

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING; AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING

12/16/2019

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

6:00 P.M.

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

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

A. CALL MEETING TO ORDER

B. INVOCATION

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

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

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. PRESENTATIONS

1. Announcement and Presentation of 2019 Outstanding Citizenship Award(s)
2. Presentation and Discussion of the 2019 Resident Survey results

F. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

G. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. Cybersecurity incident closure

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H. FUTURE AGENDA ITEMS

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

I. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, January 6, 2020.
2. Propose cancelling the work session scheduled for Thursday, January 16.
3. The regular meeting for Monday, January 20, has been canceled in observance of the Martin Luther King holiday.

J. CONSENT ITEMS

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

1. Minutes 12/2- Consider approval of the minutes from a regular meeting of the Town Council held on December 2, 2019.
2. Final Budget Amendment FY 18-19- 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 General Fund, Stormwater Utility Fund, Parks & Recreation Special Activities Fund and Hotel Occupancy Tax Fund.
3. 1st Budget Amendment FY 19-20- 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 General Fund, Stormwater Utility Fund, Tree Preservation Fund and Vehicle and Equipment Replacement Fund.
4. Crime District 1st Budget Amend FY 19-20- 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.
5. Active Directory Upgrade- Consider approval of the Town Network Active Directory Upgrade in the amount of \$19,000.00
6. Stop Loss Insurance- Consider approval of a contract with Blue Cross and Blue Shield of Texas in the amount of \$818,936 for reinsurance coverage for the Town's Group Health Plan.
7. 2020 Computer Replacement Program- Consider approval for the purchase and roll out service of desktop and laptop computers, ruggedized laptop computers and peripherals from Dell, in the amount of \$162,825.48
8. PSA- Modern Geosciences- Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$120,000.00; and authorization for the Mayor to execute same on behalf of the Town.
9. Vehicle Purchase (5) - Police- Consider approval of the purchase of five (5) new Dodge Durango Pursuit Vehicles with Equipment Installed per Town of Flower Mound

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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 \$180,879.00.

10. Vehicle Purchase (2) - CIP Engineering- Consider approval of the purchase of two (2) 2020 Ford F150 Extended Cab Short Bed Pickup Trucks with options per Town of Flower Mound Specifications and Quote from Sam Pack's Five Star Ford, in the amount of \$56,918.00.
11. Log Cabin Design Amendment 1- 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.
12. Pink Evening Primrose Trl/Bridge- Design- 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.
13. Stonehill Water Tank Maintenance- 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.
14. Colonial Drive Recon - Design- 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.
15. Edgefield Trail Recon - Design- 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.
16. TIRZ 2019 Annual Report- Consider approval of the 2019 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code.

K. REGULAR ITEMS

17. 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.) (The Town Council moved on December 2, 2019, to postpone until the December 16, 2019, meeting.)
18. SUP19-0009 - Jungle Castle- **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

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Road and west of Long Prairie Road. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its December 9, 2019, meeting.)

19. LDR19-0008 - Park Credit Update- **Public Hearing** to consider an ordinance amending the Land Development Regulations (LDR19-0008 – Park Credit Update) by amending Chapter 90 entitled “Subdivisions,” of the Town's Code of Ordinances to clarify the requirements of the park credit option for parkland dedication within the Town of Flower Mound. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its December 9, 2019, meeting.)
20. LDR19-0009 - Fencing Update- **Public Hearing** to consider an ordinance amending the General Ordinances and Land Development Regulations (LDR19-0009 – Fencing Update) by amending Chapter 14 entitled “Buildings and Building Regulations,” and Chapter 98 entitled “Zoning,” of the Town's Code of Ordinances to create clarifying definitions and standards for fences and walls within the Town of Flower Mound. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its December 9, 2019, meeting.)

L. CLOSED MEETING

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

a. Consultation with Attorney.

1. Short-term rental regulations

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, public rights-of-way, 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: December 12, 2019, at 12:50 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: December 16, 2019

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on December 2, 2019.

BACKGROUND INFORMATION: The Town Council held a regular meeting on December 2, 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.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 2, 2019**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 2ND DAY OF DECEMBER 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).

Administrative Note: No audio for the first 1:36 minutes of the meeting due to technical difficulties

The Town Council met in a regular meeting with the following members present:

Steve Dixon	Mayor
Sandeep Sharma	Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Ben Bumgarner	Councilmember Place 3
Jim Engel	Councilmember Place 4

with the following member absent:

Claudio Forest	Deputy Mayor Pro Tem
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constituting a quorum with the following members of the Town Staff participating:

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Executive Director of Public Works

A. CALL REGULAR MEETING TO ORDER

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

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

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

D. PUBLIC COMMENT

There were no speakers.

E. ANNOUNCEMENTS

Councilmembers Pierson and Engel announced the Christmas Parade and Tree Lighting event scheduled for Saturday, December 7th at 6:00 p.m.

Councilmember Bumgarner announced the "Paws N Claus" fundraiser for the homeless animals at the Flower Mound Adoption Center.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 2, 2019**PAGE 2****F. TOWN MANAGER'S REPORT**

Mr. Stathatos provided an update on the following projects:

1. Capital improvement projects
 - Morriss Road 20-inch water line
2. Economic Development projects
 - New businesses now open or coming soon

G. FUTURE AGENDA ITEMS

No request for future agenda items.

H. COORDINATION OF CALENDARS

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

I. CONSENT ITEMS

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.

RESOLUTION NO. 28-19

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.

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.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 2, 2019**PAGE 3**

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).

ORDINANCE NO. 58-19

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.

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.

ORDINANCE NO. 62-19

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.

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.

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 2, 2019**PAGE 4**

Mayor Pro Tem Sharma moved to approve by consent Items 1 – 9, 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, SHARMA, ENGEL, PIERSON****NAYS: NONE****ABSENT: FOREST****J. REGULAR ITEMS**

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.)

Mayor Dixon announced that the applicant has requested this item be postponed to the December 16, 2019 meeting.

Mayor Pro Tem Sharma moved to postpone item 10 to the December 16, 2019 Town Council meeting, including the associated Public Hearing. Councilmember Engel seconded the motion.

VOTE ON MOTION:*Motion passed (to postpone)***AYES: PIERSON, ENGEL, SHARMA, BUMGARNER****NAYS: NONE****ABSENT: FOREST**

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.

Staff Presentation

Ms. Bruce provided background information regarding the item and she responded to the following questions from Council:

- Are there more water line projects coming forward on Morriss
- Where is the line going to cross over into the median

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

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

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

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 2, 2019**PAGE 5**

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.

Staff Presentation

Ms. Roy gave a presentation identifying or noting:

- Lakeside Crossing aerial of site
- Site plan
- Current request summary

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

- Interest in tying the satisfactory completion of the four outstanding comments to the new agreement
- What are the consequences if the four outstanding comments are not satisfied

Mayor Dixon opened the Public Hearing at 6:15 pm. No one spoke. Mayor Dixon closed the Public Hearing at 6:15 pm.

Mayor Pro Tem Sharma moved to approve item 12 as presented. Councilmember Engel seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: PIERSON, ENGEL, SHARMA, BUMGARNER****NAYS: NONE****ABSENT: FOREST****K. BOARDS/COMMISSIONS (Pre-Council Room)**

Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Animal Services Board, Cultural Arts Commission, Environmental Conservation Commission, Parks Board, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), and Transportation Commission.

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

Administrative Note: Town Council did not convene to the pre-council room. Discussion and deliberation for this item was conducted in open session.

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

- Have any of the members expressed interest in serving as Chair

Councilmember Bumgarner moved to appoint Paul Stone as Chair to the Tax Increment Reinvestment Zone (TIRZ) for the term of January 1, 2020 through December 31, 2020. Mayor Pro Tem Sharma seconded the motion.

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

FLOWER MOUND TOWN COUNCIL MEETING OF DECEMBER 2, 2019

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ABSENT: FOREST

L./M. CLOSED/OPEN MEETING

The Town Council did not convene into a closed meeting.

N. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 6:19 p.m. on Monday, December 2, 2019, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: December 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: 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 General Fund, Stormwater Utility Fund, Parks & Recreation Special Activities Fund and Hotel Occupancy Tax Fund.

BACKGROUND INFORMATION: The attached budget amendment represents the third proposed adjustment to the FY 2018-2019 Annual Budget. According to Section 9.14 of the Town Charter, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures." Transfers such as these are presented to the Town Council throughout the fiscal year in an effort to resolve variances from the Annual Budget and reallocate resources to cover unanticipated expenditures.

The year-end budget amendment request allows staff to adjust the financial reports to ensure that expenses do not exceed the approved budget at the departmental level. A discussion of the adjustments being requested in this budget amendment is provided below.

General Fund

Total General Fund expenditures are currently \$3,451,639 below the FY 2018-2019 budgeted expenditures. (These numbers are preliminary and subject to audit adjustments.)

The following department budgets will increase or decrease by the amounts listed.

Town Manager's Office	\$ -
Legislative Services	15,000
Development Services	-
Community Services	(40,000)
Library Services	25,000
Police Services	-
Financial Services	-
Administrative Services	-
Fire and Emergency Services	-
Communications	-
Non-Departmental Services	-
Public Works	-
Environmental Services	-
	\$ -

Stormwater Utility Fund

Total Stormwater Utility Fund expenditures are currently \$158,437 below the FY 2018-2019 budgeted expenditures. (These numbers are preliminary and subject to audit adjustments.)

The following department budgets will increase or decrease by the amounts listed.

Public Works	\$ (20,000)
Environmental Services	<u>20,000</u>
	\$ -

Parks & Recreation Special Activities Fund

In the Parks & Recreation Special Activities Fund, revenues will increase by \$74,665, from \$168,350 to \$243,015 and expenditures will increase by \$55,500, from \$175,700 to \$231,200. Two of the self-funded programs in this fund; Seniors in Motion and Tennis are above the FY 2018-2019 budgeted revenues and expenditures.

Hotel Occupancy Tax Fund

In the Hotel Occupancy Tax Fund, revenues will increase by \$18,310, from \$330,300 to \$348,610 and expenditures will increase by \$40,000, from \$300,000 to \$340,000 to comply with the Courtyard by Marriott agreement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:**Proposed Revenue:**

Parks & Recreation Special Activities Fund	\$ 74,665
Hotel Occupancy Tax Fund	<u>18,310</u>
	<u>\$ 92,975</u>

Proposed Expenditure:

Parks & Recreation Special Activities Fund	\$ 55,500
Hotel Occupancy Tax Fund	<u>40,000</u>
	<u>\$ 95,500</u>

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

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

ATTACHMENTS:

1. Ordinance

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

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2018, AND ENDING ON SEPTEMBER 30, 2019, AS ADOPTED BY ORDINANCE NO. 30-18 AND AMENDED BY ORDINANCE NO. 39-18 and 25-19, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, STORMWATER UTILITY FUND, PARKS AND RECREATION SPECIAL ACTIVITIES FUND AND HOTEL OCCUPANCY TAX FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound, Texas ("Town Council") has heretofore adopted its Annual Budget for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019; and,

WHEREAS, said Annual Budget was adopted by Ordinance No. 30-18 on September 17, 2018; and,

WHEREAS, said Annual Budget was amended by Ordinance No. 39-18 on December 17, 2018 and Ordinance No. 25-19 on July 15, 2019; and,

WHEREAS, after approval of said Annual Budget, unexpected needs have arisen which require amendment of the Annual Budget; and,

WHEREAS, Section 102.010 of the Local Government Code allows the Town to make changes to the budget for municipal reasons;

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

SECTION 1

All of the above premises are hereby found to be true and correct factual and legislative 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 Annual Budget of the Town of Flower Mound, Texas, for the fiscal year beginning on October 1, 2018, and ending on September 30, 2019, as heretofore adopted by Ordinance No. 30-18 and amended by Ordinance No. 39-18 and 25-19, is hereby amended to provide for adjustments to the General Fund, Stormwater Utility Fund, Parks and Recreation Special Activities Fund and Hotel Occupancy Tax Fund, as shown in Exhibit "A," attached hereto and incorporated herein, and expenditures for said fiscal year shall be made in accordance with said Annual Budget, as amended.

ORDINANCE NO. _____

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SECTION 3

The expenditures and amendments authorized by this Ordinance are necessary to meet unusual and/or unforeseen conditions or circumstances that could not have been included in the original budget through the use of reasonably diligent thought and attention.

SECTION 4

A true and correct copy of this ordinance showing the approved budget amendments shall be filed with the Town Secretary and in the office of the County Clerk as required by Section 102.009 of the Local Government Code.

SECTION 5

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

SECTION 6

It is hereby declared to be the intention of the Town Council of the Town of Flower Mound 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 should 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, or sections of this Ordinance, since the same would have been enacted by the Town Council of the Town of Flower Mound, Texas, without incorporation in this Ordinance of such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 7

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

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

APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. _____

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EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2018-2019**

REASON FOR ADJUSTING THE GENERAL FUND APPROPRIATION:

In the General Fund, three departments require budget adjustments. Total General Fund expenditures are currently \$3,451,639 below the FY 2018-2019 budgeted expenditures. (These numbers are preliminary and subject to audit adjustments.)

<u>General Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Town Manager's Office	\$ 1,697,270	\$ 1,769,770	\$ 1,769,770	\$ -
Legislative Services	485,725	490,925	505,925	15,000
Development Services	2,092,440	2,092,440	2,092,440	-
Community Services	8,264,302	8,282,067	8,242,067	(40,000)
Library Services	1,781,570	1,781,570	1,806,570	25,000
Police Services	15,433,897	15,692,347	15,692,347	-
Financial Services	3,669,149	3,741,949	3,741,949	-
Administrative Services	6,601,334	6,852,505	6,852,505	-
Fire and Emergency Services	16,145,597	16,145,597	16,145,597	-
Communications	726,680	726,680	726,680	-
Non-Departmental Services	4,562,065	4,562,065	4,562,065	-
Public Works	5,228,290	5,303,290	5,303,290	-
Environmental Services	1,562,025	1,562,025	1,562,025	-
Total	\$ 68,250,344	\$ 69,003,230	\$ 69,003,230	\$ -

REASON FOR ADJUSTING THE STORMWATER UTILITY FUND APPROPRIATION:

In the Stormwater Utility Fund, two departments require a budget adjustment. Total Stormwater Utility Fund expenditures are currently \$158,437 below the FY 2018-2019 budgeted expenditures. (These numbers are preliminary and subject to audit adjustments.)

<u>Stormwater Utility Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Public Works	\$ 1,507,254	\$ 1,507,254	\$ 1,487,254	\$ (20,000)
Environmental Services	82,755	82,755	102,755	20,000
Total	\$ 1,590,009	\$ 1,590,009	\$ 1,590,009	\$ -

ORDINANCE NO. _____

PAGE 4

EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2018-2019**

**REASON FOR ADJUSTING THE PARKS AND RECREATION SPECIAL ACTIVITIES
FUND APPROPRIATION:**

In the Parks & Recreation Special Activities Fund, revenues will increase by \$74,665, from \$168,350 to \$243,015 and expenditures will increase by \$55,500, from \$175,700 to \$231,200. Two of the self-funded programs in this fund; Seniors in Motion and Tennis are above the FY 2018-2019 budgeted revenues and expenditures.

Parks & Recreation Special Activities Fund	Original Budget	Current Budget	Amended Budget	Increase / (Decrease)
Revenues:				
Charges for services	\$ 167,850	\$ 167,850	\$ 242,515	\$ 74,665
Investment earnings	500	500	500	-
Total	\$ 168,350	\$ 168,350	\$ 243,015	\$ 74,665
Expenditures:				
Community Services	\$ 175,700	\$ 175,700	\$ 231,200	\$ 55,500
Total	\$ 175,700	\$ 175,700	\$ 231,200	\$ 55,500

REASON FOR ADJUSTING THE HOTEL OCCUPANCY TAX FUND APPROPRIATION:

In the Hotel Occupancy Tax Fund, revenues will increase by \$18,310, from \$330,300 to \$348,610 and expenditures will increase by \$40,000, from \$300,000 to \$340,000 to comply with the Courtyard by Marriott agreement.

Hotel Occupancy Tax Fund	Original Budget	Current Budget	Amended Budget	Increase / (Decrease)
Revenues:				
Hotel occupancy tax	\$ 330,000	\$ 330,000	\$ 348,310	\$ 18,310
Investment earnings	300	300	300	-
Total	\$ 330,300	\$ 330,300	\$ 348,610	\$ 18,310
Expenditures:				
Economic Development Incentives	\$ 300,000	\$ 300,000	\$ 340,000	\$ 40,000
Total	\$ 300,000	\$ 300,000	\$ 340,000	\$ 40,000



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: December 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: **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 General Fund, Stormwater Utility Fund, Tree Preservation Fund and Vehicle and Equipment Replacement Fund.**

BACKGROUND INFORMATION: The attached budget amendment represents the first proposed adjustment of the FY 2019-2020 Annual Budget. According to Section 9.14 of the Town Charter, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures." Transfers such as these are presented to the Town Council throughout the fiscal year in an effort to resolve variances from the Annual Budget and reallocate resources to cover unanticipated expenditures.

This budget amendment is to re-appropriate the balances of outstanding purchase orders for items or services ordered but not received by September 30, 2019 totaling \$691,289 for the General Fund, \$48,915 for the Stormwater Utility Fund, \$13,700 for the Tree Preservation Fund and \$457,556 for the Vehicle and Equipment Replacement Fund.

Additional re-appropriations in the General Fund departments/divisions are:

- Economic Development - \$230,000. Previous committed, but not paid agreements.
- Facilities Management – \$49,000. Fire Station 6 generator installation project budgeted in FY 18-19 was unable to be completed during the fiscal year.
- Financial Services - \$91,783. Home improvement incentive program that has previously committed but not paid out.
- Non-departmental - \$400,000. Committed funds for FM 2499 Office project for the possible debt guarantee.

Other General Fund amendments:

- Information Technology – (\$28,000). Decrease due to changes in the annual computer rollout program.
- Police Services - \$199,792. Includes \$117,865 for police officer STEP pay plan changes to help retain and recruit officers, and \$50,000 for the final ACMS payment. Also includes moving \$22,327 moving 1.0 FTE school crossing guard and \$9,600 FY 19-20 decision package for contractual background investigator to the General Fund from the Crime District Fund.
- Fire and Emergency Services – (\$641,767). Includes (\$644,017) for salaries being reimbursed for the 15 firefighter SAFER grant awarded to the Town after budget adoption. An increase of \$2,250 is for additional CoServ costs related to the Tour 18 warning siren.
- Transfers between departments - \$0. The traffic signal box art budget for \$2,500 will move from Library Services to Community Services and crossing guard recruitment budget for \$4,600 will move from Police Services to Administrative Services.

- Intergovernmental Revenue – (\$60,000). Decrease for changes to the School Resource Officers contract with LISD.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Revenue:	Account Number(s):
\$ (60,000)	Fund 100 General Fund
\$ (60,000)	
Proposed Expenditure:	Account Number(s):
\$ 992,097	Fund 100 General Fund
48,915	Fund 230 Stormwater Utility Fund
13,700	Fund 311 Tree Preservation Fund
457,556	Fund 565 Vehicle Replacement Fund
\$ 1,512,268	

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

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

ATTACHMENTS:

1. Ordinance

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

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2019, AND ENDING ON SEPTEMBER 30, 2020, AS ADOPTED BY ORDINANCE NO. 50-19, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, STORMWATER UTILITY FUND, TREE PRESERVATION FUND, AND VEHICLE AND EQUIPMENT REPLACEMENT FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Flower Mound, Texas ("Town Council") has heretofore adopted its Annual Budget for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020; and,

WHEREAS, said Annual Budget was adopted by Ordinance No. 50-19 on September 16, 2019; and,

WHEREAS, after approval of said Annual Budget, unexpected needs have arisen which require amendment of the Annual Budget; and,

WHEREAS, Section 102.010 of the Local Government Code allows the Town to make changes to the budget for municipal reasons;

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

SECTION 1

All of the above premises are hereby found to be true and correct factual and legislative 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 Annual Budget of the Town of Flower Mound, Texas, for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, as heretofore adopted by Ordinance No. 50-19, is hereby amended to provide for adjustments to the General Fund, Stormwater Utility Fund, Tree Preservation Fund, and Vehicle and Equipment Replacement Fund, as shown in Exhibit "A," attached hereto and incorporated herein, and expenditures for said fiscal year shall be made in accordance with said Annual Budget, as amended.

SECTION 3

The expenditures and amendments authorized by this Ordinance are necessary to meet unusual and/or unforeseen conditions or circumstances that could not have been included in the original budget through the use of reasonably diligent thought and attention.

ORDINANCE NO. _____

PAGE 2

SECTION 4

A true and correct copy of this ordinance showing the approved budget amendments shall be filed with the Town Secretary and in the office of the County Clerk as required by Section 102.009 of the Local Government Code.

SECTION 5

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

SECTION 6

It is hereby declared to be the intention of the Town Council of the Town of Flower Mound 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 should 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, or sections of this Ordinance, since the same would have been enacted by the Town Council of the Town of Flower Mound, Texas, without incorporation in this Ordinance of such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 7

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

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

APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. _____

PAGE 3

EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2019-2020**

REASON FOR ADJUSTING THE GENERAL FUND APPROPRIATION:

In the General Fund, revenues will decrease by \$60,000 from \$70,569,203 to 70,509,203 and expenditures will increase by \$992,097, from \$74,314,282 to \$75,306,379; to re-appropriate funds budgeted in prior years for outstanding purchase orders at September 30, 2019. Included in the General Fund is \$230,000 for economic development, \$49,000 for Fire Station 6 generator installation that was originally budgeted for during FY 18-19, \$91,783 for the home improvement incentive program, \$167,865 police officer STEP plan changes and ACMS final payment, \$400,000 for council committed funds, and \$2,250 for additional costs related to the Tour 18 warning siren. Budget in the amount of \$31,927 will transfer to the General Fund from the Crime District Fund for 1-FTE school crossing guard and contractual background investigator. Budgeted expenditures will decrease \$644,017 due to a SAFER grant award and \$28,000 for computer rollout program.

General Fund	Original Budget	Current Budget	Amended Budget	Increase / (Decrease)
Revenues:				
Taxes	\$ 58,265,545	\$ 58,265,545	\$ 58,265,545	\$ -
Charges for services	3,275,800	3,275,800	3,275,800	-
Licenses and permits	2,692,275	2,692,275	2,692,275	-
Fines and forfeits	1,090,807	1,090,807	1,090,807	-
Investment earnings	120,000	120,000	120,000	-
Intergovernmental Revenue	604,615	604,615	544,615	(60,000)
Other revenue	4,520,161	4,520,161	4,520,161	-
Total	\$ 70,569,203	\$ 70,569,203	\$ 70,509,203	\$ (60,000)
Expenditures:				
Town Manager's Office	\$ 2,002,424	\$ 2,002,424	\$ 2,247,424	\$ 245,000
Legislative Services	510,208	510,208	510,208	-
Development Services	2,112,727	2,112,727	2,144,550	31,823
Community Services	8,457,980	8,457,980	8,499,220	41,240
Library Services	1,822,733	1,822,733	1,820,233	(2,500)
Police Services	15,755,574	15,755,574	15,964,174	208,600
Financial Services	3,771,329	3,771,329	3,866,102	94,773
Administrative Services	6,223,719	6,223,719	6,305,321	81,602
Fire and Emergency Services	16,497,490	16,497,490	16,265,134	(232,356)
Community Relations	707,671	707,671	707,671	-
Non-Departmental Services	9,238,557	9,238,557	9,638,557	400,000
Public Works	5,649,560	5,649,560	5,773,475	123,915
Environmental Services	1,564,310	1,564,310	1,564,310	-
Total	\$ 74,314,282	\$ 74,314,282	\$ 75,306,379	\$ 992,097

ORDINANCE NO. _____

PAGE 4

EXHIBIT "A"

**Town of Flower Mound
Amended Budget
Fiscal Year 2019-2020**

REASON FOR ADJUSTING THE STORMWATER UTILITY FUND APPROPRIATION:

In the Stormwater Utility Fund, expenditures will increase by \$48,915, from \$1,922,570 to \$1,971,485; to re-appropriate funds budgeted in prior years for outstanding purchase orders at September 30, 2019.

<u>Stormwater Utility Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Public Works	\$ 1,826,476	\$ 1,826,476	\$ 1,875,391	\$ 48,915
Environmental Services	96,094	96,094	96,094	-
Total	\$ 1,922,570	\$ 1,922,570	\$ 1,971,485	\$ 48,915

REASON FOR ADJUSTING THE TREE PRESERVATION FUND APPROPRIATION:

In the Tree Preservation Fund, expenditures will increase by \$13,700, from \$192,964 to \$206,664; to re-appropriate funds budgeted in prior years for outstanding purchase orders at September 30, 2019.

<u>Tree Preservation Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Environmental Services	\$ 192,964	\$ 192,964	\$ 206,664	\$ 13,700
Total	\$ 192,964	\$ 192,964	\$ 206,664	\$ 13,700

REASON FOR ADJUSTING THE VEHICLE AND EQUIPMENT REPLACEMENT FUND APPROPRIATION:

In the Vehicle and Equipment Replacement Fund, expenditures will increase by \$457,556, from \$1,500,000 to \$1,957,556, to re-appropriate funds budgeted in prior years for outstanding purchase orders at September 30, 2019.

<u>Vehicle & Equipment Replacement Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Vehicles & Equipment	\$ 1,500,000	\$ 1,500,000	\$ 1,957,556	\$ 457,556
Total	\$ 1,500,000	\$ 1,500,000	\$ 1,957,556	\$ 457,556



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: December 16, 2019

FROM: Kay Wilkinson, Budget Officer

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution 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.

BACKGROUND INFORMATION: At the March 3, 2008, Town Council meeting, the Town Council acting as the Board of Directors for the Crime District, adopted alternative budget procedures for the Crime District to follow similar procedures and dates to the Town's annual budget.

The attached budget amendment represents an adjustment of the FY 2019-2020 Crime District Budget. According to Section 12 of Resolution No. 06-08, "During the fiscal year, the Town Council shall have the power to transfer funds allocated by the budget from one department to another department, and to re-estimate revenues and expenditures."

The Crime District Fund budget will decrease by \$2,614. Included is an increase of \$29,313 for police officer STEP pay plan changes to help retain and recruit officers, a decrease of \$22,327 moving 1.0 FTE school crossing guard and \$9,600 FY 19-20 decision package for contractual background investigator to the General Fund from the Crime District Fund.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$ (2,614)

Proposed Expenditure:	Account Number(s):
\$ (2,614)	Fund 318 Crime District Fund
\$ (2,614)	

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

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

ATTACHMENTS:

1. Resolution

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

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2019, AND ENDING SEPTEMBER 30, 2020, AS ADOPTED BY RESOLUTION NO. 16-19; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council acting as the Board of Directors of the Town of Flower Mound Crime Control and Prevention District (Crime District) has adopted procedures for adopting and amending a budget that are different from the procedures outlined in Texas Local Government Code Section 363.204, as permitted by such section; and

WHEREAS, the Town Council acting as the Board of Directors of the Crime District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Crime District for the fiscal year beginning October 1, 2019, and ending September 30, 2020; and

WHEREAS, said Crime District Budget was adopted by Resolution No. 16-19 on September 16, 2019; and

WHEREAS, after approval of said Resolution, unexpected needs have arisen which require amendment of the Crime District Budget adopted thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, THAT:

SECTION 1

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

SECTION 2

The Crime District Budget, for the fiscal year beginning on October 1, 2019, and ending on September 30, 2020, as heretofore adopted by Resolution No. 16-19, is hereby amended to provide for adjustments as shown in Exhibit "A", attached hereto and incorporated herein.

RESOLUTION NO. _____**PAGE 2****SECTION 3**

The expenditures and amendments authorized by this Resolution are necessary to meet unusual and/or unforeseen conditions or circumstances that could not have been included in the original budget through the use of reasonably diligent thought and attention.

SECTION 4

The Town Manager shall file or cause to be filed three (3) true and correct copies of said amended budget, along with this Resolution, with the Town Secretary, who shall file or cause to be filed one (1) true and correct copy of same in the office of the County Clerk of Denton County, Texas and one (1) true and correct copy of same in the office of the County Clerk of Tarrant County, Texas.

SECTION 5

If any section, paragraph, sentence, clause, phrase, or word in this Resolution, or application thereof by any persons or circumstances is held invalid in any Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the Town Council acting as the Board of Directors of the Crime District hereby declares it would have passed such remaining portions of the resolution despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 6

This Resolution shall take effect and be in full force from and after its passage and adoption.

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

APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____

PAGE 3

EXHIBIT "A"

**Town of Flower Mound
Crime Control and Prevention District
Amended Budget
Fiscal Year 2019-2020**

REASON FOR ADJUSTING THE CRIME DISTRICT FUND APPROPRIATION:

The Crime District Fund, expenditures will decrease by \$2,614 from \$3,574,440 to \$3,571,826. Included is an increase of \$29,313 for police officer STEP pay plan changes to help retain and recruit officers, a decrease of \$22,327 moving 1.0 FTE school crossing guard and \$9,600 FY 19-20 decision package for contractual background investigator to the General Fund from the Crime District Fund.

<u>Crime District Fund</u>	<u>Original Budget</u>	<u>Current Budget</u>	<u>Amended Budget</u>	<u>Increase / (Decrease)</u>
Expenditures:				
Police Services	\$ 3,574,440	\$ 3,574,440	\$ 3,571,826	\$ (2,614)
Total	\$ 3,574,440	\$ 3,574,440	\$ 3,571,826	\$ (2,614)



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: December 16, 2019

FROM: Gary Bertagnolli, Director of Information Technology

ITEM: **Consider approval of the Town Network Active Directory Upgrade in the amount of \$19,000.00**

BACKGROUND INFORMATION: The purpose of this project is to upgrade the town's Windows Active Directory, the component of Windows that manages all Windows security, login IDs, file/folder permissions, etc., on our network and Office 365 to the latest version.

The version of Windows Active Directory we are currently running is end of life and support in 2020. In order to be supported by Microsoft and ensure compliancy for items such as Criminal Justice Information Services (CJIS) etc., this must be upgraded. This project includes two components, a professional services piece, and upgraded hardware.

BOARD REVIEW/CITIZEN FEEDBACK: n/a

ALTERNATIVES/OPTIONS: A decision to not approve the proposed upgrade would leave our network vulnerable.

FISCAL IMPACT: \$19,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$19,000.00	100-655-59100-5100

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

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

ATTACHMENTS:

1. Active Directory Upgrade Statement of Work
2. Terms and Conditions

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



Statement of Work

Active Directory Upgrade

Prepared exclusively for:

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
US

By:

Software One, Inc.
20875 Crossroads Cir #1
Waukesha, Wisconsin 53186
USA

11/01/2019

2.0

This Statement of Work is valid for 30 days from the date listed above.

Document History

Version

Name	Role	Review date / Changes	Version
Mark L. Gordon	SOW Author	October 18, 2019	1.1
Mark L. Gordon	SOW Author	November 01, 2019	2.0

Contacts: Town of Flower Mound

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2. Scope of Work 6

3. Other Requirements 13

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1. Preface

This statement of work dated 11/01/2019 (hereinafter: "Statement of Work") governs duties and scope of the service engagement between Town of Flower Mound and Software One, Inc. ("SoftwareONE"). This Statement of Work is entered under SoftwareONE's standard terms and conditions (the "T&Cs"). The T&Cs, as applicable, shall govern this Statement of Work, along with any non-disclosure agreement in place between SoftwareONE and Town of Flower Mound. In case of any inconsistencies between the relevant documents, the T&Cs will control, unless all of the following apply: (i) the Statement of Work clearly identifies the applicable section of the Services Agreement or T&Cs that is to be modified; and (ii) the Statement of Work clearly states that such provision supersedes the conflicting or inconsistent provision in the Services Agreement or T&C's.

1. Executive Summary

- a. Town of Flower Mound has decided to upgrade Active Directory to meet its business goals. This Statement of Work outlines out how SoftwareONE will design and build the ideal IT environment to help you meet your business objectives.
- b. The following elements have been highlighted as a priority by Town of Flower Mound
 - i. Upgrade Domain Controllers to Windows Server 2016 or 2019
 - ii. Move to an Active Directory Domain Services functional level of 2016
 - iii. Move current certificate services to the updated environment
 - iv. Evaluate using Azure AD SSO with Flower Mound's GIS system
 - v. Develop a plan for secure identity management in the DMZ environment
- c. This Statement of Work details how SoftwareONE will provide Town of Flower Mound with the following services:
 - i. Lead a planning and design workshop to develop and document a plan for upgrade and provisioning new services
 - ii. Assist in the upgrade of AD and implementation of password reset
 - iii. Validate functionality and document configuration standards used
- d. The total cost for the engagement is \$19,000.00
 - i. This price is exclusive of travel costs
 - ii. If local resources are available, the planning workshop will be delivered on site otherwise, all delivery will be performed remotely

2. Scope of Work

2.1. Solution

This Statement of Work outlines the requirements, scope of activities, timelines and deployment team required to transition Town of Flower Mound to Office 365 utilizing the Delivery Services and Support Services of SoftwareONE. The following services are included for Town of Flower Mound:

- i. Planning workshop
- ii. Active Directory upgrade
- iii. Configuration of certificate services in new AD environment
- iv. Configuration of AD password sync and password reset

2.2. Scope

The following scope is defined for the engagement:

Town of Flower Mound Variables	In Scope	Out of Scope
Location	Flower Mound Texas	All other locations
Organization(s)	Town of Flower Mound	All other entities

2.2.1. In Scope

The following table defines the scope for the project

Reference	Scope item	Owner
S001	Deliver an Active Directory upgrade and identity planning workshop	SoftwareONE
S002	Implement prerequisites	SoftwareONE
S003	Configure Azure AD password sync and password reset	SoftwareONE
S004	Build Windows Servers to be promoted to Domain Controllers	Town of Flower Mound
S005	Configure and promote Windows Server Active Directory Domain Services on up to five servers	SoftwareONE
S006	Move certificate server to new Windows Server or Domain Controller	SoftwareONE
S007	Assist in resolution of issues discovered during Active Directory testing	SoftwareONE
S008	Provide documentation of standard AD configurations as implemented	SoftwareONE

2.2.2. Out of Scope

The following items are out of scope for the project:

- a. Remediation of current Active Directory and network environments
- b. Testing and verification of existing town applications
- c. Configuration of SSO with Town's GIS application
 - i. Can be added to scope once evaluation has been completed
- d. Build of Windows Servers that will be used as Domain Controllers
 - i. Windows Server build will be performed by Flower Mound
- e. Decommissioning of existing Windows Server Domain Controllers,
 - i. SoftwareONE will demote existing servers, Town of Flower Mound will decommission Windows Servers according to their standard server decommissioning process
- f. All other actions not described in Section 3.2.1.

2.3. Work Plan

2.3.1. Activities

a. Design and Planning

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 2121 Cross Timbers Road, Flower Mound, Texas, 75028, US
Inclusions	a) Project kick off meeting b) Planning workshop to address: i) Windows 2016 vs. 2019 ii) AD upgrade process and plan iii) Group Policy best practices and plan iv) OU best practices and plan v) Password reset plan vi) Evaluation of Azure AD SSO for GIS vii) DNS and DHCP viii) Network Policy Access Services ix) Best practices for City users to authenticate to city's website c) Creation of design documentation d) Creation of testing plan e) Project plan, RAID log and management reporting structure Creation of Migration strategy and plans f) Creation of communication plan
Exclusions	a) Procurement of hardware b) Procurement of software licenses c) Configuration during planning workshop d) Installation of inventory or configuration management and reporting systems e) Distribution and formatting for communications to end users f) All other work not identified in Inclusions
Customer Dependencies	Availability of Town of Flower Mound resources for workshops
Key Obligations, Information, & Assumption(s)	Design documents will be approved by Town of Flower Mound within 5 days of submission, if no comments are received within 5 days then the documents will be automatically baselined
Deliverable(s)	a) High level design a) Low level design b) Test plan c) Project plan d) RAID Log e) Migration strategy f) Migration plan g) Communication plan

b. Implementation of new environment

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 2121 Cross Timbers Road, Flower Mound, Texas, 75028, US
Inclusions	a) Implement prerequisites i) Schema Extensions ii) DNS iii) DHCP iv) Verify and update Azure AD Connect if required v) Required GPO modifications vi) Updated OU structure vii) Network Policy Access Services b) Configure Azure AD password sync and password reset c) Configure and promote Windows Server Active Directory Domain Services and/or DNS on up to five servers d) Move certificate server to new Windows Server or Domain Controller
Exclusions	a) Remediation of on-premises Active Directory b) Town of Flower Mound will provide standard Windows Server images c) Tasks other than as noted under "Inclusions" here d) Removal of old Domain Controller images
Dependencies	a) Availability of appropriate Town of Flower Mound resources Access to Town of Flower Mound's Office 365 tenant b) Procurement of Azure AD Premium licensing c) Access to Town of Flower Mound's on-premises Active Directory environment d) Flower Mound to build Windows Servers for promotion to Domain Controllers
Key Information / Assumption(s)	a) Properly defined configuration documentation from planning workshop b) Configuration activity will occur during office hours
Deliverable(s)	a) Upgraded Active Directory b) Implementation of Azure AD password reset c) Certificate services running in upgraded environment

c. Testing and Documentation

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 2121 Cross Timbers Road, Flower Mound, Texas, 75028, US
Inclusions	a) Assist in resolution of issues discovered during Active Directory testing i) Replication ii) DHCP iii) DNS iv) Certificates v) Azure AD b) Document standard configurations as implemented at Flower Mound
Exclusions	a) Delivery of training to end users b) Direct support of end users c) Windows Autopilot testing and configuration d) Management of first line calls from end users e) All other work not identified in Inclusions
Customer Dependencies	a) Approved change controls to allow changes to environment b) End user communication content and process agreed c) End user communications and training in-progress or complete by Town of Flower Mound
Key Obligations, Information, & Assumption(s)	Configuration activities will occur during office hours
Deliverable(s)	a) Documentation of standard configurations used to build Active Directory Domain Services environment b) Documentation of Azure AD password reset c) Documentation of certificate services

d. Project Closure

Place of Performance	☒ Remote Delivery ☐ On-site Delivery at: 2121 Cross Timbers Road, Flower Mound, Texas, 75028, US
Inclusions	Project closure meeting i. Review project accomplishments ii. Confirm completion of the project iii. Obtain sign-off
Deliverable(s)	Project Closure documentation

2.3.2. Known Risks and Issues

Ref	Owner	Risk	Impact	Severity
R001	Town of Flower Mound	No test environment	Will not be able to test process before production upgrade	Low

2.3.3. Milestone(s)

The milestones below indicate the projected business days of completion from engagement commencement time (T)

Milestone Overview			
Milestone ID	Description	Payment	Projected Date of Completion
M01	Upfront payment of project cost	\$19,000.00	SOW Signature + 30 days

2.4. Place of Performance

- a. If a local delivery resource is available, the onsite workshop may be delivered in person at Flower Mound's offices. If a local Dallas resource is not available, the project will be performed as outlined in Section 3.3 by a SoftwareONE consultant. Any requested travel by SoftwareONE to Town of Flower Mound's location will be subject to additional costs as detailed in Section 0 of this Statement of Work, and subject to the approval of SoftwareONE.
- b. The assigned resources will be available during the business hours of 9:00am to 5:00 pm Central US with the exception of the holidays listed below in the company holiday schedule to perform the project. If after hours work is required, the timing of this work will be agreed to by both Flower Mound and SoftwareONE in advance and is subject to resource availability. Any technical support requests are subject to acknowledgement, acceptance and completion during the business hours outlined above as it relates to the selected service level. In the event that the primary resource is out of the office for planned leave, a backup point of contact will be communicated to Town of Flower Mound. The resource assignment will be communicated to Town of Flower Mound during the initial project kick-off communication. Any planned departures from the SoftwareONE project team will be discussed with Town of Flower Mound at least one (1) month in advance of the resource leaving the project whenever possible. SoftwareONE reserves the right to make these changes at any time and without agreement from Town of Flower Mound.

SoftwareONE 2019 Holiday Schedule	
January 1	New Year's Day
May 27	Memorial Day
November 28 th	Thanksgiving Day
November 29 th	Day after Thanksgiving
December 24	Christmas Eve
December 25	Christmas Day

2.5. Acceptance Criteria

SoftwareONE will provide a deliverable acceptance form that is to be completed by Town of Flower Mound at the completion of the engagement. If the form is not received countersigned by SoftwareONE within ten (10) business days, then the deliverables will be deemed accepted.

3. Other Requirements

3.1. SoftwareONE Responsibilities

- a. SoftwareONE will assign a primary consultant to the engagement that will serve as the focal point for all communications relative to this engagement.
- b. SoftwareONE will make all reasonable efforts to communicate with Town of Flower Mound to ensure the completion of engagement deliverables.
- c. SoftwareONE will make a reasonable good faith effort to ensure the accuracy of the data it reports to the Town of Flower Mound based on industry standards.
- d. SoftwareONE will provide information needed by Town of Flower Mound to complete the engagement. This information will be provided in accordance with the engagement timeline agreed upon by both parties.
- e. SoftwareONE shall ensure that Town of Flower Mound is notified of any issues likely to impact this Statement of Work.
- f. SoftwareONE has provided an escalation path as outlined below starting with the primary contact (1st level) and moving up. This is the path that should be followed when escalating any issues with the engagement.

SoftwareONE Escalation Path			
Level	Name and position	Email address	Phone number
1	SoftwareONE Project Manager – TBD	TBD upon project commencement	TBD
2	Phillip Bushman, Software Portfolio Advisor	phillip.bushman@SoftwareONE.com	+1.262.953.5243
3	Mark Gordon, Solution Specialist	mark.gordon@SoftwareONE.com	+1.317.753.4774
4	Jaisson Mailloux, Technology Services Practice Lead	Jaisson.mailloux@softwareONE.com	+1.262.953.5261

3.2. Town of Flower Mound Responsibilities

- a. Town of Flower Mound shall designate a representative to be Town of Flower Mound's primary contact. This individual shall be the focal point for all communications relative to this engagement and shall have the authority to act on Town of Flower Mound's behalf in matters regarding this engagement. Town of Flower Mound shall ensure that this person has all necessary signing authority to approve milestones and deliverables. Town of Flower Mound shall notify SoftwareONE of any change in this assignment.
- b. Town of Flower Mound shall provide information needed by SoftwareONE to complete the engagement. This information will be provided in accordance with the engagement timeline agreed upon by both parties.
- c. SoftwareONE shall make reasonable efforts to schedule all training, consultant access, and other deliverables that involve Town of Flower Mound participation. However, it is ultimately Town of Flower Mound's responsibility to propose times and agree to a schedule. Non-use of those services does not entitle Town of Flower Mound to a reduction in engagement costs.
- d. Town of Flower Mound shall ensure that SoftwareONE is notified of any issues likely to impact this Statement of Work.

- e. Town of Flower Mound has provided an escalation path as outlined below starting with the primary contact (1st level) and moving up. Town of Flower Mound shall follow this path when escalating any issues with this Statement of Work or the engagement described herein.

Town of Flower Mound Escalation Path			
Level	Name and position	Email address	Phone number
1	Rob Silvy, IT Manager Services	Rob.silvy@flower-mound.com	+1.972.874.6000

3.3. Limitations, Exclusions & Assumptions

- a. SoftwareONE does not guarantee any cost savings or decrease in software spend as a direct result of this engagement.
- b. SoftwareONE does not guarantee compliance with Sarbanes-Oxley, HIPAA, or any other regulatory or industry documentation requirements.
- c. Any activities not documented in this Statement of Work are considered outside of scope for this Statement of Work and SoftwareONE will not have any obligation to provide any Services or create any deliverables except as provided herein.
- d. SoftwareONE will not be liable for failure or delay in delivering services or deliverables if such failure or delay arises from Town of Flower Mound's failure to perform its responsibilities, Town of Flower Mound providing inaccurate information or Town of Flower Mound's inaction or delayed action. Delays caused by Town of Flower Mound will not entitle Town of Flower Mound to any change in the cost for this engagement.
- e. All work performed under this Statement of Work is limited in scope by the abilities of any 3rd party tool(s) utilized for this engagement by Town of Flower Mound. Additionally, SoftwareONE does not guarantee the accuracy of data collected by a third-party tool.
- f. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THE SERVICES AGREEMENT, T&CS AND THIS STATEMENT OF WORK, SOFTWAREONE HEREBY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

3.4. Texas DIR-TSO-4061 Rates

The rates used for this engagement conform to Texas Contract DIR-TSO-4061

3.5. Engagement Expense Overview

SoftwareONE has proposed a Fixed Price approach to executing this engagement of work. Town of Flower Mound agrees that the below totals represent SoftwareONE's commercially reasonable efforts to accurately determine the labor required to perform the defined engagement.

Engagement Services				
SKU	Description	Unit Cost	QTY	Ext. Cost
	Active Directory upgrade	\$19,000.00	1	\$19,000.00
Total Cost:				US \$19,000.00

3.6. Travel & Expenses

Town of Flower Mound will be charged for all travel and related expenses for any resources (not local) that are part of the SoftwareONE team delivering this project that are not explicitly listed as included in the scope of the engagement in Section 3.3. All travel will require pre-approval by both the Town of Flower Mound and SoftwareONE. The charges will be calculated for each resource in accordance with SoftwareONE's travel policy, which is available upon request. Town of Flower Mound will be billed no later than quarterly at the end of the current calendar quarter following the completion of the event and travel.

3.7. Billing & Invoicing

The engagement will be billed in accordance with the engagement expense overview in Section 0 unless a specific payment schedule is defined. If any third party funding will be used in lieu of direct payment, Town of Flower Mound agrees to work with SoftwareONE to fulfil any program requirements for payment, otherwise Town of Flower Mound will be billed in accordance with the following:

- i. Town of Flower Mound will issue SoftwareONE a purchase order at execution of this Statement of Work that will be charged against in accordance with the payment schedule. No services shall be delivered prior to the acceptance of a proper payment promissory by SoftwareONE. In the case that Town of Flower Mound's normal payment process does not require a purchase order, Town of Flower Mound will provide SoftwareONE a written confirmation that a purchase order is not required and this Statement of Work shall serve as authorization.
- ii. Costs incurred by delays caused by Town of Flower Mound, or a request by Town of Flower Mound's onsite staff to delay or change the scope of this engagement, will be billed on a time & material basis at the rate of \$2,000.00 per day.
- iii. SoftwareONE's price does not include any federal, state, or local sales, use, or excise taxes. Appropriate taxes will be added to the price, as necessary, unless Town of Flower Mound provides lawful evidence of exemption.

3.8. Provision for Change of Scope

The costs outlined in this Statement of Work are based on SoftwareONE executing the required activities as listed. Any deviation from this scope or schedule may result in corresponding changes to the price, completion dates, responsibilities, or other provisions of the engagement. Changes must be agreed to by both parties and do not come into effect until a Change Request Form or a separate Statement of Work has been executed by Town of Flower Mound and SoftwareONE.

3.9. Term & Termination

3.9.1. Term

This Statement of Work will remain in effect in accordance with the term and any renewal terms as set out in the Services Agreement unless terminated earlier in accordance with the provisions set forth below.

3.9.2. Termination

This Statement of Work may be terminated immediately upon written notice:

- i. By either party if the other party commits a material breach or default of any obligation hereunder and fails to remedy such breach within thirty (30) days of receipt of a written notice by the other party which specifies the material breach;
- ii. By either party, if a receiver, liquidator or trustee of the other party is appointed by court order or receivership, insolvency or bankruptcy proceedings are commenced or a petition is filed by or against the other party under any applicable liquidation, conservatorship, bankruptcy, moratorium, insolvency, reorganization or similar laws or the other party makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts generally as they become due or otherwise takes any action or causes any action to be taken which the other party reasonably believes will cause the acting party to be unable to perform its financial obligations under the Statement of Work.
- iii. By SoftwareONE, if Town of Flower Mound fails to pay any amount due hereunder and does not cure such default within fifteen (15) days of the date payment is due. SoftwareONE may suspend performance of services without prejudice to its right to terminate hereunder.
- iv. Upon termination of this Statement of Work in accordance with this section, Town of Flower Mound will pay SoftwareONE for all services performed and any charges and expenses incurred by SoftwareONE up to the date of termination. Any rights or obligations of either party that have accrued prior to the termination shall not be affected by the termination of this Statement of Work. For the avoidance of doubt, termination of this Statement of Work may cause a termination of any licenses granted in association with this Statement of Work.

4. Specific Contract Details & Authorization

Between: SoftwareONE US
 20875 Crossroads Cir #1
 Waukesha, Wisconsin 53186
 USA

And: Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, Wisconsin 53186
 US

Engagement Description Office 365 enablement and Groupwise to Exchange
 Online migration

Price: \$19,000.00

PO Number Issued, if applicable: _____

EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND AGREES THAT ITS TERMS AND CONDITIONS INCLUDING ALL SCHEDULES, ARE BOTH REASONABLE AND ESSENTIAL REQUIREMENTS OF THE RELATIONSHIP HEREIN ESTABLISHED.

Town of Flower Mound	SoftwareONE US
By (Authorized Signature):	By (Authorized Signature):
Print Name:	Print Name:
Title:	Title:
Date:	Date:

Last Revised 1st September 2019

TERMS AND CONDITIONS

These Terms and Conditions ("Terms") as published on the website of SoftwareONE located at www.softwareone.com (click your region and specific SoftwareONE subsidiary) comprise the terms and conditions - as amended from time to time - under which SoftwareONE will supply Licenses and or Services. You accept these terms on behalf of the entity you represent ("Company") (together with its Affiliates) by either: (i) physically or electronically signing a Contract incorporating the Terms; or (ii) placing an order with SoftwareONE on behalf of Company.

1 DEFINITIONS AND INTEGRATION

In addition to any definitions contained within the body of these Terms, the following definitions apply:

"Affiliates" means any person, corporation or other entity that now or in the future, directly or indirectly controls, is controlled by or is under common control with a party. For purposes of this definition, "control" means: (a) with respect to a corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; and (b) with respect to any other entity, the power to direct the management of such entity.

"Contract" means a written agreement entered into under these Terms for the supply of Licenses or the provision of Services between SoftwareONE and Company. A Contract for Services will describe the Services, requirements, and Deliverables. Examples of a Contract include a statement of work, cloud services agreement, or other agreement for managed, cloud, or professional services.

"Deliverables" means all tangible output of the Services created exclusively for Company by SoftwareONE and identified in a Contract. Deliverables may include, data, reports, and specifications.

"EULA" means the applicable end user license agreement, customer product use rights ("PUR"), or other agreement from a Licensor relating to the Licenses to Company (e.g. Microsoft customer agreement for Cloud Services) as well as the then applicable standard terms and conditions for cloud, maintenance and/or support services of software, as amended from time to time.

"Intellectual Property Rights" means patents, rights to inventions, copyrights, software, trademarks, trade names, service marks, logos, trade secrets, Confidential Information, compilations, diagrams, layouts, mask works, know-how database rights, designs, methods, processes, formulas, rights to use and other proprietary rights and privileges, whether registered or unregistered, together with all improvements, modifications, enhancements, and derivative works to all of the foregoing, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Knowledge Capital" means the ideas, concepts, know-how, skills, methodologies, and techniques, whether possessed by SoftwareONE prior to the commencement of these Terms or developed, modified, improved, or refined by SoftwareONE during the course of performance of the Services.

"Licenses" means the permission granted by a Licensor to Company, allowing Company to exercise certain privileges with respect to its software regardless if the software is installed on premises or accessed as cloud services. The Licenses to be supplied or made available under these Terms will be listed in the respective quote from SoftwareONE, Company purchase order and Order Confirmation(s) and may include temporary usage rights (e.g. subscriptions, cloud services), updates and upgrades, patches or any other changes offered by the Licensor according to the EULA.

"Licensor" means the legal entity that is the owner of the Intellectual Property Rights vested in the Licenses with the authority to define the End User License Agreement ("EULA"), Product Terms ("PT") or other terms and conditions for the use of the Licenses.

"Order Confirmation" means SoftwareONE's binding acceptance of a Company's order containing the details of the Licenses, the price and other terms agreed upon by the parties. For the avoidance of doubt, an automatically generated response by SoftwareONE which does not state the details of the License(s), the price and other applicable terms or a Company's order is not sufficient to constitute a valid Order Confirmation.

"Personal Data" has the same meaning as "personal data" under the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

"Sanctions Rules" mean all applicable laws, regulations, rules and requirements in force from time to time relating to trade, financial or economic sanctions or embargoes including, any sanctions or embargoes enforced by the U.S. government, (including the U.S. Export Administration Regulations and the International Traffic in Arms Regulations), the European Union or any member state of the European Union as well as any applicable import, export or re-export controls and any end-user, end-use, and destination restrictions of the U.S. and other governments that apply to the other party's materials or to the use, transfer, import, export, or re-export of any products licensed or distributed under the Contract.

"Services" means the services to be provided by SoftwareONE under these Terms and the applicable Contract.

"SoftwareONE" means the SoftwareONE entity named in an Order Confirmation or Contract.

"SoftwareONE IP" means SoftwareONE's Intellectual Property Rights and Knowledge Capital.

Unless otherwise agreed in writing by SoftwareONE, all Licenses and Services are supplied under these Terms to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by Company prior to or in concluding a Contract. These Terms will apply to each Contract. In the event of a conflict between the Terms and a Contract, the Terms will control unless all of the following apply: (i) the Contract clearly identifies the applicable section of the Terms that is to be modified; and (ii) the Contract clearly states that such provision of the Contract supersedes the conflicting or inconsistent provision in the Terms. Any other attempt to alter or amend these Terms will be deemed void and have no effect. Any modifications to these Terms contained within a Contract are effective as to that Contract only and will not modify the Terms for any other purpose whatsoever. These Terms cannot be modified except in a written document signed by all parties.

2 ORDER AND DELIVERY POLICY

Price quotations and purchase orders are not binding upon either party until SoftwareONE issues to the Company an Order Confirmation or (if earlier) supplies the Licenses or commences provision of the Services. SoftwareONE may deliver the Licenses by electronic transmission, electronic access, download or other method provided by the Licensor. If electronic delivery is not possible, SoftwareONE may deliver Licenses by arranging shipment to Company's address. Company orders for Licenses are irrevocable, non-cancellable and cannot be modified once SoftwareONE places its order with the applicable Licensor. Company may modify or cancel any purchase orders for Licenses at any time prior to SoftwareONE placing its order for Licenses with the Licensor.

SoftwareONE will deliver the Licenses to the location identified in the Order Confirmation. SoftwareONE shall immediately inform Company of any delays in the delivery of the Licenses and shall provide Company with the reason for any anticipated duration of the delay. Delivery Dates are estimates only.

3 AFFILIATES

SoftwareONE's Affiliates may enter into a contractual relationship with Company pursuant to these Terms and Company's Affiliates may procure Licenses and Services by executing the applicable Contract hereunder. Company and its Affiliates will be jointly and severally liable for all orders for Licenses and Services by Company's Affiliate.

4 ACCEPTANCE OF LICENSES; RETURN POLICY

Company shall inspect the Licenses received within a reasonable time, but not exceeding five (5) Business Days from the date of receipt, to ensure that the Licenses delivered are in the correct quantity and type. In the event of errors in the quantity or type of Licenses, or to the extent allowed by the Licensor's return policies, Company may return the Licenses. If Company does not object to the quantity or type of Licenses within five (5) Business Days, then such Licenses will be deemed accepted upon the delivery date. SoftwareONE will not accept the return of supplied Licenses unless such returns are admissible as per the Licensor's return policies. If the Licenses received are not those detailed in the Contract, Company shall inform SoftwareONE no later than ten (10) Business Days of delivery.

5 ACCEPTANCE OF DELIVERABLES

SoftwareONE shall notify Company upon completion of the Services ("Notification of Completion"). Company shall examine the Services and any corresponding Deliverables and declare or refuse (for material faults only) the acceptance in writing, signed by an authorized representative, within ten (10) Business Days after receipt of the Notification of Completion. If Company does not provide a notice of defect within ten (10) Business Days, then the Services and corresponding Deliverables will be deemed accepted.

6 ACADEMIC, NON-PROFIT AND GOVERNMENT LICENSES

Certain products are only available for purchase by qualified institutions, such as educational institutions ("Academic" products), qualified non-profit organizations ("Non-Profit" products) or government units ("Government" products). By identifying itself as a qualified institution, Company represents that it is familiar with all of the Licensor's requirements with respect to such product and that it complies with all of the Licensor's requirements for such Academic, Non-Profit or Government product.

7 SERVICES

SoftwareONE shall perform the Services with due care and in accordance with the Contracts. SoftwareONE will not be required to follow any requests or instructions ("Change Request"), which change or supplement the substance or scope of the Services described in a Contract. If SoftwareONE provides the Services described in a Change Request, then Company shall pay for such Services pursuant to these Terms and the applicable Contract. SoftwareONE does not grant the achievement of a particular work result.

8 COMPANY OBLIGATIONS

8.1 Company shall: (a) cooperate with SoftwareONE in all matters relating to the Contract for facilitating the provision of the Services and Licenses; (b) provide all information SoftwareONE may request in order to carry out the Services and provide the Licenses in a timely manner and ensure that it is accurate in all material respects; (c) provide timely access to Company's Intellectual Property, premises, data and such office accommodation and other facilities as agreed with Company in writing in advance and as necessary for the purpose of providing the Services; and (d) inform SoftwareONE of health and safety rules and regulations and any other reasonable security requirements at its premises.

8.2 If the performance of SoftwareONE is prevented or delayed by any act or omission of Company, its agents, sub-contractors or employees, Company shall pay SoftwareONE all reasonable costs, fees or losses sustained or incurred by SoftwareONE as a result of such delay.

8.3 Company will be solely responsible for: (i) backing up its data; (ii) ensuring normal operation of its own software; and (iii) the necessary working environment of the software.

8.4 Company shall pay SoftwareONE's invoices as provided in Section 9.

9 PRICING; PAYMENT; TAXES

9.1 Company shall pay SoftwareONE for the Licenses and the Services along with all agreed charges set forth in the Contract. All prices and availability are subject to change unless agreed upon through a binding Order Confirmation or a Contract signed by both parties.

9.2 If Licenses or third party services consist of consumption-based services, including subscription services that are performed by a party other than SoftwareONE, then the fee for such a service will be determined by the Licensor or company performing the service. Such fees are not always fixed and may be subject to the usage of the applicable Services and Licenses by Company. Company shall review and accept the billing model and shall pay the fees in accordance with any third party terms. Company is solely responsible for understanding any third party billing model.

9.3 SoftwareONE will invoice, and Company shall pay the invoiced amounts, plus pertinent taxes, including, all applicable withholding taxes, import taxes, levies, and duties resulting from cross-border transactions (transactions where SoftwareONE and Company are tax residents of different countries). **If Company is required by law to deduct or withhold any taxes from any amount payable on a cross-border transaction, the amount payable hereunder will be increased so that after making all required deductions and withholdings, SoftwareONE receives an amount equal to the amount it would have received had no such deductions or withholdings been made.**

9.4 In the absence of an expressly agreed invoicing schedule, Company shall pay all amounts relating to Services provided by SoftwareONE at the end of every calendar month in arrears.

9.5 If payment terms are not indicated in a Contract, invoices are automatically due 14 calendar days following the invoice date. All payments made by the Company to SoftwareONE shall be in the currency of the country where SoftwareONE is located, which delivers the Licenses or Services, unless otherwise agreed between the Parties.

9.6 If Company does not pay the amounts owed in a timely manner, then Company shall pay interest charges and late payment fees on the outstanding amount, without any written demand or notice of default being necessary. All past due amounts will bear interest at the lesser of 1.5 % per month or the highest rate allowed by law, until the invoice is paid in full.

9.7 Company shall pay all charges incurred by authorized users of its account, by credit card, by wire transfer or other similar payment mechanisms in effect. To the extent permitted by applicable law, SoftwareONE may require Company to pay transaction charges levied by credit card issuers relating to purchases. Company shall reimburse SoftwareONE for all bank fees relating to checks, credit card or bankcard, and sales drafts returned by the Company's bank or card issuer. Company shall pay all attorney fees, court costs, collection agency fees, or any other costs incurred by SoftwareONE in collecting any overdue amount owed.

9.8 Company shall not set off amounts against amounts payable under the Contract.

9.9 In the event of payment default by the Company by more than fourteen (14) calendar days, SoftwareONE shall be entitled to prohibit the use of the Licenses, Services, and Deliverables with immediate effect (contractual right of prohibition/services suspension).

9.10 SoftwareONE retains the title on the Licenses, together with all right, title, and interest to the Services and Deliverables until all its future payment claims against the Company at the time of the service or in connection with the delivery items have been settled. With respect to current accounts, the retained ownership shall be regarded as security for the offset balance or current account receivable of Company.

10 WARRANTIES AND DISCLAIMER

10.1 Each party represents that: (i) they are a valid legal entity in good standing under the laws of the jurisdiction in which they are organized; (ii) they have full power and authority to enter into these Terms and any Contract, which will create a binding agreement between the parties; and (iii) the performance by the parties hereunder will not violate any obligation or duty owed to a third party.

10.2 Company acknowledges that SoftwareONE only delivers Licenses subject to the applicable EULA and PT, which may contain a limited warranty from Licensor. All of Company's rights and remedies with respect to the Licenses, warranty, liability, and indemnity will be governed by the applicable EULA, PT or other documentation. Company acknowledges that it will be required to enter into a EULA, PT or similar end user agreement with the Licensor as a condition precedent to using Licensor's software. **The EULA/PT or similar agreement will outline all warranties and representations with respect to the Licenses purchased. SoftwareONE does not make any representations or warranties relating to any Licenses or software.**

10.3 All third party services distributed by SoftwareONE are delivered with the service provider's limited warranty. The warranties for third party services that are not performed by SoftwareONE will be governed by the applicable policies and procedures of the service provider only. SoftwareONE does not make any express or implied warranties for third party services.

10.4 SoftwareONE represents and warrants that: (a) it will perform the Services and deliver Licenses using personnel with the abilities, qualifications and experience in accordance with these Terms and the applicable Contract; and (b) it will perform the Services in a professional and workmanlike manner and in accordance with the applicable Contract and all applicable laws, rules, and regulations.

10.5 As far as SLA are agreed in writing, breach of service level agreements ("SLA") are deemed to be relevant or considered a material breach of these Terms and the applicable Contract, only if SoftwareONE has culpably violated the SLA parameters (negligence or deliberate act) and if said violation lasts for a period of at least three (3) months; furthermore SoftwareONE shall only be held responsible of the non-availability of a Service (e.g. Cloud Services) if it occurs outside of a regular or irregular service/maintenance window (the service windows are described in the SLA document of the respective Service). In case of payment of service credits or penalties for breach of SLA this is the sole and exclusive remedy of the Company, and further obligation and liability of SoftwareONE relating to the claims identified above are excluded.

10.6 EXCEPT AS STATED IN THIS SECTION 10, OR THE APPLICABLE EULA, PT, SERVICES DESCRIPTIONS, SOFTWAREONE HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

11 LIMITATION OF LIABILITY

11.1 SoftwareONE's liability for any damages relating to Licenses or Services available through SoftwareONE are limited to the value of the amounts paid by Company under the Contract for such Licenses or Services over the last twelve calendar months preceding the incident giving rise to the damage. In no event will SoftwareONE be liable for any incidental, consequential, special,

punitive or indirect damages of any kind, including damages resulting from delay, loss of profits, lost business opportunity, loss of content, interruption of business or loss of goodwill, which may arise in connection with or pertaining to these Terms or any Contract, even if such party has been notified of the possibility or likelihood of such damages occurring under any theory of law (including tort or other theory).

11.2 NOTHING IN THESE TERMS OR ANY CONTRACT LIMITS EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; (C) WILLFUL MISCONDUCT; (D) INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (E) THE BREACH OF CONFIDENTIALITY OBLIGATIONS; (F) COMPANY PAYMENT OBLIGATIONS; OR WHICH (G) CANNOT BE LIMITED UNDER APPLICABLE LAW.

11.3 Company agrees that any Contract or other document relating to the purchase of Licenses or Services submitted to SoftwareONE that includes any warranty to Company or that includes language that may create a liability for SoftwareONE, or conflicts with these Terms, is void and of no effect, unless it complies with the integration requirements stated in Section 1.

11.4 Some jurisdictions do not allow for the limitation or exclusion of warranties or damages, so the limitations on damages may not apply.

12 INTELLECTUAL PROPERTY RIGHTS; IP INDEMNITY

12.1 Except as expressly provided in this Section 12, nothing in these Terms provides Company any right, title or interest in or to any Intellectual Property Rights comprised in the Licenses or the Services, which will at all times remain the property of SoftwareONE or of the Licensors, as applicable.

12.2 SoftwareONE shall assist Company with the handling of any associated claims or issues with the Licensor. Company acknowledges that SoftwareONE is not the publisher or developer of the Licenses and the only warranties or indemnities or license rights are those granted by the Licensor.

12.3 Company represents and warrants that it is buying the Licenses for its own internal use and not for resale.

12.4 In the event of conflict between these Terms and the EULA/PT or similar agreement regarding the scope of the Intellectual Property Rights, the warranties and representations conferred to Company, the EULA/PT will prevail.

12.5 Upon full and final payment of the Deliverables, SoftwareONE shall grant and hereby grants Company a perpetual, worldwide, fully paid up, royalty free license to use the applicable Deliverables for internal purposes.

12.6 SoftwareONE owns all right, title, and interest in all SoftwareONE IP, whether possessed by SoftwareONE prior to the commencement of these Terms or developed, improved, or refined by SoftwareONE during the course of performance of the Services. If SoftwareONE includes any SoftwareONE IP or Knowledge Capital within the Deliverables, then SoftwareONE shall grant Company a limited, perpetual, fully paid up, royalty free, non-exclusive, non-assignable, non-transferrable, revocable (solely for breach of the license), license to use, copy, modify, enhance, and maintain: (i) the SoftwareONE IP (but excluding Knowledge Capital) for Company's internal purposes and solely to the extent necessary to use the Deliverables; and (ii) SoftwareONE's Knowledge Capital as embodied in, or to the extent necessary for its use of the SoftwareONE IP or the Deliverables for Company's internal purposes.

12.7 Third Party Intellectual Property Rights delivered as part of the Service will be made available to Company subject to the terms provided by such third party, which SoftwareONE will make available to Company upon request.

12.8 Company hereby grants to SoftwareONE a revocable, non-exclusive, royalty-free license to use Company's Intellectual Property Rights to enable SoftwareONE to perform the Services or to identify new Services for Company. Company reserves all other right, title and interest to its Intellectual Property Rights.

12.9 Company shall not and shall not permit any Affiliates or third party to translate, reverse engineer, decompile, recompile, update, or modify any SoftwareONE IP, or any Deliverable in a targeted manner in order to discover SoftwareONE IP. If Company provides any input, comments or suggestions regarding the Services, SoftwareONE IP, or SoftwareONE's business or technology plans, including comments or suggestions regarding the possible creation, development, modification, correction, improvement or enhancement of the Services or SoftwareONE IP (collectively "**Feedback**"), then Company shall grant and hereby grants SoftwareONE a perpetual, non-exclusive, world-wide, royalty free, license to use such Feedback without restriction.

12.10 **Aggregated Data and Analytics Data.** Notwithstanding any contrary provisions in any Contract, SoftwareONE may compile and retain Aggregated Data collected from or submitted through the Services and Analytics Data it creates during the performance of the Services, for purposes of operating, maintaining, analyzing, and improving its Services, SoftwareONE IP, and Knowledge Capital, as well as research and development of new services, SoftwareONE IP, and Knowledge Capital. "**Aggregated Data**" means information and data collected from or submitted, confirmed, or provided by users in the course of accessing and using the Services. "**Analytics Data**" means SoftwareONE's analysis of the usage of its Services, SoftwareONE IP, and Knowledge Capital. SoftwareONE will own all right, title, and interest in and to all Aggregated Data and Analytics Data, provided that such Aggregated Data and Analytics Data will be anonymized such that will not identify Company or any user.

12.11 **SoftwareONE Indemnity.** SoftwareONE will indemnify and defend Company from direct damages arising from any third party claim that the Deliverables infringe any patent, copyright, trademark, or trade secret right owned by such third party. In no event will SoftwareONE have any obligations under this Section 12 or any liability for any claim or action to the extent that the claim is caused by, or results from: (a) Company's combination or use of the Deliverables with software, services, or products developed by Company or third parties; (b) modification of the Deliverables by anyone other than SoftwareONE; (c) Company's continued allegedly infringing activity, after being provided modifications that would have avoided the alleged infringement; or (d) Company's use of the Deliverables in a manner not in accordance with the applicable Contract. In the event that the Deliverable are the subject of an infringement claim, SoftwareONE shall, at its option: (i) procure the right for Company to continue using the Deliverables; (ii) make such alteration, modification or adjustment to the Deliverables so that they become non-infringing without incurring a material diminution in function in Company's reasonable estimation; or (iii) replace the infringing Deliverables at no cost to Company with non-infringing substitutes provided that the substitutes do not entail a material diminution in function in Company's reasonable estimation. If none of the foregoing is reasonable, in SoftwareONE's reasonable discretion, Company shall return the infringing Deliverables and SoftwareONE will promptly refund the sum of all payments made by Company hereunder for such Deliverables.

12.12 **Company Indemnity.** To the extent permitted by law, if any, Company will indemnify and defend SoftwareONE from any damages arising from any third party claim that the Company Assets or Company's Intellectual Property Rights, used by SoftwareONE in connection with the Services, infringe any patent, copyright, trademark, or trade secret right owned by such third party.

12.13 *Indemnification Requirements; Sole Remedy.* The indemnifying party's obligation to indemnify the indemnified party pursuant to this Section 12 is contingent upon the indemnified party: (a) providing the indemnifying party prompt written notice of any claim; (b) tendering the exclusive control of the defense of any claim to the indemnifying party; and (c) reasonably cooperating with the indemnifying party in the defense of the claim, at the indemnifying party's expense. This Section 12 sets forth the sole and exclusive remedy of the indemnified party, and the entire obligation and liability of the indemnifying party relating to the claims identified above.

13 SUPPORT

SoftwareONE will not provide any technical support, training or installation, unless expressly provided in a Contract. If SoftwareONE provides support services (e.g. by Cloud Service) without any additional use charges, SoftwareONE reserves the right to limit requests for support to a certain number of requests per contract year and to refer the Company to fee based support services in all other regards.

14 TERM, TERMINATION, & SURVIVAL

14.1 The Contract including these Terms are effective upon execution, submission of the Order Confirmation, or delivery of the Services/Licenses - as the case maybe- and will remain in effect until terminated as provided herein. Unless otherwise agreed in the Contract, which may provide for a longer or shorter term, any Contract for managed Services (as defined in such Contract) will have a term of one (1) year ("Initial Term"). Except as provided in a Contract, following the Initial Term, a Contract for Managed Services will automatically renew for additional thirty (30) day terms.

14.2 SoftwareONE may terminate any Contract or modify the Terms hereunder at any time and for any reason by providing thirty (30) days' prior written notice to the other party. The terms and conditions of these Terms will survive any termination with respect to any Contract, until its expiration.

14.3 Either party may immediately terminate the Terms or any Contract hereunder by providing written notice to the other party if: (a) the other party commits a material breach of any of its obligations under the Terms or the applicable Contract that remains uncured for thirty (30) days following written notice therefor, or in the case of a breach that may not be cured within thirty (30) days, the breaching party does not act to cure the breach within the thirty (30) day period; (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is engaged in any procedures relating to a rescheduling of debt, an arrangement with creditors, a winding up procedure, a moratorium; (c) a party becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; (d) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within ten (10) Business Days; or (e) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.4 Sections 1, 3, 4, 8.4, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21 and 22 will survive any termination of these Terms.

15 FORCE MAJEURE

SoftwareONE shall not be liable to Company for any loss or damages which may be suffered by Company as a direct or indirect result of the supply of Licenses and Services by SoftwareONE being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond SoftwareONE's reasonable control including but not limited to acts of God, war, riot, strike, lock-out, fire, flood, and storm.

16 CONFIDENTIALITY

16.1 *Definition.* "Confidential Information" means non-public information of a competitive or commercially sensitive, proprietary, financial, trade secret nature, or information that involves or implicates privacy interests. Confidential Information includes any information labeled "Confidential" or "Proprietary", business plans, strategies, forecasts, analyses, financial information, employee information, technology information, trade secrets, products, technical data, specifications, documentation, rules and procedures, methods, contracts, presentations, know-how, product plans, business methods, product functionality, data, customers, markets, competitive analysis, databases, formats, methodologies, applications, developments, inventions, processes, payment, delivery and inspection procedures, designs, drawings, algorithms, formulas or information relating to engineering, marketing, or finance and any other information that the Recipient should reasonably believe to be confidential given the circumstances.

16.2 *Exclusions from Confidentiality.* Confidential Information excludes information that: (i) is known by the Recipient prior to its receipt; (ii) is now or becomes publicly known by acts not attributable to the Recipient; (iii) is disclosed to Recipient by a third party who has the legal right to make such a disclosure; (iv) is disclosed by the Recipient with Discloser's prior written consent; (v) is subsequently developed by the Recipient independently of any disclosures made hereunder and without use or access to any of the Discloser's Confidential Information; or (vi) is required to be disclosed pursuant to governmental regulation or court order.

16.3 *Confidentiality Obligations.* Each party acknowledges that certain information it will receive from the other party may be Confidential Information of the other party. Any party receiving Confidential Information ("Recipient") shall exercise the same degree of care and protection with respect to the Confidential Information of the party disclosing Confidential Information ("Discloser") that it exercises with respect to its own Confidential Information, but in no event less than a reasonable standard of care. Recipient and its personnel may only use Discloser's Confidential Information to the extent necessary to fulfill its obligations under the applicable Contract. The Recipient shall not, directly or indirectly, disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of the Discloser. The Recipient may only disclose Confidential Information to its personnel, if such personnel have a need to know the Confidential Information in order for the Recipient to perform its obligations under the applicable Contract, and such personnel have agreed in writing to comply with the confidentiality obligations contained in these Terms.

16.4 *Injunctive Relief.* Each party acknowledges that any violation of its obligations relating to Confidential Information would result in damages to the other party that are largely intangible but nonetheless real, and that cannot be remedied by an award of damages. Accordingly, any such violation will give the other party the immediate right to a court-ordered injunction or other appropriate order to enforce those obligations. A party's right to injunctive relief is in addition to any other rights and remedies available to such party at law and in equity. The party against whom any such injunction is entered shall pay to the other party all

reasonable expenses, including attorney fees, incurred in obtaining such enforcement.

16.5 *Texas Public Information Act.* The Parties acknowledge that the Texas Public Information Act, Texas Government Code, Section 552.001 et seq. requires that public records must be promptly disclosed by the Company upon request unless specifically exempted from disclosure. If compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or public records request (including under the state statute cited above or any Town of Flower Mound ordinance, resolutions or regulations implementing this state statute), or similar processes, to disclose any of the Confidential Information, the Company, as appropriate, shall use its best efforts to immediately provide SoftwareONE with prompt notice. The Company shall also independently assert any applicable exemptions and objections to disclosure of the Confidential Information. Notwithstanding any term in this Agreement to the contrary, the Company's disclosure of Confidential Information in compliance with a court order or an opinion from the Attorney General of Texas will not be considered a default or breach of this Agreement.

17 DATA PROTECTION

17.1 Parties will ensure that Personal Data will be processed in accordance with applicable privacy and data protection laws and regulations.

17.2 If SoftwareONE processes Personal Data solely for the purpose of providing the agreed Services and act on behalf and under the instructions of the Company, SoftwareONE will treat such Personal Data confidential and implement appropriate technical and organizational measures to protect this data. Company agrees that SoftwareONE may engage its affiliates as another processor and subcontractor when contributing to the Services.

17.3 Within the scope of application of the GDPR (General Data Protection Regulation (EU) 2016/679) the following applies: to the extent that the use or implementation of SoftwareONE Services involves the processing of Personal Data by SoftwareONE on behalf of and under the instructions of the Company, the parties are obliged to enter into a separate Data Processing Agreement (DPA).

18 AUDIT RIGHTS

SoftwareONE shall be entitled to audit the compliance of the Company with the requirements under these Terms or applicable Contract either itself or by a third party obligated to confidentiality, at any time after prior notification during regular business, on site, and in a manner that impacts the operational business of the Company as little as possible. As part of such an audit, SoftwareONE may also check the Company's documentation and reports. The Company shall grant SoftwareONE access to the relevant information, databases, log files and the like for this purpose and shall enable SoftwareONE or the third party to monitor the compliance with these Terms and/or the Contract. The Company shall support SoftwareONE or the third party to the best of its effort.

19 EXPORT CONTROL

19.1 Each party shall comply with Sanctions Rules in relation to all matters connected with or arising out of the applicable Contract and agrees that, as between the parties, it is solely responsible for ensuring its compliance with Sanctions Rules.

19.2 SoftwareONE shall obtain all necessary authorizations and licenses required to comply with Sanctions Rules applicable to the export of any Licenses, Services and Deliverables supplied or sold to Company under any Contract.

19.3 Neither party shall act or fail to act in such a manner that would cause the other party to be in breach of Sanctions Rules.

20 ANTI-BRIBERY AND CORRUPTION

20.1 The parties shall not commit, authorize or permit any action in connection with the negotiation, conclusion or the performance of the Contract that violates any applicable anti-corruption or anti-bribery laws or regulations. This obligation applies in particular to illegitimate payments to government officials, representatives of public authorities or their associates, families or close friends.

20.2 The parties shall not offer, or give to any employee, representative or third party acting on behalf of the other party, or accept, from any employee, representative or third party acting on behalf of the other party, any undue gift or benefit, be it monetary or other, with regard to the negotiation, conclusion or the performance of the Contract.

20.3 Each party shall promptly notify the other party if it becomes aware of or suspects any corruption relating to the negotiation, conclusion, or the performance of the Contract.

21 JURISDICTION AND GOVERNING LAW

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Texas, to the exclusion of its rules on conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract. Each party irrevocably agrees that the courts of Denton County, Texas shall have exclusive jurisdiction to settle such disputes.

22 GENERAL

22.1 The invalidity or unenforceability of any provision of these Terms will not adversely affect the validity or enforceability of the remaining provisions.

22.2 All notices and other communications required or permitted to be served or given shall be in writing.

22.3 The failure of SoftwareONE to enforce a provision of these Terms does not constitute a waiver of it and will in no way affect the right to later enforce such provision.

22.4 Any heading, caption, or paragraph title contained in these Terms is inserted only as a matter of convenience and in no way defines or explains any paragraph or provision hereof.

22.5 Nothing in these Terms or any Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

22.6 These Terms together with the Contracts, represent the entire agreement between the parties regarding the subject matter hereof, and supersede all other agreements and understandings.

Software One, Inc.

By: _____

Name: _____

Title: _____

Company

By: _____

Name: _____

Title: _____



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: December 16, 2019

FROM: Lynda Bolitho, Director of Human Resources

ITEM: Consider approval of a contract with Blue Cross Blue Shield in the amount of \$818,936.00 for reinsurance coverage for the Town's Group Health Plan.

BACKGROUND INFORMATION: The Town is self-insured for health, dental, and vision benefits for employees and dependents covered on the Town's group health insurance plan. The Town purchases reinsurance to limit its liability from any single participant's claims to \$150,000 per year. The reinsurance also limits the total aggregate insurance claims for all employees during any calendar year.

The Human Resources Division, in conjunction with the Town's health insurance consulting firm, McGriff, Seibels & Williams of Texas, Inc. (MSW), requested bids from October 4 thru 23, 2019, for the Town's specific and aggregate reinsurance coverages. MSW requested quotes from seventeen (17) carriers. MSW received one quote from Blue Cross and Blue Shield of Texas, the current carrier. Other carriers declined to quote due to uncompetitive pricing. The Blue Cross and Blue Shield quote represents a 9.51% increase or approximately \$818,936.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$818,936.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$818,936.00	840-710-17600-8510

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

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

ATTACHMENTS:

1. 2020 Medical Renewal Analysis
2. Application for Stop Loss Coverage

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

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Town of Flower Mound

Medical Renewal Analysis

Effective Date: 1/1/2020

Attachment 1

	CURRENT	RENEWAL	RENEWAL ALTERNATE	RENEWAL ALTERNATE	RENEWAL ALTERNATE
	BCBS	BCBS	BCBS	BCBS	BCBS
		Incl. BVA and Mem Rew	Incl. BVA and Mem Rew	Incl. BVA and Mem Rew	Incl. BVA and Mem Rew
Third Party Administrator					
Adminstration Fees					
Medical Administration	\$65.55	\$69.06	\$69.06	\$69.06	\$69.06
Prescription Rebate	(\$35.28)	(\$41.90)	(\$41.90)	(\$41.90)	(\$41.90)
Rx Administration	Included	Included	Included	Included	Included
Dental Administration	\$3.84	\$3.84	\$3.84	\$3.84	\$3.84
PPO Access Fee	Included	Included	Included	Included	Included
Enable Wellbing Mngmt (prev. BCC)	Included	Included	Included	Included	Included
Pre-Certification /Utilization Review	Included	Included	Included	Included	Included
Wellness Fund	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
Composite Admin Fee 539	\$34.11	\$31.00	\$31.00	\$31.00	\$31.00
Total Monthly Admin Fee (546 Employees)	\$18,385.29	\$16,709.00	\$16,709.00	\$16,709.00	\$16,709.00
Annual Admin Fee	\$220,623.48	\$200,508.00	\$200,508.00	\$200,508.00	\$200,508.00
% Increase		-9.12%	-9.12%	-9.12%	-9.12%
Includes: Employer Plus MD Behavioral Health Rx Options: Step Therapy & P.A.					
Includes: Employer Plus MD Behavioral Health Rx Options: Step Therapy & P.A.					
Includes: Employer Plus MD Behavioral Health Rx Options: Step Therapy & P.A.					
Includes: Employer Plus MD Behavioral Health Rx Options: Step Therapy & P.A.					
Stop Loss Carrier	BCBS	BCBS	BCBS	BCBS	BCBS
SPECIFIC RETENTION	\$150,000	\$150,000	\$160,000	\$175,000	\$180,000
Contract	24/12	24/12	24/12	24/12	24/12
Coverages	Medical & Rx	Medical & Rx	Medical & Rx	Medical & Rx	Medical & Rx
Specific Rates					
Employee 171	\$78.61	\$101.99	\$94.44	\$87.12	\$84.70
Family 368	\$78.61	\$101.99	\$94.44	\$87.12	\$84.70
Specific Monthly Premium	\$42,370.79	\$54,972.61	\$50,903.16	\$46,957.68	\$45,653.30
Specific Annual Premium 539	\$508,449.48	\$659,671.32	\$610,837.92	\$563,492.16	\$547,839.60
Aggregate Rate					
Employee	\$2.90	\$2.90	\$3.08	\$3.66	\$3.67
Aggregate Monthly Premium	\$1,563.10	\$1,563.10	\$1,660.12	\$1,972.74	\$1,978.13
Aggregate Annual Premium	\$18,757.20	\$18,757.20	\$19,921.44	\$23,672.88	\$23,737.56
TOTAL ANNUAL REINSURANCE COST	\$527,206.68	\$678,428.52	\$630,759.36	\$587,165.04	\$571,577.16
BCBS Premim Credit		-\$60,000.00	-\$60,000.00	-\$60,000.00	-\$60,000.00
% Increase Compared to Current	0.00%	17.30%	8.26%	-0.01%	-2.96%
AGGREGATE RETENTION					
Contract	24/12	24/12	24/12	24/12	24/12
Coverages	Medical & Rx	Medical & Rx	Medical & Rx	Medical & Rx	Medical & Rx
Maximum Reimbursement	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Aggregate Factors Employee 171	\$1,647.96	\$1,601.14	\$1,619.90	\$1,630.56	\$1,634.32
Aggregate Factors Family 368	\$1,647.96	\$1,601.14	\$1,619.90	\$1,630.56	\$1,634.21
Monthly Attachment Factor	\$888,250.44	\$863,014.46	\$873,126.10	\$878,871.84	\$880,858.00
Annual Attachment Factor 539	\$10,659,005.28	\$10,356,173.52	\$10,477,513.20	\$10,546,462.08	\$10,570,296.00
Total Fixed Costs					
Monthly Fixed Costs	\$62,319.18	\$73,244.71	\$69,272.28	\$65,639.42	\$64,340.43
Annual Fixed Costs	\$747,830.16	\$818,936.52	\$771,267.36	\$727,673.04	\$712,085.16
% Increase	--	9.51%	3.13%	-2.70%	-4.78%

*\$60,000 credit to Jan Bill

*\$60,000 credit to Jan Bill

*\$60,000 credit to Jan Bill

*\$60,000 credit to Jan Bill





BlueCross BlueShield
of Texas

APPLICATION FOR STOP LOSS COVERAGE

Employer Group Name: Town of Flower Mound
Employer Group Address: 2121 Cross Timbers Road
City: Flower Mound **State of Situs:** Texas **Zip Code:** 75028
Account Number: 031462
Employer Group Number(s): 031462,099925, 037207
Current Effective Date of Policy 01/01/2020
Current Policy Period: These specifications are for the Policy Period commencing on 01/01/2020 and ending on 12/31/2020

The specifications below shall become effective on the first day of the Policy Period specified above and shall continue in full force and effect until the earliest of the following dates: (1) The last day of the Policy Period; (2) The date the Policy terminates; or (3) The date this Application is superseded in whole or in part by a later executed Application.

A. Aggregate Stop Loss Coverage: ☒ Yes ☐ No
 If yes, complete items 1 through 9 below.

1. ☐ New Coverage ☒ Renewal of Existing Coverage

2. Stop Loss Coverage during the current Policy Period:

☐ New Coverage (Select one from below):

☐ Incurred and paid during the Policy Period: Claims incurred and paid from _____ to _____

☐ Incurred with Run-Out: Claims incurred from _____ to _____
and Claims paid from _____ to _____

☐ Run-in coverage: Claims incurred from _____ to _____
and Claims paid from _____ to _____

If coverage is for claims incurred prior to the effective date of the Policy and paid by Policyholder's prior claim administrator, then such claims must be reported by the Policyholder to the Company (Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company) and paid by the Policyholder's prior claim administrator by the end of the current Policy Period.

☒ Renewal of Existing Coverage:

☒ Claim Administrator's Claims: Claims incurred on or after the original Effective Date of Policy and paid during the Policy Period.

☐ Incurred with Run-Out: Claims incurred from _____ to _____
and Claims paid from _____ to _____

3. Aggregate Stop Loss Coverage shall apply to:

- ☒ Medical Claims
- ☒ Outpatient Prescription Drug Claims with Company's Pharmacy Benefit Manager
- ☐ Outpatient Prescription Drug Claims with Policyholder's Pharmacy Benefit Manager: _____
- ☐ Dental Claims
- ☐ Other (please specify): _____

4. Average Claim Value: 1280.91 (per Employee per Month)Attachment Factor: 125% of the Average Claim Value

5. Aggregate Claim Liability and Run-Off Claim Liability Factors

- a. Employer's Claim Liability for each Policy Period shall be the sum of the Monthly amounts obtained by multiplying the number of Individual and Family Coverage Units for each Month by the following factors:

\$1,601.14 for each Coverage Unit\$1,601.14 for each Family Coverage Unit

*Please use the continuous text field directly below for any other structure (leaving the fields above blank).
Note: you can use the "return" key to create additional rows, if needed:*

- b. Employer's Run-Off Claim Liability shall be calculated by multiplying the sum average of the total of all Coverage Units during each of the three calendar Months immediately preceding termination by the factors shown below. Settlement for the final accounting period will be described in the section of the Policy entitled SETTLEMENTS.

\$469.08 for each Coverage Unit\$469.08 for each Family Coverage Unit

*Please use the continuous text field directly below for any other structure (leaving the fields above blank).
Note: you can use the "return" key to create additional rows, if needed:*

6. CAP Arrangement ☐ Yes ☒ No

7. Aggregate Stop Loss Claims

- a. The amount of Paid Claims during the current Policy Period, less:

i. Individual (Specific) Stop Loss Claims

ii. Any claims in excess of the Individual (Specific) Stop Loss Claims per Covered Person per Lifetime Maximum

iii. Any claims in excess of the Individual (Specific) Stop Loss Claims maximum Point of Attachment

that exceeds the Aggregate Point of Attachment. The Aggregate Point of Attachment shall equal the sum of the Employer's Claim Liability amounts calculated Monthly as described in item A.5.a. above for the current Policy Period.

- b. In the event of termination at the end of a Policy Period, the Final Settlement Aggregate Point of Attachment shall equal the sum of the Employer's Claim Liability amount for the Final Policy Period and the Employer's Run-Off Claim Liability calculated as described in item A.5.b. above. However, for the current Policy Period the minimum Aggregate Point of Attachment shall be
- \$9,234.080
- .

8. Stop Loss Premium (Select one):

☐ Annual Premium (Due on the first day of the current Policy Period): \$_____.

☒ Monthly Premium shall be equal to the amounts obtained by multiplying the number of Individual and Family Coverage Units for a particular Month by:

\$2.90 for each Coverage Unit

\$2.90 for each Family Coverage Unit

Please use the continuous text field directly below for any other structure (leaving the fields above blank). Note: you can use the "return" key to create additional rows, if needed:

9. The premium is based upon a current membership of 167 Individual Coverage Units and 367 Family Coverage Units.**B. Individual (Specific) Stop Loss Coverage:** ☒ Yes ☐ No

If yes, complete items 1 through 6 below.

1. ☐ New Coverage ☒ Renewal of Existing Coverage

2. Stop Loss Coverage Period:

☐ New Coverage (Select one from below):

☐ Incurred and paid during the Policy Period: Claims incurred and paid from _____ to _____

☐ Incurred with Run-Out: Claims incurred from _____ to _____
and Claims paid from _____ to _____

☐ Run-in coverage: Claims incurred from _____ to _____
and Claims paid from _____ to _____

If coverage is for claims incurred prior to the effective date of the Policy and paid by Policyholder's prior claim administrator, then such claims must be reported by the Policyholder to the Company (Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company) and paid by the Policyholder's prior claim administrator by the end of the current Policy Period.

☒ Renewal of Existing Coverage:

☒ Claim Administrator's Claims: Claims incurred on or after the original Effective Date of Policy and paid during the Policy Period.

☐ Incurred with Run-Out: Claims incurred from _____ to _____
and Claims paid from _____ to _____

3. Individual (Specific) Stop Loss Coverage shall apply to:

☒ Medical Claims

☒ Outpatient Prescription Drug Claims with Company's Pharmacy Benefit Manager

☐ Outpatient Prescription Drug Claims with Policyholder's Pharmacy Benefit Manager: _____

☐ Dental Claims

☐ Vision Claims

☐ Other (please specify): _____

4. Individual (Specific) Stop Loss Claims

a. For NA who is identified by the health identification (ID) number NA, the amount of Paid Claims during the current Policy Period in excess of the Individual Point of Attachment of \$NA. Such amount shall apply for the current Policy Period.

b. For each other Covered Person:

The amount of Paid Claims during the current Policy Period in excess of the Individual Point of Attachment of \$150,000 per Covered Person but not to exceed a maximum Point of Attachment of \$ UNLIMITED per Policy Period. Paid Claims in excess of the maximum point of attachment shall not be eligible to satisfy the Aggregate Point of Attachment. Such amount shall apply for the current Policy Period.

c. Covered Person per Lifetime Maximum:

The Individual (Specific) Stop Loss Claims shall not exceed UNLIMITED per Covered Person per Lifetime. Paid Claims in excess of the Covered Person per Lifetime Maximum shall not be eligible to satisfy the Aggregate Point of Attachment.

Point of Attachment ☒ Includes Claim Administrator's Provider Access Fee
☐ Excludes Claim Administrator's Provider Access Fee

5. Stop Loss Premium (select one):

☐ Annual Premium (Due on the first day of the current Policy Period): \$____.

☒ Monthly Premium shall be equal to the amounts obtained by multiplying the number of Individual and Family Coverage Units for a particular Month by:

\$101.99 for each Coverage Unit

\$101.99 for each Family Coverage Unit

Please use the continuous text field directly below for any other structure (leaving the fields above blank). Note: you can use the "return" key to create additional rows, if needed:

6. The premium is based upon a current membership of 167 Individual Coverage Units and 367 Family Coverage Units.

Additional Provisions:

The undersigned person represents that he/she is authorized and responsible for purchasing stop loss coverage on behalf of the Employer. It is understood that the actual terms and conditions of coverage are those contained in Application the Stop Loss Coverage Policy into which this Application shall be incorporated at the time of acceptance by Blue Cross and Blue Shield of Texas, a Division of Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC"). Upon acceptance, HCSC shall issue a Stop Loss Coverage Policy to the Employer. Upon acceptance of this Application and issuance of the Stop Loss Coverage Policy, the Employer shall be referred to as the "Policyholder."

Amy Westendorf
Sales Representative

Signature of Authorized Purchaser

Tayyaba Tariq
Name of Underwriter

Title of Authorized Purchaser

Signature of Underwriter

Date

INTERNAL USE ONLY	Date Application approved by Underwriting:
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TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: December 16, 2019

FROM: Gary Bertagnolli, Director of IT

ITEM: Consider approval for the purchase and roll out service of desktop and laptop computers, ruggedized laptop computers and peripherals from Dell, in the amount of \$162,825.48

BACKGROUND INFORMATION: Beginning in FY00/01, equipment and software were standardized throughout the Town, and all machines were replaced over the following years in order to address expired warranties. Dell brand computers were established as the Town's standard computer system, based on cost and one stop support.

In addition to the standardization of equipment and software, a computer replacement program was established in order to maintain the most current and efficient computer systems. This purchase request will allow the Town to continue scheduled replacements of computer systems.

The Town of Flower Mound entered into an inter-local agreement with the Texas Procurement and Support Services cooperative (formerly, General Services Commission) on December 7, 1992. Participation in the program allows our local government to purchase goods and services through the cooperative contract, DIR contracts included, while satisfying all competitive bidding requirements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$162,825.48

Proposed Expenditure:	Account Number(s):
\$143,351.48	100-655-59100-2180
\$19,474.00	100-655-59100-5110

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Dell PC Replacements Quote
2. Dell PC Rollout SOW

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



A quote for your consideration.

Based on your business needs, we put the following quote together to help with your purchase decision. Below is a detailed summary of the quote we've created to help you with your purchase decision.

To proceed with this quote, you may respond to this email, order online through your [Premier page](#), or, if you do not have Premier, use this [Quote to Order](#).

Quote No.	3000049995220.1	Sales Rep	David Slaughter
Total	\$143,351.48	Phone	(800) 456-3355, 5139356
Customer #	2434214	Email	David_Slaughter@Dell.com
Quoted On	Nov. 11, 2019	Billing To	ACCOUNTS PAYABLE
Expires by	Jan. 10, 2020		TOWN OF FLOWER MOUND
Deal ID	16578450		2121 CROSS TIMBERS RD
			FLOWER MOUND, TX 75028-2602

Message from your Sales Rep

Please contact your Dell sales representative if you have any questions or when you're ready to place an order. Thank you for shopping with Dell!

Regards,
David Slaughter

Product	Unit Price	Qty	Subtotal
Dell Latitude 5500	\$1,061.54	25	\$26,538.50
Dell 24 Monitor - P2419H	\$162.49	10	\$1,624.90
Havis Docking Station 600 Series DS-DELL-601 - Docking station - VGA, HDMI - for Dell Latitude 12 Rugged Tablet 7202	\$310.00	1	\$310.00
Dell Latitude 5420	\$1,936.72	23	\$44,544.56
OptiPlex 7070 MFF MLK	\$722.86	78	\$56,383.08
Dell Dock- WD19 130w Power Delivery - 180w AC	\$167.99	20	\$3,359.80
Precision 3431 Small Form Factor	\$904.28	2	\$1,808.56
Dell Latitude 7220	\$2,195.52	4	\$8,782.08

Subtotal:	\$143,351.48
Shipping:	\$0.00
Non-Taxable Amount:	\$143,351.48
Taxable Amount:	\$0.00
Estimated Tax:	\$0.00

Total:	\$143,351.48
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Special lease pricing may be available for qualified customers and offers. Please contact your DFS Sales Representative for details.

Dell Latitude 5500		\$1,061.54	Qty 25	Subtotal \$26,538.50
Estimated delivery if purchased today: Dec. 03, 2019 Contract # C000000006841 Customer Agreement # DIR-TSO-3763				
Description	SKU	Unit Price	Qty	Subtotal
Latitude 5500 XCTO Base	210-ASJH	-	25	-
8th Generation Intel Core i7-8665U Processor (4 Core,8MB Cache,1.9GHz,15W, vPro-Capable)	379-BDLE	-	25	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	25	-
No AutoPilot	340-CKSZ	-	25	-
Microsoft(R) Office 30 Days Trial	658-BCSB	-	25	-
Intel Core i7-8665U Processor with Integrated Intel UHD 620 Graphics	338-BRKV	-	25	-
Intel vPro Technology Enabled	631-ACBI	-	25	-
8GB, 1x8GB, DDR4 Non-ECC	370-AECX	-	25	-
M.2 256GB PCIe NVMe Class 35 Solid State Drive	400-BDXG	-	25	-
15.6" FHD WVA (1920 x 1080) Anti-Glare Non-Touch, Camera & Mic, WLAN/WWAN Capable, Privacy Shutter	391-BEJJ	-	25	-
US English Keyboard Backlit with 10 Key Numeric Keypad Dual Pointing	583-BFBO	-	25	-
No Mouse	570-AADK	-	25	-
Driver for Intel® Dual Band Wireless AC 9560 (802.11ac) 2x2 + Bluetooth 5.0	555-BEUN	-	25	-
Intel® Dual Band Wireless AC 9560 (802.11ac) 2x2 + Bluetooth 5.0	555-BEDV	-	25	-
No Mobile Broadband Card	556-BBCD	-	25	-
4 Cell 68Whr ExpressCharge™ Capable Battery	451-BCIP	-	25	-
65W AC Adapter, 7.4mm Barrel	492-BBXF	-	25	-
Dual Pointing, No Fingerprint and No SmartCard Reader, Displayport over Type-C	346-BFKZ	-	25	-
No FGA	817-BBBB	-	25	-
SupportAssist	525-BBCL	-	25	-
Dell(TM) Digital Delivery Cirrus Client	640-BBLW	-	25	-
Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps)	658-BBMR	-	25	-
Waves Maxx Audio	658-BBRB	-	25	-
Dell Developed Recovery Environment	658-BCUV	-	25	-
Dell Power Manager	658-BDVK	-	25	-
Dell Latitude 5500 SRV	658-BEGF	-	25	-
Regulatory Label, FCC	389-DPGZ	-	25	-
Direct ship Info Mod	340-AAPP	-	25	-
MIX SHIP Config (DAO/BCC)	340-CMEO	-	25	-
No Resource DVD / USB	430-XXYG	-	25	-
No Removable CD/DVD Drive	429-AATO	-	25	-

Intel Core i7 vPro Label	389-CGJM	-	25	-
OS-Windows Media Not Included	620-AALW	-	25	-
No Option Included	340-ACQQ	-	25	-
No Anti-Virus Software	650-AAAM	-	25	-
Latitude 5500 bottom door	321-BELH	-	25	-
Not ENERGY STAR Qualified	387-BBCE	-	25	-
US Power Cord	450-AAEJ	-	25	-
Safety/Environment and Regulatory Guide (English/French Multi-language)	340-AGIK	-	25	-
US Order	332-1286	-	25	-
BTO Standard Shipment (S)	800-BBQN	-	25	-
No UPC Label	389-BCGW	-	25	-
Setup and Features Guide	340-CMFK	-	25	-
Dell Limited Hardware Warranty Extended Year(s)	975-3461	-	25	-
Dell Limited Hardware Warranty	997-8317	-	25	-
ProSupport Plus: Next Business Day Onsite, 1 Year	997-8366	-	25	-
Thank you for choosing Dell ProSupport Plus. For tech support, visit www.dell.com/contactdell or call 1-866-516-3115	997-8367	-	25	-
ProSupport Plus: 7x24 Technical Support, 3 Years	997-8380	-	25	-
ProSupport Plus: Next Business Day Onsite, 2 Year Extended	997-8381	-	25	-
ProSupport Plus: Keep Your Hard Drive, 3 Years	997-8382	-	25	-
ProSupport Plus: Accidental Damage Service, 3 Years	997-8383	-	25	-
			Qty	
		\$162.49	10	Subtotal

Dell 24 Monitor - P2419H

Estimated delivery if purchased today:

Dec. 02, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Dell 24 Monitor - P2419H	210-AQDX	-	10	-
Dell Limited Hardware Warranty	814-5380	-	10	-
Advanced Exchange Service, 3 Years	814-5381	-	10	-
			Qty	Subtotal
		\$310.00	1	\$310.00

Havis Docking Station 600 Series DS-DELL-601 - Docking station - VGA, HDMI - for Dell Latitude 12 Rugged Tablet 7202

Estimated delivery if purchased today:

Nov. 19, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Havis Docking Station 600 Series DS-DELL-601 - Docking station - VGA, HDMI - for Dell Latitude 12 Rugged Tablet 7202	A8512639	-	1	-
			Qty	Subtotal
		\$1,936.72	23	\$44,544.56

Dell Latitude 5420

Estimated delivery if purchased today:

Dec. 12, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Dell Latitude 5420 Rugged, CTO	210-AQPT	-	23	-
8th Gen Intel Core i7-8650U Processor (Quad Core, 8M Cache,	379-BDHD	-	23	-

1.9GHz,15W, vPro)				
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	23	-
No AutoPilot	340-CKSZ	-	23	-
Microsoft(R) Office 30 Days Trial	658-BCSB	-	23	-
Dell Data Protection Encryption Personal Digital Delivery	421-9984	-	23	-
Dell ProSupport for Software, Dell Data Protection Encryption Personal, 1 Year	954-3455	-	23	-
Intel Core i7-8650U Processor Base with AMD Radeon RX540 Graphics 128 Bit	338-BPTH	-	23	-
No Out-of-Band Systems Management	631-ABWH	-	23	-
8GB, 2x4GB, 2666MHz DDR4 Non-ECC	370-AEVI	-	23	-
M.2 256GB PCIe NVMe Class 40 Solid State Drive	400-BBTW	-	23	-
14" FHD WVA (1920 x 1080) Embedded Touch, Outdoor-Readable Screen	391-BDVP	-	23	-
RGB Camera	319-BBFN	-	23	-
SYSTEM RATING LABEL	389-DOPP	-	23	-
Sealed Internal RGB Backlit English Keyboard	580-ABYR	-	23	-
Intel Dual Band Wireless AC 8265 (802.11ac) 2x2 + Bluetooth 4.2 Driver	555-BEPE	-	23	-
Intel Dual Band Wireless AC 8265 (802.11ac) 2x2	555-BDGD	-	23	-
WLAN Bracket	575-BBYW	-	23	-
No Mobile Broadband Card	362-BBBB	-	23	-
3 Cell 51Whr ExpressCharge Capable Battery	451-BCHG	-	23	-
90 Watt AC Adapter	492-BCNQ	-	23	-
Dell Top Case and Palmrest without Security	346-BEVE	-	23	-
Dell USB,USB,AUDIO,BLANK left I/O module	590-TEYE	-	23	-
No Anti-Virus Software	650-AAAM	-	23	-
OS-Windows Media Not Included	620-AALW	-	23	-
2nd 3 Cell 51Whr ExpressCharge Capable Battery	451-BCHH	-	23	-
No Additional IO Ports	590-TEYC	-	23	-
No Resource DVD / USB	430-XXYG	-	23	-
TPM Enabled	340-AJPV	-	23	-
System Driver, Dell Latitude 5420	640-BBRG	-	23	-
Dell Developed Recovery Environment	658-BCUV	-	23	-
Quick Referene Guide	340-CHGB	-	23	-
Safety/Environment and Regulatory Guide (English/Spanish)	340-AGIN	-	23	-
US Order	332-1286	-	23	-
Shuttle SHIP Material	328-BCXL	-	23	-
Directship Info Mod	340-CKTD	-	23	-
Regulatory Label included	389-BEYY	-	23	-
No UPC Label	389-BDCE	-	23	-
E5 Power Cord (US)	537-BBBD	-	23	-
Intel(R) Core(TM) i7 Processor Label	389-CGBC	-	23	-
BTO Standard shipment Air	800-BBGF	-	23	-

Factory Installed Rigid handle tied sku	540-BCIH	-	23	-
No Option Included	340-ACQQ	-	23	-
No Option Included	340-ACQQ	-	23	-
ENERGY STAR Qualified	387-BBNJ	-	23	-
ProSupport: Next Business Day Onsite, 3 Years	808-6784	-	23	-
Dell Limited Hardware Warranty Initial Year	808-6805	-	23	-
ProSupport: 7X24 Technical Support, 3 Years	808-6809	-	23	-
Thank you choosing Dell ProSupport. For tech support, visit //support.dell.com/ProSupport or call 1-866-516-3115	989-3449	-	23	-
			Qty	Subtotal
		\$722.86	78	\$56,383.08

OptiPlex 7070 MFF MLK

Estimated delivery if purchased today:

Dec. 05, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Optiplex 7070 Micro XCTO	210-ASEF	-	78	-
Intel Core i7-9700 (8 Cores/12MB/8T/3.0GHz to 4.7GHz/65W); supports Windows 10/Linux	338-BRTC	-	78	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	78	-
No AutoPilot	340-CKSZ	-	78	-
Microsoft(R) Office 30 Days Trial	658-BCSB	-	78	-
8GB 1X8GB DDR4 2666MHz Non-ECC	370-ADZL	-	78	-
M.2 256GB PCIe NVMe Class 35 Solid State Drive	400-BEUP	-	78	-
Thermal Pad	412-AALV	-	78	-
M2X3.5 Screw for SSD/DDPE	773-BBBC	-	78	-
Intel vPro Technology Enabled	631-ACCZ	-	78	-
No Additional Hard Drive	401-AANH	-	78	-
No Wireless LAN Card	555-BBFO	-	78	-
No Wireless LAN Card	555-BBFO	-	78	-
No PCIe add-in card	492-BBFF	-	78	-
OptiPlex 7070 Micro with 130W up to 87% efficient adapter	329-BEIU	-	78	-
Black Dell KB216 Wired Multi-Media Keyboard English	580-ADJC	-	78	-
Black Dell MS116 Wired Mouse	275-BBBW	-	78	-
No Cove	320-BCGK	-	78	-
No Additional Cable Requested	379-BBCY	-	78	-
Not selected in this configuration	817-BBBC	-	78	-
No Integrated Stand option	575-BBBI	-	78	-
SupportAssist	525-BBCL	-	78	-
Dell Applications for Windows	658-BBLB	-	78	-
Waves Maxx Audio	658-BBRB	-	78	-
Software for OptiPlex 7070	658-BEHB	-	78	-
OS-Windows Media Not Included	620-AALW	-	78	-
ENERGY STAR Qualified	387-BBLW	-	78	-
Dell Developed Recovery Environment	658-BCUV	-	78	-

No FGA	817-BBBB	-	78	-
No Option Included	340-ACQQ	-	78	-
Placemat for OptiPlex 7070 MFF	750-ABKV	-	78	-
CMS Software not included	632-BBBJ	-	78	-
TPM Enabled	329-BBJL	-	78	-
Intel Core i7 Label for Vpro	389-DQKQ	-	78	-
130W AC Adapter	450-AGDQ	-	78	-
No CompuTrace	461-AABF	-	78	-
Regulatory Label 7070 MFF 130W (65W CPU)	389-DQJU	-	78	-
US Power Cord	450-AAZN	-	78	-
No UPC Label	389-BCGW	-	78	-
Ship Material for OptiPlex Micro Form Factor	340-CDWS	-	78	-
Shipping Label for DAO	389-BBUU	-	78	-
US Order	332-1286	-	78	-
Safety/Environment and Regulatory Guide (English/French Multi-language)	340-AGIK	-	78	-
Desktop MFF BTO Standard Shipment	800-BBPR	-	78	-
No Intel Responsive	551-BBBJ	-	78	-
No Anti-Virus Software	650-AAAM	-	78	-
No Optane	400-BFPO	-	78	-
Dell Limited Hardware Warranty Plus Service	812-3886	-	78	-
Onsite/In-Home Service After Remote Diagnosis 3 Years	812-3887	-	78	-
			Qty	Subtotal
Dell Dock- WD19 130w Power Delivery - 180w AC		\$167.99	20	\$3,359.80

Estimated delivery if purchased today:

Nov. 15, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Dell Dock- WD19 130 PD	210-ARIQ	-	20	-
Advanced Exchange Service, 3 Years	824-3984	-	20	-
Dell Limited Hardware Warranty	824-3993	-	20	-
			Qty	Subtotal
Precision 3431 Small Form Factor		\$904.28	2	\$1,808.56

Estimated delivery if purchased today:

Dec. 05, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Precision 3431 SFF CTO BASE	210-ASGZ	-	2	-
Intel Core i7-9700, 8 Core, 12MB Cache, 3.0GHz, 4.7 GHz Turbo w/UHD Graphics 630	338-BRYU	-	2	-
Dell Precision Tower Heatsink	412-AAOM	-	2	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	2	-
No AutoPilot	340-CKSZ	-	2	-
Microsoft(R) Office 30 Days Trial	658-BCSB	-	2	-
Precision 3431 Tower with 200W up to 92% efficient PSU (80Plus Platinum) no SD card reader	321-BELY	-	2	-

16GB 2X8GB DDR4 2666MHz UDIMM Non-ECC Memory	370-AEFV	-	2	-
Intel vPro Technology Enabled	631-ACEU	-	2	-
C2 2.5 1-2 HD	449-BBMB	-	2	-
NVIDIA(R) Quadro(R) P620, 2GB, 4 mDP to DP adapter	490-BFDD	-	2	-
2.5" 256GB SATA Class 20 Solid State Drive	400-BFGQ	-	2	-
No Additional Hard Drive	401-AADF	-	2	-
No Additional Hard Drive	401-AADF	-	2	-
No RAID	780-BBCJ	-	2	-
Integrated Intel SATA Controller	403-BBCE	-	2	-
Black Dell KB216 Wired Multi-Media Keyboard English	580-ADJC	-	2	-
Black Dell MS116 Wired Mouse	275-BBBW	-	2	-
Thank You for Choosing Dell	340-ADBJ	-	2	-
No Additional Network Card Selected (Integrated NIC included)	555-BBJO	-	2	-
Thank You for Choosing Dell	555-BBNG	-	2	-
Not selected in this configuration	817-BBBC	-	2	-
No Media Card Reader	385-BBBL	-	2	-
No PCIe add-in card	492-BBFF	-	2	-
ODD Bezel, Small Form Factor	325-BCXP	-	2	-
8x DVD+/-RW 9.5mm Optical Disk Drive	429-ABFH	-	2	-
US Power Cord	450-AH DU	-	2	-
Safety/Environment and Regulatory Guide (English/French Multi-language)	340-AGIK	-	2	-
Quick Setup Guide	340-CMPF	-	2	-
OS-Windows Media Not Included	620-AALW	-	2	-
ENERGY STAR Qualified	387-BBLW	-	2	-
Dell Precision Optimizer	640-BBRC	-	2	-
CMS Essentials DVD no Media	658-BBTV	-	2	-
Dell Developed Recovery Environment	658-BCUV	-	2	-
No FGA	817-BBBB	-	2	-
No Additional Port	492-BCLP	-	2	-
US Order	332-1286	-	2	-
No UPC Label	389-BCGW	-	2	-
Dell Precision TPM Info	340-ACBY	-	2	-
No Driver	555-BBNI	-	2	-
No Accessories	461-AABV	-	2	-
No Intel Rapid Start or Smart Connect	409-BBCF	-	2	-
No Security Software	650-AAJS	-	2	-
No Integrated Stand option	575-BBBI	-	2	-
Dell Digital Delivery Cirrus Client	340-AAUC	-	2	-
SupportAssist	525-BBCL	-	2	-
Waves Maxx Audio	658-BBRB	-	2	-

Dell Applications for Windows 10	658-BDYP	-	2	-
System Driver Precision 3431	658-BEIB	-	2	-
MOD,SHP MTL,PWS,P9,SFF,DAO	340-CBUS	-	2	-
SHIP,PWS,LNK,NO,NO,AMF	340-CBUU	-	2	-
MOD,LBL,REG,MEX,EPA,3431	389-DQMD	-	2	-
Intel Core i7 Label for Vpro	389-DQKQ	-	2	-
No Optane	400-BFPO	-	2	-
System Monitoring not selected in this configuration	817-BBSI	-	2	-
External Speaker Not Included	520-AABF	-	2	-
Dell Limited Hardware Warranty Plus Service	997-2808	-	2	-
Onsite/In-Home Service After Remote Diagnosis 3 Years	997-2811	-	2	-
			Qty	
			4	
		\$2,195.52		Subtotal
				\$8,782.08

Dell Latitude 7220

Estimated delivery if purchased today:

Dec. 09, 2019

Contract # C000000006841

Customer Agreement # DIR-TSO-3763

Description	SKU	Unit Price	Qty	Subtotal
Dell Latitude 7220 Rugged, CTO	210-ATEF	-	4	-
8th Generation Intel Core i7-8665U Processor (4 Core,8MB Cache,1.9GHz,15W)	379-BDQU	-	4	-
Win 10 Pro 64 English, French, Spanish	619-AHKN	-	4	-
No AutoPilot	340-CKSZ	-	4	-
Microsoft(R) Office 30 Days Trial	658-BCSB	-	4	-
Intel Core i7-8665U with u-blox NEO-M8 GPS card 16GB Memory	338-BTPS	-	4	-
No Out-of-Band Systems Management	631-ACHF	-	4	-
M.2 256GB PCIe NVMe Class 40 Solid State Drive	400-BGWQ	-	4	-
11.6", FHD (1920 x 1080), 1000 Nit Outdoor-Readable, AG/AS/AP, Glove-Capable Touchscreen	391-BEVG	-	4	-
Intel Dual Band Wireless AC 9560 (802.11ac) 2x2	555-BFJV	-	4	-
No Mobile Broadband Card	362-BBBB	-	4	-
No Security	461-AAHD	-	4	-
WLAN Chassis No NFC	321-BEZF	-	4	-
2-cell 34Wh) Lithium Ion Primary Battery	451-BCCD	-	4	-
2-cell (34Wh) Lithium Ion Secondary Battery	451-BCCM	-	4	-
45 Watt AC Adapter	450-AEHK	-	4	-
5 MP HD webcam /8 MP rear camera with Flash and Dual Microphone	319-BBHH	-	4	-
Connector for I/O Expansion	750-ABNN	-	4	-
Mini Serial Port	325-BDNX	-	4	-
No Removable CD/DVD Drive	429-AATO	-	4	-
No Option Included	340-ACQQ	-	4	-
BTO Standard shipment Air	800-BBGF	-	4	-
No Removable CD/DVD Drive	429-AATO	-	4	-
16GB 2133MHz LPDDR3 Memory	370-AFDB	-	4	-

No Mouse	570-AADK	-	4	-
Intel Wi-Fi 9560 Driver with Bluetooth	555-BFIU	-	4	-
US Power Cord	537-BBBL	-	4	-
Latitude Rugged 7220 Getting Started Guide	340-COCF	-	4	-
US Order	332-1286	-	4	-
No Carrying Case	460-BBEX	-	4	-
Safety/Environment and Regulatory Guide (English/French Multi-language)	340-AGIK	-	4	-
ENERGY STAR Qualified	387-BBNJ	-	4	-
No FGA	817-BBBB	-	4	-
System Regulatory Label	389-DRXP	-	4	-
Regulatory Label (WLAN)	389-DRXQ	-	4	-
Shipping Material, Shuttle	340-AQMD	-	4	-
Directship Info Mod	340-CKTD	-	4	-
No Option Included	340-ACQQ	-	4	-
No UPC Label	389-BDCE	-	4	-
Windows 10 Additional Software	658-BEPO	-	4	-
No Media	620-AAOH	-	4	-
No Security Software	650-AAJS	-	4	-
ProSupport: Next Business Day Onsite, 3 Years	804-0500	-	4	-
Thank you choosing Dell ProSupport. For tech support, visit //support.dell.com/ProSupport or call 1-866-516-3115	989-3449	-	4	-
Dell Limited Hardware Warranty Initial Year	997-6988	-	4	-
ProSupport: 7x24 Technical Support, 3 Years	997-6995	-	4	-

Subtotal:	\$143,351.48
Shipping:	\$0.00
Estimated Tax:	\$0.00
Total:	\$143,351.48

Important Notes

Terms of Sale

This Quote will, if Customer issues a purchase order for the quoted items that is accepted by Supplier, constitute a contract between the entity issuing this Quote ("Supplier") and the entity to whom this Quote was issued ("Customer"). Unless otherwise stated herein, pricing is valid for thirty days from the date of this Quote. All product, pricing and other information is based on the latest information available and is subject to change. Supplier reserves the right to cancel this Quote and Customer purchase orders arising from pricing errors. Taxes and/or freight charges listed on this Quote are only estimates. The final amounts shall be stated on the relevant invoice. Additional freight charges will be applied if Customer requests expedited shipping. Please indicate any tax exemption status on your purchase order and send your tax exemption certificate to Tax_Department@dell.com or ARSalesTax@emc.com, as applicable.

Governing Terms: This Quote is subject to: (a) a separate written agreement between Customer or Customer's affiliate and Supplier or a Supplier's affiliate to the extent that it expressly applies to the products and/or services in this Quote or, to the extent there is no such agreement, to the applicable set of Dell's Terms of Sale (available at <http://www.dell.com/terms> or www.dell.com/oemterms); and (b) the terms referenced herein (collectively, the "Governing Terms"). Different Governing Terms may apply to different products and services on this Quote. The Governing Terms apply to the exclusion of all terms and conditions incorporated in or referred to in any documentation submitted by Customer to Supplier.

Supplier Software Licenses and Services Descriptions: Customer's use of any Supplier software is subject to the license terms accompanying the software, or in the absence of accompanying terms, the applicable terms posted on www.Dell.com/eula. Descriptions and terms for Supplier-branded standard services are stated at www.dell.com/servicecontracts/global or for certain infrastructure products at www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm

Offer-Specific, Third Party and Program Specific Terms: Customer's use of third-party software is subject to the license terms that accompany the software. Certain Supplier-branded and third-party products and services listed on this Quote are subject to additional, specific terms stated on www.dell.com/offeringspecificterms.

In case of Resale only: Should Customer procure any products or services for resale, whether on standalone basis or as part of a solution, Customer shall include the applicable software license terms, services terms, and/or offer-specific terms in a written agreement with the end-user and provide written evidence of doing so upon receipt of request from Supplier.

In case of Financing only: If Customer intends to enter into a financing arrangement ("Financing Agreement") for the products and/or services on this Quote with Dell Financial Services LLC or other funding source pre-approved by Supplier ("FS"), Customer may issue its purchase order to Supplier or to FS. If issued to FS, Supplier will fulfill and invoice FS upon confirmation that: (a) FS intends to enter into a Financing Agreement with Customer for this order; and (b) FS agrees to procure these items from Supplier. Notwithstanding the Financing Agreement, Customer's use (and Customer's resale of and the end-user's use) of these items in the order is subject to the applicable governing agreement between Customer and Supplier, except that title shall transfer from Supplier to FS instead of to Customer. If FS notifies Supplier after shipment that Customer is no longer pursuing a Financing Agreement for these items, or if Customer fails to enter into such Financing Agreement within 120 days after shipment by Supplier, Customer shall promptly pay the Supplier invoice amounts directly to Supplier.

Customer represents that this transaction does not involve: (a) use of U.S. Government funds; (b) use by or resale to the U.S. Government; or (c) maintenance and support of the product(s) listed in this document within classified spaces. Customer further represents that this transaction does not require Supplier's compliance with any statute, regulation or information technology standard applicable to a U.S. Government procurement.

For certain products shipped to end users in California, a State Environmental Fee will be applied to Customer's invoice. Supplier encourages customers to dispose of electronic equipment properly.

Electronically linked terms and descriptions are available in hard copy upon request.

^Dell Business Credit (DBC):

OFFER VARIES BY CREDITWORTHINESS AS DETERMINED BY LENDER. Offered by WebBank to Small and Medium Business customers with approved credit. Taxes, shipping and other charges are extra and vary. Minimum monthly payments are the greater of \$15 or 3% of account balance. Dell Business Credit is not offered to government or public entities, or business entities located and organized outside of the United States.



Statement of Work for Managed Deployment Services Town of Flower Mound

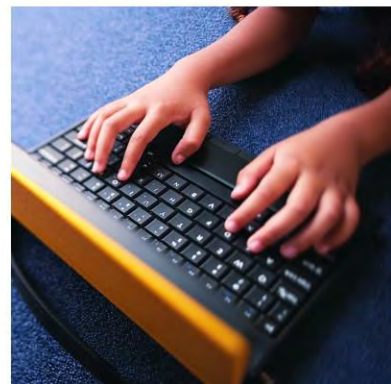


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1 INTRODUCTION

“Dell EMC Services”	Dell Marketing L.P.
“Dell EMC Services Address”	One Dell Way, Round Rock TX 78682, United States
“Customer”	Town of Flower Mound
“Customer Address”	2121 Cross Timbers Road Flower Mound, TX 75028
“SOW”	This Statement of Work.
“Services”	The services as described in this SOW.
“Agreement”	The Services performed, provided under this SOW, are governed by and subject to the terms and conditions in the Agreement that exists between Dell Marketing, L.P. (“Dell”) and the Texas Department of Information Resources (the “DIR Dell Agreement”, DIR-TSO-3763 -- Dell Contract Code 75AHH -- effective January 10, 2018), under such contract Customer has elected to participate as an eligible public entity.
“Effective Date”	The date of the last signature below.
“Term”	The term of this SOW will begin on the Effective Date and, unless terminated in accordance with this SOW or the Agreement, expires on the date that Dell EMC Services completes the provision of Services in accordance with this SOW.
“Deliverables”	Any reports, time sheets, analyses, scripts, code or other work results which have been delivered by Dell EMC Services to Customer within the framework of fulfilling obligations under the SOW.
“Reference”	SFDC # 18808070

The terms **“Dell EMC Services”**, **“Dell EMC Services Address”**, **“Customer”**, **“Customer Address”**, **“SOW”**, **“Services”**, **“Agreement”**, **“Effective Date”**, **“Term”** and **“Deliverables”** have the meanings indicated above. Capitalized terms used herein but not otherwise defined will have the meanings ascribed to such terms in the Agreement. To the extent that this SOW conflicts with the Agreement, the terms and conditions of this SOW shall control. Prevailing terms will be construed as narrowly as possible to resolve the conflict while preserving as much of the non-conflicting terms as possible, including preserving non-conflicting provisions within the same paragraph, section or sub-section.

The following appendices are attached hereto and incorporated by reference:

- Appendix A – Change Request Form
- Appendix B – Supported Sites
- Appendix C – Definitions
- Appendix D – Major Metropolitan Areas

2 SUMMARY OF SERVICE

This section provides an overview of the Services. This section does not form part of the SOW and is added for information purposes only.

- Project is expected to occur at approximately 12 location(s) within the Town of Flower Mound.
- The duration of the project is expected to be 4 weeks.
- Services are estimated to affect 130 Dell Latitudes and Optiplex units.
- Security clearance required is None.
- The start date of the deployment shall be contingent upon completion of the Scheduling Assumptions.
- Dell will deliver Services for Customer's sites identified in Appendix B (each, a "Customer Site").

Services:

- Warehousing and Redeliver New Equipment per system
- Asset Labeling (Customer-provided tags) and Reporting
- Off-site Unattended Imaging via Network in Provider Warehouse
- Basic Installation Service – Client System (CPU and Monitor)
- Data Migration
- Off Customer Premises Trash Removal

3 ENGAGEMENT DETAILS

In connection with this SOW, Dell EMC Services will perform the Services as specifically described herein.

3.1 Scope of Services

Dell EMC Services will perform the following Services under this SOW:

3.1.1.1 Warehouse and Redeliver New Equipment per system

Service Description

- Provide warehouse facility for receiving, consolidating and storing systems.
- Pricing will be based on a thirty (30) day billing cycle on a per system basis.
- Confirm delivery locations, contacts, quantities of devices per delivery location and schedule with Customer Project Coordinator.
- Sign out of equipment to be delivered.
- Deliver equipment to correct location; deliver inside to storage location.
- Equipment will be delivered to central area at each Customer location.
- If required, truck with lift gate will be provided.
- Secure acceptance documentation.
- Accept/cover risk of loss for systems while in Service Provider's possession.
- In-warehouse Dell Latitude and mobile cart services performed in conjunction with delivery services.

Assumptions

- Additional charges apply per unit for any portion of thirty (30) days and for each thirty (30) days, after the initial thirty (30) days.
- Logistics reporting will be on a piece count basis.
- Boxes will be clearly labeled with appropriate Customer delivery address.
- SOW pricing assumes a single delivery per Customer location.

3.1.1.2 Remote Imaging Service

Service Description

- Remote Image:
 - o Unpack Dell Latitude/Optiplex Client systems and components.
 - o Provider will configure each Client system with an approved image provided by Customer; for up to one (1) image

Assumptions

- Customer to provide a single .WIM file with base image that boots to local admin user.
- Provider will allow new client system to perform initial Windows boot.
- Provider will run first article process to verify image as successful which includes:
 - o Loading Customer provided image via .WIM file
 - o Allow initial Windows boot
 - o Provider will schedule a time with Customer to verify image load success at Customer location.
 - o Once verified as successful mass production will begin.
 - If image is deemed unsuccessful, Customer and Provider will work together to obtain a working successful image and perform first article process until image is verified and approved.

3.1.1.3 Remote Asset Labeling

Service Description

- Customer-supplied computer label, attach to each Client system in Provider warehouse.

Assumptions

- Labels affixed to legacy CPU and/or monitor will not be removed or installed under this scope of work.
- Includes one (1) computer label, one (1) for each CPU.
- Labeling to be performed at Provider's facility prior to shipment of hardware to Customer location(s).

3.1.2 On-Site Deployment Services

3.1.2.1 Basic Installation Service – Client System (CPU and Monitor)

Service Description

- Unpack new Client System from shipping boxes and inspect components for any damage.
- Verify service tag for each new Client System against packing slip.
- Notify Dell help desk of any discrepancy or damage regarding the shipment of Dell equipment.
- Move new equipment from central location to the end user desk side.
- Organize Client System components and peripherals (e.g. keyboards, power supplies, mice, and software) for deployment.
- Plug Customer-provided, certified network patch cables into new Client System.
- Plug all power cords into electrical sources.
- Plug network patch cables into existing certified network jacks.
- Boot the new Client System and verify network connection for Customer's network connected devices.
- Log on to the new Client System using Customer-provided user ID and password.
- Configure IP Address.

- Map up to two (2) network printers to each new Client System.
- Reconnect and setup of up to four (4) existing external peripherals to Client System. When required, Dell will load the drivers supplied by Customer and will print a test page or conduct an agreed upon simple test for functionality.
- Connect Customer-provided peripheral cable to the new Client System (excludes configuration).
- Complete validation and function test as agreed to by both parties.
- Contact the Dell help desk if a problem is encountered with any component provided by Dell for the new Client System.
- Offsite disposal of deployment related trash; properly clean the installation area.

3.1.2.2 Manual Data Migration average of 20GB

- Provider will perform manual data migration to transfer user profiles, software applications, and Outlook set up using a combination of tools (CD, USB, Scripts, etc) per the analysis obtained from Customer provided individual Data Migration survey for up to 20GB (See Appendix G)

3.1.2.3 Off Premises Trash Removal

Service Description

Removal of deployment trash off Customer premises.

3.1.3 Pre-Deployment Activities

Dell and Customer will complete the activities listed below before managed deployment services begin. These activities will validate the assumptions, requirements, procedures, and responsibilities set forth in this SOW. In the event any assumption, requirement, procedure, or responsibility is found to be incorrect, the pricing and/or scope of Services will be modified using the Change Management Process to reflect the actual operating environment.

- 1) **Site Survey and End-User Profiles.** Customer will complete a site survey for each Customer Site. The site survey is used to collect information needed for the deployment. Customer will complete end-user profile surveys, if applicable.
- 2) **Pilot Test.** Dell will conduct a pilot test to validate the assumptions and test the deployment procedures prior to the first scheduled deployment. The pilot will consist of a typical set of Services for a limited number of systems (in each case, as determined by Dell in its discretion) and validate the following requirements: average installation time, information flow, procedures for each deployment activity, system environment, timings, and assumptions.

Dell and Customer will mutually agree on written installation instructions prior to the date the pilot is scheduled to be performed. The installation instructions and configuration of automated migration tools must be finalized before Dell will commit resources to perform the pilot. Upon completion of the pilot, Dell and Customer will review the results and identify any necessary modifications to the Services and/or prices.

- 3) **Schedules.** Dell and Customer will mutually agree in writing to a deployment schedule by Customer Site and Schedule Group (collectively, the "Deployment Schedule"). The Deployment Schedule will be distributed by Customer to end-users identified in each Schedule Group prior to the scheduled installation of their Client Systems. Customer will promptly notify Dell of any conflicts in order to lock the schedule prior to the scheduled installation date. Any modifications or cancellations occurring prior to the scheduled installation date may be subject to additional fees.

3.1.4 Project Management

Dell EMC Services will assign a single point of contact ("**SPOC**") to manage the delivery of this engagement.

Dell EMC Services Project Management Responsibilities.

Dell EMC Services and/or its Project Manager will perform the following activities:

- Serve as SPOC for all service delivery issues.
- Manage Dell EMC Services tasks and resources associated with the Services and coordinate activities with Customer.
- Conduct meetings to communicate roles, responsibilities, review assumptions, and schedule activities.
- Use standard industry recognized project management tools and methodologies.
- Employ a reporting mechanism to identify project tasks, next steps, and issues.
- Implement changes associated with the Services in compliance with the Change Management Process described in this SOW.

Customer Project Management Responsibilities.

Customer and/or its Project Manager will perform the following activities:

- Provide reasonable assistance, cooperation, timely decisions and support in connection with the provision of the Services by Dell EMC Services.
- Coordinate the scheduling of all Customer-designated resources required for the Services.
- Obtain all consents, approvals, and licenses required by Customer's suppliers, licensors, and lessors necessary to support or permit the provision of Services under this SOW.
- Assign a site coordinator for each Customer site where Services will be provided.

3.2 Project Timeline

Dell EMC Services anticipates the Services will span an estimated period of 4 contiguous business Weeks. The actual schedule will be developed and agreed upon following project initialization. The actual schedule may change as the project progresses. Any changes will be managed in accordance with the Change Management Process described below.

3.3 Services Out of Scope

For the avoidance of doubt, the parties acknowledge that the following activities are not included in the scope of this SOW

- 1) Any services, tasks or activities other than those specifically noted in this SOW.
- 2) The development of any intellectual property created solely and specifically for the Customer under this SOW.
- 3) Any Dell training or certification services not specifically described in this SOW.
- 4) Except as set forth herein, Dell is not responsible (including financial responsibility) for any Customer and/or third party personnel, hardware, software, equipment or other assets currently utilized in the Customer's operating environment.
- 5) Procurement, shipping, or warehousing of hardware, software, or other equipment required for the Services unless otherwise stated in the SOW.
- 6) Packaging software applications for installation.
- 7) Providing end user orientation, training, or support.
- 8) Transporting between floors without the use of elevators.
- 9) Packing, shipping, or disposing of legacy systems unless otherwise stated in the SOW.
- 10) Removing viruses (Dell will promptly notify Customer Site Coordinator upon discovery of virus).

- 11) Disaster recovery, including but not limited to: re-imaging, reloading software applications or recovering backup data.
- 12) Warranty services or remedial hardware maintenance or software maintenance.
- 13) Warranty services for third-party products which are not provided by Dell.

The terms of this SOW do not confer on the Customer any warranties which are in addition to the warranties provided under the terms of the Agreement. The Customer may be able to purchase out of scope services at an additional charge and, upon request by Customer, Dell EMC Services will provide a proposal for such out of scope services, pursuant to the Change Management Process described below.

3.4 Assumptions

Dell EMC Services has made the following specific assumptions while specifying the Services detailed in this SOW:

1. All volume-metric assumption deviations in excess of plus or minus ten percent (+/-5%) of the quantities or locations to receive Services will be considered out of scope and subject to the Change Management Process.
2. Twenty-three (23) client systems will be used for PD/Fire locations and only require image and install, 2 application loads and no data migration.
3. Changes to the mutually agreed schedule for performance of Services or modifications to the Services will only be in accordance with the Change Management Process.

3.4.1 Deployment Density Allocation Assumptions

Services below are grouped based on Customer requirements. Detailed information on the specific deployment activities for each one of the following service groups is in Section 3.1 Scope of Service and Section 5 Pricing, herein.

3.4.1.1 Blended Services

Service Group	Density Bands	Quantity
- Warehousing and Redeliver New Equipment per system - Asset Labeling (Customer-provided tags) and Reporting - Off-site Unattended Imaging via Network in Provider Warehouse - Basic Installation Service – Client System (CPU and Monitor) - Data Migration - Off Customer Premises Trash Removal	1 system visit	TBD
	2 to 5 systems/visit	TBD
	6 to 9 systems/visit	TBD
	10 to 29 systems/visit	TBD
	30 to 99 systems/visit	130
	100+ systems/visit	TBD
	Total Systems	130

3.4.1.2 Timing Assumptions

Deployment Service	Disposition	Items	Time Assumption
Warehousing and Redeliver New Equipment per system	System	130	30 min
Asset Labeling (Customer-provided tags) and Reporting	System	130	5 min
Off-site Unattended Imaging via Network in Provider Warehouse	System	130	45 min
Basic Installation Service – Client System (CPU and Monitor)	System	130	30 min
Data Migration	System	130	30 min
Off Customer Premises Trash Removal	System	130	5 min

3.4.2 Scheduling Assumptions

- 1) Schedules will maximize the quantity of Services at each Customer Site which are in reasonable proximity within the same building and minimize the number of return visits to each Customer Site.
- 2) Changes to the mutually agreed schedule for performance of Services or modifications to the Services will only be in accordance with the Change Management Process.
- 3) Schedule Groups will be formed to allow a consistent daily volume of Services at a Customer Site.
- 4) Services will be scheduled to take place over consecutive days at a Customer Site to ensure maximum efficiency of resources.
- 5) Customer will meet the following scheduling milestones:

Scheduling Milestones	Business Days	Execution
Pilot Test Performed	15	Following Effective Date of the SOW or as mutually agreed
Installation Instructions finalized	15	Prior to the date of the first scheduled deployment
Site Surveys complete	15	Prior to scheduled deployment
Site ready to receive Services	10	Prior to scheduled deployment
Schedule Groups finalized, Schedule locked	15	Prior to scheduled deployment
End-user profiles completed	10	Prior to scheduled deployment
Customer to provide all logon IDs, passwords, domain specifications and personal settings for each end-user	5	Prior to scheduled deployment

3.4.3 IT Environment & Technical Assumptions

- 1) Desktop/laptop operating system, Windows 7, Windows 8 or Windows 10.
- 2) Standard Ethernet 100MB T base switched subnets, and 5-10 MB/sec throughput at the desktop is available for login, data transfer, application loads, and imaging.
- 3) Customer provides a single point of contact for resolution of any technical issues which may arise with regard to the network, devices, and any software application.
- 4) Network infrastructure is stable and consistent across all Customer Sites.
- 5) Standard implementation of dynamic host configuration protocol (DHCP) addresses is utilized.

- 6) Dell is not responsible for application malfunctions or conflicts between Customer applications.
- 7) Customer ensures all software applications are certified, operational, and compatible with the new Client System configuration and operating systems.
- 8) If required, Customer provides all VPN hardware and/or software required for joining machines to Customer's domain including, but not limited to, two (2) Ethernet interfaces (DHCP and class C addresses required).

3.4.4 General Assumptions

- 1) Dell will dispose of deployment related trash off site.
- 2) Customer does not require resources to have any United States Federal DoD Security Clearances (Secret, Top Secret, Top Secret / SCI, Top Secret / SCI with Polygraph, etc.).
- 3) Systems weighing more than 50 pounds require an additional resource to assist with handling the system, which may require additional charges.
- 4) Customer is advised and agrees that modifications Customer makes, or changes Dell, its subcontractors or any third-party makes on Customer's behalf, to an Energy Star compliant product may affect whether the product continues to qualify as Energy Star compliant.

3.5 Customer Responsibilities

Customer will provide reasonable and timely cooperation to Dell EMC Services in its performance of the Services. If the Customer fails to fulfill one or more of the following responsibilities, Dell EMC Services will be relieved of any schedule, milestone, or financial commitments associated with the Services. Customer agrees to the following responsibilities:

- 1) Promptly notifying Dell EMC Services in writing of: a) any changes Customer makes to its information technology environment that may impact Dell EMC Services' delivery of the Services; or b) business, organizational, security and technical issues that may have an impact on the performance and delivery of the Services. The Change Management Process will control any changes to the SOW following the notice.
- 2) Provide Dell EMC Services with any required consents necessary to perform the Services.
- 3) Maintain a current version of an anti-virus application continuously running on any system to which Dell EMC Services is given access and will scan all Deliverables and the media on which they are delivered. Customer will take reasonable back-up measures and, in particular, will provide for a daily back-up process and back-up the relevant data, software and programs before Dell EMC Services performs any work on Customer's production systems.
- 4) Developing or providing documentation, materials and assistance to Dell EMC Services.
- 5) Unless this SOW specifically requires Dell EMC Services to provide a software license, Customer is responsible for any and all software licensing requirements. Unless otherwise directed by Customer in writing during the installation process, Dell EMC Services will "accept" on Customer's behalf any and all electronic agreements provided with the installed hardware and/or software, including without limitation licenses, terms of sale, and other terms and conditions. Customer agrees that its purchase, license, and/or use of any hardware or software installed by Dell EMC Services under this SOW shall be subject to and governed by such electronic agreements to the same degree as if Customer had itself accepted the electronic agreements.
- 6) Ensuring the Dell EMC Services personnel have: reasonable and timely access to the project site, software, hardware, and internet access; a safe working environment; an adequate office space; parking; and remote access as required. Facilities and power must meet Dell EMC Services' requirements for the products and Services purchased.
- 7) Prior to the start of this SOW, indicating to Dell EMC Services in writing a person to be the single point of contact to ensure that all tasks can be completed within the specified time period (the "**Customer Contact**"). All Services communications will be addressed to the Customer Contact.

- 8) Customer Contact will have the authority to act for Customer in all aspects of the Services including bringing issues to the attention of the appropriate persons within Customer's organization and resolving conflicting requirements. Customer Contact will ensure attendance by key Customer personnel at Customer meetings and Deliverable presentations. Customer Contact will ensure that any communication between Customer and Dell EMC Services are made through the SPOC. Customer Contact will obtain and provide project requirements, information, data, decisions and approvals within one working day of the request, unless both parties agree to a different response time.
- 9) Providing technical points-of-contact, who have a working knowledge of the information technology components to be considered during the Services and have the authority to make business decisions ("**Technical Contacts**"). Dell EMC Services may request that meetings be scheduled with Technical Contacts.
- 10) Making appropriate service outage windows available for Dell EMC Services as needed.
- 11) The physical and network security of Customer environment.
- 12) Providing all documentation on Dell EMC Services standard templates unless both parties agree otherwise.
- 13) Ensure Customer's Site coordinator is on-site and available at the deployment site.
- 14) Prepare Customer Sites and end-user locations to receive Services (e.g., installing cables, network jacks, and power outlets and ensuring connectivity).
- 15) Procure all hardware components and software licenses in advance of deployment activities to meet the Deployment Schedule.
- 16) Ensure all systems and related equipment are easily accessible by Dell without the need to move furniture, and provide keys to any cable locks as needed to remove or secure systems during de-installation and/or installation and disable any BIOS passwords currently configured on Legacy Systems prior to a service call for installation.
- 17) Receive hardware at Customer's receiving dock or provide access, as applicable.
- 18) Provide carts for transporting hardware within deployment site.
- 19) Advise Dell prior to locking schedule of any unique site entry requirements.
- 20) Provide Dell with the physical location of each end-user desk where the Services are to be performed as well as location of printers to be mapped per system, if applicable.
- 21) Provide Dell with local administration rights necessary to perform the Services and ensure the domain login is enabled.
- 22) Provide all logon IDs, passwords, domain specifications, and personal settings necessary to perform the Services for each end-user prior to scheduled deployment.
- 23) Provide Dell with a complete list of all approved peripherals to be installed on the new Client System, and supply all applicable drivers at the Customer Site.
- 24) In the event Dell encounters problems loading Customer-provided software, Customer will contact the proper help resources for that application to complete the installation.
- 25) Perform quality assurance after login is complete, including access to Active Directory profile to allow end users to access specific software applications and load personalities.
- 26) Provide adequate storage area for de-installed Legacy Systems and a common area for debris at each Customer Site (to be located within the building where the deployment occurs).
- 27) Provide post-installation support and troubleshooting assistance as needed to address software application performance, software application and operating system conflicts, software application version issues or co-existence issues.
- 28) At the conclusion of the Services, change all system and network access credentials to prevent further Dell access to systems and networks.

- 29) Customer will provide image on a .wim file (hard-drive) for mass production at Provider warehouse.
- 30) Customer will provide complete individual Data Migration Survey prior to deployment start.

3.6 Service Hours

Dell EMC Services will perform the Services during normal business hours typically 08:00 AM to 5:00 PM, Monday through Friday, Customer local time and will include travel time to and from the Customer location and excludes local holidays, unless other arrangements have been made in writing between Dell EMC Services and Customer.

4 PRICING

This section describes the methodology for calculating the charges for the Services provided under this SOW. Customer hereby agrees to pay such charges in

Charges shall be as follows:

The per-unit price for the Services to be performed by Dell EMC Services and applicable cancellation and rescheduling fees for the Services are listed below (see "**Pricing Structure**" in definitions provided in Appendix C).

Dell EMC Services will invoice Customer monthly in arrears based on the actual number of assets ("**Units**") as recorded in the system of record, multiplied by the per Unit cost set forth in the table below.

Description of the Service(s)	Units	Per Unit Cost	Line Item Total
- Warehousing and Redeliver New Equipment per system - Asset Labeling (Customer-provided tags) and Reporting - Off-site Unattended Imaging via Network in Provider Warehouse - Basic Installation Service – Client System (CPU and Monitor) - Data Migration - Off Customer Premises Trash Removal	130	\$149.80	\$19,474.00

4.1 Estimate Revisions

Should Dell EMC Services' price estimate change because of a deviation in any assumption, engagement dependency, scope specification, or other provision of this SOW for which a change order as described in the Change Management Process section of this SOW does not already apply, Dell EMC Services will notify Customer and discuss any next steps. This may necessitate invoking the Change Management Process.

4.2 Expenses

Expenses are included in the charges under this SOW. Unless the scope or the list of supported sites change, pursuant to the Change Management Process, Dell EMC Services will not charge any additional expenses in connection with delivering the Services without the express written consent of Customer. Additional expenses could include Service-related expenses such as actual, reasonable, and necessary travel and living expenses.

4.3 Additional Pricing Terms

- 1) The terms of this SOW shall be valid for thirty (30) calendar days following submission of the final version of this SOW to Customer. In the event this SOW is executed by Customer and returned to Dell EMC Services after such thirty (30) day period, Dell EMC Services may: (i) accept the SOW on the stated terms; or (ii) reject the SOW and provide Customer with a revised SOW setting forth any necessary updates to the terms of the previous SOW.
- 2) The price for the Services is based on Customer's environment as disclosed to Dell EMC Services and on the basis that the information supplied is accurate and complete. If the assumptions and parameters used to develop the SOW are found to be incorrect or have changed, the Customer will notify Dell EMC Services in writing within five (5) business days. The parties agree to pursue resolution through the Change Management Process. If the parties fail to reach an agreement with respect to such incorrect assumptions or parameters, Dell EMC Services may terminate this SOW with notice to Customer.
- 3) Any timescales or plans presented in this document assume that Customer provides any required information and fulfils its other obligations as described in this SOW in a timely manner. If Customer fails to meet its obligations as set forth in this SOW, Dell EMC Services may adjust the timeline or costs with notice to Customer to address such delays or failure to meet obligations.
- 4) If any of the volumetric assumptions used in this SOW, including, time on task, locations, service consumption, and/or configuration factors, relied upon by Dell EMC Services vary by +/- five (5%) percent, Dell EMC Services has the right to adjust the pricing to reflect such changes.
- 5) All prices are in US Dollars (USD) and are exclusive of all applicable taxes.
- 6) Both parties will mutually agree upon a service commencement date. If Customer requires changes to the service commencement date with less than ten (10) business days' notice to Dell EMC Services, additional charges may apply.
- 7) In the event the Term of this SOW extends beyond one (1) year, Dell EMC Services reserves the right to revisit the pricing on each anniversary of the Effective Date. Any changes to the pricing will be managed in accordance with the Change Management Process.
- 8) Schedule delays outside of Dell EMC Service's control, shall be billed at the current time and material rates plus travel and living expenses as described above. Any additional costs incurred by Customer as a result of delays shall be the sole responsibility of the Customer.
- 9) Price excludes travel incurred due to schedules that cause excessive travel between customer sites.
- 10) Price includes travel expenses within fifty (50) miles of a major metropolitan area as defined by Dell.
- 11) Per the Time and Material Pricing Table in Appendix C, rates will be invoiced to and will be paid by Customer, for the following:
 - a) Customer delays exceeding thirty (30) minutes beyond the scheduled time for the Services to be performed; such charges will be invoiced in thirty (30) minute increments.
 - b) Services requested when the technician is not currently onsite are charged based on a 2-hour minimum per incident.
 - c) Out-of-scope services (see Section 3.3 Out of Scope Services herein).
 - d) Services performed outside the defined Service Hours.
 - e) Services designated as Time & Materials.
- 12) Cancellation or Rescheduling of any scheduled deployment after the schedule has been locked may be subject to additional fees plus any actual and reasonable travel expenses incurred. See Definitions "Cancellation" and "Reschedule" for fee schedule.
- 13) Prices exclude costs for procurement of any hardware or software.

- 14) Payment for any hardware ordered from Dell is due in accordance with Dell's standard terms for such purposes (unless the parties have entered into a separate agreement regarding acquisition of the hardware, in which case payment for the hardware would be due in accordance with such separate agreement) and shall in no case be contingent upon performance or delivery of the Services and/or installation described in this SOW.
- 15) For clarity, any hardware failures that are discovered in connection with Dell's delivery of the Services will be resolved via the Customer's existing warranty for such failed hardware. In the event warranties for failed hardware are expired or otherwise not effective, Dell will provide reasonable support to Customer to facilitate resolution of the failed hardware so that Services hereunder may be completed. In no event will Dell assume financial responsibility for Customer's failed hardware where such failure is not the direct result of Dell's actions as indicated by root cause analysis.

5 CHANGE MANAGEMENT PROCESS

To ensure the success of this engagement, it is critical that Customer and Dell EMC Services have a clear understanding of engagement expectations. The parties will utilize the approach outlined below (the "Change Management Process") for managing changes to the SOW. Customer or Dell EMC Services may propose changes to the Services under this SOW, including Deliverables, scope or any other aspect of the engagement. The Change Management Process for this engagement consists of the following:

- Change Initiation – All proposed changes will be forwarded to, or originated by, the SPOC and documented. A copy of the proposed change request will be forwarded to the Customer Contact. Change requests will be documented using the Change Request Form found in Appendix A.
- Change Validation – Dell EMC Services will examine the proposed change and may discuss the change request with the Customer Contact to clarify the details of the request.
- Change Analysis and Impact Analysis – Dell EMC Services will analyze the change request and make modifications to the Change Request Form as necessary.
- Change Implementation – If the change request is approved, the change will be noted as "Approved" and will be incorporated into the SOW and managed for progress. If the change is not approved, the change will be noted as "Rejected" and Dell EMC Services will continue to perform without regard to the proposed change to the extent practically possible.

The receiving party will review the proposed Change Request Form and will: (i) approve it, (ii) agree to further investigation, or (iii) reject it. Neither Customer nor Dell EMC Services will unreasonably withhold or delay its agreement to any proposed change. Investigation must be performed within seven (7) calendar days. Changes agreed upon pursuant to the Change Management Process will not be effective until mutually executed by a duly authorized representative of both parties. In addition, Dell EMC Services shall be relieved of any performance, schedule, milestone, or financial commitments associated with Services affected by Customer's non-compliance with Customer responsibilities or other obligations under this SOW or in the event of any deviation from any assumption, constraint, dependency or engagement scope specification contained in this SOW until an appropriate written change order or other amendment to this SOW addressing the foregoing is approved and signed by the Customer and Dell EMC Services.

6 OTHER PROVISIONS

The Services, including any Deliverables, are subject to the following:

- 1) Dell EMC Services may use affiliates and subcontractors to perform the Services.
- 2) Dell EMC Services may perform all or part of the Services off-site at a Dell EMC Services location or other location.

- 3) Customer acknowledges that Dell EMC Services will request Customer's participation in a Customer feedback survey. Additionally, Dell EMC Services may approach Customer to serve as reference regarding Dell EMC Services' performance of the Services. If Customer agrees to be a reference, Customer and Dell EMC Services will agree in writing to the terms of such reference. A reference program has been developed to facilitate confidential conversations between Dell EMC Services' customers and potential customers.
 - a) Customers are invited to join the program at the conclusion of their project for a period of one year.
 - b) Dell EMC Services will only share Customer contact information to a potential customer who is interested in contacting Customer for a discussion on Customer's previous experiences.
 - c) We limit usage of Customer reference to no more than once per month.
 - d) We will not publish Customer name, organization, or any Customer identifiable details based on participation in this program.
- 4) Dell EMC Services shall not be responsible for any delay or failure to provide the Services to the extent caused by: (a) failures by Customer to perform its responsibilities under this SOW; (b) materially inaccurate assumptions; (c) a defect, deficiency or failure with respect to Customer's network, systems, software, data or other equipment; or (d) modifications to Customer's network, systems, or other equipment made by a party other than Dell EMC Services or its representatives. In the event that either party becomes aware of the occurrence of one or more of the foregoing events, they shall notify the other party accordingly. Notwithstanding such occurrence, Dell EMC Services may, following discussion with Customer regarding the impact of such incident, continue to provide the Services and shall use commercially reasonable efforts to perform the Services under this SOW. Customer will reimburse Dell EMC Services for its reasonable additional costs of providing the Services and out of pocket expenses for such efforts to the extent attributable to the items defined above.
- 5) Customer, not Dell EMC Services, is responsible for the performance of Customer's employees and agents, including any contribution, alteration, or other modification they make to the Services, including Deliverables, and for the accuracy and completeness of all data, information, and materials provided to Dell EMC Services. Dell EMC Services is not providing any warranty regarding, and is not liable for, Customer hardware, software, documentation, tools, equipment, or other products, assets, materials, or services. Dell EMC Services' performance is dependent upon timely decisions and approvals of Customer in connection with the Services, and Dell EMC Services is entitled to rely on all decisions and approvals of Customer.
- 6) The Services and resulting Deliverables may include advice and recommendations, but Customer agrees that all decisions in connection with the implementation of such advice and recommendations will be the responsibility of, and made by, Customer. Dell EMC Services is not providing legal or regulatory advice.
- 7) Unless this SOW specifically requires otherwise, Dell EMC Services is not providing any third party hardware, software, documentation, tools, equipment, or other products, materials or services, including, without limitation, Dell EMC Select Products and Brokerage Products (collectively, "**Third Party Products**") to Customer. Customer is solely responsible for the negotiation of an applicable agreement with the applicable third party from whom Customer wishes to license or acquire Third Party Products, the terms of which, including without limitation, the license, warranty, indemnity, maintenance, and support terms, shall govern such license or acquisition. Dell EMC Services is not providing any warranty regarding, and is not liable for, any Third Party Products. Third Party Products are not supported or maintained by Dell EMC Services and Customer must contact the applicable third party manufacturer or supplier directly for support and maintenance services. Any configuration or modification made by Dell EMC Services to any Third Party Products provided by Customer or work product incorporating such items will be subject to the ownership and other rights agreed to by Customer with the applicable third party.
- 8) Dell EMC Services will not be responsible for non-performance due to software failure or software errors including any software failures or functionality limitations of Third Party Products.

- 9) To the extent Dell EMC Services' liability is not anyway excluded under the Agreement, Dell EMC Services will have no liability for loss or recovery of data, programs or loss of use of system(s) arising out of or in connection with the Services provided under this SOW.
- 10) Dell EMC Services may rely upon any standard operating procedures or practices of Customer and any direction, regulatory guidance, or other guidance provided by Customer.
- 11) Customer is responsible for the identification and interpretation of, and ensuring compliance with, any laws, statutes, rules, regulations, and standards applicable to it or its affiliates' business or operations.
- 12) No Dell EMC product is or can be licensed or purchased under this document. Any purchase or licensing of Dell EMC products is governed by the terms of a separate license or purchase agreement between the parties. Dell EMC Services' fees set forth herein do not include the cost of the purchase or licensing of any Dell EMC product.
- 13) The functional overview, if applicable, demonstrates basic functionality to familiarize Customer with the implemented in-scope products, demonstrating the product operations as installed in Customer's environment. Knowledge transfer, if applicable, demonstrates best practices to address Customer's skills and resource gaps to ensure successful implementation of Customer's new technologies. Functional overviews and knowledge transfers are not a substitute for formal Dell EMC product Customer education.
- 14) A non-deployable system is a Dell-branded system that has failed or is non-functioning at time of install ("NDS"). In the event any Dell-branded equipment covered by this SOW is deemed to be a NDS at the time of installation, Dell will notify Customer that the equipment is NDS, and if the equipment is under warranty, then Customer is responsible for requesting warranty service per the terms of the warranty associated with the NDS equipment identified.
- 15) This SOW and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Texas, to the exclusion of its rules on conflict of laws. Each party irrevocably agrees that the courts of Denton County, Texas shall have exclusive jurisdiction to settle such disputes.

7 SIGNATURES

Please review this SOW for accuracy. If the terms are acceptable, please sign and return to Dell EMC via email at MD_Deployment@dell.com. This SOW may be executed in any number of counterpart copies, each of which will be deemed an original, but which taken together will constitute a single instrument. The parties agree to cooperate in good faith to provide each other with a fully executed original of this SOW within five (5) calendar days of any counterpart execution. This SOW together with the Agreement (i) is the complete and exclusive agreement between Dell EMC Services and Customer with regard to its subject matter, and supersedes all prior oral or written proposals, agreements, representations and other communications between the parties with respect to the Services described in this SOW; and (ii) will apply in lieu of any different, conflicting or additional terms and conditions which may appear on any order or other document submitted by either party.

IN WITNESS WHEREOF, the parties hereto have caused this SOW to be executed by their duly authorized representatives as of the Effective Date.

Town of Flower Mound

Dell Marketing L.P.

Signature:

Signature:

Printed Name:

Printed Name:

Title:

Title:

Date:

Date:

Please note that for administrative purposes only, Services may not be scheduled or commenced until Dell EMC Services receives a purchase order ("PO") from Customer that references this SOW. Upon receipt of this fully executed SOW and Customer's PO, the SPOC will contact Customer to begin scheduling Services.

Appendix A: Change Request Form

The Change Request Form may be found at: www.dell.com/servicecontracts/RFC

Appendix B: Supported Sites

The Services will be provided for the following supported sites during the term of this SOW. Additional supported sites may be included as mutually agreed between the parties using the Change Management Process.

Name	Address	City, State	Zip Code	
Town of Flower Mound	2121 Cross Timbers Road	Flower Mound, TX	75028	

Appendix C: Definitions

Average Installation Time	The Average Installation Time is calculated based on the aggregate quantity of new Client Systems installed per Customer per quarter. Installation times, including quantities of peripherals, will be evaluated on a monthly basis by the Dell PMO.
Cancellation	<u>Site Cancellation</u>: A site cancellation occurs when Customer cancels the Services for the site after the schedule has been locked and Customer either does not set a new date or the new date is scheduled beyond thirty (30) days of the original locked deployment schedule (see "Reschedule"). Site Cancellation Fee Scenarios: For cancellations with six (6) or more business days' notice, and where the site has ten (10) or more users, Customer will be assessed an administrative fee equal to ten (10) percent of the scheduled deployment price for the site. For cancellations with five (5) or less business days' notice, or where the site has less than ten (10) users, Customer will be assessed the full price for the scheduled deployment at the time the schedule was originally locked. <u>User Cancellation</u>: A user cancellation occurs when Customer cancels the Services for the user after the schedule has been locked and Customer either does not set a new date or the new date is scheduled beyond thirty (30) days of the original locked deployment schedule. User Cancellation Fee Scenario: Customer will be assessed the full price of the scheduled deployment for each user within the contiguous delivery of Services. Any new scheduled date for a user that is outside the contiguous delivery of Services will be in accordance with the Change Management Process.
Change Order	A written and signed request by either party requesting change to the set of services or deadlines provided under this SOW. All Change Orders must be executed by both parties in accordance with the Change Management Process described in this SOW.
Clearances	<u>Secret</u>: Dell will provide on-site technical resources with a Secret clearance as defined in the Government-provided "DD Form 254". <u>Top Secret</u>: Dell will provide on-site technical resources with a Top Secret clearance as defined in the Government-provided "DD Form 254". <u>Top Secret-SCI</u> (Sensitive Compartmented Information): Dell will provide on-site technical resources with a Top Secret-SCI clearance as defined in the Government-provided "DD Form 254". NOTE: This level of warranty support is based on the systems being located in areas accessible by non-cleared Dell service personnel. In the event that the systems are relocated and reside in a secure area when onsite service is required, Dell will work with Customer to develop a suitable plan for support. Upon award of a Secret, Top Secret, or Top Secret-SCI contract, Dell's FSO (Facility Security Officer) must receive the Government-issued "CONTRACT SECURITY CLASSIFICATION SPECIFICATION" or most commonly called "DD Form 254" before service can begin. Dell's FSO will manage the "DD Form 254" for validation and processing.
Client Systems	Desktop: CPU and monitor; Laptop: which may include a docking station.
Legacy System	The computer system installed at Customer's site which is to be upgraded or de-installed, removed and replaced with a Dell computer system during a site installation

	event. Server or workstation class computer systems and external peripherals are not Legacy Systems.
Pricing Structure	<u>Blended Pricing</u> is based on the estimated units to be deployed per site per visit provided by Customer prior to the deployment. Variances in the estimated units to be deployed in excess of (+/-) five (5) percent of the actual units deployed per site per visit will be subject to Tiered Pricing. <u>Tiered Pricing</u> is based on actual units deployed per site per visit.
Reschedule	<u>Site Reschedule</u>: A site reschedule occurs when Customer reschedules the Services to be performed within thirty (30) days of the original locked deployment schedule (see "Cancellation"). <u>Site Reschedule Fee Scenarios</u>: For reschedules with six (6) or more business days' notice, and where the site has ten (10) or more users, Customer will be assessed an administrative fee equal to ten (10) percent of the scheduled deployment price for the site. For reschedules with five (5) or less business days' notice, or where the site has less than ten (10) users, Customer will be assessed the full price for the scheduled deployment at the time the schedule was originally locked. <u>User Reschedule</u>: A user reschedule occurs when Customer reschedules the Services to be performed within thirty (30) days of the original locked deployment schedule. <u>User Reschedule Fee Scenarios</u>: Providing Dell can perform Service within the contiguous delivery of Services, Customer will be assessed the full amount of the scheduled deployment for each user. Users rescheduled outside the contiguous delivery of Services will be in accordance with the Change Management Process.
Schedule Group	A group of deployment events that are scheduled to occur on a specific date at a specific time at a specific location.
Services	The complete set of services to be performed by Dell described in this Statement of Work "SOW."

Time & Materials Pricing Table

Time & Materials Concept	Disposition	Cost
Additional Days Warehousing	Per Unit	\$.28
Time & Materials Rates - (During Service Hours - Per Hour)	N/A	\$42.24
Time & Materials Rates - (Outside Service Hours - Per Hour)	N/A	\$65.12
Project Management Office (Extension Fee for Services Beyond Term - Per Week). Customer approval required via Change Management Process	N/A	\$4425.00

Appendix D: Major Metropolitan Areas

The Services will be provided for the following supported sites during the term of this SOW. Additional supported sites may be included as mutually agreed using the Change Management process as defined in section 6.

City	State	City	State	City	State
Birmingham	AL	Kansas City	KA	Rochester	NY
Montgomery	AL	Wichita	KS	Syracuse	NY
Fayetteville	AR	Erlanger	KY	Brecksville	OH
Little Rock	AR	Louisville	KY	Cincinnati	OH
Phoenix	AZ	Lake Charles	LA	Cleveland	OH
Tempe	AZ	Metairie	LA	Columbus	OH
Tucson	AZ	New Orleans	LA	Oklahoma City	OK
Bakersfield	CA	Shreveport	LA	Tulsa	OK
Fresno	CA	Sulphur	LA	Eugene	OR
Grover Beach	CA	Boston	MA	Portland	OR
Los Angeles	CA	Malden	MA	Camp Hill	PA
Sacramento	CA	Westboro	MA	Coraopolis	PA
San Diego	CA	Portland	ME	Harrisburg	PA
San Francisco	CA	Detroit	MI	Philadelphia	PA
San Jose	CA	Grand Rapids	MI	Pittsburgh	PA
San Luis Obispo	CA	Livonia	MI	Sharon Hill	PA
W Sacramento	CA	Arden Hills	MN	Charleston	SC
Denver	CO	Duluth	MN	Columbia	SC
Hartford	CT	Minneapolis/St. Paul	MN	No. Charleston	SC
Shelton	CT	Columbia	MO	Knoxville	TN
Washington	DC	Fenton	MO	Memphis	TN
Ft. Lauderdale	FL	Jefferson City	MO	Nashville	TN
Jacksonville	FL	Kansas City	MO	Austin	TX
Miami	FL	St. Louis	MO	Corpus Christi	TX
Orlando	FL	Jackson	MS	Dallas	TX
Pensacola	FL	Pearl	MS	El Paso	TX
Tallahassee	FL	Billings	MT	Houston	TX
Tampa	FL	Charlotte	NC	Lubbock	TX
Atlanta	GA	Durham	NC	San Antonio	TX
Forest Park	GA	Raleigh	NC	Salt Lake City	UT
Cedar Rapids	IA	Wilmington	NC	Herndon	VA
Des Moines	IA	Bismarck	ND	Richmond	VA
Boise	ID	Omaha	NE	Roanoke	VA
Chicago	IL	Newark	NJ	Seattle	WA
Elk Grove Village	IL	Albuquerque	NM	Spokane	WA
Peoria	IL	Las Vegas	NV	Tukwila	WA
Evansville	IN	Reno	NV	Madison	WI
Ft. Wayne	IN	Albany	NY	Charleston	WV
Indianapolis	IN	New York	NY	Nitro	WV

Appendix E: Data Migration Survey

Please fill out this form to help facilitate proper data migration.

General Information	
Username:	
Old model:	
New Model:	
Department:	
New Computer name:	

Join Domain ☐ yes ☐ no	
Domain administrator credentials must be provided if technician is performing join.	
Domain Name:	

Standard profile migration includes all documents saved to user profile under *active drive/users/{username}*.

Size of User Folder in GB	
---------------------------	--

Custom Migration – includes installation of below applications use separate sheet if more application loads are required			
Application	Media (cd/usb/internet)	Size of App in GB	Special Instructions

Assumes DNS records are setup to auto-discover Exchange/O365

Outlook setup ☐ yes ☐ no		
username		
password		
	Exchange ☐	Office 365 ☐
PST location		

Peripherals: please supply list local peripherals to be installed (monitors, printers, scanners, etc)		
Peripheral	Quantity	Special Drivers required
		☐ yes ☐ no
		☐ yes ☐ no
		☐ yes ☐ no
		☐ yes ☐ no
		☐ yes ☐ no
		☐ yes ☐ no



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: December 16, 2019

FROM: Matthew Woods, Director of Environmental Services

ITEM: Consider approval of a Professional Services Agreement for monthly gas well pad site air monitoring by Modern Geosciences, LLC, in the amount of \$120,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Town began conducting air monitoring in 2010 on a quarterly basis to assess the ambient air conditions adjacent to gas well operations and other areas in the Town. In 2011, the Town Council directed staff to implement monthly air monitoring at designated sampling points in the Town which has continued through 2018. The reports from the 2010 through 2018 air sampling and pad site monitoring activities have been provided to the Town and are posted on the Town's webpage at <https://www.flower-mound.com/384/Air-Quality>.

Beginning with the 2016-2017 program proposal, a more detailed gas well pad site monitoring approach was initiated to more effectively assess the conditions on the pad site and identify potential air quality-related issues. For the proposed 2020 program, Modern Geosciences will continue to conduct upwind and downwind monitoring consistent with EPA methodology, near-equipment inspections to evaluate the operational conditions on the pad sites, associated subgrade piping monitoring, and conduct an assessment of the pad site conditions associated with gas well plugging and abandonment processes.

Modern Geosciences has provided an acceptable scope of services for the air sampling and pad site monitoring program, and Modern Geosciences has the necessary experience to perform the requested sampling and analysis. The cost for the monthly monitoring program for 2020 is estimated at \$120,000 which includes contingency costs in the event an additional monitoring event is needed. The costs associated with the pad site monitoring program are covered by gas well pad site monitoring and inspection fees which are assessed to the pad site operators. The Town Council approved the amended gas well pad site inspection fees in September 2010 to cover certain expenses associated with the gas well inspection and monitoring program which includes the air monitoring evaluations. The current Professional Services Agreement for the Town's monitoring and inspection program expires in December 2019.

FISCAL IMPACT: \$120,000.00

Proposed Expenditure:	Account Number(s):
\$ 90,000.00	100-695-96050-5110 (FY 19-20)
\$ 30,000.00	100-695-96050-5110 (FY 20-21)

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

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
MODERN GEOSCIENCES, LLC.**

This contract is entered into on this _____ day of _____, 20____, 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 Modern Geosciences, LLC. ("hereinafter referred to as "CONSULTANT") whose address is 5100 Thompson Terrace, Colleyville, Texas 76034.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to conducting monthly gas well pad site air monitoring inspections and post-production inspections in 2020, and provide a final report for each monthly monitoring event to the TOWN; and

WHEREAS, CONSULTANT is an engineering and professional geosciences firm qualified to provide such services and is willing to undertake the performance of such services for the TOWN in exchange for fees hereinafter specified;

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.
Scope of Services

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

III.
Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred and Twenty Thousand and no/100 Dollars (\$120,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

Each month CONSULTANT will submit to TOWN an invoice for actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month. Each invoice shall be itemized to show the amount of work performed during 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 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. 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.

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

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

IV.
Revisions of the Scope of Services

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

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

V.
Term

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

VI.
Contract Termination Provision

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

VII.
Ownership of Documents

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

VIII. Insurance

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

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

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

The following policies and coverage shall be required:

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

CONSULTANT under this Contract to the extent covered by policy form CG0001 or equivalent, 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.

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.

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 equivalent 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, or nonrenewal, a notice thereof shall be given to TOWN by certified mail to:

Matthew Woods, Director of Environmental Services
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6348 Telephone
972-874-6473 Facsimile

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 reduction in coverage or in limits 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 (with the exception of professional liability coverage) shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX.

Right to Inspect Records

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

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

X.

Successors and Assigns

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

XI.

CONSULTANT's Liability

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

XII. Indemnification

CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, 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, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII. Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this

Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondent superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV. Default

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

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

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

XV. Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and XVII 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:

Matthew Woods, Director of Environmental Services
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6348 Telephone
972-874- 6473 Facsimile

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:

Kenneth S. Tramm, PhD, PG, CHMM
Modern Geosciences, LLC.
5100 Thompson Terrace
Colleyville, TX 76034
682-223-1322 Telephone

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

- (a) Cancel, terminate, or suspend the Contract in whole or in part; or

(b) Declare CONSULTANT ineligible for future TOWN contracts until it is determined to be in compliance.

XXII
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

[The remainder of this page is left blank intentionally]

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

**THE TOWN OF FLOWER MOUND,
TEXAS**

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

Date Signed: _____

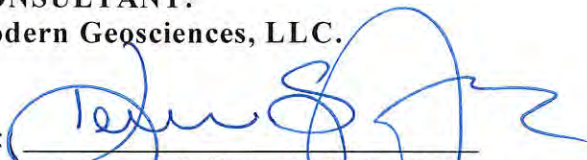
Attest:

Town Secretary

Approved:

Town Attorney

CONSULTANT:
Modern Geosciences, LLC.

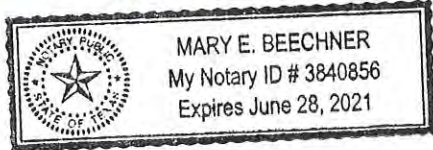
By: 
Name: Kenneth S. Tramm, PhD, PG
Title: General Manager

Date Signed: 11-25-19

State of Texas §
 §
County of Tarrant §

This instrument was acknowledged before me on the 25th day of November, 20 19, by Kenneth S. Tramm, PhD, PG, in his capacity as Gen. Mgr. of Modern Geosciences, LLC., 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 Modern Geosciences, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 25th DAY OF Nov., 20 19.




Notary Public, State of Texas

My Commission Expires:

6-28-21



DATE November 22, 2019

PROPOSAL P19261

ATTN **Mr. Matthew Woods**
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75208

SUBJECT **Padsite Inspection and Air Monitoring Program - 2020**
Flower Mound, Texas

Dear Mr. Woods:

Modern Geosciences, LLC (Modern) is pleased to submit this this proposal to the Town of Flower Mound (Town) to perform Monthly Padsite Inspection and Air Monitoring in 2020.

The following sections provide our understanding of the proposed project, scope of work, fee and schedule. Modern's consulting services will be conducted in accordance with the scope of services detailed below and Professional Services Agreement (PSA) as provided by the Town.

BACKGROUND AND PROJECT UNDERSTANDING

Modern understands the Town would like to continue detailed padsite inspection and air monitoring in 2020. Prior sampling and monitoring have been completed by the Town since 2010 with individual padsite inspection begun in 2013. Since padsite inspections have been implemented, hundreds of leaks have been identified and addressed by operators, which in turn minimize impact to off-site properties. Dr. Kenneth Tramm with Modern has been the Program Manager since 2010 for the Town and will continue in this capacity.

Our padsite inspection and air monitoring approach includes two distinct steps that will occur simultaneously and produce padsite-specific data to aid in the identification of concerns before significant releases or emissions become a greater concern off the padsite. Modern has worked with the Town to tailor our approach and expand our inspection parameters each year monitoring has been performed. For 2020, expanded elements include additional Post-Production Inspection efforts to address possible legacy concerns that may impact future redevelopment of prior padsites after well plugging and equipment decommissioning.



Additional detail on the Fenceline Monitoring and Near-Equipment Inspection is presented below.

Fenceline Monitoring

Modern will continue to perform up and downwind air sampling for each padsite. This will utilize our Gas Chromatograph/Mass Spectrometer (GC/MS) to analyze samples collected upwind and downwind of each padsite for volatile organic compounds (VOCs). Additionally, Modern will deploy high-resolution particulate matter (PM) monitors to evaluate up and downwind levels of PM_{2.5} (fine particles) and PM₁₀ (coarse particles) in addition to a high-resolution hydrogen sulfide meter (3 ppbv detection limit).

GC/MS System

The GC/MS will allow collection of discrete samples analyzed using a modified EPA Method TO-15 or TO-17 for broad range of volatile organic compounds (VOCs). This is consistent with the ambient monitoring approach described below, but will be processed within 12 hours of collection to allow us the ability to respond to concerns in an expedited manner. This approach will yield high resolution data in the low parts per billion.

Particulate Matter

Modern will collect PM data within 60 second intervals to allow multiple observations both up and downwind of padsites. The samples will be analyzed using light-scattering methods to allow differentiation of specific mass sizes. This allows estimation of both coarse and fine particle contribution to ambient air from multiple emission sources that may be present at a padsite (compressor exhaust, diesel engine exhaust, elevated SVOCs). Temperature and humidity will be recorded to allow adjustment to observations as appropriate.

Discrete Meters

Handheld meters (further detailed below) monitoring hydrogen sulfide, VOCs, methane, and radiation will also be utilized at the fenceline locations. Additionally, Modern will record meteorological data such as wind speed, direction, and barometric pressure.

Near-Equipment Inspection

During the monitoring event, Modern will perform an Audio, Visual, and Olfactory (AVO) field inspection as well as record monitoring results with the use of optical gas imaging systems (e.g., FLIR cameras) and handheld meters. The goal of near-equipment inspection activities is to visually evaluate operational conditions of well heads, well connections, flanges, valves, pumps, well head fluids (i.e., corrosion inhibitors), production piping, visible system pressure gauges, separator systems, above-ground storage tanks (i.e., thief hatch, ventilation), fluid disposal transfer points, compressor system connections, chemical storage areas, and identify obvious signs of staining, spills, or releases.

Modern uses a FLIR GF320 Optical Gas Imaging (OGI) system to determine if a potential leak is indicated. When emissions are identified, handheld equipment is used to quantify the emissions for leak determination at the point of release. Our instrumentation includes optical methane sensors (ppmv resolution), radiological survey



meters (uR/hr resolution), photo-ionization detectors (ppbv resolution), and hydrogen sulfide monitors (ppbv resolution).

Our proposed leak definitions are set at either positive visual observation with the OGI equipment, or if accessible, direct measurement for quantification. An example of typical leak definition thresholds is outlined below.

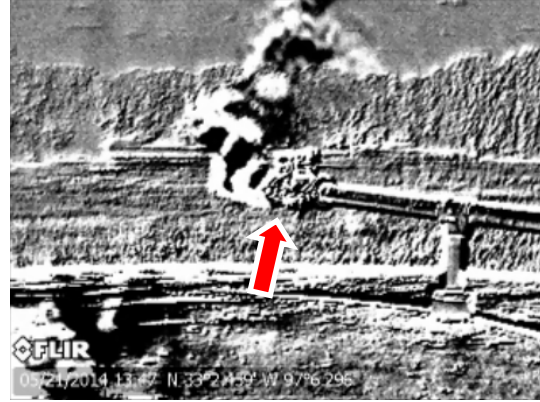
Measured Compound	On-Site Criteria	Fenceline Criteria
Methane	10,000 ppmv ¹	500 ppmv ²
Hydrogen Sulfide (H ₂ S)	5 ppmv ³	0.08 ppmv ⁴
Total VOCs (tVOCs)	500 ppmv ^{2,5}	5 ppmv ⁶
Radiation (NORM)	50 µR/hr ⁷	20 µR/hr ⁷
Individual VOCs, Ozone, others	OSHA, NIOSH, ACGIH levels	TCEQ Short-term AMCV or ESL, NAAQS
Particulates	PM _{2.5} - 5,000 ug/m ³ ⁸ PM ₁₀ - 15,000 ug/m ³	PM _{2.5} - 35 ug/m ³ , ⁹ PM ₁₀ - 150 ug/m ³ , ⁹

1. Utilizes the Interstate Natural Gas Association of America (INGAA) recommended leak definition within their December 4, 2015 response to EPA Docket No. EPA-HQ-OAR-2010-0505 – “Oil and Natural Gas Sector: Emission Standards for New and Modified Sources,” dated September 18, 2015 (80 FR 56593). Also represents 20% of the Lower Explosive Limit. A lower leak definition and additional inspection and reporting may be required at facilities subject to 40 CFR §60 Subpart OOOOa
2. NSPS; 40 CFR Part 40 Subpart OOOOa; Represent half of the American Conference of Governmental Industrial Hygienists (ACGIH) 8-hour threshold limit value (TLV) of 1,000 ppmv (0.1% by volume) set for potential cardiac sensitization and central nervous system depression.
3. 50% NIOSH 10-minute IDLH ceiling (29 CFR 1910.1000 Table Z-2)
4. 30-minute criteria set at 30 TAC §112.31
5. EPA 20102; 40 CFR Part 63 (EPA-HQ-OAR-2010-0505; FRL-RIN 2060-AP76)
6. Used as an indicator elevated VOCs may approach or exceed ambient air quality criteria
7. 16 TAC §4; Environmental Protection, Subchapter F, Oil and Gas NORM; EPA average background criteria established under Document No. 402-R-08-005; April 2008. Reported background ranged from 10 µR/hr to 85 µR/hr.
8. Utilizes OSHA Total and Respirable Limits
9. Utilizes the 24-hour Average Criteria set under NAAQS

The above references represent non-ambient conditions that would typically indicate a significant contribution of COC emissions from production equipment. If “new, modified, or reconstructed” equipment as defined within NSPS OOOOa is present on a padsite, the methane (as a part of the VOC definition) leak criteria will be adjusted to match NSPS requirements of 500 ppmv.



Near-Equipment Inspection efforts during a padsite inspection event using an Optical Gas Imaging (OGI) Camera to record a leak.



Example image for a leaking pressure control valve from a tank battery system. The leak is video recorded for the operator to repair.



Example of infrared methane monitoring after a leak has been identified with the OGI equipment.



Example of tagged equipment in need of repair or replacement. Modern can tag each accessible component noted above monitoring goals.

SCOPE OF SERVICES

TASK 1: PADSITE INSPECTION AND FENCELINE AIR MONITORING

Modern will coordinate with Town staff and padsite representatives to obtain access to each of the padsites. Flame Resistant clothing will be worn during access to areas where flammable environments are anticipated. It is anticipated that the services will be performed under Level D safety requirements and no other protective gear is required.



Modern will perform upwind and downwind monitoring by collecting discrete samples for VOC analysis as well as particulate matter evaluation. During the fenceline monitoring events, Modern will also complete Near-Equipment Inspection activities as detailed earlier.

Inspection Schedule

Modern will coordinate with Town staff to inspect each of the padsites every six months (twice annually). We understand Town staff will continue to verify the identified leaks are addressed by the operator, but have anticipated periodic assistance and re-inspections as directed by Town staff. Modern will coordinate with Town staff on the final schedule for inspections and monitoring.

TASK 3: MONTHLY REPORTING

The preliminary results of our assessment will be verbally reported during the course of the project. Modern's scope of services for this assessment is based on the production of brief reports issued after each sampling and inspection period. Streamlined reports are proposed and will padsite specific.

The reports will include:

- Results of Near-Equipment inspections and notation of changing conditions identified;
- Results of Fenceline Monitoring and notation of changing conditions identified;
- Subgrade piping inspection results; and
- Findings and Conclusions

The ambient air sampling and monitoring results will be compared to the current Texas Commission on Environmental Quality (TCEQ) Short Term Air Monitoring Comparison Values (AMCVs) and if warranted, additional related risk criteria developed by the TCEQ Toxicology Division and/or other appropriate regulatory entities.

TASK 3: POST-PRODUCTION INSPECTION REPORTING

As padsites are decommissioned and future development contemplated, it is important that final site conditions be confirmed since there is a possibility for subgrade leaks, elevated radiation from NORM-containing scale, and/or other non-compliance items to be identified. Modern has developed a streamlined process and reporting format to help document if final site conditions suggest a concern for future development. To ensure the final location of all major infrastructure is captured, Modern will bring GPS equipment with sub-meter capability to verify all separators, tanks systems, wells, and other equipment locations.

A contingency cost for the Interim Post-Production Inspection (PPI) (equipment still present) and/or Final PPI (all equipment and planned grading completed and RRC plugging documents submitted). If elevated radiation is noted during the interim effort, this will be communicated to the operator to confirm if removal is still planned



or confirmatory sampling pending. If the inspection event follows the completion of all planned padsite activities by the operator, and evidence of a release or elevated radiation (2x background) remains, Modern's inspection will include soil sampling and laboratory analysis for determination of regulatory compliance. A contingency budget was added for these purposes. Additionally, a Final PPI will include all available close out documents as submitted to the City and RRC.

ESTIMATED BUDGET

Modern will perform the above described scope of services on a unit rate cost (per below) with an annual not-to-exceed budget of **\$120,000**. Additional costs might be incurred if the assumptions presented earlier are not correct or further monitoring assistance is needed outside the above scope. In the event that additional costs and services are required, Modern will notify the town immediately and prepare an estimate of the additional cost. Modern will not exceed the authorized amount until written approval from town has been received. The estimated project budget is summarized in the table below.

PROJECT BUDGET	
TASK 1-2: INSPECTION/REPORTING	
Consulting Labor and Expenses (\$1,400/well x 37 wells x 2 events)	\$103,600
Subtotal:	\$103,600
TASK 3: POST-PRODUCTION INSPECTION	
Interim Field Inspection/Report (\$1,500/ea x 3 estimated)	\$ 4,500
Final Field Inspection/Report (\$2,300/ea x 3 estimated)	\$ 6,900
<i>Program Contingency Costs (if sampling required)</i>	\$ 5,000
Subtotal:	\$ 16,400
ANNUAL TOTAL BUDGET:	\$120,000

PROJECT SCHEDULE

Modern is ready to begin project activities within 10 days of authorization. Each monthly sampling event will include coordination with Town staff and padsite operators (as authorized by Town) so all active padsites are evaluated twice annually. Post-production inspections will be coordinated with Town staff when each location is ready.

ASSUMPTIONS AND LIMITATIONS

- Our client will coordinate all access and site personnel/equipment requirements to allow the above scope of services to be executed;



- Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of our profession practicing in the same locality, under similar conditions and at the time the services are performed;
- Our findings and conclusions will be based on the information available for review. This will only include a limited number of observations and data points. It is likely that conditions will vary between or beyond the specific points evaluated. Modern makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided. The final report will be submitted electronically. Hard copies can be provided for an additional fee;
- The samples collected as part of these services will represent conditions at the time of sampling only as future conditions can vary based on changing conditions, such as: work schedules of oil and gas exploration, production, and transmission, temperature, weather factors and other industrial activities within the Town; and
- This proposal is valid for a period of 60 days from the date of issuance.

AUTHORIZATION

If this proposal meets your needs please submit provide us written authorization and the PSA as required by the Town. If there is a need for any change in the scope of services described in this proposal, please contact us immediately. Any requested changes may require revision of the proposed fee and schedule. All terms and conditions indicated in this proposal will be considered by both parties to be in effect from the effective date of the executed contract through completion of the project.



CLOSING

We thank you for the opportunity to provide this proposal for environmental services and look forward to working with you on this project. If you have any comments or questions concerning this proposal please contact us at your earliest convenience.

Respectfully submitted,



Kenneth S. Tramm, PhD, PG, CHMM
PROGRAM MANAGER

MODERN GEOSCIENCES

TEXAS REGISTERED GEOSCIENCE FIRM 50411

TEXAS REGISTERED ENGINEERING FIRM F-16201



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: December 16, 2019

FROM: Sabrina Zadow, Purchasing Manager

ITEM: Consider approval of the purchase of five (5) new Dodge Durango 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 \$180,879.00.

BACKGROUND INFORMATION: The Police Services Department is requesting the purchase of five (5) new Dodge Durango Police Pursuit Vehicles in the amount of \$152,880.00 through BuyBoard Cooperative Contract No 521-16 plus upfit equipment with installation in the amount of \$27,999.00 through Tarrant County Contract 2019-181 from Defender Supply. Four (4) of these units are part of the approved Fiscal Year 2019-2020 Vehicle Equipment Replacement Fund (VERF) budget and the remaining unit is a new addition to the Town's Fleet Inventory and was approved for purchase with Crime District Funds.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$180,879.00

Proposed Expenditure:	Account Number(s):
\$144,656.00	565-450-84500-6130 – VERF
\$ 36,223.00	318-560-43500-6130 – Crime District Fund

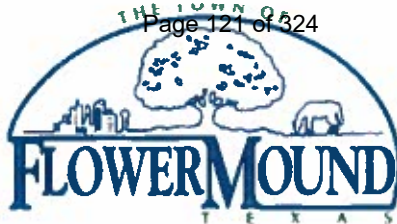
Finance Review by: Debra Wallace, Deputy Town Manager /CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Fleet Manager's Bid Award Recommendation - Quote and Specifications for Vehicles
2. Fleet Manager's Bid Award Recommendation - Quote and Specifications for Upfit Equipment

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



Bid Award Recommendation

**Co-op Contract:
BUYBOARD #521-16**

Date: 11-06-2019

Description: New Dodge Durango Pursuit AWD

Qty required: Five

Replaces: (4 units)

Unit #4350-144: 2010 Ford Fusion
Unit #4350-161: 2011 Ford Fusion
Unit #4350-174: 2012 Ford Fusion
Unit #4350-10: 2015 Ford Taurus

New Vehicle: (1 unit).

Bidder: Grapevine Dodge Chrysler Jeep, Grapevine, Tx. Dennis Thomas

Item #1: bid: New Dodge Durango Pursuit AWD (5 units)

*Per TOFM specifications/Quote

Total for 5 vehicles: \$152,880.00

FOB Grapevine Dodge

It is Fleet Services recommendation to award the bid to Grapevine Dodge and Jeep as the lowest responsible bidder in the amount of \$ 152,880.00.

H. Deats Stewart
Fleet Services Manager

11-06-2019
Date

Date: 10/22/2019

O. TOTAL PURCHASE PRICE INCLUDING BUYBOARD FEE

Town of Flower Mound

PURCHASING SPECIFICATIONS

SPECIFICATION NO.:

Revised: October 11, 2019

ITEM: (5) Five new vehicles mid-sized Police pkg. SUV, 4-door, 2 wheel drive; Four replacement vehicles (TOFM vehicle replacement program) One new vehicle (Account#100-340-43500-6130)

FUNCTION: Criminal investigation and Task Force Officer vehicle. Public Safety unit with rear cargo area for transporting various types of equipment.

DESCRIPTION: (The following should be interpreted as examples only, for the type of vehicle requested. It is not the intent of the Town of Flower Mound to exclude any vehicle which meets or exceeds the required specifications in this bid.)

Example:

Dodge Durango SSV (police pursuit rated)

NOTE:

Bidder **MUST** indicate: 'Yes' unit bid meets or exceeds the minimum required specification, or 'No' unit bid does not meet or exceed the minimum required specification listed. Failure to do so could result in disqualification of bid.

ATTENTION:

It is the intent of the Town of Flower Mound to satisfy the requirements set forth by the EPA (Environmental Protection Agency) whenever purchasing new vehicles and/or equipment.

Bidder / Flower Mound

Y/N

Y/N

☒

Y

1. Unit bid is EPA LEV (Certified Low Emissions Vehicle).

☐

Y

2. Unit bid is an E-85 flex-fuel vehicle. (FFV not required for this application.)

DRIVE TRAIN

Bidder / Flower Mound

Y/N Y/N

H Y__ 1. Engine: Gasoline, minimum 3.5L or equal
 State engine size bid: 3.6L
 Flex-Fuel: Yes Yes No No

✓ Y__ 2. Automatic Transmission

✓ Y__ 3. Fuel tank: min. 20 gal.

✓ Y__ 4. Power Anti-lock Braking System, 4-wheel Disc

Y YH 5. Rear wheel drive All wheel Drive

TIRES AND WHEELS**Bidder / Flower Mound**

Y/N Y/N

✓ Y__ 1. Tires: Radial highway, all season

✓ Y__ 2. Spare tire/ wheel with jack Temp use full size

Y Y__ 3. Ice/Snow cables (1 set, for 2 tires) per the tire size bid

CAB & EQUIPMENT**Bidder / Flower Mound**

Y/N Y/N

Y Y__ 1. Power Steering

Y Y__ 2. Factory window tinted glass – Front Driver/Passenger (rear factory darkness)

Y Y__ 3. Intermittent wipers

Y Y__ 4. Exterior Paint: **Dark color (Black, Granite, Blue Shade Pearl, etc.)**

Y Y__ 5. Seats: Cloth Front lowback (bucket) seats, rear cloth

Y Y__ 6. Rear fold down seat. (preferred 60/40 split)

Y Y__ 7. Air Conditioning

- Y H 8. Radio: Standard AM / FM w/CD player *No CD*
- Y 9. Rear Window Defroster
- Y 10. Interior cargo area.
Preferred width: min. 74". *Rear Shoulder Section*
State width of unit interior bid: _____
- Preferred cargo volume: min. 47 cu.ft.
State cargo volume of unit bid: 47.7 cu ft.
- Y 11. Rear window washer and wiper
- Y 12. Power windows
- Y 13. Power door locks
- Y 14. Power Driver/Passenger Mirrors
- Y 15. Front and Rear: Full color matching carpet with floormats
- Y 16. Interior: Interior corresponding to outside color
- Y 17. Keyless entry
- Y 18. six (2) sets of *4 Sets* keys (Must be included at time of vehicle delivery)
- Y 19. Rear lift hatch
- Y 20. Tow Hitch / Package
- Y 21. Dome light: red/white
- Y 22. Bluetooth

OTHER EQUIPMENT**Bidder / Flower Mound**

Y/N Y/N

- Y 1. Pursuit Package (Law Enforcement Emergency Vehicle Package)
to include but not limited to: engine and transmission cooling
package, increased electrical power and heavy duty suspension.)

Y 2. Vehicle State Inspection when delivered (2 year certificate)

TOTAL BID PRICE

\$ _____

(To include all listed equipment and installation)

Warranty: Standard Manufacturers warranty. Please specify.

3yr / 36,000 miles
5yr / 100,000 miles Limited Powertrain

COMMENTS

Use this page to explain any items that you marked no on above:

All wheel drive for pursuits only
No CD player



Bid Award Recommendation
Co-op Contract:
Tarrant County Contract #2019-181

Date: 11-06-2019

Description: **Equipment Upfit** for New Dodge Durango PPV

Qty: (4) replacement unit upfits complete
 (1) new unit upfit complete

Replacement units:

Unit #4350-144: 2010 Ford Fusion
 Unit #4350-161: 2011 Ford Fusion
 Unit #4350-174: 2012 Ford Fusion
 Unit #4300-10: 2015 Ford Taurus
 New units: (1) unit

Attention: This is for the upfit equipment and install only, performed at Defender Supply.

Bidder: Holiday Ford and Holiday Chevrolet: DBA: (Johnson Grayson Automotive Inc.) DEFENDER SUPPLY

Item #1: bid: Equipment/Install for (4) four replacement units:
 (4) New Dodge Durango PPV

Total 4 unit installs: \$22,352.00

bid: Equipment/Install for (1) new unit:
 (1) New Dodge Durango PPV

Total 1 unit install: \$5,647.00

***Per TOFM specifications/Quote for equipment/install only**

Total for Equipment/Installs only:
(Does not include New Durango quotes.) \$27,999.00

It is Fleet Services recommendation to award the bid to **Holiday Ford and Holiday Chevrolet (Defender Supply)** as the lowest responsible bidder in the amount of **\$ 27,999.00**.

H. Deats Stewart
 Fleet Services Manager

11-06-2019
 Date



DEFENDER SUPPLY

Date	10/12/2018
Estimate By	Mike Hewitt mike@defendersupply.com (903) 564-5641



Bill To
Town of Flower Mound 2121 Crosstimbers Rd Flower Mound, TX 75028

Customer Contact	
Customer Phone	972-874-6037 AP
Customer E-mail	accountspayable@fl...
Estimate #	23419

Description	Location	Qty.	Cost	Vehicle and Em...
** Pricing Per Tarrant County Contract Number to 2019-181 **				
Dodge Durango-CID				
Window Tint - All Windows - SUV		1	268.00	268.00
5% Limo on every window and an AS1 "eyebrow" strip at 5%				
ISFW455 Inner Edge, Durango, 5 Lamp, Duo Red/Blue		1	779.00	779.00
Whelen ION Red w/Smoke Lens	Behind Front Grill	1	97.00	97.00
Whelen Smoke ION, Blue	Behind Front Grill	1	97.00	97.00
Whelen 360 Degree LED Side Emitter Light Head - Red/Blue Split	Tail Lamp	2	71.00	142.00
Whelen 360 Degree LED Side Emitter Light Head - Red/Blue Split	Fog Light Area	2	71.00	142.00
DUO LINEAR ION RED/BLU SMK BLK	Rear Qtr Glass-Side Facing	2	106.00	212.00
Whelen LED Flush Mount Compartment Light in Red & White	Cargo Area	1	45.00	45.00
Whelen HHS3200 Hand Held Siren/Light Controller		1	341.00	341.00
Whelen 100 Watt All Weather Heavy Duty Composite Siren Speaker	Behind Grill	1	171.00	171.00
Whelen Behind the Grill Siren Speaker Bracket - Universal Swivel Bail Type Mounting Bracket		1	23.00	23.00
RLN6434 Motorola Radio Charger for APX6000		1	51.00	51.00
CARGO BOX - DSK- Drawer, Sliding with Key Lock - BSK- Base Sliding with Key Lock		1	839.00	839.00
Shipping of Above Emergency Parts for Upfit		1	52.00	52.00
Misc. Shop Supplies		1	66.00	66.00
Defender Supply Wiring Harness		1	129.00	129.00
ST Blade Split Bus Fuse Block		1	44.00	44.00

Vehicle and Emergency Equipment Total

Quantity Ordered

Total Vehicle Order Cost

Page 1

SIGNATURE

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

A) replacement units

Date	10/12/2018
Estimate By	Mike Hewitt mike@defendersupply.com (903) 564-5641



Town of Flower Mound
2121 Crosstimbers Rd
Flower Mound, TX 75028

23419

Description	Location	Qty.	Cost	Vehicle and Em...
Installation of Above Equipment and transfer of Gun Rack from another vehicle to trunk		1	2,090.00	2,090.00

\$5,588.00

(4) Four

\$22,352⁰⁰

SIGNATURE

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.



DEFENDER SUPPLY

Date	10/15/2019
Estimate By	Mike Hewitt mike@defendersupply.com (903) 564-5641



Bill To
Town of Flower Mound 2121 Crosstimbers Rd Flower Mound, TX 75028

Customer Contact	
Customer Phone	972-874-6037 AP
Customer E-mail	accountspayable@fl...
Estimate #	26583

Description	Location	Qty.	Cost	Vehicle and Em...
** Pricing Per Tarrant County Contract Number to 2019-181 **				
TFO Durango				
Window Tint - All Windows - SUV		1	268.00	268.00
5% Limo on every window and an AS1 "eyebrow" strip at 5%				
ISFW44Z Inner Edge, Durango, 10 Lamp Duo RW/BW	Front Visor	1	931.00	931.00
Whelen Inner Edge Rear RST, Durango, Red/Blue	Rear Upper	1	677.00	677.00
Whelen ION Red w/Smoke Lens	Behind Front Grill	1	97.00	97.00
Whelen Smoke ION, Blue	Behind Front Grill	1	97.00	97.00
Whelen 360 Degree LED Side Emitter Light Head - Red/Blue Split	Tail Lamp	2	71.00	142.00
Whelen 360 Degree LED Side Emitter Light Head - Red/Blue Split	Fog Light Area	2	71.00	142.00
Whelen ION™ Series LED, Blue with Universal Clip Mounts	Rear Qtr Glass-Side Facing	2	89.00	178.00
Whelen ION™ Series LED, Red with Universal Clip Mounts	Rear Qtr Glass-Side Facing	2	89.00	178.00
Whelen LED Flush Mount Compartment Light in Red & White	Cargo Area	2	45.00	90.00
Whelen HHS3200 Hand Held Siren/Light Controller		1	341.00	341.00
Whelen 100 Watt All Weather Heavy Duty Composite Siren Speaker	Behind Grill	1	171.00	171.00
Whelen Behind the Grill Siren Speaker Bracket - Universal Swivel Bail Type Mounting Bracket		1	23.00	23.00
Rigid Insert MOLLE Panel 15 25x25in w/ LE SC-6 Locking Rifle Rack		1	501.00	501.00
Shipping of Above Emergency Parts for Upfit		1	52.00	52.00
Misc. Shop Supplies		1	66.00	66.00
Defender Supply Wiring Harness		1	129.00	129.00
ST Blade Split Bus Fuse Block		1	44.00	44.00

Vehicle and Emergency Equipment Total

Quantity Ordered

Total Vehicle Order Cost

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

Page 1

SIGNATURE

1) new unit

Date	10/15/2019
Estimate By	Mike Hewitt mike@defendersupply.com (903) 564-5641



Bill To
Town of Flower Mound 2121 Crosstimbers Rd Flower Mound, TX 75028

Customer Contact	
Customer Phone	972-874-6037 AP
Customer E-mail	accountspayable@f...
Estimate #	26583

Description	Location	Qty.	Cost	Vehicle and Em...
Installation of Above Equipment		1	1,520.00	1,520.00

Final sale amount may be subject to state and local sales tax. PLEASE NOTE: Once this estimate has been approved, either by signature on this form, written approval referencing the estimate number or the issuance of purchase order, any changes or cancellations of parts made by the customer are subject to a 25% restocking fee. Any additional customer-requested parts/services will be added to the total amount of the sale.

Vehicle and Emergency Equipment Total

\$5,647.00

Quantity Ordered

(1) one

Total Vehicle Order Cost

\$5647.00

SIGNATURE

Town of Flower Mound

PURCHASING SPECIFICATIONS**SPECIFICATION NO.:**Revised: October 11, 2019**ITEM: Equipment for (1) one mid-sized Police pkg. SUV, 4-door, 2 wheel drive****(TFO Vehicle Account #100-640-43500-6130)****NOTE:**

Bidder MUST indicate: 'Yes' unit bid meets or exceeds the minimum required specification, or 'No' unit bid does not meet or exceed the minimum required specification listed. Failure to do so could result in disqualification of bid.

EQUIPMENT OPTIONS:

Manufacturer brands and model numbers listed are to be interpreted as 'preferred'. Any equivalent bid must be an exact replacement for preferred Mfg. brand and model number.

*The following items will be included as Options. The listed Mfg. brand or a manufacture equivalent will be required. If an equivalent is named it must be approved by the Town of Flower Mound Chief of Police or his designee.

Equipment:

<u>Bidder</u>	<u>Qty</u>	<u>Item</u>	<u>Description</u>	<u>Cost</u>
Y / N	1	Whelen HHS-3200	Whelen handheld light and siren controller	
Y / N	1	SA315P	Whelen 100W siren/speaker	
Y / N	1	Whelen Inner Edge Duo ISFL44Z	Driver and Passenger side (Red/white-Blue/white)	
Y / N	1	Whelen ION - red XONR	Whelen ION red smoked lens - mounted behind grill	
Y / N	1	Whelen ION - blue XONB	Whelen ION blue smoked lens - mounted behind grill	

Y / N	2	Whelen Vertex split – red/blue XTX609J	Whelen Vertex Omni directional lighthouse <i>smoked</i> lens red/blue – foglamp area
Y / N	2	Whelen Vertex split – Red/blue VTX3609J	Whelen Vertex split – Red/Blue – taillamps
Y / N	2	Whelen ION - red IONR	Whelen ION red - mounted in rear quarter glass.
Y / N	2	Whelen ION - blue IONB	Whelen ION blue - mounted in rear quarter glass.
Y / N	4	WEC-IONBKT5	Whelen universal mount for Ion lighthouses.
Y / N	1	Whelen ULF44 flasher	Whelen LED taillamp flasher
Y / N	1	Whelen Inner Edge RST IS448	8-lamp RST mounted rear glass -red/blue
Y / N	2	LED Compartment light 3SRCCDCR	3in, round flush mount red/ white compartment light- cargo area
Y / N	1	Rigid MOLLE Panel – LE SC-6 Locking Rifle Rack 15.25x25in	GreyMan Tactical vehicle panel

Total price for above “lighting/ equipment” items: \$ _____

Total installation charges “lighting/ equipment” items: \$ _____

TOTAL Cost of Installation and Materials \$ _____

TOTAL BID PRICE \$ _____

(To include all listed equipment and installation)

Warranty: Standard Manufacturers warranty. Please specify.

COMMENTS

Use this page to explain any items that you marked no on above:



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: December 16, 2019

FROM: Sabrina Zadow, Purchasing Manager

ITEM: Consider approval of the purchase of two (2) 2020 Ford F150 Extended Cab Short Bed Pickup Trucks with options per Town of Flower Mound Specifications and Quote from Sam Pack's Five Star Ford, in the amount of \$56,918.00

BACKGROUND INFORMATION: The Capital Projects and Engineering Services Departments are requesting the purchase of two (2) New Ford F150 Extended Cab Short Bed Pickup Trucks with options in the amount of \$28,459.00 each (Total \$56,918.00) from Sam Pack's Five Star Ford through an existing interlocal agreement with Tarrant County using Tarrant County Contract 2019-041. These vehicles are part of the approved Fiscal Year 2019-2020 Vehicle Equipment Replacement Fund (VERF) budget and replace units #93000-01 (Capital Projects) and #91000-01 (Engineering Services).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$56,918.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$56,918.00	565-450-84500-6130 - VERF

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Fleet Manager's Bid Award Recommendation for Vehicles
2. Quote for Pick Up Trucks
3. Specs with Options and pricing

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



Bid Award Recommendation

Co-op Contract: Tarrant County 2019-041

Date: 11-15-2019

Description: New 2020 Ford F-150 Extended Cab Pickup, Short Bed

Qty required: two

Replaces:

Unit #93100-01: 2012 Ford F-150—CIP Engineering

Unit #93000-01: 2010 Ford F-150—Capital Projects

Bidder: Sam Pack's 5-Star Ford, Carrollton, Tx.

Item #1: New 2020 Ford F-150 Extd. Cab Pickup, short Bed

Per ea.: \$26,299.00

***Per TOFM specifications/Quote**

To include following options:

HD Rawson-Koenig across-the-bed tool box (Qty 2)	\$695.00 per ea
Total for qty 2:	1390.00
HD Rawson-Koenig Louvered Headache Rack (Qty2)	\$475.00 per ea
Total for qty 2:	\$950.00
HD in-the-bed, over-the-top-rail locking side boxes (Qty-4)	\$495.00 per ea
Total for qty 4:	\$1980.00

Total w/options (2 units): \$56,918.00

It is Fleet Services recommendation to award the bid to Sam Pack 5-Star Ford as the lowest responsible bidder in the amount of \$ 56,918.00.

H. Deats Stewart
Fleet Services Manager

11-15-2019
Date,

Sam Pack's Five Star Ford 1635 S. IH 35E Carrollton Texas, 75006 (888) 8 FLEET 9 (888-835-3389) - FAX 972-245-5278 - bidtr@spford.com					
CUSTOMIZED PRODUCT PRICING SUMMARY BASED ON CONTRACT					
Cars and Light Trucks					
Team Members – Kevin Moore - Jorge Guerra - Alan Rosner					
TARRANT COUNTY 2019-041					
End User: TOWN OF FLOWER MOUND		Sam Pack's Rep: KEVIN MOORE			
Contact: JULIE TAYLOR		Date: 11.14.19			
Contact TN/Email		Phone #			
Product Description:		2020 F150 EXTENDED CAB SHORT WHEEL BASE		Exterior Color / Interior white	
A.	Bid Series: LINE 2D X1C			Base Price:	\$ 24,209.00
B. Published Options (Itemize Each Below)					
Code	Description	Bid Price	Code	Description	Bid Price
446	AUTO TRANS	Included		5.0 V8 OPTION	\$ 1,195.00
	Power Group	Included			
	CRUISE	Included			
	STATE INSPECTION FREE	Included			
	DELIVERY FREE	Included			
	CLOTH INTERIOR	Included			
	WHITE IN COLOR	Included			
	3.3L V6 FLEX FUEL	Included			
	100A EQUIPMENT GROUP	Included			
	FLEX FUEL RATED	Included			
	SYNC	Included			
	SPRAY IN LINER	\$ 495.00			
Total of B. - Published Options					\$ 1,690.00
C. Ford Factory Published Options					
Code	Description	Bid Price	Code	Description	Bid Price
Total of C. - Dealer Published Options					\$ -
D. Fleet Quote					
Code	Description	Bid Price	Code	Description	Bid Price
	MATS	\$75.00			
	EXTRA KEY	\$325.00			
Total of D. - Off Menu Options					\$ 400.00
F.	Delivery Charges	0 Miles @ \$2.45/mile			\$ -
G.	Option Discounts				\$ -
H.	Total of A + B + C + D + E = F				\$ 26,299.00
I.	Floor Plan Assistance				\$0.00
J.	Lot Insurance Coverages				\$0.00
K.	Quantity Ordered 2 X F =				\$ 52,598.00
L.	Administrative Fee				\$ -
M.	Non-Equip Charges & Credits				
N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE				\$52,598.00

**Town of Flower Mound
Request for Quote No.
Purchase of Two (2) Full Size, Extended Cab, ½ Ton Pick-Ups,
Short Bed**

I. General Information

The Town of Flower Mound is soliciting quotes for two (2) full size, extended cab, ½ ton pick-ups, short bed, in accordance with the specifications herein. The equipment must be new, of current production model, and available to the commercial market. This is a one time purchase and will be awarded based on the lowest quote received meeting specifications.

II. General Specifications

It is the intent of the Town of Flower Mound to satisfy the requirements set forth by the EPA (Environmental Protection Agency) whenever purchasing new vehicles and/or equipment. Therefore, bidders are required to indicate below if the units bid, 'Are' or 'Are Not' EPA LEV (Low Emission Vehicle) certified. The Town reserves the right to purchase a LEV unit, or a non-LEV unit, based upon availability of funds.

(Indicate by placing a check in the appropriate box):

- ☒ Yes ☐ No 1. Unit offered is an E-85 Flex-Fuel vehicle (if available)
- ☐ Yes ☐ No 2. Unit offered is EPA LEV certified (or greater).

Respondents **MUST** place a checkmark in the appropriate box to indicate: 'Yes' unit offered meets or exceeds the minimum required specification, or 'No' unit offered does not meet or exceed the minimum required specification listed. Failure to do so could result in disqualification of quote. The Town of Flower Mound reserves the right to waive minor irregularities as determined by the Town due to changes in industry standards. Minor irregularities will not affect the end product/performance intended by the specifications. Respondent agrees that as a condition of this quote, all options available on standard base unit, whether explicit or implied in this specification, will be included on the unit at no additional cost to the Town of Flower Mound.

Drive Train

☒ Yes ___ No 1. Engine: V-8, approx. 231 hp.@4750 rpm

**State engine size and horse-power bid:

Engine: 5.0
H.P. _____

☒ Yes ___ No 2. Automatic Transmission

☐ Yes ___ No 3. Fuel tank: standard equipment capacity

☒ Yes ___ No 4. Heavy duty battery

☒ Yes ___ No 5. GVWR : Minimum 6200 lbs. (approx.)

☒ Yes ___ No 6. Power brakes

Tires and Wheels

☒ Yes ___ No 1. Tires: Radial highway tread

☒ Yes ___ No 2. Full size spare tire with jack

☒ Yes ___ No 3. Standard hub covers

Cab and Equipment

☒ Yes ___ No 1. Power Steering

☒ Yes ___ No 2. Intermittent wipers

☒ Yes ___ No 3. Exterior Paint: OEM Fleet White

☒ Yes ___ No 4. Factory Tinted glass (All)

☐ Yes ___ No 5. Seats: Bench type with vinyl covering, blue interior (if available)

☒ Yes ___ No 6. Air Conditioning

☒ Yes ___ No 7. Rear Step Bumper

☒ Yes ___ No 8. Radio: Standard AM / FM

☒ Yes ___ No 9. Power Windows

☒ Yes ☐ No 9. Power Locks

Inspection

☒ Yes ☐ No 1. Current Texas Vehicle State Inspection when delivered (2 year certificate-if available)

Other

☒ Yes ☐ No 1. Full Floor Covering

☒ Yes ☐ No 2. Heavy duty floor mats to match covering

☒ Yes ☐ No 3. Three (3) sets of keys (door, ignition, trunk as applicable)

☒ Yes ☐ No 4. One (1) set of Operator and Service manuals, to be delivered with unit (CD preferred if available)

☒ Yes ☐ No 5. Spray-in bed liner, to include tailgate and over the top of rear quarter panels.

Options (Include installation in price.)

Item	Price (per each)
1. Heavy Duty cross-the-bed locking tool box (Rawson-Koenig)	\$ <u>695</u>
2. Heavy Duty in-the-bed, over-the-top-rail mounted, locking side boxes (Rawson-Koenig)	\$ <u>495 x 2 = 990</u>
3. Heavy Duty Louvered headache rack (Rawson-Koenig)	\$ <u>475</u>

Warranty

Please state warranty term:

3 yr / 100K / 5 yr / 60K powerTrain

Please state location nearest to the Town of Flower Mound where warranty work will be performed:

Five Star Lewisville

The Town of Flower Mound wishes to be placed on the manufacturer's mailing list to receive all special bulletins and supplements pertaining to services, repairs, problems, etc. Please provide information on steps needed to accomplish this:

Comments

Any exceptions to these specifications must be noted in this section:



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: December 16, 2019

FROM: David Bauer, Construction Manager

ITEM: Consider approval of an amendment to 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.

BACKGROUND INFORMATION: The Gibson-Grant Log House, constructed in 1860-1861, is of exceptional historical significance as one of the few remaining log structures of mid-nineteenth century still standing on its original site in Denton. In March 2018, the Town Council approved the Master Plan for the Gibson Grant Log Cabin Site.

The Gibson-Grant Log House project was originally planned to be restored, with supporting infrastructure, in 3 phases. Due to the receipt of grant funds for the project, all three phases were combined into one in the FY 19/20 CIP budget.

McCoy Collaborative Preservation Architecture was originally awarded the design contract for phase I in February 2019. This amendment revises the agreement to include all three phases.

BOARD REVIEW/CITIZEN FEEDBACK: Peggy Riddle, Denton County Director- Office of History and Culture, reviewed and provided input on the professional services agreement.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$116,005.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$116,005.00	325-373-90763

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

Total project cost is \$1,575,593. Funding sources are:

- Grant \$ 1,451,000
- Other \$ 124,593

LEGAL REVIEW: The AIA document was approved by Alicia Kreh with Taylor, Olson, Adkins, Sralla, & Elam L.L.P.

ATTACHMENTS:

1. Amendment No.1 to the Professional Services Agreement

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

AIA® Document G802™ – 2017
Amendment to the Professional Services Agreement
PROJECT: *(name and address)*

Gibson-Grant Log House
Exterior Restoration

AGREEMENT INFORMATION:

Date: 18 February 2019

AMENDMENT INFORMATION:

Amendment Number: 01
Date: 18 November 2019

OWNER: *(name and address)*

Town of Flower Mound

2121 Cross Timbers Road

Flower Mound, Texas 75028

ARCHITECT: *(name and address)*

McCoy Collaborative Preservation

Architecture, PLLC

3200 Main Street, #3.6

Dallas, Texas 75226

The Owner and Architect amend the Agreement as follows:

To include the interior restoration, structural foundation for a pre-fabricated restroom, site and street work at the Gibson-Grant Log House for the purpose of establishing a house museum.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:

Stipulated Sum

Basic Services - One hundred fifteen thousand three hundred fifty-five dollars and zero cents (\$115,355.00).

Site survey - Two thousand seven hundred fifty dollars and zero cents (\$2,750.00).

Credit for omission of cost estimating services in base contract - Two thousand one hundred dollars and zero cents (\$2,100.00).

Total adjustment - \$116,005

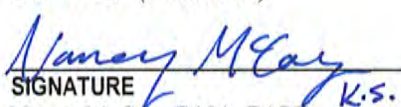
Schedule Adjustment:

Add six months to base contract for a total of 24 months.

SIGNATURES:

McCoy Collaborative Preservation
Architecture, PLLC

ARCHITECT *(Firm name)*

 *K.S.*

SIGNATURE
Nancy McCoy, FAIA, FAPT
Principal

PRINTED NAME AND TITLE

18 November 2019

DATE

OWNER *(Firm name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE



November 14, 2019

EXHIBIT "A"
SCOPE OF SERVICES
AMENDMENT NO. 1
GIBSON-GRANT LOG HOUSE INTERIOR AND SITE RENOVATION
ARCHITECTURAL/PRESERVATION AND ENGINEERING SERVICES

1.0 SERVICES

The following professional services are included:

- a. Architectural Services
- b. Structural Engineering services
- c. Civil Engineering services
- d. Mechanical Electrical and Plumbing services

1.1 Schematic Design Phase Services (SD)

- 1.1.1 Start-up meeting – Review project scope for the interior and site work; coordinate with Owner's Construction Manager for probes and selective demolition, schedule and budget.
- 1.1.2 One design meeting - Project design review for interior and site development.
- 1.1.2 Additional Site Investigations.
 - 1.1.2.1 Interior investigations in concert with probes and selective demolition will be provided by the Owner's Construction Manager.
- 1.1.3 Submit 100% SD drawings and a narrative scope of work electronically as a PDF for review to Owner and for cost estimating by Construction Manager. This submittal will incorporate the previously completed 50% DD drawings for the exterior renovation (base contract).

1.2 Design Development Phase Services (DD)

- 1.2.1 One meeting for review of the DD progress.
- 1.2.2 Submit 100% DD drawings and outline specifications electronically as a PDF for review to Owner and for cost estimating by Construction Manager.

1.3 Construction Documents Phase Services (CD)

- 1.3.1 Submit 95% CD drawings and project manual electronically as a PDF for review to Owner and for cost estimating by Construction Manager.
- 1.3.2 One meeting - Present 95% Construction Documents submittal to Owner. Review the Owner's Construction Manager's cost estimate. Obtain final comments and approval.
- 1.3.3 Submit 100% CD drawings and project manual for bidding.
- 1.3.4 Submit and register the project with Texas Department of Licensing and Regulation (TDLR) in compliance with Texas Accessibility Standards (TAS) along with exterior work; cost is already included in the exterior work fee and the additional small fee for the increase in construction cost will be waived.

1.4 Procurement Phase Services

- 1.4.1 The Construction Manager will bid the project.

- 1.4.2 If substantial changes to the documents are necessary due to the amount of changes due to pricing or negotiations, these will be provided as an Additional Service.

1.5 Construction Phase Services (CA)

- 1.5.1 Selective Demolition – for interior will be performed concurrently with the Exterior Renovation (base contract) work. Architect and Structural Engineer to visit site during selective demolition to investigate uncovered existing conditions and prepare Architectural Supplemental Instructions as required.
 - 1.5.1.1 Purpose of selective demolition is to uncover existing conditions which was previously inaccessible.
 - 1.5.1.2 Issue ASI for changes necessitated as a result of existing conditions found during selective demolition.
- 1.5.2 Meetings, mock-up reviews and sample approvals will be undertaken to coincide with the site visits noted above; any site visits beyond the site visits noted above will be considered Additional Services requiring the Owner's prior consent and authorization.

2.0 LIMITATIONS

Limitations are exclusions to the work, consisting of the following:

- 2.1 Arrangements for access to the building and site (including use of ladders) will be provided by the Owner. Equipment rental is not included.
- 2.2 Unsafe conditions that may exist at the building and site are not the responsibility of the Architect.
- 2.3 The identification or abatement of hazardous materials (asbestos, lead paint, etc.) is not the responsibility of the Architect and services provided by the Architect do not include any services related to asbestos or hazardous or toxic materials. A hazardous materials survey and abatement will be provided by the Owner.
- 2.4 Specifications for shoring, jacking and lifting, strapping, and other means and methods will be the responsibility of the Contractor and not the Architect.
- 2.5 Specifications for safety and precautionary measures will be the responsibility of the Contractor and not the Architect. The requirement for safety will be included in the construction documents but the means and methods will be the responsibility of the Contractor.
- 2.6 Specifications for required licensing, insurance and bond requirements will be included in the bidding documents by the Owner.
- 2.7 BIM modeling of architectural or structural components is not included in Architect's services
- 2.8 Construction permitting fees will be provided by the Owner or Contractor.
- 2.9 Record or As-built documentation is not included.
- 2.10 Services described herein shall be provided concurrently with the base contract services. Out of sequence services shall be billed as additional services.
- 2.11 Landscape design will be provided by the Owner. The Architect will coordinate the site plan with the Owner's design, upon timely delivery of information.
- 2.12 Renderings for fundraising or other purposes are not included.



November 14, 2019

EXHIBIT "B"
CONTRACT REVISIONS
AMENDMENT NO. 1
GIBSON-GRANT LOG HOUSE INTERIOR AND SITE RENOVATION
ARCHITECTURAL/PRESERVATION AND ENGINEERING SERVICES

1.0 REVISIONS TO AIA DOCUMENT B101-2017

- 1.1 1.1.3: Cost of work is estimated at approximately \$1.5 million.
- 1.2 1.1.5: The Owner has retained the services of a Construction Manager.
- 1.3 1.1.9: Add 2. Property survey with topographical and tree information.
- 1.4 1.1.11.1: Add .2 Mechanical Electrical and Plumbing Engineer
 Nova Engineering
 4819 TX 121, Suite 12
 The Colony, Texas 75056
 Telephone Number: (972) 323-7300
- 1.5 1.1.11.1: Add .3 Civil Engineer
 JQ Infrastructure
 100 Glass Street
 Dallas, Texas 75207
 Telephone Number: (214) 623-5801
- 1.6 1.1.11.1: Add .4 Landscape Architect
 CCA Landscape Architects
 12700 Hillcrest Rd #149
 Dallas, Texas 75230
 Telephone Number: (214) 739-9105
- 1.7 3.2.1: Omit. Replace with: The Architect shall perform traditional Schematic Design phase services for the Owner's approval. The Schematic Design Documents shall illustrate and describe the schematic design and shall consist of drawings and other documents including plans, sections, elevations, and concepts pertaining to the mechanical, electrical and plumbing special requirements.
- 1.8 3.3.2: Omit.
- 1.9 3.4.4: Omit.
- 1.10 3.5.1: Omit. Replace with: The Architect shall assist the Owner and Construction Manager in obtaining bids.
- 1.11 3.5.2.1.4: Omit.
- 1.12 3.5.3: Omit.
- 1.13 3.6.1.1: Omit. Replace with: AIA A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor.
- 1.14 4.2.5: Revise eighteen (18) months to twenty-four (24) months.
- 1.15 6.3: Omit.
- 1.16 6.5: Omit.
- 1.17 6.7: Omit. Replace with: If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as

necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1 and the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3.



February 6, 2019

EXHIBIT "B"
HOURLY RATES

Principal	\$220
Associate/Senior Architect	\$175
Intermediate Architect	\$150
Architect/ Architectural Conservator	\$140
Architectural Intern	\$ 90
Clerical	\$ 75



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: December 16, 2019

FROM: Blake Hummel, Senior Project Engineer

ITEM: 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.

BACKGROUND INFORMATION: The Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project includes construction of a pedestrian bridge that will span Timber Creek in order to connect Gaston Park to the 8' Multi-Use Trail being built with the NEM Flower Mound Senior Living and Windsor Ridges developments and Timber Trails Park. The project anticipates an 8' wide 150' long pedestrian bridge to span the limits of the floodplain over Timber Creek and an additional 400' of 8' Multi-Use Trail to tie into Gaston Park and College Parkway.

Previously conducted feasibility study with Halff Associates, whom was the engineering firm that designed the current FM2499 bridge over Timber Creek, was performed to see what would be required to add an 8' pedestrian addition to the current FM2499 bridge versus a standalone pedestrian bridge just to the east of FM2499. Results of the feasibility study yielded opinion of costs for each option relatively close with the standalone pedestrian bridge option being roughly \$20,000.00 more than the addition to FM2499. With the relatively comparable costs the two options were presented to the Parks Board and the more scenic standalone pedestrian bridge option that ties directly into Gaston Park was unanimously approved, see Board Review/Citizen Feedback section below for more information.

The scope of the Professional Services Agreement includes the preparation of design survey, geotechnical engineering, design plans, contract specifications and record drawings. The engineer's opinion of probable cost is \$450,000.00. Construction is estimated to begin Summer 2020 (FY 19-20).

BOARD REVIEW/CITIZEN FEEDBACK: Parks Board unanimously approved the recommendation to include this addition of the Pink Evening Primrose Trail Connection project to the FY 19-20 Five Year Capital Improvement Projects list on August 1, 2019.

ALTERNATIVES/OPTIONS: The decision to not approve the proposed Professional Services Agreement for design would leave the Town's Multi-Use Trail that is currently under construction by the NEM Senior Living and Windsor Ridges developments dead ended at the Timber Creek crossing, just east of FM2499. There is currently no available room on the existing FM2499 bridge over Timber Creek to accommodate a Multi-Use Trail extension and pedestrian connectivity from the neighborhoods north of Timber Creek would not have immediate access to the River Walk development and Timber Trails Park.

FISCAL IMPACT: \$59,190.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$59,190.00	310-320-90471

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

Total project cost is \$650,000 Funding sources are:

- Park Development Fund \$ 250,000
- TIRZ \$ 400,000

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

ATTACHMENTS:

1. Professional Service Agreement with Halff Associates, Inc.

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

This contract is entered into on this 16th 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 **Halff Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 4000 Fossil Creek Blvd., Fort Worth, TX 76137.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, geotechnical engineering, design and providing construction documents for the Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the Pink Evening Primrose Trail Connection (Bridge & Trail from Gaston Park to Timber Trails Park) project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Fifty-Nine Thousand One Hundred Ninety and No/100 Dollars (\$59,190.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of

recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

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

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

IX.

Right to Inspect Records

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

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

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use

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

XIX. **Notice Information**

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

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

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

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

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

XX. **Applicable Law**

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

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

XXI.

Non-Discrimination

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

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

XXII.

Arbitration

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

XXIII.

No Waiver of Governmental Immunity

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

XXIV.

Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
Halff Associates, Inc.**

By: *B. L. Megahey*
Name: BENJAMIN L. MEGAHEY
Title: VICE PRESIDENT

Date Signed: 11/15/2019

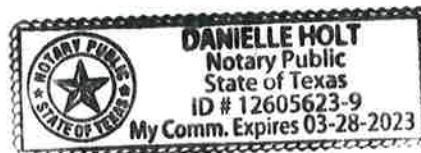
State of Texas §
 §
County of TARRANT §

This instrument was acknowledged before me on the 15th day of NOVEMBER, 2019, by BENJAMIN L. MEGAHEY in his capacity as VICE PRESIDENT of HALFF ASSOCIATES, INC., a TEXAS Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of HALFF ASSOCIATES, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 15th DAY OF Nov, 2019.

Danielle Holt
Notary Public, State of Texas

My Commission Expires:
March 28, 2023



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: PINK EVENING PRIMROSE TRAIL CONNECTION (BRIDGE & TRAIL FROM GASTON PARK TO TIMBER TRAILS PARK)

PROJECT UNDERSTANDING

The objective of this project is to provide surveying and engineering design services for the construction of a pedestrian bridge that will span Timber Creek in order to connect Gaston Park to the 8-foot wide multi-use trail being constructed with the NEM Flower Mound Senior Living Development and Timber Trails Park. This connection will provide connectivity from Gaston Park to the developments and parks to the south including River Walk and Timber Trails Park.

ASSUMPTIONS

- Only Town of Flower Mound funds are being used to pay for the proposed improvements, i.e. no State or Federal funds.
- No easement(s) and/or right-of-way documents are included in this Scope of Work. The Town of Flower Mound is the Owner of Gaston Park (Lot 1, Block A Gaston Park Addition) and an existing 12-foot wide Pedestrian Access Easement was dedicated by the Replat of the Flower Mound Senior Living Addition.
- Project assumes an 8-foot wide, 150-foot long pedestrian bridge to be constructed over Timber Creek and an additional 400 feet of 8-foot wide multi-use trail to tie into Gaston Park and College Parkway.
- Project assumes no encroachment of the pedestrian bridge other than abutment armoring into the floodplain. Therefore, no flood study is included in the scope of this project. The Town of Flower Mound will provide Halff a flood study prepared by others for use in bridge design. If the Town requires a flood study, one can be provided for an additional negotiated fee.

SCOPE OF PROFESSIONAL SERVICES

TASK 1: DESIGN SURVEYS

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

- A. Vertical benchmarks shall be established such that all points of construction shall be within 500 feet of a benchmark. Benchmarks should not be subject to loss during construction. Fire hydrants and similar appurtenances are not to be used for benchmarks. The surveyor shall establish temporary benchmarks throughout the length of the project.

- B. Topographic features will be surveyed along with any other features needed for design, review, permitting, construction, and inspection of the project. Coverage will extend beyond the proposed improvements far enough to integrate the design with the adjacent properties.
- C. Existing property corners, iron pins, etc. shall be tied to establish existing property boundaries and rights-of-way. Since Gaston Park is owned by the Town and an existing Pedestrian Access Easement has been platted, Halff assumes no permission is necessary to perform surveys.

TASK 2: GEOTECHNICAL ENGINEERING SERVICES

- A. Halff shall retain the services of CMJ Engineering, Inc. to provide geotechnical engineering support. A geotechnical engineering report will be prepared to address general soil and groundwater conditions and recommendations for pedestrian bridge construction/requirements.
- B. An optional allowance is recommended for brush clearing for rig access as necessary. If necessary, Halff will obtain written right-of-entry into the site from the property owner.

TASK 3: DESIGN PHASE SERVICES

- A. Project Management and Coordination

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

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

B. Data Collection and Field Reconnaissance

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

C. Preparation of Contract Documents

- Halff shall develop construction plans for review, permitting, bidding, construction, inspection and record keeping. In general, construction plans shall be consistent with normal practice for projects of this nature. The construction plans will consist of sheets generally ordered as follows:
 - o Title Sheet – The title sheet shall include a location map. It shall also include a sheet index with drawings numbered consecutively and without subscripts. Additionally, the title sheet shall show the project name, project number, date, Town logo, Consultant's name, address, and telephone number and other items as may be specified.
 - o Project General Notes and Legend – This sheet will include a listing of abbreviations, legend, and general notes.
 - o Project Layout Sheet – The purpose of the project layout is to depict the project in a simplified view. Major items of work will be shown without excessive detail. This sheet(s) will include a listing of abbreviations, legend, general notes, and key map.
 - o Grading Plan Sheets – Grading plan sheets will be arranged with the north arrow up or to the right on the sheet. Plan sheets will be drawn having a scale of 1" = 20'. Each plan sheet will include no more than 500 feet of trail; thus, leaving ample margins both left and right. Plan sheets shall depict all existing and proposed items pertinent to the project. One-foot contours and adequate spot elevations will be provided to allow a Contractor to grade the project.
 - o Structural General Notes – This sheet will provide structural general notes and notes for earthwork, foundations and cast-in-place concrete necessary for the construction of the pedestrian bridge.
 - o Pedestrian Bridge Plan & Profile Sheet – Plan-profile sheet will be arranged with the north arrow to the right on the sheet. Plan-profile sheet will be drawn to a scale of 1" = 20' h and 1" = 4' v. Stationing will be from south to north with the beginning station being set at approximately 1+00. The plan and profile station will align vertically on the sheet with the proposed centerline drawn parallel to the profile grid. Plan-profile sheet shall depict all existing and proposed items pertinent to the project.

- o Typical Sections – At a minimum, typical sections will be provided for the prefabricated bridge section, pedestrian bridge elevation view, pedestrian bridge approach slab, multi-use trail, and any necessary armoring of the bridge abutment.
- o Detail Sheets – Town of Flower Mound's standard drawings will be used as a beginning point in developing standard details for this project. They will be reviewed and modified as necessary for this project. Additionally, structurally engineering details will be provided for the pedestrian bridge abutments.
- o Miscellaneous – Construction plans will also address demolition and temporary and permanent erosion control.
- Submittals – Plans shall be prepared and submitted at the 60% and 90% milestones. Final plans shall then be prepared and submitted at the 100% milestone. Also, Halff may submit plan sheets or working drawings to the Town for review and comment to reduce the number of revisions that otherwise would be required. During development of the plans, Halff shall attend meetings as needed. Halff shall, in company with the Town, perform at least one plans-in-hand review.
- Design – The design of the project shall be in general accordance with the Town of Flower Mound ordinances, standard details, and good engineering practices.
- Specifications – Halff shall prepare a project manual and technical specifications required for bidding and constructing the project. The project manual will be provided in the Town's standard format. Only TxDOT specifications and specifications amending or supplementing North Central Texas Council of Governments (NCTCOG) specifications need be furnished. Project manual, specifications, bid items and quantities shall be furnished on hard copy and by electronic file.
- Estimates – An opinion of probable construction cost (OPCC) will be developed at each milestone submittal.
- Prints – Electronic files in PDF format and up to five (5) sets of half-size (11"x17") plans will be submitted to the Town at each milestone.

TASK 3: BIDDING PHASE SERVICES

- A. Bid Contract Documents and Specifications – Five (5) sets of final construction plans (11"x17") and specifications will be provided for bidding purposes.
- B. Addenda – The Town of Flower Mound will issue addendums. Any questions received or directed to the design firm during solicitation should not be answered and shall be forwarded to the Town's Project Engineer immediately.

- C. Construction Contract Documents and Specifications – Prepare final construction contract documents for selected Contractor. Provide five (5) half-size (11"x17") sets of conformed plans, one (1) full-size (22"x34") set of conformed plans and a PDF file.

TASK 4: RECORD DRAWINGS

- A. Prepare record drawings from contractor's marks showing changes made during construction. Transfer contractor's marks to digital format. Halff will be provided the contractor's revisions and shall not be responsible for verifying their completeness or accuracy.
- B. Provide to the Town one (1) CD containing AutoCAD (*.DWG) and PDF (entire set) files.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services Halff can provide include, but are not limited to, the following:

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

ATTACHMENT B
COMPENSATION

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

TASK 1 – Design Surveys	\$ 5,400.00
TASK 2a – Geotechnical Engineering Services	\$ 5,940.00
TASK 2b – Brush Clearing for Geotechnical (if necessary)	\$ 1,650.00
TASK 3 – Design Phase Services	\$ 41,300.00
TASK 4 – Bidding Phase Services	\$ 2,600.00
TASK 5 – Record Drawings	\$ 2,300.00
<u>TOTAL</u>	<u>\$59,190.00</u>

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

ATTACHMENT C

SCHEDULE

- A. Completion of Data Collection and Survey: 45 calendar days from date of written authorization to begin work.
- B. Completion/furnishing 60% preliminary plans and construction cost estimate: 90 calendar days from date of written authorization to begin, excluding Town review time.
- C. Completion/furnishing 90% final plans, specifications, bid quantities, and construction cost estimate: 135 calendar days from date of written authorization to begin, excluding Town review time.
- D. Completion/furnishing 100% final plans, specifications, bid quantities, and construction cost estimate: 165 calendar days from date of written authorization to begin, excluding Town review time.
- E. Bidding Services: In accordance with the Town's bidding schedule.
- F. Record Drawings: 30 calendar days from receipt of contractor's marks.



TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: December 16, 2019

FROM: Brian Waltenburg, Assistant Director of Engineering

ITEM: 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.

BACKGROUND INFORMATION: The Stonehill Pump Station Discharge Valve Replacement & 10 MG Ground Storage Tank Rehabilitation project includes modifications to the existing pump discharge valves, a tank and pump station paint recoating, the addition of a tank mixer, and other necessary repairs to the ground storage tank.

The scope of the Professional Services Agreement includes design survey, design plans, and contract specifications. The engineer's opinion of probable cost is \$1,100,000.00 Construction is estimated to begin Fall 2020 (FY20-21).

BOARD REVIEW/CITIZEN FEEDBACK:

ALTERNATIVES/OPTIONS: The Stonehill Pump Station is a critical part of the Town's water system. During routine inspections, components of the storage tank were identified to be in poor condition. The storage tank discharge valve is currently inoperable. A decision to not approve the proposed agreement would result in the pump station storage continuing to deteriorate and risk water supply or quality issues. The Town could also be open to enforcement action by the Texas Commission on Environmental Quality (TCEQ).

FISCAL IMPACT: \$88,500.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$53,100.00	630-960-96003
\$35,400.00	630-960-98930

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

Total project cost is \$1,200,000 Funding sources are:

- Other \$ 100,000
- Utility Debt \$ 1,100,000

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

ATTACHMENTS:

1. Professional Service Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
KIMLEY-HORN AND ASSOCIATES, INC.**

This contract is entered into on this 16th 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 **Kimley-Horn and Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 801 Cherry Street, Unit 1300, Fort Worth, Texas, 76102.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Stonehill Pump Station Discharge Valve Replacement & 10 MG Ground Storage Tank Rehabilitation project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the Stonehill Pump Station Discharge Valve Replacement & 10 MG Ground Storage Tank Rehabilitation project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Eighty-Eight Thousand Five Hundred and No/100 Dollars (\$88,500.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV. Revisions of the Scope of Services

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

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

V. Term

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

VI. Contract Termination Provision

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such

notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

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

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

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

IX.

Right to Inspect Records

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

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

compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.

Successors and Assigns

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

XI.

CONSULTANT's Liability

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

XII.

Indemnification

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

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

XIII. Independent Contractor

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

XIV. Default

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

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

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

XV.

Provisions Surviving Termination

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

XVI.

Changes

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

XVII.

Conflicts of Interest

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

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

XVIII.

Confidential Information

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

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

XIX. **Notice Information**

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

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

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

Anthony Samarripas, P.E.,
13455 Noel Road,
Two Galleria Office Tower, Suite 700,
Dallas, TX 75240
972-770-1300 Telephone

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

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

[The remainder of this page is left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
KIMLEY-HORN AND
ASSOCIATES, INC.**

By: Scott R. Arnold
Name: Scott R. Arnold
Title: Vice President

Date Signed: November 21, 2019

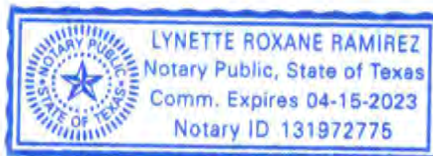
State of Texas §
 §
County of Tarrant §

This instrument was acknowledged before me on the 21st day of November, 2019, by Scott R. Arnold in his capacity as Vice President of Kimley Horn Associates, a North Carolina Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Kimley Horn Associates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE November DAY OF 21st, 2019.

Lynette Ramirez
Notary Public, State of Texas

My Commission Expires:
4/15/2023



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: Stonehill Pump Station Discharge Valve Replacement and 10 MG GST Rehabilitation

PROJECT UNDERSTANDING

This project consists of the design of improvements at the existing Stonehill Pump Station and Ground Storage Tank. Improvements are anticipated to include modifications to the existing pump discharge valves, tank and pump station recoating, addition of a tank mixer, and miscellaneous repairs to the ground storage tank.

SCOPE OF PROFESSIONAL SERVICES

TASK 1: GENERAL ITEMS AND MEETINGS

- A. General Items
 - 1. Record Research - Work with Town staff to obtain all available Town record drawings for existing site.
 - 2. Coordinate with Town staff throughout the project.
- B. Meetings
 - 1. Conduct kick-off meeting with the Town
 - 2. Conduct meeting with Town to review 60% plans
 - 3. Conduct meeting with Town to review 90% plans

TASK 2: DESIGN

- A. Design
 - 1. Design modifications to existing pump discharge control valves to convert existing hydraulic control valves to pump control valves with solenoids.
 - 2. Evaluate tank mixing solutions to replace existing tank baffle curtain.
 - 3. Design coating improvements for ground storage tank (exterior) and pump station (interior floors, walls, structural steel, and piping).
 - 4. Walk site with Town staff to identify unsatisfactory ground storage tank items to be incorporated into the rehabilitation plans.
 - 5. Perform field investigation and field verification of existing tank and pump station infrastructure. Modify existing base files as required.
 - 6. Evaluate sequencing and shutdown requirements associated with improvements. Incorporate requirements into Contract Documents.

7. Design electrical and instrumentation improvements associated with tank mixer and discharge control valve improvements. Provisions will be made to incorporate tank mixer into existing Town SCADA system. Solenoids will be controlled locally and will not be incorporated into SCADA.
 8. Prepare engineering plan sheets and details as necessary. The Design is anticipated to include the following sheets:
 - o Cover
 - o General Notes
 - o Pump Station Mechanical Plan
 - o Tank Miscellaneous Repair Details (2 sheets)
 - o GST Plan/Section
 - o Construction Details (2 sheets)
 - o Electrical Notes, Legend, and Abbreviations
 - o Electrical Site Plan
 - o Electrical Details (2 sheets)
 - o Instrumentation P&ID
 9. Prepare specifications which include technical specifications for materials and installation. The contract documents shall be based upon Flower Mound Contract Documents. The NCTCOG Standard Specifications for Public Works Construction and the Town of Flower Mound's requirements for Public Works Construction will govern all other specifications.
 10. Make revisions based on the Town's review of the 60% and 90% submittals.
 11. Submit final plans to the TCEQ for review and comments.
- B. Submittals/Deliverables:
1. 60% plans and opinion of probable construction cost for review and comments.
 2. 90% plans, specifications, contract documents, and opinion of probable construction cost for review and comments.
 3. 100% plans, specifications, contract documents, and opinion of probable construction cost
- C. Services provided by the Town
1. Review and comment on 60% plan view only plans and OPCC.
 2. Review and comment on 90% Contract Documents (plans and specifications) and OPCC.
- D. Exclusions/Assumptions
1. Field survey will not be required.
 2. Tank inspection will not be required.
 3. It is assumed that the existing Cla-Val hydraulic check valve will be retrofitted to provide more operational flexibility. Evaluating

additional control valves based an evaluation of pump and system hydraulics is not included in this scope of work.

4. GST supply line modifications are not included.
5. GST supply control valve modifications are not included.
6. RTU/PLC programming is not included.
7. Ladder logic/loop diagrams will not be required.
8. Discharge valve replacement and GST rehabilitation will be bid under a single construction contract.

TASK 3: BIDDING PHASE SERVICES

A. Bidding Phase Services

1. Print and issue 3 sets of bidding documents. Additional sets of bidding documents shall be printed, only upon the Town's authorization, as Additional Professional Services. Bidding documents will be issued to potential bidders upon the payment of a non-refundable fee to cover the cost of printing those documents.
2. Issue addenda as required.
3. Evaluate Bids.
4. Evaluate Contractor Qualifications.
5. Prepare Award Recommendation Letter
6. Address Contractor Questions

B. Submittals/Deliverables

1. Bid documents
2. Addenda as required.
3. Contractor Award Recommendation letter

C. Exclusions

1. Preparing conformance documents

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Assisting Town or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Kimley-Horn on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Sampling, testing, or analysis beyond that specifically included in the Scope of Services referenced herein above.
- Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Town.
- Providing professional services associated with the discovery of any hazardous waste or materials in the project route.
- Providing additional presentations to the Town Council.
- Providing construction staking, additional platting, or other surveying services not identified in the above Scope of Services.
- Providing any easement acquisition services.
- Attending additional public meetings during the project.
- Preparation of Easement Documents
- Providing construction phase services
- Perform any materials testing.
- Perform welding and coating inspections.
- Preparing record drawings
- Performing ground storage tank inspection and preparing inspection report
- Design GST modifications (supply line and control valve modifications)
- Any services not listed in the Scope of Services.

ATTACHMENT B
COMPENSATION

The Consultant will provide the Scope of Services detailed in Tasks 1 through 3 for a lump sum fee.

TASK 1 – General Items and Meetings	\$8,000
TASK 2 – Design	\$77,500
TASK 3 – Bidding Phase Services	\$3,000
<u>TOTAL</u>	<u>\$88,500</u>

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



TOWN COUNCIL AGENDA ITEM NO. 14

CONSENT ITEM

DATE: December 16, 2019

FROM: Blake Hummel, Senior Project Engineer

ITEM: 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.

BACKGROUND INFORMATION: The Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Drive) project includes the reconstruction of Colonial Drive paving between Whitney Lane and Homestead Drive (2000 ft). The reconstruction will also include complete sidewalk replacement and pedestrian ramp improvements along the limits of the project. Colonial Drive will be reconstructed to match the existing 27 ft. wide (back of curb to back of curb) cross-section and 4 ft. wide sidewalks. Several sections of the existing storm sewer system within the limits of the project will be completely replaced with new storm piping and curb inlets. The Colonial Drive Sewer Line Replacement (Whitney Lane to Homestead Drive) project shown in the FY20-21 CIP will also be completed during the Colonial Drive Reconstruction Phase II project.

The scope of the Professional Services Agreement includes the preparation of design survey, design plans, contract specifications and record drawings. The engineer's opinion of probable cost is \$1,700,000.00. Construction is estimated to begin Fall 2020 (FY20-21).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The decision to not approve the proposed professional services agreement for design would postpone the reconstruction of Colonial Drive between Whitney Lane and Homestead Drive.

FISCAL IMPACT: \$153,639.50

Proposed Expenditure/(Revenue):	Account Number(s):
\$153,639.50	316-560-78101

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

Total project cost is \$1,521,000 Funding sources are:

- Dedicated Sales Tax \$ 1,521,000

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

ATTACHMENTS:

1. Professional Service Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
PACHECO KOCH CONSULTING ENGINEERS, INC.**

This contract is entered into on this 16th 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 **Pacheco Koch Consulting Engineers, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 4060 Bryant Irvin Rd., Fort Worth, TX 76109.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Drive) project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed One Hundred Fifty-Three Thousand Six Hundred Thirty-Nine and 50/100 Dollars (\$153,639.50). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV. **Revisions of the Scope of Services**

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

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

V. **Term**

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

VI. **Contract Termination Provision**

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

entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of

recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

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

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

IX.

Right to Inspect Records

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

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

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use

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

XIX.

Notice Information

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

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

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

Mark A. Pacheco, P.E., R.P.L.S.
President
Pacheco Koch Consulting Engineers, Inc.
7557 Rambler Road, Suite 1400
Dallas, Texas 75231
972-235-3031 Telephone

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

XX.

Applicable Law

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

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

XXI.

Non-Discrimination

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

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

XXII.

Arbitration

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

XXIII.

No Waiver of Governmental Immunity

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

XXIV.

Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Pacheco Koch Consulting Engineers, Inc.

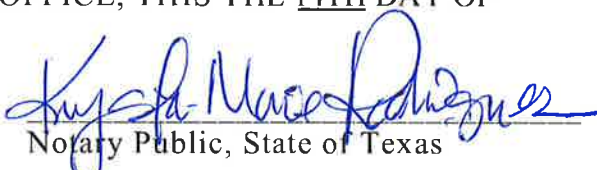
By: 
Name: Mark A. Pacheco, P.E., R.P.L.S.
Title: President

Date Signed: 11/14/2019

State of Texas §
 §
County of Dallas §

This instrument was acknowledged before me on the 14 day of November, 2019, by Mark A. Pacheco in his capacity as President of Pacheco Koch Consulting Engineers, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Pacheco Koch Consulting Engineers, Inc.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 14TH DAY OF NOVEMBER, 2019


Notary Public, State of Texas

My Commission Expires:

October 19, 2023

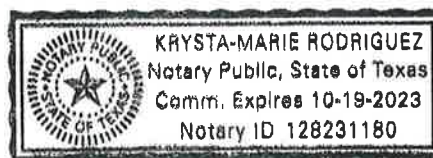


EXHIBIT A to Agreement between the
Town of Flower Mound, Texas
(OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

EXHIBIT 'A' – SCOPE OF SERVICES

COLONIAL DRIVE RECONSTRUCTION PHASE II (WHITNEY LANE TO HOMESTEAD DRIVE)

PROJECT DESCRIPTION:

The project consists of the reconstruction of the 2-lane roadway along Colonial Drive between Whitney Lane and Homestead Drive. The reconstruction will also include reconstruction of the sidewalk and pedestrian ramps. The reconstruction is planned to be 27' B-B with 4' wide sidewalks matching the original section. The project will also include with the necessary utility adjustments; failed storm replacement, striping, signing, traffic control, and other details. (PROJECT)

BASIC SERVICES:

A. Project Management, Coordination & Permitting

1. Manage the Team:

- Lead, manage and direct design team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Allocate team resources

2. Communications and Reporting:

- Attend a pre-design project kickoff meeting with OWNER staff to confirm and clarify scope, understand OWNER objectives, and ensure economical and functional designs that meet OWNER requirements.
- Conduct review meetings with the OWNER at the end of each design phase.
- Prepare and submit monthly invoices in the format acceptable to the OWNER.
- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially and Project Schedule updates.

3. Utility Clearance:

- The CONSULTANT will consult with the OWNER, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. CONSULTANT will design OWNER facilities to avoid or minimize conflicts with existing utilities, and consider known

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Services

potential future utilities in designs. CONSULTANT will provide plans to and coordinate with utility owner(s) related to the relocation efforts of franchise utilities that remain in conflict with the proposed construction.

B. Conceptual Design (30% Submittal)

The Conceptual Design shall be submitted to OWNER per the approved Project Schedule. The purpose of the conceptual design is for the CONSULTANT to

- Study the project,
- Identify and develop alternatives,
- Present (through the defined deliverables) these alternatives to the OWNER,
- Recommend the alternatives that successfully address the design problem, and
- Obtain the OWNER's endorsement of the selected concept.

CONSULTANT will develop the conceptual design of the infrastructure as follows.

1. Data Collection

- In addition to data obtained from the OWNER, CONSULTANT will research proposed improvements in conjunction with any other planned future improvements known by the OWNER that may influence the project.
- The CONSULTANT will also identify and seek to obtain data for existing conditions that may impact the project including but not limited to; utilities, agencies (TxDOT and USCOE), OWNER Master Plans, and property ownership as available from the Tax Assessor's office.
- The data collection efforts will also include conducting special coordination meetings with affected property owners and businesses as necessary to develop the design.

2. The Conceptual Design Package shall include the following:

- Conceptual (30%) plans to include:
 - Roadway plan and profile sheets
Scale 1" = 20' Horizontal; 1" = 2' Vertical
 - Drainage plan and profile sheets
Scale 1" = 20' Horizontal; 1" = 2' Vertical
 - Drainage Area Map
Scale 1" = 50' Horizontal (with inserts for large drainage basins)
- Proposed phasing scheme of any construction that is included in this project documented in narrative form.
- Documentation of key design decisions.

EXHIBIT A to Agreement between the
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(CONSULTANT) for Consulting
Services

- Conceptual opinion of probable construction cost with a 20% contingency.
1. Submit four (4) half sized 11"x17" of preliminary 30% plans, PDF of plans and conceptual opinion of probable construction costs to the OWNER for review.

C. Preliminary Design (60% Submittal)

1. Prepare preliminary construction plans that will include the following sheets at the engineering scale indicated:
 - Cover Sheet
 - General Notes
 - Quantity Sheet
 - Project Layout & Control Sheet
 - Roadway plan and profile sheets.
Scale 1" = 20' Horizontal; 1" = 2' Vertical
 - Cross Section Sheets at Driveways
Scale 1" = 20' Horizontal; 1" = 4' Vertical
 - Drainage plan and profile sheets.
Scale 1" = 20' Horizontal; 1" = 2' Vertical
 - Erosion Control Plans
 - Traffic Control Plan Sheet(s)
 - Intersection Layout Sheet(s) with Pavement Markings
 - Detail sheets

Information required can be combined on sheets if the information can be clearly shown and is approved by OWNER's project manager.

Construction plan sheets identified above may require additional sheets, which would be mutually agreed upon prior to addition.

2. Assemble OWNER's standard construction contract documents and modify special technical specifications, if needed, for the project (if any).
3. Prepare an estimate of construction quantities and develop the preliminary opinion of probable construction costs with a 15% contingency.
4. Submit four (4) half sized 11"x17" of preliminary 60% plans, four (4) sets of preliminary construction contract documents, PDF of plans/contract documents, special conditions (if any) and preliminary opinion of probable construction costs to the OWNER for review.

EXHIBIT A to Agreement between the
Town of Flower Mound, Texas
(OWNER) and Pacheco Koch
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Services

D. Final Design (90% & 100% Submittals)

1. Revise preliminary plans incorporating comments from the OWNER.
2. Submit four (4) half sized 11"x17" sets of 90% plans, four (4) set of 90% construction contract documents, PDF of plans/contract documents, and 90% opinion of probable construction costs for OWNER review.
3. Incorporate final OWNER review comments into the plans and construction contract documents to finalize construction plans for proposed improvements.
4. Finalize construction contract documents including OWNER standard specifications, special technical specifications and special conditions (if any).
5. Estimate of final construction quantities and final opinions of construction cost with a 10% contingency.
6. Submit four (4) sealed (100%) half size 11"x17" sets of final plans and construction documents for OWNER use and five (5) half size 11"x17" sets of final plans and construction contract documents for bidding along with sealed PDF copy of plans & contract documents.
7. Submit DWG and any word documents (if requested) to the OWNER on a CD-ROM disk or flash drive.

E. Project Completion

1. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s) and OWNER's project representative. Submit one (1) set of the record drawings (with "record drawing stamp" bearing the signature of the Engineer and the date) to the OWNER on a CD-ROM disk or flash drive containing scanned half size 11"x17" black and white PDF images, TIFF images and AutoCAD files.

F. Direct Expenses

1. Included in this item are usual and customary expenses normally incurred during performance of the services described. These expenses could include courier delivery charges, copies of existing engineering plans and/or maps, printing and reproduction (either in-house or by reproduction company) and mileage.

EXHIBIT A to Agreement between the
Town of Flower Mound, Texas
(OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

SPECIAL SERVICES:

A. Field Survey

1. Establish Survey Control

Establish survey control along each street or intersecting streets as necessary. These control points will be established based on and tied to established Town horizontal and vertical control points. The horizontal control for each street in the PROJECT will be established on the State Plane Coordinate System (NAD'83 Surface Coordinates) from OWNER monumentation. Control points will be established using 5/8" iron rods, 18" long. These control points will be established using GPS and conventional surveying methods.

2. Benchmark Loop

A benchmark circuit will be established, based on the vertical control points provided. These benchmarks will be located outside of the construction limits and put in such a place so that they may be easily found for future use. Benchmarks will be located at about 1,000' intervals and will be referenced. Benchmarks shall be looped in accordance with good surveying practice prior to field surveys. All control leveling work will be performed using appropriate modified second order procedures with closed loops into the PROJECT vertical control.

3. Existing Streets, Driveways and Right-of-Way

Existing streets, driveways and right-of-way will be profiled and cross-sectioned at 50' intervals and to points at least 20' outside of the Right-of-Way line. Low points, high points and other unique features will be tied. Pavement surfacing type(s) will be determined by visual inspection only. Intersecting streets and extensions beyond the limits of the roadway being designed will be profiled and cross-sectioned to a point at least 150' beyond the roadway being designed.

4. Existing Drainage Channels and Drainage Area Verification

Existing drainage channels and swales will be profiled and cross sectioned within the immediate vicinity of the PROJECT, 100' upstream and downstream. Low points, high points and any other unique features will be tied. Additional surveying may be necessary to verify the limits of drainage areas and channel transitions.

EXHIBIT A to Agreement between the
Town of Flower Mound, Texas
(OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

5. Existing Underground and/or Overhead Utilities

Utility owner's will be contacted, on an as-needed basis, and requested to assist in locating existing utilities identified for the PROJECT. Above ground features of existing utilities within the proposed Right-of-Way and 20' adjacent thereto for the limits of the PROJECT will be field located, including elevations of sanitary and storm sewer manhole flowlines and water/gas valve stems. Manholes upstream and downstream of the PROJECT limits will be tied when needed to determine pipeline locations and elevations within the PROJECT. The location of utilities between above ground features will be determined from visual inspection, utility records, and/or from locations determined by the respective utility companies. The utilities will be tied to the PROJECT control points and depths determined in sufficient detail to identify potential conflicts with proposed construction. The excavation and other costs required to expose or probe the underground utilities will be the responsibility of others.

6. Right-of-Way

Right-of-Way lines along the PROJECT will be located. This information will be included on the PROJECT's plan sheets.

7. Existing Storm Sewers and Culverts

The size of existing culverts will be measured and tied along with existing headwalls, channels and aprons. The size, length, and flowline elevation of existing storm sewers will be surveyed. Drainage areas contributing to the PROJECT or conveying water from the PROJECT will be determined through field investigations and available GIS topographic mapping.

8. Temporary Signs, Traffic Control, Flags, Safety Equipment, Etc.

The Surveyor will exercise care in completing this surveying assignment by using traffic control devices, flags and safety equipment when necessary.

B. Sanitary Sewer Design (if requested – to be submitted with 60%/90% Submittals)

1. Sanitary Sewer Plan and Profile sheets
Scale 1" = 40' Horizontal; 1" = 4' Vertical

EXHIBIT A to Agreement between the
Town of Flower Mound, Texas
(OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

Services not included in this contract:

- *Construction observation or inspection services*
- *Bidding or Construction Phase services*
- *Subsurface Utility Exploration/Engineering*
- *As-built surveys of constructed improvements*
- *Public hearings or Town Council/Commission meetings*
- *Geotechnical engineering*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities.*
- *Reset property corner monumentation disturbed or removed during or after construction*
- *LOMR Preparation*
- *Traffic Signal Design*
- *Illumination Design*
- *Required application and permitting fees (LOMR) or special insurance premiums are not included*
- *Phase II Environmental Site Assessments*
- *Storm Water Pollution Prevention Permit (SWPPP) – Erosion Control Plans are included.*
- *Tree mitigation plan or calculations of protected tree inches requiring mitigation.*

END OF EXHIBIT 'A'

EXHIBIT B to Agreement between the
Town of Flower Mound, Texas
(OWNER) and Pacheco Koch
Consulting Engineers, Inc.
(CONSULTANT) for Consulting
Services

EXHIBIT 'B' – COMPENSATION AND METHOD OF PAYMENT

COLONIAL DRIVE RECONSTRUCTION PHASE II (WHITNEY LANE TO HOMESTEAD DRIVE)

COMPENSATION:

For all professional services included in EXHIBIT 'A', Scope of Services, the CONSULTANT shall be compensated a lump sum fee of \$ 153,639.50 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT A, including all labor materials, supplies, and equipment necessary to deliver the services.

Basic Services

A.	Project Management, Coordination & Permitting	\$ 10,760.00
B.	Conceptual Design (30% Submittal)	26,137.50
C.	Preliminary Design (60% Submittal)	54,055.00
D.	Final Design (90% & 100% Submittals)	31,367.50
E.	Project Completion	590.00
F.	Direct Expense (Not to Exceed)	<u>1,654.50</u>
		\$ 124,564.50

Special Services

A.	Field Survey	15,075.00
B.	Sanitary Sewer Design (if requested)	<u>14,000.00</u>
		\$ 29,075.00

TOTAL **\$ 153,639.50**

METHOD OF PAYMENT:

The CONSULTANT shall be paid monthly payments as described in the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of the CONSULTANT.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to the CONSULTANT plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times the CONSULTANT'S cost.

END OF EXHIBIT 'B'



TOWN COUNCIL AGENDA ITEM NO. 15

CONSENT ITEM

DATE: December 16, 2019

FROM: Blake Hummel, Senior Project Engineer

ITEM: 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.

BACKGROUND INFORMATION: The Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive) project includes the reconstruction of existing Edgefield Trail paving between Wood Creek Drive and Timber Valley Drive (1500 ft.). The reconstruction is to also include complete sidewalk replacement and pedestrian ramp improvements along the limits of the project. Edgefield Trail will be reconstructed to match the existing 27 ft. wide (back of curb to back of curb) cross-section and 4 ft. wide sidewalks. Several sections of the existing storm sewer system within the limits of the project need repairs and those sections will be completely replaced with new storm piping and curb inlets.

The scope of the Professional Services Agreement includes the preparation of design survey, design plans, contract specifications and record drawings. The engineer's opinion of probable cost is \$1,100,000.00. Construction is estimated to begin Fall 2020 (FY20-21).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The decision to not approve the proposed Professional Services Agreement for design would postpone the reconstruction of Edgefield Trail between Wood Creek Drive and Timber Valley Drive.

FISCAL IMPACT: \$92,748.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$92,748.00	316-560-78039

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

Total project cost is \$1,464,000 Funding sources are:

- Dedicated Sales Tax \$ 1,464,000

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

ATTACHMENTS:

1. Professional Service Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
CRIADO & ASSOCIATES, INC.**

This contract is entered into on this 16th 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 **Criado & Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 4100 Spring Valley Road, Suite 1001, Dallas, TX 75244.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Edgefield Trail Reconstruction (Wood Creek Drive to Timber Valley Drive) project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Ninety-Two Thousand Seven Hundred Fourty Eight and No/100 Dollars (\$92,748.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV. **Revisions of the Scope of Services**

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

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

V. **Term**

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

VI. **Contract Termination Provision**

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

entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of

recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

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

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

IX.

Right to Inspect Records

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

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

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use

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

XIX. **Notice Information**

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

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

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

Kelly Moncrief, P.E.
Senior Project Manager
Criado & Associates, Inc.
4100 Spring Valley Road, Suite 1001
Dallas, Texas 75244
972-392-9092 Telephone

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

XX. **Applicable Law**

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

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

XXI.

Non-Discrimination

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

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

XXII.

Arbitration

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

XXIII.

No Waiver of Governmental Immunity

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

XXIV.

Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Criado & Associates, Inc.

By: [Signature]
 Name: CRISTINA CRIADO
 Title: PRESIDENT
 Date Signed: 11/15/19

State of Texas §
 §
 County of Dallas §

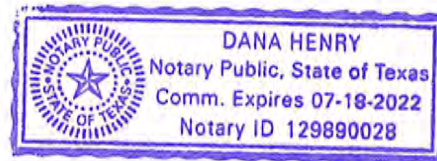
This instrument was acknowledged before me on the 15th day of November, 20 19, by Cristina Criado in his capacity as President of Criado & Associates, a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of President.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 15th DAY OF NOV, 20 19.

[Signature: Dana Henry]
 Notary Public, State of Texas

My Commission Expires:

July 18, 2022



November 15, 2019

Mr. Blake Hummel, P.E., C.F.M.
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

Re: Civil Engineering Fee Proposal for the reconstruction of Edgefield Trail from Wood Creek Drive to Timber Valley Drive (Approximately 1,500 LF).

Dear Mr. Hummel:

Criado & Associates, Inc. (CRIADO) is pleased to be of service to the Town of Flower Mound, by providing the design and bid documents for paving improvements along Edgefield Trail. This is to be reconstructed as a 2-lane, 27-foot wide back-to-back local residential street section from Wood Creek Drive to Timber Valley Drive (Approximately 1,500 LF).

CRIADO shall perform services for the project in accordance with the Scope of Work contained in **Exhibit A**, attached. We propose the lump sum amounts in the Fee Schedule (**Exhibit B**):

Task 0 – Project Management & Coordination	\$ 5,280.00
Task 1 – Topographic Survey for Design	\$ 12,910.00
Task 2 – Preliminary Design:	\$ 44,100.00
Task 3 – Final Design:	\$ 24,108.00
Task 4 – Bid Phase Services:	\$ 530.00
Task 5 – Construction Administration	\$ 3,170.00
Task 6 – Special Services	\$ 1,650.00
Task 7 – Reimbursables	<u>\$ 1,000.00</u>
Total Fee	\$ 92,748.00

Final plans and specifications shall be submitted no later than 9 months after a “Notice to Proceed” has been provided exclusive of Town review periods.

We appreciate the opportunity to be of service to the Town of Flower Mound. We trust that our association on this project will be mutually beneficial and continue to serve as the foundation for a long-term relationship. If you have any questions, please do not hesitate to call me at 972-392-9092.

Sincerely,
Criado & Associates, Inc.



Kelly Moncrief, P.E.
Senior Project Manager

EXHIBIT A SCOPE OF SERVICES

EDGEFIELD TRAIL RECONSTRUCTION (WOOD CREEK DR. TO TIMBER VALLEY DR.) TOWN OF FLOWER MOUND, TEXAS

0.0 GENERAL

0.1 Project Description

The services to be provided for this project include the preliminary and final design, development of construction plans, specifications, and estimates for the construction of Edgefield Trail from Wood Creek Drive to Timber Valley Drive (Approximately 1,500 lf) with a proposed 27-foot back-to-back pavement cross section in the Town of Flower Mound, Denton County, Texas. Improvements also include replacement of several sections of failed storm sewer and associated inlets within the project limits.

All work will be performed within the existing right of way. Plans will be prepared using conventional ground topographic surveying tied to the Town of Flower Mound Geodetic Control Network to produce 1" = 20' scale construction documents.

0.2 Project Phasing

This project shall be divided into five phases:

- Topographic Survey for Design
- Preliminary Design Phase
- Final Design Phase
- Bid Phase Services
- Construction Phase Services

0.3 Design Standards

Design and preparation of construction drawings and technical specifications required for the project shall be in accordance with the following standards.

- a. Town of Flower Mound Design Standards
- b. NCTCOG Construction Specifications and Details
- c. AASHTO Design Criteria
- d. TDLR Architectural Barriers Act / Texas Accessibility Standards
- e. TxDOT Design and Construction Standards

1.0 TOPOGRAPHIC SURVEY FOR DESIGN

Establish benchmarks and horizontal control using Town's control network, establish scale factor for adjustment to surface coordinates.

Obtain topographic survey data within the limits of the right-of-way of Edgefield Trail; including visible features, utility appurtenances and utility manhole flowlines. The topographic survey will include capturing all trees and visible improvements along the alignment necessary for design. The survey will include

the combined performance of research, field work, analysis, computation, and documentation necessary to provide detailed topographic (3-dimensional) mapping of a project site. A design survey may include, but need not be limited to, cross-sections or data to create cross-sections and Digital Terrain Models (DTM), horizontal and vertical location of utilities and improvements, detailing of bridges and other structures, review of right-of-way maps, and establishing control points.

Field verify location and elevation of existing utilities, public and franchise, appurtenances, and other utility improvements affecting the design and construction. Texas 811 will be contacted to mark the approximate position of existing franchise utilities prior to the topo survey beginning.

Survey shall include existing corner monumentation as required to assist in defining the street easement / ROW lines. The street addresses of each property will be provided in the existing ROW map product.

No right of entry letters are included as part of this Contract.

2.0 PRELIMINARY DESIGN (65%)

2.1 Data Collection & Utility Coordination

Obtain and review available reports, pertinent utility plans, street plans, plats and right-of-way maps, existing easement information, and other features within the project area from the Town of Flower Mound. Contact private utilities along the project for information on existing and proposed facilities. Work with affected utilities such as water, gas, telephone, cable TV, and electric to obtain accurate information for horizontal and vertical data for their facilities. Distribute the plans to local utility companies to obtain information regarding impacts to their facilities.

2.2 Preliminary Design – General Tasks

Prepare the following sheets at the engineering scale indicated:

- a. General Sheets
 - Cover sheet.
 - General Notes sheets.
- b. Roadway Plans
 - Typical sections sheet.
 - Paving Details.
- c. Specifications
 - Prepare construction specifications for Edgefield Trail.

2.3 Preliminary Design – Project Specific Tasks

Prepare the following sheets at the engineering scale indicated:

- a. Control Sheets
 - Project Layout / Horizontal Alignment sheet.
- b. Removal plans. Scale 1" = 20'.

c. **Roadway Plans**

- Paving plan & profile sheets for street improvements; including annotation of associated Pavement Markings & Signage notes. Scale 1" = 20' horizontal and 1" = 2' vertical.
- Cross sections for street improvements.

d. **Drainage Plans**

- Storm plan & profile sheets for lateral improvements.

e. **SWPPP & Erosion control plan sheets.** Scale 1"=40'.

f. **Traffic Control Plans - Construction phasing, narrative and temporary traffic control sheets.** Scale 1" = 40'.

2.4 Preliminary Quantities & Cost Estimate

Prepare a preliminary estimate of construction quantities and develop preliminary statement of probable construction cost.

2.5 Preliminary (65%) Submittal & Review Meeting

Submit three (3) half-size (11" x 17") sets of 65% preliminary plans, outline of specifications, and preliminary estimates with associated electronic digital PDF / Excel files to the Town for review.

Meet with the Town of Flower Mound to discuss preliminary plans, outline of specifications, estimates, and drainage requirements.

3.0 FINAL DESIGN (95% & IFB)

3.1 Franchise Utility Coordination

Incorporate comments from the utility companies.

3.2 95% Design - Address Town Comments – General Tasks

Revise preliminary plans incorporating comments from the Town of Flower Mound.

3.3 95% Design - Address Town Comments – Project Specific Tasks

Revise preliminary plans incorporating comments from the Town of Flower Mound.

3.4 Final Quantities & Construction Cost Estimate

Prepare a final estimate of construction quantities and develop final statement of probable construction cost.

3.5 95% Submittal & Review Meeting

Provide 100% plan submittal (3 sets each submittal) with associated electronic digital PDF / Excel files and meet with the Town of Flower Mound staff during final design to review progress, discuss design issues, obtain additional design information, review plans and specifications, and coordinate final details. Prepare a record of all review meetings and distribute it to attendees.

3.6 100% IFB Revisions & Submittal

Revise 95% plans incorporating comments from the Town of Flower Mound.

3.6 Contract Bid Documents

Assist the Town in preparing final bid documents using existing Town of Flower Mound standard documents as directed by the Town staff. Bid documents shall include bid proposal forms, construction plans, specifications, and other documents required by the Town of Flower Mound. Submit three (3) half-size (11" x 17") sets of prints, contract documents, and bid proposal forms with associated electronic digital PDF / Excel files prepared by the Engineer to the Town of Flower Mound.

4.0 BID PHASE SERVICES

4.1 Advertising and Pre-bid Meeting – Not in Contract

Assist Town staff in advertising for bids.

4.2 Plan Distribution

Furnish five (5) half-size IFB sets of plans and specifications for bidding. If conformance plans and / or specifications are necessary, an additional five (5) half size IFC sets of plans and specifications will be provided prior to construction.

4.3 Addenda – Not in Contract

4.4 Receive Bids – Not in Contract

Assist the Town of Flower Mound in receiving and opening bids for construction of the project.

4.5 Bid Tabulation – Not in Contract

Prepare a tabulation of bids for the project and verify the bid amounts. Evaluate the lowest and second lowest bidder, including obtaining information on past work history and physical resources.

4.6 Recommendation for Award – Not in Contract

Prepare a recommendation for award of contract or other action and notify bidders of the action taken by the Town of Flower Mound.

4.7 Prepare Final Specifications – Not in Contract

5.0 CONTRACT ADMINISTRATION

5.1 Pre-construction Meeting – Not in Contract

5.2 Site Visits – Not in Contract

5.3 Shop Drawing Review – Not in Contract

5.4 Request for Information – Not in Contract

5.5 Final Inspection – Not in Contract

5.6 Prepare Record Drawings

Utilizing Contractor construction record information, prepare and provide a CD containing Record Drawing in digital format (PDF and CAD).

6.0 SPECIAL SERVICES

6.1 Pavement Design – Geotechnical – Not in Contract

6.2 Levels 'A' & 'B' SUE – Not in Contract

6.3 TDLR Submittals & Review

Submit final plans and specifications to TDLR for all pedestrian improvements in excess of \$50,000. To be billed as a direct reimbursable expense at actual cost x 1.1.

7.0 EXCLUSIONS

The intent of the scope is to include only the services specifically listed above and no others. Services specifically excluded from this Scope of Services include, but are not necessarily limited to the following:

- Computer modeling and routing of wastewater flows.
- Title searches.
- Fees for permits and advertising.
- Traffic engineering report or studies.
- Floodplain reclamation plans.
- Full time inspection.
- Designs for trench safety.
- Retaining walls, etc., not included in proposal.
- Revisions to plans as a result of revisions after completion of original final design (unless to correct error on plans).
- Consulting services by others not included in proposal.

- Quality control and testing services during construction.
- Prints furnished after acceptance of the required sets for construction in accordance with this Agreement.
- Environmental Services / Archeological Research.
- Prepare to serve or serve as an expert witness on behalf of the Town in connection with any public hearings or legal proceedings.
- Water distribution system improvements.
- Sanitary sewer system improvements.
- Storm drainage analysis and preparation of a drainage area map.
- Storm drainage and hydraulic design.
- Review monthly requests for payment from the contractor and prepare a recommendation for action by the Town of Flower Mound.
- Review the contractor's monthly progress reports and provide review comments to the Town of Flower Mound.
- This project includes the design of on-site facilities only. Design of any off-site road, utility or drainage facility extensions which may be required to serve the project is not included in the engineer's scope
- Street lighting and electrical design and layout.
- Landscape and Irrigation Design.
- Subsurface Utility Engineering Quality Level (QL) A.
- Right-of –Way Determination or Acquisition Services.
- Environmental site assessments.
- Wastewater capacity analysis, flow study, or condition analysis.

EXHIBIT B

**TOWN OF FLOWER MOUND
EDGEFIELD TRAIL
(WOOD CREEK DR. TO TIMBER VALLEY DR.)
(APPROX. 1,500 LF)**

TASK/DESCRIPTION	TOTAL FEE FOR TASK
BASIC SERVICES (TASKS 0 - 3)	
TASK 0 - PROJECT MANAGEMENT & COORDINATION	\$5,280
TASK 1 - TOPOGRAPHIC SURVEY FOR DESIGN	\$12,910
TASK 2 - PRELIMINARY DESIGN (65%)	\$44,100
TASK 3 - FINAL DESIGN (95% & IFB)	\$24,108
SUB-TOTAL - BASIC SERVICES FEE	\$86,398
SPECIAL SERVICES (TASKS 4 - 7)	
TASK 4 - BID PHASE SERVICES	\$530
TASK 5 - CONSTRUCTION ADMINISTRATION	\$3,170
TASK 6 - SPECIAL SERVICES	\$1,650
TASK 7 - REIMBURSABLES	\$1,000
SUB-TOTAL - SPECIAL SERVICES FEE	\$6,350
TOTAL FEE	\$92,748

EXHIBIT B - MANHOUR BREAKDOWN

TOWN OF FLOWER MOUND
EDGEFIELD TRAIL
(WOOD CREEK DR. TO TIMBER VALLEY DR.)
(APPROX. 1,500 LF)

TASK / DESCRIPTION	PRINCIPAL	SENIOR PROJECT MANAGER	PROJECT ENGINEER	ENGINEER IN-TRAINING	CADD TECH	SURVEY TECHNICIAN	RPLS	2-MAN FIELD CREW	CLERICAL	MAN- HOURS	CHARGES	SUB CONSULT'S	FOR TASK (INCL MULTS)
BASIC SERVICES													
TASK 0 - PROJECT MANAGEMENT & COORDINATION													
0.1 PROJECT COORDINATION		24.0								24.0	\$5,280		\$5,280
SUBTOTAL HOURS/COSTS													
		24.0								24.0	\$5,280		\$5,280
TASK 1 - TOPOGRAPHIC SURVEY FOR DESIGN													
1.1 SURVEY FOR DESIGN - TOPOGRAPHY (INCLUDES BENCHMARKS / LVL LOOP)		1.0				36.0	6.0	48.0		91.0	\$12,910		\$12,910
SUBTOTAL HOURS/COSTS													
		1.0				36.0	6.0	48.0		91.0	\$12,910		\$12,910
TASK 2 - PRELIMINARY DESIGN (65%)													
2.1 DATA COLLECTION & UTILITY COORDINATION		0.5		2.0						2.5	\$320		\$320
2.2 PRELIMINARY DESIGN - GENERAL TASKS													
2.2a GENERAL SHEETS (COVER & GENERAL NOTES)		0.5	2.0		8.0					10.5	\$1,220		\$1,220
2.2b ROADWAY PLANS (TYPICAL SECTIONS & DETAILS)		1.0	2.0	4.0	16.0					23.0	\$2,590		\$2,590
2.2c CONSTRUCTION SPECIFICATIONS		1.0	4.0	12.0						17.0	\$2,020		\$2,020
2.3 PRELIMINARY DESIGN - PROJECT SPECIFIC TASKS													
2.3a CONTROL SHEETS (PROJECT LAYOUT / HORIZ ALIGNMENT)		0.5	1.0	6.0	10.0					17.5	\$1,925		\$1,925
2.3b REMOVAL PLANS		1.0	2.0	6.0	12.0					21.0	\$2,380		\$2,380
2.3c ROADWAY PLANS (PLAN & PROFILE SHEETS & CROSS SECTIONS)		12.0	24.0	40.0	64.0					140.0	\$16,800		\$16,800
2.3d DRAINAGE PLANS (LATERAL PLAN & PROFILE SHEETS & DETAILS)		1.0	3.0	6.0	16.0					26.0	\$2,935		\$2,935
2.3e SWPPP & EROSION CONTROL PLANS		2.0	4.0	8.0	16.0					30.0	\$3,500		\$3,500
2.3f TRAFFIC CONTROL PLAN - NARRATIVE & PHASING		4.0	10.0	20.0	40.0					74.0	\$8,530		\$8,530
2.4 PRELIMINARY QUANTITIES & COST ESTIMATE		0.5	1.0	4.0	2.0					7.5	\$875		\$875
2.5 PRELIMINARY (65%) SUBMITTAL & REVIEW MEETING		3.0	1.0		2.0					6.0	\$1,005		\$1,005
SUBTOTAL HOURS/COSTS													
		27.0	54.0	108.0	186.0					375.0	\$44,100		\$44,100
TASK 3 - FINAL DESIGN (95% & IFB)													
3.1 FRANCHISE UTILITY COORDINATION		1.0		2.0						3.0	\$430		\$430
3.2 95% DESIGN - ADDRESS TOWN COMMENTS - GENERAL TASKS													
3.2a GENERAL SHEETS (COVER & GENERAL NOTES)		0.5	1.0		4.0					5.5	\$665		\$665
3.2b ROADWAY PLANS (TYPICAL SECTIONS & DETAILS)		0.5	1.0	2.0	6.0					9.5	\$1,085		\$1,085
3.2c CONSTRUCTION SPECIFICATIONS		1.0	2.0	6.0						9.0	\$1,120		\$1,120
3.3 95% DESIGN - ADDRESS TOWN COMMENTS - PROJECT SPECIFIC TASKS													
3.3a CONTROL SHEETS (PROJECT LAYOUT)		0.5	0.5	2.0	4.0					7.0	\$808		\$808
3.3b REMOVAL PLANS		0.5	1.0	2.0	6.0					9.5	\$1,085		\$1,085
3.3c ROADWAY PLANS (PLAN & PROFILE SHEETS & CROSS SECTIONS)		6.0	12.0	18.0	40.0					76.0	\$9,030		\$9,030
3.3d DRAINAGE PLANS (LATERAL PLAN & PROFILE SHEETS & DETAILS)		0.5	1.0	2.0	8.0					11.5	\$1,295		\$1,295
3.3e SWPPP & EROSION CONTROL PLANS		0.5	1.0	4.0	6.0					11.5	\$1,295		\$1,295
3.3f TRAFFIC CONTROL PLAN - NARRATIVE & PHASING		2.0	4.0	8.0	16.0					30.0	\$3,500		\$3,500
3.4 QUANTITIES		0.5	1.0	3.0	1.0					5.5	\$665		\$665
3.5 95% SUBMITTAL & REVIEW MEETING		3.0	1.0		3.0					7.0	\$1,110		\$1,110
3.6 100% IFB REVISIONS & SUBMITTAL		3.0	1.0		3.0					7.0	\$1,110		\$1,110
3.7 BID DOCUMENTS		1.0	2.0		4.0					7.0	\$910		\$910
SUBTOTAL HOURS/COSTS													
		19.5	26.5	49.0	97.0					199.0	\$24,108		\$24,108

EXHIBIT B - MANHOUR BREAKDOWN

TOWN OF FLOWER MOUND
EDGEFIELD TRAIL
(WOOD CREEK DR. TO TIMBER VALLEY DR.)
(APPROX. 1,500 LF)

TASK 4 - BID PHASE SERVICES													
4.1	PRE-BID MEETING (NOT INCLUDED)		0.5			4.0					4.5	\$530	\$530
4.2	PLAN DISTRIBUTION												
4.3	ADDENDA (NOT INCLUDED)												
4.4	RECEIVE BIDS (NOT INCLUDED)												
4.5	BID TABULATION (NOT INCLUDED)												
4.6	RECOMMENDATION FOR AWARD (NOT INCLUDED)												
4.7	PREPARE CONFORMANCE PLANS & SPECIFICATIONS (NOT INCLUDED)												
SUBTOTAL HOURS/COSTS			0.5			4.0					4.5	\$530	\$530
TASK 5 - CONSTRUCTION ADMINISTRATION													
5.1	PRE-CONSTRUCTION MEETING (NOT INCLUDED)												
5.2	SITE VISITS (NOT INCLUDED)												
5.3	SHOP DRAWING REVIEW (NOT INCLUDED)												
5.4	REQUEST FOR INFORMATION (NOT INCLUDED)												
5.5	FINAL INSPECTION (NOT INCLUDED)												
5.6	RECORD DRAWINGS		0.5	4.0		24.0					28.5	\$3,170	\$3,170
SUBTOTAL HOURS/COSTS			0.5	4.0		24.0					28.5	\$3,170	\$3,170
TASK 6 - SPECIAL SERVICES													
6.1	PAVEMENT DESIGN (GEOTECHNICAL) (NOT INCLUDED)												
6.2	LEVEL A & B SUE - NIC												
6.3	TDLR SUBMITTALS & REVIEW (TO BE BILLED AS A DIRECT REIMBURSABLE EXPENSE AT ACTUAL COST X 1.1)											\$1,650	\$1,650
SUBTOTAL HOURS/COSTS												\$1,650	\$1,650
TASK 7 - REIMBURSABLES													
7.1	REIMBURSABLES (TO BE BILLED AT ACTUAL COST X 1.1)											\$1,000	\$1,000
SUBTOTAL HOURS/COSTS												\$1,000	\$1,000
FEE SUMMARY													
TASK 0 - PROJECT MANAGEMENT & COORDINATION			24.0								24	\$5,280	\$5,280.00
TASK 1 - TOPOGRAPHIC SURVEY FOR DESIGN			1.0				36.0	6.0	48.0		91	\$12,910	\$12,910.00
TASK 2 - PRELIMINARY DESIGN (65%)			27.0	54.0	108.0	186.0					375	\$44,100	\$44,100.00
TASK 3 - FINAL DESIGN (95% & IFB)			19.5	26.5	49.0	97.0					199	\$24,108	\$24,108.00
TASK 4 - BID PHASE SERVICES			0.5			4.0					5	\$530	\$530.00
TASK 5 - CONSTRUCTION ADMINISTRATION			0.5	4.0		24.0					29	\$3,170	\$3,170.00
TASK 6 - SPECIAL SERVICES												\$1,650	\$1,650.00
TASK 7 - REIMBURSABLES												\$1,000	\$1,000.00
TOTAL HOURS			72.5	84.5	157.0	311.0	36.0	6.0	48.0		722	\$91,098	\$1,650
HOURLY RATES		\$328.00	\$220.00	\$135.00	\$105.00	\$105.00	\$110.00	\$175.00	\$160.00	\$80.00			
												TOTAL FEE	
												\$92,748	



TOWN COUNCIL AGENDA ITEM NO. 16

CONSENT ITEM

DATE: December 16, 2019

FROM: Melody Eby, Economic Development Specialist

ITEM: **Consider approval of the 2019 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1) in accordance with Chapter 311 of the Texas Tax Code.**

BACKGROUND INFORMATION: On September 19, 2005, the Flower Mound Town Council established the TIRZ #1 by creating the zone, a Board of Directors, and a TIRZ fund. The TIRZ #1 Board will be voting on the 2019 Annual Report at their December 16, 2019 (4:00 p.m.) meeting. The Annual Report provides a summary of the action steps taken by the Board of Directors and the Town Council for fiscal year 2018-2019. It also outlines the net taxable value and captured appraised value within the zone as well as the increment for fiscal year 2018-2019, which is \$5,563,095. The Annual Report is required by law to be filed annually with Denton County and the Comptroller of Public Accounts in Austin before the 90th day following the end of the fiscal year, which would be on or before December 31, 2019.

BOARD REVIEW/CITIZEN FEEDBACK: The TIRZ #1 Board will be voting on the 2019 Annual Report at their December 16, 2019 (4:00 p.m.) meeting.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. 2019 Annual Report

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



Town of Flower Mound, Texas

Tax Increment Reinvestment Zone #1 (TIRZ #1)

ANNUAL REPORT

2019

Town of Flower Mound, Texas
Tax Increment Reinvestment Zone #1
As of September 30, 2019

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YEAR END SUMMARY OF MEETINGS/TOWN COUNCIL/BOARD ACTIONS

During the period from October 1, 2018, through September 30, 2019, the Town of Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ) Board of Directors met once. The meeting was held on December 3, 2018, to approve the minutes from the December 4, 2017, TIRZ board meeting and the 2018 Annual Report.

Town of Flower Mound Economic Development Director, Andrea Roy, provided a brief overview of the 2018 Annual Report of the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ #1), including information that had changed since the previous annual report.

Deputy Town Manager/CFO, Debra Wallace, presented the revisions to the TIRZ #1 Project Plan. The original \$4,000,000 budget for the Improvements in Forum (Riverwalk) Area was reduced to \$730,000, leaving \$3,270,000 to be reallocated to the following projects: \$1,000,000 to FM 2499 at Waketon Intersection, \$470,000 to East Waketon Road Drainage Improvements, \$1,800,000 to Morriss Waterline Project PH III.

Board members appointed and serving at the time of the December 3, 2018 meeting: Town—Paul Stone, Bill Collins, Jim Engel and County—Larry Lipscomb and Lori Fickling. Ex-Officio members are Mayor Tom Hayden and Town Manager Jimmy Stathatos.

During the period from October 1, 2018, through September 30, 2019, the Flower Mound Town Council took the following action:

- At a meeting on December 17, 2018, the Town Council approved the 2018 Annual Report for the Flower Mound Tax Increment Reinvestment Zone #1 (TIRZ) in accordance with Chapter 311 of the Texas Tax Code.

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PUBLIC INFRASTRUCTURE/BUILDING PROJECTS

2018-2019

River Walk Parking Structure

On October 20, 2014, a Chapter 380 Partnership Agreement was executed between the Town of Flower Mound and RMI River Walk Investors, LP, which included the use of TIRZ funding for up to \$1 million for a public parking structure on the site of a nationally-branded hotel; later named the Courtyard by Marriott Dallas Flower Mound. Section 7 of the Agreement specifies that this financial assistance provided by the TIRZ may not exceed \$1 million and will be paid as reimbursement for infrastructure costs following the issuance of a Certificate of Occupancy for the parking structure. A First Amendment to the Chapter 380 Agreement was approved by Town Council on May 4, 2015, placing additional requirements on the acceptance of these TIRZ funds, in exchange for an extension to the parking structure's building permit deadline. On September 18, 2017, the Town Council approved a Second Amendment to the Chapter 380 Agreement, extending the required completion date of the parking structure. Since approval of the Second Amendment, RMI River Walk Investors, LP, completed the parking structure and received a Building Final on March 23, 2018. To date, RMI River Walk Investors, LP has not submitted a Payment Request to the Town for the reimbursement.

Town Hall Project

The new Town Hall project began with a feasibility study funded by the TIRZ board in 2012, with the new Town Hall portion being completed in November 2014. On August 9, 2016, the TIRZ Board recommended the use of TIRZ funds to pay the annual debt service on the issuance of \$10,000,000 to partially fund a new Town Hall for the Town of Flower Mound. The estimated total cost of the project was \$15,000,000; \$10,000,000 from the TIRZ and \$5,000,000 from the Town. The project consisted of an approximately 46,000 sq. ft. new Town Hall and associated site improvements located at the intersection of FM 1171 and Morriss Road, being the same location of the prior Town Hall. The new Town Hall was designed with enough space to consolidate staff operating from the prior Town Hall facility and rented space at the Atrium. Approximately 5,000 square feet of space is provided for future expansion. The facility was designed with an effort to maximize space and reduce wasted real estate that existed between the two main locations of Town operations; the prior Town Hall and the Atrium. The new Town Hall removed the lease payment obligation to the Town for the 19,000 square-feet of space leased at the Atrium at an amount of \$300,000 annually.

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On August 15, 2016, Town Council approved the following: a revision to the Tax Increment Reinvestment Zone #1 Project Plan (providing for the revised budget for the new Town Hall), a resolution declaring expectation to reimburse expenditures with proceeds of future debt and authorizing the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations (related to the new Town Hall funding), and a professional services agreement with Oxley Williams Tharp Architect for the new Town Hall design. A professional services agreement with Kleinfelder Central, Inc., to provide geotechnical professional engineering services, in the amount of \$14,990, was approved by Manager Communication on August 28, 2016. The Construction Manager at Risk (CMAR) contract with Steele Freeman was approved by the Town Council on December 19, 2016, and the groundbreaking ceremony for the new Town Hall was held on June 19, 2017. Staff previously housed in the prior Town Hall moved into the new Town Hall the first week of December 2018, with the ribbon cutting and first Town Council meeting held on December 17, 2018. The remaining Staff who were housed at The Atrium relocated to the new Town Hall in March 2019, at which time the project was deemed to be substantially complete.

Town of Flower Mound Public Library Project

On June 19, 2017, the TIRZ Board recommended the use of TIRZ #1 Funds to pay the annual debt service on the issuance of \$10,900,000 for the Town of Flower Mound Public Library Renovation and Expansion Project. The project consists of a renovation of the existing 25,000 sq. ft. Library and an expansion of approximately 15,000 sq. ft., as well as associated site improvements. The expansion of the Library will create additional adult program rooms, quiet reading rooms, study rooms, additional collection space, a multi-purpose room, and more meeting spaces. On November 6, 2017, the Town Council approved a reimbursement resolution for an amount not to exceed \$10,900,000 to fund improvements in accordance with the FY 17-18 Capital Improvement Plan. On December 4, 2017, the Town Council then authorized the publication of notice to issue Certificates of Obligation, Series 2018, in the principal amount not to exceed \$10,900,000 to fund the project. This same evening, Town Council approved a professional services agreement for Library design services with Komatsu Architecture. Komatsu Architecture was the architect for the Library when originally built. Later, the Construction Manager at Risk (CMAR) contract with Steele & Freeman, Inc. was approved by the Town Council on June 18, 2018. The site plan was approved on March 20, 2019, and the construction award and testing award were both approved at the May 6, 2019, Town Council meeting. The approved Guaranteed Maximum Price (GMP) with Steele & Freeman, Inc. for the construction of the Library Expansion Project was in the amount of \$10,399,482.11. Construction is ongoing with a completion date in early FY 20-21.

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Street Projects**FM 1171 Westbound Turn Lane at FM 2499 Intersection**

The project includes the installation of a FM 1171 westbound turn lane at the FM 1171/FM 2499 intersection, providing for approximately 410 feet of paving, hike/bike trails, utility relocations and traffic signal upgrades. The design contract in the amount of \$55,000 was awarded to Kimley-Horn and Associates, Inc. on October 3, 2016. Since that time, project design has been completed and right-of-way acquisition is ongoing. Buried utilities were located and several lines will need to be relocated. Coordination with TxDOT is ongoing.

FM 2499 and Waketon Intersection Improvements

The project initially included the addition of westbound and eastbound right turn lanes, however, during design and with coordination of adjacent property owners, the project will also include the northbound and southbound right turn lanes. The design contract was awarded to Halff Associates, Inc. in the amount of \$173,450.00 at the March 4, 2019, Town Council meeting. Design approximately 60% complete and right-of-way acquisition and franchise utility coordination is ongoing.

Rippy Road

Rippy Road will be completed in two phases. Phase 1 (Waketon Road to Pecan Meadows) included improvements of Rippy Road to its thoroughfare plan designated section, a two-lane concrete urban collector. On May 15, 2017, the Town Council approved a development agreement with CalAtlantic Homes, for construction of the improvements, providing reimbursement of the Town's share of the construction costs associated with the infrastructure improvements. Phase I of the project has been completed and the developer has received reimbursement for the construction costs associated with Phase 1.

Phase 2 (Pecan Meadows to FM 2499) includes improvements to approximately 2,500 linear feet of existing two lane open section asphalt roadway to its thoroughfare plan designated section, a two lane concrete urban collector. The project also includes an enclosed storm water collection system to improve storm water collection in the area. The design contract was awarded to CP&Y, Inc. at the March 4, 2019, Town Council meeting in the amount of \$298,645.75. Design plans are approximately 60% complete. Right-of-way acquisition and franchise utility coordination is ongoing. Phase 2 construction is expected to begin in FY 19-20.

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Waketon Road

Waketon Road will be completed in two phases. Phase 1 (FM 2499 to the western limits of the proposed Bradford Park Subdivision, approximately 1,450' east of Chinn Chapel Road) included improvements of Waketon Road to its thoroughfare plan designated section, a two-lane concrete urban collector. On May 15, 2017, the Town Council approved a development agreement with CalAtlantic Homes, for construction of the improvements, providing reimbursement of the Town's share of the construction costs associated with the infrastructure improvements. Phase I of the project has been completed and the developer has received reimbursement for the construction costs associated with Phase 1.

Phase 2 (Chinn Chapel Road to the western limits of the Bradford Parks Subdivision) includes improvements to approximately 1,650 linear feet of existing two lane open section asphalt roadway to its thoroughfare plan designated section, a two lane concrete urban collector. The project also includes a roundabout at Chinn Chapel. This is a joint project with the Town of Double Oak as they improve Waketon Road from Chinn Chapel west. The professional services agreement for the design phase services, with Halff Associates, Inc., in the amount of \$243,225, was approved on November 21, 2016. The plans are approximately 95% complete, but the project has been delayed until Double Oak is ready to bid. Both the Double Oak right-of-way acquisition and franchise utility relocation are still ongoing. Phase 2 construction is anticipated to begin late FY 19/20.

Churchill Drive

The project consists of extending Churchill Drive approximately 400 feet east to connect to Yucca Drive. Churchill Drive will be built during the reconstruction of Yucca Drive from Sagebrush to approximately 700 feet south of Cross Timbers. On June 20, 2016, the professional services agreement with Criado and Associates, Inc. to provide professional engineering services for the Yucca and Churchill projects in the amount of \$181,249 was approved. On June 5, 2017, Amendment No. 2 was approved in the amount of \$17,937 to the professional services contract to provide additional design services associated with the relocation and replacement of approximately 1,150 linear feet of waterline along Yucca Drive. Town Council awarded the construction of both projects on August 20, 2018. Notice to proceed was provided to the contractor on November 5, 2018. The extension of Churchill is open, however it will have temporary closures until work on Yucca is complete. Yucca is currently one-way southbound from Stonebridge south. The anticipated completion is March 2020.

East Waketon Rd Drainage Improvements

The project consists of channel excavation from FM 2499 to Waketon Road and culvert replacement under Waketon Road to alleviate the recurring flooding and traffic disruption of Waketon Road, east of FM 2499.

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The project will be constructed in two phases. Phase 1 provides for the channel excavation and Phase 2 provides for culvert replacement. In 2017, a drainage study was completed which provided hydraulic modeling of existing conditions, analysis of alternatives and a final report. The design was awarded on January 7, 2019, and plans are 30% complete. Construction is scheduled for FY 20-21.

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CAPITAL IMPROVEMENT PLAN BUDGET

Project	Estimated Cost
STREETS	
Dixon Lane (Chinn Chapel to Crestside)	\$2,685,267
Chinn Chapel (FM 407 to Dixon)	1,387,500
Chinn Chapel (Dixon to Waketon)	941,305
Waketon Road	5,270,000
Rippy Road (FM 2499 to Waketon)	2,115,000
Churchill (East end to Yucca)	400,000
FM 1171 at FM 2499 Westbound Right Turn Lane	998,000
FM 1171 at FM 2499 Eastbound Right Turn Lane	785,000
FM 2499 at Waketon Intersection	1,000,000
East Waketon Rd Drainage Improvements	470,000
Subtotal	\$16,052,072
SIGNALS	
College Parkway at FM 2499	\$115,000
Subtotal	\$115,000
WATER	
FM 2499 west side from FM 1171 to Dixon	\$1,700,000
FM 407 from FM 2499 to Country Meadows Addition	438,039
Morriss Waterline Project PH III	1,800,000
Subtotal	\$3,938,039
FACILITIES	
Town Hall	\$10,000,000
Senior Citizen Activity Center	4,869,638
Library renovation/expansion	10,900,000
Subtotal	\$25,769,638
PARKS	
Hike and Bike Trails	\$400,000
Subtotal	\$400,000
Improvements in Forum (Riverwalk) Area	\$730,000
Parking Structure	1,000,000
Subtotal	\$1,730,000
Other Projects	\$464,566
Town Center Master Plan	50,685
Retail Developments Shared Drive (FM 407 & Chinn Chapel)	180,000
Subtotal	\$695,251
TOTAL	\$48,700,000

Highlighted values indicate changes from 2018

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BUDGET VS EXPENDITURES

Project	Current Budget	Expended Costs to Date	Remaining Balance
STREETS			
Dixon Lane (Chinn Chapel to Crestside)	\$2,685,267	\$2,685,267	\$0
Chinn Chapel (FM 407 to Dixon)	1,387,500	1,387,500	0
Chinn Chapel (Dixon to Waketon)	941,305	941,305	0
Waketon Road	5,270,000	2,690,594	2,579,406
Rippy Road (FM 2499 to Waketon)	2,115,000	764,088	1,350,912
Churchill (East end to Yucca)	400,000	207,500	192,500
FM 1171 at FM 2499 Westbound Right Turn Lane	998,000	76,023	921,977
FM 1171 at FM 2499 Eastbound Right Turn Lane	785,000	432,752	352,248
FM 2499 at Waketon Intersection	1,000,000	86,900	913,100
East Waketon Rd Drainage Improvements	470,000	62,470	407,530
Subtotal	\$16,052,072	\$9,334,399	\$6,717,673
SIGNALS			
College Parkway at FM 2499	\$115,000	\$115,000	\$0
Subtotal	\$115,000	\$115,000	\$0
WATER			
FM 2499 west side from FM 1171 to Dixon	\$1,700,000	\$7	\$1,699,993
FM 407 from FM 2499 to Country Meadows Addition	438,039	438,039	0
Morris Waterline Project PH III	1,800,000	0	1,800,000
Subtotal	\$3,938,039	\$438,046	\$3,499,993
FACILITIES			
Town Hall	\$10,000,000	\$1,980,000	\$8,020,000
Senior Citizen Activity Center	4,869,638	4,869,638	0
Library Renovation/Expansion	10,900,000	1,800,000	9,100,000
Subtotal	\$25,769,638	\$8,649,638	\$17,120,000
PARKS			
Hike and Bike Trails	\$400,000	\$0	\$400,000
Subtotal	\$400,000	\$0	\$400,000
Improvements in Forum (Riverwalk) area			
Parking Structure	\$730,000	\$0	\$730,000
Subtotal	\$1,730,000	\$0	\$1,730,000
Other Projects			
Town Center Master Plan	\$464,566	\$0	\$464,566
Retail Developments Shared Drive (FM 407 & Chinn Chapel)	50,685	50,685	0
Subtotal	\$695,251	\$230,685	\$464,566
TOTAL	\$48,700,000	\$18,767,768	\$29,932,232

Highlighted values indicate changes from 2018

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TIRZ FUND

Beginning Balance:	
<i>October 1, 2018</i>	\$13,464,211
Revenues:	
Property Tax	\$5,563,095
Interest	<u>\$321,189</u>
TOTAL REVENUES	\$5,884,284
Expenditures:	
Land Purchases	\$0
Professional Services	\$0
Construction/Improvements	\$3,465,189
Debt Service	<u>\$2,638,275</u>
TOTAL EXPENDITURES	\$6,103,464
Ending Balance:	
<i>September 30, 2019 (unaudited)</i>	\$13,245,031

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Chapter 311.016 of V.C.T.A. requires the following information as part of the annual report on the status of the TIRZ District. Information is contained in detail on the attached financial statements.

1. Amount and source of revenue in the tax increment fund established for the zone:

\$5,884,284 Total Revenue

2. Amount and purpose of expenditures from the fund:

\$3,465,189 Total Expenditures

3. Amount of Principal and Interest due on outstanding indebtedness is as follows:

\$2,638,275 Total Principal and Interest

- I. Contributions /Advances from developers— none.
- II. Bonds issued and payment schedule to retire bonds—

2017COTIRZ: Town Hall	Fiscal Year	Principal	Interest	Total
	2020	1,020,000	216,425	1,236,425
	2021	1,045,000	196,025	1,241,025
	2022	1,065,000	175,125	1,240,125
	2023	1,085,000	153,825	1,238,825
	2024	1,110,000	126,700	1,236,700
	2025	1,145,000	93,400	1,238,400
	2026	1,190,000	47,600	1,237,600
		<u>\$ 7,660,000</u>	<u>\$ 1,009,100</u>	<u>\$ 8,669,100</u>

2018COTIRZ: Library	Fiscal Year	Principal	Interest	Total
	2020	1,160,000	239,050	1,399,050
	2021	1,185,000	215,850	1,400,850
	2022	1,210,000	192,150	1,402,150
	2023	1,230,000	167,950	1,397,950
	2024	1,270,000	131,050	1,401,050
	2025	1,305,000	92,950	1,397,950
	2026	1,345,000	53,800	1,398,800
		<u>\$ 8,705,000</u>	<u>\$ 1,092,800</u>	<u>\$ 9,797,800</u>

4. Tax Increment base and current captured appraised value retained by the zone:

Taxing Jurisdiction	Net Taxable Fiscal Year Value 2018 - 2019	Base Year* Value Jan 1, 2005	Captured App. Value Fiscal Year 2018 - 2019
Town of Flower Mound	\$1,097,571,176	\$228,290,889	\$869,280,287
Denton County	\$1,140,498,867	\$229,382,705	\$911,116,162

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5. Captured appraised value by the municipality and other taxing units, the total amount of the tax increment received, and any additional information necessary to demonstrate compliance with the tax increment financing plan adopted by the governing body of the municipality.

- A. Captured appraised value shared by the municipality and other participating taxing jurisdictions received in Fiscal Year 2018-2019:

Taxing Jurisdiction	Participation Per \$100/Value	Amount of 2018-2019 Increment
Town of Flower Mound (100%)	\$0.439000	\$3,816,140.46
Denton County (85%)	\$0.191740	\$1,746,955.00
Total	\$0.630740	\$5,563,095

- B. Amount of tax increment received in 2019 from the municipality and the other taxing jurisdictions based on 2018 valuations: \$5,563,095.
- C. Other information: None

* Base Year Value as of January 1, 2005 is for Fiscal Year 2005-2006.



TOWN COUNCIL AGENDA ITEM NO. 17

REGULAR ITEM

DATE: December 16, 2019

FROM: Chuck Russell, Principal 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. (The Planning and Zoning Commission recommended denial by a vote of 6 to 0 at its November 11, 2019, meeting.) (The Town Council moved on December 2, 2019, to postpone until the December 16, 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

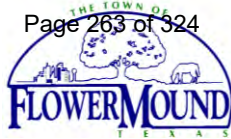
BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. This item was considered by the Town Council on December 2, 2019, and, at the request of the applicant, was tabled until December 16, 2019. After P&Z's consideration of this item, the applicant requested an additional condition be included in their proposed Planned Development District. The condition limits the size of the proposed health club or athletic club to the proposed lease space of 1,196 square feet within the existing office building. This condition has been included in the draft ordinance.

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

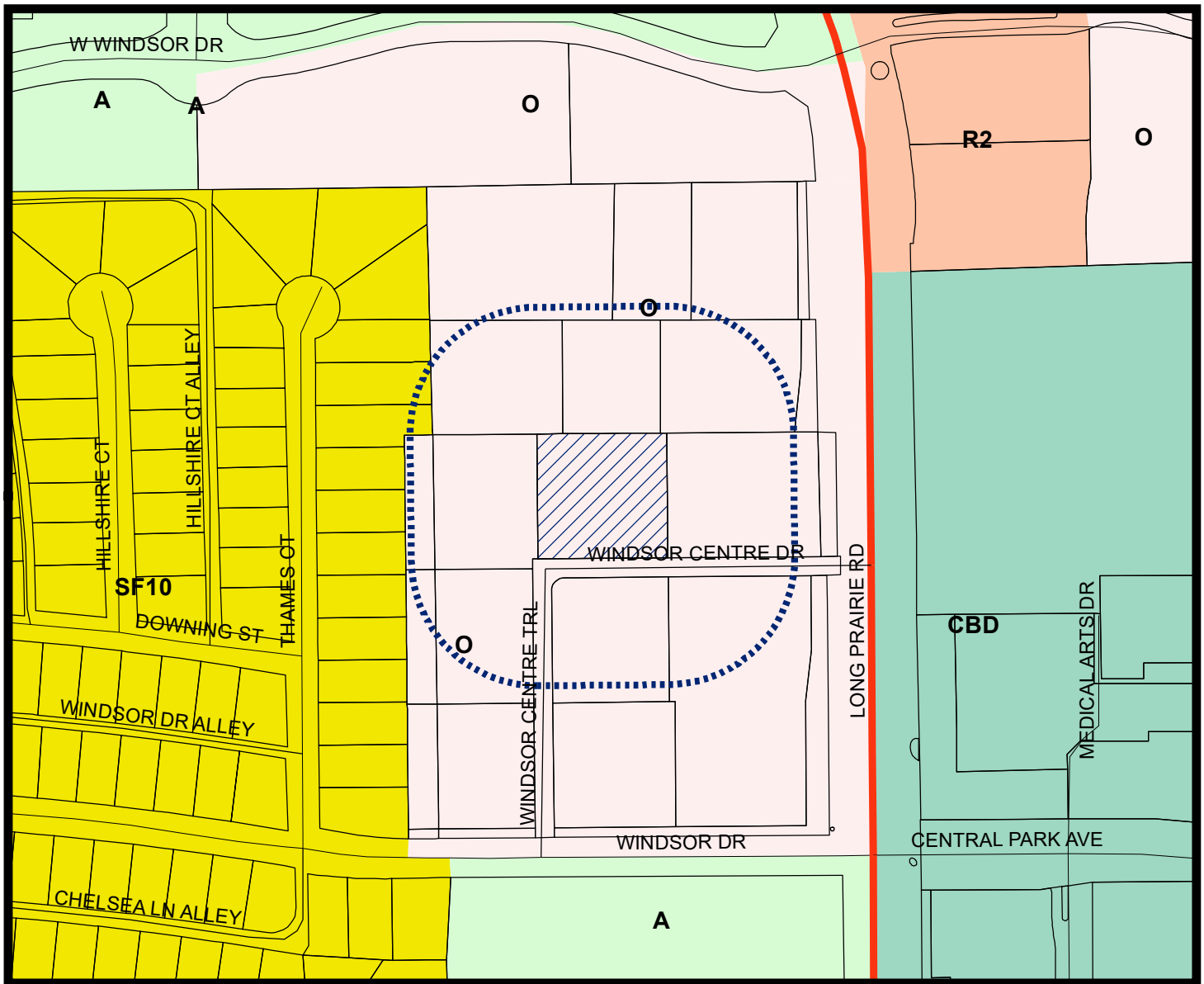
B. Application Details

1. Draft Amended Planned Development (PD) Standards

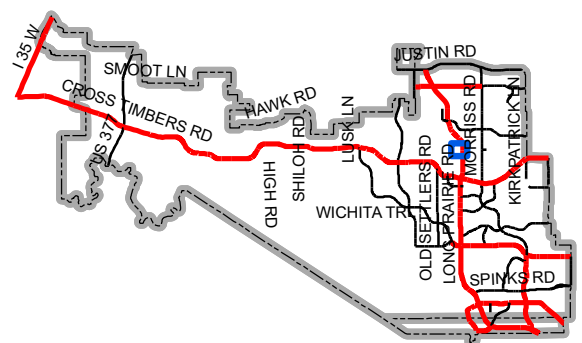
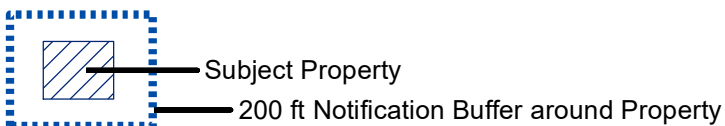


Vicinity Map

Reference Project: ZPD19-0009



LEGEND



Map Location



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:

ORDINANCE NO. 08-06

PAGE 2

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.

ORDINANCE NO. 08-06

PAGE 3

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"

BEGINNING at that certain lot, parcel or tract of land situated in the C. Cracron 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 26 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 5 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 5, 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 5;

THENCE South 89 degrees 26 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.

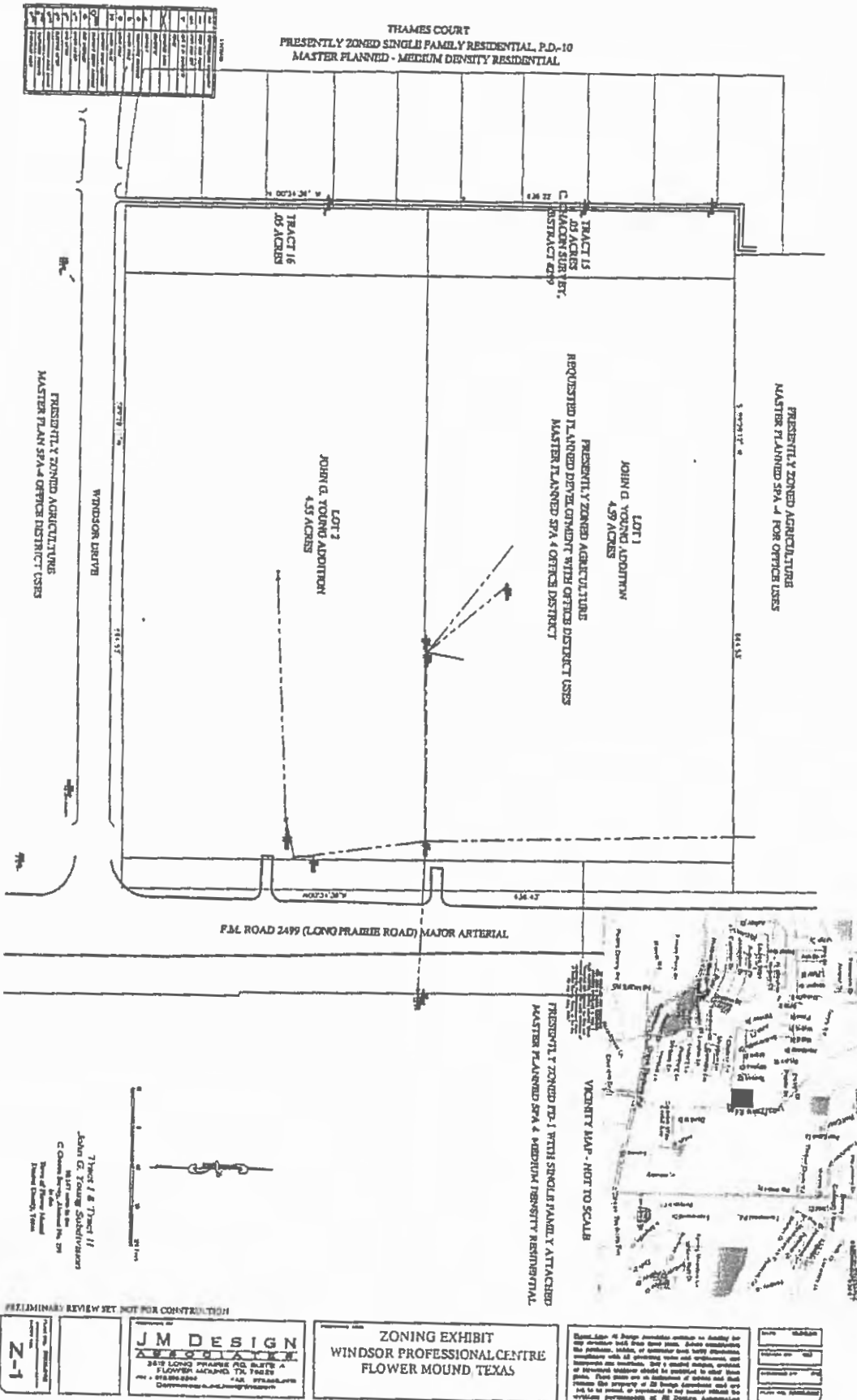


EXHIBIT "B"

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.

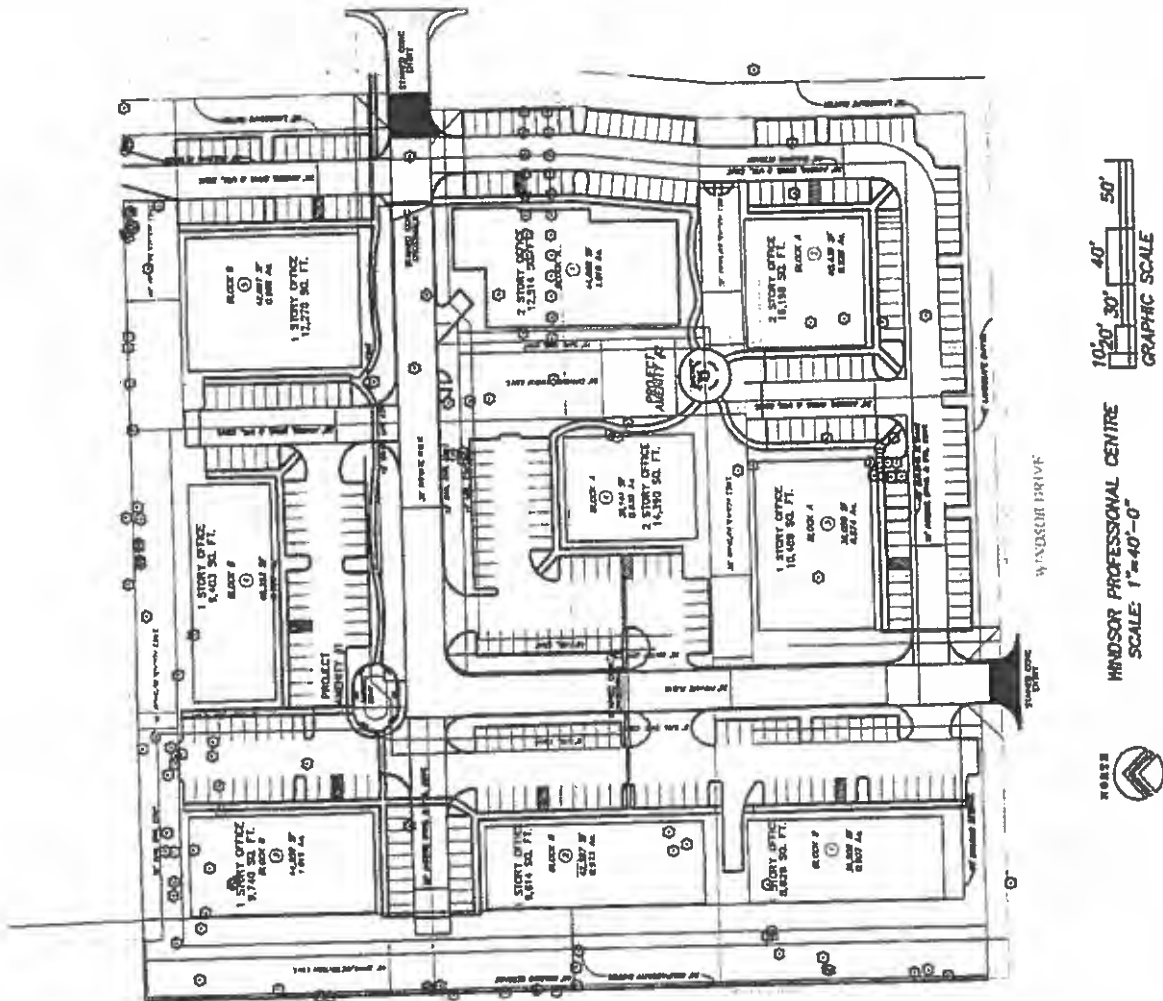
EXHIBIT "C"

WINDSOR PROFESSIONAL CENTRE
WINDSOR & LONG PRAIRIE RD (FM 2499)
LOWER MOUND TEXAS

J M DESIGN
3888 LONG PRAIRIE RD. SUITE A
LOWER MOUND, TX 76033
361-222-2222
jmdesign.com

C-SP
CONCEPT PLAN RE-SUBMITTAL 13-05

WindSOR Professional Centre is a multi-story office building located at the intersection of Windsor & Long Prairie Rd. The building is designed to provide a modern, efficient workspace for professional services. The plan shows a central core with multiple wings extending from it. The building is surrounded by parking areas and landscaped grounds. The plan also shows the location of the building relative to the surrounding streets and landmarks.



THANKS FOR YOUR ATTENTION

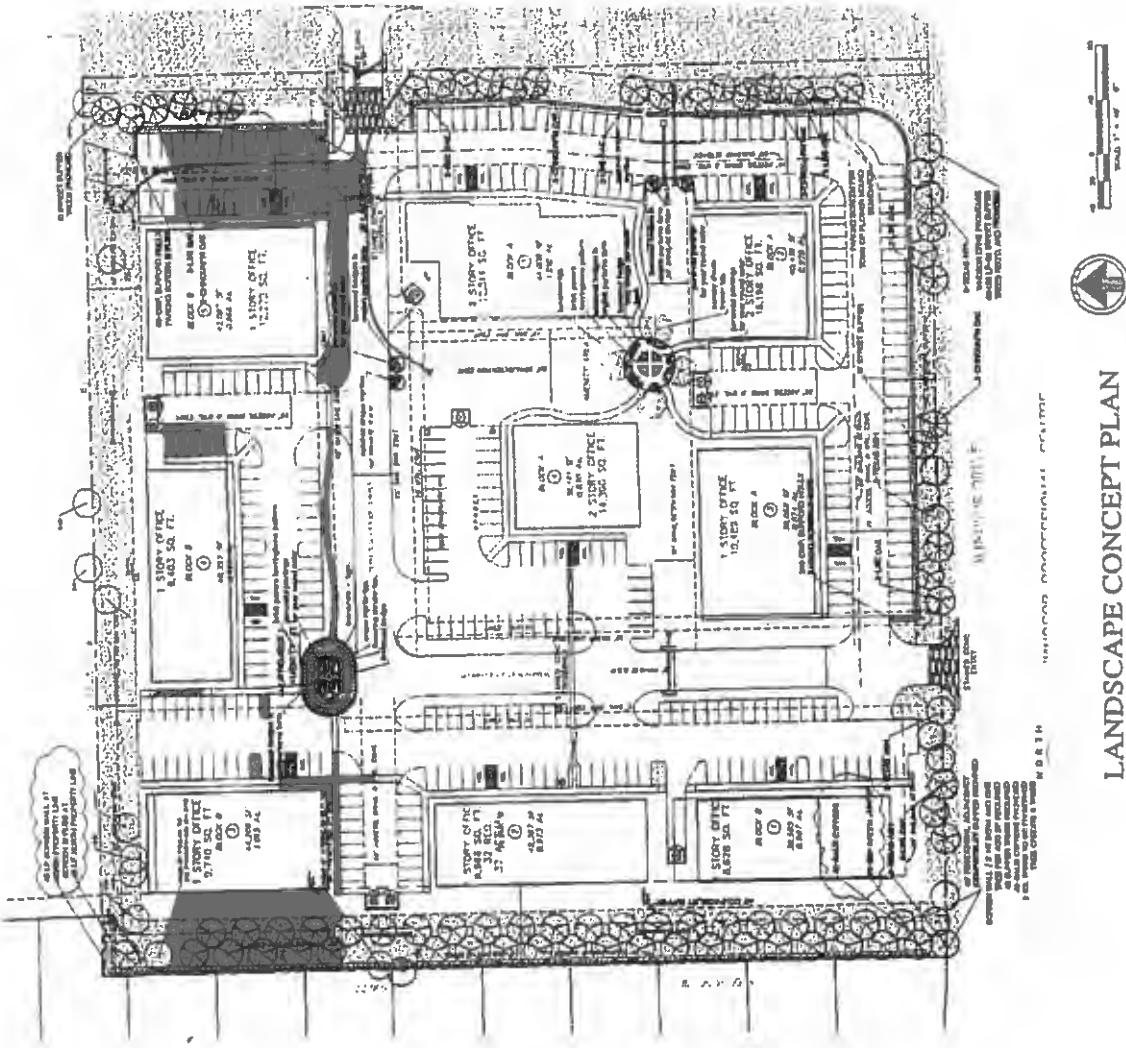
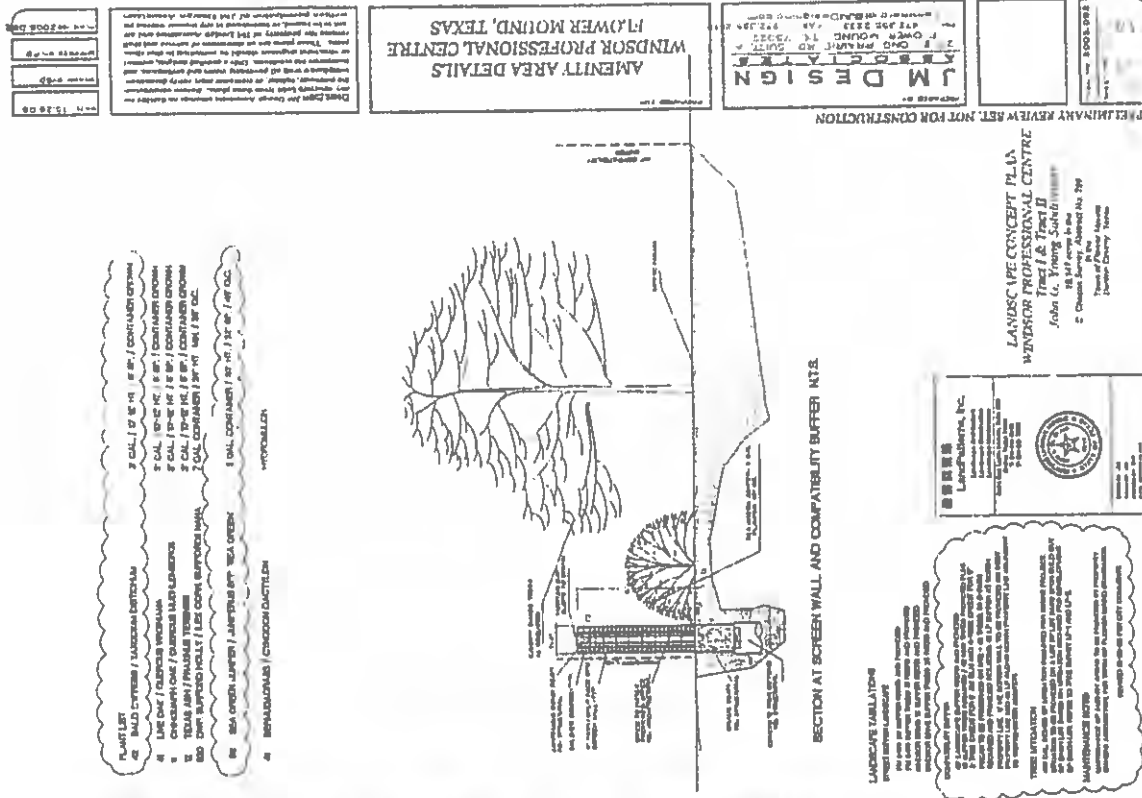


EXHIBIT "E"

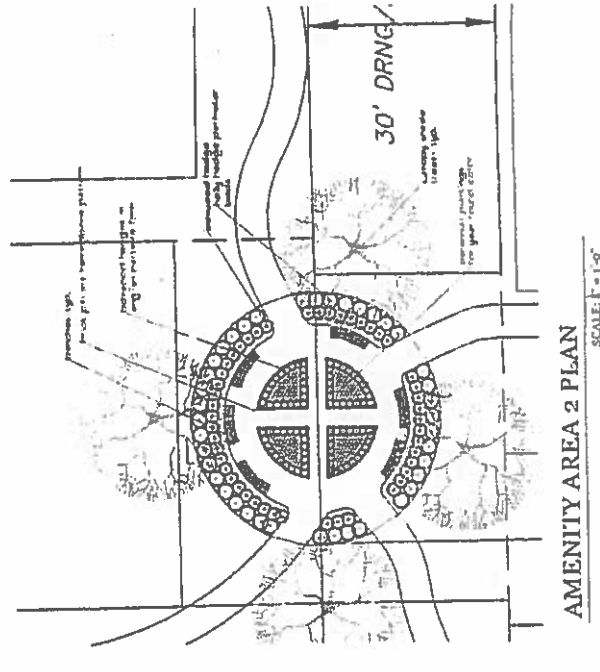
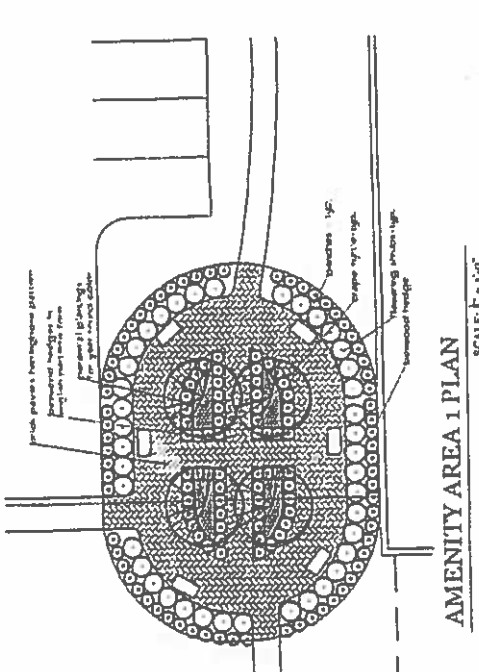
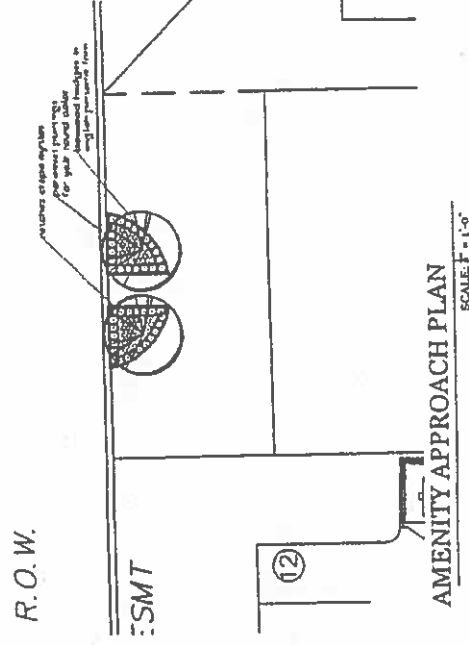
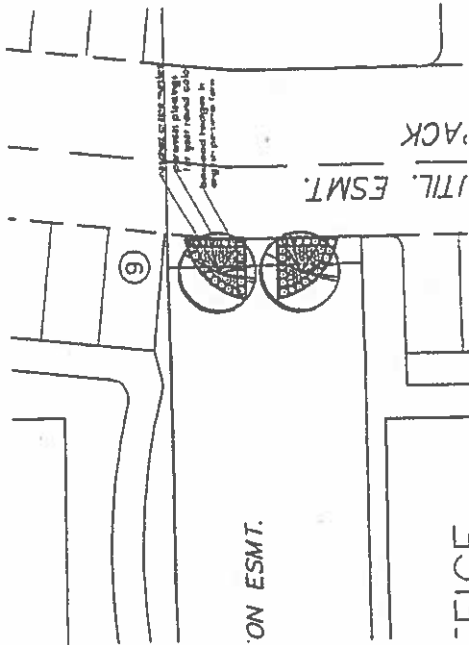
FLORIAN REVISIT SET, NOT FOR CONSTRUCTION

JM DESIGN
ARCHITECTS
2010 LONG PRAIRIE RD. SUITE A
FLOWER MOUND, TX 75022
TEL: 972.393.8888
WWW.JMDDESIGN.COM

WINDSOR PROFESSIONAL CENTRE
FLOWER MOUND, TEXAS

WindSOR Professional Centre is a 100,000 sq. ft. office building located at the intersection of Highway 121 and Highway 121. The building is a 2-story structure with a modern design. The building is surrounded by a parking lot and a landscaped area. The building is located in the Flower Mound area of Texas.

DATE: 08/06
DRAWN BY: JMD
CHECKED BY: JMD
APPROVED BY: JMD



A2.1

CONCEPT PLAN RE-SUBMITTAL 12-13-05

REALTORS®

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 December 16, 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:

ORDINANCE NO. _____**Page 2**

SECTION 1

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

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

ORDINANCE NO. _____**Page 3**

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 16TH 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 1,196 square feet of building area within 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. 18

REGULAR ITEM

DATE: December 16, 2019

FROM: Chuck Russell, Principal Planner

ITEM: 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 by a vote of 6 to 0 at its December 9, 2019, meeting.)



SUMMARY DATA:

- Size – 4.34 acre lot
- Proposed square feet – 2,195 sf within a 40,990 sf retail building
- SMARTGrowth – Passed
- Traffic Analysis – No impact on capacity of area roadways
- Exceptions – N/A
- Incentives – N/A

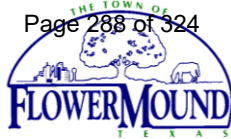
BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item.

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: 4

REGULAR ITEM

DATE: December 9, 2019

FROM: Chuck Russell, Town Planner

ITEM: **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.**

I. ITEM SUMMARY

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

This application will require final action by the Town Council, which is scheduled for December 16, 2019.

II. APPLICATION ANALYSIS

The purpose of this application is to request approval of a Specific Use Permit (SUP-460) to provide for an amusement and recreation (indoors) use to occupy a portion of the multi-tenant retail building within the Founders Square retail development. The property is zoned Planned Development District No. 37 (PD-37). This request is located within the Retail-2 District (R-2) tract within PD-37. The proposed use is permitted subject to Town Council approval of a Specific Use Permit.

On July 31, 2000, the Planning and Zoning Commission approved a site plan for a 40,990 square foot retail building (Founders Square). The applicant proposes to occupy approximately 2,125 square feet within Founders Square to provide for the requested use. There are no proposed revisions to the approved landscape plan or elevations for the building.

The Town Code requires 11 parking spaces for the proposed use. A total of 253 parking spaces exist for the development. Based on the current tenant mix of the existing retail building, approximately 302 parking spaces are required, including the proposed use. The required parking falls within the 20 percent deviation allowed by the Code.

As part of the request, the applicant has agreed to the following standards:

- Hours of operation: Monday through Thursday (9:00 a.m. to 6:00 p.m.) and Friday through Sunday (9:00 a.m. to 7:00 p.m.)
- Soundproofing of the lease area so that no noise is audible to adjacent tenants

The retail development has access from both Long Prairie Road and Flower Mound Road. Excluding the adjacency of the two thoroughfares, the retail center is wrapped by a single-family subdivision along its western and southern boundaries (The Villages of Northshore, Phase 1A).

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all rezoning requests. At the time this report was written, staff had received no correspondence in support or in opposition to the project.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Approved Site Plan, Landscape Plan and Elevations

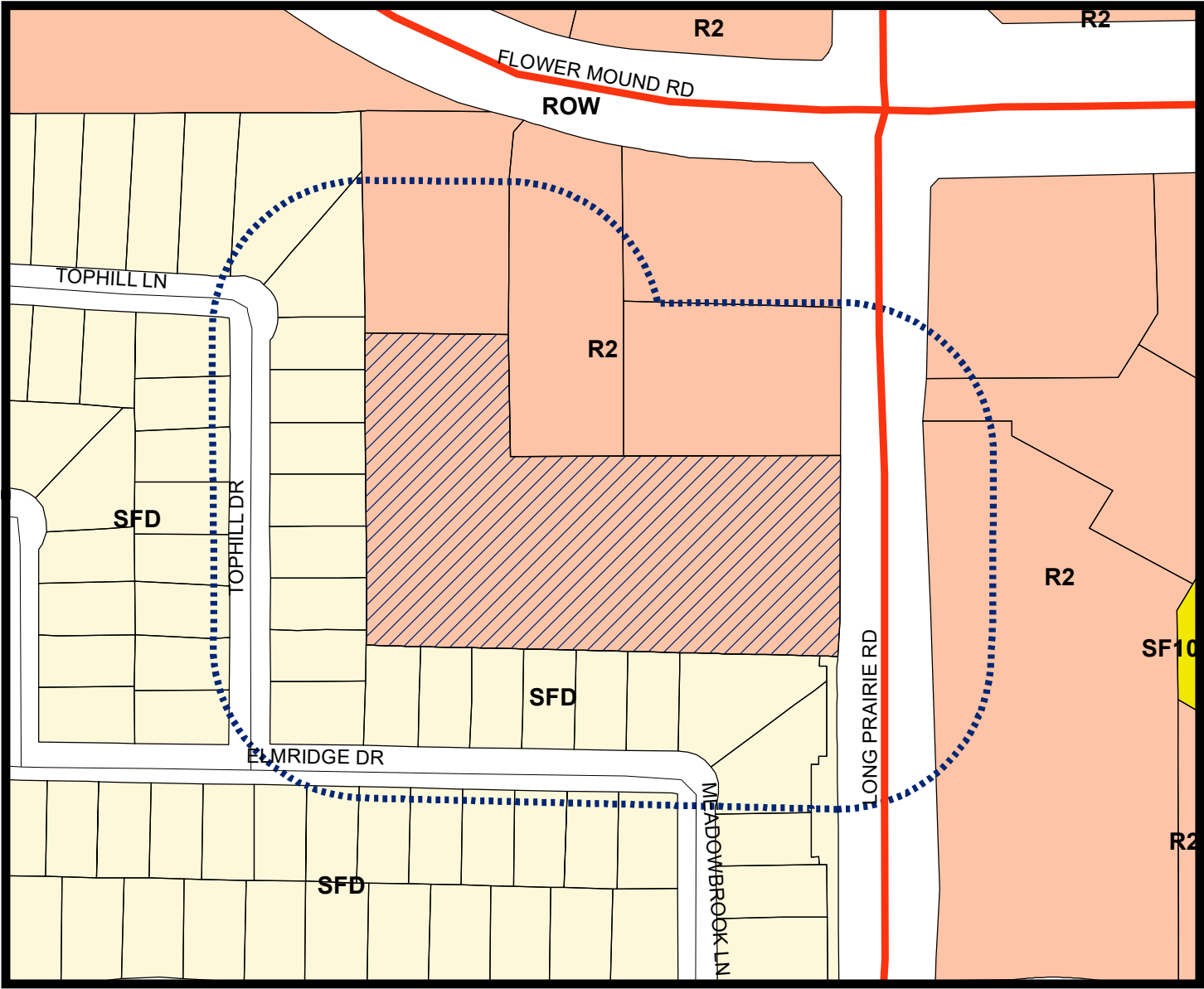
B. Application Details

1. Specific Use Permit Package



Vicinity Map

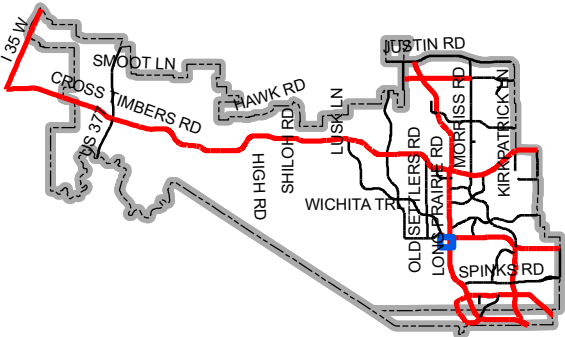
Reference Project: SUP19-0009



LEGEND

- Retail 2
- Single Family 10
- Single Family Density

- Subject Property
- 200 ft Notification Buffer around Property



Map Location

November 5, 2019

Letter of Intent

SUP19-0009
Jungle Castle

Members of the Planning and Zoning Commission and Town Council:

We are applying for a Specific Use Permit for an Amusement and recreation (indoors) use. We provide a children's indoor playground. No outside activity areas are proposed.

We will occupy 2,125 square feet of floor area within the Founders Square retail development. The property is located within the Tract 2 portion (approximately 14 acres) of PD – 37 with Retail-2 District (R-2) uses, which requires a Specific Use Permit for this use.

Nine required parking spaces will be provided as well as our building permit package will include for soundproofing of our lease space. Our proposed days and hours of operation are as follows:

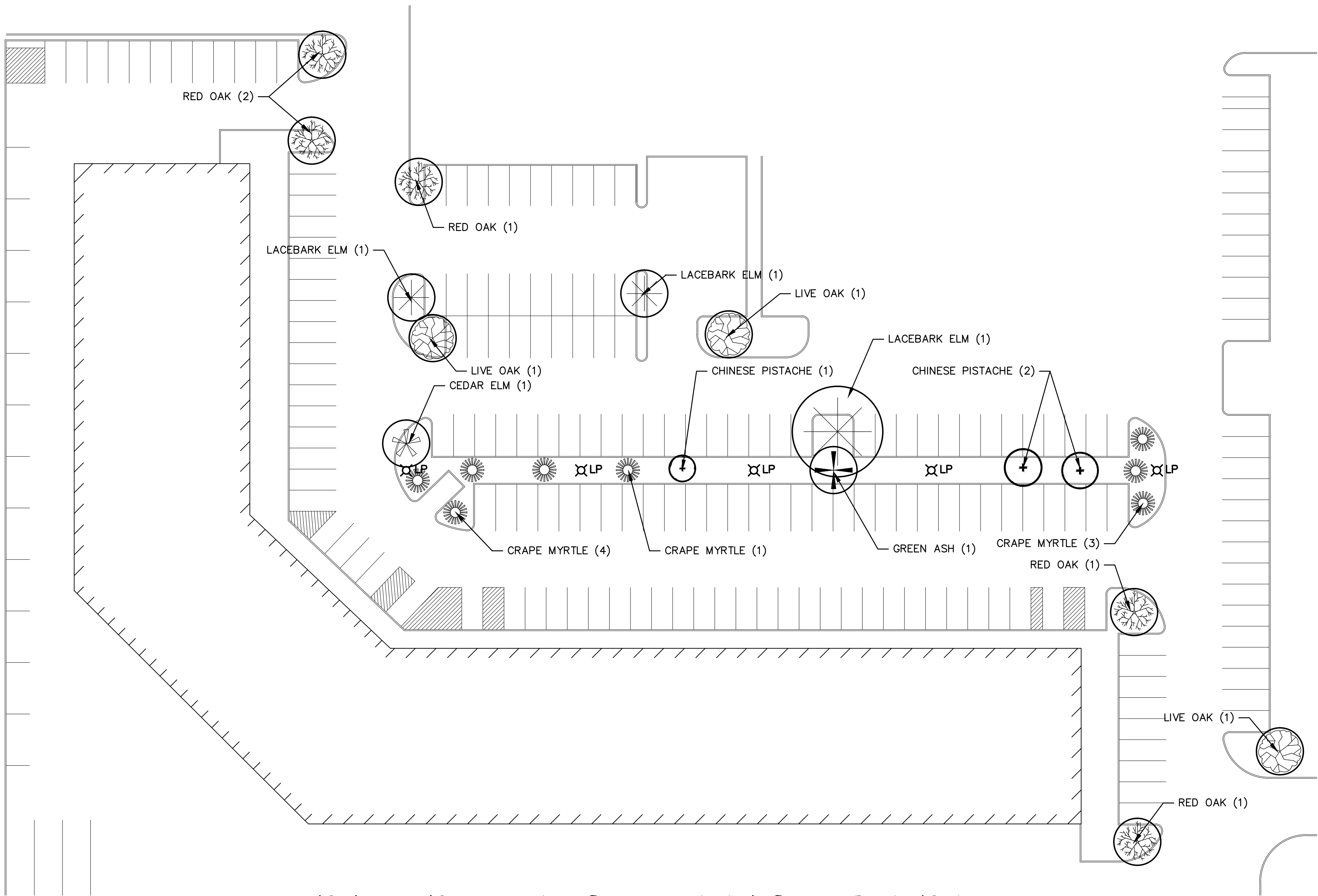
Monday – Thursday/9:00 a.m. to 6:00 p.m.
Friday to Sunday/9:00 a.m. to 7:00 p.m.

Other than the requirement to obtain a Specific Use Permit for our business, there are no exceptions or variances being requested.

Sincerely,

Xiaobin Guo





PROPOSED LANDSCAPE

PARKING LOT TREES TO REMAIN	16
PROPOSED TREES TO BE INSTALLED	8
TOTAL PARKING LOT TREES	24

LEGEND

- PROPOSED CRAPE MYRTLE
- EXISTING LIVE OAK
- EXISTING RED OAK
- EXISTING LACEBARK ELM
- EXISTING GREEN ASH
- EXISTING CEDAR ELM

PLANT LIST

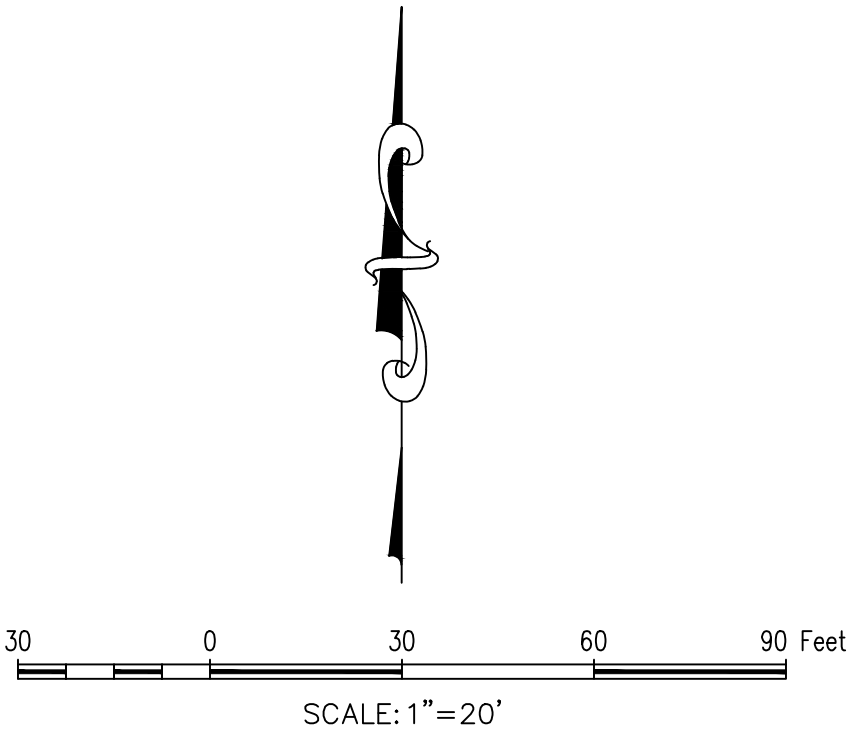
QUANT.	COMMON NAME	BOTANICAL NAME	SIZE	MIN. HT.	SPACE	REMARKS
8	CRAPE MYRTLE	Lagerstroemia indica	30 gal.	7'-8'	per plan	Multi trunk

SECTION 94-123(4) (From Town Code at the time of platting)

ALLOWS FOR ORNAMENTAL TREES TO BE INSTALLED IN LIEU OF 30% OF REQUIRED PARKING LOT TREES

NOTE:

THERE ARE (24) EXISTING PARKING LOT TREES ON THIS SITE AND ONLY (22) ARE REQUIRED



Site Planning
Civil Engineering
Platting

CONSULTANTS, LLC

Land Surveying
Landscape Architecture

111 Hillside Drive • Lewisville, TX 75057 • P: 972.436.9712 • F: 972.436.9715
611 Dallas Drive, Suite 114 • Round Rock, TX 76662 • P: 682.831.3712 • F: 817.860.4043
TBP# Firm No. 1798

FOUNDERS SQUARE
Lot 4, Block A
FLOWER MOUND RETAIL CENTER ADDITION
PHASE TWO, 4.3 Acres
in the
JOHN WHITE SURVEY, ABSTRACT NO. 1341
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

AMENDED LANDSCAPE PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
RON STEWART LANDSCAPE ARCHITECT
DATED 4/21/2014

791
STATE OF TEXAS

Drawn By: AM
Date: 04/21/14
Scale: #####
Revisions:

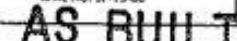
14040

L2

The Following Plat/Graphic
Case Number **ASP14-0019-SP11-01**
Was Administratively Approved
On Date **APR.24, 2014**

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date _____
Town of Flower Mound
Engineering Services

OWNER/DEVELOPER
GRASS ROOTS LANDSCAPE GROUP
237 SAMUEL
LEWISVILLE, TX 75057
Ph. 469-268-9851
Contact: John "Booker" Rheudasil





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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 460 (SUP-460) FOR AN AMUSEMENT AND RECREATION (INDOORS) FACILITY ON CERTAIN PROPERTY DESCRIBED AS 4.34 ACRES OF LAND AND BEING ALL OF LOT 4RB, BLOCK A, OF THE FLOWER MOUND RETAIL CENTER ADDITION AND ZONED PLANNED DEVELOPMENT DISTRICT NO. 37 (PD-37) FOR RETAIL DISTRICT-2 (R-2) USES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

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

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owner of the property described as 4.34 acres of land and being all of Lot 4RB, Block A, of the Flower Mound Retail Addition has filed an application for a Specific Use Permit for an amusement and recreation (indoors) facility; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on December 9, 2019, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on December 16, 2019, with respect to the Specific Use Permit described herein; and,

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

WHEREAS, the Town Council finds that the Specific Use Permit should be granted as outlined herein as 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.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF

Ordinance No. _____**Page 2****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:

4.34 acres of land and being all of Lot 4RB, Block A, of the Flower Mound Retail Center Addition, Denton County, Texas and zoned Planned Development District No. 37 (PD-37).

Specific Use Permit No. 460 is granted to allow an amusement and recreation (indoors) facility subject to the following conditions:

1. The Specific Use Permit is limited to an approximately 2,125 square foot lease space located in the 40,990 square foot Founders Square retail building as shown in Exhibit "A".
2. The hours of operation for the facility are limited to Monday through Thursday (9:00 a.m. to 6:00 p.m.) and Friday through Sunday (9:00 a.m. to 7:00 p.m.).
3. The lease area will be soundproofed so that no noise is audible to adjacent tenants.

SECTION 2

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

SECTION 3

The use of the property described above shall be subject to all applicable regulations contained in the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound including the regulations contained in Planned Development District-37 (PD-37).

SECTION 4

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 5

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

Ordinance No. _____**Page 3**

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 6

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 7

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 8

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

SECTION 10

This Ordinance shall 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
_____, 2019.**

APPROVED:

Steve Dixon, MAYOR

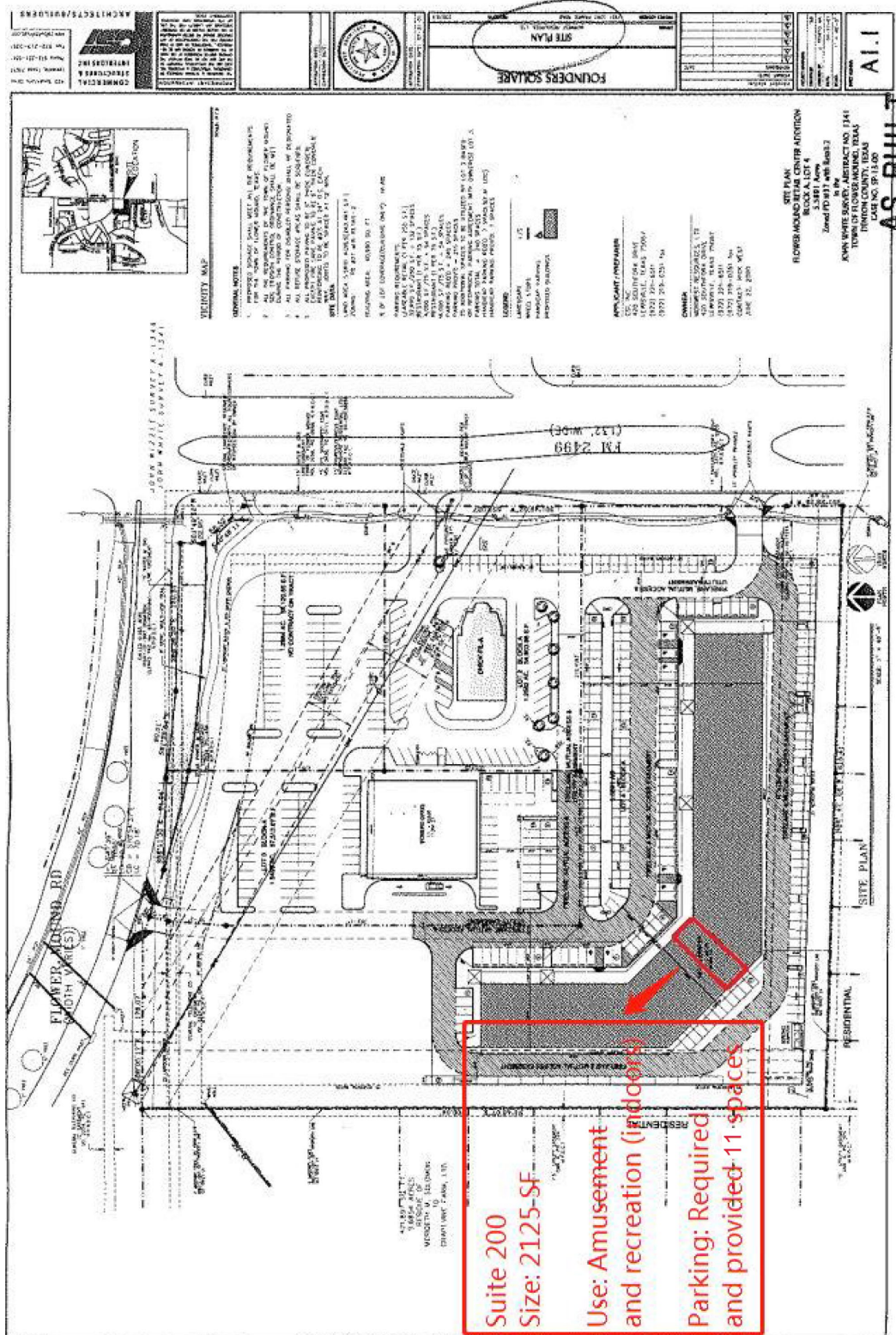
Ordinance No._____

Page 4

ATTEST:

Theresa Scott, TOWN SECRETARY

Exhibit "A"





TOWN COUNCIL AGENDA ITEM NO. 19

REGULAR ITEM

DATE: December 16, 2019

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR19-0008 – Park Credit Update), by amending Chapter 90 entitled “Subdivisions,” of the Town’s Code of Ordinances to clarify the requirements of the park credit option for parkland dedication within the Town of Flower Mound. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its December 9, 2019, meeting.*)**

SUMMARY DATA:

- Town Council approved the park credit option for parkland dedication in multi-family and mixed use projects on April 15, 2019.
- Since this time, staff has identified some opportunities for improvements and clarification within the text.

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item.

P&Z recommended the following amendment to Section F)7)f)2):

1. The slope from the **water’s** edge...

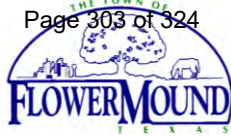
The attached ordinance reflects the change recommended by P&Z.

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: 5

REGULAR ITEM

DATE: December 9, 2019

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR19-0008 – Park Credit Update), by amending Chapter 90 entitled “Subdivisions,” of the Town’s Code of Ordinances to clarify the requirements of the park credit option for parkland dedication within the Town of Flower Mound.**

I. ITEM SUMMARY

This Town-initiated item proposes to clarify the Town’s Land Development Regulations regarding parkland dedication requirements for certain types of development.

This item will require final action by the Town Council, which is scheduled for December 16, 2019.

II. APPLICATION ANALYSIS

The park credit option for parkland dedication with multi-family and mixed use projects was adopted by Council on April 15, 2019 ([video link](#)). This option was incorporated to establish reasonable and consistent parkland dedication requirements that provide for quality parks and open spaces in these types of projects.

Since the time of the park credit option’s adoption, the Town has had an applicant and associated project come forward that wanted to submit under the new standards. In working with the applicant on their submittal, it came to staff’s attention that there were a few typos within the text, as well as some instances where additional language could be provided to clarify the standards. This proposed update incorporates those changes. The only revision of substance that is being suggested is substituting the term “park” for the open space type of “natural preserve.” There was confusion from applicants as to how “natural preserve” functionally differed from “natural area,” and we believe this title change makes that differentiation clear.

The proposed updates do not change the minimum amount of park area that is required to be dedicated for any type of project, nor the process for doing so.

Attachment 1, the draft redline ordinance, notes all of the proposed revisions.

IV. CORRESPONDENCE

The Town Code requires public notice in a newspaper of general circulation (Denton Record Chronicle). At the time this report was written, the Town had not received any correspondence regarding this item.

V. ATTACHMENTS

1. Draft Redline Ordinance

Park Credit Update Draft Ordinance

Amend Chapter 90 – Subdivisions, Sec. 90-443. - *Character and minimum dedication.*

(d) The minimum amount of park and recreational area that shall be dedicated pursuant to this division shall be: 3.36 acres per 100 dwelling units for single-family detached, and single-family attached uses; 2.78 acres per 100 dwelling units for multi-family uses, and; 2.4 acres per 100 dwelling units for age-restricted residential uses meeting the provisions of the Federal Housing for Older Persons Act. Land within floodplain and floodway designated areas shall not be counted toward meeting the requirement of this subsection, subject to except as allowed in Section 90-449.

Amend Chapter 90 – Subdivisions, Sec 90-449. - *Park credit option.*

- a) *Purpose and Intent:* The Town finds that public~~ally~~ly accessible open space is necessary to create a place of recreation and relaxation for its residents. An opportunity exists between the Town, property owners, and developers to enhance the residents' quality of life by providing options for privately maintained and publicly accessible open space. This open space will ensure that new residential development augments and complements the Town's public parks and facilities.
- b) *Definitions:* In addition to the definitions contained in Subpart B of the Town's Code of Ordinances, the following definitions shall also apply to development electing to pursue the Credit Option:
 - *Credit Option* means the alternative option of providing privately maintained and public~~ally~~ly accessible open space under this section in lieu of dedicating park land or payment in lieu thereof, in accordance with Sections 90-444 and 90-445, hereof.
 - *Director of Planning Services* means the Town's Director of Planning Services or the Director's designee.
 - *Enhanced paving* means a paving treatment that consists of stamped concrete, stained concrete, brick or stone paving, or any combination of said treatments.
 - *Open space associated with and integral to, specific buildings* means open space that cannot otherwise be constructed without also constructing an associated building. Examples include courtyards that are integrated into the design of a building or set of buildings, or a square that cannot remain open and accessible, or undamaged during the construction of an adjacent building.
 - *Open Space Plan* means a detailed, scaled drawing meeting all of the submittal requirements of this Section.
 - *Open Space Types* means courtyards, natural areas, greens or lawns, natural preserves parks, plazas, squares, detention/retention facilities, and general open space.
 - *Structured recreation* means larger recreational facilities such as playground equipment, sport courts, splash pads, adult and youth fitness stations, natural and interactive playgrounds, and outdoor classrooms.
 - *Mixed-use development* means development that proposes vertical mixed use that

- combines different uses in the same building.
 - *Multi-use development* means development that proposes a horizontal mix of uses that combines single-use buildings on distinct parcels in a range of land uses within a block.
- c) *Applicability*: The Credit Option may only be applied to residential uses within the following zoning districts:
- 1) A PD Planned Development District that permits residential uses in a Mixed-use development or a Multi-use development, approved by the Town Council after April 15, 2019.
 - 2) An MU Mixed Use District, approved by the Town Council after April 15, 2019.
- d) *Required Park Land Dedication Options*: Applicants eligible for the Credit Option under this Section 90-449 may request that the Town Council consider accepting privately maintained and public~~ally~~ly accessible open space to fully or partially offset the otherwise required public park land dedication, or fees in lieu thereof.
- e) *Submittal Requirements for the Credit Option*: The following is required for eligible applicants seeking the Credit Option alternative:
- 1) Open Space Plan: Eligible applicants shall submit an Open Space Plan with the zoning application for the subject property. The Open Space Plan shall include all of the following detail~~s~~s:
 - a) Conceptual landscaping associated with the applicant's zoning application that complies with the Town's Concept Landscape Plan requirements.
 - b) Location, description, Open Space Type, and minimum area of all open spaces.
 - c) Location and description of natural features listed in Section 90-449(f) as well as any such features identified in the Environmentally Sensitive Area Survey required by the Town's SMARTGrowth Program. This information may be provided on a separate plan sheet for clarity purposes.
 - d) Location and area of all proposed public~~ally~~ly accessible open spaces within the development.
 - e) Location, dimension, and type of pedestrian connections between open space amenities.
 - f) Location and preliminary design details of all proposed open space amenities.
 - g) A summary of the perpetual maintenance proposed for each open space area, which maintenance must be feasible and appropriate for each Open Space Type.
 - h) Phasing and location of the open space associated with the overall development and the open space associated with, and integral to, specific buildings.
 - i) A checklist of all required information to be depicted on an Open Space Plan shall be maintained by the Director of Planning Services.
 - 2) Open Space Easement: All public~~ally~~ly accessible open space accepted by the Town in lieu of otherwise required park land dedication, or the payment of fees in lieu thereof, shall be dedicated to the public as a permanent public access easement, reflected on the face of a plat. All such open space shall be maintained by the property owner(s) or the property owners' association. Changes to a dedicated open space access easement

are permitted only after Town Council approval following a recommendation by the Town Parks Board. Changes to an open space access easement may not reduce the amount of Council- approved open space, the amount of land that is public~~ally~~ accessible, or the accessibility standards outlined in the easement.

- f) *Open Space Types and Credit Calculation:* Each area of open space that meets the requirements of this Section shall be eligible to receive a Town Council approved reduction in the amount of park land dedication, or fee payment in lieu thereof, otherwise required. The amount of credit that may be granted for eligible open space~~s~~ shall be dependent on whether additional or enhanced amenities are provided, as described herein. Each proposed open space shall be subject to the following Open Space Type-specific criteria and maximum credit eligibility limitations. The Planning Department shall maintain representative examples of each Open Space Type to provide illustrative guidance, the Guide to Open Space Types, on the design, development, character, activation, and location for each Open Space Type.

- 3) *Green or Lawn.* A green or lawn is an open space available for unstructured recreation and as a gathering place. A green or lawn may be bordered by landscaping rather than buildings and should be adjacent to active uses such as retail and restaurant uses. Its landscape shall consist of land and trees in a coordinated arrangement, requiring minimal maintenance. The size of a green or lawn shall not be less than one half (0.5) acre and shall not exceed two (2) acres in size.
- a) A green or lawn must, at a minimum, incorporate the following amenities:
 - 1) Seating and associated shade.
 - b) Lighting: Street lighting, or ambient accent and bollard lighting, shall be installed, as appropriate.
 - c) Signage: No signage shall be permitted if the green or lawn is open to a public street. Appropriate directional signage shall be installed if not open to a public street.
 - d) Landscape Design: A green or lawn shall be predominately turf with a coordinated planting scheme.
 - e) Credit Option: If the development satisfies the standards above, the Town Council may approve a credit towards the required park land dedication, or fees in lieu thereof, on a per acre basis, at a ratio of one and three quarter (1.75) acres of required park land for every one (1) acre of green or lawn open space provided. In the event additional or enhanced amenities are provided, the Town Council may increase the credit to a ratio of no more than two and one half (2.5) acres of required park land for every one (1) acre of green or lawn open space provided.
- 4) Natural Preserve Park. A natural preserve park is intended primarily to provide unstructured recreation, but structured recreation should also be a component. Any structured recreation within a natural preserve park shall be limited to less than ten percent of the area. A natural preserve park is usually independent of surrounding building frontages. Its landscape consists of natural paths, trails, meadows, woodlands, and open shelters. A natural preserve park must be greater than one (1) acre in size.

- a) A natural preserve park must, at a minimum, incorporate the following amenities:
 - 1) A natural preserve park must connect to any trail identified on the Town's Parks and Trails Master Plan, if the planned trail is present within the development (or contiguous with the development) and is located within three hundred feet (300') of the natural preserve park. The natural preserve park must also be accessible from the development's planned commercial or residential areas through the installation of an interconnected system of sidewalks or trails.
 - 2) Seating and associated shade.
 - 3) Structured Recreation; playground, splash pad, or other type of recreational use as recommended by the Director of Parks and Recreation.
- b) Lighting: Exterior lighting is prohibited except in limited circumstances where low voltage accent lighting may be appropriate.
- c) Signage: Signage shall be placed adjacent to all entrances, as well as appropriate directional signage if the park is not open to a public street.
- d) Landscape Design: A coordinated planting scheme must be implemented.
- e) Credit Option: If the development satisfies the standards above, the Town Council may approve a credit towards the required park land dedication, or fees in lieu thereof, on a per acre basis, at a ratio of one and one half (1.5) acres of required park land for every one (1) acre of natural preserve park open space provided. In the event additional or enhanced amenities are provided, the Town Council may increase the credit to a ratio of no more than two and one quarter (2.25) acres of required park land for every one (1) acre of natural preserve park open space provided.

- 7) *Retention/Detention Facilities.* Retention/detention facilities are storm water management basins designed to collect storm water and slowly release it at a controlled rate so that downstream areas are not flooded or eroded. These facilities must be designed for multiple uses, and must incorporate include low impact design principals in order to qualify for the Credit Option.
 - a) Retention/detention facilities must, at a minimum, incorporate the following amenities:
 - 1) Natural stone or brick veneer complementary to the development is required on headwalls, bridges, culverts, retaining walls, and like structures.
 - 2) A minimum eight-foot (8') trail is required around the retention/detention facility except where site conditions such as excessive slopes or outfall structures render construction of the trail infeasible. The trail shall connect to internal trails proposed within the development. The trail shall also connect to any trail identified on the Town's Parks and Trails Master Plan, if the trail required by this subsection (f)(7)(a)(2) of this section is located within three hundred feet (300') of the trail identified on the Town's Parks and Trails Master Plan and the latter is located within the development or is contiguous to the development.
 - 3) Seating and associated shade.
 - b) Retention/detention facilities must, at a minimum, incorporate the following facility- specific amenities:

- 1) Detention basins must be designed to achieve a multi-purpose use that provides access to the basin for active and passive recreation activities.
 - 2) Retention basins must provide at least one (1) overlook with at least one (1) bench, one (1) trash receptacle, and a minimum of three (3) shade trees.
 - c) Lighting: Perimeter lighting and accent lighting shall be permitted where appropriate.
 - d) Signage: No signage is permitted if the retention/detention facility is open to a public street. Appropriate directional signage shall be installed if the retention/detention facility is not open to a public street.
 - e) Landscape Design: Shade trees, planted a minimum of thirty-feet (30') on center, staggered on each side of the trail surrounding the retention/detention facility, shall be planted.
 - f) The following engineering standards shall apply to the design of a retention/detention facility:
 - 1) The retention/detention facility must comply with the provisions of Chapter 32, the Town's Engineering Design Criteria and Construction Standards.
 - 2) The slope from the edge of a retention pond shall not exceed three twenty five percent (25%); provided, however, any slope that exceeds three percent (3%) shall incorporate stone terracing. Terracing or the cutting of a sloped plane into a series of successively receding flat surfaces or platforms, must have a maximum shelf depth of three feet (3') with a maximum six inch (6") risers, and shall not negatively impact Environmentally Sensitive Areas regulated by the Town's SMARTGrowth Program.
 - g) Credit Option: If the development satisfies the standards above, the Town Council may approve a credit towards the required park land dedication, or fees in lieu thereof, on a per acre basis, at a ratio of one (1) acre of required park land for every one (1) acre of retention/detention facility open space provided. In the event additional or enhanced amenities are provided, the Town Council may increase the credit to a ratio of no more than one and one half (1.5) acres of required park land for every one (1) acre of retention/detention facility open space provided.
- 8) **General Open Space.** Open spaces that do not fit into any of the Open Space Types identified above may be considered by the Park Board for eligibility for the Credit Option. General open space may be accepted by the Town Council, following a recommendation by the Parks Board, if the Town Council finds that the general open space satisfies the purpose and intent of this section, as set forth in subsection (a) of this section.
- a) Credit Option: If the development satisfies the standards above, the Town Council may approve a credit towards the required park land dedication, or fees in lieu thereof, on a per acre basis, at a ratio of one and one half (1.5) three quarter (1.75) acres of required park land for every one (1) acre of general open space provided. In the event additional or enhanced amenities are provided, the Town Council may increase the credit to a ratio of no more than one and one half (1.5) three quarter (1.75) acres of required park land for every one (1) acre of general open space provided.

9) *Calculation.* Calculation of the open space eligible for credit shall be in accordance with the following:

- a) Eligible open space shall exclude all rights-of-way or easements for streets or alleys, required street buffers and setbacks, required screening and landscaping for parking, storage and refuse areas, parking, parking lot tree islands, utility yards, town trail extensions as outlined in the Town Parks and Trails Master Plan, and all Area Plan requirements as set out in the Master Plan.
- b) Floodplain or water impoundments, as identified in Section 98-148, shall only be eligible for credit in the natural area Open Space Type. The maximum amount of floodplain or water impoundment that may be counted toward open space credit shall not exceed fifty percent (50%) of the allowable total natural area ~~of~~ open space credit applied to the development. Any amount of floodplain or water impoundment that exceeds this limitation shall be excluded from the credit calculation.
- c) Areas of proposed natural area and natural preserve park open space: 1) containing grades subject to Section 98-147, governing topographical slope protection, 2) located outside of the floodplain, and 3) which prohibit public access, may be counted toward up to fifty percent (50%) of the allowable natural area or park open space credit. The remaining fifty percent (50%) of the proposed natural area or natural preserve park open space must not be subject to the protections set forth in Section 98-147 and must be publicly accessible.

i) *Phasing and Timing:*

- 4) Construction/installation of open space and enhancements associated with and integral to specific buildings shall be completed prior to issuance of a Certificate of Occupancy or Building Final ~~of for~~ that building.

j) *Amendments to approved plans or regulations associated with developments containing approved open space:*

- 2) The Director of Planning Services may approve minor changes to and deviations from the Open Space Plan, based upon the applicant's written justification for such changes. Upon approval, a revised Open Space Plan shall be filed with the Town and any associated fee adjustments shall be calculated. The Director of Planning Services may deny a minor change or deviation from the Open Space Plan regardless of the applicant's written justification. In the event of such denial, an applicant may instead seek approval of the change or deviation by filing an application to amend the zoning ordinance governing the development.



TOWN COUNCIL AGENDA ITEM NO. 20

REGULAR ITEM

DATE: December 16, 2019

FROM: Forrest Williams, Comprehensive Planner

ITEM: **Public Hearing to consider an ordinance amending the General Ordinances and Land Development Regulations (LDR19-0009 – Fencing Update) by amending Chapter 14 entitled “Buildings and Building Regulations,” and Chapter 98 entitled “Zoning,” of the Town's Code of Ordinances to create clarifying definitions and standards for fences and walls within the Town of Flower Mound. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its December 9, 2019, meeting.)***

SUMMARY DATA:

- Town Council directed staff at the 2019 Strategic Planning Session to bring forward ordinance amendments addressing:
 - o Masonry wall replacement in areas without HOA's or PD standards.
 - o Uneven fencing between existing lots and new subdivisions.
- Staff has included other proposed fencing-related updates within this amendment as well.

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and draft ordinance for this item.

During the P&Z staff presentation, the Commission recommended staff:

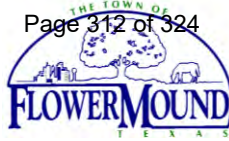
- Notify potentially affected areas of the new options that would be created with this LDR; and
- Promote residents to work together when replacing fences and walls to encourage uniformity.

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: 6

REGULAR ITEM

DATE: December 09, 2019

FROM: Forrest Williams, Comprehensive Planner

ITEM: **Public Hearing to consider an ordinance amending the General Ordinances and Land Development Regulations (LDR19-0009 – Fencing Update) by amending Chapter 14 entitled “Buildings and Building Regulations,” and Chapter 98 entitled “Zoning,” of the Town's Code of Ordinances to create clarifying definitions and standards for fences and walls within the Town of Flower Mound.**

I. ITEM SUMMARY

This Town-initiated item proposes to amend the Town's General Ordinances and the Town's Land Development Regulations to provide updates to the definitions and standards for fences and walls.

This item will require final action by the Town Council, which is scheduled for December 16, 2019.

II. APPLICATION ANALYSIS

During the Strategic Planning Session on June 21, 2019, ([web link](#)) Town Council gave staff direction to bring forward ordinance amendments providing regulatory relief to existing homeowners in the following situations:

- 1) Needed perimeter fence/masonry wall repairs/replacements in subdivisions without HOA's or PD standards
- 2) Uneven fencing and/or sightlines for homeowners in existing residential lots adjacent to new subdivisions that were constructed with varying topography

Due to infrastructure aging, there has been an increase in requests to replace perimeter fences in older subdivisions. Depending on the age of the subdivision and the way the subdivision's fencing standards were adopted, staff's ability to enforce a fair and consistent standard has varied.

In 1992, the Town adopted mandatory HOA regulations that created a mechanism for perimeter wall/fence maintenance. In 1994, the Town adopted its current subdivision perimeter fence standards, which require masonry walls and columns, or columns with tubular steel fencing and plantings along thoroughfare streets (Section 98-1143).

Prior to 1994, the code left the decision on perimeter fence treatment to the Planning and Zoning Commission and/or Town Council. In those cases, whatever was approved with the subdivision was the standard. Sometimes the Planned Development (PD)

outlined the fencing requirements, and sometimes it did not. There are several subdivisions without HOAs (platted prior to the mandatory HOA ordinance (Ord. 35-92) adopted on July 20, 1992), where the masonry components of the perimeter fence are now failing. Individual property owners have expressed a hardship due to the expense of the repair, and some property owners have requested to replace the masonry components with wood (board-on-board) fencing. During the Strategic Planning Session, Council agreed that this would be an acceptable alternative in cases where there was no HOA in place to fund the masonry fence replacement and no clear standard requiring a masonry perimeter fence at that location.

Town Council was also contacted by a resident that backs up to a new residential subdivision that is under construction. The design of the new subdivision has left the resident with mismatched fencing along his rear property line. A portion of his rear property line is bordered by a new residential lot that contains a six-foot wooden privacy fence on a four-foot stone retaining wall. The remaining property line is bordered by an ornamental steel fence adjacent to dedicated open space. The resident requested that the Council direct staff to amend the Town's Land Development Regulations to allow exceptions to the Town's fencing requirements in extenuating circumstances where existing homeowners were negatively impacted by new development. Town Council directed staff to develop a standard that was tailored to the type of situation described.

Since the Strategic Planning Session, staff reached out to all departments who deal with fencing-related issues and identified other updates that would be recommended. This includes creating a definition for a Global Fence Permit and Established Front Yard and creating an allowance for front yard fencing in key lots, provided the fence is setback a minimum of 10 feet from the property line. Staff has provided a draft redline ordinance noting all proposed definitions and standard updates.

III. CORRESPONDENCE

The Town Code requires public notice in a newspaper of general circulation (Denton Record Chronicle). At the time this report was written, the Town had not received any correspondence regarding this item.

IV. ATTACHMENTS

1. Draft Redline Ordinance

Fencing Standards Update Draft Ordinance

Amend Article XIII. – Property Maintenance Standards, Division 1. – Generally.

Sec. 14-513. - *Definitions.*

Global Fence Permit means a permit for the repair or replacement of any fencing and/or masonry screening walls located within the same subdivision, to be constructed on two or more contiguous lots without interruption. Interruption may be, but is not limited to, a street, another lot, an open space, or an easement.

Perimeter fence means any fence as defined for the purposes of this article that is adjacent to an arterial or collector road as defined in the town's thoroughfare plan, and does not meet the requirements of section 98-821 perimeter screening of this Code. This definition does not include any fence allowed under the town's urban design plan or ~~any five-foot fence allowed under section 98-1142(b) of this Code.~~ any barbed wire or metal/wire livestock fencing allowed by this Code in A, agricultural district.

Amend Article XIII. – Property Maintenance Standards, Division 2. - Minimum Standards.

Sec. 14-541. - *Enumeration.*

An owner and/or occupant commits an offense under this article if he fails to:

- (1) Securely close or cover a well, cesspool or cistern;
- (2) keep the doors and windows of a vacant structure or vacant portion of a structure securely closed to prevent unauthorized entry;
- (3) Maintain fences and related appurtenances in good condition and not as a dilapidated or deteriorated fence. Fences shall not be propped up or leaned against a pole, piece of lumber or other similar object as a means of support. ~~A dilapidated or deteriorated fence in which 25 percent or more of the fence area is adjacent to a town arterial or collector road may not be repaired. If 25 percent or more of the perimeter fence is determined to be dilapidated or deteriorated, it may not be repaired;~~ instead the perimeter fence that is adjacent to a town arterial or collector road shall be completely replaced and constructed in accordance with section 14-542;
- (4) Maintain in good condition and protect all exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and from decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and all surfaces with rust and corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from all exterior surfaces; surfaces designed for stabilization by oxidation are exempt from this requirement;

Fencing Standards Update Draft Ordinance

- (5) Maintain all perimeter walls, carports, awnings, patio covers, garages and garage doors, sheds, storage buildings, outbuildings, and other accessory buildings or structures in a structurally sound condition, and free of deterioration;
- (6) Maintain all satellite dishes, antennas, towers, stacks and other similar structures in a structurally sound and secure condition free of deterioration and instability;
- (7) Maintain the interior of a vacant structure or vacant portion of a structure free from rubbish and garbage; or
- (8) Replace all broken glass on the exterior of homes and accessory structures.

The property standards of this section do not apply when the subject premises are the site of either a new construction project or a repair or remodeling project for which a building permit has been issued and reasonable and continuous progress is being made to complete the project or construction.

Amend Chapter 74. – General Provisions, Sec. 74-3. - *Definitions*.

Established front yard means the required front yard located between the street and the front of the house on lots having two required front yards.

Amend Chapter 98. – Zoning, Article IV. – Supplementary District Regulations, Division 7. - Fences and Walls, Sec. 98-1142. - ~~Front yard fence~~ height and visibility.

- (a) Except in A, agricultural district and Key Lots as defined by this code, no fence or wall within a required front yard shall exceed four feet in height above the adjacent grade.
- (b) In the A, agricultural district no solid fence or wall within a required front yard shall exceed four feet in height above the adjacent grade; however, notwithstanding the foregoing, barbed wire or metal/wire livestock fencing not exceeding five feet in height above the adjacent grade shall be permitted within a required front yard.
- (c) No fence or wall erected within a required side or rear yard shall exceed eight feet in height above the adjacent grade.
- (d) Fences and walls shall be erected in accordance with the requirements of section 82-161 of this Code, corner visibility.
- (e) No fence or wall within the established front yard for key lots shall exceed four (4) feet in height above the adjacent grade. Fences constructed within the additional required front yard shall not exceed eight (8) feet in height, but must be setback a minimum of 10 feet from the property line. Fences constructed within the first 10 feet of the additional required front yard shall not exceed four (4) feet in height.

Fencing Standards Update Draft Ordinance

- (f) Town Council may grant an exception for maximum fence height or fencing materials for individual lots in situations where a new subdivision perimeter fence caused compatibility concerns with an existing residential fence due to topography and/or location.

Amend Sec. 98-1143. - *Perimeter and open space walls and fences.*

- (a) Subdivision perimeter fences and walls constructed adjacent and parallel to the rights-of-way of arterial and collector streets shall consist of masonry, stone, wrought-iron or tubular steel, or a combination of such materials. The fences and walls shall be a minimum of six feet in height and shall have masonry or stone columns measuring a minimum of 24 inches by 24 inches, with monolithic tops, placed a maximum of 40 feet apart on center. Vertical or horizontal spacing of members of wrought-iron or tubular steel fencing and their attachment to any column shall not allow passage of a four-inch sphere. Wrought-iron and tubular steel fencing shall be used in conjunction with, and further provide for, approved plantings from section 82-277 of this Code, "Screening plant selection list," placed three feet on center adjacent to all wrought-iron and tubular steel fencing. Such perimeter fencing shall be located within a three-foot wide fence easement dedicated to the mandatory homeowners' association for perpetual maintenance by such association. Parallel privacy fences of wood or other construction shall not be allowed between the perimeter fencing and parallel foundation lines on adjacent or contiguous lots. Notwithstanding the foregoing, wrought-iron or tubular steel fencing of a minimum of four feet in height may be allowed at the open end of cul-de-sacs and between parallel streets, provided that such fencing complies with all of the requirements contained in this section other than height.
- (b) Fences constructed adjacent and parallel to dedicated park, trail, or open space areas shall consist of wrought-iron or tubular steel. Such fences shall be a minimum of four feet in height and shall be of consistent color throughout a development. Vertical or horizontal spacing of members of wrought-iron or tubular steel fencing shall not allow passage of a four-inch sphere. Parallel privacy screening of masonry construction, not exceeding 50 percent of the lot width, shall be allowed between the wrought-iron or tubular steel fencing and parallel foundation lines on abutting lots. Approved plantings from section 82-277, screening plant selection list, shall be placed three feet on center along the entire length of that side of the masonry screening facing the wrought-iron or tubular steel fencing. Such masonry screening shall be located a minimum distance of ten feet from the wrought-iron or tubular steel fencing. Fences of wood shall not be allowed between such perimeter fencing and parallel foundation lines on adjacent or contiguous lots.
- (c) Property owners replacing existing masonry walls in neighborhoods where HOAs were not established and/or designated to provide ongoing fence/wall maintenance and that have no applicable Planned Development standards, shall either match original construction materials or meet the perimeter fence standards established in Section 14-542 of the Town's Code of Ordinances.

Fencing Standards Update Draft Ordinance

Amend Appendix A – *Fee Schedule*.

When a building, plumbing, mechanical or electrical permit is required by the building, plumbing, mechanical or electrical code adopted by the Town of Flower Mound, the following fees shall be assessed:

(d) Fees for additions, alterations, repairs, demolition, screening walls, retaining walls and accessory buildings. The following fees shall be charged for small construction jobs involving additions, alterations and repairs. Projects that involve substantial work shall be charged as new construction at the discretion of the building official.

Type of Construction	Permit Fee
***	***
Retaining wall, or Screening wall, <u>or Global Fence Permit</u>	150.00
***	***

Ordinance No. _____

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

AN ORDINANCE OF TOWN COUNCIL THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS" OF THE TOWN'S CODE OF ORDINANCES, SECTION 14-513, "DEFINITIONS" TO ADD THE DEFINITION FOR A GLOBAL FENCE PERMIT, AND AMEND THE DEFINITION FOR PERIMETER FENCE; AMENDING SECTION 14-541, "ENUMERATION" PROVIDING ADDITIONAL STANDARDS; AMENDING CHAPTER 74, "GENERAL PROVISIONS" OF THE TOWN'S CODE OF ORDINANCES, SECTION 74-3, "DEFINITIONS" TO ADD A DEFINITION FOR ESTABLISHED FRONT YARD; AMENDING CHAPTER 98, "ZONING" OF THE TOWN'S CODE OF ORDINANCES, THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN, SECTION 98-1142, "FRONT YARD FENCE HEIGHT AND VISIBILITY" TO RENAME THE SECTION TO "FENCE HEIGHT AND VISIBILITY", AND AMENDING THE SECTION TO PROVIDE ADDITIONAL STANDARDS FOR KEY LOT FENCES, AND PROVIDE AN EXCEPTION FOR FENCE HEIGHT OR MATERIALS; AMENDING SECTION 98-1143, "PERIMETER AND OPEN SPACE WALLS AND FENCES", PROVIDING A REPLACEMENT OPTION FOR FENCES AND WALLS IN NEIGHBORHOODS WITHOUT AN ESTABLISHED HOA OR PLANNED DEVELOPMENT STANDARDS; AMENDING APPENDIX A, "FEE SCHEDULE", PROVIDING A FEE OF \$150.00 FOR A GLOBAL FENCE PERMIT; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; 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 previously adopted Article XIII of Chapter 14 to the Code of Ordinances, as amended, establishing minimum standards for property maintenance in the Town; and,

WHEREAS, the Town Council of the Town of Flower Mound previously adopted Chapter 98, Zoning, of Subpart B, Land Development Regulations, of the Town of Flower Mound Code of Ordinances, as amended, establishing regulations for zoning and uses of land and development of real property within the Town; and,

WHEREAS, the Town Council finds and determines that fence and wall maintenance requirements, and standards should allow affordable options for repair and replacement for property owners in neighborhoods without established HOAs or Planned Development (PD) standards; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on December 9, 2019, and the Town Council of the Town of

Ordinance No. _____

Flower Mound, Texas, held a public hearing on December 16, 2019, with respect to the amendments described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Texas Local Government Code, Chapter 78 of the Town's Land Development Regulations, and all other laws dealing with notice, publication and procedural requirements for the approval of a Land Development Regulations Amendment;

WHEREAS, the Town Council finds that the amendment to Chapter 98 as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

SECTION 1

That Section 14-513, "Definitions," of Division 1, "Generally," of Article XIII, "Property Maintenance Standards," of Chapter 14 of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a definition of "*Global Fence Permit*" and to modify the definition of "*Perimeter Fence*" to be added and inserted alphabetically to read as follows:

"Sec. 14-513. – Definitions.

Global Fence Permit means a permit for the repair or replacement of any fencing and/or masonry screening walls located within the same subdivision, to be constructed on two or more contiguous lots without interruption. Interruption may be, but is not limited to, a street, another lot, an open space, or an easement.

Perimeter fence means any fence as defined for the purposes of this article that is adjacent to an arterial or collector road as defined in the town's thoroughfare plan, and does not meet the requirements of section 98-821 perimeter screening of this Code. This definition does not include any fence allowed under the town's urban design plan or any barbed wire or metal/wire livestock fencing allowed by this Code in A, agricultural district.

***"

SECTION 2

That Section 14-541, "Enumeration," of Division 2, "Minimum Standards," of Article XIII, "Property Maintenance Standards," of Chapter 14 of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended both subsection (3) and subsection (5) to read as follows:

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“Sec. 14-541. – Enumeration.

- (3) Maintain fences and related appurtenances in good condition and not as a dilapidated or deteriorated fence. Fences shall not be propped up or leaned against a pole, piece of lumber or other similar object as a means of support. If 25 percent or more of the perimeter fence is determined to be dilapidated or deteriorated, it may not be repaired; instead the perimeter fence that is adjacent to a town arterial or collector road shall be completely replaced and constructed in accordance with section 14-542;

- (5) Maintain all perimeter walls, carports, awnings, patio covers, garages and garage doors, sheds, storage buildings, outbuildings, and other accessory buildings or structures in a structurally sound condition, and free of deterioration;

***”

SECTION 3

That Section 74.3, "Definitions," of Chapter 74, "General Provisions," of Subpart B – "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a definition of "*Established Front Yard*" to be added and inserted alphabetically to read as follows:

“Sec. 74.3. – Definitions.

Established front yard means the required front yard located between the street and the front of the house on lots having two required front yards.

***”

SECTION 4

That Section 98-1142, "Front yard fence height and visibility," of Division 7, "Fences and Walls," of Article IV, "Supplementary District Regulations" of Chapter 98 of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to rename Section 98-1142, amend subsection (a), and add two new subsections (e) and (f) to read as follows:

“Sec. 98-1142. – Fence height and visibility.

- (a) Except in A, agricultural district and Key Lots as defined by this code, no fence or wall within a required front yard shall exceed four feet in height above the adjacent grade.

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- (e) No fence or wall within the established front yard for key lots shall exceed four (4) feet in height above the adjacent grade. Fences constructed within the additional required front yard shall not exceed eight (8) feet in height, but must be setback a minimum of 10 feet from the property line. Fences constructed within the first 10 feet of the additional required front yard shall not exceed four (4) feet in height.
- (f) Town Council may grant an exception for maximum fence height or fencing materials for individual lots in situations where a new subdivision perimeter fence caused compatibility concerns with an existing residential fence due to topography and/or location.”

SECTION 5

That Section 98-1143, “Perimeter and open space walls and fences,” of Division 7, “Fences and Walls,” of Article IV, “Supplementary District Regulations” of Chapter 98 of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add a new subsection (c) to read as follows:

“Sec. 98-1143. – Perimeter and open space walls and fences.

- (c) Property owners replacing existing masonry walls in neighborhoods where HOAs were not established and/or designated to provide ongoing fence/wall maintenance and that have no applicable Planned Development standards, shall either match original construction materials or meet the perimeter fence standards established in Section 14-542 of the Town’s Code of Ordinances.”

SECTION 6

That Appendix A, “Fee Schedule,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add an associated fee of \$150.00 for a “Global Fence Permit” in the Fee Schedule chart to be added and read as follows:

“Appendix A. – Fee Schedule.

Type of Construction	Permit Fee
***	***
Retaining wall, Screening wall, or Global Fence Permit	150.00

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***"

SECTION 7

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 8

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 9

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 10

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein which 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 11

The Town Secretary of the Town of Flower Mound is hereby directed to publish the

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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 12

This Ordinance shall be in full force and effect from and after the date of 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 16TH DAY OF DECEMBER, 2019.

APPROVED:

Steve Dixon, **MAYOR****ATTEST:**

Theresa Scott, **TOWN SECRETARY**

Town Council Future Agenda Items



SCHEDULED	1/6/2020	Consent	Consider approval of the purchase of a Kaeser Compressor valve control system from Kaeser Dallas, Inc., a sole source provider, for control of valves associated with the operation of the Sequence Batch Reactor process at the TOFM Wastewater Treatment Plant, in the amount of \$55,669.09.
		Consent	Consider approval of the network wiring installation for the Library Expansion project, in the amount of \$38,550.00.
		Consent	Morriss Road Improvements & 12-Inch Waterline Change Order No. 1
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on December 16, 2019.
	2/3/2020	Consent	Hound Mound Parking and Restroom - Design
		Consent	WWTP UV - CO1 (SCADA)
		Consent	Placeholder: Call May 2, 2020 Election.
		Consent	Timber Creek Trunk Line - Construction Award
		Consent	Timber Creek Water Line Replacement Phase 1 - Design
		Consent	Red Bud Point Water Service Relocation - Testing Award.
		Consent	Red Bud Point Water Service Relocation - Construction Award.
		Regular	Morriss Road Water Line Phase II (Milford to Eaton) - Design Award.
		Regular	Stonecrest Pump Station Phase 1 Auxillary Power - Design
	2/17/2020	Consent	The Mound Monument ADA Improvements