Homeless Coalition, which brings together those fighting to end homelessness in Denton County, such as local service providers, churches and governments. The Town's Grants & Financial Analyst currently serves as the Coalition's Secretary.

  The Town of Flower Mound also supplements the work of various Town-funded social service agencies to end chronic homelessness by promoting the preservation and maintenance of existing homes through its Minor Home Repair Program and Residential Rehabilitation Program.

  The Town continues to carry out these programs and support these various organizations and agencies in order to address this challenge in a coordinated and proactive manner that reduces duplication of effort as much as possible.

PUBLIC HOUSING

Actions taken to address the needs of public housing:
This section is not applicable, as the Town of Flower Mound does not have a public housing authority. The Town also does not receive or administer funds for assisted housing. There are no plans for public housing in Flower Mound at this time. However, surrounding communities do administer assisted housing programs to residents of Flower Mound, such as the Denton Housing Authority, which currently provides assistance to 16 clients in Flower Mound.

Actions taken to encourage public housing residents to become more involved in management and participate in homeownership:
N/A

Actions taken to provide assistance to troubled PHAs:
N/A

OTHER ACTIONS

Actions taken to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment:
During the 2018 Program Year, the Town's SMARTGrowth Commission and Planning and Zoning Commission continued their periodic review of development criteria to help mitigate the ill effects of overcrowding and congestion, including overburdened infrastructure, facilities, schools and services. Examples of these efforts include:

- The Planning and Zoning Commission met regularly throughout the year. The members used Flower Mound's SMARTGrowth criteria to ensure growth does not occur at the expense of environmental quality, community character, or quality of life of the Town's residents. Commission members followed residential density criterion and the Town's Master Plan when reviewing residential development requests, which allowed for a wide range of housing opportunities.

- The SMARTGrowth Commission also met during the year, which provided an opportunity for members to discuss any potential issues with the SMARTGrowth criteria.

Additionally, The Fair Housing Committee continued its routine review of the Town's zoning and subdivision ordinances, building codes and impact fees; and when necessary, will bring any potential impediments to the attention of management and the Town Council. Examples of these efforts include:

- The Town's Planning Services Division is represented on the Town's Fair Housing Committee. This division reviews, administers and enforces Town codes and regulations pertaining to the development of commercial and residential property through the planning and zoning process. During the year, no impediments were identified that needed to be brought to the attention of management and the Town Council.

- The Town's Building and Inspections Division is represented on the Fair Housing Committee. This Division reviews building codes and enforces building, electrical, plumbing and mechanical code regulations within Flower Mound. Permits are required before performing any new construction or addition, alteration or repair of existing buildings, structures, plumbing, electrical or mechanical work. During the year, no impediments were identified that needed to be brought to the attention of management and the Town Council.

- The Developmental Services Department is represented on the Fair Housing Committee. This Department reviews impact fees and provides planning, design review, implementation, quality control and maintenance for the Town's infrastructure system and improvement projects. During the year, no impediments were identified that needed to be brought to the attention of management and the Town Council.

Actions taken to address obstacles to meeting underserved needs:
Limited funding and resources to address the most complicated situations are the primary obstacles to meeting underserved needs in Flower Mound. However, the Town did allocate more than $250,000 in General Fund dollars to its social service partners to help meet the basic unmet needs of residents, including food, medical care, clothing and emergency housing assistance.

Actions taken to reduce lead-based paint hazards:
During the 2018 Program Year, the Town of Flower Mound continued to demonstrate its commitment to the eradication of lead-based paint hazards in the community.

In 2003, the Town formed a Lead-based Paint Task Force to determine what activities needed to be taken to reduce any existing or potential lead-based paint hazards and ensure compliance with the Lead-based Paint Hazard Reduction Act of September 15, 2000. During the year, the Task Force (a) researched and analyzed Flower Mound's ordinances, laws, regulations, public polices, practices, procedures, records and reports for any references to lead-based paint; (b) identified the locations of the 859 homes in Flower Mound built before 1978; and (c) obtained and developed educational materials about the dangers of lead-based paint. These materials were made available for public access at Town Hall and posted on the Town's website.

Based on the Task Force recommendations, the Town's Environmental Services Division was identified as Flower Mound's point of contact for lead-based paint issues. This Division continued to maintain and update the supply of educational materials available at Town Hall, as well as information on the Town website.

The Town currently sponsors two housing activities (the Residential Rehabilitation Program and the Minor Home Repair Program) that are carried out through the Community Development Block Grant Program. For these two programs, occupants of units constructed prior to 1978 receive proper notification of Lead-Based Paint (LBP) hazards and all projects are subject to the implementation of the Federal Lead-Based Paint Regulations in accordance with the most recently published CDBG grant management manual chapter on Lead-Based Paint.

During the 2018 Program Year, two of the homes rehabilitated had a construction date prior to 1978. However, after testing, it was found that no lead was present. Therefore, none of the Town's housing activities required lead hazard remediation actions.

Actions taken to reduce the number of poverty-level families:
The Town of Flower Mound's actions to help reduce the number of poverty-level families during the 2018 Program Year included economic development activities, tax exemptions for the disabled and senior citizens, leveraging resources and serving as a referral source:

- Economic Development: 2.7% of Flower Mound families live below the poverty level (compared to 8.4% in Denton County, 16.0% in Texas and 14.6% in the United States) and the Town's unemployment rate of 3.6% is lower than Denton County's rate of 4.5%, the State's rate of 5.8%, and the Nation's rate of 6.6%, according to the American Community Survey 5-Year Estimates. Flower Mound's lower rate can be attributed to the Town's proximity to numerous major employers and educational institutions throughout the Dallas-Fort Worth area. However, it is important to note that within Town limits, only 22.89% of the tax base is commercial. While Flower Mound's property, county and school taxes are among the lowest in the surrounding area, 74.39% of the Town's tax base is comprised of residential development, placing a disproportionate tax burden on homeowners. Community efforts during the past few years have resulted in an increase in commercial properties in Flower Mound. During the 2018 Program Year, Town staff continued its efforts, with the help of the local Chamber of Commerce, to provide business and retention development programs with incentives for economic development. As a result, in PY 2018, 46 new commercial permits were issued.

- Tax Exemptions: The Town maintained the exempted amount of the appraised value of residence homesteads for those with disabilities and individuals 65 years of age or older at $100,000. Additionally, the Town recently approved a 2.5% homestead exemption for all Flower Mound homeowners, which went into effect this year.

- Leveraging Resources: Town staff continued to liaison with community agencies established to provide the necessary resources for affordable housing and other needed services through outlets such as the Denton County Homeless Coalition. Some of these organizations include the Denton Housing Authority, which offers rental assistance and self-sufficiency training; the Denton Workforce Center/Texas Workforce Commission, which offers training and supportive services leading to employment; the Texas Department of Housing and Community Affairs; and the Denton County Housing Finance Corp., which offers homebuyer assistance.

- Referral Source: To help ensure that residents needing services are aware of available local providers, Town staff maintained established links to service providers on the Town website. In addition, the Town continued to post information about available job training, job search and financial management workshop opportunities on the Town's website, at the Town library and on the Town's cable television station. During the 2018 Program Year, six workshops related to these categories were hosted by the Town Library. In total, 132 residents attended these workshops.

These actions assisted in reducing the number of poverty-level families in Flower Mound by increasing local employment opportunities, reducing homeowner costs for senior citizens and those with disabilities and providing a referral network for those families seeking rental and other assistance.

Actions taken to develop institutional structure:
The Town continued to promote and emphasize the need for greater coordination between all social service agencies active in the Flower Mound area so as to minimize duplication of efforts. This was

carried out through outlets such as the Denton County Homeless Coalition meetings and quarterly roundtables co-hosted with the City of Lewisville, which serve as an education and networking opportunity for local social service agencies. Efforts to enhance coordination between local agencies, both public and private, will ensure that the information available is comprehensive, needs are being properly addressed and resources are being maximized.

Actions taken to enhance coordination between public and private housing and social service agencies:
The Town of Flower Mound continued to share information and leverage funds with area public and private housing, health and social service agencies. This helps ensure that access to needed services is available. The Town also continued to liaison with the Denton County Housing Authority, the Denton County Housing Finance Corporation and area lenders, through means such as the meetings of the Denton County Homeless Coalition, an organization that includes a network of public and private housing, health and social service representatives throughout Denton County.

The Town continues to make staff available as a referral source for families with low-to-moderate incomes to assist them in obtaining rental assistance or below-market interest rate mortgage loans and down payment assistance through local lenders. Additionally, the Town continued to maintain the links to housing rights, access groups and other service providers on the Flower Mound website.

Finally, the Town continued its participation in HUD-sponsored activities, which are informative and offer a ready network of Community Development Block Grant representatives and advisors.

Identify actions taken to overcome the effects of any impediments in the jurisdictions' analysis of impediments to fair housing choice:
The Town of Flower Mound continues to demonstrate its commitment to overcoming the effects of impediments to fair housing choice. This position was solidified in 2012 when the Town passed a Fair Housing Ordinance, which declared the Town's commitment to ensure fair housing opportunities for all citizens, regardless of race, color, religion, handicap, sex, familial status or national origin. This ordinance was unanimously approved by the Town Council.

During the 2018 Program Year, The Fair Housing Committee conducted its annual review of the Town's Analysis of Impediments to Fair Housing Choice. No overt barriers to fair housing were identified in the analysis. However, the Fair Housing Committee discussed a few items that the Town should do to ensure that unanticipated barriers do not develop in the future. These items and the efforts the Town took to address them in the 2018 Program Year are listed below.

- The SMARTGrowth Commission continued its periodic review of development criteria to help mitigate the ill effects of overcrowding and congestion, including overburdened infrastructure, facilities, and services.

- The Fair Housing Committee continued its routine review of the Town's zoning and subdivision ordinances, building codes and impact fees; and when necessary, commits to bringing any potential impediments to the attention of management and the Town Council.

- The Economic Development Department continued to work closely with the Chamber of Commerce to provide business and retention development programs with incentives for economic development. As a result, in PY 2018, 46 new commercial permits were issued.

- The Financial Services Department continued to foster partnerships with community agencies established to provide the necessary resources for affordable housing and identifying populations such as the elderly, youth, and female head-of-households living below the poverty level. This was done through the outlet of the Denton County Homeless Coalition, where the Town's Grants and Financial Analyst serves as the Town's representative and the Coalition's current Secretary. The Grants and Financial Analyst also sits on the Denton County Homeless Coalition Steering Committee. Flower Mound's Community Outreach Committee, chaired by Finance staff, includes members who represent church, private sector, banking and social service organizations. Many of these members provided services to Flower Mound residents during the year. For example, Journey to Dream assisted about 2,500 Flower Mound teens with various programs, including case management/assessment services, life skills training, counseling, and medical assistance.

- The Community Services Department continued to ensure that residents with poverty-level incomes are made aware of job training, financial management and job search workshop opportunities at the Town of Flower Mound Library. One hundred and thirty-two individuals attended these various workshops during the 2018 Program Year. Additionally, the Library provides online databases related to the job search process and educational assistance that 173 users accessed during the program year. These databases were available both onsite and remotely, which allowed residents access any time of day. Finally, the Library continued to purchase new books that relate to resume writing, interviewing, testing and starting a small business.

MONITORING

Evaluate the jurisdiction's progress in meeting its specific objectives for reducing and ending homelessness through:

- **Describe the standards and procedures used to monitor activities carried out in furtherance of the plan and used to ensure long-term compliance with requirements of the programs involved, including minority business outreach and the comprehensive planning requirements.**
  The Town of Flower Mound continually monitors programs and projects to ensure compliance with all applicable laws and regulations.

  Financial Services staff administers financial monitoring for all projects, programs and activities funded by CDBG. They ensure that all drawdowns are made after all ledgers and records have been reconciled and approved. Additionally, the financial operations and expenditures of the Town are audited on an annual basis by an independent accounting firm.

  To ensure compliance with grant requirements, effectiveness in solving neighborhood and community problems, as well as adherence to the goals laid out in the Town's five-year Consolidated Plan and 2018 Annual Plan, Town staff conducted monitoring of all operational projects identified in the Annual Plan. Technical assistance is provided on a continuing basis. During the 2018 Program Year, no problems or issues were identified in any of the three CDBG projects that needed to be corrected during the review.

Additionally, under the Town's Residential Rehabilitation Program and Minor Home Repair Program, Town staff administers and continuously monitors all projects implemented under these programs. Projects requested by residents are thoroughly evaluated for adherence to the program guidelines, including income eligibility. An environmental compliance checklist is completed for each project and the potential repairs are assessed for eligibility during an on-site evaluation by staff.

As a result of this careful management and monitoring, Flower Mound's CDBG-funded programs continue to have a positive effect on solving neighborhood and community problems, especially in regards to reducing the potential for homelessness. While progress is slow due to a lack of available funding, our community is meeting priority needs and specific objectives that will help to make Flower Mound's vision of the future a reality. By collaborating and leveraging funds, we were able to provide opportunities for our low-and moderate-income residents to have access to decent housing, a suitable living environment, and expanded economic opportunity.

- **Description of the efforts to provide citizens with reasonable notice and an opportunity to comment on performance reports.**
  The Town's Citizen Participation Plan requires the Town to post public notices for performance reports in the newspaper and on the Town website to ensure that interested groups, agencies, organizations and individuals have an opportunity to provide comments regarding Flower Mound's use of federal grant funds under the Community Development Block Program. These requirements were designed especially to encourage participation by low- and moderate-income residents.

  During the comment period, a copy of the report was posted on the Town website, www.flower-mound.com, at the Town Library, located at 3030 Broadmoor Lane, and at Town Hall, located at 2121 Cross Timbers Road. Additionally, on October 29, 2019, a public hearing was held at Flower Mound's Town Hall in the Council Chambers. This meeting place is easily accessible to all Town residents, including those with disabilities. All meeting notices and the Town website noted that translation services were available upon request, and that persons with disabilities would also be accommodated upon request. Public notices announcing the hearing were issued two weeks prior to the hearing date. Information about the public hearing was published in the Denton Record-Chronicle, displayed at Town Hall in an area easily visible to all who entered the building, and posted on the Town website.

CDBG

Specify the nature of, and reasons for, any changes in the jurisdiction's program objectives and indications of how the jurisdiction would change its programs as a result of its experiences.
There were no changes to the Town of Flower Mound's program objectives. The Town of Flower Mound will continue to stay on track to meet the goals established in its 2015-2019 Consolidated Plan and annual Action Plans. No changes are needed at this time.

Does this jurisdiction have any open Brownsfields Economic Development Initiative (BEDI) grants?
No.

TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: December 2, 2019

FROM: Andrea Roy, Economic Development Director

ITEM: **Consider approval of an Assignment of the Chapter 380 and Tax Abatement Agreement between the Town of Flower Mound and HIP DFW North DC IV LLC., to BTC III DFW North IV LLC, and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: The subject request relates to the assignment of the existing Chapter 380 and Tax Abatement Agreement between the Town and HIP DFW North DC IV LLC (Huntington), to BTC III DFW North IV LLC. Huntington wishes to sell the property at 1901 Lakeside Parkway, which contains an recently completed 198,961 square foot speculative industrial building, to BTC III. The site is located on the south side Lakeside Pkwy., east of Home Depot and west of Stryker Communications.

On April 16, 2018, Town Council approved the subject Chapter 380 and Tax Abatement Agreement to assist Huntington in offsetting the costs required to address the significant development obstacles on the subject site. The property, which measures approximately 17 acres has extreme topography, requiring the construction of a substantial retaining wall and limiting the use of much of the site. The property has been in foreclosure and was passed over by many developers due to these obstacles.

The Chapter 380 and Tax Abatement Agreement provides for a five-year, 50% real and tangible personal property abatement (total estimated savings $107,000), a grant equal to 25% of impact fees ($31,250), and a building permit fee waiver ($45,000). A 10-year cost-benefit analysis indicates a total cost to the Town of $185,000, providing a minimum net benefit of over $405,000. The payback to the Town is approximately 4 years.

All future benefits of the incentive will be assigned to BTC, with the exception of the Impact Fee Grant, which will be provided to Huntington.

According to the Chapter 380 and Tax Abatement Agreement, Huntington must complete the shell building by no later than December 31, 2019. The building final is expected to be issued this week, which is in full compliance with the Agreement. Additionally, the building must have a minimum taxable value of $5 million by January 1 of the year following the issuance of the first Certificate of Occupancy for a tenant.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Assignment of Tax Abatement Agreement to BTC III DFW North IV LLC
2. Executed HIP DFW North DC IV LLC Chapter 380 and Tax Abatement Agreement

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

Attachment 1

ASSIGNMENT OF TAX ABATEMENT AGREEMENT

THIS ASSIGNMENT OF TAX ABATEMENT AGREEMENT (this "**Assignment**") is made as of December ____, 2019, between HIP DFW NORTH DC IV LLC, a Delaware limited liability company ("**Assignor**"), BTC III DFW NORTH IV LLC, a Delaware limited liability company ("**Assignee**"), and THE TOWN OF FLOWER MOUND, TEXAS (the "**Town**").

BACKGROUND

WHEREAS, Assignor and the Town entered into that certain 380 and Tax Abatement Agreement dated April 16, 2018 (the "**Agreement**") with respect to that certain property commonly known as "DFW IV" and located at 1901 Lakeside Parkway, Flower Mound, Texas (the "**Property**").

WHEREAS, Assignor, as seller, and Assignee, as buyer, are parties to that certain Purchase and Sale Agreement dated as of November 1, 2018 (as amended and assigned to date, the "**Purchase and Sale Agreement**").

WHEREAS, Assignor and Assignee desire to enter into this Assignment in conjunction with the sale by Assignor to Assignee of the Property.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Definitions. Capitalized terms not defined herein shall have the meaning set forth in the Purchase and Sale Agreement, unless reference to any capitalized term is noted as defined in the Agreement.

2. Assignment and Assumption. Except with respect to the Impact Fee Grant (as defined in the Agreement), Assignor assigns and transfers to Assignee all of its rights, title and interest in and to the Agreement. Assignee hereby accepts the foregoing assignment, and assumes and agrees to perform all of the covenants and agreements in the Agreement to be performed by Assignor thereunder that arise or accrue from and after the date of this Assignment. Notwithstanding the foregoing, Assignor shall retain the Impact Fee Grant, whether paid prior to or after the date of this Assignment, and Assignee shall have no right, title or interest in or to the Impact Fee Grant.

3. Annual Certification. Pursuant to Section 9 of the Agreement, Assignor hereby certifies that, as of the date of this Assignment, Assignor is in compliance with each applicable term of the Agreement and, by countersigning this Agreement, the Town hereby acknowledges and agrees with the same.

4. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflicts of laws principles. Mandatory and exclusive venue for any action concerning this Assignment in which the Town is a party shall be in a court of competent jurisdiction in Denton County, Texas.

5. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

6. Notices. Pursuant to Section 11(g) of the Agreement, notices to be provided to "Owner" under the Agreement must be addressed to Assignee as follows and shall be provided in accordance with the terms of the Agreement:

BTC III DFW NORTH IV LLC
c/o Black Creek Industrial Acquisitions LLC
Attention: Joshua J. Widoff, General Counsel
518 17th Street, 17th Floor
Denver, CO 80202
Email: jwidoff@blackcreekgroup.com

[*The remainder of the page is intentionally blank; signatures follow.*]

Assignee, Assignor and the Town have executed this Assignment as of the date first hereinabove written.

ASSIGNOR:

HIP DFW NORTH DC IV LLC,
a Delaware limited liability company

By: Huntington Industrial Partners - Southwest, LLC,
a Colorado limited liability company, its sole member

By:_____
Name:_____
Title:_____

ASSIGNEE:

BTC III DFW NORTH IV LLC,
a Delaware limited liability company

By: Build-to-Core Industrial Partnership III LLC,
a Delaware limited liability company, its sole member

By: BCG BTC III Managing Member LLC,
a Delaware limited liability company, its Investment Managing Member

By: _____
Printed Name:_____
Title:_____

By: _____
Name: _____
Title: _____

THE TOWN:

THE TOWN OF FLOWER MOUND, TEXAS

By:_____
Name:
Its:

Attachment 2

THE STATE OF TEXAS)
)
COUNTY OF DENTON)

380 AND TAX ABATEMENT

This 380 and Tax Abatement Agreement (hereinafter referred to as the **"Agreement"**) is entered into by and between the Town of Flower Mound, Texas, a Texas home rule municipality (hereinafter referred to as the **"Town"**), and HIP DFW North DC IV LLC, a Delaware limited liability company (hereinafter referred to as the **"Owner"**), the property owner of a to-be-constructed commercial-warehouse property located in the Lakeside Business District in the Town and more particularly described on Exhibit A attached hereto (also referred to as the **"Real Property"**). Town and Owner may sometimes be referred to individually as **"Party"** or collectively as the **"Parties."**

W I T N E S S E T H:

WHEREAS, Section 312.002(a) of the Texas Tax Code requires the Town to pass a resolution indicating the Town's desire to become eligible to participate in tax abatement agreements; and

WHEREAS, on or about December 17, 2007, the Town adopted Resolution No. 37-07 electing to become eligible to participate in tax abatement agreements, in accordance with Section 312.002(a) of the Texas Tax Code, and subsequently has timely reaffirmed said tax abatement agreement policies; and

WHEREAS, at such times the Town also adopted and/or reaffirmed tax abatement guidelines and criteria, in accordance with Section 312.002 of the Texas Tax Code (hereinafter referred to as the "Town's Tax Abatement Guidelines and Criteria"); and

WHEREAS, the Town's Tax Abatement Guidelines and Criteria constitute appropriate guidelines and criteria governing tax abatement agreements to be entered into by the Town, as contemplated by Chapter 312 of the Texas Tax Code, as amended; and

WHEREAS, on or about April 16, 2018, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. 10-18 establishing a Tax Abatement Reinvestment Zone (the "Zone") in the Town of Flower Mound, Texas, for commercial- warehouse tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code; and

WHEREAS, the Owner owns, or will own, real property located within said Reinvestment Zone, Town of Flower Mound, Texas; and

WHEREAS, this abatement of taxes will maintain and enhance the economic and employment base of the Town, thereby benefiting the Town, in accordance with the Tax Abatement Guidelines and Criteria and the Property Redevelopment and Tax Abatement Act; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, finds that the contemplated use of the Real Property, and the improvements to the Real Property as set forth in this Agreement, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone in the Town of Flower Mound, Texas, in accordance with the purposes for its creation, and are in compliance with the Town's Tax Abatement Guidelines and Criteria, and Chapter 312 of the Texas Tax Code; and

WHEREAS, the Owner acknowledges and agrees that the tax abatements granted by this Agreement are contingent upon its compliance with this Agreement in accordance with the terms and conditions set forth herein; and

WHEREAS, the City desires to provide, pursuant to Chapter 380 of the Texas Local Government Code ("**Chapter 380**"), an incentive to the Owner to bring business development to the Town; and

WHEREAS, the Town has the authority under Article 52-a of the Texas Constitution and Chapter 380 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the Town; and

WHEREAS, the Town has determined that a grant of funds to the Owner will serve the public purpose of promoting local economic development, and stimulating business and commercial activity within the Town; and

WHEREAS, this Agreement was approved by the Town Council of the Town of Flower Mound, Texas, at a regularly scheduled meeting, consistent with Section 312.207(a) of the Texas Tax Code, as amended.

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

SECTION 1. FINDINGS INCORPORATED - AUTHORITY

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

(b) This Agreement is authorized by Chapter 312 of the Texas Tax Code, and Section 380.001 of the Texas Local Government Code.

SECTION 2. PROGRAM APPROVED

A program authorized under Chapter 380 is hereby established by the Flower Mound Town Council to encourage development of the Real Property (as hereinafter defined) and to add significant taxable value to the Town of Flower Mound. The terms of this Agreement shall implement the Program.

SECTION 3. TERM

This Agreement shall be effective as of the Effective Date and end on the last day of the Tax Abatement Period.

SECTION 4. DEFINITIONS

The terms "Agreement", "Town", "Owner", "Parties", and "Party", shall have the meanings provided above. The following words shall have the following meanings when used in this Agreement:

"Affiliate" means any entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Owner.

"Base Value" means the appraised value of the Real Property, according to the Denton Central Appraisal District, on the date this Agreement is signed, which the Parties agree is One Million Forty-Five Thousand Three Hundred Twenty-Seven Dollars ($1,045,327.00).

"Building" means an approximately 198,961 square foot commercial warehouse building to be constructed on the Real Property.

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

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

"Effective Date" means the date of the later to execute this Agreement by and between the Town and the Owner.

"Force Majeure" means any cause, condition or event, which is beyond the control of Owner or any person for whom Owner is responsible, that could not reasonably be avoided through ordinary care.

"Future Tenant" means a tenant which leases all or a portion of the Building after the Effective Date of this Agreement.

"Impact Fee Grant" means the grant from Town in an amount equal to 25% of the Town impact fees (water, wastewater, and road) paid by Owner and received by Town, which are attributable to the construction of the Improvements.

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

"Improvements" means the Building and other ancillary improvements such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the City, from time to time, in order to obtain a building permit(s), provided, however, that "Improvements" shall not include the Real Property.

"Payment Request" means a written request from Owner to Town for payment of the Impact Fee Grant, which request shall be accompanied by evidence reasonably satisfactory to Town to establish that Owner is in compliance with this Agreement. The Payment Request must be submitted in accordance with the notice provisions of this Agreement.

"Real Property" means the approximately 17-acre tract of land generally located at the southeast corner of Lake Forest Blvd. and Lakeside Parkway, Town of Flower Mound, Texas, and as more particularly described in Exhibit A to this Agreement, which is attached hereto and incorporated herein for all purposes.

"Substantial Completion" means the date a Certificate of Occupancy is issued by the Town for a Future Tenant space within the Improvements.

"Tangible Personal Property" means furniture, fixtures and equipment owned or leased by the Owner or Future Tenant(s) and located at the Real Property, subsequent to the execution of this Agreement. Tangible Personal Property shall not include inventory, Freeport Goods or Goods in Transit located at the Real Property.

"Tax Abatement Period" means the period, in years, during which the Real Property and Tangible Personal Property are entitled to tax abatement pursuant to this Agreement. The Tax Abatement Period shall commence on the earlier of (i) January 1 of the year following Substantial Completion or (ii) January 1, 2020; and said period shall expire on the last day of the fifth calendar year thereafter.

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

"Term" means the term of this Agreement as specified in Section 3 of this Agreement.

SECTION 5. OBLIGATIONS OF OWNER

As consideration for the tax abatement and grants of public funds, the Owner agrees and covenants as follows:

(a) Building Final. The Owner shall receive a Building Final for the Building no later than December 31, 2019.

(b) Taxable Value. Upon the first January 1st to occur after Substantial Completion, the Improvements must have a minimum Taxable Value of $5,000,000.

(c) Compliance with Laws. Owner agrees that construction of the Improvements shall be in accordance with all applicable federal, state, and local laws and regulations. The Real Property shall be used only in compliance with the Town's Comprehensive Zoning Ordinance.

(d) Use of Property. The Real Property shall at all times during the term of this Agreement be used in a manner that is consistent with the Zone. Both Parties agree that use of the premises for a warehouse is consistent with such purpose.

SECTION 6. OBLIGATIONS OF THE TOWN

Provided the Owner is in full compliance with the terms and conditions of this Agreement, the Town agrees to provide the following incentive to the Owner.

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

(b) Building Permit Fees. The Town agrees that building permit fees for the Improvements shall be waived. For purposes of clarification, fees not subject to the aforementioned waiver include engineering inspection fees, re-inspection fees, sign fees, screening wall fees, retaining wall fees, after-hours inspection fees, re-stamp fees for project scope changes during construction, construction

trailers fees, fire department fees, plat recording fees and early-construction fees. Any fees not referenced herein as being waived are specifically deemed not to be waived by the Town.

(c) Tax Abatement. Subject to the terms and conditions of this Agreement, and subject to the rights of holders of any outstanding bonds of the Town, ad valorem taxes otherwise owed to the Town for the Real Property and the Tangible Personal Property shall be abated in accordance with this subsection. The abatement of the taxes shall be based upon the increased value of the Real Property (which includes the Improvements once completed) over the Base Value, and the Tangible Personal Property added to the Real Property, in accordance with the terms of this Agreement and all applicable federal, state, and local laws and regulations.

(i) Term. The Tax Abatement Period shall commence on January 1 of the year following the earlier of (A) Substantial Completion or (B) January 1, 2020 and said period shall expire on the last day of the fifth calendar year thereafter.

(ii) Abatement Amount. The tax abatement rate for each such year during the Tax Abatement Period shall be the following percentage of the portion of the increased Taxable Value of the Real Property above the Base Value of the Real Property, and the ad valorem taxes assessed on the Tangible Personal Property located on the Real Property:

Year of Tax Abatement Period	Abatement Percentage
1	50%
2	50%
3	50%
4	50%
5	50%

Notwithstanding any provision in this Agreement to the contrary, the Real Property and Tangible Personal shall not be entitled to tax abatement for more than five (5) years.

SECTION 7. TERMINATION AND RECAPTURE PROVISION

(a) Termination. This Agreement terminates on the last day of the Tax Abatement Period, but may be terminated earlier upon any one or more of the following:

(i) by mutual written agreement of the Parties;

(ii) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;

(iii) upon written notice by Town, if any Impositions owed to Town or the State of Texas by Owner shall have become delinquent (provided, however, Owner retains the right to timely and properly protest and contest any such taxes or Impositions);

(iv) upon written notice by Town, if Owner suffers an event of Bankruptcy or Insolvency; or

(v) upon written notice by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

(b) Repayment. In the event this Agreement is terminated by Town pursuant to Section 7(a)(ii)-(iv), Owner shall be liable for and will pay to the Town within sixty (60) days following the termination of this Agreement: (1) an amount equal to the amount of the Impact Fee Grant that has been provided by Town to Owner prior to the date of such termination, as well as all waived permit fees which would otherwise have been paid to Town but for this Agreement, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Town) as its prime or base commercial lending rate, from the Effective Date until paid; (2) the amount of all taxes abated under this Agreement; (3) interest on the abated amount at the rate provided for in the Texas Tax Code for delinquent taxes; and (4) penalties on the amount abated in the year of default at the rate provided for in the Texas Tax Code for delinquent taxes.

SECTION 8. RIGHT OF ACCESS FOR INSPECTION

The Owner further agrees that the Town, its agents and employees, shall have reasonable right to access the Real Property during normal business hours and upon not less than two (2) business days written notice to Owner to inspect the Improvements and other items subject to this Agreement in order to ensure that the construction of the Improvements is in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the Improvements, the Town shall have the continuing right of reasonable access to the Real Property during normal business hours and upon not less than two (2) business days written notice to Owner to inspect the Real Property to ensure that they are thereafter maintained and operated in accordance with this Agreement.

SECTION 9. ANNUAL CERTIFICATION

On or before April 1 of each year, the Owner shall provide to Town written certification that Owner is in compliance with each applicable term of this Agreement. Such certification shall be in a form reasonably satisfactory to the Town, and shall include, at a minimum, information supporting Owner's conclusions that it met (or expects to meet) each condition and requirement to abatement set forth in this Agreement. Any failure of the Town to request or demand such certification shall not constitute a waiver of such certification or any future certification; provided, however, that if the Town fails to request or demand such certification and Owner fails to provide such certification, the Town shall give Owner written notice of such failure and Owner shall provide such certification within thirty (30) days of Owner's receipt of such notice.

SECTION 10. CANCELLATION OR MODIFICATION OF AGREEMENT

The Town and Owner agree that the Town may cancel or modify this Agreement if the Owner fails to comply with any of the provisions of this Agreement, subject to any cure provisions referenced in Section 7 and Section 9 of this Agreement.

SECTION 11. MISCELLANEOUS PROVISIONS

(a) Amendments. This Agreement constitutes the entire understanding and Agreement of the

parties as to matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties south to be charged or bound by the alteration or amendment.

(b) Applicable Law 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 the state district courts of Denton County, Texas.

(c) Assignment.

(i) Generally. This Agreement may not be assigned without the express written consent of the other party; provided, however, that Owner may assign Owner's interests in this Agreement, or a portion of such interests, as applicable, to an Affiliate, provided that any such assignee agrees to assume the obligations and duties of Owner contained in this Agreement.

(ii) Future Tenants. Owner may make full or partial assignments of this Agreement to any Future Tenant to afford the Future Tenant the right to receive an abatement of its Tangible Personal Property located on the Real Property. The assignment must be approved by the Town and on a form acceptable to Town.

(d) Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Town warrants and represents that the individual executing this Agreement on behalf of Town has full authority to execute this Agreement and bind Town to the same. Owner warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(e) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(f) Filing. In order to receive the tax abatement pursuant to this Agreement, Owner understands it must file with the appraisal district an application for property tax abatement exemption between January 1 and April 30 of each year during the term of this Agreement.

(g) Notices. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter if sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

if to Owner:

HIP DFW North DC IV LLC,
a Delaware limited liability company
c/o Huntington Industrial Partners
385 Inverness Parkway, Suite 460
Englewood, Colorado 80112
Attn: John W. Seiple, Jr.

if to Town:

Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028
Attn: Economic Development

(h) 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.

(i) Sovereign Immunity. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

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

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

(l) Prevailing Party Attorney's 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).

(m) Town Ordinances Applicable. The signatories hereto shall be subject to all applicable ordinances of the Town, whether now existing or in the future arising.

(n) Runs with the Land. The provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and successors in title.

[Remainder of page intentionally left blank.]

PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, on this 16 day of April, 2018.

TOWN:

TOWN OF FLOWER MOUND, TEXAS

Thomas E. Hayden, Mayor

ATTEST:

Theresa Scott, Town Secretary

OWNER:

HIP DFW North DC IV LLC, a Delaware limited liability corporation

By: _____
Name: Steven K. Meyer
Title: Authorized Representative

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the 16 day of April, 2018, Thomas E. Hayden, Mayor of the Town of Flower Mound, Texas, a Texas home rule municipality, on behalf of said Town.

THERESA SCOTT
Notary Public, State of Texas
Comm. Expires 12-29-2018
Notary ID 10116723

Theresa Scott
Notary Public, State of Texas

STATE OF Texas)
)
COUNTY OF Denton)

This instrument was acknowledged before me on the 17 day of Apr. 2018 by Steven ~~Wayne~~ Meyers, the Authorized Representative of HIP DFW North DC IV LLC, a Delaware limited liability company.

LINDA PROSKEY
Notary Public, State of Texas
Comm. Expires 08-28-2019
Notary ID 130350010

Notary Public, State of Texas

EXHIBIT "A"

LEGAL DESCRIPTION

BEING a description, of a 17.146 acre tract of land situated in the J. Knight Survey, Abstract No. 692, Denton County, Texas; being part of that tract of land described in Substitute Trustee's Foreclosure Sale Deed to First National Bank recorded in Document Number 2009-69937, Official Records of Denton County, Texas; said 17.146 acre tract being more particularly described as follows:

BEGINNING at a 5/8-inch iron rod (legible cap) found at the intersection of the south right-of-way line of Lakeside Parkway (a variable width right-of-way, 120 feet wide at this point) and the east right-of-way line of Lake Forest Boulevard (a 45-foot wide right-of-way); said point being the northwest corner of said Bank tract:

THENCE, easterly with the south line of Lakeside Parkway and the north line of said Bank tract, as follows:

North 89 degrees, 11 minutes, 53 seconds East, a distance of 449.11 feet to a ½-inch iron rod with "DAA" cap found at the beginning of a tangent curve to the right;

Along said curve to the right, having a central angel of 05 degrees, 20 minutes, 31 seconds, a radius of 940.00 feet, an arc distance of 87.64 feet, and a chord bearing and distance of South 88 degrees, 07 minutes, 51 seconds East, 87.61 feet, to a point at the end of said curve;

THENCE, departing the south line of Lakeside Parkway and into and across the said First National Bank tract the following eight (8) calls:

South 18 degrees, 14 minutes, 26 seconds East, a distance of 145.30 feet to a point for corner;

South 67 degrees, 37 minutes, 53 seconds East, a distance of 224.03 feet to a point for corner;

South 07 degrees, 12 minutes, 30 seconds East, a distance of 182.54 feet to a point for corner;

South 54 degrees, 39 minutes, 35 seconds West, a distance of 124.74 feet to a point for corner;

South 07 degrees, 12 minutes, 30 seconds East, a distance of 169.88 feet to a point for corner;

South 59 degrees, 35 minutes, 58 second West, a distance of 70.71 feet to a point for corner;

South 07 degrees, 12 minutes, 30 seconds East, a distance of 141.60 feet to a point for corner;

.

South 22 degrees, 12 minutes, 21 seconds East, a distance of 252.03 feet to a point for corner; said point being the northeast corner of that tract of land described in Special Warranty Deed to Grand Seville, L.P. recorded in Document Number 2007-102880 of said Official Records;

THENCE, South 89 degrees, 40 minutes, 23 seconds West, with the line common to said Bank tract and the Grand Seville tract, a distance of 775.49 feet to a ½-inch iron rod with "DAA" cap found for corner; said point being the southwest corner of said Bank tract and the east corner of the south terminus of said Lake Forest Boulevard;

THENCE, North 00 degrees, 27 minutes, 02 seconds West, departing the north line of the Seville tract and along the east line of Lake Forest Boulevard, and the west line of said Bank tract, a distance of 1055.68 feet to the POINT OF BEGINNING.

CONTAINING 746,898 square feet of 17.146 acres of land, more or less.

SAVE AND EXCEPT that portion conveyed by Right-of-Way Dedication Deed filed 05/24/2016, recorded in cc#2016-60293, cc# 2016-60294 and cc# 2016-60295, Real Property Records, Denton County, Texas.

TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: December 2, 2019

FROM: Wendell Mitchell, Assistant Police Chief WKM

ITEM: **Consider approval of these purchase agreements from Axon Enterprise, Inc., for the acquisition of Axon Fleet in car video camera systems, Axon body worn camera licensing, and Axon electric control devices; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: Law enforcement agencies utilize various technologies and tools in the performance of their duty, including in car video, body worn cameras (BWC) and electronic control devices (ECD or Tasers). The use of video recording systems has been a best practice for law enforcement agencies for years. These systems, both in car and BWC, are effective tools to collect valuable evidence, enhance officer training, and improve transparency as it relates to community interactions. Taser devices have proven to be a use of force option that has enhanced the safety of officers and suspects during force encounters. The mere display of a Taser, when justified, has shown to be an effective tool to de-escalate potentially violent encounters.

During this fiscal year the Police Department (PD) will continue to phase out in-car video recording systems that are due for replacement in police units with Axon Fleet. Historically in-car video recording systems function effectively 4-5 years given the climate in north Texas and wear of being in a police vehicle. Authorization to purchase additional BWC licensing related to video evidence processing, investigations, and submission is also being requested. The last Axon purchase, is to replace 12 Tasers that are going out of warranty by adding 12 Taser units to our current Taser 60 agreement. One of the biggest advantages of acquiring Tasers as part this agreement is cost is distributed over 5 years. The approval of these purchase agreements will allow the FMPD to acquire replacement equipment and additional licensing from Axon.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Although recording systems, both in-car and BWC, and Tasers are commonplace and a best practice for police agencies, they are not required by statute. Alternatively, our current in-car video recording systems could be maintained until they fail to operate; however, not recommended given the importance of these systems.

FISCAL IMPACT: The funding for these purchases was approved as part of the Town's 2019 –2020 fiscal year budget. The total fiscal impact for the terms of these purchases is $98,021.70.

Proposed Expenditure:	Account Number(s):
$ 9,288.00	100-640-43500-5020
$13,529.70	100-640-43500-5110

Finance Review by: Tammy Wilson, Executive Director of Financial Services tw

LEGAL REVIEW: Purchase agreements for these Axon products and licensing have previously been reviewed by attorneys with Taylor, Olson, Adkins, Sralla, & Elam L.L.P., as to form and legality.

ATTACHMENTS:

1. Axon quote for Taser 60
2. Axon quote for Body Worn Cameras and Licenses
3. Axon quote for Axon Fleet in-car system

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

Attachment 1

Q-200338-43775.648JM

Issued: 11/06/2019

Quote Expiration: 12/31/2019

Account Number: 157674

Payment Terms: Net 30

Delivery Method: Fedex - Ground

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

SHIP TO
Paul Boon
Flower Mound Police Dept. - TX
4150 KIRKPATRICK LN
FLOWER MOUND, TX 75028
US

BILL TO
Flower Mound Police Dept. - TX
4150 KIRKPATRICK LN
FLOWER MOUND, TX 75028
US

SALES REPRESENTATIVE
Jason Maxwell
Phone: (480) 502-6201
Email: jmaxwell@taser.com
Fax: (480) 378-6152

PRIMARY CONTACT
Paul Boon
Phone: (972) 874-3304
Email: paul.boon@flower-mound.com

Initial Payment - Taser 60 Year 1

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85176	TASER 60 YEAR 1 PAYMENT: X2 BASIC	12	345.00	345.00	4,140.00
Hardware					
22003	YELLOW X2 CEW, HANDLE	12	0.00	0.00	0.00
22011	APPM, AUTOMATIC SHUT-DOWN BATTERY PACK, X2/X26P	12	0.00	0.00	0.00
22501	RIGHT-HAND HOLSTER, X2, BLACKHAWK	12	0.00	0.00	0.00
22151	25 FT SMART CARTRIDGE, X2	24	0.00	0.00	0.00
				Subtotal	4,140.00
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	4,140.00

Taser 60 Year 2 - 2020

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85177	TASER 60 YEAR 2 PAYMENT: X2 BASIC	12	345.00	345.00	4,140.00
				Subtotal	4,140.00
				Estimated Tax	0.00
				Total	4,140.00

Taser 60 Year 3 - 2021

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85178	TASER 60 YEAR 3 PAYMENT: X2 BASIC	12	345.00	345.00	4,140.00
				Subtotal	4,140.00
				Estimated Tax	0.00
				Total	4,140.00

Taser 60 Year 4 - 2022

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85179	TASER 60 YEAR 4 PAYMENT: X2 BASIC	12	345.00	345.00	4,140.00
				Subtotal	4,140.00
				Estimated Tax	0.00
				Total	4,140.00

Taser 60 Year 5 - 2023

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
85180	TASER 60 YEAR 5 PAYMENT: X2 BASIC	12	345.00	345.00	4,140.00
				Subtotal	4,140.00
				Estimated Tax	0.00
				Total	4,140.00

Grand Total	**20,700.00**

Summary of Payments

Payment	Amount (USD)
Initial Payment - Taser 60 Year 1	4,140.00
Taser 60 Year 2 - 2020	4,140.00
Taser 60 Year 3 - 2021	4,140.00
Taser 60 Year 4 - 2022	4,140.00
Taser 60 Year 5 - 2023	4,140.00
Grand Total	**20,700.00**

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

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

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Jason Maxwell at jmaxwell@taser.com or fax to (480) 378-6152

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

'Protect Life'© and TASER® are registered trademarks of Axon Enterprise, Inc, registered in the U.S. © 2013 Axon Enterprise, Inc. All rights reserved.

Axon Internal Use Only		
		SFDC Contract #: Order Type: RMA #: Address Used: SO #:
Review 1	Review 2	
Comments:		

Flower Mound Police Dept. - TX

AXON SALES REPRESENTATIVE
Danny Thielen
(480) 434-8810
dthielen@axon.com

ISSUED
11/7/2019

Attachment 2

Q-197076-43776.650DT

Issued: 11/07/2019

Quote Expiration: 12/20/2019

Account Number: 157674

Payment Terms: Net 30
Delivery Method: Fedex - Ground
Contract Number: 00019126

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

SHIP TO
Darren Branch
Flower Mound Police Dept. - TX
4150 KIRKPATRICK LN
FLOWER MOUND, TX 75028
US

BILL TO
Flower Mound Police Dept. - TX
4150 KIRKPATRICK LN
FLOWER MOUND, TX 75028
US

SALES REPRESENTATIVE
Danny Thielen
Phone: (480) 434-8810
Email: dthielen@axon.com
Fax: (480) 502-6270

PRIMARY CONTACT
Darren Branch
Phone: 972-874-7587
Email: darren.branch@flower-mound.com

Year 2 - 1/1/2020 - 11/30/2020

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80013	BASIC EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	13	165.00	165.00	2,145.00
80023	PRO EVIDENCE.COM LICENSE: YEAR 2 PAYMENT	7	429.00	429.00	3,003.00
85110	EVIDENCE.COM INCLUDED STORAGE	130	0.00	0.00	0.00
85110	EVIDENCE.COM INCLUDED STORAGE	210	0.00	0.00	0.00
				Subtotal	5,148.00
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	5,148.00

Year 3 - 12/1/2020 - 11/30/2021

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80014	BASIC EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	13	180.00	180.00	2,340.00
80024	PRO EVIDENCE.COM LICENSE: YEAR 3 PAYMENT	7	468.00	468.00	3,276.00
85110	EVIDENCE.COM INCLUDED STORAGE	130	0.00	0.00	0.00
85110	EVIDENCE.COM INCLUDED STORAGE	210	0.00	0.00	0.00
				Subtotal	5,616.00
				Estimated Tax	0.00
				Total	5,616.00

Year 4 - 12/1/2021 - 11/30/2022

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80015	BASIC EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	13	180.00	180.00	2,340.00
80025	PRO EVIDENCE.COM LICENSE: YEAR 4 PAYMENT	7	468.00	468.00	3,276.00
85110	EVIDENCE.COM INCLUDED STORAGE	130	0.00	0.00	0.00
85110	EVIDENCE.COM INCLUDED STORAGE	210	0.00	0.00	0.00
				Subtotal	5,616.00
				Estimated Tax	0.00
				Total	5,616.00

Year 5 - 12/1/2022 - 11/30/2023

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80016	BASIC EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	13	180.00	180.00	2,340.00
80026	PRO EVIDENCE.COM LICENSE: YEAR 5 PAYMENT	7	468.00	468.00	3,276.00
85110	EVIDENCE.COM INCLUDED STORAGE	130	0.00	0.00	0.00
85110	EVIDENCE.COM INCLUDED STORAGE	210	0.00	0.00	0.00
				Subtotal	5,616.00
				Estimated Tax	0.00
				Total	5,616.00

Grand Total	**21,996.00**

Summary of Payments

Payment	Amount (USD)
Year 2 - 1/1/2020 - 11/30/2020	5,148.00
Year 3 - 12/1/2020 - 11/30/2021	5,616.00
Year 4 - 12/1/2021 - 11/30/2022	5,616.00
Year 5 - 12/1/2022 - 11/30/2023	5,616.00
Grand Total	**21,996.00**

Notes

This quote is co-termed with quote Q-156470 (executed contract #00019126). The end date of these subscriptions is subject to change if the ship/start date changes.

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is governed by the Master Services and Purchasing Agreement entered into by Axon Enterprise, Inc. and the Town of Flower Mound on October 3, 2018, as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Danny Thielen at dthielen@axon.com or fax to (480) 502-6270

Thank you for being a valued Axon customer. For your convenience on your next order, please check out our online store buy.axon.com

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Axon Internal Use Only		
		SFDC Contract #:
		Order Type: RMA #: Address Used: SO #:
Review 1	Review 2	
Comments:		

Flower Mound Police Dept. - TX

AXON SALES REPRESENTATIVE
Danny Thielen
(480) 434-8810
dthielen@axon.com

ISSUED
11/7/2019

Q-234195-43776.656DT

Issued: 11/07/2019

Quote Expiration: 12/20/2019

Account Number: 157674

Payment Terms: Net 30
Delivery Method: Fedex - Ground
Contract Number: 00019126

Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
Phone: (800) 978-2737

SHIP TO
Darren Branch
Flower Mound Police Dept. - TX
4150 KIRKPATRICK LN
FLOWER MOUND, TX 75028
US

BILL TO
Flower Mound Police Dept. - TX
4150 KIRKPATRICK LN
FLOWER MOUND, TX 75028
US

SALES REPRESENTATIVE
Danny Thielen
Phone: (480) 434-8810
Email: dthielen@axon.com
Fax: (480) 502-6270

PRIMARY CONTACT
Darren Branch
Phone: 972-874-7587
Email: darren.branch@flower-mound.com

Year 1

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80156	FLEET 2 UNLIMITED PACKAGE: YEAR 1 PAYMENT	9	1,419.00	1,277.10	11,493.90
85739	FLEET EVIDENCE.COM STORAGE, UNLIMITED	9	0.00	0.00	0.00
Hardware					
71088	AXON FLEET 2 KIT	9	0.00	0.00	0.00
80192	5 YEAR TAP, FLEET 2 KIT	9	0.00	0.00	0.00
80179	FLEET 2 TAP TRUE-UP PAYMENT	9	754.00	226.20	2,035.80
74110	CABLE, CAT6 ETHERNET 25 FT, FLEET	9	0.00	0.00	0.00
Other					
No Router	No Router (Declined)	9	0.00	0.00	0.00
				Subtotal	13,529.70
				Estimated Shipping	0.00
				Estimated Tax	0.00
				Total	13,529.70

Year 2

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80157	FLEET 2 UNLIMITED PACKAGE: YEAR 2 PAYMENT	9	1,548.00	1,548.00	13,932.00
85739	FLEET EVIDENCE.COM STORAGE, UNLIMITED	9	0.00	0.00	0.00
				Subtotal	13,932.00
				Estimated Tax	0.00
				Total	13,932.00

Year 3

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80158	FLEET 2 UNLIMITED PACKAGE: YEAR 3 PAYMENT	9	1,548.00	1,548.00	13,932.00
85739	FLEET EVIDENCE.COM STORAGE, UNLIMITED	9	0.00	0.00	0.00
				Subtotal	13,932.00
				Estimated Tax	0.00
				Total	13,932.00

Year 4

Item	Description	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages					
80159	FLEET 2 UNLIMITED PACKAGE: YEAR 4 PAYMENT	9	1,548.00	1,548.00	13,932.00
85739	FLEET EVIDENCE.COM STORAGE, UNLIMITED	9	0.00	0.00	0.00
				Subtotal	13,932.00
				Estimated Tax	0.00
				Total	13,932.00

Grand Total	**55,325.70**

Discounts (USD)

Quote Expiration: 12/20/2019

List Amount	61,353.00
Discounts	6,027.30
Total	**55,325.70**

Total excludes applicable taxes

Summary of Payments

Payment	Amount (USD)
Year 1	13,529.70
Year 2	13,932.00
Year 3	13,932.00
Year 4	13,932.00
Grand Total	**55,325.70**

STATEMENT OF WORK & CONFIGURATION DOCUMENT

Axon Fleet In-Car Recording Platform

This document details a proposed system design

Agency Created For: Flower Mound Police Dept. - TX

Quote: Q-234195-43776.656DT

Sold By:	Danny Thielen
Designed By:	Evan Bates
Installed By:	Customer
Target Install Date:	

V-3.26.18

VEHICLE OVERVIEW

SITE NAME	CUSTOMER NAME
Headquarters	Flower Mound Police Dept. - TX

Total Configured Vehicles

- 9 Total Vehicles with this Configuration

Video Capture Sources

- 18 Total Cameras Deployed
- 1 Axon Signal Unit(s) Per Vehicle

Mobile Data Terminal Per Vehicle

- 1 Located In Each Vehicle

Mobile Router Per Vehicle

- 1 Cradlepoint IBR900-600

Offload Mechanism

- Wi-Fi

Evidence Management System

- Evidence.com

Axon Camera

Signal Unit

In-Car Router

Battery Box

SYSTEM CONFIGURATION DETAILS

The following sections detail the configuration of the Axon Fleet In-Car System

Vehicle Hardware

Vehicle Hardware	2	Axon Fleet Cameras will be installed in each vehicle
	2	Axon Fleet Battery Boxes will be installed in each vehicle
	1	Axon Signal Units will be installed in each vehicle
	1	Cradlepoint IBR900-600 router will be installed in each vehicle
Axon Battery Boxes	The battery box provides power to its connected camera for up to 4 hours allowing for video offload while the vehicle ignition state is OFF and the MDT is connected and available.	
Signal Activation Methods	When triggered, the Axon Signal Vehicle (ASV) device will activate the recording mechanism for all configured Axon cameras within 30 feet of the vehicle.	
Mobile Data Terminal	Each vehicle will be equipped with a Mobile Data Terminal provided by the customer.	
Mobile Data Terminal Requirements	**Operating System:** Windows 7 or Windows 10 - x32 or x64 with the most current service packs and updates **Hard Drive:** Must have 25GB+ of free disk space **RAM/Memory:** Windows 7 - 4GB or greater | Windows 10 - 8GB or greater **Ethernet Port:** The system requires the MDT to have one dedicated and available Ethernet port reserved for an Ethernet cable from router. The Ethernet port can be located on an electronic and stationary mobile docking station. If a docking station is used, it is the preferred location for the Ethernet port. **Wi-Fi Card:** The system requires an 802.11n compatible Wi-Fi card using 5Ghz band. **USB Ports:** If the computer is assigned to the officer and does not remain with the vehicle, then the number dongles ordered should equal the number of officers or the number of computers assigned. At least one dedicated and available USB 2.0 port for the Fleet USB dongle USB Port on MDT or Dock.	

Additional Considerations	If the customer has a MiFi hotspot, embedded cellular, or USB 4G, then the customer must purchase a Cradlepoint router with an external antenna and Cradlecare. For agencies that use NetMotion Mobility, Axon traffic must be passed through; such that it does not use the Mobility VPN tunnel. Customer must provide IT and / or Admin resources at time of installation to ensure data routing if functional for Axon Fleet operation.	
	In the event an Agency is unable to support the IT requirements associated with the installation, Axon reserves the right to charge the Agency for additional time associated with on-site work completed by an Axon Employee.	
Hardware Provisioning	Customer will provide the following router for all vehicles:	Cradlepoint IBR900-600
	The customer will provide a MDT for each vehicle	

In-Car Network Considerations

Network Requirements	Cradlepoint IBR900-600 will create a dedicated 5Ghz WiFi network within each vehicle. This network will join the Axon Fleet cameras and Mobile Data Terminal together.			
Network Addressing	**IP Addressing**		**Total IPs Required**	
	Axon Fleet Cameras	18	36	
	Mobile Data Terminal	9		
	Cradlepoint IBR900-600	9		
Hardware Provisioning	Customer to provide all IP addressing and applicable network information			

Network Consideration Agreement

Network Consideration Agreement	Customer acknowledges the minimum requirements for the network to support this Statement of Work.
	All Axon employees performing services under this SOW are CJIS certified.
	If the network provided by Customer does not meet the minimum requirements, or in the event of a requested change in scope of the project, a Change Order will be required and additional fees may apply. Additional fees would also apply if Axon is required to extend the installation time for reasons caused by the customer or the customer network accessibility.

Professional Services & Training

Project Management	Axon will assign a Project Manager that will provide the expertise to execute a successful Fleet camera deployment and implementation. The Project Manager will have knowledge and experience with all phases of the project management lifecycle and with all application modules being implemented. He/she will work closely with the customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables.
Vehicle Installation	Customer will be performing the installation of all Axon Fleet vehicle hardware. Installation services purchased from Axon include a “clip” and removal of existing in-car system hardware. This does not include “full removal” of existing wiring. A “full removal” of all existing hardware and wiring is subject to additional fees. Axon provides basic Fleet operation overview to the customer lead and/or Admin at the time of install. Clip vs Rip installation removal: o It is necessary to differentiate between the type of equipment removal to be provided by Axon. Standard Fleet Installation includes hardware removal in a fashion considered “Clip” which means Axon cuts the wires from the old system without removing multiple panels, removing all wiring and parts from the old system. In the case Axon removes the hardware Axon is not responsible for the surplus of hardware or any devices that may have been physically integrated with the removed system. In some situations, radar systems are integrated with the in-car video system and have a cable that connects to the system, if Axon removes the old in car system then Axon is not responsible for the radar system as part of the removal. o A “Rip” removal should be contracted through ProLogic directly. The Rip would be similar to a complete and full removal, which is more common when they retire a vehicle from service.
Custom Trigger Installation	Axon Signal Units have multiple trigger configuration options. Any trigger configurations that include a door or magnetic door switch are considered “custom” and may be subject to additional fees. An Axon representative has discussed with the Agency the standard triggers of the Fleet System. Those standard triggers include light-bar activation, speed, crash and gun-locks. The light-bar must have a controller to allow Axon to interface for the desired position, gun-locks must be installed with existing hardware in the vehicle. Doors are considered “CUSTOM” since they required additional hardware and time for installation, typically requiring the door may need to be taken apart for the installation.
Training	End-user go-live training provides individual device set up and configuration assistance, training on device use, Evidence.com and AXON View XL. End-user go-live training and support is not included in the installation fee scope.

WiFi Offload Considerations

WiFi Offload Standards	There will be a maximum of 15 concurrent vehicles offloading at any given time.
	0 servers are required to facilitate the offload of in-car data to Evidence.com
	0 wireless access point(s) are required to facilitate the offload of data to Evidence.com
	When in proximity, the Cradlepoint IBR900-600 will connect to the agency's wireless access point(s) and initiate the upload of recorded video content
	Axon will not assume any responsibility for the management of/or configuration of an Axon Fleet compatible 3rd party router purchased by the Agency
	Upon completion of solution connectivity, meaning Axon Fleet is operational and appropriately connected to the Agency's WAP/Network Infrastructure, the Agency will then assume responsibility for their network workflow.
	In the event the Agency has a VPN/APN, Axon requires the appropriate Administrator of the Agency be present during the entire installation of Fleet.
	In the event the Agency is using Wi-Fi Offload and a WOS server is being used, Axon requires the appropriate Administrator of the Agency be present for the installation of Fleet in the initial vehicle.
	Customer will provide all wireless access points for installation.
	Customer will provide all server(s) for this installation.
	Customer will provide the data switch for this installation.
	Customer will provide the server rack for this installation.
	Customer will provide the KVM, monitor and mouse for this installation.
	Customer will provide the Uninterruptible Power Supply (UPS) for this installation.
	Servers will maintain a Sustained Disk Write Speed of Mbps.
	An Axon representative will provide the Agency detailed instructions for the WOS server setup and configuration (to include racking the server, setup of the server, and configuration of Axon WOS Software and Microsoft IIS Server). It is the responsibility of the Agency to ensure the WOS Server(s) are operational before the scheduled deployment date. Axon will provide remote assistance per the Agency's request.

Network Considerations

Agency Provided Metrics	Camera Bitrate (see Comments)	7	Mbps	
	Shifts per Day	3	Shifts	
	Maximum Offline Time	1	Days	
	Hours Of video Recorded Per Shift	2	Hours	
	Number of Vehicles per Shift at Site	12	Vehicles	
	Max Concurrent Vehicles Offloading	15	Vehicles	
	Available Internet Upload Bandwidth	600	Mbps	
Variables	Vehicle Offload Time	30	Minutes	
	Wi-Fi Overhead	20	Percent	
	Network Protocol Overhead	20	Percent	
	Max Storage Utilization %	40	Percent	
Results	Data Size per Vehicle / Shift	6300	MB	

Network Considerations

Results	Required Throughput Per Verhicle	28	Mbps	
	Minimum Wi-Fi Speed	28	Mbps	
	Total Data per Shift	73.83	GB	
	Total Data per Day	221.48	GB	
	Total Offload Bandwidth	421	Mbps	
	Total Storage	55371.09	GB	
	Required Sustained Network Bandwidth	443	Mbps	
	Sustained Disk Write Speed	53	Mbps	
	Min. Supportable Throughput to E.com	21	Mbps	
	E.com Throughput Difference	579	Mbps	

Notes

This quote is co-termed with quote Q-156470 (executed contract #00019126). Year one has been prorated to 11 months to align with agency annual billing dates. This has been done according to an anticipated ship date range of 12/1/2019-12/15/2019 as the end date of these subscriptions is subject to change if the ship/start date changes.

Axon Fleet 2.0 camera system hardware contained in this quote will be covered under the Technology Assurance Plan (TAP) and will be eligible for 1 replacement at the same time as the equipment originally deployed on this existing contract as determined by quote Q-156470. This will take place at the end of the contract on 11/30/2023.

Tax is subject to change at order processing with valid exemption.

Axon's Sales Terms and Conditions

This Quote is governed by the Master Services and Purchasing Agreement (MSPA) entered into by Axon Enterprise, Inc. and the Town of Flower Mound on October 3, 2018 and the First Amendment to the MSPA entered into on July 17, 2019, as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature: _____ **Date:** _____

Name (Print): _____ **Title:** _____

PO# (Or write N/A): _____

Please sign and email to Danny Thielen at dthielen@axon.com or fax to (480) 502-6270

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		SFDC Contract #:
		Order Type: RMA #: Address Used: SO #:
Review 1	Review 2	
Comments:		

TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: December 2, 2019

FROM: Mark Long, Recreation Superintendent

ITEM: **Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2020 Independence Fest *(The Parks Board recommended approval by a vote of 6 to 0 at its November 7, 2019 meeting).***

BACKGROUND INFORMATION: Staff is requesting approval of the sale of alcoholic beverages (beer and wine) at the 2020 Independence Fest that will be held on Saturday, July 4 at Bakersfield Park. On December 3, 2018, the Town Council unanimously approved alcohol sales for the festival that was held on July 4, 2019. The Town has allowed the sale of alcoholic beverages for the Wild About Flower Mound Festival and the Independence Fest since 2009. There have been no issues or concerns related to the sale of alcoholic beverages during any of the previous events.

The sale of alcoholic beverages on park property requires Parks Board consideration and the Town Council's approval since the event will be held at Bakersfield Park, as stipulated in Sec. 54-31(b)(2) of the Town's Code of Ordinances.

Similar to last year's event, Promoter Line, Inc., will secure a third party retailer to handle the sale of alcoholic beverages. The retailer will take on the risk and liability of selling alcohol at the festival. Additionally, the retailer will acquire all appropriate licenses and permits from the Texas Alcoholic Beverage Commission and name the Town as an additional insured on their liability insurance. The Town will be paid a 25% commission of the total beverage sales.

Alcohol consumption at city festivals and Independence Day celebrations is not uncommon in the Dallas-Fort Worth area (i.e. Lewisville's Western Day Festival, Grapevine's Grapefest and Main Street Days, Addison's Kaboom Town, and Southlake's Oktoberfest).

If approved for the event, alcohol would be prohibited from being taken out of the fenced in festival area. Similar to last year, this would be controlled by fencing, signage, police officers, and festival security staff. With the festival taking place on Independence Day, the Town has instructed the Flower Mound Youth Sports Association to not schedule their AAYBA baseball tournament the week of July 4th.

If the sale of alcohol is not approved for the event, the Town could lose significant sponsorship opportunities and the revenue stream created by the sale of alcoholic beverages. For the 2019 festival, Budweiser sponsored the festival by contributing $3,000, donating the backdrops for the stage, and produced event signage. In addition, the Town received $9,591.50 in commissions from the sale of beverages.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval by a unanimous vote of 6 to 0 at its November 7, 2019, regular meeting.

ALTERNATIVES/OPTIONS: The Town Council could deny the request and alcoholic beverages would not be sold at the 2020 Independence Fest.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENT: N/A

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

TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: December 2, 2019

FROM: Jaime Jaco-Cooper, Senior Center Manager

ITEM: **Consider approval of the consumption of alcoholic beverages at the Flower Mound Senior Center during the SIM Auxiliary's Elite Chef Competition fundraiser.**

BACKGROUND INFORMATION: The SIM Auxiliary, Inc. is requesting approval from the Town Council to serve wine at their Elite Chef Competition fundraiser on Thursday, January 30, 2020, from 6:00 – 8:00 p.m. at the Flower Mound Senior Center.

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

The Elite Chef Competition is an exciting annual event for SIM members and is open to the public. For this event, SIMA collaborates with four local businesses who each donate a chef and tasting-servings for 200 people. During the event, four chefs will perform cooking demonstrations and prepare small plates for each guest to sample. Guests will get to sample each dish while the chefs are performing their demonstrations. Each guest will vote for his or her favorite dish, and the winning chef will receive the Elite Chef Trophy. Guests will purchase a ticket for $20, which will include appetizers, wine, and beverages. SIMA previously held this event at the Flower Mound Senior Center in 2015, 2017, 2018, and 2019. Last year, the Elite Chef Competition fundraiser brought in approximately $3,500 for the Flower Mound Seniors In Motion Program.

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

BOARD REVIEW/CITIZEN FEEDBACK: N/A

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

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENT:

1. SIMA Elite Chef Flyer

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

Menu
ELITE CHEF
COMPETITION
Thursday, Jan. 30 at 6 p.m.
$20 per person
SIMA and Seniors In Motion invites you to this unique culinary experience! Local, professional chefs will compete by demonstrating and preparing their best dishes. Audience members will sample each dish and vote for their favorite. The chef with the most votes will be crowned the Elite Chef! Ticket price includes appetizers, tasting dishes, and beverages. All proceeds will be donated to SIMA, benefiting the Flower Mound Seniors In Motion program.
Bon Appétit!

TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: December 2, 2019

FROM: Mark Long, Recreation Superintendent

ITEM: **Consider approval of an ordinance amending Article II, "Park Regulations" of Chapter 54, "Parks and Recreations" of the Code of Ordinances by amending Section 54-2 to adopt regulations regarding the Disc Golf Course; amending appendix A "Fee Schedule"; providing this ordinance shall be cumulative of all ordinances; providing a severability clause; providing a penalty for violation hereof in accordance with Section 1-13 of the Code of Ordinances; providing for publication in the official newspaper; and providing an effective date (The Parks Board recommended approval by a vote of 6 to 0 at its May 2, 2019, regular meeting).**

BACKGROUND INFORMATION: Since the opening of the Heritage Park Disc Golf course in March 2019, there has been a high demand for daily use. The Town has been approached by multiple groups requesting permission to host tournaments on the course. With this being the first 18-hole disc golf course in town, there were no policies in place as it relates to rules, regulations and rental fees. Staff presented a comprehensive disc golf policy and fee structure at the May 2, 2019 Parks Board meeting. The Parks Board recommended approval of the policy and associated fees by unanimous vote of 6-0.

The Parks and Recreation Department is requesting approval from Town Council to adopt the policy and fees by ordinance, allowing staff the ability to rent the course to organizations for tournament play. The ordinance will amend Article II, "Parks Regulations" of Chapter 54, "Parks and Recreation" of the Code of Ordinances by amending Section 54-2 to adopt regulations regarding the Disc Golf course. Furthermore, the ordinance will amend Appendix A "Fee Schedule" to include the proposed disc golf fees. If approved, organizations will be required to abide by the rules and regulations set forth in the ordinance, and to pay the appropriate fees. The organization will also be required to fill out a permit application form through the Parks and Recreation Department, and depending on the scope of a tournament, a special use permit through the Environmental Services Division would need to be obtained. Applicants will also be required to provide liability insurance naming the Town as an additional insured.

The disc golf course rental policy is similar to those approved by Town Council that address pavilion, tennis court, and sports field rentals. The ordinance addresses items such as cancellations, inclement weather, refunds, and rules and regulations as it pertains to disc golf course use.

BOARD REVIEW: The Parks Board recommended approval by unanimous vote of 6-0 at its May 2, 2019, regular meeting.

ALTERNATIVES/OPTIONS: The Town Council could decide not to approve the regulations and not allow tournaments to be played on the Heritage Park Disc Golf course.

FISCAL IMPACT: Up to $1,000 in revenue to the Town annually for tournament rentals.

Finance Review by: Tammy Wilson, Executive Director of Financial Services tw

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

ATTACHMENT:

1. Disc Golf Ordinance

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

Attachment 1

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ARTICLE II, "PARK REGULATIONS" OF CHAPTER 54, "PARKS AND RECREATION" OF THE CODE OF ORDINANCES BY AMENDING SECTION 54-2 TO ADOPT REGULATIONS REGARDING THE DISC GOLF COURSE; AMENDING APPENDIX A "FEE SCHEDULE"; 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; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound, Texas 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 has previously adopted ordinances regulating public parks and recreation facilities within the Town; and,

WHEREAS, the Town Council now desires to adopt regulations governing the use and enjoyment of any public park or portion of a park designated by the Town as a disc golf course; and,

WHEREAS, the Town Council finds and determines that the adoption of this Ordinance is in the best interests of and necessary to protect the health, safety, and welfare of the public;

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

SECTION 1

Section 54-2 "Fees" of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by adding subsection (g) "Disc Golf Courses" to read as follows:

"(g) *Disc Golf Courses.*

(1) *Definitions*

Disc Golf Course means any portion of a public park as defined in section 11.01(b) of the town's Code of Ordinances that is either owned or leased by the town that has been equipped for the purpose of and designated as an area for playing disc golf.

Organization means any organized group that has entered into a disc golf course rental agreement with the town for the purpose of hosting a tournament.

(2) *Reservations.*

a. Disc golf courses can be reserved for tournaments through the Town Parks and Recreation Department to guarantee availability. Tournaments are limited to a maximum of six (6) hours per day and may, upon applicant's request, receive exclusive use of the disc golf course. The Organization applicant must be eighteen (18) years of age or older to reserve the disc golf course.

b. Rental applications may be made up to twelve (12) months in advance but must be submitted no later than forty-five (45) days prior to the tournament start date. Applications will be processed on a first-come, first-serve basis. Any necessary amendments or revisions to the rental application must be received seven (7) days before the tournament date.

c. The Parks and Recreation Department must approve all tournaments. Applicants must indicate any outside equipment, facilities, or vendors, such as food trucks, amplification equipment, or tents, which will be used during tournaments. Organizations may be required to apply for a special use permit through the Town's Environmental Services Division as determined by the Director of Parks and Recreation or their designee based on the scope, size, and site plan of the tournament.

d. The frequency of two (2) tournaments on the same disc golf course must be at least forty-five (45) days apart unless permission is granted by the Director of Parks and Recreation or their designee. This policy does not apply to Town organized or Town sponsored tournaments.

e. Organizations must submit a certificate of liability insurance for commercial general liability insurance, which provides bodily injury and property damage coverage at limits not less than $1,000,000.00 combined single limit per occurrence. The Town shall be named as an additional insured on the certificate, listing the date(s) and location of the tournament.

f. The Parks and Recreation Department reserves the right to deny any rental-permit application on any disc golf course.

(2) *Rental Fees.*

a. The reservation fees for tournaments are $200.00 for a one-day tournament and $360.00 for two-day tournaments.

b. A $200.00 deposit is required upon reservation of the disc golf course.

(3) *Cancellation and Refunds.*

a. The Town reserves the right to cancel or postpone any activities due to weather, unsafe playing conditions, or any other reasons that might endanger the safety of the players or public.

b. In the event the Parks and Recreation Department cancels a tournament due to severe weather conditions or course playability, a full refund will be provided to applicant.

c. Cancellations must be made in writing and submitted to the Parks and Recreation Department. If a cancellation is received sixty (60) days or more prior to the scheduled tournament date, the applicant will receive a full refund minus a $35.00 processing fee. All cancellations received with less than 60 days' notice but more than thirty (30) days 'notice will not be entitled to a refund for the rental fee. Deposit will be refunded in full. No refunds will be granted for cancellations within thirty (30) days of event.

d. Requests for a refund must be received, in writing, no later than fourteen (14) days after the scheduled tournament. Rescheduling in lieu of a refund is permitted based on course availability. To be considered for approval, the tournament must be rescheduled no later than fourteen (14) days after the date of the originally scheduled tournament. Failure to submit a request for a refund or to reschedule in

the time frame noted forfeits the opportunity for a refund or rescheduling in lieu of a refund.

(4) *Rules and Regulations.*

a. Organizations must comply with all applicable rules and regulations found in Section 54-72 of the Town Code of Ordinances.

b. *Hours*. Disc golf course use may not extend outside the hours of the approved rental request. No rentals will be allowed to continue thirty (30) minutes after sunset.

c. *Closed Course*. It shall be unlawful for any person to go on a course that has been designated and posted as a "Closed Course," except for the purpose of course maintenance.

d. *Intended Use.* It shall be unlawful for any person to use the disc golf course for any activity other than its intended use except as authorized in writing by the Director of Parks and Recreation or their designee.

e. *Activity Disruption*. It shall be unlawful for any individual or group that has not received a disc golf course rental permit to prevent, interfere with, or obstruct in any manner any permitted activities, programs, or uses on a disc golf course.

f. Failure to comply with park rules and regulations may cause the cancellation of the rental and possible denial of future use of the disc golf course."

SECTION 2

Appendix A "Fee Schedule," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by adding Section 54-(g), to read as follows:

Code Section Number	Description
54-2(g)(20	Fees: Disc Golf Course Rental

a. The reservation fees for tournaments are $200.00 for a one-day tournaments and $360.00 for two-day tournaments.

b. A $200.00 deposit is required upon reservation of the disc golf course."

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 violating any term or provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine in accordance with Section 1-13 of the Code of Ordinances, Town of Flower Mound, Texas, and each and every day such violation shall continue shall constitute a separate offense.

SECTION 6

The Town Secretary of the Town of Flower Mound is hereby directed to publish the caption of this Ordinance 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 7

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

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

APPROVED:

_____
Steve Dixon, MAYOR

ATTEST:

_____
Theresa Scott, TOWN SECRETARY

TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: December 2, 2019

FROM: Mark Long, Recreation Superintendent

ITEM: **Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code-Section 42.041 and to adopt an Ordinance providing for said Standards *(The Parks Board recommended approval by a vote of 6 to 0 at its November 7, 2019 regular meeting).***

BACKGROUND INFORMATION: The State of Texas Department of Family and Protective Services administer state regulations and general licensing procedures for all child-care facilities. Municipalities are exempted from the licensing requirement for programs provided for elementary age youth provided the Town Council annually adopts standards of care by ordinance after a public hearing. The required public hearing took place at the November 7, 2019 Parks Board meeting and the Board unanimously approved recommending the proposed ordinance for Town Council consideration. Additionally, the following criteria must be met in order to receive the exemption:

- Standards of care are provided to the parents of each program participant.
- Ordinance includes at a minimum: staffing ratios; staff qualifications; facility, health, and safety standards; and mechanisms for monitoring and enforcing the adopted local standards.
- Parents are informed that the program is not operated or advertised as a licensed day care.

The request for the exemption is necessary as the Town currently offers different day camps and programs throughout the year for youth ages 5 – 14 years. The Town officially received its exempt status from the State in 2011. On December 3, 2018, the Town Council enacted Ordinance No. 37-18, which adopted Standards of Care for the Town's Parks and Recreation youth recreation programs.

Staff is recommending no changes be made to the proposed Standards of Care adopted on December 3, 2018, in accordance with Section 42.041(b) (14) of the Texas Human Resources Code and Section 54-206 of the Code of Ordinances, Town of Flower Mound, Texas.

BOARD REVIEW/CITIZEN FEEDBACK: The Parks Board recommended approval of the Standards of Care by a vote of 6 to 0 at its November 7, 2019 regular meeting.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

ATTACHMENT:
1. Proposed Ordinance (Standards of Care- Exhibit "A")

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS; AMENDING CHAPTER 54, "PARKS AND RECREATION," SECTION 54-202, "ADOPTION;" ADOPTING UPDATED STANDARDS OF CARE FOR YOUTH RECREATION PROGRAMS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound, Texas ("Town") 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 operates a recreation program for elementary age children as a service to residents of the Town, and surrounding communities; and

WHEREAS, the State of Texas has adopted licensing requirements and regulations under Chapter 42 of the Texas Human Resources Code for facilities providing care to children, with which all facilities must comply, unless an exemption under Section 42.041(b) applies; and

WHEREAS, Section 42.041(b)(14) of the Texas Human Resources Code provides an exemption from the requirements of Chapter 42 to a municipality operating a recreation program for elementary age children (5-13 years); and

WHEREAS, on February 11, 2011, the Town received an exemption from the requirements of Chapter 42 of the Texas Human Resources Code from the Texas Department of Family and Protective Services ("TDFPS"); and

WHEREAS, the TDFPS will not monitor the Town's Parks and Recreation's youth recreation programs because the exempt status has been granted, and the TDFPS will not be responsible for investigating complaints regarding the Town's Parks and Recreation's youth recreation programs, so that any complaints shall be made to the Town Parks and Recreation Department; and

WHEREAS, the Town adopted Ordinance No. 37-18 on December 3, 2018 setting forth the standards of care for the Town Parks and Recreation's youth recreation programs; and

WHEREAS, the Town's standards of care for the Town Parks and Recreation's youth recreation programs must be adopted annually by the Town of Flower Mound Town Council, after public hearing, in order to maintain the exemption under Section 42.041(b)(14) of the Texas Human Resources Code; and

WHEREAS, the Director of the Town Parks and Recreation Services Department has recommended no changes be made to the standards of care adopted on December 3, 2018, in accordance with Section 42.041(b)(14) of the Texas Human Resources Code and Section 54-206 of the Code of Ordinances, Town of Flower Mound, Texas; and

WHEREAS, a public hearing was held on November 7, 2019, by the Parks Board regarding the revised standards of care, and the adoption of such revised standards of care by

the Town Council of the Town of Flower Mound ("Town Council") has been recommended by the Parks Board; and

WHEREAS, the Town Council finds that it 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 to adopt the revised standards of care as recommended by the Parks Board.

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

SECTION 1

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

SECTION 2

The Town Council hereby adopts local standards of care for the Parks and Recreation Services Department ("Department") youth recreation programs in compliance with the requirements of Texas Human Resources Code Section 42.041(b)(14) and pursuant to Section 54-206 of the Code of Ordinances of the Town of Flower Mound. The standards of care adopted by this Ordinance are available for inspection in the office of the Town Secretary and in the Town Parks and Recreation Services Department office.

SECTION 3

That Section 54-202, "Adoption," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"**Sec. 54-202. Adoption.**

The local standards of care ("Standards of Care"), as set forth in Exhibit "A" which is attached to the ordinance adopting the Standards of Care are incorporated by reference for all purposes as if written word for word herein, and are hereby adopted by the Town Council as the Standards of Care for the Parks and Recreation Services Department of the Town of Flower Mound. The Standards of Care are available for inspection in the office of the Town Secretary and in the Town Parks and Recreation Services Department office."

SECTION 4

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

SECTION 5

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause,

sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 6

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 2ND DAY OF DECEMBER, 2019.

APPROVED:

_____
Steve Dixon, MAYOR

ATTEST:

_____
Theresa Scott, TOWN SECRETARY

TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: December 2, 2019

FROM: Dale Crown, P.E., Senior Project Engineer

ITEM: **Consider approval of a Professional Services Agreement with HVJ North Texas – Chelliah Consultants, Inc. to provide construction materials engineering and testing, for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) project, in the amount of $45,175.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: The Professional Services Agreement includes construction materials engineering and testing for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) project. The project consists of the construction of 4,100 linear feet of 20-inch water line, 1,000 linear feet of 8-inch water line, and 250 linear feet of 12-inch water line.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Materials testing is required as part of the construction project.

FISCAL IMPACT: $45,175.00

Proposed Expenditure/(Revenue):	Account Number(s):
$45,175.00	630-960-98849

Finance Review by: Tammy Wilson, Executive Director of Financial Services tw

Total project cost for FY 19/20 is $ 2,300,000. Funding source is:

- New Debt

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

ATTACHMENTS:

1. Professional Services Agreement

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

Attachment 1

THE STATE OF TEXAS §
COUNTY OF DENTON §

PROFESSIONAL SERVICES AGREEMENT WITH HVJ NORTH TEXAS – CHELLIAH CONSULTANT, INC.

This contract is entered into on this 2nd day of December, 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 **HVJ NORTH TEXAS – CHELLIAH CONSULTANT, INC.,** ("hereinafter referred to as "CONSULTANT") whose address is 8701 John Carpenter Freeway, Suite 250, Dallas, Texas 75247.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) 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 Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) 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 Five Thousand One Hundred Seventy Five and No/100 Dollars ($45,175.00). 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:

Dale Crown, PE
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

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

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;

5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and

6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;

2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and

4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

IX.
Right to Inspect Records

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

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, 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:

Dale Crown, PE
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874- 6302 Telephone

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

Devarajan Chelliah, PE
HVJ Associates
8701 John Carpenter Freeway,
Suite 250,
Dallas, Texas 75247
214-678-0027 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

CONSULTANT:
HVJ NORTH TEXAS – CHELLIAH CONSULTANT, INC.

By: C. Thiran
Name: Devarajan Chelliah, PE
Title: Manager Owner
Date Signed: 11/08/2019

State of Texas §
§
County of Denton §

This instrument was acknowledged before me on the 8th day of NOVEMBER, 2019, by Devarajan Chelliah in his capacity as Managing Owner of HVJ North Texas, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of HVJ NORTH TEXAS.

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

Notary Public, State of Texas

My Commission Expires:

10-03-2020

MABEL M. LUSENGO
NOTARY PUBLIC - STATE OF TEXAS
ID# 130848879
COMM. EXP. 10-03-2020

Attachment A

8701 John Carpenter Freeway, Suite 250
Dallas, Texas 75247-4640
214.678.0227 Ph
214.678.0228 Fax
www.hvj.com

October 27, 2019 (2nd Revised on 11/5/2019)

Dale Crown, PE.
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

Re: Proposal for Construction Materials Engineering and Testing Services
Project: Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff)
Owner: Town of Flower Mound
HVJ Proposal No.: DC 1810130.4

Dear Mr. Crown:

HVJ Associates ® (HVJ) is pleased to submit this budget estimate for material testing and laboratory services for the above referenced project.

Project Description
This project is along Morriss Road and a couple of nearby streets that includes open-cut installation of approximately 4,100 LF of a new 20-inch water line and 1,000 LF of new 8-inch water line. The new 20-inch line will be located within the Morriss Road median and includes a handful of median break crossings (pavement repair), and one dry auger bore. The project also includes approximately 900 LF of 8-inch water main that will be sliplined into an existing pipe.

Schedule
We understand that open bids for the project early November and expect to award the contract in December in 2019. Notice to proceed is expected in January 2020.

Scope of Services
HVJ's scope of services for this project will consist of on-call field and laboratory construction materials inspection and testing services for earthwork and concrete. The scope of material testing services anticipated for this project is in accordance with project plan and specifications.

Testing, including sampling, will be performed by a certified technician or the testing firm's laboratory personnel, in the general manner indicated in the project specifications. The testing firm's laboratory shall perform all laboratory tests within a reasonable time consistent with the specified standards and shall furnish a written report of each test.

Mr. Dale Crown, PE,
DC 1810130.4
October 26, 2019 (2nd Revised on 11/5/2019)

Budget Estimate
The estimated cost to perform the material testing services required on this project by HVJ is $45,175.00. Testing services will be provided on an on-call basis, with at least 24 hours prior notice to ensure proper scheduling of work.

Overtime rates of 1.5 times the regular hourly rates will be billed for services performed before 6:00 AM and after 6:00 PM on Monday through Friday, or any hours worked on Saturday, Sunday, a holiday, or if over 8 hours in one day. Onsite cancellations will be charged a minimum of 4 hours.

Invoice
HVJ's accounting procedures call for the submittal of invoices on a month-end basis or at the conclusion of the project should its duration last less than a month. HVJ credit terms are net 30 days.

If this proposal meets with your approval, please send us a written NTP along with task order or work order. Alternatively, if you agree with our scope and fee estimate please sign and complete the indicated spaces below and forward a copy of the proposal to us.

We appreciate your consideration of HVJ for this project and look forward to the opportunity of working with you. Should you have any questions regarding the contents of this proposal, please contact us at 214-678-0227.

Sincerely,

HVJ NORTH TEXAS - CHELLIAH CONSULTANT, INC.

Partheeban Selvarajah, PE
Project Manager

Agreed to this _____ day of _____, 20_____

By: _____

Title: _____

Firm: _____

Phone No._____

Date to Start Work: _____

Attachment B

8701 John Carpenter Freeway, Suite 250
Dallas, Texas 75247-4640
214.678.0227 Ph
214.678.0228 Fax
www.hvj.com

FEE SCHEDULE

TABLE- CONSTRUCTION MATERIAL TESTING

Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff)

Client: Town of Flower Mound

HVJ Fee Schedule No. : DC181030.4

Date: 10/27/2019 (2nd Revised on 11/5/2019)

Description	*Quantity*	*Units*	*Unit Price*	Total Price
Earthwork Testing				
Laboratory Moisture-Density Relationship (ASTM D698)	12	each	$180.00	$2,160.00
Laboratory Moisture-Density Relationship (ASTM D698)- Lime and Cement Stabilized	6	each	$220.00	$1,320.00
Lime Series	3	each	$300.00	$900.00
Liquid Limit, Plastic Limit, and Plasticity Index of Soils (ASTM S4318)	18	each	$65.00	$1,170.00
Materials finer than No. 200 sieve in soils by washing (ASTM C1140)	18	each	$45.00	$810.00
			Subtotal	**$6,360.00**
Aggregate Testing				
Sieve Analysis of Fine and Coarse Aggregate (ASTM C136)	2	each	$75.00	$150.00
			Subtotal	**$150.00**
Concrete Testing				
Compressive Strength of Cylindrical Concrete Specimens (ASTM C39)	120	each	$20.00	$2,400.00
			Subtotal	**$2,400.00**
Hot Mix Asphalt Testing				
Asphalt Extraction with Gradation (Tex-236-F)	1	each	$165.00	$165.00
Theoretical Maximum Specific Gravity (Tex-227-F)	1	each	$110.00	$110.00
Density of Roadway Core (Includes Trimming) (Tex-207-F)	1	each	$80.00	$80.00
Effect of water on Bituminous Mixtures (Tex-530-C)	1	each	$110.00	$110.00
			Subtotal	**$465.00**
Equipment				
Construction Truck (Includes Operation, Maintenance Costs and Insurance)	60	day	$90.00	$5,400.00
Nuclear Density Equipment Rental	30	trip	$50.00	$1,500.00
			Subtotal	**$6,900.00**
Personnel				
Engineer Tech (American Concrete Institute Field, Troxler Hazmat and Nuclear Gauge) - Regular Time - minimum 4 hours per trip	300	hour	$60.00	$18,000.00
Engineer Tech (American Concrete Institute Field, Troxler Hazmat and Nuclear Gauge) - Overtime	30	hour	$90.00	$2,700.00
Project Engineer, PE	33	hour	$145.00	$4,785.00
Staff Engineer	7	hour	$95.00	$665.00
Admin/Clerical	50	hour	$55.00	$2,750.00
			Subtotal	**$28,900.00**
Total				**$45,175.00**

General Notes

1. The items listed above are those tests most frequently requested. Additional test and special service quotes are available upon request
2. A minimum charge of 4 hours applies to field testing and inspection services with the exception of sample pick ups for which minimum 2 hours is charged. Onsite cancellation will be charged minimum of 4 hrs.
3. Technician time is charged on a portal to portal basis from our office. The minimum billing increment for field time is 1/2 of an hour.
4. Overtime rates of 1.5 times the regular hourly rates will be billed for services performed before 6:00 AM and after 6:00 PM Monday through Friday or any hours worked on Saturday,
5. Personnel time for site visits, consulting, compliance letter etc. will be charged per applicable unit rates.
6. We assumed the majority of the material testing services will be provided within the year of 2020, approximately 110 trips for concrete and density tests.

TOWN COUNCIL AGENDA ITEM NO. 10

REGULAR ITEM

DATE: December 2, 2019

FROM: Richard Brown, Senior Planner

ITEM: **Public Hearing to consider an ordinance for rezoning (ZPD19-0009 – Windsor Professional Centre) to amend Planned Development District No. 92 (PD-92) with Office District (O) uses, to add Health club or athletic club as a permitted use for Lot 4, only. The property is generally located north of Windsor Centre Drive and west of Long Prairie Road. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its November 11, 2019, meeting.)**

SUMMARY DATA:

- Size – 0.9264 acres
- Existing building square feet – 9,934 sf for office uses
- SMARTGrowth – Passed
- Traffic Analysis – No impact on capacity of area roadways
- Exceptions – N/A
- Incentives – N/A

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
2. Draft Ordinance

LEGAL REVIEW: James Donovan, 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: 3

REGULAR ITEM

DATE: November 11, 2019

FROM: Richard Brown, Senior Planner

ITEM: **Public Hearing to consider an ordinance for rezoning (ZPD19-0009 – Windsor Professional Centre) to amend Planned Development District No. 92 (PD-92) with Office District (O) uses, to add the Health club or athletic club use as a permitted use for Lot 4, only. The property is generally located north of Windsor Centre Drive and west 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.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

Planned Development District No. 92 (PD-92) for Office District (O) uses consists of approximately 10.05 acres and provides for two tracts of land. The property fronts on the north side of Windsor Centre Drive. On April 10, 2006, the Planning and Zoning Commission approved a record plat for Windsor Professional Centre Addition that provided for eight buildable lots and four x-lots. Mutual access easements serve the entire nonresidential subdivision, with all lots having access to Long Prairie Road and Windsor Drive. An amenity area that serves the subdivision is partially located within the southwest corner of the property. All x-lots and the amenity area are maintained by the business owners' association.

On July 24, 2017, the Planning and Zoning Commission approved a site plan (SP17-0013) that provided for a one-story, 9,934 square foot office building (multi-tenant) inclusive of 36 parking spaces; this request is limited to this lot. All other lots within the nonresidential subdivision are developed.

The purpose of this request is to consider the addition of the Health club or athletic club use as a Permitted Use, subject to the following standards:

- Limit the use to Lot 4 (this applicant's parcel)
- A maximum of six attendees at any one time
- No outside activities
- Operation of the use is limited to the hours between 6:00 a.m. and 8:00 p.m., Monday through Thursday; 6:00 a.m. and 6:00 p.m., Friday; and 7:00 a.m. and 1:00 p.m., Saturday.

Adjacent development within the nonresidential subdivision consists of various office uses (both general/professional and medical) and a hospital (Medical City ER Flower Mound).

The Westchester-Flower Mound residential subdivision lies immediately west of Windsor Professional Centre with the Westside Professional Center nonresidential subdivision developed to the north. Long Prairie Road and Windsor Drive abut the eastern and southern property lines of the subdivision, respectively.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all Specific Use Permit requests. At the time this report was written, the Town had received one phone call with concerns of the overall parking demands within the subdivision. Additionally, two items of correspondence in opposition to the request has been received; staff has not received any correspondence in support. All written correspondence was sent directly to the Planning and Zoning Commission according to the new public communication process.

IV. ATTACHMENTS

A. Background Information

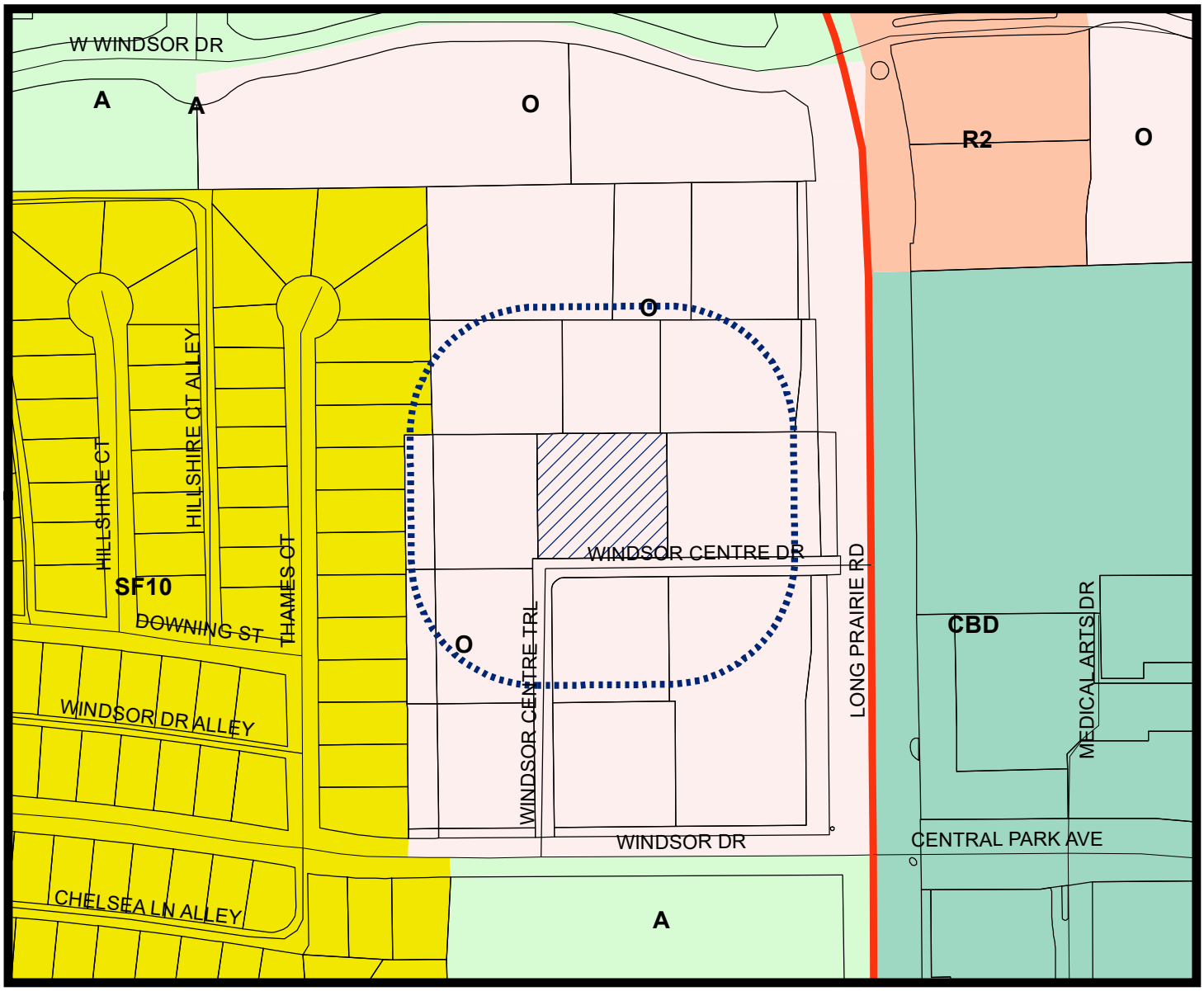
1. Vicinity Map
2. Letter of Intent
3. Existing PD-92 Ordinance

B. Application Details

1. Draft Amended Planned Development (PD) Standards

Vicinity Map

Reference Project: ZPD19-0009

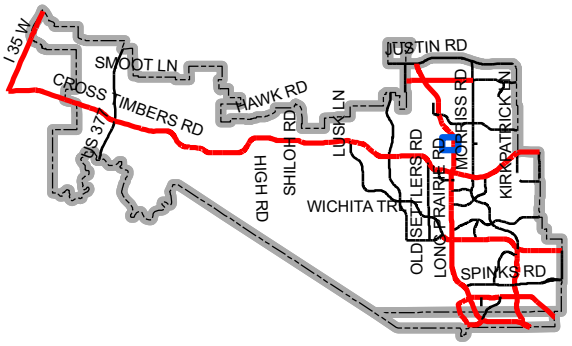


LEGEND

Agriculture | Central Business District | Office | Retail 2 | Single Family 10

Subject Property

200 ft Notification Buffer around Property



Map Location

0 187.5 375 750 Feet

OGH
14114 Dallas Parkway #605
Dallas, TX 75254
Office: 972.691.7600
Fax: 972.691.7601
oghcommercial.com

October 23, 2019

The owner of 4335 Windsor Centre Trail is requesting an amendment to our property zoning to allow for a health club or athletic club, in the building. The property is currently zoned PD-92 for Office District (O) uses. The owner is requesting a zoning amendment to the property at 4335 Windsor Centre to allow for a health club or athletic club. The amount of space of the building that would be occupied by health club is 1,196 square feet. The property lot size is .9264 acres. This request to amend the zoning is limited to Lot 4 only. The building has been completed, there are not any phases in the development. We are not requesting any exceptions or waivers.

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 08-06

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 AN APPROXIMATE 10.15 ACRE TRACT OF LAND IN THE C. CHACON SURVEY, ABSTRACT NO. 299 (INCLUDING ALL OF LOTS 1 AND 2 OF THE JOHN G. YOUNG ADDITION) FROM AGRICULTURAL DISTRICT (A) TO PLANNED DEVELOPMENT DISTRICT NO. 92 (PD-92) WITH OFFICE DISTRICT (O) USES, IN ACCORDANCE WITH THE TOWN'S MASTER PLAN 2001 AND IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; 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 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 an approximately 10.15 acre tract of land in the C. Chacon Survey, Abstract No. 299 (including all of Lots 1 and 2 of the John G. Young Addition) from Agricultural District (A) to Planned Development District No. 92 (PD-92) with Office District (O) uses as herein described; and

WHEREAS, all legal requirements, conditions, and prerequisites have been complied with prior to this case coming before the Town Council of the Town of Flower Mound; and

WHEREAS, the Town Council of the Town of Flower Mound, 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 of the Town of Flower Mound and of all testimony and information submitted during said public hearing, has determined that it is in the public's best interest and in support of the health, safety, morals, and general welfare of the citizens of the Town, that the zoning of the property described herein shall be changed, and that the official zoning map, Exhibit "A" of Subpart B, the Land Development Regulations of the Code of Ordinances of the Town of Flower Mound, Texas, shall be amended to reflect the rezoning of the property herein described.

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 factual and legislative determinations of the Town Council of the Town of Flower Mound and are hereby approved and 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 property described herein shall be rezoned as set forth in this section, and the official zoning map, Exhibit "A" of Subpart B, the Land Development Regulations of the Code of Ordinances of the Town of Flower Mound, Texas, is hereby amended and changed in the following particulars to reflect the action taken herein, and all other existing sections, subsections, paragraphs, sentences, definitions, phrases, and words of said Land Development Regulations are not amended, but shall remain intact and are hereby ratified, verified, and affirmed.

The uses allowed on that certain tract of land being approximately 10.15 acres in the C. Chacon Survey, Abstract No. 299 (including all of Lots 1 and 2 of the John G. Young Addition) and more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes, presently zoned Agricultural District (A) is hereby rezoned Planned Development District No. 92 (PD-92) with Office District (O) uses, in accordance with Exhibit "B" (Development Standards), Exhibit "C" (Concept Plan), Exhibit "D" (Landscape Concept Plan), Exhibit "E" (Amenity Areas) and Exhibit "F" (Concept Elevation Plan), and specific requirements in the Town's Master Plan 2001, as stated herein and in the exhibits attached hereto.

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

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

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 or of the final site plan as adopted by the Planning and Zoning Commission 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 from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 5 TO 0, ON THIS THE 16th DAY OF February, 2006.

APPROVED:

Jody A. Smith, MAYOR

ATTEST:

Paula J. Paschal, TRMC, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, TOWN ATTORNEY

EXHIBIT "A"

BEING all that certain lot, parcel or tract of land situated in the C. Chacon Survey, Abstract Number 299, in the Town of Flower Mound, Denton County, Texas and being First Tract of the John G. Young Subdivision, an addition to the Town of Flower Mound, Denton County, Texas according to the plat thereof recorded in Volume 4, Page 1 of the Plat Records of Denton County, Texas, and Second Tract of Revision Number One of the John G. Young Subdivision, an addition to the Town of Flower Mound, Denton County, Texas according to the plat thereof recorded in Volume 4, Page 57 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod set with cap stamped "Arthur Surveying Company" at the intersection of the north line of Windsor Drive and the west line of Farm to Market Road 2499 (F.M. 2499);

THENCE South 89 degrees 28 minutes 12 seconds West, along the north line of said Windsor Drive, a distance of 664.53 feet to a ½ inch iron rod found at the southeast corner of Lot 107, Block S of Westchester Third Increment, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet D, Page 144, Plat Records, Denton County, Texas;

THENCE North 00 degrees 34 minutes 36 seconds West, along the east line of said Lot 107 same being the east line of Westchester Third Increment and passing a ½ inch iron rod at a distance of 316.01 feet, said point being in the east line of Lot 103 of said Block S, and continuing along course a total distance of 636.43 feet to a ½ inch iron rod set with cap stamped "Arthur Surveying Company", said point being an inner ell corner of Lot 98 of the aforementioned Block S;

THENCE South 89 degrees 25 minutes 12 seconds West, along a south line of said Lot 98 passing the southeast corner thereof, said point being the southwest corner of that certain tract of land described in deed to Norvell Family Partners, Ltd., recorded in Volume 4487, Page 2655, Real Property Records, Denton County, Texas and continuing along said course a total distance of 664.53 feet to a ½ inch iron rod set with cap stamped "Arthur Surveying Company" in the west line of aforementioned F.M. 2499;

THENCE South 00 degrees 34 minutes 36 seconds East, along the west line of said F.M. 2499, a distance of 636.43 feet to the POINT OF BEGINNING, and containing 10.147 acres of land, more or less, and being subject to any easements that may affect.

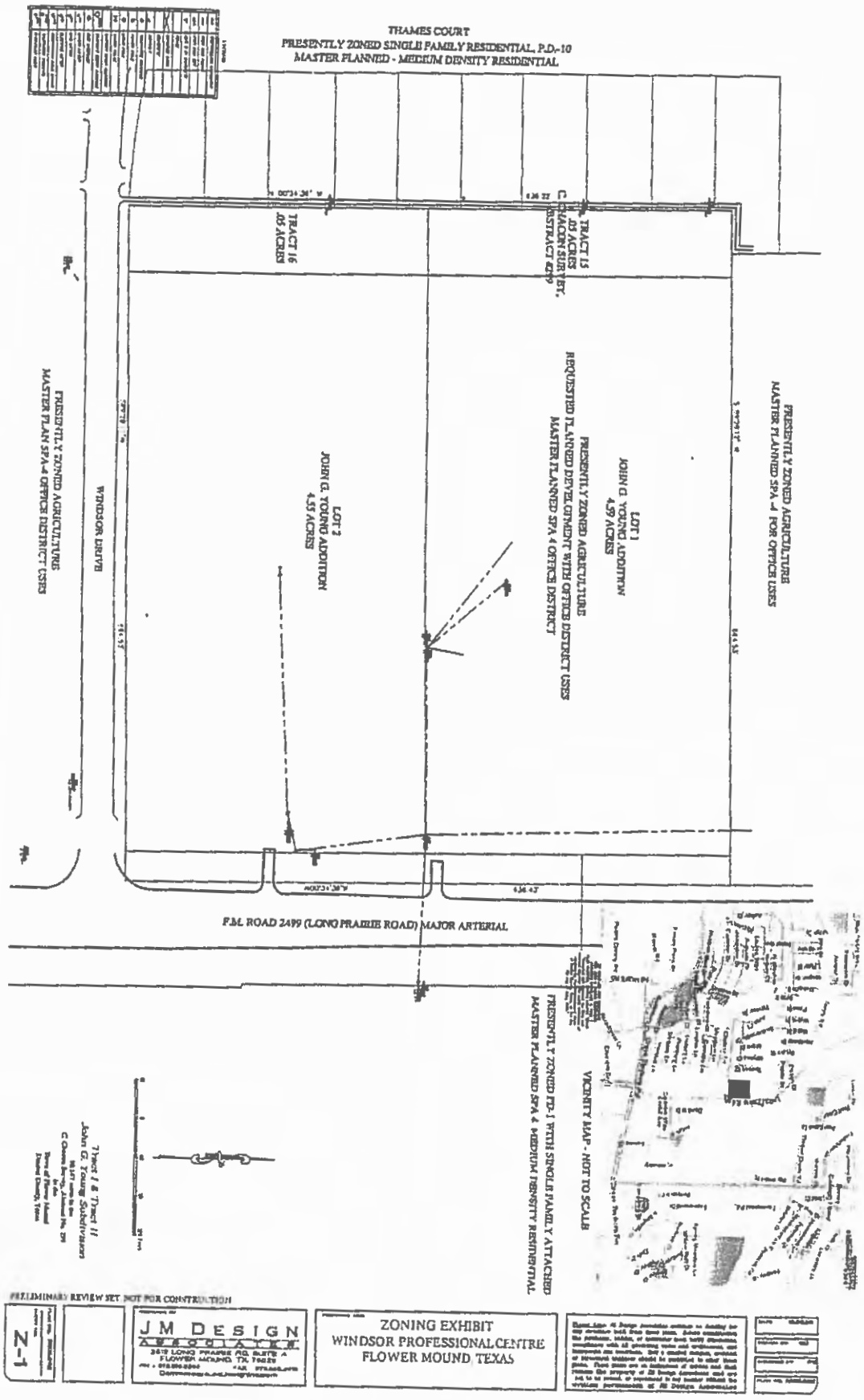

THAMES COURT
PRESENTLY ZONED SINGLE FAMILY RESIDENTIAL, P.D.-10
MASTER PLANNED - MEDIUM DENSITY RESIDENTIAL
TRACT 16
.05 ACRES
C. DACON SURVEY,
ABSTRACT 429
TRACT 15
.05 ACRES
PRESENTLY ZONED AGRICULTURE
MASTER PLAN SPA-4 OFFICE DISTRICT USES
WINDSOR DRIVE
LOT 2
JOHN G. YOUNG ADDITION
4.55 ACRES
REQUESTED PLANNED DEVELOPMENT WITH OFFICE DISTRICT USES
MASTER PLANNED SPA 4 OFFICE DISTRICT
LOT 1
JOHN G. YOUNG ADDITION
4.59 ACRES
PRESENTLY ZONED AGRICULTURE
MASTER PLANNED SPA 4 FOR OFFICE USES
F.M. ROAD 2499 (LONG PRAIRIE ROAD) MAJOR ARTICLE
PRESENTLY ZONED PD-1 WITH SINGLE FAMILY ATTACHED
MASTER PLANNED SPA 4 MEDIUM DENSITY RESIDENTIAL
VICINITY MAP - NOT TO SCALE
PRELIMINARY REVIEW SET NOT FOR CONSTRUCTION
Z-1
JM DESIGN
ASSOCIATES
2612 LONG PRAIRIE RD, SUITE A
FLOWER MOUND, TX 75022
ZONING EXHIBIT
WINDSOR PROFESSIONAL CENTRE
FLOWER MOUND TEXAS

EXHIBIT "B"

DEVELOPMENT STANDARDS
PLANNED DEVELOPMENT NO. 92
WINDSOR PROFESSIONAL CENTRE

The development as described in Exhibit "A" shall be in accordance with the Town's Master Plan 2001 and Land Development Regulations, as amended, and shall be subject to the following conditions and requirements:

A. PERMITTED USES

Office District (O) uses. Development of the Office District (O) area designated in Exhibit "A" shall contain approximately 10.15 acres and shall be in compliance with all regulations applicable to Office District (O) contained in the Town's Land Development Regulations, as amended, except as otherwise provided for in this Ordinance. The following Office District uses shall be permitted within the Planned Development District:

1. Bank or savings and loan
2. Book or stationery store or newsstand
3. Custom personal service
4. Florist
5. Office, medical or dental
6. Office, general business and professional
7. Optical sales
8. Travel bureau or consultant

B. USES PERMITTED ONLY UPON APPROVAL OF A SPECIFIC USE PERMIT

1. Restaurant, general
2. Drug Store or pharmacy
3. Laboratory, scientific and research
4. Laboratory, medical and dental
5. Personal improvement services

C. MISCELLANEOUS STANDARDS

1. The first phase of development shall include the public amenity areas, fire lanes to support first phase, curb cuts, utilities, perimeter landscaping, and masonry walls. A Certificate of

Occupancy shall not be issued for the first building until all of the above are completed.

2. The development will be subject to an overall reciprocal easement agreement granting cross-access and cross-parking. A copy of said agreement will be provided to the Town of Flower Mound with the Record Plat for the development.

3. Corner buildings should provide "front door" elevations facing each of the roads toward which they are oriented. Buildings should be located along the roads so that they screen service areas from view from the public rights-of-way.

4. Surface parking areas should be divided into units of 100 cars or less and landscaped in accordance with the Town's Land Development Regulations.

5. A minimum 40 foot compatibility buffer is proposed along the western property boundary.

6. A minimum 30 foot compatibility buffer is proposed along the northern property boundary.

7. Buildings along the western and northern property boundaries will be limited to one-story in height and shall be constructed with articulated features on the respective western and northern elevations of those building, in accordance with Town Ordinances, and further, the structures along the western property boundary shall be designed and constructed with respect to the residential uses of the property immediately west of this development.

8. Development shall be organized around a public open space amenity. The amenity can be a public square or other form.

9. Building Elevation Profiles and Roof Form shall have the following components:

   a. Buildings need to reflect an architectural prominence, with particular attention being paid to architectural quality on the facades, rooflines, and elevations visible from major arterials.

b. A unified design theme shall be required within the development.

c. Contrasting wall planes, architectural elements, and rooflines shall be used to create interesting and pleasing elevations. Decorative pilasters, cornices, and/or moldings should be incorporated into all elevations exposed to public view.

d. Any exposed roof slopes should be composition shingle, clay tile and/or standing seam metal. Colors should be earth tones, copper color, or members of the gray scale.

e. Roofs of buildings 15,000 square feet and under are to be hip, gable, or a combination of the two. Structures larger than 15,000 square feet should have no visible area of flat roof from any adjacent properties. A mansard parapet structure, in a combination of vertical and sloping sections, will be required along 100% of the roof perimeter.

f. The roof surface height shall not exceed thirty-five (35) feet, and any building shall not be more than two (2) stories in height.

10. Building Materials shall have the following characteristics:

a. At least eighty percent (80%) of the façade masonry shall be hand laid brick or stone. Up to 20% of the façade material may be stucco or E.I.F.S. Masonry shall be earth and wood tone in color.

b. The use of exposed standard concrete shall not be utilized for any façade facing a public street or platted access easement.

c. Concrete surfaces shall be colored, textured, sculpted, or patterned.

d. Earth and wood tone colors are to be used (reddish brown, brown, tan, umber, gold, sand, green), as well as other colors that may be acceptable, if the applicant can demonstrate that they are appropriate for the design of

the development, harmonious with the site, or compatible with the character of adjacent developments.

e. The primary exterior color should be comprised of earth or wood tones for at least 60%, but not greater than 90%, of the façade. A secondary earth or wood tone accent color should be used on at least 10% of the façade.

f. Unpainted metal, galvanized metal, or metal subject to rusting shall not be used. All exposed metals shall have a factory-applied finish. Metal that develops an "attractive" finish (copper) is appropriate.

g. Windows and glass shall be incorporated into the design of the building, but will not comprise more than fifty percent (50%) of the elevation. Maximum reflectance for windows shall not be greater than fifteen percent (15%).

h. E.F.I.S. or stucco shall be used for accents, not to exceed twenty percent (20%) of an individual tenant's exterior wall surface area.

i. Not more than fifteen percent (15%) of any elevation shall be comprised of a color that is not considered an earth or wood tone.

j. Not more than 15% of any elevation should be painted/stained to a color that is not considered an earth or wood tone.

11. The following waivers shall be granted with the approval of the Planned Development District:

a. A waiver from Section 82-302(1), requirement for a brick wall or masonry wall along the northern property boundary except for the western 45 feet adjacent to the Westchester Addition.

b. A waiver from Section 82-302(2), requirement for a continuous berm with a minimum height of three feet, understory plants, and native shade trees, a minimum of three-inch caliper, at a ratio of one tree per 400 square feet of buffer area along the entire northern property

boundary except for the western 45 feet adjacent to the Westchester Addition.

c. A waiver from Section 82-302(2), requirement for a continuous berm along the western property boundary and the western 45 feet along the northern property boundary adjacent to the Westchester Addition.

d. A waiver from Section 82-303, Compatibility Setback requirements, along the entire northern property boundary except for the western 45 feet adjacent to the Westchester Addition.

Ordinance 08-06

EXHIBIT "C"

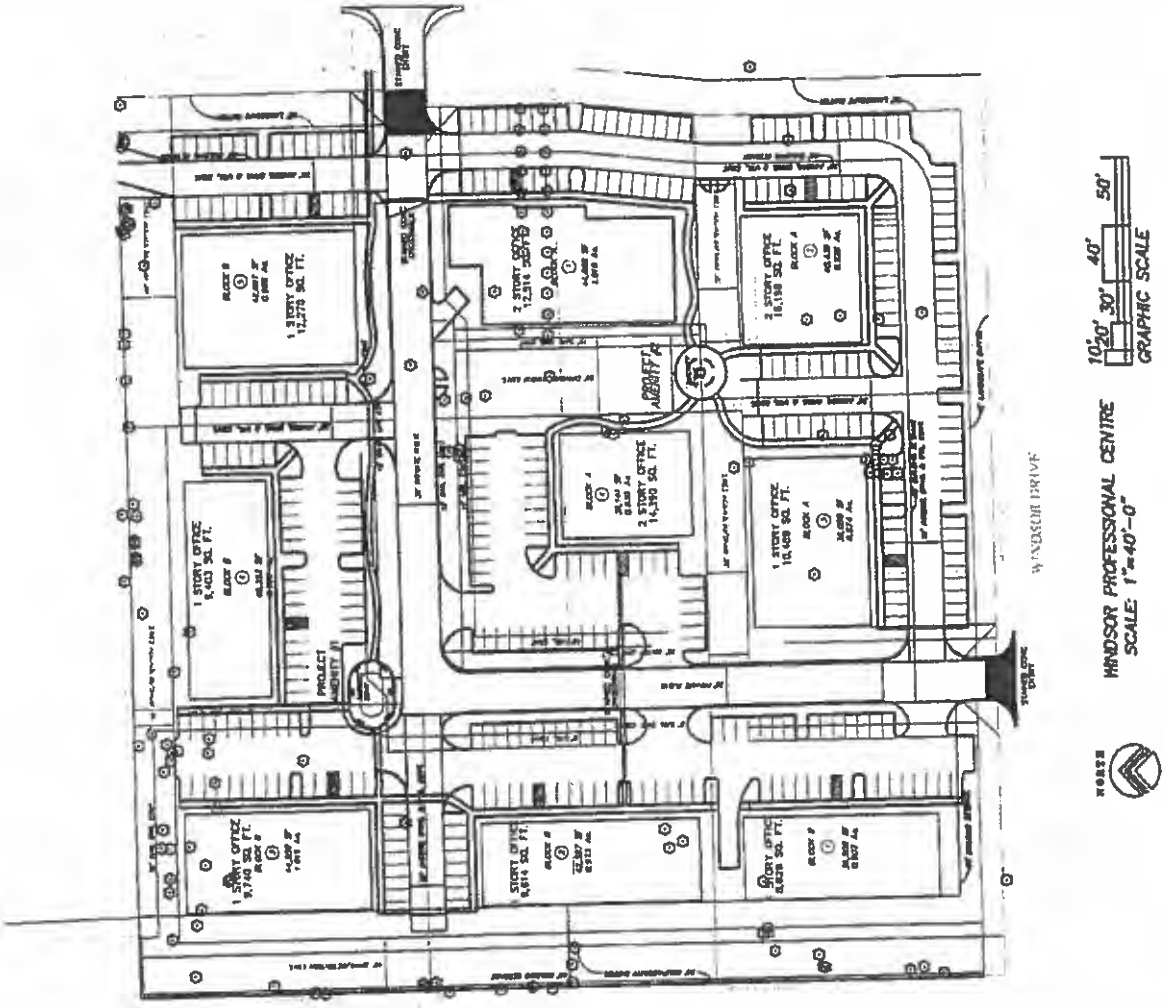


EXHIBIT "D"

Ordinance 08-06

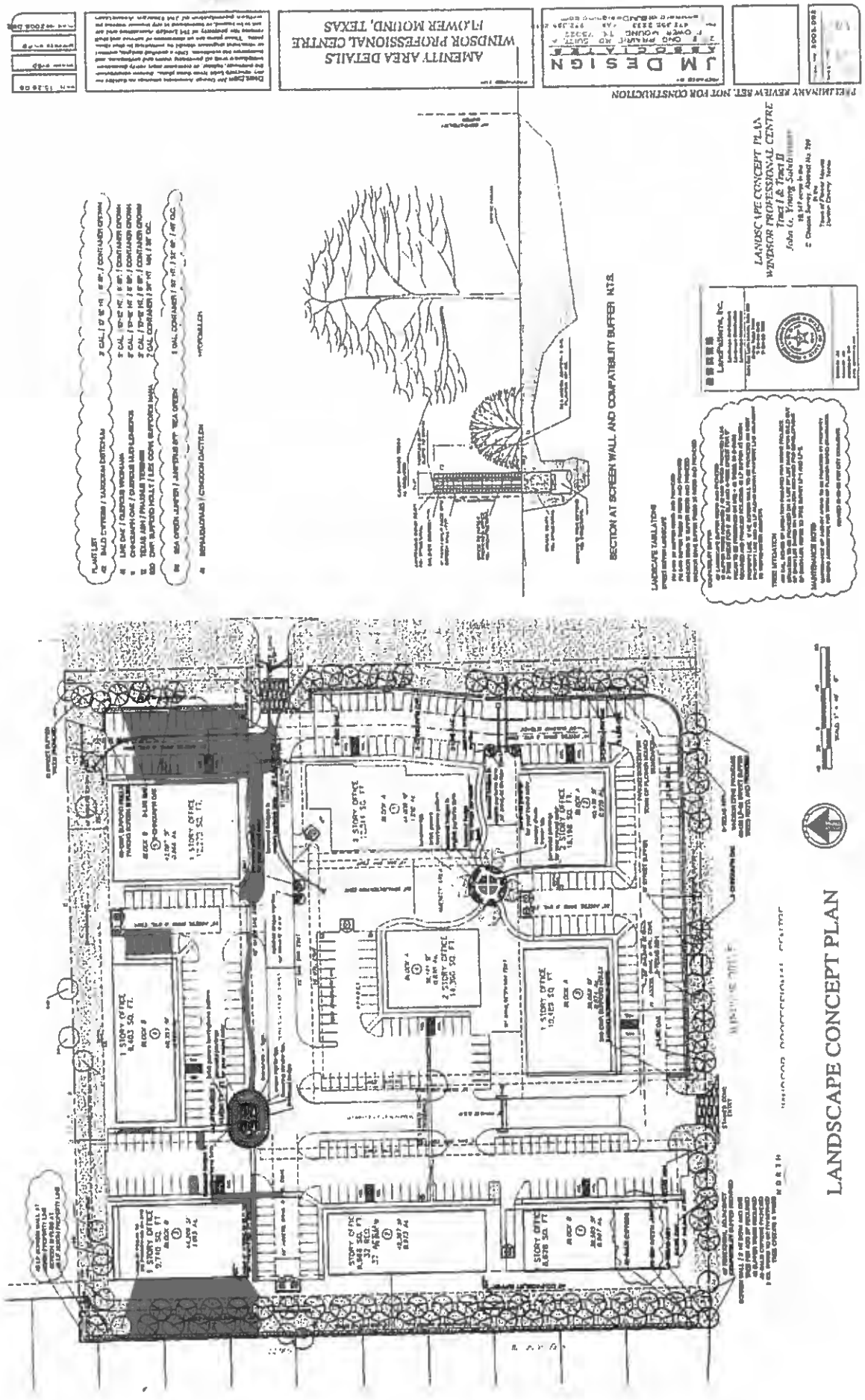


EXHIBIT "E"

L-2
WINDSOR PROFESSIONAL CENTRE
FLOWER MOUND, TEXAS
AMENITY APPROACH PLAN
AMENITY APPROACH PLAN
AMENITY AREA 1 PLAN
AMENITY AREA 2 PLAN
30' DRNG.
R.O.W.

EXHIBIT "F"

Ordinance 08-06

Exhibit "B"
Development Standards

Planned Development District - 92 (PD-92)
Windsor Professional Centre

The development as described in Exhibit "A" shall be in accordance with the Town's Master Plan 2001 and Land Development Regulations, as amended, and shall be subject to the following conditions and requirements:

A. PERMITTED USES

Office District (O) uses. Development of the Office District (O) area designated in Exhibit "A" shall contain approximately 10.15 acres and shall be in compliance with all regulations applicable to Office District (O) contained in the Town's Land Development Regulations, as amended, except as otherwise provided for in this Ordinance. The following Office District uses shall be permitted within the Planned Development District:

1. Bank or savings and loan
2. Book or stationary store or newsstand
3. Custom personal services
4. Florist
5. Health club or athletic club *(Limited to Lot 4)*
6. Office, medical or dental
7. Office, general business and professional
8. Optical sales
9. Travel bureau or consultant

C. MISCELLANEOUS STANDARDS

12. Health club or athletic club.

    a. Maximum number of attendees at any time is six.

    b. Operation of the use shall be limited to the hours between 6:00 a.m. and 8:00 p.m., Monday through Thursday; 6:00 a.m. and 6:00 p.m., Friday; and, 7:00 a.m. and 1:00 p.m., Saturday.

    c. Outside activities are prohibited.

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO._____

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 08-06, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 92 (PD-92) ON CERTAIN PROPERTY DESCRIBED AS APPROXIMATELY 10.15 ACRES OF LAND SITUATED IN THE C. CHACON SURVEY, ABSTRACT NO. 299; BY AMENDING EXHIBIT "B," ENTITLED "DEVELOPMENT STANDARDS;" IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBIT "B" 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 owners of the property described as approximately 10.15 acres of land situated in the C. Chacon Survey, Abstract No. 299, have filed an application for a Zoning Planned Development amendment to amend Ordinance No. 08-06 for Planned Development District No. 92 (PD-92); and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on November 11, 2019, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on November 18, 2019, with respect to the proposed Zoning Planned Development amendment 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 Zoning Planned Development amendment on the property;

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 and area as shown below:

10.15 acres of land situated in the C. Chacon Survey, Abstract No. 299, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Exhibit "B" to Ordinance No. 08-06, entitled "Development Standards," as amended, is hereby amended to amend Paragraphs entitled, "Permitted Uses" and "Miscellaneous Standards;" as shown on Exhibit "B" attached hereto and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms and conditions contained herein, as well as the applicable regulations contained in Ordinance No. 08-06 for Planned Development District No. 92 (PD-92), 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 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

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 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 2ND DAY OF DECEMBER, 2019.

APPROVED:

_____
Steve Dixon, **MAYOR**

ATTEST:

_____
Theresa Scott, **TOWN SECRETARY**

EXHIBIT "A"

BEING all that contain lot, parcel or tract of land situated in the C. Chacon Survey, Abstract Number 299, in the Town of Flower Mound, Denton County, Texas and being First Tract of the John G. Young Subdivision, an addition to the Town of Flower Mound , Denton County, Texas according to the plat thereof recorded in Volume 4, Page 1 of the Plat Records of Denton County, Texas, and Second Tract of Revision Number One of the John G. Young Subdivision, an addition to the Town of Flower Mound, Denton County, Texas according to the plat thereof recorded in Volume 4, Page 57 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a ½ inch iron rod set with cap stamped "Arthur Surveying Company" at the intersection of the north line of Windsor Drive and the west line of Farm to Market Road 2499 (F.M. 2499);

THENCE South 89 degrees, 28 minutes 12 seconds West, along the north line of said Windsor Drive, a distance of 664.53 feet to a ½ inch iron rod found at the southeast corner of Lot 107, Block S of Westchester Third Increment, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Cabinet D, Page 144, Plat Records, Denton County, Texas;

THENCE North 00 degrees 34 minutes 36 seconds West, along the east line of said Lot 107 same being the east line of Westchester Third Increment and passing a ½ inch iron rod at a distance of 316.01 feet, said point being in the east line of Lot 103 of said Block S, and continuing along course a total distance of 636.43 feet to a ½ inch iron rod set with cap stamped "Arthur Surveying Company", said point being an inner ell corner of Lot 98 of the aforementioned Block S;

THENCE South 90 degrees 28 minutes 12 seconds West, along a south line of said Lot 98 passing the southeast corner thereof said point being the southwest corner of that certain tract of land described in deed to Norvell Family Partners, Ltd., recorded in Volume 4487, Page 2655, Real Property Records, Denton County, Texas and continuing along said course a total distance of 664.53 feet to a ½ inch iron rod set with cap stamped "Arthur Surveying Company" in the west line of aforementioned F.M. 2499;

THENCE South 00 degrees 34 minutes 36 seconds East, along the west line of said F.M. 2499, a distance of 636.43 feet to the POINT OF BEGINNING, and containing 10.15 acres of land, more or less, and being subject to any easements that may affect.

Exhibit "B"
Development Standards

Planned Development District - 92 (PD-92)
Windsor Professional Centre

The development as described in Exhibit "A" shall be in accordance with the Town's Master Plan 2001 and Land Development Regulations, as amended, and shall be subject to the following conditions and requirements:

A. PERMITTED USES

Office District (O) uses. Development of the Office District (O) area designated in Exhibit "A" shall contain approximately 10.15 acres and shall be in compliance with all regulations applicable to Office District (O) contained in the Town's Land Development Regulations, as amended, except as otherwise provided for in this Ordinance. The following Office District uses shall be permitted within the Planned Development District:

1. Bank or savings and loan
2. Book or stationary store or newsstand
3. Custom personal services
4. Florist
5. Health club or athletic club *(Limited to Lot 4)*
6. Office, medical or dental
7. Office, general business and professional
8. Optical sales
9. Travel bureau or consultant

C. MISCELLANEOUS STANDARDS

12. Health club or athletic club.

    a. Maximum number of occupants at any time is six.

    b. Operation of the use shall be limited to the hours between 6:00 a.m. and 8:00 p.m., Monday through Thursday; 6:00 a.m. and 6:00 p.m., Friday; and, 7:00 a.m. and 1:00 p.m., Saturday.

    c. Outside activities are prohibited.

TOWN COUNCIL AGENDA ITEM NO. 11

REGULAR ITEM

DATE: December 2, 2019

FROM: Dale Crown, P.E., Senior Project Engineer

ITEM: **Consider approval of a Construction Agreement with Western Municipal Construction of Texas, LLC., for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) project, in the amount of $1,640,384.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: On November 6, 2019, bids were received and opened for the Morriss Road 20-inch Water Line (Forest Vista to Lake Bluff) project (Bid # 2020-10-B). Western Municipal Construction of Texas, LLC submitted the lowest qualified bid of the 7 responding bidders at a base bid of $1,640,384.00. The project consists of the construction of 4,100 linear feet of 20-inch water line, 1,000 linear feet of 8-inch water line, and 250 linear feet of 12-inch water line. The 20-Inch water line will be located along Morriss Road from Forest Vista to Lake Bluff Drive. In order to maintain redundancy in the water distribution system, a proposed 8-inch water line will replace the portion of the existing 20-inch water line located along Tudor Way that is planned to be taken out of service as part of this project.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The proposed 20-inch water line will replace an existing 20-inch water line in poor condition. Recent asset management inspections have identified this section of water line in poor condition and recent breaks in this line have caused significant disruptions to water service in the area. Approximately 700-ft of the existing water line alignment is located within easements on residential lots which creates issues accessing and repairing issues to the existing line. All work on the existing line is highly impactful to these residential lots. The proposed 20-inch water line alignment is wholly located within Morriss Road right-of-way and would minimize impacts to residents in the event of any future maintenance or repairs. A decision not to approve the Construction Agreement would result in continued deterioration, maintenance difficulties, and service disruptions along this section of the existing 20-inch water line.

FISCAL IMPACT: $1,640,384.00

Proposed Expenditure/(Revenue):	Account Number(s):
$1,640,384.00	630-960-98849

Finance Review by: Tammy Wilson, Executive Director of Financial Services tw

Total project cost for FY 19/20 is $ 2,300,000. Funding source is:

- New Debt

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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

Attachment 1

Town of Flower Mound
Bid Tabulation

Bid No: 2020-10-B - Morriss Road 20-Inch Water Line (Forest Vista Drive to Lake Bluff Drive)

Bid Opening: 11/6/2019 at 11:00 AM

Company	Total Bid
Western Municipal Construction of Texas, LLC	$ 1,640,384.00
Excel Aircraft, LLC dba Excel Trenching	$ 1,797,321.00
Muniz Construction Inc	$ 1,977,747.00
Canary Construction, Inc	$ 2,196,476.00
Atkins Brothers Equipment Company, Inc	$ 2,252,779.00
BELT Construction, Inc	$ 2,583,780.00
Fort Worth Civil Constructors, LLC	$ 2,632,978.00

**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: November 6, 2019

TOWN OF FLOWER MOUND

MORRISS ROAD 20-INCH WATER LINE
(FOREST VISTA TO LAKE BLUFF)

Bid # 2020-10-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 2nd day of December, 2019, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Western Municipal Construction of Texas, 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:

MORRISS ROAD 20-INCH WATER LINE
(FOREST VISTA TO LAKE BLUFF)

Bid # 2020-10-B

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

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

A. The Construction Agreement;

B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;

C. Any listed and numbered addenda;

D. Special Provisions;

E. Supplementary Conditions;

F. Construction Drawings or Plans;

G. Technical Specifications;

H. Town's Standard Construction Details;

I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);

J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);

K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);

L. The General Conditions;

M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);

N. Notice to Bidders;

O. Instructions to Bidders;

P. The Town's written notice to proceed to Contractor;

Q. The Contractor's Bid Proposal;

R. The Performance Bond, Payment Bond and Maintenance Bond; and

S. Bid materials distributed by the Town that relate to the Project.

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

the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair, and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Six Hundred Forty Thousand Three Hundred Eighty Four Dollars and Zero cents ($1,640,384.00)** 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:

Contract Amount	Retainage Percentage
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 2nd day of December, 2019.

TOWN OF FLOWER MOUND

_____
Steve Dixon, MAYOR

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

CONTRACTOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

ATTEST:_____ (Signature)

_____ (Position)

TOWN COUNCIL AGENDA ITEM NO. 12

REGULAR ITEM

DATE: December 2, 2019

FROM: Andrea Roy, Director of Economic Development

ITEM: **Public Hearing to consider an assignment of the Chapter 380 Agreement with Newstream Hotels & Resorts, LLC, (through Lakeside Crossing Land Partners, LP & Newstream Retail Partners-FM, LLC) to BI 43 LLC, for Lots 1-3, 6, 7, and 8x, and to BI 50 LLC, for Lots 4 & 5, and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: This item is for consideration of the Town's consent to a Collateral Assignment of the Chapter 380 Agreement with Newstream Hotels & Resorts, LLC (through Lakeside Crossing Land, LP & Newstream Retail Partners-FM, LLC) to BI 43 LLC, for Lots 1-3, 6, 7, and 8x, and to BI 50 LLC, for Lots 4 & 5 (the two retail pad sites along FM 2499).

The subject assignment has been requested by representatives of Newstream Hotels & Resorts as a requirement associated with the $3.32 million loan through BI 43 LLC, and the $7.12 million loan through BI 50 LLC, the lenders. The assignment will assign all benefits associated with the Chapter 380 Agreement to the Lender for the term of the Loan.

The prior lender, Spectrum, has provided written documentation to the Town that the prior collateral assignment has been terminated, allowing the subject new assignment to occur.

The new Lender, BI 43 and BI 50, are project specific entities under BridgeInvest, a private real estate lender based in Miami, Florida. BridgeInvest is leading private real estate lender, with over 25 years of experience, focused on short-term financing for unique commercial and residential assets through the Southeast US, offering bridge, construction, and land financing.

Chapter 380 Agreement

Original Approval

On July 17, 2017, the Town executed a Chapter 380 Agreement with Newstream Hotels & Resorts, LLC for the development of the original 12-acre site on the west side of Long Prairie Road, south of the Long Prairie Road/Lakeside intersection, known as Lakeside Crossing. Lakeside Crossing will include: a 5-story, full-service hotel with 125-140 rooms and suites; a full service restaurant providing 24-hour room service; and, approx. 4,000 sq. ft. of meeting space. The hotel was originally to be branded Unscripted (later Hotel RL and now Hotel Indigo). Newstream will also construct approximately 90,000 sq. ft. of restaurant, retail, and office space, as well as approx. 15 townhomes. Employment at full development is estimated at approx. 250-300 FTE's and total build out construction value is estimated at $55 million.

Assignments

On September 19, 2017, the Town authorized assignment of the Chapter 380 Agreement from Newstream Hotels & Resorts, LLC to Lakeside Crossing Land Partners, LP. Soon thereafter, on October 2, 2017, the Town Council approved a Collateral Assignment from Lakeside Crossing Land, LP to the project's lender, Spectrum Origination. Most recently, on November 8, 2019, the Town authorized a partial assignment of the Chapter 380 Agreement from Lakeside Crossing Land Partners, LP to Newstream Retail Partner-FM, LLC.

First Amendment

On December 17, 2018, the Town authorized a first amendment to extend the performance deadlines within the Chapter 380 Incentive Agreement by approximately 7 ½ months, to allow the developer to complete

negotiations with the new hotel brand, which was Hotel RL. Associated with the amendment, a deadline to submit hotel plans to the Town was added, as well as a stipulation allowing the Town's use of the hotel meeting space.

Second Amendment
On June 17, 2019, the Town authorized a second amendment, providing an additional four month extension on the performance deadlines related to the hotel building permit application, permit approval, construction completion, and completion of the remaining commercial buildings. In exchange for such extensions, the term for the real and business personal property rebate was reduced from seven (7) years to five (5) years.

	Original Approved Agrmnt.	Approved 1st Amendment	2nd Amendment
Hotel building permit application	N/A	May 15, 2019	September 15, 2019
Hotel building permit approval	December 31, 2018	July 15, 2019	November 15, 2019
Hotel construction completed	June 30, 2020	February 15, 2021	June 15, 2021
Other buildings completed	June 30, 2021	February 15, 2022	June 15, 2022

Third Amendment
On August 5, 2019, the Town authorized a third amendment, allowing for adjustments to the size and design of Building 4 & 5, as the developer has now determined the precise layout of these buildings, which varies from the original concept. This amendment also modifies the timing of payments owed to the developer, with the Town holding all incentive payments for the commercial buildings (2-7) until all buildings are complete and receive a Building Final or Certificate of Occupancy. Incentives associated with the hotel are not affected by this amendment.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Chapter 380 Collateral Assignment & Consent and Joinder of Town to BI 43 LLC
2. Chapter 380 Collateral Assignment & Consent and Joinder of Town to BI 50 LLC

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

Attachment 1

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

This COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT ("**Assignment**") is dated as of _____, 2019, and executed by LAKESIDE CROSSING LAND PARTNERS LP, a Texas limited partnership ("**Borrower**"), in favor of BI 43 LLC, a Florida limited liability company ("**Lender**").

W I T N E S S E T H:

WHEREAS, Pursuant to the terms of that certain Loan Agreement by and between Borrower and Lender, dated _____, 2019 (as the same may be amended, restated, or otherwise modified from time to time, the "**Loan Agreement**"), Lender made a loan to Borrower in the original principal amount of THREE MILLION THREE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS ($3,320,000.00) (the "**Loan**"). The Loan was evidenced by, among other things, that certain Promissory Note, dated _____, 2019, executed by Borrower payable to the order of Lender, in the principal amount of the Loan (together with all amendments, modifications, renewals, substitutions and replacements thereof, the "**Note**") and is further evidenced and secured by the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Newstream Hotels and Resorts, LLC, a Texas limited liability company also known as Newstream Hotels and Resorts LLC ("**Newstream**"), and the Town of Flower Mound, Texas, a Texas municipal corporation (the "**Town**"), executed that certain Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC dated July 17, 2017 (as the same may have been or may be amended, restated, or otherwise modified from time to time, the "**Development Agreement**") recorded in the Real Property Records of Denton County, Texas, as assigned by Newstream to Borrower pursuant to that certain Assignment of Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC, dated September 18, 2017, made by Newstream in favor of Borrower, recorded in the Real Property Records of Denton County, Texas;

WHEREAS, the Development Agreement relates to, among other things, the Land (the "**Land**") more particularly described on Exhibit A attached hereto and incorporated herein for all purposes, together with any and all streets, alleys, sidewalks, street lighting, screen walls, and utility lines and facilities, and similar items ("**Improvements**"), now or hereafter existing or constructed upon the Land (the Land and Improvements are herein collectively referred to as the "**Property**");

WHEREAS, pursuant to the Development Agreement, Borrower is entitled to receive payment from the Town of funds equal to the amounts of the TPP Grants, Real Property Grants, Sales Tax Grants, Impact Fee Grants and HOT Grants (collectively, the "**Grants**") (any and all such payments Borrower receives or is entitled to receive under the Development Agreement, including contingent, earned and unearned amounts, collectively, the "**Development Agreement Proceeds**"); and

WHEREAS, as additional security for the Loan, Lender has required, and Borrower has agreed to execute and deliver to Lender this Assignment.

NOW, THEREFORE, for and in consideration of the mutual and dependent covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Borrower hereby covenants and agrees to Lender as follows:

1. Assignment. Borrower does hereby GRANT, CONVEY, ASSIGN and TRANSFER to Lender all of Borrower's right, title and interest in and to all of the following (collectively, the "**Collateral**"): (i) all of Borrower's right, title and interest under the Development Agreement, but none of Borrower's obligations under the Development Agreement; (ii) the Development Agreement Proceeds and all other amounts, including, without limitation, contingent, earned and unearned amounts, payable to Borrower under the Development Agreement; (iii) any and all Collateral acquired by Borrower in the future; and (iv) any and all proceeds of the Collateral. Borrower has not assigned to Lender, and Lender has not accepted, any of the liabilities of Borrower under the Development Agreement, and Borrower hereby expressly reserves unto Borrower all liabilities under the Development Agreement. Borrower hereby further covenants and agrees that the acceptance by Lender of payments otherwise due to Borrower under the Development Agreement shall not make Lender liable for the performance of any obligations of Borrower or any other party under the Development Agreement. LENDER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITIES UNDER THE DEVELOPMENT AGREEMENT, AND BORROWER HEREBY RESERVES ALL SUCH LIABILITIES TO BORROWER.

2. Security Interest. This Assignment shall also constitute a security agreement with respect to the Collateral, and shall be, during the existence of the Loan Documents, a first and prior security interest under the Uniform Commercial Code of Texas and each other applicable jurisdiction as to the Collateral. In this regard, Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in and to the Collateral, to secure the full and timely payment of the Indebtedness (as hereinafter defined) and the full and timely performance and discharge of the Obligations (as hereinafter defined). Borrower hereby agrees that Lender shall have the right to file, without the consent of or prior notice to Borrower, such UCC financing statements as Lender shall deem appropriate with respect to this Assignment, the Collateral and the Development Agreement. Borrower further covenants and agrees to execute and deliver to Lender, in form and substance satisfactory to Lender, such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect and preserve Lender's security interest herein granted. Lender may cause (at the sole cost and expense of Borrower) any and or all of such UCC financing statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

3. Payments Directly to Lender. From and after the date of this Assignment, all payments with respect to the Collateral shall be made directly to Lender. Borrower hereby unconditionally and irrevocably authorizes and directs the Town to make any and all payments of the Collateral directly to Lender, pursuant to the payment instructions provided by Lender to the Town from time to time, as such instructions may be modified by Lender from time to time. Concurrently with the execution and delivery of this Agreement, Borrower shall deliver to Lender the irrevocable notice (the "**Payment Direction Notice**"), in the form attached to this Assignment

as Exhibit C, directing the Town to pay directly to Lender all amounts payable to Borrower under the Development Agreement, for which the Town has acknowledged receipt thereof. BORROWER HEREBY INDEMNIFIES AND HOLDS HARMLESS THE TOWN FROM AND AGAINST ANY AND ALL COSTS, EXPENSE, LIABILITY AND OTHER DAMAGES WHICH THE TOWN MAY INCUR OR SUSTAIN BY REASON OF ITS ADHERENCE TO THE PROVISIONS OF THIS ASSIGNMENT, INCLUDING (WITHOUT LIMITATION) THE REQUIREMENTS TO MAKE PAYMENTS OF THE COLLATERAL DIRECTLY TO LENDER AS PROVIDED ABOVE. The Town's obligation to make payment directly to Lender as provided in this Assignment shall continue until such time as Lender has executed a termination of this Assignment and filed a termination of the applicable UCC financing statement relating to the Collateral, or when the Town has made payment of all of the Collateral in accordance with the terms and provisions of this Assignment.

4. Absolute Assignment. Prior to or concurrently with the execution and delivery of this Assignment by Borrower, Borrower shall execute and deliver to Lender the Absolute Assignment of Development Agreement (the "**Absolute Assignment**") in the form attached to this Assignment as Exhibit D, to be held by Lender in escrow until absolutely and unconditionally delivered to Lender pursuant to this Section 4. Borrower hereby unconditionally and irrevocably authorizes and directs Lender, upon the occurrence of any Event of Default (as defined in the Loan Agreement), to take the following actions, at any time, as determined by Lender in the sole and absolute discretion of Lender, without prior notice to or the consent of Borrower: (i) to cause the release of the Absolute Assignment from escrow, and the absolute and unconditional delivery to Lender of the Absolute Assignment, and (ii) to record the Absolute Assignment in the Real Property Records of Denton County, Texas,

5. Secured Indebtedness. This Assignment is executed and all of the rights and properties covered and to be covered hereby have been assigned as security for and to secure the full, prompt and unconditional payment and performance of any and all indebtednesses, liabilities and obligations of Borrower now or hereafter existing or arising, absolute or contingent, direct or indirect, secured or unsecured, due or to become due, with respect to the Loan Documents (collectively, the "**Indebtedness**") and the performance and discharge of all obligations under and with respect to the Loan Documents (collectively, the "**Obligations**").

6. Attorney-in-Fact. Borrower hereby constitutes and appoints the Lender its true and lawful attorney, which appointment is hereby coupled with an interest and is therefore irrevocable, with full power of substitution, to, as and when provided by this Assignment and/or the Loan Documents, or otherwise upon any Event of Default: (i) ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts constituting the Collateral, which may be due or become due or payable under the Development Agreement, (ii) execute any and all requests and notices or other demands for the payment of all or any part of the Collateral, (iii) endorse the name of the Borrower on all commercial paper or other instruments given in payment of all or any part of the Collateral, (iv) in the discretion of the Lender, file any claim or take any other action or proceeding, either in its own name or in the name of the Borrower or otherwise, which the Lender may deem necessary or appropriate to protect and preserve the rights, titles and interests of the Lender hereunder or of Borrower under the Development Agreement, and (v) without limiting the foregoing, the Lender shall have and is hereby given full power and authority to transfer the Development Agreement into the name of the Lender and/or its nominee to receive

or demand all or any part of the Collateral without prior notice (except as otherwise expressly provided for in any of the Loan Documents) or further consent by Borrower.

7. Representations and Warranties. The Borrower represents and warrants that: (i) Borrower is the owner of the Collateral, free and clear of all liens and encumbrances of any nature whatsoever, except for those created in favor of the Lender under this Assignment; (ii) Borrower has full power, right and authority to execute and deliver this Assignment; (iii) the Development Agreement shall not be cancelled, terminated, amended or supplemented in any manner whatsoever without the prior written consent of Lender, which consent may be conditioned, withheld or delayed in the sole and absolute discretion of Lender; and (iv) the Development Agreement is in full force and effect and valid, binding and enforceable against Borrower and the Town as therein provided.

8. No Pledge or Assignment of Development Agreement. Subject to the other terms of this Assignment, Borrower covenants and agrees that for as long as Lender has any interest in the Development Agreement and/or the Collateral, Borrower will not pledge, assign or transfer all or any rights, titles or interests in and to the Development Agreement and the Collateral.

9. Representations, Warranties and Covenants of Borrower. Borrower hereby represents, warrants, covenants and agrees to Lender as follows: (i) the Development Agreement has been validly issued and is currently in full force in effect; (ii) the Development Agreement is in full compliance with all applicable laws and regulations including, without limitation, Texas Local Government Code Chapter 380; (iii) Borrower will satisfy all of the requirements set forth in the Development Agreement for the payment to Borrower of payments under the Grants, including, without limitation, all requirements set forth in Article 3 of the Development Agreement, the requirements for Capital Investment set forth in Section 4.3(d) and the prohibition on use of undocumented workers as set forth in Section 6.15 of the Development Agreement; (iv) upon request of Lender, Borrower shall furnish to Lender, concurrently with the delivery thereof in accordance with the Development Agreement, the following: (A) each Sales Tax Report pursuant to Section 3.6 of the Development Agreement; (B) each Payment Request pursuant to Sections 4.1, 4.2, 4.3(d), 4.4(d), and 4.5 of the Development Agreement; (C) the Annual Plan and Budget pursuant to Section 4.3(c)(1) of the Development Agreement and the approval of the Town with respect to same pursuant to Section 4.3(c)(iii) of the Development Agreement; (D) any and all notices of breach or default under or termination of the Development Agreement, including without limitation, notices pursuant to Section 5.1 thereof; and (E) copies of any remittances, checks, statements, invoices or reports reflecting any payments or refunds made or payable by Town to Borrower under the Development Agreement; (v) except for this Assignment and the other Loan Documents, Borrower has not assigned, sold, conveyed, pledged, encumbered, or otherwise transferred or terminated in any respect any of Borrower's rights under the Development Agreement; (vi) upon request by Lender, from time to time and at any time, Borrower shall execute and deliver to Lender and/or the Town such agreements and instruments as Lender shall require in connection with the Development Agreement, including, without limitation, a release and indemnity in favor of the Town with respect to any future payments made by the Town to Lender instead of Borrower; (vii) without the prior written consent of Lender, which consent may be conditioned, withheld or delayed in the sole and absolute discretion of Lender, Borrower shall not (A) modify or amend in any respect the Development Agreement, or (B) waive any of the rights of Borrower or obligations of the Town under the Development Agreement, or terminate all or any

portion of the Development Agreement, or (C) assign, sell, convey, pledge, encumber, or otherwise transfer or terminate in any respect any of Borrower's rights under the Development Agreement; (viii) Borrower shall at all times keep the Development Agreement in full force and effect, shall not terminate or agree to a termination thereof, and shall use its best efforts to cause the Town to make all payments due under the Development Agreement as and when such payments are due; and (ix) Borrower shall, within five (5) days after any request by Lender, which requests may be made from time to time and at any time, execute and deliver to Lender any and all documents, agreements, assignments and/or other Instruments (all of which shall be in form and substance as required by Lender in its sole and absolute direction) as Lender shall require with respect to the Development Agreement.

10. Release of Collateral. Upon the payment in full to Lender of all sums due and owing with respect to the Indebtedness and the performance of the Obligations under the Loan Documents, and the termination of all of Lender's liabilities under the Loan Documents, the Lender, at the written request and expense of Borrower, shall release the Collateral and terminate this Assignment pursuant to instruments acceptable to Lender.

11. Remedies. If any Event of Default shall occur under any Loan Document, the Lender shall be entitled to (i) unilaterally declare this Assignment to be an absolute and unconditional assignment of the Collateral and all of Borrower's rights in, to and under the Development Agreement, (ii) exercise any and all of Borrower's rights in, to and under the Development Agreement, or (iii) any and all other rights, remedies and recourses which Lender may have under applicable law.

12. Application of Proceeds. By its acceptance of this Assignment, Lender hereby agrees that upon receipt of any Development Agreement Proceeds, Lender shall, to the extent permitted under applicable law, apply such funds in the following order of priority: (i) to payment of all sums expended by Lender under the terms of this Assignment for the collection of such Development Agreement Proceeds; and (ii) the balance thereof as set forth in the Loan Agreement.

13. Waiver. To the extent Borrower may be deemed to be a surety as a result of the execution of this Assignment, Borrower, to the maximum extent permitted by applicable law, hereby waives (i) all rights Borrower may have as a surety, (ii) all notice of acceptance hereof, protest, demand and dishonor, presentment and demands of any kind now or hereafter provided for by any statute or rule of law, (iii) any and all requirements that Lender institute any action or proceeding, or exhaust any or all of Lender's rights, remedies or recourses, against the Borrower, or any and all guarantors of the Loan, or any part thereof, or in respect to any of the property covered by the Loan Documents, as a condition precedent to exercising any right or remedy of Lender contained in this Assignment, (iv) any defense arising by reason of any disability, insolvency, lack of authority or power, death, insanity, minority, dissolution or any other defense of Borrower, or any other surety, co-maker, endorser or guarantor of the Indebtedness (even though rendering same void, unenforceable or otherwise uncollectible), and (v) any claim Borrower might otherwise have against Lender by virtue of Lender's invocation of any right, remedy or recourse permitted it under this Assignment.

14. No Release. Borrower hereby agrees that (i) the payments called for and provisions contained in the Loan Documents, including specifically the Note, as defined therein, may be

renewed, extended, rearranged, modified, released or cancelled, (ii) all or any part of any of the property covered by the Loan Documents may be released from, and any new or additional security may be added to, the liens and security interests of the Loan Documents, (iii) any guarantor, and any additional parties who may become personally liable for repayment of any portion of the Indebtedness, may hereafter be released from their liability, and (iv) Lender and any other party may take any and all action with reference to the Loan Documents (regardless of whether same might vary the risk or alter the rights, remedies or recourses of Borrower), including specifically the settlement or compromise of any amount allegedly due thereunder, all without notice to, consideration to or the consent of Borrower, and no such acts shall in any way release, diminish, or affect this Assignment. It is the intent of Borrower that the obligations under this Assignment and in connection with the Collateral are primary, absolute and unconditional under any and all circumstances and that, subject to the other terms and provisions of this Assignment, until the Indebtedness is fully and finally paid and the Obligations under the Loan Documents are fully and finally satisfied, neither this Assignment nor any of Borrower's obligations under this Assignment shall be discharged or released, in whole or in part, by any act or occurrence which might, but for this paragraph, be deemed a legal or equitable discharge or release of a guarantor or surety.

15. No Election of Remedies. The rights and remedies of the Lender under this Assignment and the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

16. Successors and Assigns. This Assignment and all representations and warranties, powers and rights herein contained or resulting herefrom are binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

17. Venue. Borrower hereby consents to nonexclusive personal jurisdiction in any state or Federal court located within the State of Texas.

18. Applicable Law. This Assignment shall be governed by the laws of the State of Texas, without regard to principles of conflicts of laws, and applicable federal law.

19. Notices. All notices, demands, or other communications under this Assignment shall be in writing and shall be delivered to the appropriate party at the address set forth on the signature page of each party hereto (or, in the case of Lender, at the address below), including the Town on the signature page to the Consent and Joinder of Town attached to this Assignment (subject to change from time to time by written notice to all other parties to this Assignment). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of default may be sent by certified mall, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Furthermore, and notwithstanding the preceding, email shall be deemed sufficient notice hereunder and shall be deemed received upon receipt by the addressee. Any party shall have the right to change its address for notice hereunder

to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove.

Notice address for Lender:

BI 43 LLC
2601 S. Bayshore Drive
Suite 1200
Miami, Florida 33133
Attention: Alex Horn
Email: alex.horn@bridgeinvest.com

with copies by regular mail or such hand delivery to:

Bryan Cave Leighton Paisner LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488
Attention: Johnny D. Latzak, Jr., Esq.
Email: jay.latzak@bclplaw.com

20. Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

21. Consent and Joinder. Borrower hereby agrees to cause the execution and delivery, concurrently with the execution and delivery hereof by Borrower to Lender, by the Town of the Consent and Joinder of Town (herein so called) in substantially the same form as the consent and joinder attached hereto as Exhibit B and incorporated herein by reference for all purposes. Nevertheless, if Lender accepts this Assignment, in its sole and absolute discretion, without the execution and delivery by Town of the Consent and Joinder of Town, Borrower agrees to use its best efforts to cause the Town to execute and deliver same to Lender; provided, however, same shall not and will not render this Assignment null and void and unenforceable and, notwithstanding such failure or refusal of the Town to execute and deliver the Consent and Joinder of Town, this Assignment is valid, binding and enforceable against Borrower and Lender as herein provided.

22. Rules of Construction. The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other

Loan Documents. The word "Lender" as used herein shall include the named Lender, its successors, assigns and affiliates.

23. Use of Singular and Plural; Gender. When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.

24. Exhibits, Schedules and Riders. All exhibits, schedules, riders and other items attached hereto are incorporated into this Assignment by such attachment for all purposes.

25. Inconsistencies. In the event of any inconsistencies between the terms of this Assignment and the terms of any of the other Loan Documents, the terms of this Assignment shall prevail.

26. Integration: Interpretation. THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN BORROWER AND LENDER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF BORROWER AND LENDER. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN BORROWER AND LENDER. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY BORROWER AND LENDER.

27. Waiver of Consumer Rights. BORROWER REPRESENTS AND WARRANTS TO LENDER THAT BORROWER (i) IS A BUSINESS CONSUMER, (ii) HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE BORROWER TO EVALUATE THE MERITS AND RISKS OF THE SUBJECT TRANSACTION, (iii) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH RESPECT TO THE SUBJECT TRANSACTION, AND (iv) HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL (WHO WAS NOT, DIRECTLY OR INDIRECTLY, IDENTIFIED, SUGGESTED OR SELECTED BY LENDER OR LENDER'S AGENTS) IN CONNECTION WITH THE REFERENCED TRANSACTION.

28. WAIVER OF RIGHT TO TRIAL BY JURY. LENDER, BY ITS ACCEPTANCE OF THIS ASSIGNMENT, AND BORROWER, UNCONDITIONALLY AND IRREVOCABLY, EACH WAIVES, RELINQUISHES, AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE LOAN, THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, AND/OR ANY ACTION TAKEN IN CONNECTION THEREWITH, INCLUDING THOSE BASED ON OR ARISING FROM AN ALLEGED CONTRACT CLAIM, TORT, STATUTE, CONSTITUTION, OR OTHER. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS MADE VOLUNTARILY, KNOWINGLY, AND WITH FULL AWARENESS OF THE LEGAL CONSEQUENCES.

[Signature page follows.]

Attachment 1

IN WITNESS WHEREOF, Borrower has signed this Assignment.

Address:

311 S. Oak Street
Roanoke, Texas 76262

BORROWER:

LAKESIDE CROSSING LAND PARTNERS LP,
a Texas limited partnership

By: Newstream Hotels and Resorts LLC,
a Texas limited liability company,
Its General Partner

By: _____
Name:_____
Title: Managing Member

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me on this _____, 2019, by _____, the Managing Member of Newstream Hotels and Resorts LLC, a Texas limited liability company, the General Partner of LAKESIDE CROSSING LAND PARTNERS LP, a Texas limited partnership, on behalf of said limited partnership.

[Seal]

_____
Notary Public, State of Texas

My Commission Expires:

_____

_____
Printed Name of Notary Public

Attachment 1

EXHIBIT A

PROPERTY DESCRIPTION

BEING Lots 1, 2, 3, 6, 7 and 8x, Block A, of Record Plat, LAKESIDE CROSSING, an Addition to the Town of Flower Mound, Denton County, Texas, according to the Map thereof recorded in Volume 2019, Page 97, of the Map Records of Denton County, Texas.

Attachment 1

EXHIBIT B

CONSENT AND JOINDER OF TOWN

[The Consent and Joinder of Town follows this cover page.]

Attachment 1

CONSENT AND JOINDER OF TOWN

This CONSENT AND JOINDER OF TOWN dated _____, 2019, and executed by the TOWN OF FLOWER MOUND, TEXAS, a Texas municipal corporation (the "**Town**"), and is executed pursuant to that certain Collateral Assignment of Development Agreement ("**Assignment**") dated _____, 2019, executed by Lakeside Crossing Land Partners LP, a Texas limited partnership ("**Borrower**"), to BI 43 LLC, a Florida limited liability company ("**Lender**").

For and in consideration of the mutual and dependent covenants contained in the Development Agreement (as defined in the Assignment) and the Assignment and this Consent and Joinder of Town, the Town hereby represents, warrants, covenants and agrees as follows:

1. Consent. The Town hereby (i) acknowledges the execution and delivery of the Assignment, and (ii) consents to the assignment of the Collateral pursuant to Section 1 of the Assignment.

2. Representations. The Town hereby represents that the Development Agreement attached hereto as Exhibit A is a true, correct and complete copy of same.

3. Payments. The Town hereby agrees to make payments of the Collateral (as defined in the Assignment) directly to Lender pursuant to the written instructions provided by Lender to the Town, as Lender may amend and modify such instructions from time to time or at any time. The Town hereby acknowledges and agrees that the Collateral includes all payments and amounts due and/or payable to Borrower under the Development Agreement. The Town hereby agrees that the Town shall not, unless and until such time as the Town has received from Lender written notice that the Assignment has been terminated, make any payments to Borrower, and all such payments otherwise due or payable to Borrower under the Development Agreement shall be paid directly to Lender. The Town's agreement to make payments to Lender in accordance with this Section 3 is made in reliance and subject to Borrower's obligation to indemnify Town as set forth in Section 3 of the Assignment and the Payment Direction Notice.

4. No Liability of Lender. The Town acknowledges and agrees that (i) Lender has no liability under the Development Agreement, and (ii) Lender shall not become liable under the Development Agreement as a result of the acceptance by Lender of payments under the Development Agreement.

5. Construction and Development Conditions. The Town hereby acknowledges and agrees that until Borrower has satisfied, and the Town has approved, all of the construction and development conditions of Borrower under the Development Agreement, Town agrees to provide to Lender, concurrent with the notice sent to Borrower, a copy of any notice of non-compliance therewith. In addition, the Town agrees that as a condition precedent to declaring any default, breach or termination of the Development Agreement, to provide Lender ninety (90) days to cause same to be cured, which cure period shall be extended for such period of time as may be reasonably necessary for Lender to obtain possession or ownership of the Property by foreclosure or deed-in-lieu of foreclosure.

6. Acknowledgments and Agreements by Town. The Town hereby acknowledges and agrees as follows: (i) pursuant to Section 4 of the Assignment, that in the event Borrower has delivered to Lender that certain Absolute Assignment of Development Agreement (the "Absolute Assignment") in the form attached to the Assignment as Exhibit D, Lender has the right, upon the occurrence of any Event of Default (as defined in the Assignment), to cause the absolute and unconditional delivery to Lender of the Absolute Assignment, and to record the Absolute Assignment and same shall not constitute or cause a breach or default under the Development Agreement; (ii) following the delivery to Lender of the Absolute Assignment, the Town will recognize Lender as the absolute owner of all of the rights, title and interest of Borrower under the Development Agreement; (iii) the Town hereby consents and agrees not to unreasonably withhold its consent to the further assignment by Lender of the Development Agreement, and agrees that any sale of all or any portion of the property covered by the Development Agreement shall not constitute a breach or default under the Development Agreement; (iv) all of the payment obligations of the Town under the Development Agreement shall survive any foreclosure or voluntary conveyance of the property covered by the Development Agreement, and such payments shall be payable to (A) the party which acquires (whether by foreclosure, deed in lieu of foreclosure, a voluntary conveyance, or otherwise) the property covered by the Development Agreement, or (B) such other party to whom Lender absolutely assigns the Development Agreement; and (v) the payment obligations of the Town under the Development Agreement shall not be adversely affected by any sale to any other third party (including a third party which is not affiliated with Borrower) of all or any portion of the property covered by the Development Agreement. Notwithstanding the foregoing or any term in the Assignment to the contrary, the Town is not obligated to make any payment under the Development Agreement unless the obligations in Article 3 of the Development Agreement have been satisfied.

7. Notices. The Town hereby agrees to honor and comply with the notice provisions set forth in this CONSENT AND JOINDER OF TOWN, and agrees that Borrower and Lender are entitled to provide notice to the Town in accordance with the Assignment, at the following address for the Town:

Town of Flower Mound, Texas
2121 Cross Timbers Rd.
Flower Mound, TX 75028
Attention: Economic Development Director

[Signature page follows].

Attachment 1

IN WITNESS WHEREOF, the Town has signed this Consent and Joinder of Town.

TOWN:

TOWN OF FLOWER MOUND, TEXAS, a Texas municipal corporation

By: _____
Name:
Title:

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me on this _____, 2019, by _____, the _____ of the TOWN OF FLOWER MOUND, TEXAS, a Texas municipal corporation, on behalf of said municipal corporation.

[Seal]

_____
Notary Public, State of _____

My Commission Expires:

_____

_____
Printed Name of Notary Public

Attachment 1

Exhibit A to Consent and Joinder of Town

Development Agreement

[The Development Agreement follows this cover page.]

Attachment 1

EXHIBIT C

PAYMENT DIRECTION NOTICE

[The Payment Direction Notice follows this cover page.]

Attachment 1

Payment Direction Notice

_____, 2019

To: Town of Flower Mound, Texas
2121 Cross Timbers Rd.
Flower Mound, TX 75028
Attention: Economic Development Director

Re: Payment Direction Notice for Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC dated July 17, 2017 (the "**Development Agreement**"), as assigned by Newstream Hotels and Resorts LLC to Lakeside Crossing Land Partners LP pursuant to that certain Assignment of Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC, dated as of September 19, 2017

Dear Madam or Sir:

Lakeside Crossing Land Partners LP ("**Developer**") has (i) assigned to BI 43 LLC ("**Lender**") all of the payments due and/or payable to Developer at any time under the Development Agreement, and (ii) agreed pursuant to a Collateral Assignment of Development Agreement dated as of _____, 2019 made by Developer to Lender that all payments due from the Town of Flower Mound, Texas (the "**Town**") under the Development Agreement for or relating to the property covered thereby will be paid directly to Lender. From and after the date hereof, Developer hereby irrevocably instructs and directs that all payments to be paid by you to Borrower under the Development Agreement or otherwise should be paid as follows:

(a) If paying by check, money order or other Instrument, please mail or otherwise deliver such items to Lender the following address:

BI 43 LLC
2601 S. Bayshore Drive
Suite 1200
Miami, Florida 33133
Attention: Alex Horn

All checks or other Instruments should be made out to the name of "BI 43 LLC".

- OR -

(b) Transfer such amounts by wire transfer to the following account:

Bank Name:	
Bank Address:	
Bank Contact:	
ABA Number:	
Account Number:	
Account Name:	

These payment instructions cannot be withdrawn or modified without the prior written consent of Lender, or pursuant to a joint written instruction from the Developer and Lender. Until you receive written instructions from Lender, continue to send all payments due to the Developer under the Development Agreement to Lender as indicated in paragraphs (a) or (b) above. All payments must be delivered to Lender no later than the day on which such amounts are due under the Development Agreement.

DEVELOPER HEREBY INDEMNIFIES AND HOLDS HARMLESS THE TOWN FROM AND AGAINST ANY AND ALL COSTS, EXPENSE, LIABILITY AND OTHER DAMAGES WHICH THE TOWN MAY INCUR OR SUSTAIN BY REASON OF ITS ADHERENCE TO THE PROVISIONS OF THIS LETTER, INCLUDING (WITHOUT LIMITATION) THE REQUIREMENTS TO MAKE PAYMENTS DIRECTLY TO LENDER AS PROVIDED ABOVE.

Please acknowledge your receipt of this letter by signing this letter in the space below and returning an originally signed copy of this letter to Lender at the following address:

BI 43 LLC
2601 S. Bayshore Drive
Suite 1200
Miami, Florida 33133
Attention: Alex Horn

If you have any questions concerning this letter, please contact Timothy C. Nystrom of Lakeside Crossing Land Partners LP at (214) 995-8668. We appreciate your cooperation in this matter.

[Signature page follows.]

Attachment 1

DEVELOPER:

LAKESIDE CROSSING LAND PARTNERS LP,
a Texas limited partnership

By: Newstream Hotels and Resorts LLC,
a Texas limited liability company,
its General Partner

By:_____
Name: _____
Title: _____

RECEIVED AND ACKNOWLEDGED:

TOWN OF FLOWER MOUND, TEXAS,
a Texas municipal corporation

By:_____
Name:_____
Title_____

Attachment 1

EXHIBIT D

ABSOLUTE ASSIGNMENT

[The form of Absolute Assignment follows this cover page.]

Attachment 1

ABSOLUTE ASSIGNMENT OF DEVELOPMENT AGREEMENT

This ABSOLUTE ASSIGNMENT OF DEVELOPMENT AGREEMENT ("**Assignment**") is dated as of _____, 2019, and executed by LAKESIDE CROSSING LAND PARTNERS LP, a Texas limited partnership ("**Assignor**"), to and for the benefit of BI 43 LLC, a Florida limited liability company ("**Assignee**").

WHEREAS, Newstream Hotels and Resorts, LLC, a Texas limited liability company also known as Newstream Hotels and Resorts LLC ("**Newstream**"), and the Town of Flower Mound, Texas, a Texas municipal corporation (the "**Town**"), executed that certain Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC dated July 17, 2017 (as the same may have been or may be amended, restated, or otherwise modified from time to time, the "**Development Agreement**") recorded in the Real Property Records of Denton County, Texas, as assigned by Newstream to Assignor pursuant to that certain Assignment of Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC, dated September 18, 2017, made by Newstream in favor of Assignor, recorded in the Real Property Records of Denton County, Texas.

FOR AND IN CONSIDERATION OF $10.00 and other good and valuable consideration received by Assignee, the receipt and sufficiency of which are hereby acknowledged and confessed:

1. Absolute Assignment. Assignor does hereby absolutely, unconditionally and irrevocably ASSIGN, TRANSFER, SET OVER, CONVEY and DELIVER unto Assignee, its successors and assigns, ail of the rights, powers, privileges and interests of Assignor in and to the Development Agreement.

2. No Personal Liability. In no event shall Assignee have any personal liability for any obligations or liabilities of the Assignor under the Development Agreement.

3. **Assignor Indemnity. ASSIGNOR HEREBY AGREES TO INDEMNIFY ASSIGNEE, DEFEND ASSIGNEE WITH COUNSEL SELECTED BY ASSIGNEE AND HOLD HARMLESS ASSIGNEE FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE, COST AND EXPENSE, INCLUDING SPECIFICALLY (BUT WITHOUT LIMITATION) REASONABLE ATTORNEYS' FEES AND COSTS OF COURT, WHICH ASSIGNEE MAY SUFFER OR INCUR BY REASON OF ANY ACT OR CAUSE OF ACTION OCCURRING OR ACCRUING, AND/OR. ARISING OUT OF THE DEVELOPMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, LIABILITY, LOSS, DAMAGE, COST AND EXPENSE ARISING OUT OF THE NEGLIGENCE OF ASSIGNEE; PROVIDED, HOWEVER, THE FOREGOING INDEMNITY SHALL NOT APPLY TO ANY LIABILITY, LOSS, DAMAGE, COST AND EXPENSE WHICH IS CAUSED SOLELY BY, OR ARISES SOLELY OUT OF, THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ASSIGNEE, AS DETERMINED BY A FINAL, NON-APPEALABLE ORDER OF A COURT OF COMPETENT JURISDICTION.**

4. Binding Effect. This Assignment is binding upon and shall inure to the benefit of the parties hereto, and their respective authorized agents and representatives, successors and assigns. This Assignment has been entered into by Assignor and Assignee solely for their benefit, and the benefit of their respective successors, assigns, authorized agents and representatives, and not for the benefit of any other persons not a party to this Assignment. No person shall be entitled to the benefits of any covenant, indemnification or other agreement made herein, whether as a third-party beneficiary or otherwise, except as expressly provided in this Assignment.

[Remainder of Page Intentionally Left Blank]

Attachment 1

IN WITNESS WHEREOF, Assignor has signed this Assignment.

ASSIGNOR:

LAKESIDE CROSSING LAND PARTNERS LP,
a Texas limited partnership

By: Newstream Hotels and Resorts LLC, a Texas limited liability company, its General Partner

By:_____
Name:_____
Title: Managing Member

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me on this _____, 2019, by _____, the Managing Member of Newstream Hotels and Resorts LLC, a Texas limited liability company, the General Partner of LAKESIDE CROSSING LAND PARTNERS LP, a Texas limited partnership, on behalf of said limited partnership.

[Seal]

_____
Notary Public, State of Texas

My Commission Expires:

_____

_____
Printed Name of Notary Public

Attachment 2

COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

This COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT ("**Assignment**") is dated as of _____, 2019, and executed by NEWSTREAM RETAIL PARTNERS – FM LLC, a Texas limited liability company ("**Borrower**"), in favor of BI 50 LLC, a Florida limited liability company ("**Lender**").

W I T N E S S E T H:

WHEREAS, Pursuant to the terms of that certain Loan Agreement by and between Borrower and Lender, dated _____, 2019 (as the same may be amended, restated, or otherwise modified from time to time, the "**Loan Agreement**"), Lender made a loan to Borrower in the original principal amount of Seven Million One Hundred Twenty Thousand and 00/100 Dollars ($7,120,000.00) (the "**Loan**"). The Loan was evidenced by, among other things, that certain Promissory Note, dated _____, 2019, executed by Borrower payable to the order of Lender, in the principal amount of the Loan (together with all amendments, modifications, renewals, substitutions and replacements thereof, the "**Note**") and is further evidenced and secured by the other Loan Documents (as defined in the Loan Agreement);

WHEREAS, Newstream Hotels and Resorts, LLC, a Texas limited liability company also known as Newstream Hotels and Resorts LLC ("**Newstream**"), and the Town of Flower Mound, Texas, a Texas municipal corporation (the "**Town**"), executed that certain Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC dated July 17, 2017 (as the same may have been or may be amended, restated, or otherwise modified from time to time, the "**Development Agreement**") recorded in the Real Property Records of Denton County, Texas, as assigned by Newstream to Lakeside Crossing Land Partners LP, a Texas limited partnership ("**Lakeside**"), pursuant to that certain Assignment of Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC, dated September 18, 2017, made by Newstream in favor of Lakeside, recorded in the Real Property Records of Denton County, Texas, as assigned by Lakeside to Borrower, pursuant to that certain Partial Assignment of 380 Agreement, dated _____, made by Lakeside in favor of Borrower, recorded or to be recorded in the Real Property Records of Denton County, Texas;

WHEREAS, the Development Agreement relates to, among other things, the Land (the "**Land**") more particularly described on Exhibit A attached hereto and incorporated herein for all purposes, together with any and all streets, alleys, sidewalks, street lighting, screen walls, and utility lines and facilities, and similar items ("**Improvements**"), now or hereafter existing or constructed upon the Land (the Land and Improvements are herein collectively referred to as the "**Property**");

WHEREAS, pursuant to the Development Agreement, Borrower is entitled to receive payment from the Town of funds equal to the amounts of the TPP Grants, Real Property Grants, Sales Tax Grants, Impact Fee Grants and HOT Grants (collectively, the "**Grants**") (any and all such payments Borrower receives or is entitled to receive under the Development Agreement, including contingent, earned and unearned amounts, collectively, the "**Development Agreement Proceeds**"); and

WHEREAS, as additional security for the Loan, Lender has required, and Borrower has agreed to execute and deliver to Lender this Assignment.

NOW, THEREFORE, for and in consideration of the mutual and dependent covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Borrower hereby covenants and agrees to Lender as follows:

1. Assignment. Borrower does hereby GRANT, CONVEY, ASSIGN and TRANSFER to Lender all of Borrower's right, title and interest in and to all of the following (collectively, the "**Collateral**"): (i) all of Borrower's right, title and interest under the Development Agreement, but none of Borrower's obligations under the Development Agreement; (ii) the Development Agreement Proceeds and all other amounts, including, without limitation, contingent, earned and unearned amounts, payable to Borrower under the Development Agreement; (iii) any and all Collateral acquired by Borrower in the future; and (iv) any and all proceeds of the Collateral. Borrower has not assigned to Lender, and Lender has not accepted, any of the liabilities of Borrower under the Development Agreement, and Borrower hereby expressly reserves unto Borrower all liabilities under the Development Agreement. Borrower hereby further covenants and agrees that the acceptance by Lender of payments otherwise due to Borrower under the Development Agreement shall not make Lender liable for the performance of any obligations of Borrower or any other party under the Development Agreement. LENDER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL LIABILITIES UNDER THE DEVELOPMENT AGREEMENT, AND BORROWER HEREBY RESERVES ALL SUCH LIABILITIES TO BORROWER.

2. Security Interest. This Assignment shall also constitute a security agreement with respect to the Collateral, and shall be, during the existence of the Loan Documents, a first and prior security interest under the Uniform Commercial Code of Texas and each other applicable jurisdiction as to the Collateral. In this regard, Borrower has GRANTED, BARGAINED, CONVEYED, ASSIGNED, TRANSFERRED and SET OVER, and by these presents does GRANT, BARGAIN, CONVEY, ASSIGN, TRANSFER and SET OVER, unto Lender, a first and prior security interest in and to the Collateral, to secure the full and timely payment of the Indebtedness (as hereinafter defined) and the full and timely performance and discharge of the Obligations (as hereinafter defined). Borrower hereby agrees that Lender shall have the right to file, without the consent of or prior notice to Borrower, such UCC financing statements as Lender shall deem appropriate with respect to this Assignment, the Collateral and the Development Agreement. Borrower further covenants and agrees to execute and deliver to Lender, in form and substance satisfactory to Lender, such further assurances as Lender may, from time to time, reasonably consider necessary to create, perfect and preserve Lender's security interest herein granted. Lender may cause (at the sole cost and expense of Borrower) any and or all of such UCC financing statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

3. Payments Directly to Lender. From and after the date of this Assignment, all payments with respect to the Collateral shall be made directly to Lender. Borrower hereby unconditionally and irrevocably authorizes and directs the Town to make any and all payments of the Collateral directly to Lender, pursuant to the payment instructions provided by Lender to the

Town from time to time, as such instructions may be modified by Lender from time to time. Concurrently with the execution and delivery of this Agreement, Borrower shall deliver to Lender the irrevocable notice (the "**Payment Direction Notice**"), in the form attached to this Assignment as Exhibit C, directing the Town to pay directly to Lender all amounts payable to Borrower under the Development Agreement, for which the Town has acknowledged receipt thereof. BORROWER HEREBY INDEMNIFIES AND HOLDS HARMLESS THE TOWN FROM AND AGAINST ANY AND ALL COSTS, EXPENSE, LIABILITY AND OTHER DAMAGES WHICH THE TOWN MAY INCUR OR SUSTAIN BY REASON OF ITS ADHERENCE TO THE PROVISIONS OF THIS ASSIGNMENT, INCLUDING (WITHOUT LIMITATION) THE REQUIREMENTS TO MAKE PAYMENTS OF THE COLLATERAL DIRECTLY TO LENDER AS PROVIDED ABOVE. The Town's obligation to make payment directly to Lender as provided in this Assignment shall continue until such time as Lender has executed a termination of this Assignment and filed a termination of the applicable UCC financing statement relating to the Collateral, or when the Town has made payment of all of the Collateral in accordance with the terms and provisions of this Assignment.

4. Absolute Assignment. Prior to or concurrently with the execution and delivery of this Assignment by Borrower, Borrower shall execute and deliver to Lender the Absolute Assignment of Development Agreement (the "**Absolute Assignment**") in the form attached to this Assignment as Exhibit D, to be held by Lender in escrow until absolutely and unconditionally delivered to Lender pursuant to this Section 4. Borrower hereby unconditionally and irrevocably authorizes and directs Lender, upon the occurrence of any Event of Default (as defined in the Loan Agreement), to take the following actions, at any time, as determined by Lender in the sole and absolute discretion of Lender, without prior notice to or the consent of Borrower: (i) to cause the release of the Absolute Assignment from escrow, and the absolute and unconditional delivery to Lender of the Absolute Assignment, and (ii) to record the Absolute Assignment in the Real Property Records of Denton County, Texas,

5. Secured Indebtedness. This Assignment is executed and all of the rights and properties covered and to be covered hereby have been assigned as security for and to secure the full, prompt and unconditional payment and performance of any and all indebtednesses, liabilities and obligations of Borrower now or hereafter existing or arising, absolute or contingent, direct or indirect, secured or unsecured, due or to become due, with respect to the Loan Documents (collectively, the "**Indebtedness**") and the performance and discharge of all obligations under and with respect to the Loan Documents (collectively, the "**Obligations**").

6. Attorney-in-Fact. Borrower hereby constitutes and appoints the Lender its true and lawful attorney, which appointment is hereby coupled with an interest and is therefore irrevocable, with full power of substitution, to, as and when provided by this Assignment and/or the Loan Documents, or otherwise upon any Event of Default: (i) ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts constituting the Collateral, which may be due or become due or payable under the Development Agreement, (ii) execute any and all requests and notices or other demands for the payment of all or any part of the Collateral, (iii) endorse the name of the Borrower on all commercial paper or other instruments given in payment of all or any part of the Collateral, (iv) in the discretion of the Lender, file any claim or take any other action or proceeding, either in its own name or in the name of the Borrower or otherwise, which the Lender may deem necessary or appropriate to protect and preserve the rights, titles and

interests of the Lender hereunder or of Borrower under the Development Agreement, and (v) without limiting the foregoing, the Lender shall have and is hereby given full power and authority to transfer the Development Agreement into the name of the Lender and/or its nominee to receive or demand all or any part of the Collateral without prior notice (except as otherwise expressly provided for in any of the Loan Documents) or further consent by Borrower.

7. Representations and Warranties. The Borrower represents and warrants that: (i) Borrower is the owner of the Collateral, free and clear of all liens and encumbrances of any nature whatsoever, except for those created in favor of the Lender under this Assignment; (ii) Borrower has full power, right and authority to execute and deliver this Assignment; (iii) the Development Agreement shall not be cancelled, terminated, amended or supplemented in any manner whatsoever without the prior written consent of Lender, which consent may be conditioned, withheld or delayed in the sole and absolute discretion of Lender; and (iv) the Development Agreement is in full force and effect and valid, binding and enforceable against Borrower and the Town as therein provided.

8. No Pledge or Assignment of Development Agreement. Subject to the other terms of this Assignment, Borrower covenants and agrees that for as long as Lender has any interest in the Development Agreement and/or the Collateral, Borrower will not pledge, assign or transfer all or any rights, titles or interests in and to the Development Agreement and the Collateral.

9. Representations, Warranties and Covenants of Borrower. Borrower hereby represents, warrants, covenants and agrees to Lender as follows: (i) the Development Agreement has been validly issued and is currently in full force in effect; (ii) the Development Agreement is in full compliance with all applicable laws and regulations including, without limitation, Texas Local Government Code Chapter 380; (iii) Borrower will satisfy all of the requirements set forth in the Development Agreement for the payment to Borrower of payments under the Grants, including, without limitation, all requirements set forth in Article 3 of the Development Agreement, the requirements for Capital Investment set forth in Section 4.3(d) and the prohibition on use of undocumented workers as set forth in Section 6.15 of the Development Agreement; (iv) upon request of Lender, Borrower shall furnish to Lender, concurrently with the delivery thereof in accordance with the Development Agreement, the following: (A) each Sales Tax Report pursuant to Section 3.6 of the Development Agreement; (B) each Payment Request pursuant to Sections 4.1, 4.2, 4.3(d), 4.4(d), and 4.5 of the Development Agreement; (C) the Annual Plan and Budget pursuant to Section 4.3(c)(1) of the Development Agreement and the approval of the Town with respect to same pursuant to Section 4.3(c)(iii) of the Development Agreement; (D) any and all notices of breach or default under or termination of the Development Agreement, including without limitation, notices pursuant to Section 5.1 thereof; and (E) copies of any remittances, checks, statements, invoices or reports reflecting any payments or refunds made or payable by Town to Borrower under the Development Agreement; (v) except for this Assignment and the other Loan Documents, Borrower has not assigned, sold, conveyed, pledged, encumbered, or otherwise transferred or terminated in any respect any of Borrower's rights under the Development Agreement; (vi) upon request by Lender, from time to time and at any time, Borrower shall execute and deliver to Lender and/or the Town such agreements and instruments as Lender shall require in connection with the Development Agreement, including, without limitation, a release and indemnity in favor of the Town with respect to any future payments made by the Town to Lender instead of Borrower; (vii) without the prior written consent of Lender, which consent may be

conditioned, withheld or delayed in the sole and absolute discretion of Lender, Borrower shall not (A) modify or amend in any respect the Development Agreement, or (B) waive any of the rights of Borrower or obligations of the Town under the Development Agreement, or terminate all or any portion of the Development Agreement, or (C) assign, sell, convey, pledge, encumber, or otherwise transfer or terminate in any respect any of Borrower's rights under the Development Agreement; (viii) Borrower shall at all times keep the Development Agreement in full force and effect, shall not terminate or agree to a termination thereof, and shall use its best efforts to cause the Town to make all payments due under the Development Agreement as and when such payments are due; and (ix) Borrower shall, within five (5) days after any request by Lender, which requests may be made from time to time and at any time, execute and deliver to Lender any and all documents, agreements, assignments and/or other Instruments (all of which shall be in form and substance as required by Lender in its sole and absolute direction) as Lender shall require with respect to the Development Agreement.

10. Release of Collateral. Upon the payment in full to Lender of all sums due and owing with respect to the Indebtedness and the performance of the Obligations under the Loan Documents, and the termination of all of Lender's liabilities under the Loan Documents, the Lender, at the written request and expense of Borrower, shall release the Collateral and terminate this Assignment pursuant to instruments acceptable to Lender.

11. Remedies. If any Event of Default shall occur under any Loan Document, the Lender shall be entitled to (i) unilaterally declare this Assignment to be an absolute and unconditional assignment of the Collateral and all of Borrower's rights in, to and under the Development Agreement, (ii) exercise any and all of Borrower's rights in, to and under the Development Agreement, or (iii) any and all other rights, remedies and recourses which Lender may have under applicable law.

12. Application of Proceeds. By its acceptance of this Assignment, Lender hereby agrees that upon receipt of any Development Agreement Proceeds, Lender shall, to the extent permitted under applicable law, apply such funds in the following order of priority: (i) to payment of all sums expended by Lender under the terms of this Assignment for the collection of such Development Agreement Proceeds; and (ii) the balance thereof as set forth in the Loan Agreement.

13. Waiver. To the extent Borrower may be deemed to be a surety as a result of the execution of this Assignment, Borrower, to the maximum extent permitted by applicable law, hereby waives (i) all rights Borrower may have as a surety, (ii) all notice of acceptance hereof, protest, demand and dishonor, presentment and demands of any kind now or hereafter provided for by any statute or rule of law, (iii) any and all requirements that Lender institute any action or proceeding, or exhaust any or all of Lender's rights, remedies or recourses, against the Borrower, or any and all guarantors of the Loan, or any part thereof, or in respect to any of the property covered by the Loan Documents, as a condition precedent to exercising any right or remedy of Lender contained in this Assignment, (iv) any defense arising by reason of any disability, insolvency, lack of authority or power, death, insanity, minority, dissolution or any other defense of Borrower, or any other surety, co-maker, endorser or guarantor of the Indebtedness (even though rendering same void, unenforceable or otherwise uncollectible), and (v) any claim Borrower might otherwise have against Lender by virtue of Lender's invocation of any right, remedy or recourse permitted it under this Assignment.

14. No Release. Borrower hereby agrees that (i) the payments called for and provisions contained in the Loan Documents, including specifically the Note, as defined therein, may be renewed, extended, rearranged, modified, released or cancelled, (ii) all or any part of any of the property covered by the Loan Documents may be released from, and any new or additional security may be added to, the liens and security interests of the Loan Documents, (iii) any guarantor, and any additional parties who may become personally liable for repayment of any portion of the Indebtedness, may hereafter be released from their liability, and (iv) Lender and any other party may take any and all action with reference to the Loan Documents (regardless of whether same might vary the risk or alter the rights, remedies or recourses of Borrower), including specifically the settlement or compromise of any amount allegedly due thereunder, all without notice to, consideration to or the consent of Borrower, and no such acts shall in any way release, diminish, or affect this Assignment. It is the intent of Borrower that the obligations under this Assignment and in connection with the Collateral are primary, absolute and unconditional under any and all circumstances and that, subject to the other terms and provisions of this Assignment, until the Indebtedness is fully and finally paid and the Obligations under the Loan Documents are fully and finally satisfied, neither this Assignment nor any of Borrower's obligations under this Assignment shall be discharged or released, in whole or in part, by any act or occurrence which might, but for this paragraph, be deemed a legal or equitable discharge or release of a guarantor or surety.

15. No Election of Remedies. The rights and remedies of the Lender under this Assignment and the Loan Documents shall be cumulative, and the exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

16. Successors and Assigns. This Assignment and all representations and warranties, powers and rights herein contained or resulting herefrom are binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

17. Venue. Borrower hereby consents to nonexclusive personal jurisdiction in any state or Federal court located within the State of Texas.

18. Applicable Law. This Assignment shall be governed by the laws of the State of Texas, without regard to principles of conflicts of laws, and applicable federal law.

19. Notices. All notices, demands, or other communications under this Assignment shall be in writing and shall be delivered to the appropriate party at the address set forth on the signature page of each party hereto (or, in the case of Lender, at the address below), including the Town on the signature page to the Consent and Joinder of Town attached to this Assignment (subject to change from time to time by written notice to all other parties to this Assignment). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of default may be sent by certified mall, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Furthermore, and notwithstanding the preceding, email shall be deemed sufficient notice hereunder and shall be deemed received upon

receipt by the addressee. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days notice to the other party in the manner set forth hereinabove.

Notice address for Lender:

BI 50 LLC
2601 S. Bayshore Drive
Suite 1200
Miami, Florida 33133
Attention: Alex Horn
Email: alex.horn@bridgeinvest.com

with copies by regular mall or such hand delivery to:

Bryan Cave Leighton Paisner LLP
One Atlantic Center
Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, Georgia 30309-3488
Attention: Johnny D. Latzak, Jr., Esq.
Email: jay.latzak@bclplaw.com

20. Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

21. Consent and Joinder. Borrower hereby agrees to cause the execution and delivery, concurrently with the execution and delivery hereof by Borrower to Lender, by the Town of the Consent and Joinder of Town (herein so called) in substantially the same form as the consent and joinder attached hereto as Exhibit B and incorporated herein by reference for all purposes. Nevertheless, if Lender accepts this Assignment, in its sole and absolute discretion, without the execution and delivery by Town of the Consent and Joinder of Town, Borrower agrees to use its best efforts to cause the Town to execute and deliver same to Lender; provided, however, same shall not and will not render this Assignment null and void and unenforceable and, notwithstanding such failure or refusal of the Town to execute and deliver the Consent and Joinder of Town, this Assignment is valid, binding and enforceable against Borrower and Lender as herein provided.

22. Rules of Construction. The word "Borrower" as used herein shall include both the named Borrower and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Borrower under the Note and the other

Loan Documents. The word "Lender" as used herein shall include the named Lender, its successors, assigns and affiliates.

23. Use of Singular and Plural; Gender. When the identity of the parties or other circumstances make it appropriate, the singular number includes the plural, and the masculine gender includes the feminine and/or neuter.

24. Exhibits, Schedules and Riders. All exhibits, schedules, riders and other items attached hereto are incorporated into this Assignment by such attachment for all purposes.

25. Inconsistencies. In the event of any inconsistencies between the terms of this Assignment and the terms of any of the other Loan Documents, the terms of this Assignment shall prevail.

26. Integration: Interpretation. THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN BORROWER AND LENDER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF BORROWER AND LENDER. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN BORROWER AND LENDER. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY BORROWER AND LENDER.

27. Waiver of Consumer Rights. BORROWER REPRESENTS AND WARRANTS TO LENDER THAT BORROWER (i) IS A BUSINESS CONSUMER, (ii) HAS KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS THAT ENABLE BORROWER TO EVALUATE THE MERITS AND RISKS OF THE SUBJECT TRANSACTION, (iii) IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION WITH RESPECT TO THE SUBJECT TRANSACTION, AND (iv) HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL (WHO WAS NOT, DIRECTLY OR INDIRECTLY, IDENTIFIED, SUGGESTED OR SELECTED BY LENDER OR LENDER'S AGENTS) IN CONNECTION WITH THE REFERENCED TRANSACTION.

28. WAIVER OF RIGHT TO TRIAL BY JURY. LENDER, BY ITS ACCEPTANCE OF THIS ASSIGNMENT, AND BORROWER, UNCONDITIONALLY AND IRREVOCABLY, EACH WAIVES, RELINQUISHES, AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE LOAN, THIS ASSIGNMENT, ANY OTHER LOAN DOCUMENT, AND/OR ANY ACTION TAKEN IN CONNECTION THEREWITH, INCLUDING THOSE BASED ON OR ARISING FROM AN ALLEGED CONTRACT CLAIM, TORT, STATUTE, CONSTITUTION, OR OTHER. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS MADE VOLUNTARILY, KNOWINGLY, AND WITH FULL AWARENESS OF THE LEGAL CONSEQUENCES.

[Signature page follows.]

Attachment 2

IN WITNESS WHEREOF, Borrower has signed this Assignment.

Address:

311 S. Oak Street, Suite 250
Roanoke, Texas 76262

BORROWER:

NEWSTREAM RETAIL PARTNERS – FM LLC,
a Texas limited liability company

By: LC Retail Flower Mound LLC, a Texas limited liability company, its Manager

By: Newstream Ventures, LLC, a Texas limited liability company, its Manager

By:_____
Name:_____
Title: Managing Member

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me on this _____, 2019, by _____, as the Managing Member of Newstream Ventures, LLC, a Texas limited liability company, the Manager of LC Retail Flower Mound LLC, a Texas limited liability company, the Manager of **NEWSTREAM RETAIL PARTNERS – FM LLC**, a Texas limited liability company (the "Company"), on behalf of said Company.

[Seal]

_____
Notary Public, State of Texas_

My Commission Expires:

_____

_____
Printed Name of Notary Public

Attachment 2

EXHIBIT A

PROPERTY DESCRIPTION

BEING Lots 4 and 5, Block A, of Record Plat, LAKESIDE CROSSING, an Addition to the Town of Flower Mound, Denton County, Texas, according to the Map thereof recorded in Volume 2019, Page 97, of the Map Records of Denton County, Texas.

Attachment 2

EXHIBIT B

CONSENT AND JOINDER OF TOWN

[The Consent and Joinder of Town follows this cover page.]

Attachment 2

CONSENT AND JOINDER OF TOWN

This CONSENT AND JOINDER OF TOWN dated _____, 2019, and executed by the TOWN OF FLOWER MOUND, TEXAS, a Texas municipal corporation (the "**Town**"), and is executed pursuant to that certain Collateral Assignment of Development Agreement ("**Assignment**") dated _____, 2019, executed by Newstream Retail Partners – FM LLC, a Texas limited liability company ("**Borrower**"), to BI 50 LLC, a Florida limited liability company ("**Lender**").

For and in consideration of the mutual and dependent covenants contained in the Development Agreement (as defined in the Assignment) and the Assignment and this Consent and Joinder of Town, the Town hereby represents, warrants, covenants and agrees as follows:

1. Consent. The Town hereby (i) acknowledges the execution and delivery of the Assignment, and (ii) consents to the assignment of the Collateral pursuant to Section 1 of the Assignment.

2. Representations. The Town hereby represents that the Development Agreement attached hereto as Exhibit A is a true, correct and complete copy of same.

3. Payments. The Town hereby agrees to make payments of the Collateral (as defined in the Assignment) directly to Lender pursuant to the written instructions provided by Lender to the Town, as Lender may amend and modify such instructions from time to time or at any time. The Town hereby acknowledges and agrees that the Collateral includes all payments and amounts due and/or payable to Borrower under the Development Agreement. The Town hereby agrees that the Town shall not, unless and until such time as the Town has received from Lender written notice that the Assignment has been terminated, make any payments to Borrower, and all such payments otherwise due or payable to Borrower under the Development Agreement shall be paid directly to Lender. The Town's agreement to make payments to Lender in accordance with this Section 3 is made in reliance and subject to Borrower's obligation to indemnify Town as set forth in Section 3 of the Assignment and the Payment Direction Notice.

4. No Liability of Lender. The Town acknowledges and agrees that (i) Lender has no liability under the Development Agreement, and (ii) Lender shall not become liable under the Development Agreement as a result of the acceptance by Lender of payments under the Development Agreement.

5. Construction and Development Conditions. The Town hereby acknowledges and agrees that until Borrower has satisfied, and the Town has approved, all of the construction and development conditions of Borrower under the Development Agreement, Town agrees to provide to Lender, concurrent with the notice sent to Borrower, a copy of any notice of non-compliance therewith. In addition, the Town agrees that as a condition precedent to declaring any default, breach or termination of the Development Agreement, to provide Lender ninety (90) days to cause same to be cured, which cure period shall be extended for such period of time as may be reasonably necessary for Lender to obtain possession or ownership of the Property by foreclosure or deed-in-lieu of foreclosure.

6. Acknowledgments and Agreements by Town. The Town hereby acknowledges and agrees as follows: (i) pursuant to Section 4 of the Assignment, that in the event Borrower has delivered to Lender that certain Absolute Assignment of Development Agreement (the "Absolute Assignment") in the form attached to the Assignment as Exhibit D, Lender has the right, upon the occurrence of any Event of Default (as defined in the Assignment), to cause the absolute and unconditional delivery to Lender of the Absolute Assignment, and to record the Absolute Assignment and same shall not constitute or cause a breach or default under the Development Agreement; (ii) following the delivery to Lender of the Absolute Assignment, the Town will recognize Lender as the absolute owner of all of the rights, title and interest of Borrower under the Development Agreement; (iii) the Town hereby consents and agrees not to unreasonably withhold its consent to the further assignment by Lender of the Development Agreement, and agrees that any sale of all or any portion of the property covered by the Development Agreement shall not constitute a breach or default under the Development Agreement; (iv) all of the payment obligations of the Town under the Development Agreement shall survive any foreclosure or voluntary conveyance of the property covered by the Development Agreement, and such payments shall be payable to (A) the party which acquires (whether by foreclosure, deed in lieu of foreclosure, a voluntary conveyance, or otherwise) the property covered by the Development Agreement, or (B) such other party to whom Lender absolutely assigns the Development Agreement; and (v) the payment obligations of the Town under the Development Agreement shall not be adversely affected by any sale to any other third party (including a third party which is not affiliated with Borrower) of all or any portion of the property covered by the Development Agreement. Notwithstanding the foregoing or any term in the Assignment to the contrary, the Town is not obligated to make any payment under the Development Agreement unless the obligations in Article 3 of the Development Agreement have been satisfied.

7. Notices. The Town hereby agrees to honor and comply with the notice provisions set forth in this CONSENT AND JOINDER OF TOWN, and agrees that Borrower and Lender are entitled to provide notice to the Town in accordance with the Assignment, at the following address for the Town:

Town of Flower Mound, Texas
2121 Cross Timbers Rd.
Flower Mound, TX 75028
Attention: Economic Development Director

[Signature page follows].

Attachment 2

IN WITNESS WHEREOF, the Town has signed this Consent and Joinder of Town.

TOWN:

TOWN OF FLOWER MOUND, TEXAS, a Texas municipal corporation

By: _____
Name:
Title:

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me on this _____, 2019, by _____, the _____ of the TOWN OF FLOWER MOUND, TEXAS, a Texas municipal corporation, on behalf of said municipal corporation.

[Seal]

_____
Notary Public, State of _____

My Commission Expires:

_____

_____
Printed Name of Notary Public

Attachment 2

Exhibit A to Consent and Joinder of Town

Development Agreement

[The Development Agreement follows this cover page.]

Attachment 2

EXHIBIT C

PAYMENT DIRECTION NOTICE

[The Payment Direction Notice follows this cover page.]

Attachment 2

Payment Direction Notice

_____, 2019

To: Town of Flower Mound, Texas
2121 Cross Timbers Rd.
Flower Mound, TX 75028
Attention: Economic Development Director

Re: Payment Direction Notice for Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC dated July 17, 2017 (the "**Development Agreement**"), as assigned by Newstream Hotels and Resorts LLC to Lakeside Crossing Land Partners LP pursuant to that certain Assignment of Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC, dated as of September 19, 2017, as assigned by Lakeside Crossing Land Partners LP to Newstream Retail Partners – FM LLC pursuant to that certain Partial Assignment of 380 Agreement, dated as of _____, 2019

Dear Madam or Sir:

Newstream Retail Partners – FM LLC ("**Developer**") has (i) assigned to BI 50 LLC ("**Lender**") all of the payments due and/or payable to Developer at any time under the Development Agreement, and (ii) agreed pursuant to a Collateral Assignment of Development Agreement dated as of _____, 2019 made by Developer to Lender that all payments due from the Town of Flower Mound, Texas (the "**Town**") under the Development Agreement for or relating to the property covered thereby will be paid directly to Lender. From and after the date hereof, Developer hereby irrevocably instructs and directs that all payments to be paid by you to Borrower under the Development Agreement or otherwise should be paid as follows:

(a) If paying by check, money order or other Instrument, please mail or otherwise deliver such items to Lender the following address:

BI 50 LLC
2601 S. Bayshore Drive
Suite 1200
Miami, Florida 33133
Attention: Alex Horn
Email: alex.horn@bridgeinvest.com

All checks or other Instruments should be made out to the name of "BI 50 LLC".

- OR -

(b) Transfer such amounts by wire transfer to the following account:

Bank Name:	
Bank Address:	
Bank Contact:	
ABA Number:	
Account Number:	
Account Name:	

These payment instructions cannot be withdrawn or modified without the prior written consent of Lender, or pursuant to a joint written instruction from the Developer and Lender. Until you receive written instructions from Lender, continue to send all payments due to the Developer under the Development Agreement to Lender as indicated in paragraphs (a) or (b) above. All payments must be delivered to Lender no later than the day on which such amounts are due under the Development Agreement.

DEVELOPER HEREBY INDEMNIFIES AND HOLDS HARMLESS THE TOWN FROM AND AGAINST ANY AND ALL COSTS, EXPENSE, LIABILITY AND OTHER DAMAGES WHICH THE TOWN MAY INCUR OR SUSTAIN BY REASON OF ITS ADHERENCE TO THE PROVISIONS OF THIS LETTER, INCLUDING (WITHOUT LIMITATION) THE REQUIREMENTS TO MAKE PAYMENTS DIRECTLY TO LENDER AS PROVIDED ABOVE.

Please acknowledge your receipt of this letter by signing this letter in the space below and returning an originally signed copy of this letter to Lender at the following address:

BI 50 LLC
2601 S. Bayshore Drive
Suite 1200
Miami, Florida 33133
Attention: Alex Horn
Email: alex.horn@bridgeinvest.com

If you have any questions concerning this letter, please contact Timothy C. Nystrom of Newstream Retail Partner – FM, LLC at (214) 995-8668. We appreciate your cooperation in this matter.

[Signature page follows.]

Attachment 2

DEVELOPER:

NEWSTREAM RETAIL PARTNERS – FM LLC,
a Texas limited liability company

By: LC Retail Flower Mound LLC, a Texas limited liability company, its Manager

By: Newstream Ventures, LLC, a Texas limited liability company, its Manager

By:_____
Name:_____
Title: Managing Member

RECEIVED AND ACKNOWLEDGED:

TOWN OF FLOWER MOUND, TEXAS,
a Texas municipal corporation

By:_____
Name:_____
Title_____

Attachment 2

EXHIBIT D

ABSOLUTE ASSIGNMENT

[The form of Absolute Assignment follows this cover page.]

Attachment 2

ABSOLUTE ASSIGNMENT OF DEVELOPMENT AGREEMENT

This ABSOLUTE ASSIGNMENT OF DEVELOPMENT AGREEMENT ("**Assignment**") is dated as of _____, 2019, and executed by NEWSTREAM RETAIL PARTNERS – FM LLC, a Texas limited liability company ("**Assignor**"), to and for the benefit of BI 50 LLC, a Florida limited liability company ("**Assignee**").

WHEREAS, Newstream Hotels and Resorts, LLC, a Texas limited liability company also known as Newstream Hotels and Resorts LLC ("**Newstream**"), and the Town of Flower Mound, Texas, a Texas municipal corporation (the "**Town**"), executed that certain Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC dated July 17, 2017 (as the same may have been or may be amended, restated, or otherwise modified from time to time, the "**Development Agreement**") recorded in the Real Property Records of Denton County, Texas, as assigned by Newstream to Lakeside Crossing Land Partners LP, a Texas limited partnership ("**Lakeside**"), pursuant to that certain Assignment of Chapter 380 Agreement Between The Town of Flower Mound and Newstream Hotels and Resorts, LLC, dated September 18, 2017, made by Newstream in favor of Lakeside, recorded in the Real Property Records of Denton County, Texas, as assigned by Lakeside to Assignor, pursuant to that certain Partial Assignment of 380 Agreement, dated _____, made by Lakeside in favor of Assignor, recorded in the Real Property Records of Denton County, Texas.

FOR AND IN CONSIDERATION OF $10.00 and other good and valuable consideration received by Assignee, the receipt and sufficiency of which are hereby acknowledged and confessed:

1. Absolute Assignment. Assignor does hereby absolutely, unconditionally and irrevocably ASSIGN, TRANSFER, SET OVER, CONVEY and DELIVER unto Assignee, its successors and assigns, ail of the rights, powers, privileges and interests of Assignor in and to the Development Agreement.

2. No Personal Liability. In no event shall Assignee have any personal liability for any obligations or liabilities of the Assignor under the Development Agreement.

3. **Assignor Indemnity. ASSIGNOR HEREBY AGREES TO INDEMNIFY ASSIGNEE, DEFEND ASSIGNEE WITH COUNSEL SELECTED BY ASSIGNEE AND HOLD HARMLESS ASSIGNEE FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE, COST AND EXPENSE, INCLUDING SPECIFICALLY (BUT WITHOUT LIMITATION) REASONABLE ATTORNEYS' FEES AND COSTS OF COURT, WHICH ASSIGNEE MAY SUFFER OR INCUR BY REASON OF ANY ACT OR CAUSE OF ACTION OCCURRING OR ACCRUING, AND/OR. ARISING OUT OF THE DEVELOPMENT AGREEMENT, INCLUDING, WITHOUT LIMITATION, LIABILITY, LOSS, DAMAGE, COST AND EXPENSE ARISING OUT OF THE NEGLIGENCE OF ASSIGNEE; PROVIDED, HOWEVER, THE FOREGOING INDEMNITY SHALL NOT APPLY TO ANY LIABILITY, LOSS, DAMAGE, COST AND EXPENSE WHICH IS CAUSED SOLELY BY, OR ARISES SOLELY OUT OF, THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ASSIGNEE, AS DETERMINED BY A FINAL, NON-APPEALABLE ORDER OF A COURT OF COMPETENT JURISDICTION.**

4. Binding Effect. This Assignment is binding upon and shall inure to the benefit of the parties hereto, and their respective authorized agents and representatives, successors and assigns. This Assignment has been entered into by Assignor and Assignee solely for their benefit, and the benefit of their respective successors, assigns, authorized agents and representatives, and not for the benefit of any other persons not a party to this Assignment. No person shall be entitled to the benefits of any covenant, indemnification or other agreement made herein, whether as a third-party beneficiary or otherwise, except as expressly provided in this Assignment.

[Remainder of Page Intentionally Left Blank]

Attachment 2

IN WITNESS WHEREOF, Assignor has signed this Assignment.

ASSIGNOR:

NEWSTREAM RETAIL PARTNERS – FM LLC,
a Texas limited liability company

By: LC Retail Flower Mound LLC, a Texas limited liability company, its Manager

By: Newstream Ventures, LLC, a Texas limited liability company, its Manager

By:_____
Name:_____
Title: Managing Member

STATE OF _____ §
§
COUNTY OF _____ §

The foregoing instrument was ACKNOWLEDGED before me on this _____, 2019, by _____, as the Managing Member of Newstream Ventures, LLC, a Texas limited liability company, the Manager of LC Retail Flower Mound LLC, a Texas limited liability company, the Manager of **NEWSTREAM RETAIL PARTNERS – FM LLC**, a Texas limited liability company (the "Company"), on behalf of said Company.

[Seal]

_____
Notary Public, State of Texas

My Commission Expires:

_____

_____
Printed Name of Notary Public

TOWN COUNCIL AGENDA ITEM NO. K(a)

BOARDS/COMMISSIONS

DATE: December 2, 2019

FROM: Theresa Scott, Town Secretary

ITEM: **Discuss and consider appointment of Chair to the Tax Increment Reinvestment Zone Number 1 (TIRZ # 1).**

BACKGROUND INFORMATION: The structure and organization of the Tax Increment Reinvestment Zone Number 1 (TIRZ #1) board members is described by Town Ordinance and requires the Town Council to designate a voting member of the board to serve as chair for a period of one year beginning January 1st. The board shall elect from its members a vice chair and other officers as it sees fit.

The current voting members of the board that may be considered for the position of chair are:

Paul Stone (currently serving as Chair)
Lori Fickling
Larry Lipscomb
Bill Collins
Jim Engel

Ex officio non-voting members of the board include the Mayor and Town Manager.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

DRAFT MOTION: Move to designate _____ as Chair of the Tax Increment Reinvestment Zone Number 1 effective January 1, 2020 through December 31, 2020.

Town Council Future Agenda Items

SCHEDULED	**12/16/2019**	Presentation	Announcement and Presentation of 2019 Outstanding Citizenship Award(s)
		Consent	Consider approval of an amendment the professional services agreement for the restoration of the Gibson Grant Log House Project with McCoy Collaborative Preservation Architecture, PLLC., in the amount of $116,005.00, for a total fixed fee of $204,025.00; and authorization for the Mayor to execute the same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Pacheco Koch Consulting Engineers, Inc., for the design phase services associated with the Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Drive) project, in the amount of $153,639.50; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Halff Associates, Inc., for the design phase services associated with the Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project, in the amount of $59,190.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Criado & Associates, Inc., for the design phase services associated with the Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive) project, in the amount of $92,748.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a contract with TBD in the amount of TBD for reinsurance coverage for the Town's Group Health Plan.
		Consent	Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of $XXX,XXX.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., for design phase services associated with the Stonehill Pump Station Discharge Valve Replacement & Stonehill Pump Station 10 MG Ground Storage Tank Rehabilitation project, in the amount of $88,500.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on December 2, 2019.
		Consent	Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2018, and ending on September 30, 2019, as adopted by Ordinance No. 30-18 and amended by Ordinance No. 39-18 and Ordinance No. 25-19 for adjustments to the _____ Fund, _____ Fund and _____ Fund.

SCHEDULED	**12/16/2019**	Consent	Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2019, and ending on September 30, 2020, as adopted by Ordinance No. 50-19 for adjustments to the _____ Fund, _____ Fund and _____ Fund.
		Consent	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 amending 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, as adopted by Resolution No. 16-19.
		Regular	Public Hearing to consider an ordinance granting Specific Use Permit No. 460 (SUP19-0009 – Jungle Castle) to permit an amusement and recreation (indoors) use. The property is generally located south of Flower Mound Road and west of Long Prairie Road. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its December 9, 2019, meeting.)
	1/6/2020	Consent	WWTP Aaeser Compressor - Purchase & Install
		Consent	Timber Creek Water Line Replacement Phase 1 - Design
		Consent	The Mound Monument ADA Improvements
		Consent	Consider approval of the network wiring installation for the Library Expansion project, in the amount of $38.550.00.
		Consent	Timber Creek Trunk Line - Construction Award
		Consent	Timber Creek Trunk Line - Testing Award
		Consent	WWTP UV - SCADA
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on December 16, 2019.
	2/3/2020	Consent	Red Bud Point Water Service Relocation - Construction Award.
		Consent	Hound Mound Parking and Restroom - Design
		Consent	Stonecrest Pump Station Phase 1 Auxillary Power - Design
		Consent	Red Bud Point Water Service Relocation - Testing Award.
		Consent	Placeholder: Call May 2, 2020 Election.
		Regular	Morriss Road Water Line Phase II (FM 1171 to Milford)