

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

3/2/2020

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. Commitment to Excellence Award (Police Department)

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. Seasonal outdoor photography studio

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).

Town Council Meeting Agenda

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I. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, April 6.
2. Consider scheduling an April 16 work session to allow discussion on short-term rental regulations.

J. CONSENT ITEMS

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

1. Minutes 2/17- Consider approval of the minutes from a regular meeting of the Town Council held on February 17, 2020.
2. CAFR fiscal year- Consider approval of the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2019.
3. Lake Forest Landscape Maint. Contract- Consider approval to award Best Value Bid No 2020-2-A for Landscape Maintenance Program-Forest Vista/Lake Forest to Brightview Landscape Services, Inc. at the unit prices bid, in the estimated annual amount of \$21,134.40; and authorize the Mayor to execute same on behalf of the Town.
4. Garden Ridge & Peters Colony Testing- Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the Garden Ridge Through Lane and Peters Colony Roundabout projects, in the amount of \$29,211.00; and authorization for the Mayor to execute same on behalf of the Town.

K. REGULAR ITEMS

5. Garden Ridge & Peters Colony Const- Consider approval of a Construction Agreement with Reliable Paving Inc., for the Garden Ridge Through Lane and Peters Colony Roundabout projects, in the amount of \$1,205,174.30; and authorization for the Mayor to execute same on behalf of the Town.
6. RF20-01050 - Fence Height- Consider a request for an exception (RF20-01050) to Section 98-1142, Fence Height and Visibility, of the Code of Ordinances, to build a residential fence in excess of the Town's maximum height standards. The property is located at 3212 Pecan Meadows Drive.

L. CLOSED MEETING

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

- a. Consultation with Attorney.

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

- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, cultural arts center, and/or other municipal purposes and all matters incident and related thereto.

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- 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: February 28, 2020, at 11:00 a.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: March 2, 2020

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on February 17, 2020.

BACKGROUND INFORMATION: The Town Council held a regular meeting on February 17, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

Finance Review by: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes 2.17.20

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

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 17, 2020**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 17TH DAY OF FEBRUARY 2020, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

[Click here](#) for meeting video link (subject to change)

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

Steve Dixon	Mayor
Sandeep Sharma	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Ben Bumgarner	Councilmember Place 3
Jim Engel	Councilmember Place 4 (left at 7pm)

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

Anne Carnes	Executive Assistant
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
Andrea Roy	Director of Economic Development
James Hoefert	Environmental Review Analyst

A. CALL REGULAR MEETING TO ORDER

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

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

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

D. PUBLIC COMMENT

Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

	Speaker names and address	Subject (as written on the form)
1.	Shelley Brandt, 6301 Willow Ridge	Housing issue Canyon Falls
2.	Ann Martin, 4700 Oak Springs Dr	Announcing candidacy for Place 5

E. ANNOUNCEMENTS

There were no announcements.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 17, 2020**PAGE 2****F. TOWN MANAGER'S REPORT**

Mr. Stathatos provided an update on the following projects:

1. Update and status report related to capital improvement projects.
 - Lakeside Parkway turn lane
 - 1171 at Riverwalk
2. Update and discussion on Economic Development projects.
 - Ms. Roy provided an update on new or coming soon businesses
 - SCORE sessions coming soon
3. Short-term rental regulations
 - Mr. Meredith provided an update regarding regulation changes based on Council feedback at the last meeting

Council Discussion

There was Council discussion regarding:

- Liked the administrative component with the permitting process, and how the protections are still in the Ordinance
- Interest in seeing the limitations as it relates to types of dwellings (i.e. condos versus single family)
- Interest in getting the data to analyze it to decide
- Information gathered from webinar recently participated in regarding short term rentals
- The need to conduct a thorough investigation on companies that specialize in managing short term rentals
- Interest in seeing a report that identifies how many homes have been operating as short term rentals in Flower Mound in the past year

There was Council consensus to continue the dialogue in a future Council work session and Mayor Dixon requested Councilmember Engel provide the link to the webinar to the Town Manager for Council distribution as a resource.

4. Mr. Stathatos was asked to identify anything that the Town can do regarding the home issues described by Ms. Brandt during public comment.

He indicated more information would be needed before a response could be provided.

G. FUTURE AGENDA ITEMS

1. Councilmember Engel reported on a situation involving improper work around trees by a contractor. He expressed disappointment that the fine was only \$500 as it was not adequate or proportionate to the damage.

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Mr. Meredith provided a statement of fact as it relates to the Town's limitations regarding fines.

Councilmember Bumgarner indicated perhaps there is a need to have more check ins by code enforcement on this developer in the interest of protecting the Town's tree canopy.

2. Councilmember Pierson indicated that given the Town's fine limitations as it relates to the contractor who conducted unauthorized site work around trees, he would like to explore other sanctions beyond fines, along with the development review process.

Mr. Stathatos indicated he would have a discussion with Councilmember Pierson to seek more information regarding this thought process.

H. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, March 2.

Mayor Dixon announced the above referenced meeting.

I. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on February 3, 2020.
2. Consider approval of the second reading of an ordinance granting to a non-exclusive gas franchise to CoServ Gas, LTD.; and authorization for the Mayor to execute the same on behalf of the Town.

ORDINANCE NO. 02-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, GRANTING TO COSERV GAS, LTD., D/B/A COSERV GAS, A FRANCHISE TO FURNISH AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE TOWN OF FLOWER MOUND, TEXAS, AND TO TRANSPORT, DELIVER, SELL, AND DISTRIBUTE GAS IN AND OUT OF AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE STREETS, ALLEYS, AND PUBLIC WAYS; AND PROVIDING A SEVERABILITY CLAUSE, A PENALTY CLAUSE, AND AN EFFECTIVE DATE.

3. Consider approval of replacement of the Community Activity Center indoor/outdoor pool disinfection units by Sunbelt Pool in the amount of \$67,400.00
4. Consider approval of an ordinance amending the Code of Ordinances of the Town of Flower Mound by amending Chapter 70, "Utilities", Article VII "Water Wells", by repealing Section 70-564 "Special Construction Requirements; exceptions", and replacing it with water well regulations pursuant to Title 16 of the Texas Administrative Code, Chapter 76, Section 100.

ORDINANCE NO. 03-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 70-564 WHICH ESTABLISHED SPECIAL CONSTRUCTION REQUIREMENTS FOR WATER WELLS; REPEALING EXISTING SPECIAL CONSTRUCTIONS REQUIREMENTS AND EXCEPTIONS; AMENDING FLOWER MOUND'S ORDINANCE TO ALIGN IT WITH TEXAS DEPARTMENT OF LICENSING AND REGULATION; PROVIDING THAT 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.

5. 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 and amended by Ordinance No. 64-19 for adjustments to the General Fund and Tree Preservation Fund.

ORDINANCE NO. 04-20

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 AND AMENDED BY ORDINANCE NO. 64-19, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND AND TREE PRESERVATION 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.

6. Consider approval for the purchase and installation of Audio Video equipment for the Flower Mound Library from Data Projections in the amount of \$179,483.57.
7. Consider approval of the 2020 US Army Corps of Engineer (USACE) Solicitation No. W9126G20Q0033 for Contract with the Town of Flower Mound for law enforcement services at Lake Grapevine; and authorize the Mayor to execute same on behalf of
8. Consider approval of the award of Request for Proposal 2020-27-A for the Annual Fireworks Display to Pyro Shows of Texas, Inc., in the annual amount of \$28,000.
9. Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at The Heritage Park of Flower Mound during the Flower Mound Women In Business Spring Community Event.
10. Consider approval of a Construction Agreement with Atkins Brothers Equipment Company, Inc., for the Red Bud Point Water Service Relocation project, in the amount of \$984,858.00; and authorization for the Mayor to execute same on behalf of the Town.
11. Consider approval of a Professional Services Agreement with Alliance Geotechnical Group to provide construction materials engineering and testing, for the Red Bud Point Water Service Relocation project, in the amount of \$31,283.50; and authorization for the Mayor to execute same on behalf of the Town.

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12. Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., for the design phase services associated with the Morriss Road Water Line Phase 2 project, in the amount of \$202,500.00; and authorization for the Mayor to execute same on behalf of the Town.
13. Consider approval of Change Order No. 1 to the Wastewater Treatment Plant Ultraviolet System Upgrade project, in the amount of \$98,916.23; and authorization for the Mayor to execute same on behalf of the Town.
14. Consider approval of Amendment No. 1 to the Fiscal Year 2019-2020 Capital Improvement Program.
15. Consider approval of an ordinance vacating and abandoning an existing water line easement located at the southwest corner of Sweetwater Lane at Gerault Road.

ORDINANCE NO. 05-20

AN ORDINANCE VACATING AND ABANDONING EASEMENTS LOCATED IN THE TOWN OF FLOWER MOUND; DECLARING THAT SUCH PROPERTY IS UNNECESSARY FOR USE BY THE PUBLIC; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Mayor Pro Tem Sharma moved to approve by consent Items 1 – 15, as presented in the agenda caption. Deputy Mayor Pro Tem Forest seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

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

16. Public Hearing to consider an application for a tree removal permit for one (1) specimen tree on property proposed for development as Lot 5, Block A of the Pepper Creek Ranch Addition. The property is generally located 4705 Summerhill Court. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its January 7, 2020, meeting).

Staff Presentation

Mr. Hoefert, or Mr. Meredith, gave a presentation identifying or noting:

- Project information
- General and detailed location
- Specimen tree survey
- Picture of tree requested for removal
- Legal consideration

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

- Clarification regarding how property is defined
- Was the tree present at the time the applicant purchased the lot
- Parameters with the Cross Timbers and open space protections

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- How many lots have been through the process that did not require a tree removal and/or how many are anticipated
- If denied, is there a set amount of time where this item can be reviewed later

Council Discussion

There was Council Discussion regarding:

- Flexibility components that exist within the lot to lot option
- Clarification that the applicant is a family requesting to have the tree removed to fit the design of their house
- Possibility of building a different home on the site so the tree can be preserved
- How the design of the house is driving the tree removal request instead of the actual need
- There are other protected non specimen trees (6) that are being removed on the site
- If denied, possibility of visiting with the homeowner to understand what their needs are and then reconsider the item later
- How in the future a homeowner can cut down a tree on their lot should they wish to do so
- How the person who sold them the home holds the responsibility of negotiating as warranted
- Possible design options that would allow the tree to be saved

Applicant Presentation

Laura Hall, McAdams, 201 Country View Drive, Roanoke

- Site Lot 5, Block A
- Letter of intent
- Required signage
- Picture of the tree requested to be removed
- Tree survey

and she responded to the following questions from Council:

- Clarification regarding exactly how many trees are being removed
- Is it a spec home
- Clarification regarding what the double lines on the graphic by the trees mean
- If council was to deny the item is there another lot within the site they can build on
- What options were discussed with the homeowner to save the tree
- Is the design of the house driving the need to remove the tree

Mayor Dixon opened the Public Hearing at 6:56 p.m.

No one spoke in support or opposition.

Mayor Dixon closed the Public Hearing at 6:56 p.m.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 17, 2020**PAGE 7**

Mayor Pro Tem Sharma moved to deny item 16 as presented. Councilmember Pierson seconded the motion.

VOTE ON MOTION:*Motion passed (to deny)***AYES: BUMGARNER, SHARMA, ENGEL, PIERSON****NAYS: FOREST**

17. Public Hearing to consider an application for a tree removal permit for one (1) specimen tree on Lot 36X, Block A of the Bradford Park Phase 2 subdivision. The property is generally located at 5301 Bradford Green Trail. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its February 4, 2020, meeting).

Staff Presentation

Mr. Hoefert gave a presentation identifying or noting:

- Project information
- General and detailed location
- Specimen tree survey
- Picture of tree requested to be removed
- Legal consideration
- Bradford Park Ph 2 Specimen tree removal

and he responded to the following questions from Council:

- How many feet is the tree away from the property line
- How close is the house proposed to be
- How many (specimen or protected) trees were allowed for removal initially
- In the event this particular tree dies, are there any implications to the developer

Applicant Presentation

Curtis Young, Sage Group, 1130 N Carroll Ave, Southlake

Mr. Young provided background information about the development that led to what they are requesting today, including efforts that were made to try and save the tree.

and he responded to the following questions from Council:

- why wasn't this tree included with the initial tree removal request, as was recommended by Town staff
- what are the options for that lot
- is there a reason for the row of preserved vegetation as shown on the map
- clarification that no one currently on council was on council at the time the initial tree removal request came forward
- clarification as to if the developer would be able to build on the lot or not

Council Discussion

There was Council discussion regarding:

- there is a potential for redesign of the lots since it's only 5 feet away from the property line

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- had this tree been requested initially it would have been approved, but to remove it on its own doesn't sit well

Mayor Dixon opened the Public Hearing at 7:22 p.m.

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

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
None	Sharon Gentry, 2750 Bob White Ln	None
	Lori Pearson, 5304 Singing Brook	
	Mark Klopping, 5308 Singing Brook	
	KC Walsh, 3825 High Rd*	
	Janvier Werner, 2829 Bob White Ln*	

**indicated did not wish to speak*

Mayor Dixon closed the Public Hearing at 7:32 p.m.

Councilmember Pierson moved to deny item 17 as presented. Councilmember Bumgarner seconded the motion.

VOTE ON MOTION:

AYES: PIERSON, SHARMA, FOREST, BUMGARNER

NAYS: NONE

ABSENT: ENGEL

Motion passed (to deny)

K./L. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 7:40 p.m. on February 17, 2020, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, and 551.087 for consultation with attorney, and to discuss matters relating to real property, and economic development negotiations, and reconvened into an open meeting at 7:45 p.m. on February 17, 2020, to take action on the items as follows:

- a. Consultation with Attorney.

No action taken.

- 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.

FLOWER MOUND TOWN COUNCIL MEETING OF FEBRUARY 17, 2020**PAGE 9**

Councilmember Bumgarner moved to authorize staff to purchase Right-of-Way Property, in association with the Rippy Road Phase II project, and to negotiate for the purchase of the Right-of-Way Property up to the settlement amounts described in the document in closed session; and authorization of the Town Manager, or his designee, to close on the Right-of-Way Property should a settlement be reached, to pay all costs associated with said closing in addition to the purchase price of the Right-of-Way Property, and to execute all necessary documents at closing on behalf of the Town. Deputy Mayor Pro Tem Forest seconded the motion.

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

- c. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.

No action taken.

M. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 7:46 p.m. on Monday, February 17, 2020, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR**ATTEST:**

ANNE CARNES, EXECUTIVE ASSISTANT



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: March 2, 2020

FROM: Tammy Wilson, Executive Director of Financial Services

ITEM: Consider approval of the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2019.

BACKGROUND INFORMATION: Article III, Section 3.13 of the Town Charter requires that an annual independent audit be performed of “the books and accounts of each and every department of the Town.” The Town has complied with this requirement, and in the opinion of the auditing firm of Pattillo, Brown & Hill, L.L.P., the basic financial statements contained within the CAFR present fairly, in all material respects, the financial position of the Town as of September 30, 2019.

Copies of the Town of Flower Mound’s Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2019, were distributed prior to this meeting, and copies of the reports were placed in the Library for review by the public. There were no significant deficiencies or material weaknesses found during the audit.

The Town Council has adopted financial policies to guide and set goals for the financial administration of the Town. The following table displays the Town’s financial policy results for fiscal year 2014-2015 through fiscal year 2018-2019.

<u>Financial Goals</u>	<u>Goal</u>		<u>09/30/2015</u>	<u>09/30/2016</u>	<u>09/30/2017</u>	<u>09/30/2018</u>	<u>09/30/2019</u>
General Fund fund balance	At/Above	20.00%	32.83%	29.28%	29.07%	30.73%	33.09%
Water & Wastewater capital reserve at 60 days maintained	At/Above	16.70%	24.45%	24.20%	21.68%	23.58%	24.94%
Debt Service fund balance	At/Above	4.00%	6.21%	9.46%	11.04%	10.38%	11.24%
Ratio of net debt to AV	At/Below	1.75%	0.86%	0.76%	0.88%	0.87%	0.78%
Ratio of debt service fund expenditures to total general & debt service funds	At/Below	20.00%	18.14%	13.96%	13.76%	16.71%	16.51%
VERF funding maintained at 85% funding level or higher	At/Above	85.00%	92.87%	91.50%	91.47%	92.87%	89.83%

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

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



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: March 2, 2020

FROM: Chuck Jennings, Director of Parks and Recreation

ITEM: Consider approval to award Best Value Bid No 2020-2-A for Landscape Maintenance Program-Forest Vista/Lake Forest to Brightview Landscape Services, Inc. at the unit prices bid, in the estimated annual amount of \$21,134.40; and authorize the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Parks Services Division oversees the landscape maintenance in the medians and right-of-way within certain areas of the Forest Vista/Lake Forest subdivisions. In 2018, the subdivisions' voluntary HOA contacted the Town to request additional and improved services for the maintenance of these areas. This portion of the existing contract was removed, as agreed to by the previous vendor, and a new landscape maintenance vendor was selected in 2019. The new vendor was unable to perform the required services and the Town terminated their contract early for non-performance. The Town's Purchasing Office issued Solicitation No 2020-2-A and an optional pre-bid meeting was held with a site tour. A total of five responsive bids were received by the Purchasing Office.

An evaluation committee consisting of representatives from the Parks and Recreation Services Department evaluated the bids based on cost, equipment, safety program, work history/references and considered the approved budget. The evaluation committee decided to award the annual contract to Brightview Landscape Services, Inc. as the Best Value Bidder. The agreement is for (1) one year with (4) four optional one-year renewal terms.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: If the agenda item is not approved by the Town Council, staff would then need to service these areas to make sure the medians and right-of-way were maintained to the required standard.

FISCAL IMPACT: \$21,134.40

Proposed Expenditure/(Revenue):	Account Number(s):
\$21,134.40	100-630-33000-5110

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

LEGAL REVIEW: The Town's standard 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 Services Agreement.

ATTACHMENTS:

1. Contract

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

**TOWN OF FLOWER MOUND
STANDARD TERMS & CONDITIONS FOR SERVICES/PRODUCTS**

This Contract is made by the Town of Flower Mound, Texas, a municipal Corporation ("Town") and Brightview Landscape Services, Inc. ("Contractor"). The Town and Contractor agree:

1. **EMPLOYMENT OF THE CONTRACTOR.** The Town agrees to retain the Contractor, and the Contractor agrees to provide services relative to: Landscape Maintenance Services for Forest Vista/Lake Forest Service Location (hereinafter referred to as "Services") in connection with the terms and conditions as set forth in the Contract Documents, attached hereto and incorporated by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in the solicitation. Deviations from the scope of work may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Contractor agrees to begin work upon receipt of written authorization from the Town. Time is of the essence for this Contract and work is to commence immediately.
4. **CONTRACT PERIOD.** The initial contract period will be one year, with four (4) optional one-year renewal periods from date of award of contract. All pricing is to remain firm during the contract period. This agreement may be terminated by either party with written notice at least ninety (90) days prior to the current term renewal date, indicating their intent not to renew.
5. **COMPENSATION.** Contractor's total compensation for services to be performed and expenses to be incurred is specified in the Contractor's Pricing Sheet or Criteria.
6. **PAYMENTS.** Payments will be processed on a monthly basis with payment available within 30 days after receipt of the invoice for the previous month's service.
7. **PRICING ESCALATION:** Unless otherwise stated in the specification herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitted a request in written form to the Purchasing Manager. Basis for price escalation should be based on the consumer price index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all request for price escalations.

8. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services or lower than the Town of Flower Mound's contracted prices, an equitable adjustments shall be made in the contract price in favor of the Town.
9. **INVOICING.** Invoices should be prepared and submitted to the Town for payment in accordance with the Contract Documents. Invoices should be mailed to Accounts Payable, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028 or accountspayable@flower-mound.com.
10. **RIGHTS OF WITHHOLDING.** The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by the Contractor. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and will not be paid to the Contractor.
11. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to Contractor.
12. **TRANSFER OF INTEREST.** Neither Town nor Contractor may assign or transfer their interests in the Contract without the written consent of the other party. Such consent shall not be unreasonably withheld. This Contract is binding on Town, Contractor, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.
13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Contractor shall make available to the Town for examination all of its records with respect to all matters covered by the Contract and will permit the Town to audit, examine and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to the Contract.
14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

- a. The Contractor agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- b. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provisions will be binding upon each subcontractor, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.
- c. The Contractor shall keep records and submit reports concerning the racial and ethnic origin(s) of applicants from employment and employees as the law may require.

15. TERMINATION OF CONTRACT. Town may terminate this contract upon ninety (90) days written notice to Contractor, except in the event (i) Contractor is in breach of this Contract or (ii) Contractor fails to comply with the terms of Attachment A Worksheet. If either of the foregoing conditions exists, Town shall notify Contractor and Contractor shall be given two (2) days to cure such breach. Should Contractor fail to cure to the satisfaction of the Town, Town may terminate this Contract upon written notice.

- a. Furthermore, the Town retains the right to terminate this Contract at the expiration of each Town budget period (September 30) during the term of this Contract, even without prior notice as described in the preceding sentence.
- b. In the event of any termination hereunder, the Contractor consents to Town's selection of another Contractor to assist the Town in any way in completing the Services. Contractor further agrees to cooperate and provide any information requested by Town in connection with the completion of the Services.
- c. Contractor shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that Contractor shall receive a portion of fees and expenses permitted under this Contract in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against Contractor that may be available under applicable law.

16. CONTRACTOR'S REPRESENTATIONS. Contractor hereby represents to Town that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required.

17. TOWN APPROVAL FOR ADDITIONAL WORK. No payment, of any nature whatsoever, will be made to Contractor for additional work without the Town's written approval before such work begins.

a. **PERFORMANCE BY CONTRACTOR.** All Services provided by the Contractor hereunder shall be performed in accordance with the highest professional standards and in accordance with the Contract Documents, and Contractor shall be responsible for all Services provided hereunder whether such services are provided directly by contractor or by any contractors hired by Contractor. The Contractor shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. Contractor shall not utilize subcontractors to perform Services without the Town's prior written consent.

18. DAMAGE. In all instances where Town property and/or equipment is damaged by the Contractor's employees, a full report of the facts, extent of the damage and estimated impact on the Contractor's schedule shall be submitted to the Town's Public Works Division by 8 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Contractor must notify Police Dispatch immediately. The Contractor shall be fully liable for all damage to Town property or equipment caused by the Contractor's officers, employees or agents.

19. TOWN OBJECTION TO PERSONNEL. If at any time after entering into this Contract, Town has any reasonable objection to any of Contractor's personnel, or any personnel retained by Contractor, then Contractor shall promptly propose substitutes to whom the Town has no reasonable objection, and the Contractor's compensation shall be equitably adjusted to reflect any difference in the Contractor's costs occasioned by such substitution.

20. COMPLIANCE WITH LAWS. The Contractor warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town's Representative are followed.

21. ENTIRE CONTRACT. This instrument together with the Contract Documents of which this Contract is a part contains the entire Contract between the Town and Contractor concerning the Services. There will be no understandings or contracts other than those incorporated herein. The Contract may not be modified except by an instrument in writing signed by the parties hereto. In the event of a conflict between an attachment to this Contract and this Contract, this Contract shall control.

22. **ADVERTISING:** Contractor shall not advertise or publish, without Town's prior consent, the fact that Town has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
23. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C 1324a):** The Town supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall at all times during the term of the contract with the Town comply with the requirement of IRCA and shall notify the Town within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Town may terminate a contract with the Seller if the Town determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Town of an IRCA violation.
24. **NO BOYCOTT OF ISRAEL:** Pursuant to Texas Government Code Chapter 2270, the Seller agrees that acceptance of these Terms & Conditions serves as written verification that 1) Seller does not boycott Israel, as defined by Texas Government Code Section 808.001 and 2) Seller will not boycott Israel during the term of the contract.
25. **COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION:** Pursuant to Texas Government Code Chapter 2252, Subchapter F. Seller affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.
26. **MAILING ADDRESSES.** All notices and communications concerning this Contract to be mailed or delivered to the Town shall be sent to the address of the Town as follow, unless and until the Contractor is otherwise notified:

Sabrina Zadow
Purchasing Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

All notices and communications under this Contract to be mailed or delivered to the Contractor shall be sent to the address listed below until the Town is otherwise notified:

Name: Jason Shear
Title: VPGM
Company Name: Brightview Landscape Services, Inc
Address: 1464 West First Street
City, State, Zip: Prosper, TX 75078

Any notices and communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date in the notice or communication is placed in the United States Mail or hand-delivered.

27. **LEGAL CONSTRUCTION.** If any one or more of the provisions contained in the Contract for any reason is held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been included.
28. **GOVERNING LAW.** The validity of this Contract and of any of its terms or provisions as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue for this Contract shall be located in Denton County, Texas.
29. **COUNTERPARTS.** The Contract may be signed in counterparts, each of which shall be deemed to be an original.
30. **EFFECTIVE DATE.** This contract shall be effective once it is signed by the Town and Contractor.

AGREED TO BY:

TOWN OF FLOWER MOUND, TEXAS

By: _____
Name: Jason Shear
Title: VPGM
Date: _____

By: _____
Mayor Steve Dixon
Date: _____

Attachment A Forest Vista / Lake Forest Bid Pricing Worksheet

• Forest Vista

The successful bidder(s) shall be responsible for the following:

1. Section III - A / Section III - B

Medians: All medians from FM 2499 to Morriss Rd.

South side right-of-way: East of church at Forest Vista to Morriss Rd.

North side right-of-way: East side of church at Forest Vista to Morriss Rd. (Exclude Donald Elementary)

Bed Maintenance:

1. Forest Vista @ FM 2499 (2 sides and median)
2. Forest Vista @ Amhearst (2 sides south side)
3. Forest Vista @ Lakeshore (2 sides south side)

A.	Base Maintenance cost per week:	\$ <u>387.47</u> per week x 30 =
		\$ <u>11,624.12</u> Annual Cost \$11,624.10 <u>HS</u>
B.	Off Season Service cost per occurrence:	\$ <u>232.48</u>

• Lake Forest

The successful bidder(s) shall be responsible for the following:

1. Section III - A / Section III - B

All medians and parkways (between fence and curb) from FM 3040 to Forest Vista (Exclude Rheudasil Park)

Bed Maintenance:

1. Lake Forest @ Amhearst (4 sides)
2. Lake Forest @ Flower Mound Rd. (2 sides and median)
3. Lake Forest @ Lakeshore (2 sides)

A.	Base Maintenance cost per week:	\$ <u>317.01</u> per week x 30 =
		\$ <u>9,510.35</u> Annual Cost \$9,510.30
B.	Off Season Service cost per occurrence:	\$ <u>190.21</u>



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: March 2, 2020

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with Alliance Geotechnical Group to provide construction materials engineering and testing for the Garden Ridge Through Lane and Peters Colony Roundabout projects, in the amount of \$29,211.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Professional Service Agreement includes construction materials engineering and testing for the Garden Ridge Boulevard Through Lane at FM3040 & Peters Colony Road Roundabout projects.

On February 20, 2020, bids were received and opened for the Garden Ridge Boulevard Through Lane at FM3040 & Peters Colony Road Roundabout projects (Bid #2020-29-B). Reliable Paving Inc. submitted the lowest qualified bid of the four (4) responding bidders at a base bid of \$1,205,174.30. The construction award is also scheduled to be reviewed and approved on March 2, 2020 by Town Council.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision not to approve the Professional Services Agreement for construction materials engineering and testing would remove the ability of Town staff to verify materials are installed to the required standards and specifications in the contract documents. This verification is necessary to ensure a quality project.

FISCAL IMPACT: \$29,211.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$10,476.50	505-220-77200 Garden Ridge Through Lane
\$18,734.50	505-220-70200 Peters Colony Roundabout

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

- Garden Ridge Blvd. Through Lane: Total project cost is \$610,000. Funding sources are:
 - Impact Fees \$ 295,000
 - Decision Package (cash from General Fund) \$ 315,000
- Peters Colony Roundabout: Total project cost is \$1,100,000. Funding sources are:
 - Other \$ 400,000
 - Decision Package (cash from General Fund) \$ 710,000

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
ALLIANCE GEOTECHNICAL GROUP**

This contract is entered into on this 2nd day of March, 2020, 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 **ALLIANCE GEOTECHNICAL GROUP**, (“hereinafter referred to as “CONSULTANT”) whose address is 7970 West Main Street, Frisco, Texas 75033

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the Garden Ridge Boulevard Through Lane at FM3040 & Peters Colony Road Roundabout; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide the Garden Ridge Boulevard Through Lane at FM3040 & Peters Colony Road Roundabout

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

III. Payment for Services

Total payment for services described herein shall be a sum not to exceed Twenty-Nine Thousand Two Hundred Eleven and No/100 Dollars (\$29,211.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

VII. **Ownership of Documents**

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

VIII. **Insurance**

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

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

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

The following policies and coverage shall be required:

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

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

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

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

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

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

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX.

Right to Inspect Records

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

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

X.

Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

XIII. Independent Contractor

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

XIV. Default

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

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

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

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

(2) The total dollar amount of this Contract.

XV.

Provisions Surviving Termination

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

XVI.

Changes

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

XVII.

Conflicts of Interest

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

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

XVIII.

Confidential Information

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

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

XIX.
Notice Information

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

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

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

J.K. Marthers
Alliance Geotechnical Group
7970 West Main Street
Frisco, TX 75033
214-618-4100 Telephone
214-618-4110 Facsimile

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

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

[The remainder of this page left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
ALLIANCE GEOTECHNICAL GROUP**

By: 
Name: Robert P. Nance
Title: President
Date Signed: 2/7/2020

State of Texas §
 §
County of Dallas §

This instrument was acknowledged before me on the 7th day of February, 2020, by Robert P. Nance in his capacity as President of Alliance Geotechnical Group, 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 **Alliance Geotechnical Group, Inc..**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 7th
DAY OF February, 2020.


Notary Public, State of Texas

My Commission Expires:

11-18-2023





GEOTECHNICAL ENGINEERING
ENVIRONMENTAL CONSULTING
CONSTRUCTION MATERIALS ENGINEERING AND TESTING

February 7, 2020

Blake Hummel, P.E. – Senior Project Manager
Town of Flower Mound
2121 Cross Timbers Rd.
Flower Mound, Texas 75028

Email: blake.hummel@flower-mound.com

Re: Garden Village Blvd. Through Lane, & Peters Colony Rd. Roundabout
Flower Mound, Texas
Engineering Inspection & Testing Services
AGG Proposal No: P20-0131CR

Dear Mr. Hummel,

Alliance Geotechnical Group (AGG) is pleased to confirm our firm's interest in providing materials inspection and testing services for the proposed project noted above. A schedule of unit fees for this project is attached. Actual charges will be based on the contractors/client scheduling.

After reviewing our fee schedule if you have any questions, please contact the undersigned at (214) 618-4100. If acceptable, please sign below and return to our office as our Authorization to Proceed. We look forward to the opportunity of working with you on this project.

Respectfully submitted,

ALLIANCE GEOTECHNICAL GROUP

A handwritten signature in blue ink, appearing to read 'J.K. Marthers'.

J.K. Marthers
Project Manager

A handwritten signature in blue ink, appearing to read 'Douglas S. Land'.

Douglas S. Land, P.E.
Branch Manager

Approved by: _____
Signature

Date: _____



SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
GARDEN VILLAGE BLVD. THROUGH LANE
FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P20-0131CR

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
A. LIME SUBGRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	3	@	\$165.00	each	\$495.00
• Atterberg Limits	3	@	\$55.00	each	\$165.00
• Lime Gradation Test (1 test/300 lf roadway)	6	@	\$18.00	each	\$108.00
• Lime Depth Test (1 test /300 lf roadway)	6	@	\$18.00	each	\$108.00
• Lime Series (5 point PI method; 1 test/material type)	1	@	\$250.00	each	\$250.00
• Sulfate Test (as necessary)	1	@	\$90.00	each	\$90.00
• In-Place Density test	6	@	\$35.00	each	\$210.00
• Sr. Engineering Tech to perform testing	20	@	\$47.50	hour	\$950.00
• Sr. Engineering Tech Overtime to perform testing		@	\$71.25	hour	\$0.00
• Project Manager	3	@	\$75.00	hour	\$225.00
• Vehicle Charge	4	@	\$40.00	trip	\$160.00
				Sub-Total	\$2,761.00
B. SIDEWALK SUBGRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	2	@	\$165.00	each	\$330.00
• Atterberg Limits	2	@	\$55.00	each	\$110.00
• Minus 200 Testing	2	@	\$35.00	each	\$70.00
• Sr. Engineering Tech to perform testing	35	@	\$47.50	hour	\$1,662.50
• In-Place Density Test* (Sidewalks) (1 fdt per 300 lf/1' lift)	8	@	\$35.00	each	\$280.00
• Project Manager	3	@	\$75.00	hour	\$225.00
• Vehicle Charge	7	@	\$40.00	trip	\$280.00
				Sub-Total	\$2,957.50
C. CONCRETE & REINFORCING TESTING & INSPECTION					
• Concrete Inspection & Testing (regular time)	66	@	\$47.50	hour	\$3,135.00
• Concrete Inspection & Testing (overtime)		@	\$71.25	hour	\$0.00
• Concrete Cylinder Test (4 cyl/set)	36	@	\$18.00	each	\$648.00
• Project Manager	5	@	\$75.00	hour	\$375.00
• Vehicle Charge	15	@	\$40.00	trip	\$600.00
				Sub-Total	\$4,758.00
ESTIMATED TOTAL					\$10,476.50

SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
GARDEN VILLAGE BLVD. THROUGH LANE
FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P20-0131CR

DESCRIPTION OF SERVICES	QUANTITY	UNIT FEE	UNIT	FEE
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NOTES:

1. Overtime rates of 1.5 times the regular hourly rate will be charged for hours worked over eight (8) hours per day Monday thru Friday or any time **before 7:00 a.m. or after 5:00 p.m.** Service performed on Saturdays and Sundays will be billed at 1.5 times the regular hourly rate. Services performed on recognized holidays will be billed at 2.0 times the regular hourly rate.
2. All laboratory test fees are F.O.B. our laboratory; additional charge for sample pickup may apply.
3. Any additional tests will be billed on a hourly rate and charged at the applicable rate, portal-to-portal.
4. Additional test not specified in this proposal will be quoted upon request.
5. This proposal does not include any technician stand-by, non-readiness charges, and/or trips or re-tests of the previous failing tests.
6. The above unit rates are based on the following assumptions
 - * Lime subgrade testing - 4 estimated site visits
 - * Concrete pavement - 3 estimated 8 hour site visits
 - * Sub grade testing for sidewalks, and ADA ramps - 7 estimated site visits
 - * Concrete testing sidewalks, and ADA ramps - 6 estimated site visits
 - * Concrete cylinder pick-up - 6 estimated site visits

NOTE : The above fees are estimates only. Actual charges will be based on site conditions and contractor scheduling using the unit rates shown above.

**SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
PETERS COLONY RD. ROUNDABOUT**

FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P20-0131CR

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
A. LIME SUBGRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	2	@	\$155.00	each	\$310.00
• Atterberg Limits	2	@	\$55.00	each	\$110.00
• Lime Gradation Test (1 test/300 lf roadway)	6	@	\$15.00	each	\$90.00
• Lime Depth Test (1 test /300 lf roadway)	6	@	\$15.00	each	\$90.00
• Lime Series (5 point PI method; 1 test/material type)	1	@	\$250.00	each	\$250.00
• Sulfate Test (as necessary)	1	@	\$90.00	each	\$90.00
• In-Place Density test	6	@	\$15.00	each	\$90.00
• Sr. Engineering Tech to perform testing	20	@	\$44.50	hour	\$890.00
• Sr. Engineering Tech Overtime to perform testing		@	\$66.75	hour	\$0.00
• Project Manager	2	@	\$85.00	hour	\$170.00
• Sr. Geotechnical Engineer (as needed)		@	\$95.00	hour	\$0.00
• Vehicle Charge	4	@	\$35.00	trip	\$140.00
				Sub-Total	\$2,230.00
B. UTILITY BACKFILL TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	3	@	\$155.00	each	\$465.00
• Atterberg Limits	3	@	\$55.00	each	\$165.00
• Percent finer than #200 sieve	3	@	\$40.00	each	\$120.00
• Sieve Analysis for Embedment		@	\$65.00	each	\$0.00
• In-Place Density Test* (ASTM D6938) (1 fdt per 300 lf/1' lift)	32	@	\$15.00	each	\$480.00
• Concrete Test Cylinders (4 clys per set) inlets, manholes	28	@	\$16.00	each	\$448.00
• Sr. Engineering Tech to perform testing	63	@	\$44.50	hour	\$2,803.50
• Project Manager	5	@	\$85.00	hour	\$425.00
• Vehicle Charge	15	@	\$35.00	trip	\$525.00
				Sub-Total	\$5,431.50
C. CONCRETE SUBGRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	3	@	\$165.00	each	\$495.00
• Atterberg Limits	3	@	\$55.00	each	\$165.00
• Minus 200 Testing	3	@	\$35.00	each	\$105.00
• Sr. Engineering Tech to perform testing	50	@	\$47.50	hour	\$2,375.00
• In-Place Density Test*	20	@	\$35.00	each	\$700.00
• Project Manager	5	@	\$75.00	hour	\$375.00
• Vehicle Charge	10	@	\$40.00	trip	\$400.00
				Sub-Total	\$4,615.00

D. CONCRETE & REINFORCING TESTING & INSPECTION

• Concrete Inspection & Testing (regular time)	86	@	\$44.50	hour	\$3,827.00
• Concrete Inspection & Testing (overtime)	12	@	\$66.75	hour	\$801.00
• Paving Concrete Cylinder Test	40	@	\$16.00	each	\$640.00
• Project Manager	7	@	\$75.00	hour	\$525.00
• Vehicle Charge	19	@	\$35.00	trip	\$665.00
Sub-Total					\$6,458.00

ESTIMATED TOTAL	\$18,734.50
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ESTIMATED TOTAL SUM FOR BOTH PROJECTS**\$29,211.00****NOTES:**

- Overtime rates of 1.5 times the regular hourly rate will be charged for hours worked over eight (8) hours per day Monday thru Friday or any time **before 7:00 a.m. or after 5:00 p.m.** Service performed on Saturdays and Sundays will be billed at 1.5 times the regular hourly rate. Services performed on recognized holidays will be billed at 2.0 times the regular hourly rate.
- All laboratory test fees are F.O.B. our laboratory; additional charge for sample pickup may apply.
- Any additional tests will be billed on a hourly rate and charged at the applicable rate, portal-to-portal.
- Additional test not specified in this proposal will be quoted upon request.
- This proposal does not include any technician stand-by, non-readiness charges, and/or trips or re-tests of the previous failing tests.
- The above unit rates are based on the following assumptions
 - * Lime subgrade testing - 4 estimated site visits
 - * Utility backfill testing - 4 estimated site visits
 - * Concrete testing for utilities - 7 estimated site visits
 - * Concrete pavement - 3 estimated 8 hour site visits
 - * Sub grade testing for sidewalks, and ADA ramps - 10 estimated site visits
 - * Concrete testing sidewalks, and ADA ramps - 10 estimated site visits
 - * Concrete cylinder pick-up - 10 estimated site visits

NOTE : The above fees are estimates only. Actual charges will be based on site conditions and contractor scheduling using the unit rates shown above.



TOWN COUNCIL AGENDA ITEM NO. 5

REGULAR ITEM

DATE: March 2, 2020

FROM: Blake Hummel, P.E., Senior Project Engineer

ITEM: Consider approval of a Construction Agreement with Reliable Paving Inc., for the Garden Ridge Through Lane and Peters Colony Roundabout projects, in the amount of \$1,205,174.30; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 20, 2020, bids were received and opened (Bid # 2020-29-B) for the Garden Ridge Boulevard Through Lane at FM3040 & Peters Colony Road Roundabout project. Reliable Paving Inc., submitted the lowest qualified bid of the four (4) responding bidders at a base bid of \$1,205,174.30. The two projects have been bid together to provide a larger project more favorable to lower bids than if they were bid as two separate projects.

Garden Ridge Boulevard Through Lane at FM3040 consists of the reconfiguration of southbound Garden Ridge Boulevard at FM3040 to accommodate a dedicated right turn lane, two thru lanes and a left turn lane. Pedestrian and landscape improvements in the vicinity of the work areas are also proposed with the project.

Peters Colony Road Roundabout consists of the installation of a roundabout at the Quail Run Road, Auburn Drive, and Peters Colony Road intersections. Drainage improvements and a water main relocation, along with pedestrian and landscape improvements in the vicinity of the work area will also be proposed with the project.

BOARD REVIEW/CITIZEN FEEDBACK: The Town held a Neighborhood Meeting on October 30, 2019, to present the proposed construction documents, inform surrounding residents of what to expect during construction and outline the anticipated construction scheduling. Residents that came were in favor of the project and had a few questions regarding pedestrian improvements and the possibility of extending the Town's Multi-Use trail along the north side of Quail Run Road to Bruton Orand Boulevard. The extension of the Multi-Use trail was not included in the scope of this intersection improvement project but could be eligible to be placed on a future sidewalk links project.

ALTERNATIVES/OPTIONS: A decision to not approve the Construction Agreement would leave the Garden Ridge Boulevard and FM3040 intersection & Quail Run Road, Auburn Drive and Peters Colony Road intersection in the current configurations. Currently the lack of a second thru lane for southbound Garden Ridge Boulevard creates significant morning traffic congestion and this project will help alleviate some of that congestion. The current layout of the Quail Run Road, Auburn Drive and Peters Colony Road intersection creates dangerous turning movements for traffic due to insufficient stopping sight distance.

FISCAL IMPACT: \$1,205,174.30

Proposed Expenditure/(Revenue):	Account Number(s):
\$235,000.00	550-220-77200 Garden Ridge
146,164.20	505-220-77200 Garden Ridge
255,765.00	531-220-70200 Peters Colony
568,245.10	505-220-70200 Peters Colony

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

- Garden Ridge Blvd. Through Lane: Total project cost is \$610,000. Funding sources are:
 - Impact Fees \$ 295,000
 - Decision Package (cash from General Fund) \$ 315,000
- Peters Colony Roundabout: Total project cost is \$1,100,000. Funding sources are:
 - Other \$ 400,000
 - Decision Package (cash from General Fund) \$ 710,000

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



**Town of Flower Mound
Bid Tabulation**

Bid No: 2020-29-B - Garden Ridge Boulevard Through Lane at FM3040 & Peters Colony Road Roundabout

Bid Opening: 2/20/2020 at 11:00 AM

Company	Garden Ridge Boulevard Through Lane at FM3040	Peters Colony Road Roundabout	Total Base Bid
Reliable Paving Inc	\$ 381,164.20	\$ 824,010.10	\$ 1,205,174.30
New World Contracting, LLC	\$ 410,867.40	\$ 843,033.50	\$ 1,253,900.90
Pavecon Public Works LP	\$ 548,951.87	\$ 853,508.66	\$ 1,402,460.53
Tiseo Paving Co	\$ 589,606.51	\$ 1,252,314.45	\$ 1,841,920.96

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

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

Date: February 20, 2020

TOWN OF FLOWER MOUND
GARDEN RIDGE BOULEVARD THROUGH LANE AT FM 3040
&
PETERS COLONY ROAD ROUNDABOUT

Bid # 2020-29-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 2nd day of March, 2020, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Reliable Paving, a Corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

**GARDEN RIDGE BOULEVARD THROUGH LANE AT FM 3040 & PETERS
COLONY ROAD ROUNDABOUT**

Bid # 2020-29-B

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

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Two Hundred Five Thousand One Hundred Seventy-Four Dollars and Thirty cents (\$ 1,205,174.30)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of Garden Ridge Boulevard Through Lanes at FM 3040 (120) calendar days, within the specified time for substantial completion of Peters Colony Road Roundabout (90) calendar days and final completion of Garden Ridge Boulevard Through Lane at FM 3040 (150) calendar days and final completion of Peters Colony Road Roundabout (110) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas,

pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

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

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

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

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to

Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified by the Town within thirty (30) calendar days after it receives written demand from the Town.

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which

said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

(Signature)
(Printed Name)
(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____

(Signature)
(Position)



TOWN COUNCIL AGENDA ITEM NO. 6

REGULAR ITEM

DATE: March 2, 2020

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Consider a request for an exception (RF20-01050) to Section 98-1142, Fence Height and Visibility, of the Code of Ordinances, to build a residential fence in excess of the Town's maximum height standards. The property is located at 3212 Pecan Meadows Drive.**

BACKGROUND INFORMATION: On December 16, 2019, the Town Council amended Section 98-1142 of the Town's Code of Ordinances to create a process for a property owner to request an exception to the Town's maximum fence height standard in situations where a new subdivision perimeter fence caused compatibility concerns with an existing residential fence due to topography and/or location.

The applicant is requesting an exception through this process to allow his fence to be eleven (11) feet tall in order to maintain a consistent height across his rear property line where it connects to an adjacent fence that was built in conjunction with the construction of the Bradford Park subdivision. The Bradford Park fence is only six (6) feet tall, but it is sitting on top of a five (5) foot retaining wall, which was necessary in this area due to the topography. As noted in the provided elevation (Attachment 1), the proposed fence would be black wrought iron and would be eighty (80) feet long. This would replace existing/overlapping black metal and barbed wire fences, as noted in Attachment 2. Because this exception does not involve a zoning, platting, or site plan request, it does not require a recommendation by the Planning and Zoning Commission.

The text in Section 98-1142 that addresses this issue, reads as follows:

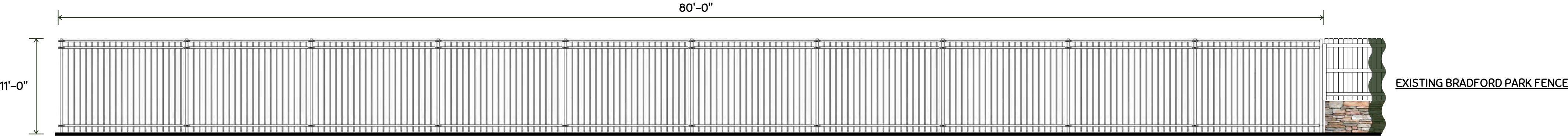
Section 98-1142. Fence height and visibility.

- (c) No fence or wall erected within a required side or rear yard shall exceed eight feet in height above the adjacent grade.
- (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.

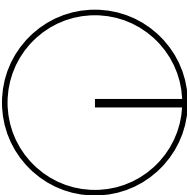
ATTACHMENTS:

- 1. Fence Elevation
- 2. Fence Plan
- 3. Property Survey

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



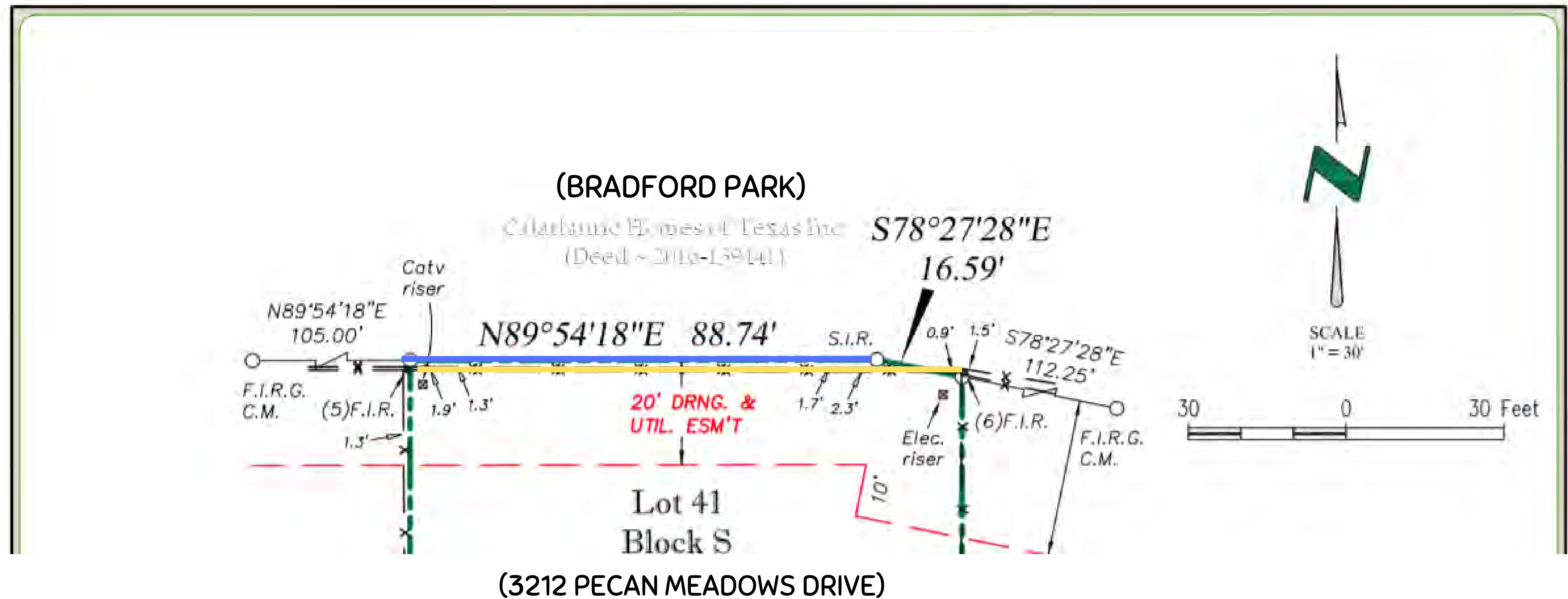
METAL FENCE - BLACK
MATCHING HEIGHT OF EXISTING WOOD/MASONRY BRADFORD PARK FENCE
DIMENSIONS - 80 FT x 11 FT



PROPOSED NORTH PERIMETER FENCE ELEVATION

3212 PECAN MEADOWS DRIVE - FLOWER MOUND - TX - 75028

BELOW DRAWING IS REFERENCED FROM MOST RECENT 9/21/17 KYSER SURVEY

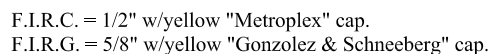


PROPOSED NORTH PERIMETER FENCE

3212 PECAN MEADOWS DRIVE – FLOWER MOUND – TX – 75028

PROPOSED INSTALLATION OF METAL FENCE – BLACK
MATCHING HEIGHT OF EXISTING WOOD/MASONRY BRADFORD PARK FENCE
DIMENSIONS – 80 FT x 11 FT

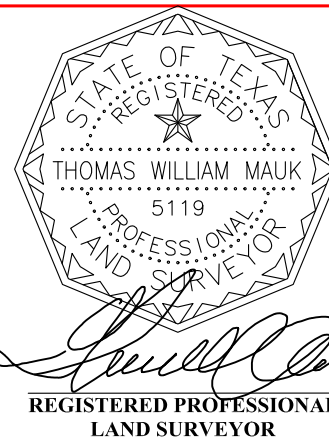
PROPOSED REMOVAL OF EXISTING METAL FENCE
&
ADJACENT BARBED WIRE FENCE



LEGEND - C.M.= Controlling Monument; F.I.R.= Found Iron Rod; F.I.P.= Found Iron Pipe; F.C.P.= Fence Corner Post. OHE=Overhead Electric. S.I.R.= Set Iron Rods 1/2" diameter with yellow cap stamped "Arthur Surveying Company". All found iron rods are 1/2" diameter unless otherwise noted. — x — (fence/ ϕ post) — OHE — (overhead power)

FLOOD NOTE: It is my opinion that the property described hereon is not within the 100-year flood zone area according to the Federal Emergency Management Agency Flood Insurance Rate Map Community-Panel No. 480777 0540 G, present effective date of map, April 18, 2011, herein property situated within Zone "X".

SURVEYORS CERTIFICATION:
The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and to the best of my knowledge, there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights of way that I have been advised of except as shown hereon. The bearings shown hereon are based on the above referenced recorded map or plat unless otherwise noted.



Note: This survey was prepared without the benefit of a title search, therefore no search of recorded easements was performed on subject property.



3212 Pecan Meadows Drive
Flower Mound, Texas



220 Elm St., # 200 - Lewisville, TX 75057
Ph. 972.221.9439 - TFRN# 10063800
arthursurveying.com Established 1986

Town Council Future Agenda Items



SCHEDULED	4/6/2020	Presentation	FMCA Graduation
		Consent	Double Oak ICA
		Consent	Peters Colony Memorial Park - Design Award.
		Consent	Speed Limit Change for Windridge Lane (North of Dixon Lane).
		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	Annual Street Sweeping Services Bid Award.
		Consent	Stonecrest Pump Station Phase 1 Auxillary Power - Design
		Consent	Timber Creek Trunk Line - Construction Award
		Consent	Purchase Solids Excluding Valves
		Consent	Forest Vista Reconstruction Phase II - Testing Award.
		Consent	Forest Vista Reconstruction Phase II - Construction Award
		Regular	Public Hearing to consider a request for rezoning (ZPD19-0012 – Mustang Creek Assisted Living) from Planned Development District-49 (PD-49) with Single Family Detached (Medium Density) (SFDM) uses to Planned Development District-176 (PD-176) with Single Family Estate (SF-E) uses and a nursing or congregate care facility, with a request for an exception to Section 82-302, Compatibility buffer, of the Code of Ordinances, and with certain waivers, exceptions and modifications to the Code of Ordinances, and consider adopting an ordinance providing for said amendment. The property is generally located north of College Parkway, east of Timberland Parkway and south of Locke Drive. (The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at its February 24, 2020, meeting.)
		Regular	Public Hearing to consider a request for a Master Plan Amendment (MPA19-0004 – Mustang Creek Assisted Living) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Flood Plain to Low Density Residential uses, and consider adopting an ordinance providing for said amendment. The property is generally located north of College Parkway, east of Timberland Parkway and south of Locke Drive. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 24, 2020, meeting.)

SCHEDULED	4/6/2020	Regular	Public Hearing to consider an application for a tree removal permit for five (5) specimen trees on property proposed for development as Mustang Creek Assisted Living. The property is generally located north of College Parkway, east of Timberland Parkway and south of Locke Drive. (The Environmental Conservation Commission recommended approval to remove four (4) of the eight (8) specimen trees requested for removal by a vote of 5-1-0 at its February 4, 2020, meeting).
	4/16/2020	Work Session	PLACEHOLDER Short-term rental regulations
	4/20/2020	Presentation	Texas Municipal Library Directors Association (TMLDA) "Achievement of Library Excellence" Award
	5/12/2020	Regular	Placeholder: Canvass 5/2 Election
	9/21/2020	Consent	GMP Gibson Grant Construction Award.