

AGENDA

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

9/21/2020

**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. ANNOUNCEMENTS

1. Announce recent and upcoming civic and social events.

F. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects
3. Financial update

G. FUTURE AGENDA ITEMS

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

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H. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, October 5.
2. A joint work session with the Planning & Zoning Commission to discuss Master Plan infill locations is scheduled for Thursday, October 15.

I. CONSENT ITEMS

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

1. Minutes 9/8- Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on September 8, 2020.
2. Minutes 9/15 & 9/17- Consider approval of the minutes from a regular meeting of the Town Council held on September 15 and September 17, 2020.
3. Atmos Rate Settlement- Consider approval of a resolution adopting Atmos Energy Corp., Mid-Tex Division's rate tariffs that reflect the negotiated rate change pursuant to the Rate Review Mechanism process.
4. TCAP Strategic Hedging Program- Consider approval of a resolution authorizing the Town to participate in Texas Coalition for Affordable Power, Inc.'s Strategic Hedging Program.
5. TimeClock Licenses Purchase- Consider approval of purchasing additional licenses with TimeClock Plus.
6. Investment Policy- Consider approval of a resolution adopting an Investment Policy for funds for the Town of Flower Mound as required annually by the Public Funds Investment Act.
7. Utility Rate Structure- Consider approval of an ordinance amending Appendix A of the Code of Ordinances by amending the charges for residential and non-residential water and sewer service; providing a severability clause; providing for publication; and providing an effective date.
8. Financial Policies Update- Consider approval of a resolution amending the financial policies of the Town of Flower Mound.
9. Rippy Rd PSA Amendment- Consider approval of Amendment No. 1 to the Professional Services Agreement for the Rippy Road project with CP&Y, Inc., to provide additional drainage investigation and design services in the amount of \$38,140.00; and authorization for the Mayor to execute same on behalf of the Town.
10. WW Treatment Plant Change Order- Consider approval of Change Order No. 2 for the Wastewater Treatment Plant Ultraviolet System Upgrade project, amending the contract with Felix Construction in the amount of \$102,265.77; and authorization for the Mayor to execute same on behalf of the Town.
11. Wastewater Pump Purchase- Consider approval of the purchase of one wastewater pump, at the wastewater treatment facility, from Xylem Water Solutions USA Inc., a sole source provider, in the amount of \$71,384.49.

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12. Blue Ridge Trl Recon - Testing Award- Consider approval of a Professional Services Agreement with Alliance Geotechnical Group to provide construction materials engineering and testing, for the Blue Ridge Trail Reconstruction project, in the amount of \$28,997.50; and authorization for the Mayor to execute same on behalf of the Town.
13. Forest Vista Dr. Change Order- Consider approval of Change Order No. 1 for the construction of the Forest Vista Drive Reconstruction Phase II (Morris to Chancellor) project, amending the contract with Pavecon Public Works, LP, to provide for an increase to the contract in the amount of \$25,221.35; and authorization for the Mayor to execute same on behalf of the Town.
14. Wastewater Permit Renewal PSA- Consider approval of a Professional Services Agreement with Plummer Associates, Inc., Inc. in the amount of \$25,000.00, to assist in securing Texas Pollution Discharge Elimination System (TPDES) permit renewal for the wastewater treatment plant; and authorization for the Mayor to execute same on behalf of the Town.

J. REGULAR ITEMS

15. FY 20-21 Town Budget Adoption- Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and making appropriations for each fund and department.
16. FY 20-21 Fire District Budget Adoption- Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.
17. FY 20-21 Crime District Budget Adoption- Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.
18. FY 20-21 Tax Rate Adoption- **Public Hearing** to consider approval of an ordinance adopting the 2020 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.436500 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2020.
19. LDR20-0001 - ED Waiver Removal- **Public Hearing** to consider an ordinance amending the Land Development Regulations (LDR20-0001 – Economic Development Waiver Removal) by amending Chapter 98 entitled “Zoning,” of the Town’s Code of Ordinances, as well as the SMARTGrowth Implementation Manual, to remove the option for economic development waivers of either environmental or community character SMARTGrowth requirements within the Town of Flower Mound. (The SMARTGrowth Commission recommended approval by a vote of 8 to 0 at its September 14, 2020, meeting.) (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)

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20. SUP20-0006 - Justin Rd Storage Center- **Public Hearing** to consider an ordinance amending Specific Use Permit No. 421 (SUP20-0006 - Justin Road Storage Center) to allow expansion of an existing mini-warehouse facility, with an exception for meritorious design and a waiver to the Architectural Standards of the Town's Urban Design Plan. The property is generally located south of Justin Road and west of Meadow View. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)
21. Z20-0006 - Grace Park- **Public Hearing** to consider a request for rezoning (Z20-0006 – Grace Park Residential) from Agricultural District (A) to Single-Family District-15 (SF-15). The property is generally located south of Cross Timbers Road and east of Regency Park Court. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)
22. Lift Station Improvements Ph II Const- Consider approval of a Construction Agreement with Fort Worth Civil Constructors, LLC, for the Lift Station Improvements and Decommissioning Phase II project, in the amount of \$1,293,798.00; and authorization for the Mayor to execute same on behalf of the Town.

K. BOARDS/COMMISSIONS *(Bold text represents boards with vacancies)*

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

23. Discuss and consider expanding the Veterans Liaison position to a committee, and with additional responsibilities.
24. Discuss and consider expanding the LISD Liaison position to include additional liaisons for the districts of Argyle ISD, Denton ISD, Grapevine-Colleyville, and Northwest ISD, and define the duties and responsibilities.

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

- a. Consultation with Attorney.

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

- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, cultural arts center, and/or other municipal purposes and all matters incident and related thereto.
- c. Discuss the employment and recruitment process associated with the Town Manager, and all matters incident and related thereto.

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- d. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.
- e. Annual review of Town Secretary.
- f. Discuss and consider resignations, appointments, or evaluations for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.

M. RECONVENE TO REGULAR MEETING

The Town Council to reconvene into an open meeting to take any action deemed necessary as a result of the closed meeting.

N. ADJOURN MEETING

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: September 18, 2020, at 4:00 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Theresa Scott, Town Secretary, at 972.874.6076.



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: September 21, 2020

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a work session of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on September 8, 2020.

BACKGROUND INFORMATION: The Town Council held a work session of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on September 8, 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

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

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING; TOWN OF FLOWER MOUND FIRE CONTROL; PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING; AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING HELD ON THE 8TH DAY OF SEPTEMBER 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

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Jimmy Stathatos	Town Manager
Debra Wallace	Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Tiffany Bruce	Executive Director of Public Works
Andrea Roy	Director of Economic Development
Matthew Woods	Director of Environmental Services
Eric Greaser	Fire Chief

A. CALL REGULAR MEETING TO ORDER

Mayor Dixon called the regular meeting to order at 6:01 p.m.

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

Mayor Dixon gave the invocation and led the pledges.

D. PUBLIC COMMENT

No one spoke during public comment.

E. ANNOUNCEMENTS

Mayor Dixon and members of Council extended farewell messages to Town Manager, Jimmy Stathatos for his service.

Councilmember Engel reminded everyone that school is back in session and to be aware of school zones.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 2**

Deputy Mayor Pro Tem Forest announced a blood drive event on September 11th.

F. TOWN MANAGER'S REPORT

Mr. Stathatos provided an update on the following projects:

1. Capital improvement projects/Fire Station No. 7

Fire Chief Greaser provided a construction update on Fire Station No. 7.

2. Economic Development projects:

- Announced new or coming soon businesses

3. Farmer's Market regulations

Mr. Woods gave a presentation identifying or noting:

- Background information
- Farmers Market:
 - o definition (by Ordinance)
 - o permit
 - o options

and he responded to the following questions from Council:

- What is the reasoning behind the 80/20 percentage requirement and what are the non-food type of items being sold
- What would be a reasonable temporary hold period
- Have there been any negative issues associated with the operations of the market

Matt Brown, Owner of Four Seasons Market

Mr. Brown responded to the following questions from Council:

- Why unable to get more food vendors
- Out of the 600 vendors how many are produce vendors

Council Discussion

There was Council discussion regarding:

- Possible temporary waiver of the 80/20 rule until the state order expires
- Possibility of changing it to a 60/40 rule instead
- Interest in allowing some flexibility for now and going forward
- Possibility of rebranding it as "The Market" instead of Farmers Market
- How appreciate where vendors don't compete with existing businesses

There was Council consensus to relax the 80/20 food/non-food requirement until the state order expires, and later revisit the overall business model of the Farmers Market.

4. Employee compensation FY20/21

Mr. Stathatos indicated that staff did not recommend any salary increases for the upcoming fiscal year because of COVID; however, Council asked for staff to present different compensation options.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 3**

Ms. Wallace presented five options for Council consideration and responded to the following questions or comments from Council:

- Property tax revenues and associated impact
- Reserve level

There was Council discussion regarding:

- Whether or not Council should or should not provide compensation to Town employees
- Possibility of using cash for CIP projects
- How there are too many variables to make any changes (i.e. property and sales tax revenue) at this time
- Possibility of a budget amendment down the road when more information is known
- How there are residents struggling and is it the best time to talk about giving raises

There was general consensus to not make any changes in the area of compensation; however, interest in having a future agenda item to revisit the topic in six months.

G. FUTURE AGENDA ITEMS

1. No future agenda items were requested.

H. COORDINATION OF CALENDARS

Mayor Dixon announced the following upcoming meetings:

1. Board and Commission interviews scheduled for September 15 & 17
2. A regular meeting is scheduled for Monday, September 21

J. CONSENT ITEMS

1. Consider approval of the minutes from a work session of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on August 13, 2020.
2. Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on August 17, 2020.
3. Consider approval of Contract No. 2020-84-A with POC Packing N Shipping Inc. for the monthly Utility Billing Bulletin in the amount of \$18,144; and authorization for the Mayor to execute on behalf of the Town.
4. Consider approval of the purchase of a new Chevrolet Tahoe Police Pursuit Vehicle, K-9 Application with Equipment (turn-key unit) per Town of Flower Mound Specifications and Vendor Quote from Holiday Chevrolet for Police Services in the amount of \$61,066.00.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 4**

5. Consider and approve annual update to the Riverwalk Public Improvement District No. 1 (PID) Service and Assessment Plan (SAP) and Assessment Roll.
6. 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 and No. 04-20 for adjustments to the General Fund, Stormwater Utility Fund, Community Development Block Grant Fund and COVID-19 Fund.

ORDINANCE NO. 23-20

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 and NO. 04-20, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, STORMWATER UTILITY FUND, COMMUNITY DEVELOPMENT BLOCK GRANT FUND AND COVID-19 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.

7. Consider approval of the 2020 Lewisville Independent School District (LISD) for Contract with the Town of Flower Mound for law enforcement services.
8. Consider approval of a Change Order No. 1 for the construction of the Garden Ridge Boulevard Through Lane at FM 3040 & Peters Colony Road Roundabout projects, amending the contract with Reliable Paving, Inc., to provide for an increase to the contract in the amount of \$150,000.00; and authorization for the Mayor to execute same on behalf of the Town.
9. Consider approval of the purchase and installation of the 2019-20 Playground Replacements project, for Chinn Chapel Soccer Complex Playground, from Webuildfun, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$149,051.25.
10. Consider approval of an Advance Funding Agreement, for Voluntary Local Government Contributions to Transportation Improvement Projects, with the Texas Department of Transportation (TxDOT) to pay for work associated with the US 377 widening project, in the amount of \$345,204.51; and authorization for the Mayor to execute the same on behalf of the Town.
11. Consider approval of Amendment No. 4 to the Fiscal Year 2019-2020 Capital Improvement Program.
12. Consider approval of a Construction Agreement with Reliable Paving, Inc., for the Blue Ridge Trail Street Reconstruction project, in the amount of \$650,057.00; and authorization for the Mayor to execute same on behalf of the Town.
13. Consider approval of a Professional Services Agreement with Alliance Geotechnical Group, to provide construction materials engineering and testing, for the FM 2499 and Waketon Road Intersection Improvements project, in the amount of \$35,992.50; and authorization for the Mayor to execute same on behalf of the Town.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 5**

Mayor Pro Tem Sharma moved to approve by consent Items 1 – 13, 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: BUMGARNER, FOREST, SHARMA, ENGEL, PIERSON****NAYS: NONE****K. REGULAR ITEMS**

14. Outdoor gatherings in excess of 10 people, in accordance with No. 5 of Executive Order GA-28.

Staff Presentation

Ms. Roy gave a presentation identifying or noting:

- Large outdoor gatherings background information
- Flower Mound events
- Considerations and options

Council Discussion

There was Council discussion regarding:

- Current process
- Importance of consistency
- The Denton County Health Department is the governing guidance
- How the public has the option to decide whether they wish to attend an event or not
- Indoor versus outdoor events
- How there needs to be a cap of some number
- Interest in the McKinney model

Mayor Dixon summarized that the direction is to have staff come up with a list of safety precautions that need to be met, have a staff committee review each application, and then provide a recommendation to the Mayor for final approval.

Mayor Dixon opened items 15 and 16 at the same time.

15. Public Hearing to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial tax abatement at 2201 Spinks Road. (The Town Council moved to postpone this item by a vote of 5 to 0 at its July 20, 2020, and August 3, and again on August 17, meeting.)
16. Public Hearing to consider approval of a Tax Abatement and Chapter 380 Agreement with Caddo Holdings, LLC, for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town. (The Town Council moved to postpone this item by a vote of 5 to 0 at its July 20, 2020, and on August 3, and again on August 17, meeting.)

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 6****Staff Presentation**

Ms. Roy gave a presentation for items 15 and 16 identifying or noting:

- Site map
- Company background information
- Caddo incentive

and she responded to the following questions from Council:

- Clarification regarding the timing for completion

Mayor Dixon opened the Public Hearing for items 15 and 16 at 7:48 p.m. No one spoke.
Mayor Dixon closed the Public Hearing for items 15 and 16 at 7:48 p.m.

Mayor Pro Tem Sharma moved to approve item 15 as presented in the agenda caption. Deputy Mayor Pro Tem Forest seconded the motion.

ORDINANCE NO. 24-20

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DESIGNATING A CERTAIN AREA AS A TAX ABATEMENT REINVESTMENT ZONE FOR COMMERCIAL TAX ABATEMENT, WITHIN THE TOWN OF FLOWER MOUND, TEXAS; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATED THERETO; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

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

Deputy Mayor Pro Tem Forest moved to approve item 16 as presented in the agenda caption. Councilmember Bumgarner seconded the motion.

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

Mayor Dixon opened items 17 and 18 at the same time.

17. Public Hearing to consider a request for rezoning (Z20-0001 – Fieldcrest Road Residential) from Agricultural District (A) to Single-Family District-10 (SF-10), and consider adopting an ordinance for said amendment. The property is generally located on the south side of Fieldcrest Road south of Kales Lane. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its August 24, 2020, meeting.)
18. Consider a request for a Record Plat (RC20-0003 – Fieldcrest Addition) to create two residential lots with an exception to the grading criteria, regarding residential lot-to-lot drainage, contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances. The property is generally located on the south side of Fieldcrest Road south of Kales Lane. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its August 24, 2020, meeting.)

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 7****Staff Presentation**

Ms. Murphy gave a presentation for items 17 and 18 identifying or noting:

- General and detailed location
- Land use and zoning
- Photos of site
- Zoning exhibit
- Proposed record plat
- Exception request
- Existing drainage area map
- Tree survey

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

- Clarification regarding:
 - o the drainage capacity and how it will be managed
 - o the trees that are being impacted
 - o driveway location
- What is the purpose in going lot to lot for the drainage

Applicant Presentation

Jason Kilpatrick, Ridinger Associates, 550 S Edmonds Ln, Lewisville

Mr. Kilpatrick responded to the following questions from Council:

- Clarification regarding the exception and what is triggering the need to change the existing condition

Mayor Dixon opened the Public Hearing (item 17) at 8:09 p.m.

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

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/ Comments Only
Name inaudible and address not provided (no speaker card submitted)	None	None

Mayor Dixon closed the Public Hearing for item 17 at 8:11 p.m.

Mayor Pro Tem Sharma moved to approve item 17 as presented in the agenda caption. Deputy Mayor Pro Tem Forest seconded the motion.

ORDINANCE NO. 25-20

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DESIGNATING A CERTAIN AREA AS A TAX ABATEMENT REINVESTMENT ZONE FOR COMMERCIAL TAX ABATEMENT, WITHIN THE TOWN OF FLOWER MOUND, TEXAS; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATED THERETO; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 8, 2020**PAGE 8****VOTE ON MOTION:***Motion passed***AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER****NAYS: NONE**

Mayor Pro Tem Sharma moved to approve item 18 as presented in the agenda caption. Deputy Mayor Pro Tem Forest seconded the motion.

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

19. Consider approval of a recruitment agreement for services related to an executive search for the Town Manager and authorize the Mayor to execute same on behalf of the Town.

Deputy Mayor Pro Tem Forest moved to approve as presented in the agenda caption, and with the firm of SGR. Councilmember Bumgarner seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER****NAYS: NONE****L./M. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 8:12 p.m. on September 8, 2020, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, and reconvened into an open meeting at 9:00 p.m. on September 8, 2020, to take action on the items as follows:

a. Consultation with Attorney.

1. Bradford Park Stormwater, Rippy Rd Improvements, including possible settlement related to same.

Councilmember Engel moved to approve the Bradford Park stormwater settlement as discussed in closed session. Councilmember Bumgarner seconded the motion.

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

2. Lakeside Crossing Chapter 380 agreement.

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 SEPTEMBER 8, 2020**PAGE 9**

c. Town Manager

See agenda item # 19.

d. Discuss and consider appointment of Interim Town Manager, including job duties and responsibilities, and all matters incident and related thereto.

Mayor Pro Tem Sharma moved to appoint Debra Wallace, Interim Town Manager, as per the discussion in closed session. Deputy Mayor Pro Tem Forest seconded the motion.

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

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

No action taken.

N. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 9:02 p.m. on Monday, September 8, 2020, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR**ATTEST:**

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: September 21, 2020

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on September 15, and September 17, 2020.

BACKGROUND INFORMATION: The Town Council held a regular meeting on September 15, and September 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 9.15
2. Draft minutes 9.17

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

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 15, 2020**PAGE 1**

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING; ON THE 15TH DAY OF SEPTEMBER 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:

Sandeep Sharma	Mayor Pro Tem
Claudio Forest	Deputy Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Ben Bumgarner	Councilmember Place 3
Jim Engel	Councilmember Place 4

constituting a quorum with the following members absent:

Steve Dixon, Mayor

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

Theresa Scott	Town Secretary
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A. CALL MEETING TO ORDER

Mayor Pro Tem Sharma called the meeting to order at 6:00 p.m.

B. PUBLIC COMMENT

No one spoke.

C. BOARDS/COMMISSIONS

Town Council conducted interviews for the following boards or commissions:

1. Animal Services Board
2. Board of Adjustment/Oil and Gas Board of Appeals (Places 1, 2, 3, 4, 5, 6, 7, 8)
3. Community Development Corporation
4. Cultural Arts Commission (CAC)
5. DCTA Board of Directors (Town appointed representative)
6. Environmental Conservation Commission (ECC)
7. LISD Liaison
8. Parks Board
9. Planning & Zoning Commission (Places 1, 2, 3, 4, 5, 6, 7, 8, 9)
10. SMARTGrowth Commission
11. Tax Increment Reinvestment Zone Number One (TIRZ #1)
12. Transportation Commission
13. Veterans Liaison

with the following individuals participating:

First Name	Last Name
Preston	Peterson
Bryan	Borden
Derek	France

**Town Council Meeting Agenda
September 15, 2020
Page 2**

Ben	Norris
Max	Uzowihe
Chuck	Freeny
Darrin	Duff
Rich	Murchek

D. COORDINATION OF CALENDAR

Mayor Pro Tem Sharma announced the following upcoming meeting:

1. A second Board & Commission interview meeting is scheduled for Thursday, September 17.

E. ADJOURN MEETING

Mayor Pro Tem Sharma adjourned the meeting at 7:00 p.m. on Tuesday, September 15, 2020, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

SANDEEP SHARMA, MAYOR PRO TEM

ATTEST:

THERESA SCOTT, TOWN SECRETARY

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 17, 2020

PAGE 1

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 17TH DAY OF SEPTEMBER 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
Jim Pierson	Councilmember Place 1
Ben Bumgarner	Councilmember Place 3
Jim Engel	Councilmember Place 4

constituting a quorum with the following members absent:

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

Theresa Scott	Town Secretary
---------------	----------------

A. CALL MEETING TO ORDER

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

B. PUBLIC COMMENT

No one spoke.

C. BOARDS/COMMISSIONS (Jody Smith Hall)

Town Council conducted interviews for the following boards or commissions:

1. Animal Services Board
2. Board of Adjustment/Oil and Gas Board of Appeals (Places 1, 2, 3, 4, 5, 6, 7, 8)
3. Community Development Corporation
4. Cultural Arts Commission (CAC)
5. DCTA Board of Directors (Town appointed representative)
6. Environmental Conservation Commission (ECC)
7. LISD Liaison
8. Parks Board
9. Planning & Zoning Commission (Places 1, 2, 3, 4, 5, 6, 7, 8, 9)
10. SMARTGrowth Commission
11. Tax Increment Reinvestment Zone Number One (TIRZ #1)
12. Transportation Commission
13. Veterans Liaison

with the following individuals participating:

First Name	Last Name
Ryan	Collingsworth
Manju	Mukkala
Amit	Patel
Shruti	Rawat
Brian	Taylor
Tom	Stevenson
Radha	Sathe
Linda	Wright
Brenda	Berry

Councilmember Bumgarner requested a future agenda item to discuss the possible expansion of the Veterans Liaison position to a board. There was Council consensus to have a future agenda item to discuss this topic.

Mayor Dixon requested a future agenda item to discuss expanding the LISD Liaison position to include additional liaisons for the other school districts since the Town has grown.

D. BOARDS/COMMISSIONS (Pre-Council Room)

Town Council convened to the Pre-Council Room to discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions:

1. Animal Services Board
2. Board of Adjustment/Oil and Gas Board of Appeals
3. Community Development Corporation
4. Cultural Arts Commission (CAC)
5. DCTA Board of Directors (Town appointed representative)
6. Environmental Conservation Commission (ECC)
7. LISD Liaison
8. Parks Board
9. Planning & Zoning Commission
10. SMARTGrowth Commission
11. Tax Increment Reinvestment Zone Number One (TIRZ #1)
12. Transportation Commission
13. Veterans Liaison

E. BOARDS/COMMISSIONS (Jody Smith Hall)

The Town Council reconvened to Jody Smith Hall and took the following action:

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 17, 2020

PAGE 3

For the Animal Services Board Councilmember Bumgarner moved to:

Reappoint* or Appoint**Christine Hastings, Place 2*Carol Stephens, Place 4*Susan Bodenmiller, Place 6*Derek France, Place 8, Alternate****Term**October 1, 2020 – September 30, 2022

and Councilmember Engel seconded the motion.

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

For the Cultural Arts Commission Councilmember Engel moved to:

Reappoint* or Appoint**Elizabeth Brannon, Place 2*Tammie Turner, Place 4*Brenda Gribbon, Place 6**Radha Sathe, Place 8, Alternate**Thomas Bailey, Place 7, Alternate****Term**October 1, 2020– September 30, 2022October 1, 2020– September 30, 2021

and Councilmember Bumgarner seconded the motion.

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

For the Environmental Conservation Commission Councilmember Bumgarner moved to:

Reappoint* or Appoint**James Seastrom, Place 2*Marilyn Lawson, Place 4*Elaine Takacs, Place 6**Ron Murchek, Place 8, Alternate**Katheryn Wells, Place 10, Alternate***Term**October 1, 2020 – September 30, 2022

and Councilmember Engel seconded the motion.

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

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 17, 2020

PAGE 4

For the Parks Board Mayor Pro Tem Sharma moved to:

Reappoint* or Appoint**Preston Peterson, Place 8, Alternate****Term**October 1, 2020 – September 30, 2022

and Councilmember Engel seconded the motion.

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

Administrative note: Reappointments for Parks Board Places 2, 4, 6, and 10 are anticipated for Council action on 9/21/20.

For the SMARTGrowth Commission Councilmember Pierson moved to:

Reappoint* or Appoint**Reginald Rembert, Developer Representative*
Mark Glover, Real Estate Representative***Term**October 1, 2020 – September 30, 2023

and Councilmember Bumgarner seconded the motion.

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

For the Tax Increment Reinvestment Zone Board Councilmember Engel moved to:

Reappoint* or Appoint**Paul Stone, Flower Mound Representative # 1***Term**January 1, 2021 – December 31, 2022.

and Mayor Pro Tem Sharma seconded the motion.

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

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 17, 2020

PAGE 5

For the Transportation Commission Councilmember Bumgarner moved to:

Reappoint* or Appoint**Willie Scales, Place 2**Chris Adams, Place 4**Chris Reed, Place 6*Brian Taylor, Place 8, Alternate**Stephen Harris, Place 5****Term**October 1, 2020 – September 30, 2022October 1, 2020 – September 30, 2021

and Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:**AYES: BUMGARNER, SHARMA, ENGEL, PIERSON****NAYS: NONE****ABSENT: FOREST***Motion passed***F./G. CLOSED MEETING/RECONVENE TO REGULAR MEETING**

The Town Council convened into closed meeting at 8:08 p.m. pursuant to Texas Government Code Chapter 551.074, to discuss matters relating to personnel, and reconvened at 8:49 p.m. to take the following action:

- a. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.

For the Board of Adjustment/Oil and Gas Board of Appeals Councilmember Engel moved to:

Reappoint* or Appoint**Ryan Geddie, Place 2**Sky Jay Schoggins, Place 4*Charles Freeney, Place 6, Alternate**Thomas Stevenson, Place 8, Alternate**Troy Bishop, Place 7, Alternate****Term**October 1, 2020 – September 30, 2022October 1, 2020 – September 30, 2021

and Councilmember Bumgarner seconded the motion.

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

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 17, 2020

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1 OF 2 (CDC)

For the Community Development Corporation Mayor Pro Tem Sharma moved to:

Reappoint* or Appoint**
Shruti Rawat, Director 6**

Term
Effective immediately – December 31, 2022.

and Councilmember Bumgarner seconded the motion.

VOTE ON MOTION:*Motion passed***AYES: BUMGARNER, SHARMA, ENGEL, PIERSON****NAYS: NONE****ABSENT: FOREST****2 OF 2 (CDC)**

For the Community Development Corporation Mayor Pro Tem Sharma moved to:

Reappoint* or Appoint**
Amit Patel, Director 1**
Max Uzowihe, Director 7**

Term
January 1, 2021 – December 31, 2021.

and Councilmember Bumgarner seconded the motion.

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

For the Planning & Zoning Commission Councilmember Pierson moved to:

Reappoint* or Appoint**
Adam Schiestel, Place 2*
David Johnson, Place 4*
Donald Gilmore, Place 6**
Robert Cox, Place 8, Alternate*
Tim Fink, Place 7**
Janvier Werner, Place 9, Alternate**

Term
October 1, 2020– September 30, 2022

October 1, 2020 – September 30, 2021

and Councilmember Bumgarner seconded the motion.

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

FLOWER MOUND TOWN COUNCIL MEETING OF SEPTEMBER 17, 2020**PAGE 7****N. ADJOURN MEETING**

Mayor Dixon adjourned the meeting at 8:58 p.m. on Thursday, September 17, 2020, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

STEVE DIXON, MAYOR**ATTEST:**

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

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

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

Since 2007, there have been several modifications to the original RRM Tariff. The most recent iteration of an RRM Tariff was reflected in an ordinance adopted by ACSC members in 2018. On or about March 31, 2020, the Company filed a rate request pursuant to the RRM Tariff adopted by ACSC members. The Company claimed that its cost-of-service in a test year ending December 31, 2019, entitled it to additional system-wide revenues of \$141.2 million. Application of the standards set forth in ACSC's RRM Tariff required Atmos to reduce its request to \$136.3 million, \$98.7 million of which would be applicable to ACSC members. ACSC's consultants concluded that the system-wide deficiency under the RRM regime should be \$111.5 million instead of the claimed \$136.3 million. The amount of the \$111.5 million deficiency applicable to ACSC members would be \$80.8 million.

After the Company reviewed ACSC's consultants' report, ACSC's Executive Committee and the Company negotiated a settlement whereby the Company would receive an increase of \$90 million from ACSC Cities, but with a two-month delay in the Effective Date until December 1, 2020. This should save ratepayers approximately \$9 million such that the case is functionally equivalent to ACSC's consultants' recommendation of \$80.8 million.

The Executive Committee recommends a settlement at \$90 million. The Effective Date for new rates is December 1, 2020. The impact of the settlement on average residential rates is an increase of \$5.15 on a monthly basis, or 9.9 percent. The increase for average commercial usage will be \$15.48 or 6.56 percent. A bill impact comparison is attached as Attachment 2. ACSC members should take action approving the Resolution before November 1, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

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

ATTACHMENTS:

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

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

**Attachment 1 to
Model Staff Report**

2020 RRM

Proof of Revenues

ATMOS ENERGY CORP., MID-TEX DIVISION
RRM CITIES RATE REVIEW MECHANISM
PROOF OF REVENUES - RRM CITIES
TEST YEAR ENDING DECEMBER 31, 2019

Line No.	Customer Class	Current	Proposed	Bills	Ccf/MmBtu	Current Revenues	Proposed Revenues	Increase
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
1	Residential							
2	Customer Charge	\$ 19.55	\$ 20.25	13,644,834		\$ 266,756,505	\$ 276,307,889	
3	Consumption Charge	0.17423	0.26651		608,491,998	106,017,561	162,169,202	
4	Revenue Related Taxes					26,692,882	31,397,617	
5	Total Class Revenue					\$ 399,466,948	\$ 469,874,708	\$ 70,407,760
6								
7	Commercial							
8	Customer Charge	\$ 46.50	\$ 54.50	1,115,081		\$ 51,851,267	\$ 60,771,915	
9	Consumption Charge	0.09924	0.11728		398,510,866	39,548,218	46,737,354	
10	Revenue Related Taxes					6,544,757	7,698,315	
11	Total Class Revenue					\$ 97,944,242	\$ 115,207,584	\$ 17,263,342
12								
13	Industrial & Transportation							
14	Customer Charge	\$ 845.50	\$ 1,014.50	7,272		\$ 6,148,476	\$ 7,377,444	
15	Consumption Charge Tier 1	\$ 0.3572	\$ 0.4157		7,769,155	2,775,142	3,229,638	
16	Consumption Charge Tier 2	\$ 0.2616	\$ 0.3044		8,666,094	2,267,050	2,637,959	
17	Consumption Charge Tier 3	\$ 0.0561	\$ 0.0653		13,696,172	768,355	894,360	
18	Revenue Related Taxes					856,339	1,012,467	
19	Total Class Revenue					\$ 12,815,362	\$ 15,151,868	\$ 2,336,505
20								
21	Total Excluding Other Revenue					\$ 510,226,552	\$ 600,234,159	\$ 90,007,608
22								
23								
24	Revenue Related Tax Factor	7.1606%						

**Attachment 2
to 2020 RRM Staff Report**

Bill Impact

Line No.	Rate R @ 44.5 Ccf	Rate C @ 357.4 Ccf	Current	Proposed	Change
1	Customer charge		\$ 19.55		
2	Consumption charge		7.75		
3	Rider GCR Part A		7.90		
4	Rider GCR Part B		13.33		
5	Subtotal		\$ 48.53		
6	Rider FF & Rider TAX		3.48		
7	Total		\$ 52.01		
8					
9	Customer charge			\$ 20.25	
10	Consumption charge			11.86	
11	Rider GCR Part A			7.90	
12	Rider GCR Part B			13.33	
13	Subtotal			\$ 53.34	
14	Rider FF & Rider TAX			3.82	
15	Total			\$ 57.16	\$ 5.15
16					9.90%
17					
18					
19	Rate C @ 357.4 Ccf				
20	Customer charge		\$ 46.50		
21	Consumption charge		35.47		
22	Rider GCR Part A		63.44		
23	Rider GCR Part B		74.89		
24	Subtotal		\$ 220.30		
25	Rider FF & Rider TAX		15.77		
26	Total		\$ 236.07		
27					
28	Customer charge			\$ 54.50	
29	Consumption charge			41.91	
30	Rider GCR Part A			63.44	
31	Rider GCR Part B			74.89	
32	Subtotal			\$ 234.74	
33	Rider FF & Rider TAX			16.81	
34	Total			\$ 251.55	\$ 15.48
35					6.56%

[illegible]

**Attachment 3
to 2020 RRM Staff Report**

RRM Monthly Savings Over GRIP and DARR Rates

**ATMOS ENERGY CORP., MID-TEX DIVISION
RESIDENTIAL AVERAGE RATE COMPARISON
TEST YEAR ENDING DECEMBER 31, 2019**

	ACSC Settled	DARR Filing	ATM Filing	Environs Filing
Cust Charge	\$20.25	\$23.75	\$26.40	\$24.60
Monthly Ccf	44.5	44.5	44.5	44.5
Cons Charge	\$0.26651	\$0.19336	\$0.14846	\$0.18653
Average Mo Bill	\$32.11	\$32.35	\$33.01	\$32.90
		-\$0.24	-\$0.90	-\$0.79

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE (“ACSC”) AND ATMOS ENERGY CORP., MID-TEX DIVISION REGARDING THE COMPANY’S 2020 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE ATTACHED SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; APPROVING AN ATTACHED EXHIBIT ESTABLISHING A BENCHMARK FOR PENSIONS AND RETIREE MEDICAL BENEFITS; APPROVING AN ATTACHED EXHIBIT REGARDING AMORTIZATION OF REGULATORY LIABILITY; REQUIRING THE COMPANY TO REIMBURSE ACSC’S REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS RESOLUTION WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND THE ACSC’S LEGAL COUNSEL.

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

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

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

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

WHEREAS, on about March 31, 2020, Atmos Mid-Tex filed its 2020 RRM rate request with ACSC Cities based on a test year ending December 31, 2019; and

WHEREAS, ACSC coordinated its review of the Atmos Mid-Tex 2020 RRM filing through its Executive Committee, assisted by ACSC's attorneys and consultants, to resolve issues identified in the Company's RRM filing; and

WHEREAS, the Executive Committee, as well as ACSC's counsel and consultants, recommend that ACSC Cities approve an increase in base rates for Atmos Mid-Tex of \$90 million applicable to ACSC Cities with an Effective Date of December 1, 2020; and

WHEREAS, ACSC agrees that Atmos plant-in-service is reasonable; and

WHEREAS, with the exception of approved plant-in-service, ACSC is not foreclosed from future reasonableness evaluation of costs associated with incidents related to gas leaks; and

WHEREAS, the two-month delayed Effective Date from October 1 to December 1 will save ACSC ratepayers approximately \$9 million off new rates imposed by the attached tariffs (Exhibit A), the impact on ratepayers should approximate the reasonable value of the rate filing found by the ACSC Consultants' Report, which was \$81 million; and

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

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

WHEREAS, the settlement agreement establishes an amortization schedule for regulatory liability prepared by Atmos Mid-Tex (Exhibit C); and

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

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

Section 1.

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

Section 2.

That, without prejudice to future litigation of any issue identified by ACSC, the Town Council finds that the settled amount of an increase in revenues of \$90 million for ACSC Cities represents a comprehensive settlement of gas utility rate issues affecting the rates, operations, and services offered by Atmos Mid-Tex within the municipal limits arising from Atmos Mid-Tex's 2020 RRM filing, is in the public interest, and is consistent with the Town's authority under Section 103.001 of the Texas Utilities Code.

Section 3.

That despite finding Atmos Mid-Tex's plant-in-service to be reasonable, ACSC is not foreclosed in future cases from evaluating the reasonableness of costs associated with incidents involving leaks of natural gas.

Section 4.

That the existing rates for natural gas service provided by Atmos Mid-Tex are unreasonable. The new tariffs attached hereto and incorporated herein as Exhibit A, are just and reasonable, and are designed to allow Atmos Mid-Tex to recover annually an additional \$90 million from customers in ACSC Cities, over the amount allowed under currently approved rates. Such tariffs are hereby adopted.

Section 5.

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

Section 6.

That subject to any future settlement or decision regarding the balance of Excess Deferred Income Tax to be refunded to ratepayers, the amortization of regulatory liability shall be consistent with the schedule found in Exhibit C, attached hereto and incorporated herein.

Section 7.

That Atmos Mid-Tex shall reimburse the reasonable ratemaking expenses of the ACSC in processing the Company's 2020 RRM filing.

Section 8.

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

Section 9.

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

Section 10.

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

Section 11.

That consistent with the Town Ordinance that established the RRM process, this Resolution shall become effective from and after its passage with rates authorized by attached tariffs to be effective for bills rendered on or after December 1, 2020.

Section 12.

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 21st DAY OF SEPTEMBER 2020.

Steve Dixon, Mayor

ATTEST:

Theresa Scott, Town Secretary

**Exhibit A
to 2020 RRM Resolution or Ordinance**

**Mid-Tex Tariffs
Effective December 1, 2020**

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**
RRC Tariff No:

RATE SCHEDULE:	R – RESIDENTIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application

Applicable to Residential Customers for all natural gas provided at one Point of Delivery and measured through one meter.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 20.25 per month
Rider CEE Surcharge	\$ 0.05 per month ¹
Total Customer Charge	\$ 20.30 per month
Commodity Charge – All <u>Ccf</u>	\$0.26651 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

¹Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2020.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RRC Tariff No:

RATE SCHEDULE:	C – COMMERCIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application

Applicable to Commercial Customers for all natural gas provided at one Point of Delivery and measured through one meter and to Industrial Customers with an average annual usage of less than 30,000 Ccf.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and Ccf charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Bill	\$ 54.50 per month
Rider CEE Surcharge	\$ 0.02 per month ¹
Total Customer Charge	\$ 54.52 per month
Commodity Charge – All Ccf	\$ 0.11728 per Ccf

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Weather Normalization Adjustment: Plus or Minus an amount for weather normalization calculated in accordance with Rider WNA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

¹ Reference Rider CEE - Conservation and Energy Efficiency as approved in GUD 10170. Surcharge billing effective July 1, 2020.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**
RRC Tariff No:

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application

Applicable to Industrial Customers with a maximum daily usage (MDU) of less than 3,500 MMBtu per day for all natural gas provided at one Point of Delivery and measured through one meter. Service for Industrial Customers with an MDU equal to or greater than 3,500 MMBtu per day will be provided at Company's sole option and will require special contract arrangements between Company and Customer.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's monthly bill will be calculated by adding the following Customer and MMBtu charges to the amounts due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 1,014.50 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.4157 per MMBtu
Next 3,500 MMBtu	\$ 0.3044 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0653 per MMBtu

Gas Cost Recovery: Plus an amount for gas costs and upstream transportation costs calculated in accordance with Part (a) and Part (b), respectively, of Rider GCR.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RRC Tariff No:

RATE SCHEDULE:	I – INDUSTRIAL SALES	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Agreement

An Agreement for Gas Service may be required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive service under Rate I, Customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**
RRC Tariff No:

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Application

Applicable, in the event that Company has entered into a Transportation Agreement, to a customer directly connected to the Atmos Energy Corp., Mid-Tex Division Distribution System (Customer) for the transportation of all natural gas supplied by Customer or Customer's agent at one Point of Delivery for use in Customer's facility.

Type of Service

Where service of the type desired by Customer is not already available at the Point of Delivery, additional charges and special contract arrangements between Company and Customer may be required prior to service being furnished.

Monthly Rate

Customer's bill will be calculated by adding the following Customer and MMBtu charges to the amounts and quantities due under the riders listed below:

Charge	Amount
Customer Charge per Meter	\$ 1,014.50 per month
First 0 MMBtu to 1,500 MMBtu	\$ 0.4157 per MMBtu
Next 3,500 MMBtu	\$ 0.3044 per MMBtu
All MMBtu over 5,000 MMBtu	\$ 0.0653 per MMBtu

Upstream Transportation Cost Recovery: Plus an amount for upstream transportation costs in accordance with Part (b) of Rider GCR.

Retention Adjustment: Plus a quantity of gas as calculated in accordance with Rider RA.

Franchise Fee Adjustment: Plus an amount for franchise fees calculated in accordance with Rider FF. Rider FF is only applicable to customers inside the corporate limits of any incorporated municipality.

Tax Adjustment: Plus an amount for tax calculated in accordance with Rider TAX.

Surcharges: Plus an amount for surcharges calculated in accordance with the applicable rider(s).

Imbalance Fees

All fees charged to Customer under this Rate Schedule will be charged based on the quantities determined under the applicable Transportation Agreement and quantities will not be aggregated for any Customer with multiple Transportation Agreements for the purposes of such fees.

Monthly Imbalance Fees

Customer shall pay Company the greater of (i) \$0.10 per MMBtu, or (ii) 150% of the difference per MMBtu between the highest and lowest "midpoint" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" during such month, for the MMBtu of Customer's monthly Cumulative Imbalance, as defined in the applicable Transportation Agreement, at the end of each month that exceeds 10% of Customer's receipt quantities for the month.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RRC Tariff No:

RATE SCHEDULE:	T – TRANSPORTATION	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Curtailment Overpull Fee

Upon notification by Company of an event of curtailment or interruption of Customer's deliveries, Customer will, for each MMBtu delivered in excess of the stated level of curtailment or interruption, pay Company 200% of the midpoint price for the Katy point listed in *Platts Gas Daily* published for the applicable Gas Day in the table entitled "Daily Price Survey."

Replacement Index

In the event the "midpoint" or "common" price for the Katy point listed in *Platts Gas Daily* in the table entitled "Daily Price Survey" is no longer published, Company will calculate the applicable imbalance fees utilizing a daily price index recognized as authoritative by the natural gas industry and most closely approximating the applicable index.

Agreement

A transportation agreement is required.

Notice

Service hereunder and the rates for services provided are subject to the orders of regulatory bodies having jurisdiction and to the Company's Tariff for Gas Service.

Special Conditions

In order to receive service under Rate T, customer must have the type of meter required by Company. Customer must pay Company all costs associated with the acquisition and installation of the meter.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Provisions for Adjustment

The Commodity Charge per Ccf (100 cubic feet) for gas service set forth in any Rate Schedules utilized by the cities of the Mid-Tex Division service area for determining normalized winter period revenues shall be adjusted by an amount hereinafter described, which amount is referred to as the "Weather Normalization Adjustment." The Weather Normalization Adjustment shall apply to all temperature sensitive residential and commercial bills based on meters read during the revenue months of November through April. The five regional weather stations are Abilene, Austin, Dallas, Waco, and Wichita Falls.

Computation of Weather Normalization Adjustment

The Weather Normalization Adjustment Factor shall be computed to the nearest one-hundredth cent per Ccf by the following formula:

$$WNAF_i = R_i \frac{(HSF_i \times (NDD-ADD))}{(BL_i + (HSF_i \times ADD))}$$

Where

i = any particular Rate Schedule or billing classification within any such particular Rate Schedule that contains more than one billing classification

$WNAF_i$ = Weather Normalization Adjustment Factor for the i^{th} rate schedule or classification expressed in cents per Ccf

R_i = Commodity Charge rate of temperature sensitive sales for the i^{th} schedule or classification.

HSF_i = heat sensitive factor for the i^{th} schedule or classification divided by the average bill count in that class

NDD = billing cycle normal heating degree days calculated as the simple ten-year average of actual heating degree days.

ADD = billing cycle actual heating degree days.

BL_i = base load sales for the i^{th} schedule or classification divided by the average bill count in that class

The Weather Normalization Adjustment for the j th customer in i th rate schedule is computed as:

$$WNA_i = WNAF_i \times q_{ij}$$

Where q_{ij} is the relevant sales quantity for the j th customer in i th rate schedule.

**MID-TEX DIVISION
ATMOS ENERGY CORPORATION**

RIDER:	WNA – WEATHER NORMALIZATION ADJUSTMENT	
APPLICABLE TO:	ALL CUSTOMERS IN THE MID-TEX DIVISION UNDER THE RRM TARIFF	
EFFECTIVE DATE:	Bills Rendered on or after 12/01/2020	PAGE:

Base Use/Heat Use Factors

Weather Station	<u>Residential</u>		<u>Commercial</u>	
	Base use <u>Ccf</u>	Heat use <u>Ccf/HDD</u>	Base use <u>Ccf</u>	Heat use <u>Ccf/HDD</u>
Abilene	10.73	0.1545	94.79	0.7284
Austin	9.53	0.1489	211.76	0.9405
Dallas	15.77	0.1792	199.74	0.9385
Waco	9.99	0.1341	145.27	0.7110
Wichita Falls	11.61	0.1402	120.34	0.5747

Weather Normalization Adjustment (WNA) Report

On or before June 1 of each year, the company posts on its website at atmosenergy.com/mtx-wna, in Excel format, a *Weather Normalization Adjustment (WNA) Report* to show how the company calculated its WNAs factor during the preceding winter season. Additionally, on or before June 1 of each year, the company files one hard copy and an Excel version of the *WNA Report* with the Railroad Commission of Texas' Gas Services Division, addressed to the Director of that Division.

Exhibit B
to 2020 RRM Resolution or Ordinance

Mid-Tex
2020 Benchmark for Pensions
and Retiree Benefits

**ATMOS ENERGY CORP., MID-TEX DIVISION
PENSIONS AND RETIREE MEDICAL BENEFITS FOR CITIES APPROVAL
TEST YEAR ENDING DECEMBER 31, 2019**

Line No.	Description	Shared Services		Mid-Tex Direct		Post-Employment Benefit Plan	Adjustment Total
		Pension Account Plan	Post-Employment Benefit Plan	Pension Account Plan	Supplemental Executive Benefit Plan		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
1	Proposed Benefits Benchmark - Fiscal Year 2020 Willis Towers Watson Report as adjusted (1) (2) (3)	\$ 3,460,135	\$ 3,695,384	\$ 6,132,704	\$ 280,578	\$ 4,992,449	
2	Allocation to Mid-Tex	43.29%	43.29%	76.59%	100.00%	76.59%	
3	Proposed Benefits Benchmark Costs Allocated to Mid-Tex (Ln 1 x Ln 2)	\$ 1,497,774	\$ 1,599,605	\$ 4,697,072	\$ 280,578	\$ 3,823,744	
4	O&M and Capital Allocation Factor	100.00%	100.00%	100.00%	100.00%	100.00%	
5	Proposed Benefits Benchmark Costs to Approve (Ln 3 x Ln 4) (3)	\$ 1,497,774	\$ 1,599,605	\$ 4,697,072	\$ 280,578	\$ 3,823,744	\$ 11,898,774
6							
7							
8	Summary of Costs to Approve (1):						
9							
10	O&M Expense Factor (WP_F-2.3, Ln 2)	79.55%	79.55%	37.83%	11.67%	37.83%	
11							
12							
13	Total Pension Account Plan	\$ 1,191,410		\$ 1,777,056			\$ 2,968,466
14	Total Post-Employment Benefit Plan		\$ 1,272,412			\$ 1,446,647	\$ 2,719,060
15	Total Supplemental Executive Benefit Plan				\$ 32,754		\$ 32,754
16	Total (Ln 13 + Ln 14 + Ln 15)	\$ 1,191,410	\$ 1,272,412	\$ 1,777,056	\$ 32,754	\$ 1,446,647	\$ 5,720,280
17							
18	Notes:						
19	1. Studies not applicable to Mid-Tex or Shared Services are omitted.						
20	2. Mid-Tex is proposing that the Fiscal Year 2020 Willis Towers Watson actuarial amounts shown on WP_F-2.3 and WP_F-2.3.1, be approved by the RRM Cities as the benchmark amounts to be used to calculate the regulatory asset or liability for future periods. The benchmark amount approved by the RRM Cities for future periods includes only the expense amount. The amount attributable to capital is recorded to utility plant through the overhead process as described in the CAM.						
21							
22	3. SSU amounts exclude cost centers which do not allocate to Mid-Tex for rate making purposes.						
23							

Exhibit C
to 2020 RRM Resolution or Ordinance

Mid-Tex 2020 Schedule for
Amortization for Regulatory Liability

ATMOS ENERGY CORP., MID-TEX DIVISION
RATE BASE ADJUSTMENTS
TEST YEAR ENDING DECEMBER 31, 2019
AMORTIZATION OF REGULATORY LIABILITY

Line No.	Year Ended Dec. 31	Beginning of Year Rate Base Adjustment Amount	Annual Amortization (1)	End of Year Rate Base Adjustment Amount (2)	Corrected Balance for December 31, 2017 (3)
	(a)	(b)	(c)	(d)	(e)
1	2017		\$ -	\$ 292,268,881	\$ 292,268,881
2	2018	292,268,881	12,075,562	280,193,319	
3	2019	280,193,319	12,085,165	268,108,155	
4	2020	268,108,155	11,171,173	256,936,982	
5	2021	256,936,982	11,171,173	245,765,809	
6	2022	245,765,809	11,171,173	234,594,635	
7	2023	234,594,635	11,171,173	223,423,462	
8	2024	223,423,462	11,171,173	212,252,289	
9	2025	212,252,289	11,171,173	201,081,116	
10	2026	201,081,116	11,171,173	189,909,943	
11	2027	189,909,943	11,171,173	178,738,770	
12	2028	178,738,770	11,171,173	167,567,597	
13	2029	167,567,597	11,171,173	156,396,424	
14	2030	156,396,424	11,171,173	145,225,251	
15	2031	145,225,251	11,171,173	134,054,077	
16	2032	134,054,077	11,171,173	122,882,904	
17	2033	122,882,904	11,171,173	111,711,731	
18	2034	111,711,731	11,171,173	100,540,558	
19	2035	100,540,558	11,171,173	89,369,385	
20	2036	89,369,385	11,171,173	78,198,212	
21	2037	78,198,212	11,171,173	67,027,039	
22	2038	67,027,039	11,171,173	55,855,866	
23	2039	55,855,866	11,171,173	44,684,692	
24	2040	44,684,692	11,171,173	33,513,519	
25	2041	33,513,519	11,171,173	22,342,346	
26	2042	22,342,346	11,171,173	11,171,173	
27	2043	11,171,173	11,171,173	(0)	
28					
29	Revenue Related Tax Factor		7.16%	See WP_F-5.1	
	Revenue Related Taxes on Annual			Amortization * Tax	
30	Amortization		\$ 799,924	Factor	
31	Amortization Including Revenue		<u>\$ 11,971,097</u>	Amortization + Taxes	

Notes:

1. The annual amortization of a 26 year recovery period is based on the Reverse South Georgia Method.
2. The Regulatory Liability is recorded to FERC Account 253, Sub Account 27909.
3. This is the final Mid-Tex liability balance filing the Fiscal Year 2018 tax return.



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

ITEM: **Consider approval of a resolution authorizing the Town to participate in Texas Coalition for Affordable Power, Inc.'s Strategic Hedging Program.**

BACKGROUND INFORMATION: The Town is a member of Texas Coalition for Affordable Power, Inc. (TCAP), a non-profit, political subdivision corporation dedicated to securing electric power for its members in the competitive retail market. The Town Council approved a resolution five years ago with TCAP to negotiate an Electrical Supply Agreement for deliveries of electricity through December 31, 2022.

TCAP has designed a new procurement strategy called a Strategic Hedging Program (SHP), and is committing to purchase power two years in advance of delivery on behalf of its members who choose to participate. SHP will involve a series of monthly auctions for roughly one-twelfth of TCAP's annual load, two years into the future, commencing January 2021. The fixed price for 2023 electric needs will be based on an average of the auctions that occur in 2021. That price will be announced in the first quarter of 2022 for each ERCOT zone. TCAP envisions the SHP process becoming the most price-competitive process available to the retail market in Texas. At all times, as of January 1, 2023, the annual price for TCAP members should be based on the average of the lowest monthly prices offered by as many as 20 different qualified wholesale suppliers. SHP should eliminate risk premiums associated with multi-year power contracts, and therefore, result in prices that are never out-of-market.

The resolution authorizes the Town Manager to sign two exhibits necessary for participation in SHP. Exhibit A is a Professional Services Agreement (PSA) which authorizes TCAP to purchase power for TCAP members and defines services provided by TCAP to members. Exhibit B is a Commercial Electric Services Agreement (CESA) that facilitates the SHP relationship between TCAP members and TCAP's designated Retail Electric Provider (REP).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: The Town anticipates savings through SHP and will monitor accordingly.

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

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

ATTACHMENTS:

1. Proposed Resolution
2. SHP User's Guide with graphs and timeline

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

RESOLUTION NO. _____**RESOLUTION OF THE TOWN OF FLOWER MOUND
TEXAS ADOPTING TCAP'S PROFESSIONAL SERVICES
AGREEMENT AND GEXA ENERGY'S COMMERCIAL
ELECTRIC SERVICE AGREEMENT FOR POWER TO BE
PROVIDED ON AND AFTER JANUARY 1, 2023**

WHEREAS, the Town of Flower Mound is a member of Texas Coalition For Affordable Power, Inc. ("TCAP"), a non-profit, political subdivision corporation of the State of Texas; and

WHEREAS, TCAP has previously arranged for the Town to purchase power through Gexa Energy with a contract set to expire December 31, 2022; and

WHEREAS, TCAP has designed a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of its members who desire participation in a Strategic Hedging Program ("SHP") that will involve a series of monthly competitive auctions; and

WHEREAS, TCAP has prepared a Professional Services Agreement ("PSA"), attached as Exhibit A, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members who choose to participate in the SHP; and

WHEREAS, approval of the PSA is a necessary, but not sufficient, prerequisite to participation in the SHP; and

WHEREAS, the PSA is a relational contract that defines services provided by TCAP to members regardless of whether a member decides to commit to the SHP; and

WHEREAS, the industry-standard retail contract is a Commercial Electric Service Agreement ("CESA") offered by a Retail Electric Provider ("REP"); and

WHEREAS, TCAP has negotiated modifications to the current CESA between the Town and Gexa Energy to reflect participation in the SHP; and

WHEREAS, the CESA that will facilitate participation in the SHP effective for power deliveries in and beyond 2023 (attached as Exhibit B) will need to be approved and signed prior to October 1, 2020; and

WHEREAS, the Town desires to participate in the SHP.

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

SECTION 1. That the Town Manager is authorized to sign Exhibit A, TCAP's Professional Services Agreement, and Exhibit B, Gexa Energy's CESA, and send the agreements to TCAP, 15455 Dallas Parkway, Ste 600, Addison, TX 75001.

PASSED AND APPROVED this 21st day of September, 2020.

MAYOR, Steve Dixon

ATTEST:

Town Secretary, Theresa Scott

PROFESSIONAL SERVICES AGREEMENT BETWEEN
TOWN OF FLOWER MOUND AND TEXAS COALITION FOR AFFORDABLE
POWER, INC.

This Professional Services Agreement ("AGREEMENT") is made and entered by and between Texas Coalition for Affordable Power, Inc. ("TCAP"), a non-profit, political subdivision corporation, and Town of Flower Mound ("MEMBER"), a TCAP member.

SECTION 1 DURATION:

This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER's electric load included in a current TCAP procurement.

SECTION 2 PURPOSE OF AGREEMENT:

The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement ("CESA") with a retail electric provider ("REP") selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER's current CESA in effect through December 31, 2022.

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:

MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP ("Energy Manager") and to select an acceptable, cost-beneficial REP to serve MEMBER's electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP's Strategic Hedging Program ("SHP"), as may be authorized and defined by TCAP's Board of Directors. MEMBER may elect to consider fixed-price, fixed-term offers for wholesale power supply, such election to be communicated to TCAP separately in writing by providing an Authorized Election Form to TCAP, the form of which has been attached to this AGREEMENT as Exhibit A. If MEMBER has provided to TCAP an Authorized Election Form, TCAP's procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in

energy related matters before State agencies, the courts or legislature. TCAP will provide additional customer services to MEMBER that are defined in SECTION 5.

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of

competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power development opportunities beneficial to its MEMBERS, including renewable projects (each, a "Power Project").

2. MEMBER Procurement Options

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER'S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP's SHP, and TCAP will function as MEMBER's electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER'S CESA (the "CESA Energy Price"). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager's estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER'S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER'S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER'S CESA price.

B. Customer and Billing Services Provided by TCAP

1. REP Portal

TCAP consultants oversee the development and presentation of the REP's portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

2. REP Customer Service

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues

TCAP monitors Public Utility Commission ("PUC") and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER's annual budget estimates. TCAP will prepare an annual electricity cost estimate for MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER'S Transmission and Distribution Service Provider ("TDSP" aka "wires company").

4. Information Services

TCAP maintains a member web site, www.tcaptx.com. In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP's Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League ("TML"). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

5. Demand Response, Distributed Generation and Cost Savings Strategy

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER's participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request,

TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

6. Regulatory and Legislative Representation

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

7. Strategic Hedging

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

SECTION 6 MEMBER RIGHT OF TERMINATION:

A. Fixed-Term, Fixed-Price Contract

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to

terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

B. Strategic Hedging Program

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days prior notice of any upcoming solicitation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute ("EEI") principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

C. Participation in Power Projects

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER'S CESA, MEMBER's termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

SECTION 7 CONFIDENTIALITY:

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER's release of information so

that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "Receiving Party") shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER's account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. "Authorized Parties" means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

SECTION 8 PARAGRAPH HEADINGS:

The paragraph headings contained in this AGREEMENT are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs.

SECTION 9 COUNTERPARTS:

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10 DEFINITIONS:

"Annual Adjustment" shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

"Energy Manager" means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP's direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP's REP.

"Power Project" means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

"Project Addendum" means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER'S CESA.

EXHIBIT A

“QSE Services Fee” means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

“Quarterly Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER’s relative contribution to TCAP load within specific ERCOT zones.

“Retail Electric Provider” or “REP” means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

“Strategic Hedging Program” or “SHP” means an energy procurement strategy approved by TCAP’s Board of Directors, overseen by TCAP’s designated consultants, and administered by TCAP’s appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the 21st day of September, 2020.

MEMBER:

By: _____

Printed Name: _____

Title: _____

TCAP:

By: _____

Printed Name: _____

Title: _____

EXHIBIT A

MEMBER'S AUTHORIZED ELECTION FORM

MEMBER hereby grants TCAP Authorization to solicit, evaluate, and select fixed-price, fixed-term power supply offers for the purpose of fixing all or a portion of MEMBER'S Energy Price for all or a portion of MEMBER'S CESA Term, in accordance with the terms below:

Fixed Price Term Start Date: _____

Fixed Price Term End Date: _____

Fixed Price not to exceed \$_____ / MWh

Upon TCAP's selection of a winning fixed-price, fixed-term offer, MEMBER authorizes TCAP to set the Energy Price for MEMBER'S CESA in accordance with MEMBER's CESA and as agreed upon by TCAP, TCAP's Energy Manager, and the REP.

Authorized on this the _____ day of _____, 20____.

MEMBER:

By: _____

Printed Name: _____

Title: _____

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the "**Agreement**"), is entered into between Gexa Energy, LP ("**Gexa**"), a Texas limited partnership, and Town of Flower Mound ("**Customer**"). Gexa and Customer may be referred to individually as a "**Party**" or collectively as the "**Parties**".

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider ("**REP**") for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer's REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer's appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer's exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a "**Scheduling Failure**") the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer's needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. ("**TCAP**"), and has entered into the Professional Services Agreement (the "**PSA**") authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP's Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP's members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer's TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

(a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the "**Term**"). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa's service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer's prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP ("**Termination Notice**"). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer's behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2037. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2037. As a result of variations in the timing of the Effective Date described in this Section 1.4 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

(b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the "**Delayed Effective Date Period**"), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the "**Delayed Effective Date Electricity Amount**"). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a) the Delayed Effective Date Electricity Amount minus

(b) the amount that Customer would have paid to Gexa pursuant to this Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa's control.

(c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

- (a) If Customer has elected to fix all or a portion of the Energy Price for a fixed term by providing an Authorized Election Form to TCAP in accordance with the PSA, the Energy Price shall equal the fixed price as determined by TCAP in accordance with the PSA, and the Authorized Election Form. Any portion of the Energy Price that is not fixed shall be noted in the Authorized Election Form, and shall be settled with Customer in accordance with Section 2.2 of this Agreement. If Customer has not made such an election, the Energy Price shall be determined in accordance with the PSA, as follows:
 - (i) TCAP shall periodically solicit, or direct its designated Energy Manager to solicit, wholesale energy market quotes, and may direct the Energy Manager to transact at the lowest of the market quotes obtained for the purpose of serving customer's load, in accordance with the PSA (each such transacted quote, a "**Wholesale Transaction**").
 - (ii) Once TCAP has directed its Energy Manager to enter into Wholesale Transactions sufficient to serve Customer's load for a given calendar year, Energy Manager and TCAP shall establish the Energy Price for that Calendar Year in accordance with those procedures outlined in the PSA, which Customer hereby acknowledges it has reviewed and accepted. TCAP shall set the Energy Price for a given Calendar Year no later than nine (9) months prior to the start of such Calendar Year. If Customer elects to participate in a project and

executes the Project Addendum, the Energy Price shall include an estimate of the Project Settlement for each month of the Calendar Year in accordance with the Project Addendum.

- (b) For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

2.2 Energy Price Adjustments.

- (a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Energy Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.
- (b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.

2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.

2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

3.2 Project Settlement Agent Services. Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "**Aggregator Fee**"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI

ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

4.2 Deposits and Other Security. A Party (the "**Requesting Party**") may require the other Party (the "**Providing Party**") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "**Performance Assurance**") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

SECTION 5: EARLY TERMINATION; DAMAGES

5.1 Cancellation by Customer for Insufficient Appropriations. If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "**Appropriations Failure**"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

5.2 Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.4, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "**Customer Early Termination Damages**"). The "**Retail Termination Payment**" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancellation or refusal of electric supply delivery ("**Customer Terminated Usage**") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "**QSE Services Termination Payment**" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "**Quarterly and Annual Adjustment Payment**" shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and

Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("**Wholesale Supply Failure**"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to Gexa's cancellation or refusal of electric supply delivery ("**Gexa Terminated Usage**") multiplied by (ii) the REP Services Fee specified in the REP Services Agreement (that result the "**Gexa Early Termination Damages**"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

5.5 Wholesale Transaction Termination Payment. If the Wholesale Transactions are terminated, then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "**Wholesale Transaction Termination Payment**"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

SECTION 6: NOTICES AND PAYMENT

6.1 General Notice. Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

- a. If to Customer:
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028

- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

6.2 Payments. The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

- a. If to Customer:
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

SECTION 7: DEFINITIONS

7.1 Definitions. In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. **“Actual Usage”** means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.

2. **“Delivery Charges”** means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.

3. **“EEI Master Agreement”** mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.

4. **“Effective Date”** means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer’s REP to such ESI ID to Gexa.

5. **“Electricity Related Charges”** means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.

6. **“Energy Manager”** means the wholesale market participant designated by TCAP to perform the services described in the PSA.

7. **“Energy Price(s)”** means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.

8. **“ERCOT”** means the Electric Reliability Council of Texas.

9. **“ERCOT Protocols”** means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.

10. **“ESI ID(s)”** means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.4.

11. **“Expected Usage”** means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.

12. **“kWh”** means kilowatt hour.

13. **“LMP” or “Locational Marginal Price”** means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.

14. **“Market Rate”** means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.

15. **“Nodal Market”** means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.

16. **“Nodal Congestion”** means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.

17. **“Non-Recurring Charges”** means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer’s electric service.

18. **“PUCT”** means Public Utility Commission of Texas.

19. **“Project Settlement Payment”** means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.

20. **“QSE Services Fee”** means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.

21. **“REP Services Agreement”** means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.

22. **“REP Services Fee”** means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.

23. **“Taxes”** means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.

24. **“TCAP”** means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.

25. **“TDSP” or “Transmission and Distribution Service Provider”** means an entity regulated by the State of Texas, which transmits or distributes electric energy.

“

Attachments:

Attachment A

Attachment B (for new TCAP Customers only)

Terms and Conditions of Service

Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER: Town of Flower Mound	GEXA: Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

Terms and Conditions of Service Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

A. REPRESENTATIONS AND WARRANTIES

A.1 Customer's Representations and Warranties. As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

A.2 Gexa's Representations and Warranties. As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

A.3 Forward Contract. (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("Code"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

B.1 LIMITATIONS OF LIABILITY. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

B.2 Duty to Mitigate. Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("**CUSTOMER PROTECTION RULES**") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS

SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

B.4 UCC/Disclaimer of Warranties. The electricity delivered is a "good" as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer's ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer's ESI ID(s). Once the electric energy is delivered to Customer's ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

B.5 Force Majeure. Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer ("**Force Majeure Event(s)**") may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer's facilities, or any cause beyond such Party's control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

C. CONFIDENTIALITY AGREEMENT

C.1 Confidentiality. Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description of the information sought prior to Customer's release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "**Receiving Party**") shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the "**Disclosing Party**") except for disclosures to Authorized Parties or as required by law. "**Confidential Information**" means information in written or other tangible form which is marked as "Confidential" when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public, (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder, (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party, or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer's account and billings. "**Authorized Parties**" means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties' affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default ("**Event of Default**") means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the

Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

D.2 Remedies upon an Event of Default. If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period. .

E. MISCELLANEOUS PROVISIONS

E.1 Disclaimer. This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

E.2 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

E.3 Waiver. Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

E.4 Assignment. Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations pursuant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withhold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggregator Fee .

E.6 Severability. If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

E.8 Further Assurances. The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

E.9 Emergency, Outage and Wire Service. In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

E.10 Customer Care. Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "Applicable Law").

E.12 No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

E.15 Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.

USER'S GUIDE TO TCAP'S PROFESSIONAL SERVICES AGREEMENT ("PSA") AND GEXA'S 2019 VERSION OF ITS COMMERCIAL ELECTRIC SERVICE AGREEMENT ("CESA")

Necessary Documents For Participation In TCAP's Strategic Hedging Program

If a TCAP member desires to participate in the Strategic Hedging Program ("SHP") approval of both the PSA and CESA by the member's governing body are necessary prior to October 1, 2020, because purchases in the wholesale market on behalf of SHP participants will commence in January 2021.

Note: The SHP is a default procurement strategy for all TCAP members. It is a fixed-price program, but with a shorter term for the fixed price designed to procure energy when it is cheaper. If a long-term fixed-price, fixed-term contract similar to a member's current contract is preferred over participation in the SHP, the member will need to submit an Authorized Election Form to TCAP. See CESA Section 2.1 (a). There currently is no deadline for such submission, but submission should be completed no later than January 31, 2022, for TCAP to arrange a contract consistent with the best market terms and price.

Brief Summary of SHP

In the fall of 2020, TCAP and its current wholesale supplier and future Energy Manager, NextEra, will tabulate the cumulative load of members desiring participation in the SHP and preliminarily arrange monthly 2021 auctions for one-twelfth of that load. Any scheduled auction may be adjusted, deferred or cancelled in recognition of prevailing market conditions. The auction process will attempt to avoid soliciting competitive bids when market prices are trending up. By the end of 2021, energy sufficient to match the 2023 anticipated SHP load should be under contract. The auction results will be communicated to SHP participants as a price per kWh Energy at least nine months prior to the effective date of such price, so member can estimate future energy expenditures for budgeting and planning purposes. TCAP will retain the right to audit auction results. See PSA, Section 5. B.7.

Necessary Contract Provisions/CESA Revisions for SHP Implementation

1. TCAP Must Be Authorized As An Wholesale Energy Procurer By Each SHP Participant. Since its creation via the merger of CAPP and STAP effective January 1, 2011, TCAP has functioned as its members' agent in arranging energy contracts and services provider. TCAP has always had the legal authority to procure power in the wholesale market, but until the design of the SHP there was never a need to request that members authorize TCAP to commit to wholesale power purchases. Because of SHP, TCAP will need to assure its Energy Manager that it has the right and responsibility to commit participating members to purchases of wholesale power through a series of auctions. See CESA Section 1.3 and PSA Section 5.A.2.

2. The Role of Energy Manager Must Be Created. Prior to creation of SHP, the role of Energy Manager did not exist. The CESA defines “Energy Manger” as “the wholesale market participant designated by TCAP to perform the services described in the PSA.” CESA Section 7.1.6. The PSA supplements that definition when it states that the Energy Manager will “conduct SHP procurements at TCAP’s direction, in accordance with Section 5A and Section 5.B.7 of this Agreement.” PSA Section 10. Pursuant to PSA Section 3 a member “authorizes TCAP to contract for the purchase of energy for member in the wholesale market from an energy manager selected by TCAP.” With regard to SHP, PSA Section 5.A.2 states: “TCAP will function as member’s electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in member’s CESA.”

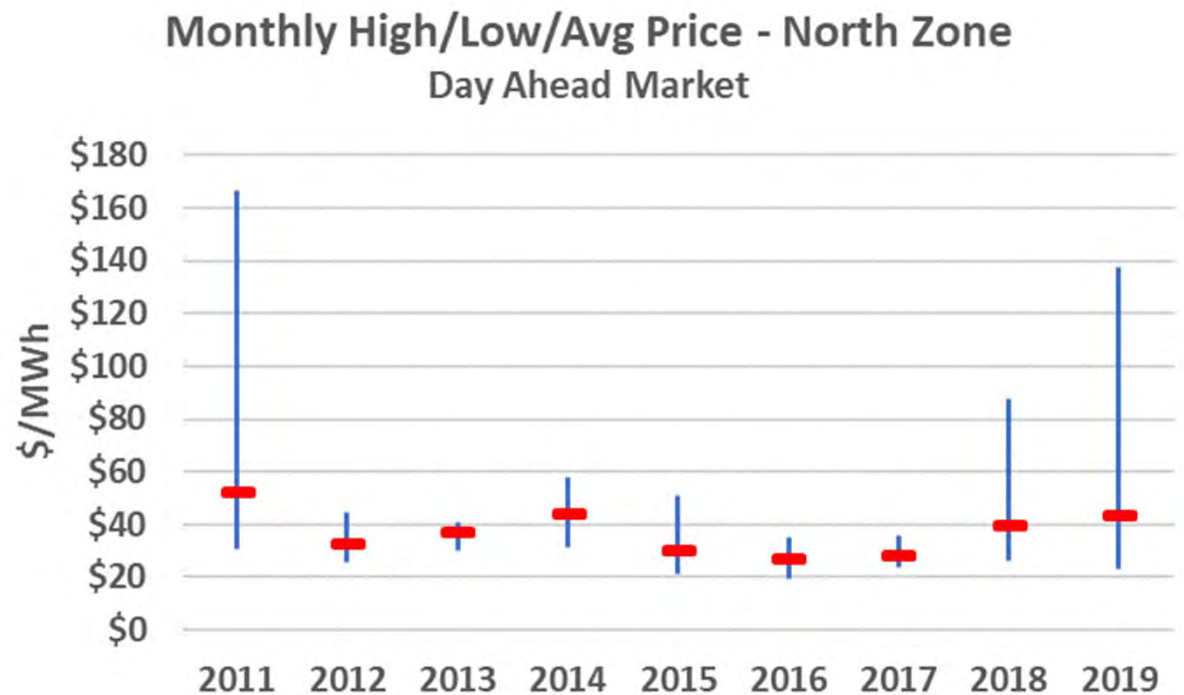
3. Recognition of various Procurement Options. As referenced earlier in this document, SPH will become the default procurement policy, but each member will have an alternative to remain as a fixed-price, fixed-term customer by executing an Authorized Election Form. CESA Section 2.1. That form will be distributed as an attachment to the PSA. Members participating in SHP will have occasional opportunities to convert to a fixed-price, fixed-term contract, if they so desire. Additionally, members will have opportunities to participate in Power Purchase Agreements (i.e., solar projects for a portion of member’s load) by exercising a Power Addendum. See CESA 1.3 and PSA 5.A.2.

4. Refinement of Contract Term. SHP May be viewed as a series of two-year commitments, with the CESA establishing a not-to-exceed termination date of December 31, 2037. See CESA 1.4 and PSA Section 5.B.7. Theoretically, subject to Town Charter or other length of contract constraints, a member content with SHP could remain under the same CESA for 14 years. However, once a participant in SHP, a member may terminate participation and switch to a fixed-price, fixed-term contract at discrete option points or exit TCAP altogether, subject to contractual commitments associated with any wholesale power auctions in which member’s load participated. One of the great advantages of SHP is that it maximizes member control over length of term.

SHP - The Average Is Much More Stable

Price Range Varies Greatly by Year

But Average Pricing is Much Less Volatile

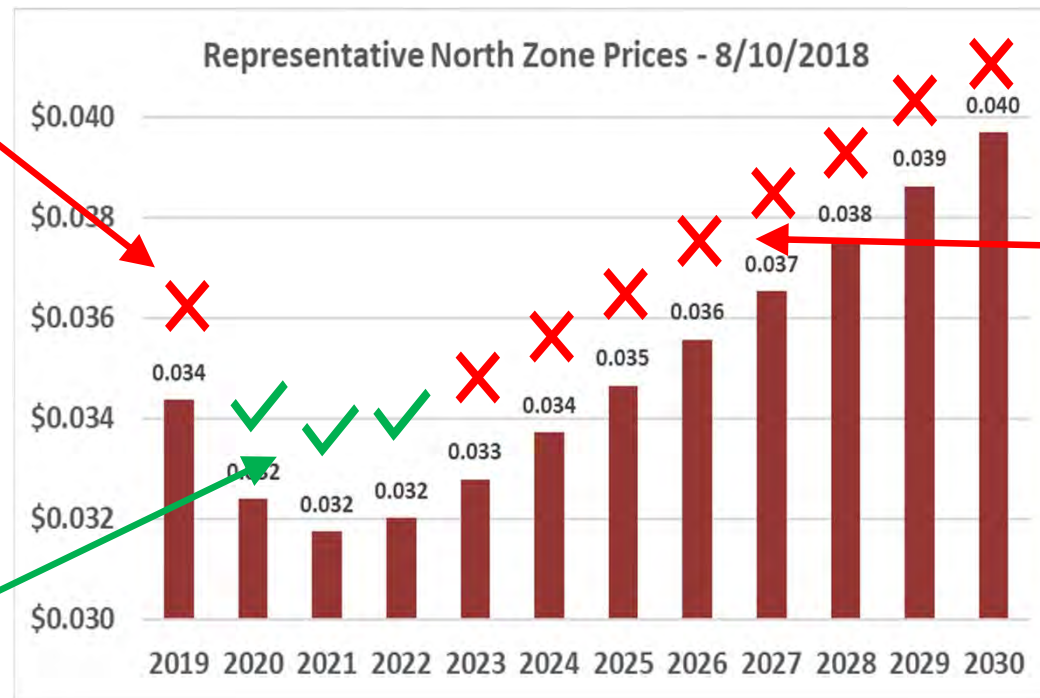


ERCOT Pricing Pattern Dynamics

Why Does Price Change Over Time?

Prices Often Higher in Immediate Next Year Reflecting Uncertainty Created by Current Market Problems and Issues

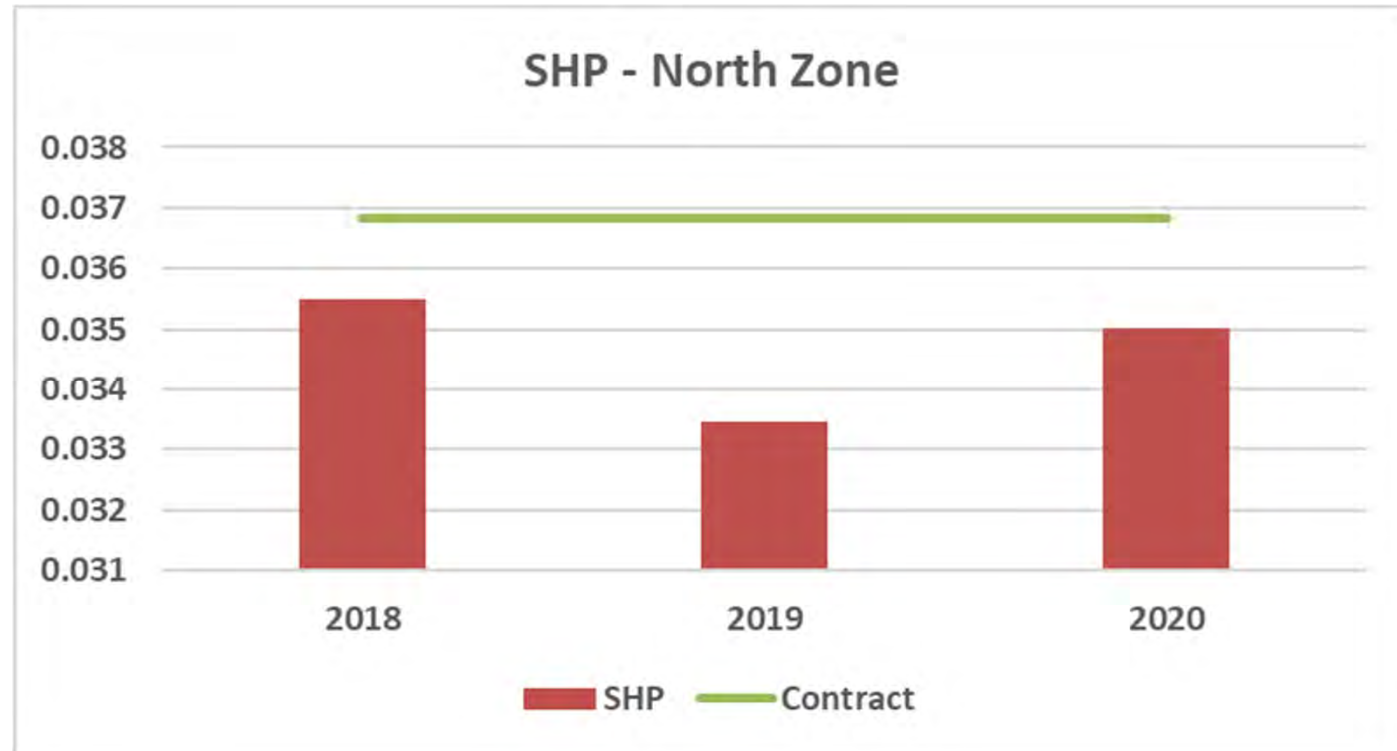
Market Feels Short Term Problems will be Resolved and Carrying Charges and Market Premium are Low. All Else Being Equal, a **Good Time to Buy.**



Prices Increase Over Time Reflecting Carrying Costs of Procurement for Future Needs and Risk Premiums for future market uncertainty

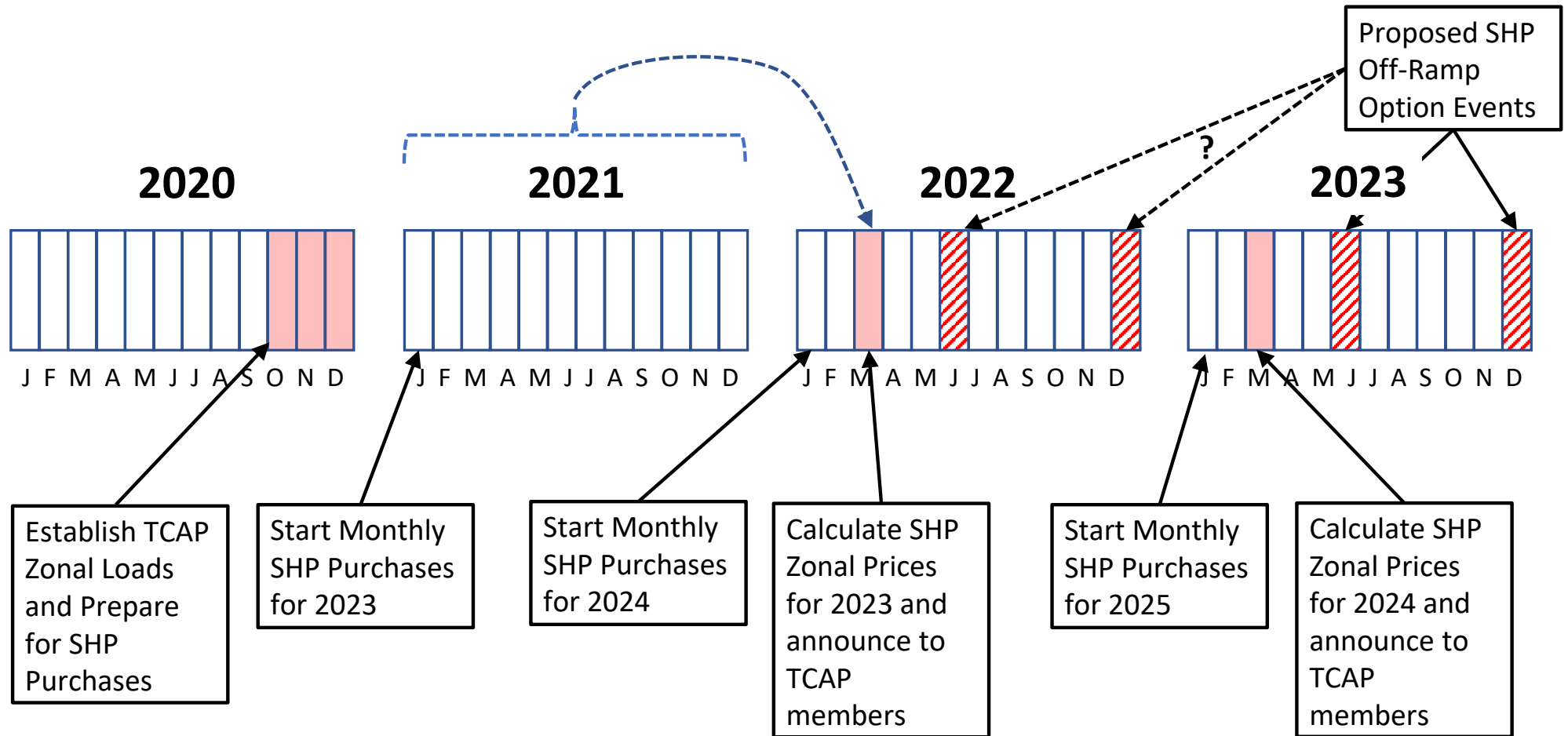
This Pattern Has Been in Place for at Least the Last Four Years and Reflects a Well Supplied Market

Analysis Shows SHP Works



Long Range Lookback Shows Savings From 2% (Worst Case) to 32% Over Fixed Price Option
Recent Market Quotes Suggest Pricing May Be Significantly Lower For Next Renewal Period.

SHP – Timeline of Future Events for 2023 Start





TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: September 21, 2020

FROM: Caryn Riggs, Director of Financial Services

ITEM: Consider approval of purchasing additional licenses with TimeClock Plus.

BACKGROUND INFORMATION: Town Council approved the licensing agreement with TimeClock Plus on August 17, 2020. Included was the cost of 520 licenses. During the conversion, it was determined that additional licenses would be needed. The cost below is for adding 180 licenses to our contract. This will bring the total allowable licenses to 700.

The additional cost over the next five years are as follows:

FY 2019-20 - \$1,485

FY 2020-21 - \$2,880

FY 2021-22 - \$3,780

FY 2022-23 - \$5,040

FY 2023-24 - \$6,480

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$1,485

Proposed Expenditure/(Revenue):	Account Number(s):
\$1,485	100-650-50000-5230

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

LEGAL REVIEW: N/A

ATTACHMENTS: N/A

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



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: September 21, 2020

FROM: Julie Taylor, Director of Treasury Operations

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

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

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

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

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

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Proposed Resolution including Exhibit A

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

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

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

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

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

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

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

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

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

SECTION 1

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

SECTION 2

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

SECTION 3

The attached policy replaces the Investment Policy which was adopted by the Town by Resolution No.15-19 and became effective September 16, 2019.

Resolution No. _____

Page 2

SECTION 4

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, ON THIS 21st DAY OF SEPTEMBER, 2020.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A
TITLE II
ADMINISTRATIVE POLICIES

CHAPTER 11: INVESTMENT POLICY

11.01 Purpose

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

11.02 Scope

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

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

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

11.03 Investment Strategy

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

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

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

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

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

11.04 Objective

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

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

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

11.05 Investment Committee

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

11.06 Responsibility and Standard

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

procedures.

- B. The Town Manager, CFO, Director of Treasury Operations, and other Town employees associated with investment functions shall be personally indemnified in the event of investment loss provided the Investment Policies and Guidelines are followed.
- C. The standard of prudence to be used by the investment officials shall be the Prudent Investor Rule, and will be applied in the context of managing an overall portfolio: Investments shall be made with judgment and care under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Investment officials meeting this standard will be relieved of personal responsibilities for an individual security's credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

- D. The CFO shall direct the preparation and presentation of a written report on the Town's investment transactions for the preceding reporting period for the Town Council and Town Manager. The report shall be provided quarterly, and shall contain the following:
 - 1. A detailed description of the investment position of the Town as of the end of the reporting period.
 - 2. A summary statement of each pooled fund covering:
 - a. Beginning market value for the period (monitored by the Wall Street Journal and software).
 - b. The book and market value of each invested asset at the end of the reporting period by type of fund.
 - 3. The maturity date of each invested asset.
 - 4. Fully accrued interest for the period.
 - 5. The fund group for each individual investment.
 - 6. The compliance of the investment portfolio of the Town as it relates to the investment strategy of the Town and the Public Funds Investment Act.
 - 7. Signatures of all investment officers.
- E. The guidelines of retaining records for seven years, as recommended in the Texas State Library Municipal Records Manual should be followed.

The Director of Treasury Operations shall oversee the filing and/or storing of investment records.

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

11.07 Investment

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

- a. Guaranteed or insured by the Federal Deposit Insurance Corporation (FDIC) or National Credit Union Share Insurance Fund (NCUSIF) or their successors; or
- b. Secured as described in section 11.09 Principal Protection and Safekeeping.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11.08 Selection of Banks and Dealers

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

rebidding, as permitted by state law.

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

11.09 Principal Protection and Safekeeping

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

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

EXHIBIT A

TEXAS PUBLIC FUNDS INVESTMENT ACT CERTIFICATION BY BUSINESS ORGANIZATION

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

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

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

Qualified Representative of the Business Organization

Name: _____

Title: _____

Date: _____

EXHIBIT B

INVESTMENT GLOSSARY

AGENCIES: Federal agency securities.

ASKED: The price at which securities are offered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MARKET VALUE: The price at which a security

is trading and could presumably be purchased or sold.

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

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

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

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

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

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

PORTFOLIO: Collection of securities held by an investor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Town of Flower Mound Investment Policy is hereby approved this 21st day of September 2020.

Debra Wallace, Interim Town Manager



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: September 21, 2020

FROM: Debra Wallace, Interim Town Manager, CFO

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

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

The Town adopted an ordinance on September 16, 2017, to amend utility rates and set the utility revenues through FY 2019-20 with further revisions on September 19, 2019. The attached ordinance sets water and sewer rates for FY 2020-21 through FY 2022-23 to recover the full costs of the Town's water and sewer systems and are designed to meet the following criteria:

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

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

	Current FY 2020	Proposed		
		FY 2021	FY 2022	FY 2023
<u>Water</u>				
Minimum Bill*	\$ 35.86	\$ 36.94	\$ 37.86	\$ 38.81
2,001-10,000	\$ 4.06	\$ 4.20	\$ 4.30	\$ 4.41
10,001-15,000	\$ 5.49	\$ 5.68	\$ 5.82	\$ 5.96
15,001-50,000	\$ 6.25	\$ 6.46	\$ 6.62	\$ 6.79
over 50,000	\$ 7.01	\$ 7.25	\$ 7.43	\$ 7.62
<u>Sewer</u>				
Minimum Bill - Residential	\$ 20.82	\$ 21.44	\$ 21.44	\$ 21.44
Minimum Bill - Commercial	\$ 20.82	\$ 21.44	\$ 21.44	\$ 21.44
over 2,000 - Residential	\$ 4.23	\$ 4.36	\$ 4.36	\$ 4.36
over 2,000 - Commercial	\$ 4.23	\$ 4.80	\$ 4.80	\$ 4.80

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

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Revenues:

The attached ordinance sets utility rates to recover the full costs of the Town's water and sewer systems.

Account Number(s):

200-4205 Water Sales \$36,977,290
200-4210 Sewer Sales \$11,813,930

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

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

ATTACHMENTS:

1. Proposed ordinance

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

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

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

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

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

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

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

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

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

SECTION 1

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

SECTION 2

That Appendix A-Fee Schedule of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by amending the schedule of fees corresponding to Section 70-361, "Water Service Rates," to read as follows:

Code Section Number	Description
70-361	Water service rates:

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

Water Meter Size (inches)	Minimum Bills Water Usage Beginning 10/01/2020 through 9/30/2021	Minimum Bills Water Usage Beginning 10/01/2021 through 9/30/2022	Minimum Bills Water Usage Beginning 10/01/2022 Thereafter
3/4 or 5/8	\$ 36.94	\$ 37.86	\$ 38.81
1	60.79	62.31	63.87
1 1/2	100.51	103.02	105.60
2	148.21	151.91	155.71
3	275.36	282.24	289.30
4	418.40	428.86	439.58
6 and larger	791.99	811.79	832.08

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

Volumetric Rates	Per 1,000 Gallons Water Usage Beginning 10/01/2020 through 9/30/2021	Per 1,000 Gallons Water Usage Beginning 10/01/2021 through 9/30/2022	Per 1,000 Gallons Water Usage Beginning 10/01/2022 and Thereafter
2,000 – 10,000 Gallons	\$ 4.20	\$ 4.30	\$ 4.41
10,001 – 15,000 Gallons	5.68	5.82	5.96
15,001 – 50,000 Gallons	6.46	6.62	6.79
Over 50,000 Gallons	7.25	7.43	7.62
Town Meters	2.18	2.24	2.29
Fire Hydrants	7.25	7.43	7.62

SECTION 3

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

Code Section Number	Description
70-381	Sewer service rates:

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

Water Meter Size (inches)	Minimum Bills Water Usage Beginning 10/01/2020 through 9/30/2021	Minimum Bills Water Usage Beginning 10/01/2021 through 9/30/2022	Minimum Bills Water Usage Beginning 10/01/2022 and Thereafter
Residential - All Sizes	\$ 21.44	\$ 21.44	\$ 21.44
Non-Residential - All Sizes	21.44	21.44	21.44
"Residential No-Average Maximum"	47.60	47.60	47.60

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

Volumetric Rates	Per 1,000 Gallons Water Usage Beginning 10/01/2020 through 9/30/2021	Per 1,000 Gallons Water Usage Beginning 10/01/2021 through 9/30/2022	Per 1,000 Gallons Water Usage Beginning 10/01/2022 Thereafter
Residential – Over 2,000 Gallons	\$ 4.36	\$ 4.36	\$ 4.36
Non-Residential – Over 2,000 Gallons	4.80	4.80	4.80

SECTION 4

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

SECTION 5

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

SECTION 6

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

SECTION 7

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

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____ ON THIS 21st DAY OF SEPTEMBER, 2020.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

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

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

Change: The Town's Vehicle Equipment Replacement Fund will be funded annually based on the average life span of the Town's fleet adjusted for inflation. Additionally, the Fund will be reviewed annually to ensure future contributions are sufficient to replace existing fleet based on replacement criteria.

Staff recommends changing the Vehicle Equipment Replacement Fund (VERF) funding policy. With the revised policy, when a vehicle or piece of equipment has met its useful life, the VERF will have 100% of its estimated future value to pay for the replacement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

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

ATTACHMENTS:

1. Resolution
2. Financial Policies

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

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, PROVIDING FOR THE ADOPTION OF AMENDED FINANCIAL POLICIES; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

SECTION 1

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

SECTION 2

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

SECTION 3

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE 21st DAY OF SEPTEMBER, 2020.

ATTEST:**APPROVED:**

Theresa Scott, TOWN SECRETARY

Steve Dixon, MAYOR

**Town of Flower Mound, Texas
Financial Policies
September 21, 2020**

Accounting, Budgeting, and Financial Planning

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

General and Debt Service Fund Reserves

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

Property Tax Supported Debt

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

Water and Wastewater Utility

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

Stormwater Utility

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

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

Debt Management

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

a. Annual Reports

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

b. Notice of Certain Events

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

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

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

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

Investments

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

Grants

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

Tax Collection

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

Self-Insurance and Retirement Funds

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



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: September 21, 2020

FROM: Brian Waltenburg, P.E., Assistant Director of Engineering

ITEM: Consider approval of Amendment No. 1 to the Professional Services Agreement for the Rippy Road Phase II project with CP&Y, Inc., to provide additional drainage investigation and design services in the amount of \$38,140.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 18, 2019, a Professional Services Agreement for design of the second phase of the Rippy Road Phase II project, with CP&Y, Inc., for \$298,645.75, was approved by Town Council. The design includes approximately 2,600 LF of two-lane concrete roadway (36' face of curb to face of curb) with curb and gutter, sidewalks, an underground storm drain system, and other stormwater improvements to the area.

During design it was found additional services were required above and beyond the original scope. These items include additional survey to verify existing offsite drainage, Bradford Park pond analysis, additional length of underground storm drain, and the relocation of the system outfall into Timber Creek. These items are included within the amended design scope of Amendment No. 1. The additional services have increased the not-to-exceed amount by \$38,140.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision not to approve the professional services amendment would cause the Rippy Road project to be constructed as currently designed, without considering the additional information that was collected during the most recent flooding event or allowing for the change of the outfall location.

FISCAL IMPACT: \$38,140.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$38,140.00	308-220-70629

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

Total project cost is \$4,750,000. Funding sources are:

- Other \$ 238,000
- TIRZ debt \$ 2,115,000
- General Fund \$ 1,978,000
- Tax Debt \$ 419,000

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

ATTACHMENTS:

1. First Amendment to Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH
CP&Y, Inc.**

This First Amendment to Professional Services Agreement (“First Amendment”) is entered into on this 21st day of September, 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 **CP&Y, Inc.**, (“hereinafter referred to as “Consultant”) regarding the following project:

RIPPY ROAD PHASE II PROJECT

I. RECITALS

WHEREAS, Town entered into a professional engineering design and related construction services from Consultant for the Rippy Road Phase II project (“Services”) on or about the 18th day of February, 2019 (the “Contract”); and

WHEREAS, Town and Consultant both desire to amend the Contract and Consultant is willing to undertake the performance of such additional services and agrees to the increased cost for such services as expressed herein;

II. TERMS OF AMENDMENT

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

A.

Recitals Incorporated

The foregoing recitals are found to be true and correct, are fully incorporated into the body of this First Amendment and made a part hereof by reference just as though they are set out in their entirety.

B.

Amendment of Paragraph No. II

From and after the approval of this First Amendment, Section II of the Contract, entitled “Scope of Services” is hereby deleted in its entirety and replaced with a new Paragraph No. II to read as follows:

“CONSULTANT shall perform such professional engineering services, not necessarily limited to, the tasks enumerated more fully in Attachment “A-1” entitled “Scope of

Services”, as are necessary to complete the Rippy Road Phase II project (hereafter referred to collectively as the “Project”). Attachment “A-1” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A-1” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.”

C.

Amendment of Paragraph No. III

From and after the approval of this First Amendment, Section III of the Contract entitled “Payment for Services” is amended in part by deleting the first paragraph of said Section III and replacing it with a new paragraph reading as follows and leaving all other provisions of Section III intact and unchanged:

“Total payment for services described herein for the Services for the Project shall be a sum not to exceed Thirty Eight Thousand One Hundred and Forty Dollars and 00/100 (\$38,140.00) as specified in Attachment “D-1”.”

D.

Revisions of the Scope of Services

From and after the approval of this First Amendment, Attachment “A”, is replaced by the document attached hereto and incorporated herein by reference as Attachment “A-1” to the Contract. In case of conflict in the language of Attachment “A-1” and any other provision of the Contract, as amended by this First Amendment, the terms and conditions of the Contract, as amended by the First Amendment, shall control, and shall be final and binding upon both parties hereto.

From and after the approval of this First Amendment, Attachment “D”, is replaced by the document attached hereto and incorporated herein by reference as Attachment “D-1” to the Contract. In case of conflict in the language of Attachment “D-1” and any other provision of the Contract, as amended by this First Amendment, the terms and conditions of the Contract, as amended by the First Amendment, shall control, and be final and binding upon both parties hereto.

E.

Contract Controls

All other provisions of the Contract remain in full force and effect. In the event of a conflict or an inconsistency between the Contract and/or the First Amendment, the terms of the First Amendment shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first written above.

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

CP&Y, Inc.

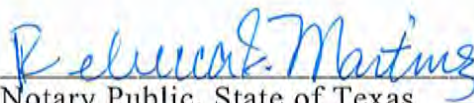
By: 
 Name Robin Handel, PE
 Title Senior Vice President

Date Signed: 8/26/20

State of Texas §
 §
 County of Denton §

This instrument was acknowledged before me on the 27th day of August, 2020, by Robin R. Handel, in his capacity as Sr. Vice President of **CP&Y, Inc.**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **CP&Y, Inc.**

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 27th DAY OF August, 2020.


 Notary Public, State of Texas

My Commission Expires:

July 1, 2023

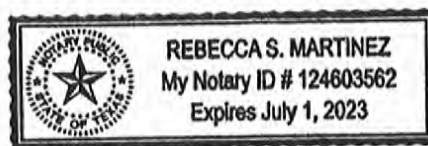


EXHIBIT A-1
SCOPE OF SERVICES
FOR
RIPPY ROAD RECONSTRUCTION AND STORM DRAIN PROJECT
FLOWER MOUND, TEXAS

The scope of work for engineering provided by CP&Y, Inc. (the “Engineer”) services involves field surveying, geotechnical investigation, engineering design, environmental, preparation of plans and specifications, computing of construction quantities, and preparation of an opinion of probable cost. All design work shall be in accordance with the Town of Flower Mound, Texas (the “Owner”) standard requirements. The standard drawings and specifications published by the Owner will be utilized on the project and supplemented where necessary by standard drawings and specifications from the North Central Texas Council of Governments (NCTCOG) and/or the Texas Department of Transportation (TxDOT).

The project involves new construction of approximately 2,600 LF of two-lane concrete roadway (36’ face of curb to face of curb) with curb and gutter and 4’ sidewalks along the west and south side of Rippy Road. The Engineer will maintain the existing sidewalk along the east and north side but will extend the existing sidewalk east of Speyside drive to Long Prairie Road.

It is the intent of the Owner to eliminate the ditches adjacent to Rippy Road and replace with an underground storm drain system. The outfall of the storm sewer system will be located downstream of the pedestrian bridge on Mesquite Street.

Water Utility design is not included in this scope of work as it is being performed by others. Engineer will coordinate the design and will include and incorporate the waterline design and specs into the roadway plans and bid documents.

Consultant services for this project shall include all aspects of the work as set forth in the following scope of services (Exhibit A), and in coordination with Exhibit B (Services to be provided by the Town). Any of the items identified herein that are specifically excluded from this scope of work and/or any items not listed below that are desired by the Town to be included in the scope of work may be added at any time via a duly executed Supplemental Agreement defining the scope of those items and the related adjustment to the agreed upon fee.

The parameters for the design of the improvements shall include the following:

- A detailed field survey of a portion of the project area will be performed to establish the existing conditions and topography of the project site, along with verifying the existing right-of-way. A majority of Rippy Road was surveyed by a prior company for a waterline project. The Engineer will utilize this survey, verifying it’s control, and augmenting the survey;

- A geotechnical investigation will be performed prior to commencement of design to establish the general strata, bearing capacity and other soil characteristic relevant to engineering design;
- Enclosure of the Rippy Road bar ditches into storm sewer system and discharge the additional stormwater runoff into Timber Creek near Mesquite Street Improvements will be designed for no rise and no increase in velocity for the 100-year storm event in Timber Creek. The storm sewer will be designed for the 100-year event such that the HGL will not cause overflows out of the system or affect upstream contributing drainage channels.
- New concrete pavement with curb and gutter will be designed for this corridor. The pavement section will have a width of 36' (face of curb to face of curb);
- Construction of 4' wide sidewalk along the west and south side of Rippy Road. The existing sidewalk along the east and north side will remain (if possible). The sidewalk on the north side will be extended from Speyside drive to Long Prairie Road.
- Erosion control plans for use during construction, and post construction erosion control to include streambank protection, sodding and/or seeding as necessary to re-establish vegetation;
- Submittals to the City of work-in-progress shall be made at 30%, 60%, 90% and 100% stages of completion, as more fully defined in Exhibit C. Each submittal will include three (3) sets of half size (11" x 17") drawings;
- All plan sheets for review and construction shall be printed on 11"x17" bond paper and provided electronically in PDF format if requested;
- All design work shall be prepared in CAD with electronic files in MicroStation V8 format which will be provided to the Town upon completion of the record drawings;
- Standard and typical details of the Town, NCTCOG and/or TxDOT selected for use will be included in the final plans and specifications;
- Special details not available as a standard drawing by the Town, NCTCOG or TxDOT will be prepared, as necessary;

The Engineer will perform the necessary engineering and technical services for the Design, Bid, and Construction Phases, including any Additional Services for the development of this project in accordance with the following sections of this agreement.

PROJECT MANAGEMENT & ADMINISTRATIVE TASKS

1. Project Management, Administration and Coordination

The Engineer will establish and maintain project schedules and budgets, develop monthly progress reports, prepare invoices, and attend design meetings with the Owner and other entities on an as-needed basis during the project design.

2. Franchise Utility Coordination

The Engineer will not be responsible for direct coordination with the various utility companies.

3. Agency Coordination: Army Corps of Engineers and the Texas Parks and Wildlife.

TASK 1 SURVEY

A majority of Rippy Road was surveyed by a prior company for a waterline project. The Engineer will utilize this survey, verifying its control, and augmenting the survey where discussed below. Engineer will provide detailed field survey as necessary to facilitate said design including:

- a. Town of Flower Mound will obtain Right-of-Entry as needed.
- b. Recover and or establish horizontal and vertical control based on Town of Flower Mound or other applicable datum approved by the Town.
- c. Establish the horizontal and vertical project control per Town of Flower Mound, locate existing utilities, obtain cross section data and locate other topographical features in the project necessary for design. The general field surveying requirements are as follows:
 - (i) Establish the horizontal control points using any Town control points if readily available. The project base line will be coincidental with or parallel to the stationed design centerline. The ROW will be established by using existing property corners found and tied. If insufficient or conflicting property data is found, a right-of-way survey shall be prepared as an additional service as directed by Town. Any traverse related to the project will be performed with appropriate modified second order procedures by closed loop into the project control. Closures will be one part in 20,000 or better.
 - (ii) The vertical control survey shall include ties into any readily available Town benchmark for correlation. A Town approved benchmark will be established at the limits of the project and tied to the project baseline. Benchmarks shall be located outside of the anticipated construction area so they are not disturbed during construction.
 - (iii) Provide drawing of cross-sections of the ROW at 50 foot intervals. This will also include work to detail all grade breaks.
 - (iv) Provide drawing of all trees greater than 4" in caliper, paving, and all surface and overhead features within the project limits including: all visible surface appurtenances such as power poles, guy anchors, overhead electric line crossings, telephone pedestals and cabinets, pipeline signs and vents, valves, manholes, roadway signs (size and photographs), mailboxes, private driveways,

turnouts, fences. All existing drainage structures will be shown, to include: Flow line, rip-rap, headwall and wingwall elevations for drainage structures. The culvert dimensions, number of barrels, material type and photographs shall be noted for each drainage structure.

(v) Design survey area includes:

Rippy Road: Right of Way (ROW) to ROW from 50' North of Pecan Meadows Drive to Long Prairie Road. Surveyor will obtain shots 10' outside ROW on both sides of Rippy Road.

Mesquite Street: ROW to ROW from Cedar Street south to Timber Creek. Surveyor will locate the pedestrian bridge and pick up the abutment limits and direction of bridge. Surveyor will capture design survey 100' downstream of pedestrian bridge and 50' each side of the centerline of the creek channel.

Cedar Street: ROW to ROW from Cottonwood Drive to Mesquite Street plus 5' outside ROW on each side.

Cottonwood Drive: ROW to ROW beginning at Rippy Road and 600' to the west plus 5' outside ROW on each side.

Existing outfall: From eastern most property line of 4861 Rippy Road to 150' west. The will begin at Rippy Road and extend to 50' past the flow line of Timber Creek.

d. Information Submittal

All fieldwork will be documented and made available to Town for review if requested. Format of field data submittals will be a computer output listing of data collector information which includes x, y, & z coordinates and a description of each point; coordinate geometry computer output of traverses and level loops; field books if produced; or other acceptable formats. Survey files will be provided in ASCII format where applicable. A Digital Terrain Model shall be created and the MicroStation 3-D file including, but not limited to, break lines, elevation points, triangles and contours, on separate levels. Field Survey Data Collection

TASK 2 50% DESIGN PHASE

1. Project Title Sheet

A project title sheet will be prepared as required for use in the construction plans in accordance with the sample provided by the Owner.

2. Project Layout Sheets

Project layout sheets will be prepared at a minimum of 1"=100' (half-size), which clearly

indicates the limits of the entire project. These layout sheets will indicate the major structures contained within the project, the names of all intersecting roadways and waterways, and other items relevant to creating an overall perspective of the entire project.

3. Roadway Plans/Profiles

Preliminary horizontal & vertical alignments will be displayed on, plan sheets. These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain topographic information, roadway baselines, pavement edges, roadway pavement contours where necessary, limits of structures, limits of retaining walls, drainage structures excluding pipes, limits of sidewalks, limits of barriers and any other information necessary for pavement construction. On approval of the preliminary vertical alignments, profile sheets will be prepared to depict these alignments. These profiles will contain existing ground lines at the proposed profile grade line, limits of structures, and proposed elevations at a minimum of 50-foot intervals.

4. Cross Sections

The Engineer will prepare cross sections of the project during the design phase to facilitate the development of the appropriate vertical profile of the roadway. These cross sections will be developed to a sufficient level to aid the Engineer in this effort and to approximate the cut/fill quantities required for the project. The Engineer will not prepare cross section sheets. If requested this information may be provided after the award, to the selected contractor and/or Town, in electronic format for informational purposes only. This information will not be further detailed and/or manipulated into plan sheet format unless specifically requested as an Additional Service item as defined in Section V below.

5. Typical Sections

Roadway typical sections will be prepared for various paving sections along the project. These sections will be developed in accordance with the Town of Flower Mound design standards.

6. Drainage Area Maps

Drainage area maps will be prepared at a minimum scale of 1"=100' (11"x17"), using available contour maps. Inlets will be located and sub-drainage areas determined. The runoff to each inlet will be calculated in accordance with the Town of Flower Mound hydraulic design criteria and shown on run-off and inlet computation sheets.

7. Drainage Computation Sheets

In accordance with standard practice, sheets will be prepared for Runoff and Inlet Computations, Storm Sewer Computations and Lateral Computations. These sheets will tabulate all relevant data used in design for easy verification of the design methods and for future improvements to be coordinated with this project. Calculations from adjacent

development projects will be reviewed and updated if necessary to provide a consistent set of hydrology for the basin.

8. Cross Culvert Plan/Profile Sheets and Hydraulic Calculations

Culvert plan/profile sheets and cross-sections will be provided for new culvert construction. TxDOT Standards will be used whenever possible for these culverts.

9. Storm Sewer Design

Plan/profile sheets will be prepared at a minimum 1"-40' (11"x17"). These sheets will show the location of inlets, manholes, storm sewers, slotted drains, culverts, and open channel improvements in relation to the project roadways. Drainage profile sheets will also be prepared which show profile information for the proposed storm sewer trunk lines, proposed ground above the storm sewers, existing ground above the storm sewers, and locations of lateral junctions. The existing bar ditch along Rippy Road will be enclosed and outfalled to Timber Creek along Mesquite Road. Appropriate discharge velocities will be maintained to minimize silting of the storm sewer. The possibility of enclosing portions of bar ditches along Pecan Meadows and Cottonwood Drives and incorporating the runoff into the Rippy Road storm sewer will be investigated.

10. Traffic Control

A layout showing sequencing will be provided to the City for review and approval of phasing.

11. Quantities and Construction Cost

Project quantities will be calculated and tabulated in a bid schedule. The pay items will be in accordance with previous Town projects and supplemented where necessary with special specifications prepared by the Engineer. The bid schedule will be included in the Bid Documents and may be reproduced in the plan set.

An Engineer's Opinion of Probable Construction Cost will be prepared for the project using current unit cost data from recent bid information.

TASK 3 90% DESIGN PHASE

1. Project Title Sheet

A project title sheet will be prepared as required for use in the construction plans in accordance with the sample provided by the Owner.

2. Project Layout Sheets

Project layout sheets will be prepared at a minimum of 1"=100' (half-size), which clearly indicates the limits of the entire project. These layout sheets will indicate the major structures contained within the project, the names of all intersecting roadways and

waterways, and other items relevant to creating an overall perspective of the entire project.

3. Removal Layouts

These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain major bid items that are to be removed from the project site. Examples include but are not limited to the following: pavement, driveways, sidewalks, trees, storm systems, etc.

4. Roadway Plans/Profiles

These plan sheets will be a minimum of 1"=40' half-size (11"x17") and contain topographic information, roadway baselines, pavement edges, roadway pavement contours where necessary, limits of structures, limits of retaining walls, drainage structures excluding pipes, limits of sidewalks, limits of barriers and any other information necessary for pavement construction. On approval of the preliminary vertical alignments, profile sheets will be prepared to depict these alignments. These profiles will contain existing ground lines at the proposed profile grade line, limits of structures, and proposed elevations at a minimum of 50-foot intervals.

5. Cross Sections

The Engineer will prepare cross sections of the project during the design phase to facilitate the development of the appropriate vertical profile of the roadway. These cross sections will be developed to a sufficient level to aid the Engineer in this effort and to approximate the cut/fill quantities required for the project. The Engineer will not prepare cross section sheets. If requested this information may be provided after the award, to the selected contractor and/or Town, in electronic format for informational purposes only. This information will not be further detailed and/or manipulated into plan sheet format unless specifically requested as an Additional Service item as defined in Section V below.

6. Typical Sections

Roadway typical sections will be prepared for various paving sections along the project. These sections will be developed in accordance with the Town of Flower Mound design standards.

7. Traffic Control

Plan sheets will be prepared at a minimum 1"-40' (11"x17") double-stacked. These sheets will show the phasing, temporary detours, typical sections, and construction sequencing. It is assumed for scoping purposes that the project will be sequenced as follows:

- Phase 1 – Waterline construction;
- Phase 2 – Storm drain and roadway reconstruction on Mesquite Street and Cedar Street;

- Phase 3 – Roadway and storm drain construction from Cedar Street to Peacon Meadows. Constructed in half sections with one way traffic;
- Phase 4 – Roadway and storm drain construction from Cedar Street to Long Prairie Road. Constructed in half sections with one way traffic.

8. Drainage Area Maps

Drainage area maps will be prepared at a minimum scale of 1"=100' (11"x17"), using available contour maps. Inlets will be located and sub-drainage areas determined. The runoff to each inlet will be calculated in accordance with the Town of Flower Mound hydraulic design criteria and shown on run-off and inlet computation sheets.

9. Drainage Computation Sheets

In accordance with standard practice, sheets will be prepared for Runoff and Inlet Computations, Storm Sewer Computations and Lateral Computations. These sheets will tabulate all relevant data used in design for easy verification of the design methods and for future improvements to be coordinated with this project. Calculations from adjacent development projects will be reviewed and updated if necessary to provide a consistent set of hydrology for the basin.

10. Cross Culvert Plan/Profile Sheets and Hydraulic Calculations

Culvert plan/profile sheets and cross-sections will be provided for new culvert construction. TxDOT Standards will be used whenever possible for these culverts.

11. Storm System Design

Plan/profile sheets will be prepared at a minimum 1"-40' (11"x17"). These sheets will show the location of inlets, manholes, storm sewers, slotted drains, culverts, and open channel improvements in relation to the project roadways. Drainage profile sheets will also be prepared which show profile information for the proposed storm sewer trunk lines, proposed ground above the storm sewers, existing ground above the storm sewers, and locations of lateral junctions. The existing bar ditch along Rippy Road will be enclosed and outfalled to Timber Creek along Mesquite Road. Appropriate discharge velocities will be maintained to minimize silting of the storm sewer. The possibility of enclosing portions of bar ditches along Pecan Meadows and Cottonwood Drives and incorporating the runoff into the Rippy Road storm sewer will be investigated.

12. Streambank stabilization

Improvements downstream of Rippy Road into Timber Creek such as grading or channel enlargements may require streambank stabilization efforts. The storm sewer point of discharge into Timber Creek near the Mesquite Street pedestrian bridge will be designed such that erosive velocities are minimized and degradation to Timber Creek is mitigated. Coordination with City staff and biologists concerning Waters of the US and Section 404 permit will be performed to ensure the most stable design matches well with habitat preservation. Grading plans and specifications will be included with the project sheets.

13. Erosion Control Plans and Details

Erosion Control Plans will be prepared and will illustrate the implementation of elements to be used to reduce the pollutants to storm water discharges associated with the construction site. The intent of these plans will be to show the ultimate configuration of these elements, not the intermediate phasing of the necessary elements.

14. Grading Sheets

Where necessary, grading sheets will be prepared to properly show the relationship between the existing topography and proposed features of the project. These sheets will contain spot elevations and/or contours to guide the construction in these areas.

15. Signing and Striping

The Engineer will prepare Signing and Striping plans at a scale similar to the roadway paving sheets. The plans will be in accordance with the Texas Manual on Uniform Traffic Control Devices (TxMUTCD).

16. Quantities and Construction Cost

Project quantities will be calculated and tabulated in a bid schedule. The pay items will be in accordance with previous Town projects and supplemented where necessary with special specifications prepared by the Engineer. The bid schedule will be included in the Bid Documents and may be reproduced in the plan set.

An Engineer's Opinion of Probable Construction Cost will be prepared for the project using current unit cost data from recent bid information.

17. Bid/Construction Administration Documents

The Engineer will assemble project documents governing the bidding and construction administration of the project including but not limited to the following: advertisement for bids, instructions to bidders, construction contract, bid schedule, bonds, general conditions of the contract, supplementary conditions and other documents related to the performance of work for the project.

18. Technical Specifications

A list of specifications necessary for construction of the various elements designed on the project will be compiled by the Engineer. Any special specifications will also be provided.

19. Assemble and Incorporate Standard Drawings

The Engineer shall assemble, collect, and incorporate the necessary standard drawings needed for the plan set.

TASK 4 100% DESIGN PHASE/BID PHASE

Includes everything in the 90% design plus the following: The Engineer to include any comments and/or revisions from the Town and to provide final documents governing the bidding and construction administration of the project including but not limited to the following: advertisement for bids, instructions to bidders, construction contract, bid schedule, bonds, general conditions of the contract, supplementary conditions and other documents related to the performance of work for the project.

TASK 5 CONSTRUCTION PHASE

1. Administrative Services

The Engineer will not provide Construction Administration services under this contract.

2. Field Engineering

The Engineer will not perform any Field Engineering to design additional features as part of this contract. However, any redesign of a planned improvement that is required as a result of an incompatibility of Engineer's original design will be addressed by the Engineer.

3. Construction Contract Documents (Conformed Set)

After the project is awarded to a contractor, the Engineer will revise the plans to include any addenda published prior to award and update the project specifications documents to reflect the bid information as awarded. These revisions will constitute the final construction documents and will be provided to the Town for execution by the contractor and Town.

4. Shop Drawing Reviews

The Engineer will not provide any shop drawing reviews.

5. As-Built Drawings

The Engineer will prepare a reproducible complete set of As-Built drawings based on any field changes made during construction and any field notes or marked up plans provided by the contractor/Town upon completion of construction.

6. Change Orders

The Engineer will not assist the Owner in preparing any Change Orders required during the construction phase.

7. Pay Requests

The Engineer will not assist the Owner in the review of construction Pay Requests under this contract.

8. Requests for Information

The Engineer will not respond to Requests for Information during the construction phase of the Project. Should the requests arise, a supplemental agreement may be required.

TASK 6 ENVIRONMENTAL

1) Threatened and Endangered Species Habitat Assessment

A habitat assessment and preliminary survey for federally-listed threatened and endangered species will be performed in the project area. Specific tasks include the following:

- Perform a review of data from the U.S. Fish and Wildlife Service (USFWS), Texas Parks and Wildlife Department Natural Diversity Database, topographic maps, soil data, project aerials, and other additional resources that may indicate the presence of potentially suitable threatened and endangered species habitat.
- Perform a field investigation to identify potentially suitable threatened and endangered species habitat within the project area. Site conditions will be documented with regards to vegetation, soils, geology, and any observations of species or evidence of species in the vicinity of the project.
- Prepare a brief memorandum detailing the methods and results of the threatened and endangered species habitat assessment and preliminary survey. The memo will include an effect determination for all federally-listed species with potential to occur in the area.

Note: If it is determined that presence-absence surveys or preparation of a Biological Assessment or Biological Evaluation and Section 10 consultation with USFWS would be required, these tasks would be completed under a supplemental agreement.

2) Waters of the U.S. Determination and Wetlands Delineation

Wetlands, waterbodies, regulated special aquatic sites, and other waters of the U.S. will be investigated in the project area. Specific tasks include the following:

- Obtain and review pertinent data to identify potential waters of the U.S. within the project area. Sources include, but are not limited to aerial photographs, soil surveys, USFWS National Wetlands Inventory maps, U.S. Geological Survey topographic maps, and Federal Emergency Management Agency floodplain maps.

- Perform a field investigation to identify potential wetlands and other waters of the U.S. in the project area. Delineations will be conducted in accordance with the *1987 Corps of Engineers Wetland Delineation Manual* along with the 2010 Regional Supplement for the Great Plains Region. Ordinary high water marks and wetland boundaries, if present, will be mapped using a Global Positioning System (GPS) unit with sub-meter accuracy. If wetlands are encountered, a minimum of one soil station inside and outside the wetland boundary will be taken. Maps will be provided of all pertinent information collected during the desktop review and field visit.
- Conduct a baseline aquatic resource analysis documenting existing conditions with the Texas Rapid Assessment Method (TxRAM), which is a wetland and stream conditional assessment model. This shall include preparation of TxRAM Stream Data Sheets, Scoring Sheets, associated exhibits, and the Aquatic Resource Compensation Calculator. Should wetland areas be encountered, TxRAM Wetland Data Sheets, Wetland Scoring Sheets, associated exhibits, and Wetland Final Scoring Sheet for Evaluating Proposed Mitigation/Impact Activities Sheet would be completed. The output from TxRAM will be used to calculate adverse impacts and if necessary, compensatory mitigation required by USACE.
- Prepare a brief water resources report detailing the methods and results of the wetlands and other waters of the U.S. delineation, providing proposed project impacts to the waters of the U.S., identifying Section 404 permitting requirements, and providing results of the TxRAM Functional Assessment.

3) Cultural Resources Assessment *(to be performed by Horizon Environmental Services, Inc.)*

The proposed undertaking would be sponsored by the town of Flower Mound, a political subdivision of the state of Texas; as such, the project would fall under the jurisdiction of the Antiquities Code of Texas. In addition, the project may require usage of a NWP issued by the USACE to construct the outfall on Timber Creek. As NWPs are federal permits, the portion of the overall project subject to the NWP would also fall under the jurisdiction of the National Historic Preservation Act (NHPA). As the proposed project represents a publicly sponsored undertaking, the project sponsor is required to provide the USACE, which would serve as the lead federal agency, and the Texas Historical Commission (THC), which serves as the State Historic Preservation Office (SHPO) for the state of Texas, with an opportunity to review and comment on the project's potential to adversely affect historic properties listed on or considered eligible for listing on the National Register of Historic Places (NRHP) and/or for designation as State Antiquities Landmarks (SAL). At this time, no other federal or state jurisdiction has been identified for the project. In the event that any additional regulatory triggers are identified as the project moves forward, Horizon will evaluate whether or not any additional, out-of-scope cultural studies or agency coordination may be required.

The cultural resources study would consist of desktop archival research, an intensive archeological field survey, and production of a report suitable for review by the SHPO

in accordance with the THC's Rules of Practice and Procedure, Chapter 26, Section 27, and the Council of Texas Archeologists' (CTA) Guidelines for Cultural Resources Management Reports.

a) Archival Research and Permitting

- Prior to performing field work, perform basic archival research at the THC, the Texas Archeological Research Laboratory (TARL), the General Land Office (GLO), the National Park Service's (NPS) online National Register Information System (NRIS), and/or other relevant archives for information on previous cultural resources investigations conducted in the vicinity of the project area and previously recorded archeological sites and historic properties within and in the vicinity of the project area. Desktop archival studies will examine a 1.0-mile radius surrounding the project area.
- Review the abovementioned archives; historic, geological, and soil maps; and aerial surveys and photographs prior to initiating fieldwork to evaluate the potential for encountering significant cultural resources within the project area.
- Apply for and obtain a Texas Antiquities Permit from the THC (required for any project that falls under the jurisdiction of the Antiquities Code of Texas). The application for a Texas Antiquities Permit requires the signature of the project sponsor and/or landowner, as appropriate, as well as the archeological Principal Investigator. The Texas Antiquities Permit must be issued by the THC prior to the initiation of any cultural resources field activities.

b) Archeological Survey Fieldwork

- Perform an intensive archeological survey, consisting of pedestrian walkover with surface inspection and systematic shovel testing at a level of intensity sufficient to meet or exceed the Texas State Minimum Archeological Survey Standards (TSMAS) and guidelines established by the CTA unless field conditions warrant excavation of more or fewer shovel tests.
- Document any cultural resources encountered to a sufficient degree to make preliminary determinations of the significance of the resources in terms of their eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.
- Inspect the locales of any previously recorded archeological sites within the project area, assess their current condition, and document the sites to a sufficient degree to make preliminary determinations of the significance of the resources in terms of their eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.

c) Technical Report

- Complete and submit State of Texas Archeological Site Data Forms (for new archeological sites) or State of Texas Archeological Site Update Forms (for

previously recorded archeological sites) to TARL. Permanent site trinomials will be obtained from TARL for any new archeological sites documented within the project area during the survey.

- Assess the significance of any cultural resources within the project area in terms of their potential eligibility for inclusion in the NRHP and/or for designation as SALs, as appropriate.
- Develop a draft technical report detailing the project background, environmental and cultural setting of the project area, research goals and survey methods, survey results, recommendations for any cultural resources documented during the survey, and a bibliography of references cited suitable for review by the THC and any other applicable regulatory agencies.
- Submit a preliminary review copy of the archeological draft report describing the results of the survey to the client for review. Following approval of the draft report by the client, Horizon will submit an electronic copy of the report to the THC and any other applicable regulatory agencies for review and comment. Horizon will coordinate review with the regulatory agencies unless the client would prefer to coordinate agency review directly.
- Respond to any comments on the draft report offered by the THC and any other applicable regulatory agencies and produce a final report.
- Submit the final report to the client and the THC.

d) Records Curation

- Prepare project records for curation at TARL per the requirements of the Antiquities Code of Texas and TARL's Stipulations and Procedures for the Preparation of Archeological Records and Photographs, Curation Supplies, and Sources and/or Stipulations and Procedures for the Preparation of Archeological Material Collections, as appropriate.

Overall Assumptions: The client will secure right-of-entry (ROE) for the project area to be surveyed.

e) Key Understandings/Assumptions

With regard to USACE Section 404 permitting, CPY assumes the following.

- The City or their contractor will implement water quality best management practices to comply with the conditions of the TCEQ Section 401 water quality certification for NWP 14.
- The project will be designed and constructed to meet the general and regional conditions of and be authorized by a NWP 14 at each single and complete crossing.
- If necessary, only a one PCN will be submitted to the USACE. If a PCN for temporary or permanent fill in waters of the U.S. is required, CPY assumes the level of effort for permit coordination with the USACE will only include providing the

information necessary to meet basic documentation requirements for NWP 14 compliance, and that extensive permit coordination will not be required.

- No agency site meetings will be required.
- Compensatory mitigation will not be required.

If following preliminary design and permitting evaluation tasks, it is determined that more extensive USACE coordination, permit application (e.g., Individual Permit), and/or preparation of a mitigation plan (e.g., compensatory mitigation necessary for project which is assumed to not be necessary at this time), then CPY will prepare a scope, schedule and budget for this additional service.

Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their actions on cultural resources that are eligible for inclusion in the National Register of Historic Places (NRHP). For example, when issuing a Section 404 permit, the USACE must consider the potential effect of a project on structures listed on, eligible for, or potentially eligible for the NRHP. The State Historic Preservation Officer (SHPO) determines whether a cultural resource meets the criteria for listing in the NRHP. The SHPO in Texas is the executive director of the Texas Historical Commission (THC). The project will require clearance from the THC under the Antiquities Code of Texas. The cultural resource survey and coordination requirements necessary for compliance with the Antiquities Code of Texas and Section 106 of the National Historic Preservation Act will vary depending on level of previous disturbance and construction footprint in native soils. Thus, the level of effort for cultural resource surveys may vary depending on coordination with the THC and USACE as well as the project design. For the purposes of this scope, CPY assumes a database search and limited pedestrian surveys will be necessary due to the anticipated limited amount of soil disturbance and fill activities. Additional pedestrian surveys and backhoe trenching would only be conducted upon request for additional information by the THC and/or USACE. Impacts to potentially historic structures are not anticipated; therefore, surveys and coordination related to historic structures is not included.

For permit identification and coordination, CPY assumes that designs will not be altered substantially following the 60% level, such that additional reviews and/or permits become necessary. Changes to the design which require additional reviews and/or permitting may require additional time and budget.

CPY has not included construction monitoring in this proposal, and assumes the City will submit the post-construction documentation when the project is complete.

As a locally funded project with no anticipated significant impacts to regulated resources, compliance and documentation for the National Environmental Policy Act (NEPA) are not anticipated. We assume that the project, through improved mobility, will not have adverse impacts to other environmental resources (e.g. air quality, noise, etc) and, therefore, would not require project-specific modeling and coordination with local, regional, state, or federal agencies for NEPA documentation. CPY assumes no

TxDOT coordination related to environmental clearances will be required. If required, these services can be performed under a supplemental agreement.

TASK 7 COTTONWOOD DRIVE AND CEDAR STREET

The drainage along Cottonwood Drive and Cedar Street occasionally exceed capacity of the existing ditches. The Engineer will evaluate the ditches and determine if improvements can be made to increase capacity. Engineer is to evaluate increasing slope, driveway pipe sizes, and augmentation of ditch by utilizing potential storm drain and inlets.

TASK 8 FLOODPLAIN MITIGATION

Floodplain storage will be analyzed and net losses to the existing floodplain storage capacity will be coordinated with City engineering staff and Parks Dept representatives. Hydraulic analyses of Timber Creek will be performed to ensure that loss of floodplain area due to construction of the proposed roadway do not impact adjacent properties through increased water surface elevations (WSELs) or increased channel velocities which may accelerate natural erosion processes. Summaries of floodplain changes will be incorporated into a Hydraulic Report. The effective FEMA model for Timber Creek will be obtained from the City or FEMA and evaluated for potential floodplain impacts. Water surface elevations will be determined for post-project conditions to ensure no impacts to the properties currently in the Timber Creek regulatory floodplain along Mesquite Street, Cedar Street, and the southern portion of Rippy Road.

TASK 9 GEOTECHNICAL INVESTIGATIONS

Sub-consultant – HVJ Associates

1. Scope of Work – Field Work

- a. Two borings totaling 55 feet of drilling are included in this scope of work. One boring at a depth of 15 feet is needed near the intersection of Cedar Street and Rippy Road. This boring will be utilized to determine if subsurface water is present and provide contractor with proper parameters for temporary shoring in installation of storm drain system.

The second boring will be at a depth of 40 feet and will be near the proposed outfall of the storm sewer system. This boring will be utilized to determine proper bank stabilization for outfall into the creek.

- b. Field personnel will drill the borings using truck-mounted equipment. Lane closures may be required. Cohesive and non-cohesive soil samples will be obtained using

three-inch diameter shelly tube samplers and two-inch diameter standard split-spoon samplers, respectively. If rock is encountered, TCP will be performed every 5 feet and augured rock sample will be collected.

- c. An engineering geologist or soils technician will extrude the samples in the field, check the samples for consistency with a hand penetrometer carefully wrap them to preserve their condition, and return them to the laboratory for testing. A log of each boring will be prepared to document field activities and results. The Geotech will stake the boring locations using normal taping procedures. Locations will be shown on the plan of borings. Precise surveying of boring locations and elevations is not included in the cost estimate. These services may be provided upon request, at additional cost. At the completion of drilling operations, bore holes will be backfilled and plugged with soil cuttings.

2. Scope of Work – Laboratory Investigation

- a. Laboratory tests will be required for classification purposes, to determine strength characteristics, and to evaluate both the short- and long-term deformation/stress properties of the materials encountered. Testing will be in accordance with standard procedures which include moisture content and soil identification, liquid and plastic limit determinations, strength tests on soil, and unit weight determinations. The specific types and quantities of tests will be determined based on soil conditions encountered in the borings.

3. Scope of Work – Engineering Services

- a. The engineering report will be prepared by a registered engineer and will present the results of the field and laboratory data together with our analyses of the results and recommendations. We will provide a digitally signed and sealed report in electronic pdf format. The report will address:
 - Soil and groundwater conditions encountered at the boring locations;
 - If required, slope stability recommendations will be provided near the outfall structure;
 - Earthwork recommendations, including material and compaction requirements; and
 - Construction considerations related to soil and ground water conditions at the borings.

TASK 10 PARCEL ACQUISITION

Right-of-Way Exhibits and Metes and Bounds descriptions is needed for up to three (3) parcels. The landowner(s) currently own the land to the Center of the street. The City desires to purchase the ROW from the property owners.

TASK 11 EXPENSES

The Engineer will necessarily incur reasonable expenses in conjunction with the design and administration of this project. Such expenses have been estimated from similar experiences and included as a line item on the Fee Summary (Exhibit D). These expenses include:

- Printing of specifications and plan sets for review, bidding and construction

These expenses will be limited to every extent possible and will be reimbursed by the Owner as part of this agreement. If the scope of the project changes or if the required number of submittals and/or copies changes appreciably from that indicated in Exhibit C, the Engineer reserves the right to seek additional compensation for the additional expenses.

FIRST AMENDMENT: *Tasks 12 through 16 are associated with the First Amendment for the above referenced project. Mores specifically, Tasks 12 through 14 are associated with the Rippy Storm System Improvements and Tasks 15 through 16 are associated with the Pond Volume Analysis.*

TASK 12 SURVEY (FIRST AMENDMENT)

Additional survey needs are necessary for engineering design of the new storm alignment which extends beyond the original limits at Pecan Meadows Drive and to provide proper streambank protection at the outfall as a result of the higher discharge.

Topographic survey will be performed at two locations along Rippy Road as a result of the new storm system alignment.

- Location 1 is approximately 100-feet north of the intersection with Pecan Meadows Drive to approximately 250-feet north of the intersection, and 60-feet in width (left Right-of-Way to right Right-of-Way). This is necessary for the extension of the system from the original project limits to the Bradford Park subdivision outfall.
- Location 2 is an approximate 75-foot by 75-foot section near the outfall location at FM 2499 (Long Prairie Drive). This is necessary to ensure the proper streambank protection measures are designed at this location as a result of the increased discharge at this location. The additional topo data collected will be combined with the existing topo data and will be utilized by the engineer(s) to properly design the storm drain system.

Survey services under this Task will follow the same procedures as noted in Task 1 of this contract.

TASK 13 STORM DESIGN (FIRST AMENDMENT)

The storm drain system will be redesigned to be a single continuous system that begins at the downstream junction box for the Bradford Park Development and out falls into Cottonwood Creek prior to FM 2499 (Long Prairie Road).

Updates to Storm Systems includes:

Design of a single system (Line A) from

- Line A – Will be designed to be a single system extending from the proposed outfall location near FM 2499 to the existing junction box installed at the southeast corner of the Bradford Park development (approx. 350 LF north of Pecan Meadows in the west parkway). An outfall/system on Mesquite will no longer be necessary as a result of this system.
- Line B – Will be redesigned to help capture drainage along Cedar Street, near the Rippy Road Bend, to connect to Line A
- Line C – Will no longer be needed since Line A will be able to capture the drainage areas associated with Line C.
- Line D, which runs along Cottonwood Drive, to connect to the Line A. Adjustments will be considered for Line D to assist with the proposed improvements to the lot located at the southwest corner of Cottonwood Drive and Rippy Road.
- Proposed Cross Culverts A & B – Will no longer be needed since Line A will be able to capture the drainage areas associated with Culverts A & B.

Updates to Drainage Area Maps, Drainage Calculations, Plan & Profile Sheets, Streambank Stabilization, and Quantities.

As a result of the redesign of the storm systems on this project, various updates will be necessary on the other design plans associated with this project. These include but are not limited to the following sheets: Layout, Typical Sections, Quantities, Removal, Traffic Control, Roadway Plan & Profile, Ditch Plan & Profile, SW3P, Standards.

These sheets will be updated to reflect the new storm system(s) and any necessary adjustments as a result of the new storm systems(s). No new plans are anticipated that were not already included in original contract.

TASK 14 ENVIRONMENTAL (FIRST AMENDMENT)

1) Threatened and Endangered Species Habitat Assessment

Updates to the Memo as a result of the storm line redesign.

Note: If it is determined that presence-absence surveys or preparation of a Biological Assessment or Biological Evaluation and Section 10 consultation with USFWS would be required, these tasks would be completed under a supplemental agreement.

2) Waters of the U.S. Determination and Wetlands Delineation

Updates to the resources report as a result of the storm line redesign.

3) Cultural Resources Assessment *(to be performed by Horizon Environmental Services, Inc.)*

Any updates necessary will be handled under the original contract scope.

As a locally funded project with no anticipated significant impacts to regulated resources, compliance and documentation for the National Environmental Policy Act (NEPA) are not anticipated. We assume that the project, through improved mobility, will not have adverse impacts to other environmental resources (e.g. air quality, noise, etc.) and, therefore, would not require project-specific modeling and coordination with local, regional, state, or federal agencies for NEPA documentation. CPY assumes no TxDOT coordination related to environmental clearances will be required. If required, these services can be performed under a supplemental agreement.

TASK 15 POND SURVEY (FIRST AMENDMENT)

Provide Topographical Survey of a 1.62-acre pond site located in Bradford Park, Phase Two. Survey will begin at the normal WSEL of Pond “C” and will include all existing features within the 1.62-acre site necessary to supplement the volume analysis described under Task 15. Standard practices detailed in Task 1 of the original contract and Task 11 of the First Amendment will be followed.

Assumptions include: The Pond WSEL is at the normal WSEL prior to field work commencing, Right of Entry is not necessary or will be obtained by the Town, No boundary/property info will not be provided or necessary.

Upon completion of the field work, topographical info will be processed and a Microstation DGN and TIN file will be created for use in the volume analysis.

TASK 16 POND ANALYSIS (FIRST AMENDMENT)

Develop an elevation-area-capacity relationship for the as-built conditions of Pond “C” of Bradford Park, Phase Two. Plot out the pond volume by elevation and tabulate at even foot elevations. Compare the as-built pond volumes, shown in the Bradford Park Phase Two plans, for Pond “C”. A technical memorandum will be produced summarizing these results.

Services not included under this task, but can be provided at the Town’s request:

- Retrofit analysis of Pond C to improve the performance if volume design was inadequate, using the original designer’s input.
- Re-Analysis of the watershed to Pond C to verify volumes and outflow performance.

- Re-Analysis of the detention pond using a hydrograph-based method, such as HEC-HMS, to better quantify the Pond C design performance.
- Similar analysis of other Ponds that may impact the Rippy Road project.

ITEMS NOT IN SCOPE

The items listed below are not included in this scope of work. Should any of these items of work become necessary, the Town shall have the right to expand the scope of work for this project under the terms of the Additional Engineering and Services portion of this contract.

- a. Irrigation Design
- b. Landscape Design
- c. Aerial Survey

ADDITIONAL SERVICES

1. Engineering Redesign

At various points during the design phase, the Engineer will submit work in progress plan sets for review by the Owner. Such sets should receive a thorough review by the Owner for compliance with the Owner's expectations for the Project. (Note: the Owner is not required to review such plan sets for design conformance, code compliance, or other requirements deemed to be the responsibility of the Engineer). Once these plans are reviewed and returned to the Engineer, they shall be considered accepted by the Owner except as noted in the review comments. **Subsequent changes requested by the Owner shall constitute Additional Services outside of the scope of this agreement. In such cases, the Engineer shall be granted a Supplemental Agreement for additional compensation in an amount sufficient to cover any and all costs incurred by the Engineer while completing the redesign effort.**

2. TDLR Review

A TDLR review is anticipated on this project based on the amount of applicable improvements. CP&Y will submit a final set of plans to a local TDLR review firm for review. Review fees are based on the construction cost of the project. CP&Y will submit an invoice to the Owner for the cost of the review. This fee is not included in the Fee Summary attached (Exhibit D). This work will be considered an expense item.

3. CLOMR and/or LOMR

Improvements to Rippy Road may change the effective Flood Insurance Rate Map (FIRM) floodplain boundaries. A CLOMR or LOMR may be required to update the proposed floodplain boundaries and Base Flood Elevations (BFEs) with FEMA. If such

a service is required, this work will be added by supplemental.

EXHIBIT D-1
FEE SUMMARY

FOR
RIPPY ROAD RECONSTRUCTION AND STORM DRAIN PROJECT
FLOWER MOUND, TEXAS

BASIC SERVICES	Fee	
TASK 1 - SURVEY	\$	34,000.00
TASK 2 - 50% DESIGN PHASE	\$	80,230.00
TASK 3 - 90% DESIGN PHASE	\$	88,700.00
TASK 4 - 100% DESIGN PHASE	\$	29,705.00
TASK 5 - CONSTRUCTION PHASE	\$	7,620.00
TOTAL BASIC SERVICES	\$	240,255.00
OTHER SERVICES		
TASK 6 - ENVIRONMENTAL PHASE	\$	8,910.00
TASK 7 - COTTONWOOD DRIVE AND CEDAR STREET	\$	22,090.00
TASK 8 - FLOODPLAIN MITIGATION	\$	5,400.00
TASK 9 - GEOTECH	\$	9,454.00
TASK 10 - PARCEL ACQUISITION	\$	4,500.00
TOTAL OTHER SERVICES	\$	50,354.00
EXPENSES		
TASK 11 - EXPENSES		
- Environmental Expenses	\$	6,178.00
- Total Design/Construction Expenses	\$	1,858.75
TOTAL EXPENSES	\$	8,036.75
TOTAL FEE (ORIGINAL)	\$	298,645.75

FIRST AMENDMENT

TASK 12 - SURVEY	\$	3,500.00
TASK 13 - STORM SYSTEM DESIGN	\$	24,400.00
TASK 14 - ENVIRONMENTAL PHASE	\$	2,240.00
TASK 15 - POND SURVEY	\$	3,500.00
TASK 16 - POND ANALYSIS	\$	4,500.00
TOTAL FIRST AMENDMENT	\$	38,140.00

TOTAL FEE (ORIGINAL + AMENDMENT)	\$	336,785.75
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NOTES:

- 1) Original Contract Includes Tasks 1 - 11 and was executed on 03/05/2019.
- 2) First Amendment Includes Tasks 12 - 16. Tasks 12 - 14 are associated with the Storm Sytem Revisions while
Tasks 15 - 16 are associated with the Pond Volume Analysis Tech Memo.



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: September 21, 2020

FROM: Christopher L. Allen, Utility Operations Supervisor

ITEM: **Consider approval of Change Order No. 2 for the Wastewater Treatment Plant Ultraviolet System Upgrade project, amending the contract with Felix Construction Company, in the amount of \$102,265.77; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: On March 18, 2019, a contract was awarded to Felix Construction Company in the amount of \$2,065,700.00 to replace the outdated WWTP Ultraviolet disinfection system.

On February 17, 2020, Change Order No. 1 was approved for the construction of the Wastewater Treatment Plant Ultraviolet System Upgrade project, amending the contract with Felix Construction Company to provide for an increase to the contract in the amount of \$98,916.23.

Change Order No. 2 allows for the replacement and upgrades of the influent and effluent gates and actuators. During construction it was found that the existing gates allow for undisinfected flow through the wastewater treatment facility. This requires all banks to be turned on in order to disinfect the flow and eliminates the plant facility to run with redundancy capability. It was also found that the effluent gate's stem was not operating properly and requires replacement. It is necessary to replace the influent gates and replace the effluent gate stem to comply with TCEQ regulations.

If approved, this change order will increase to the contract amount from \$2,164,616.23 to \$2,266,882.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$102,265.77

Proposed Expenditure/(Revenue):	Account Number(s):
\$102,265.77	630-970-98473

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

Total project cost is \$3,000,000. Funding sources are:

- Other \$ 250,000
- Utility debt \$ 2,750,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No. 2

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

CHANGE ORDER No. 2

Effective Date: Upon execution by the Mayor

Owner: Town of Flower Mound

Contractor: Felix Construction

Project: **Wastewater Treatment Plant Ultraviolet System Upgrade****CHANGE ORDER NO. 2**

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

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

Item No.	Description	Unit	Add/ Deduct	Qty.	Unit Price	Extended Amount
CO2-A	Inlet Slide Gate Replacement	LS	Add	1	\$95,583.49	\$ 95,583.49
CO2-B	Replace Stem on existing Effluent Slide Gate	LS	Add	1	\$6,682.28	\$ 6,682.28
TOTAL						\$ 102,265.77

JUSTIFICATION

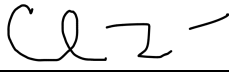
Change Order No. 2 provides for the following:

Item CO2-A provides for the replacement of influent gates and actuators to the ultraviolet system. In June 2020 when we went online with the new U.V. system the influent gates were found to be leaking. As a result of not installing new gates the leak the system is experiencing is causing the system to be at risk of breaking permit with TCEQ. To ensure compliance with TCEQ replacement of the influent gates and actuators is necessary.

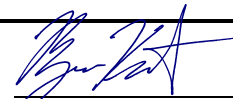
Item CO2-B provides for an upgrade to the effluent gate. During the course of the project it was discovered that the existing effluent gate stem could not be properly operated. Replacement of the effluent gate stem is necessary for the proper effluent gate operation and ensures compliance with TCEQ regulations.

Original Contract	\$ 2,065,700.00
Change Order #1	\$ 98,916.23
Change Order #2	\$ 102,265.77
Revised Contract Price	\$ 2,266,882.00

Recommended
for Approval


 Christopher L. Allen
 Utility Operations Supervisor

8/28/2020
Date



Ryan Koontz

8/28/20

Contractor
 Sr. Project Manager
 Contractor Title

Date

Approved

Steve Dixon
 Mayor

Date



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: September 21, 2020

FROM: Clay Riggs PE, CFM, Assistant Director of Public Works

ITEM: Consider approval of the purchase of one wastewater pump, at the wastewater treatment facility, from Xylem Water Solutions USA Inc., a sole source provider, in the amount of \$71,384.49.

BACKGROUND INFORMATION: The headworks pump No. 2 is at the end of its life cycle. The pump has been rebuilt multiple times and is declining in performance. It is necessary to replace this pump before failure to ensure reliability and maintain compliance with TCEQ regulations. Funding for the replacement of the headworks pump No. 2 is provided through a non-discretionary decision package adopted as part of the fiscal year 2019-2020 budget.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$71,384.49

Proposed Expenditure/(Revenue):	Account Number(s):
\$71,384.49	200-690-92420-4308

Finance Review By: Debra Wallace, Interim Town Manager /CFO *DW*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Xylem USA Quote
2. Sole Source Letter

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



Xylem Water Solutions USA, Inc.

Flygt Products

September 4, 2020

TOWN OF FLOWER MOUND
2121 CROSS TIMBERS
FLOWER MOUND TX 75028

2310 McDaniel Drive
Carrollton, TX 75006

Tel (972) 418-2400

Quote # 2020-DAL-0137-1
Job Name: Flower Mound NP 3231

Fax (972) 416-9570

Xylem Water Solutions USA, Inc. is pleased to provide a quote for the following Flygt equipment.

A Flygt Preventive Maintenance Contract is available for this order. Please contact Flygt for more information.

NP-3231.605 425Trim

Qty	Description
1	Flygt NP 3231, 63-680, 425 mm Intended for semi-permanent wet installation, guiding claw included other installation components to be ordered individually Hard iron impeller and insert ring Coating: Duasolid 50, Oxyrane ester Drive Unit: 615 6 pole, 90 hp, 480 V, Std motor Approval: FM Ex Cooling jacket for direct media cooling Insulated support bearing Cables Power: 50ft SUBCAB screened S3x35 + 3x16/3 + S(4x0.5) Cable Grip included. Pilot: 50ft SUBCAB ctrl screened S 24x1.5 Cable Grip included. Material Shaft: AISI 431 Stainless steel Supervision FLS, leakage detector, in junction box FLS, leakage detector, in stator housing PT-100 in one stator winding PT-100 in lower bearing Pump memory VIS 10, vibration sensor

Total Price \$ 71,384.49

Validity: This Quote is valid for thirty (30) days.
Time of Delivery: Approx. 16 - 18 working weeks after receipt/approval of order.





Xylem
2400 Tarpley Road, Carrollton, TX 75006

February 26, 2020

City of Flower Mound, TX

Re: Xylem / Flygt Products – Sales/Service Channel

To Whom it May Concern:

From its location in Carrollton, TX, Flygt (a Xylem brand) products are exclusively sold DIRECTLY TO END USERS for the municipal water and wastewater market, including Texas counties of Archer, Baylor, Callahan, Clay, Collin, Cooke, Dallas, Denton, Eastland, Ellis, Erath, Fannin, Foard, Hardeman, Haskell, Hill, Hood, Hunt, Jack, Johnson, Kaufman, Knox, Montague, Navarro, Palo Pinto, Rockwall, Shackelford, Somerville, Stephens, Tarrant, Throckmorton, Wichita, Wise and Wilbarger. No distributors are used in our sales channel for this area.

We are the only Flygt Authorized Warranty/Service Center or Flygt Pumps and Mixers in this area. Xylem Inc. – Flygt Products offer a large range of pumps (.25Hp – 1140Hp), mixers (1.2Hp – 40Hp) and controls. We invite you and your team to our Carrollton facility (2310 McDaniel Drive, Carrollton, TX 75006) where we sell, service and rent units here. We at Xylem Inc. – Flygt Products appreciate working with you for all your pumping, mixing and controls needs.

Please feel free to contact the undersigned with any questions regarding this matter.

Sincerely,

Todd Cranford

Todd Cranford
Regional Manager/Branch Manager
Flygt Products
Carrollton, TX
O: 972-512-4626
todd.cranford@xyleminc.com



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: September 21, 2020

FROM: Dale Crown, 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 Blue Ridge Trail Street Reconstruction project, in the amount of \$28,997.50; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The professional services agreement includes construction materials engineering and testing for the Blue Ridge Trail Street Reconstruction project. The construction project was awarded to Reliable Paving, Inc. on September 8, 2020. The project consists of the reconstruction of Blue Ridge Trail, a local residential street, from Country Meadow Drive to Branchwood Trail. The project also includes replacement of approximately 20 concrete panels along various streets within the Country Meadow Phase I subdivision.

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: \$28,997.50

Proposed Expenditure/(Revenue):	Account Number(s):
\$28,997.50	316-560-78038

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

Total project cost is \$1,010,000. Funding sources are:

- Dedicated Sales Tax \$ 1,010,000

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 these documents.

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
ALLIANCE GEOTECHNICAL GROUP**

This contract is entered into on this 21st day of September, 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 Blue Ridge Trail Reconstruction project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide the Blue Ridge Trail Reconstruction 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 Eight Thousand Nine Hundred Ninety Seven and 50/100 Dollars (\$28,997.50). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

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

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

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

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

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

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

IX.

Right to Inspect Records

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

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

X.

Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

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

J.K. Marthers
Alliance Geotechnical Group
7970 West Main Street
Frisco, TX 75033
214-618-4100 Telephone
217-618-4110 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

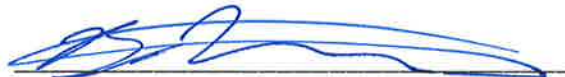
**CONSULTANT:
ALLIANCE GEOTECHNICAL GROUP**

By: 
Name: Robert P. Nance
Title: President
Date Signed: 8/19/2020

State of Texas §
 §
County of Dallas §

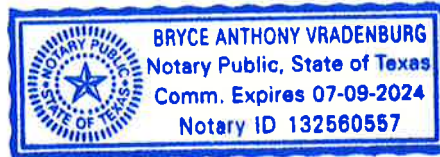
This instrument was acknowledged before me on the 19th day of August, 2020, by Robert P. Nance in his capacity as President of Alliance Geotechnical Group, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of president of Alliance Geotechnical Group, Inc..

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 19th
DAY OF August, 2020.


Notary Public, State of Texas

My Commission Expires:

7/9/2024





GEOTECHNICAL ENGINEERING
ENVIRONMENTAL CONSULTING
CONSTRUCTION MATERIALS ENGINEERING AND TESTING

August 12, 2020

Town of Flower Mound
Attn: Mr. Dale Crown
2121 Cross Timbers Rd.
Flower Mound, Texas 75028

Email: dale.crown@flower-mound.com

Re: Blue Ridge Trail Replacement
Flower Mound, Texas
Engineering Inspection & Testing Services
AGG Proposal No: P20-0804C

Dear Mr. Crown,

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
BLUE RIDGE TRAIL REPLACEMENT
FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P20-0804C

DESCRIPTION OF SERVICES	QUANTITY		UNIT FEE	UNIT	FEE
A. LIME STABILIZATION TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)	4	@	\$165.00	each	\$660.00
• Atterberg Limits	4	@	\$55.00	each	\$220.00
• In-Place Density Test (astm d6938	8	@	\$35.00	each	\$280.00
• Sulfate Test (1 per 300 lf) as needed	2	@	\$90.00	each	\$180.00
• Lime Series (5 Point PI Method)	2	@	\$250.00	each	\$500.00
• Lime Subgrade Gradation	8	@	\$18.00	each	\$144.00
• Lime Subgrade Depth Check	8	@	\$18.00	each	\$144.00
• Sr. Engineering Tech to perform testing	32	@	\$47.50	hour	\$1,520.00
• Sr. Engineering Tech Overtime to perform testing		@	\$71.25	hour	\$0.00
• Project Manager	4	@	\$75.00	hour	\$300.00
• Vehicle Charge	8	@	\$40.00	trip	\$320.00
Sub-Total					\$4,268.00
C. SUBGRADE TESTING & INSPECTION					
• Moisture/Density Relationship of Soils (ASTM D-698)		@	\$165.00	each	\$0.00
• Moisture/Density Relationship of Soils (ASTM D-1557)	1	@	\$165.00	each	\$165.00
• Atterberg Limits	1	@	\$55.00	each	\$55.00
• Material Analysis -200	1	@	\$35.00	each	\$35.00
• Flexible Base Gradation	1	@	\$195.00	each	\$195.00
• Wet Ball Mill	1	@	\$225.00	each	\$225.00
• In-Place Density Test* (ASTM D6938)	46	@	\$35.00	each	\$1,610.00
• Sr. Engineering Tech to perform testing	150	@	\$47.50	hour	\$7,125.00
• Project Manager	11	@	\$75.00	hour	\$825.00
• Vehicle Charge	30	@	\$40.00	trip	\$1,200.00
Sub-Total					\$11,435.00
D. CONCRETE & REINFORCING TESTING & INSPECTION					
• Concrete Inspection & Testing (regular time)	177	@	\$47.50	hour	\$8,407.50
• Concrete Inspection & Testing (over time)		@	\$71.25	hour	\$0.00
• Concrete Cylinders	124	@	\$18.00	each	\$2,232.00
• Project Manager	13	@	\$75.00	hour	\$975.00
• Vehicle Charge	42	@	\$40.00	trip	\$1,680.00
Sub-Total					\$13,294.50
ESTIMATED TOTAL					\$28,997.50

SCHEDULE OF FEES
FOR
CONSTRUCTION MATERIALS ENGINEERING & TESTING
BLUE RIDGE TRAIL REPLACEMENT
FLOWER MOUND, TEXAS AGG PROPOSAL NO.: P20-0804C

DESCRIPTION OF SERVICES	QUANTITY	UNIT FEE	UNIT	FEE
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NOTES:

1. It is understood that the contractor will be invoiced at overtime rates of 1.5 times the regular hourly rate 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 project plans provided to AGG by the Town of Flower Mound**
 - * Lime Stabilization Testing and Inspection - 8 estimated site visits
 - * Flexible Base Sub Grade Testing and Inspection - 30 estimated site visits
 - * Concrete Testing Paving/Sidewalks - 27 estimated site visits
 - * Concrete Cylinder Pick Ups - 15 estimated site visits



TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: September 21, 2020

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

ITEM: Consider approval of Change Order No. 1 for the construction of the Forest Vista Drive Reconstruction Phase II (Morriss to Chancellor) project, amending the contract with Pavecon Public Works, LP, to provide for an increase to the contract in the amount of \$25,221.35; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On April 6, 2020, Pavecon Public Works, LP was awarded the Forest Vista Drive Reconstruction Phase II (Morriss to Chancellor) project in the amount of \$1,664,279.45.

The project consists of the reconstruction of the 4-lane divided roadway and replacement of a 12-inch water main. The project is located on Forest Vista Drive between Chancellor Drive and Morriss Road. Change Order No. 1, in the amount of \$25,221.35, increases the total contract amount to \$1,689,500.80; allowing for the additional work described below:

- Additional traffic control costs associated with the initial delay of the project start date due to reassessment of necessary tree removal.
- Installation of an additional 155 linear feet of 12-inch water main along Forest Vista Drive. Installation of the additional water line was originally planned for the Morriss Road 20-inch Water Line project. The work is proposed to be transferred to the Forest Vista Drive project to avoid conflicts with overlapping work zones and construction schedules between the two projects' contractors.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision not to approve this project could result in a delay in completing the Forest Vista Drive reconstruction project.

FISCAL IMPACT: \$25,221.35

Proposed Expenditure/(Revenue):	Account Number(s):
\$25,221.35	316-560-78036-6160

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

Total Forest Vista Drive Reconstruction project cost is \$2,735,000. Funding sources are:

- Dedicated Sales Tax \$ 2,735,000

Total Forest Vista Water Line project cost is \$210,000. Funding sources are:

- Other \$ 210,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No. 1

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

CHANGE ORDER No. 1

Effective Date: Upon execution by the Mayor
 Owner: Town of Flower Mound
 Contractor: Pavecon Public Works, LP
 Project: Forest Vista Drive Reconstruction Phase II

CHANGE ORDER NO. 1

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

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

Item No.	Description	Unit	Add/ Deduct	Qty.	Unit Price	Extended Amount
P-2	Traffic Control	LS	Add	0.11	\$ 37,505.00	\$ 4,125.55
W-1	12" Gate Valve and Valve Box	EA	Add	2	\$ 2,860.00	\$ 5,720.00
W-4	Fire Hydrant	EA	Add	1	\$ 3,300.00	\$ 3,300.00
W-5	12" PVC DR-18 Water Main Pipe	LF	Add	155	\$ 73.70	\$ 11,423.50
W-8	Ductile Iron Fitting	TON	Add	0.1	\$ 4,818.00	\$ 481.80
W-10	Trench Safety	LF	Add	155	\$ 1.10	\$ 170.50
SUBTOTAL						\$ 25,221.35

JUSTIFICATION

Change Order No. 1 provides for the following:

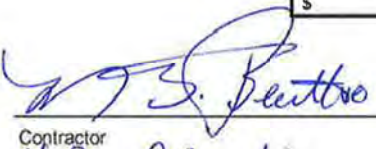
Bid item P-2 allows for additional traffic control due to project delay associated with tree protection.

Bid items W-1, W-4, W-5, W-8 & W-10 allows for additional water line installation along Forest Vista Drive.

REVISED CONTRACT AMOUNTS

Original Contract	\$ 1,664,279.45
Change Order #1	\$ 25,221.35
Revised Contract Price	\$ 1,689,500.80

Recommended  8/26/2020
 for Approval Dale Crown, P.E. Date
 Senior Project Engineer

 8/25/20
 Contractor V.P. of Operations Date
 Contractor Title

Approved _____
 Steve Dixon Date
 Mayor



TOWN COUNCIL AGENDA ITEM NO. 14

CONSENT ITEM

DATE: September 21, 2020

FROM: Clay Riggs, PE, CFM, Assistant Director of Public Works

ITEM: Consider approval of a Professional Services Agreement with Plummer Associates, Inc., Inc. in the amount of \$25,000.00, to assist in securing Texas Pollution Discharge Elimination System (TPDES) permit renewal for the wastewater treatment plant; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The current Texas Pollution Discharge Elimination System (TPDES) permit no. WQ0011321001 expires on September 1, 2021. In accordance with requirements of the Texas Commission on Environmental Quality (TCEQ), the application for renewal of the permit must be submitted a minimum of 180 days prior to its expiration date. Therefore, the permit application must be submitted to TCEQ prior to March 5, 2021.

The scope of the Professional Services Agreement provides for assistance in preparation of the permit renewal application, processing, and review of the application with TCEQ until permit issuance.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$25,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$25,000.00	200-690-92100-5110

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

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

This contract is entered into on this 21st day of September, 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 **Plummer Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 1320 S. University Drive, Suite 300, Fort Worth, Texas 76107.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to assist in securing Texas Pollutant Discharge Elimination System (TPDES) permit renewal for the Town of Flower Mound’s Wastewater Treatment Plant permit; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the Wastewater Treatment Plant Texas Pollutant Discharge Elimination System Permit Renewal Application 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-Five Thousand and No/100 Dollars (\$25,000.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV. Revisions of the Scope of Services

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

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

V. Term

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

VI. Contract Termination Provision

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

notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

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

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

Clay Riggs, PE, CFM
Assistant Director of Public Works
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6411 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

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

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

IX. Right to Inspect Records

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

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

XVIII.
Confidential Information

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

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

XIX. **Notice Information**

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

Clay Riggs, PE, CFM
Assistant Director of Public Works
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6411 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:

Ellen McDonald, PhD., P.E.
Principal
Plummer Associates, Inc.
1320 S. University Drive, Suite 300
Fort Worth, Texas 76107
817-806-1750 Telephone

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

XX. **Applicable Law**

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

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

XXI.

Non-Discrimination

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

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

XXII.

Arbitration

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

XXIII.

No Waiver of Governmental Immunity

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

XXIV.

Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page is left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Plummer Associates, Inc.

By: Ellen McDonald
Name:
Title:

Date Signed: September 14, 2020

State of Texas §
 §
County of Tarrant §

This instrument was acknowledged before me on the 14th day of September, 20 20, by Ellen McDonald in her capacity as Principal of Plummer Associates, Inc., a Texas Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same on behalf of and as the act of Authorized Representative.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 14th DAY OF Sept., 20 20.

Cylena Eason
Notary Public, State of Texas

My Commission Expires:

7/5/2021

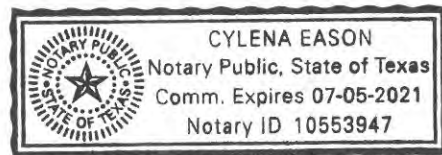


EXHIBIT A**TOWN OF FLOWER MOUND
WASTEWATER TREATMENT PLANT
TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM
PERMIT RENEWAL APPLICATION****SCOPE OF WORK**

The Town of Flower Mound (CLIENT) has requested Plummer Associates, Inc., (ENGINEER) to assist in securing Texas Pollutant Discharge Elimination System (TPDES) permit renewal for the Wastewater Treatment Facility (WWTF) Permit No. WQ0011321001. The existing TPDES permit expires on September 1, 2021. In accordance with requirements of the Texas Commission on Environmental Quality (TCEQ), the application for renewal of the permit must be submitted a minimum of 180 days prior to its expiration date. Therefore, the permit application must be submitted to the TCEQ prior to March 5, 2021.

This Scope of Work provides for assisting CLIENT with this project. Included are descriptions of BASIC SERVICES and ADDITIONAL SERVICES. BASIC SERVICES are those services known to be required for the renewal of the TPDES permit. A specific scope and budget for BASIC SERVICES is provided. BASIC SERVICES include preparing the application for renewal without changes for the TPDES permit. A cost breakdown for the proposed services has been provided as Exhibit B. ENGINEER will not conduct ADDITIONAL SERVICES unless such services are authorized by CLIENT.

BASIC SERVICES

The BASIC SERVICES proposed for this Scope of Work assume that a permit renewal without changes is desired by CLIENT. BASIC SERVICES consist of two tasks. Pursuant to these tasks, ENGINEER will assist CLIENT with the preparation and processing of a TPDES permit application. ENGINEER will assist CLIENT with the review of draft TPDES permits. The BASIC SERVICES tasks are as follows:

Task I – Prepare Permit Renewal Application

ENGINEER will prepare application to renew the TPDES permits for the WWTF. Application forms will be completed and appropriate attachments to the application forms will be prepared. Copies of the draft application will be provided to CLIENT for review. Copies of the final application will be prepared for submittal to the TCEQ.

A. Gather Appropriate Information

ENGINEER will review the information available from the previous permit application. ENGINEER will provide CLIENT with a list of additional information needs and the appropriate format for presenting additional information. Additional information includes, but is not limited to, laboratory analytical data for effluent sampling, sludge analyses, and results of whole effluent toxicity testing. ENGINEER will coordinate with CLIENT regarding laboratory testing for pollutants and provide a

detailed list of effluent sampling requirements for the application. CLIENT will be responsible for coordinating with a laboratory of its choice. Effluent sampling costs will be the responsibility of CLIENT

B. Prepare Permit Application Documents

ENGINEER will complete the application forms, assemble the necessary worksheets, and prepare appropriate attachments. Application information includes, but is not be limited to, description of the existing facility, listing of the major treatment units with dimensions of each unit, process flow diagram(s), facility site plan, location maps(s), and results of pollutant analyses of effluent.

ENGINEER will provide draft copies of all permit application documents for CLIENT review. Comments from CLIENT will be appropriately incorporated into the application. ENGINEER will coordinate closely with CLIENT to make sure the permit application will be complete at the time of submittal. A total of seven copies of the final application document will be prepared for the permit; two copies are for CLIENT's files, one copy is for public display, and four copies will be submitted to the TCEQ. An application fee will be due to the TCEQ at the time the application is submitted. The application fee will be the responsibility of CLIENT.

C. Respond to TCEQ During Administrative Review Process

ENGINEER will assist CLIENT in responding to TCEQ requests for additional information during the administrative review until TCEQ declares the application administratively complete. CLIENT will ensure the permit application is available for public viewing. ENGINEER will provide hard copies of the permit application to CLIENT for this purpose. CLIENT will be responsible for placing a copy of the permit application in a suitable location for public viewing.

D. Publication of Notice of Application

A public notice of the administratively complete application will be required by the TCEQ. Bilingual notification requirements may require additional publication in Spanish. ENGINEER will assist CLIENT with publication of notices, including working with the appropriate newspapers to ensure notices are correct and published as required. ENGINEER will also obtain the required proof of publication and will submit necessary documentation to the TCEQ. The cost of publication, payable to the newspapers, will be the responsibility of CLIENT.

Task II – Assist During Permit Application Processing and Review Until Permit Issuance

Pursuant to this task, ENGINEER will provide services related to technical and regulatory review of the draft TPDES permit prepared by the TCEQ. Services include the following:

A. Assist with Responding to Review Comments

ENGINEER will assist CLIENT in response to TCEQ requests for additional information during the technical review of the permit application. ENGINEER also will assist CLIENT in tracking the application through the permitting process. TCEQ may request minor changes to the application during the technical review process. ENGINEER will provide CLIENT with necessary changes to ensure the public viewing copy is up to date.

B. Review and Comment on Draft TPDES Permit

ENGINEER will review the initial draft permit and assist CLIENT with a written response, including requests for changes to the permit. ENGINEER will review TCEQ's revised draft permit for consistency with any requested changes. ENGINEER may also communicate via telephone with TCEQ permitting staff during this process. For purposes of this scope, it is assumed that the revised draft of the permit will be acceptable to the CLIENT and further rounds of draft permit review will not be necessary. Review and comment on additional drafts of the permit will be considered Additional Services.

C. Publication of Notice Preliminary Decision

A public notice of the TCEQ's decision to renew the permit will be required by the TCEQ. Bilingual notification requirements may require additional publication in Spanish. ENGINEER will assist CLIENT with publication of notices, including working with the appropriate newspapers to ensure notices are correct and published as required. ENGINEER will also obtain the required proof of publication and will submit necessary documentation to the TCEQ. The cost of publication, payable to the newspapers, will be the responsibility of CLIENT.

D. Review Final TPDES Permit

ENGINEER will review the final issued permit to verify that the permit reflects the conditions that CLIENT accepted during the draft permit process. ENGINEER will contact TCEQ to make necessary corrections, if necessary.

PROJECT MANAGEMENT

ENGINEER will provide necessary project management services associated with the services described in Tasks I and II.

SCHEDULE

The project schedule for development of the application is driven primarily by the permit application due date, which is March 5, 2021. Based on these requirements, the following anticipated application schedule is provided:

Milestone	Target Date
Project Kick-off	November 1, 2020
Request for Information to CLIENT	December 15, 2020
CLIENT response to RFI	January 15, 2020
Draft application to CLIENT	February 5, 2020
Final Application Complete	March 1, 2020
Submittal of Application to TCEQ	March 5, 2021

Once the application is submitted to the TCEQ, the schedule is driven by TCEQ's own internal target for completing a permit renewal process. The TCEQ's schedule for a renewal is generally around 10 months but depends on the agency's available resources for processing. ENGINEER will provide additional information on the processing schedule as it becomes available.

ADDITIONAL SERVICES

ADDITIONAL SERVICES are tasks not currently a part of the BASIC SERVICES for this project, but which CLIENT may request as ADDITIONAL SERVICES. Following are examples of activities that might be performed as ADDITIONAL SERVICES:

- Prepare for and attend additional meetings to discuss the project, beyond that provided for in BASIC SERVICES.
- Prepare application forms and documents required for application requesting changes or amendments to the TPDES permits.
- Prepare detailed review of new or more stringent permit limits, such as dissolved salts permit limits, or lower limits for conventional pollutants.
- Review of the TCEQ water quality discharge model.
- Conduct field reconnaissance to collect data or information not provided by CLIENT.
- Prepare to serve or serve as an expert witness on behalf of CLIENT.
- Provide technical or procedural support if proposed permits are protested.

ENGINEER will perform ADDITIONAL SERVICES only as authorized to do so by CLIENT.

EXHIBIT B**Compensation****1. Basic Services of ENGINEER**

CLIENT shall pay ENGINEER for Basic Services of ENGINEER rendered for "Scope of Services" as provided in this agreement. Compensation for the Tasks I and II shall be paid on a lump sum basis. ENGINEER will provide monthly invoices with estimates of the percent completion of the project as of the close of the month prior. The budget for BASIC SERVICES does not include the application fee, laboratory costs, and public notice publication costs, CLIENT will pay application fees, laboratory costs, and public notice costs.

Project Budget	
Task I – Application Production Through First Notice	\$ 18,500.00
Task II – Assist During Permit Application Processing and Review Until Permit Issuance	\$ 5,000.00
Project Management	\$ 1,500.00
Total for Basic Services	<u>\$ 25,000.00</u>



TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

ITEM: **Consider approval of an ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and making appropriations for each fund and department; ratify property tax revenue increase reflected in the budget.**

BACKGROUND INFORMATION: The FY 2020-2021 Proposed Budget is hereby presented for adoption in fund total. Section 9.08 of the Town's Charter states that, "The budget shall be adopted by the favorable vote of three (3) of the members of the Town Council."

The Flower Mound Town Council and staff held the FY 2020-2021 Budget Work Session on August 13, 2020, in the Council Chambers. A public hearing for the Proposed Budget was also held on August 17, 2020. The proposed budget for FY 2020-2021 includes a five-year Capital Improvement Program (CIP).

The proposed budget for the General Fund includes \$70,111,503 in revenues and \$69,015,031 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages. Agencies that provide community support for the Town of Flower Mound, and meet certain criteria are eligible to request community support funding. The proposed budget includes \$172,543 for community support funding. Five organizations that provide a quantifiable benefit to the Town are incorporated into Town department budgets for \$72,543. Cultural Arts organizations are funded at \$22,000 and \$78,000 of community support funding is for Social Services/Volunteerism organizations.

The proposed budget for the Utility Fund includes \$49,866,220 in revenues, and \$49,807,151 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages.

The proposed budget for the Stormwater Utility Fund includes \$1,768,260 in revenues, and \$1,798,946 in expenditures, which includes the baseline budget, non-discretionary requests, and proposed decision packages.

The Town utilizes three Internal Service Funds. The three funds are the Health Insurance/Flex Fund, the Vehicle and Equipment Replacement Fund and the Technology Replacement Fund. The Health Insurance/Flex Fund is supported by internal charges and employee contributions. The proposed budget for the Health Insurance/Flex Fund includes \$10,706,000 in revenues, and \$10,935,100 in expenditures. The Vehicle and Equipment Replacement Fund and the Technology Replacement Fund are supported by internal transfers. The Vehicle and Equipment Replacement Fund includes \$2,511,209 in revenues, and \$2,150,000 in expenditures. The Technology Replacement Fund includes \$484,510 in revenues, and \$426,755 in expenditures.

The first year of the five-year General Government Capital Improvement Program (CIP) addresses needs pertaining to streets, signals, facilities and parks, and totals \$10,095,000. The largest portion of the CIP for FY 2020-2021 is dedicated to street and signal projects for \$6,095,000 and \$4,000,000 for park projects. No new debt will be issued for these projects. These projects will be supported by dedicated sales tax, park development funds, grants and interlocal agreements, impact fees, TIRZ revenue and cash transfers from the General Fund.

The five-year CIP in the Utility Fund is approximately \$21,260,000 for FY 2020-2021, which includes water and wastewater lines and stormwater projects. These projects will be supported by \$17,035,500 in additional debt.

A complete listing of Funds approved is included in the Fiscal Impact section.

Since the budget will require raising more revenue from property taxes than in the previous year, Section 102.007(c), Local Government Code, requires a separate vote of the governing body (in addition to and separate from the vote to adopt the budget) to ratify the property tax revenue increase reflected in the budget. This separate motion is set out below under the recommendation.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Expenditure:

General Fund	\$ 69,015,031
Utility Fund	49,807,151
Stormwater Utility Fund	1,798,946
Health insurance/Flex Fund	10,935,100
Vehicle and Equipment Replacement Fund	2,150,000
Technology Replacement Fund	426,755
Library Development Fund	20,000
TIRZ Fund	13,776,353
Park Development Fund	2,693,556
Tree Preservation Fund	314,415
Public Education Government (PEG) Fund	673,225
Street Maintenance Sales Tax Fund	7,893,461
4B Parks Sales Tax Fund	5,333,046
Park & Recreation Special Activities Fund	322,360
Flower Mound Log Cabin	-
Police Seizure Fund	-
IRS Equitable Sharing Fund	347,807
Chapter 59 Seizures Fund	55,000
Animal Care Fund	31,500
CDBG-HUD Grant Fund	211,786
Neighborhood Improvement Fund	120,000
Hotel Occupancy Tax Fund	340,000
Municipal Court Security Fund	36,100
Municipal Court Technology Fund	34,515
Municipal Court Jury Fund	255
Municipal Court Truancy Prevention	12,670
General Debt Service Fund	12,309,695
Total Expenditures	\$ 178,658,727

Proposed Revenue:

General Fund	\$ 70,111,503
Utility Fund	49,866,220
Stormwater Utility Fund	1,768,260
Health insurance/Flex Fund	10,706,000
Vehicle and Equipment Replacement Fund	2,511,209
Technology Replacement Fund	484,510
Library Development Fund	15,250
TIRZ Fund	6,555,965
Park Development Fund	50,000
Tree Preservation Fund	10,000
Public Education Government (PEG) Fund	166,500
Street Maintenance Sales Tax Fund	3,417,000
4B Parks Sales Tax Fund	3,392,000
Park & Recreation Special Activities Fund	280,750
Flower Mound Log Cabin	4,000
Police Seizure Fund	100
IRS Equitable Sharing Fund	2,000
Chapter 59 Seizures Fund	-
Animal Care Fund	10,300
CDBG-HUD Grant Fund	211,786
Neighborhood Improvement Fund	60,900
Hotel Occupancy Tax Fund	370,500
Municipal Court Security Fund	20,575
Municipal Court Technology Fund	23,750
Municipal Court Jury Fund	340
Municipal Court Truancy Prevention	16,900
General Debt Service Fund	12,726,365
Total Resources	\$ 162,782,683

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

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

ATTACHMENTS:

1. Ordinance

DRAFT MOTION:

Note: Budget adoption must include two motions- the second motion is to ratify the property tax increase reflected in the budget.

1. Move to approve an ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and making appropriations for each fund and department.
2. Move to ratify the property tax revenue increase reflected in the FY 2020-2021 budget.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING AND APPROVING THE BUDGET FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, AND MAKING APPROPRIATIONS FOR EACH FUND AND DEPARTMENT; PROVIDING FOR THE LEVYING AND COLLECTION OF A SUFFICIENT TAX TO PAY THE INTEREST ON SINKING FUND AND OTHER OBLIGATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Manager has caused to be filed with the Town Secretary a budget to cover all proposed expenditures of the government of the Town for the fiscal year beginning October 1, 2020, and ending September 30, 2021; and,

WHEREAS, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and,

WHEREAS, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and,

WHEREAS, notice of public hearing on the proposed Annual Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and,

WHEREAS, one (1) such public hearing was held on August 17, 2020, prior approval of which date being hereby ratified and confirmed by the Town Council, and all those wishing to speak on the budget were heard; and,

WHEREAS, the Town Council has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached in fund total hereto is in the best interest of the Town of Flower Mound; and,

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

SECTION 1

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

SECTION 2

The budget attached in fund total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2020, and ending September 30, 2021, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other

ORDINANCE NO. _____**PAGE 2**

expenditures as proposed in the attached budget. The budget includes a contingent appropriation in the General Fund of \$6,901,503 (i.e., 10 percent of total expenditures) to be used in the event of unforeseen items of expenditure. Such contingent appropriations shall be under the control of the Town Manager and distributed by him, after approval of the Town Council.

SECTION 3

No expenditure of the funds of the Town shall hereafter be made except in strict compliance with said budget, except that in the case of public necessity, the Town Council shall authorize amendments to said budget such emergency expenditures to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

SECTION 4

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

SECTION 5

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

SECTION 6

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

SECTION 7

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Ordinance shall take effect immediately from and after its passage.

ORDINANCE NO. _____

PAGE 3

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 21st DAY OF SEPTEMBER, 2020.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. _____

PAGE 4

EXHIBIT A

Town of Flower Mound, Texas
FY 20-21

PROPOSED REVENUES	General Fund	General Debt Service Fund	Utility Fund	Stormwater Utility Fund	Internal Service Funds
Property Taxes	\$ 38,409,239	\$ 9,787,190	\$ -	\$ -	\$ -
Utility Franchise Fees	5,790,491	-	-	-	-
Sales Tax Collections	13,468,000	-	-	-	-
Other Taxes	249,312	-	-	-	-
Charges for Current Services	3,116,965	-	-	-	-
Licenses and Permits	2,629,375	-	-	-	-
Fines and Forfeitures	996,690	-	-	-	-
Investment Earnings	180,000	25,000	200,000	8,000	-
Intergovernmental Revenue	528,825	-	-	-	-
Interfund Transfer	2,865,960	2,914,175	-	-	-
Other Revenue	1,876,646	-	190,000	-	-
Water Sales	-	-	36,977,290	-	-
Sewer Charges	-	-	11,813,930	-	-
Stormwater Fees	-	-	-	1,525,260	-
Drainage Inspections	-	-	-	225,000	-
Meter and Connect Fees	-	-	220,000	-	-
Solid Waste Collection	-	-	135,000	-	-
Penalties-Utility Billing	-	-	330,000	10,000	-
Health Insurance Fund	-	-	-	-	10,706,000
Vehicle and Equipment Replacement Fund	-	-	-	-	2,511,209
Technology Replacement Fund	-	-	-	-	484,510
TOTAL REVENUE	\$ 70,111,503	\$ 12,726,365	\$ 49,866,220	\$ 1,768,260	\$ 13,701,719

PROPOSED EXPENDITURES	General Fund	General Debt Service Fund	Utility Fund	Stormwater Utility Fund	Internal Service Funds
Town Manager's Office	\$ 2,276,335	\$ -	\$ -	\$ -	\$ -
Legislative Services	507,083	-	-	-	-
Development Services	2,127,616	-	-	-	-
Parks & Recreation Services	8,416,848	-	-	-	-
Library Services	1,921,013	-	-	-	-
Police Services	15,932,146	-	-	-	-
Financial Services	3,791,407	-	1,777,228	-	-
Administrative Services	5,617,102	-	-	-	-
Fire & Emergency Services	15,484,160	-	-	-	-
Communications	702,573	-	-	-	-
General Fund Non-Departmental	4,360,507	-	-	-	-
Utility Fund Non-Departmental	-	-	13,896,790	-	-
Public Works	6,361,993	-	34,133,133	1,705,576	-
Environmental Services	1,516,248	-	-	93,370	-
Debt Service	-	12,309,695	-	-	-
Health Insurance Fund	-	-	-	-	10,935,100
Vehicle and Equipment Replacement Fund	-	-	-	-	2,150,000
Technology Replacement Fund	-	-	-	-	426,755
TOTAL EXPENDITURES	\$ 69,015,031	\$ 12,309,695	\$ 49,807,151	\$ 1,798,946	\$ 13,511,855
NET CHANGE	\$ 1,096,472	\$ 416,670	\$ 59,069	\$ (30,686)	\$ 189,864

2020-2021 FUND BALANCE PROJECTION	General Fund	General Debt Service Fund	Utility Fund	Stormwater Utility Fund	Internal Service Funds
Fund Balance 10/1/20	\$ 17,680,592	\$ 1,545,977	\$ 10,168,013	\$ 310,767	\$ 14,193,127
Revenue	70,111,503	12,726,365	49,866,220	1,768,260	13,701,719
Expenditure	(69,015,031)	(12,309,695)	(49,807,151)	(1,798,946)	(13,511,855)
Fund Balance 09/30/21	\$ 18,777,064	\$ 1,962,647	\$ 10,227,082	\$ 280,081	\$ 14,382,991

ORDINANCE NO. _____

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EXHIBIT A

Town of Flower Mound, Texas
FY 20-21

PROPOSED REVENUES	Library Development Fund	TIRZ Fund	Park Development Fund	Tree Preservation Fund	Public-Education Government (PEG) Fund	Strt Maint Sales Tax Fund
Taxes	\$ -	\$ 6,430,965	\$ -	\$ -	\$ 165,000	\$ 3,367,000
Licenses and Permits	-	-	-	-	-	-
Intergovernmental Revenue	-	-	-	-	-	-
Charges for Services	-	-	-	-	-	-
Fines and Forfeitures	-	-	-	-	-	-
Interest Earnings	250	125,000	50,000	10,000	1,500	50,000
Interfund Transfer	-	-	-	-	-	-
Other Revenue	15,000	-	-	-	-	-
TOTAL REVENUE	\$ 15,250	\$ 6,555,965	\$ 50,000	\$ 10,000	\$ 166,500	\$ 3,417,000

PROPOSED EXPENDITURES	Library Development Fund	TIRZ Fund	Park Development Fund	Tree Preservation Fund	Public-Education Government (PEG) Fund	Strt Maint Sales Tax Fund
Town Manager's Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legislative Services	-	-	-	-	-	-
Development Services	-	-	-	-	-	-
Parks & Recreation Services	-	-	2,693,556	54,335	-	-
Library Services	20,000	-	-	-	-	-
Police Services	-	-	-	-	-	-
Financial Services	-	13,776,353	-	-	-	-
Administrative Services	-	-	-	-	673,225	-
Fire & Emergency Services	-	-	-	-	-	-
Communications	-	-	-	-	-	-
Public Works	-	-	-	-	-	7,893,461
Environmental Services	-	-	-	260,080	-	-
TOTAL EXPENDITURES	\$ 20,000	\$ 13,776,353	\$ 2,693,556	\$ 314,415	\$ 673,225	\$ 7,893,461

NET CHANGE	\$ (4,750)	\$ (7,220,388)	\$ (2,643,556)	\$ (304,415)	\$ (506,725)	\$ (4,476,461)
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2020-2021 FUND BALANCE PROJECTION	Library Development Fund	TIRZ Fund	Park Development Fund	Tree Preservation Fund	Public-Education Government (PEG) Fund	Strt Maint Sales Tax Fund
Fund Balance 10/1/20	\$ 25,313	\$ 7,220,388	\$ 2,658,556	\$ 1,804,646	\$ 506,725	\$ 4,476,461
Revenue	15,250	6,555,965	50,000	10,000	166,500	3,417,000
Expenditure	(20,000)	(13,776,353)	(2,693,556)	(314,415)	(673,225)	(7,893,461)
Fund Balance 09/30/21	\$ 20,563	\$ -	\$ 15,000	\$ 1,500,231	\$ -	\$ -

ORDINANCE NO. _____

PAGE 6

EXHIBIT A

Town of Flower Mound, Texas
FY 20-21

PROPOSED REVENUES	4B Parks Sales Tax Fund	Park & Rec Spc Activities Fund	Flower Mound Log Cabin Fund	Police Seizure Fund	IRS Equitable Sharing Fund	Chapter 59 Seizure Fund	Animal Care Fund
Taxes	\$ 3,367,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Licenses and Permits	-	-	-	-	-	-	-
Intergovernmental Revenue	-	-	-	-	-	-	-
Charges for Services	-	280,000	-	-	-	-	-
Fines and Forfeitures	-	-	-	-	-	-	-
Interest Earnings	25,000	750	4,000	100	2,000	-	300
Interfund Transfer	-	-	-	-	-	-	-
Other Revenue	-	-	-	-	-	-	10,000
TOTAL REVENUE	\$ 3,392,000	\$ 280,750	\$ 4,000	\$ 100	\$ 2,000	\$ -	\$ 10,300
PROPOSED EXPENDITURES	4B Parks Sales Tax Fund	Park & Rec Spc Activities Fund	Flower Mound Log Cabin Fund	Police Seizure Fund	IRS Equitable Sharing Fund	Chapter 59 Seizure Fund	Animal Care Fund
Town Manager's Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legislative Services	-	-	-	-	-	-	-
Development Services	-	-	-	-	-	-	-
Parks & Recreation Services	5,333,046	322,360	-	-	-	-	-
Library Services	-	-	-	-	-	-	-
Police Services	-	-	-	-	347,807	55,000	31,500
Financial Services	-	-	-	-	-	-	-
Administrative Services	-	-	-	-	-	-	-
Fire & Emergency Services	-	-	-	-	-	-	-
Communications	-	-	-	-	-	-	-
Public Works	-	-	-	-	-	-	-
Environmental Services	-	-	-	-	-	-	-
TOTAL EXPENDITURES	\$ 5,333,046	\$ 322,360	\$ -	\$ -	\$ 347,807	\$ 55,000	\$ 31,500
NET CHANGE	\$ (1,941,046)	\$ (41,610)	\$ 4,000	\$ 100	\$ (345,807)	\$ (55,000)	\$ (21,200)
2020-2021 FUND BALANCE PROJECTION	4B Parks Sales Tax Fund	Park & Rec Spc Activities Fund	Flower Mound Log Cabin Fund	Police Seizure Fund	IRS Equitable Sharing Fund	Chapter 59 Seizure Fund	Animal Care Fund
Fund Balance 10/1/20	\$ 1,941,046	\$ 119,997	\$ 82,530	\$ 11,521	\$ 345,807	\$ 74,045	\$ 75,387
Revenue	3,392,000	280,750	4,000	100	2,000	-	10,300
Expenditure	(5,333,046)	(322,360)	-	-	(347,807)	(55,000)	(31,500)
Fund Balance 09/30/21	\$ -	\$ 78,387	\$ 86,530	\$ 11,621	\$ -	\$ 19,045	\$ 54,187

ORDINANCE NO. _____

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EXHIBIT A

Town of Flower Mound, Texas
FY 20-21

PROPOSED REVENUES	CDBG-HUD Grant Fund	Neighborhood Improvement Fund	Hotel Occupancy Tax Fund	Muni Court Security Fund	Muni Court Technology Fund	Muni Court Jury Fund	Muni Court Truancy Prevention Fund
Taxes	\$ -	\$ -	\$ 370,000	\$ -	\$ -	\$ -	\$ -
Licenses and Permits	-	-	-	-	-	-	-
Intergovernmental Revenue	211,786	-	-	-	-	-	-
Charges for Services	-	60,200	-	-	-	-	-
Fines and Forfeitures	-	-	-	20,125	23,300	340	16,900
Interest Earnings	-	700	500	450	450	-	-
Interfund Transfer	-	-	-	-	-	-	-
Other Revenue	-	-	-	-	-	-	-
TOTAL REVENUE	\$ 211,786	\$ 60,900	\$ 370,500	\$ 20,575	\$ 23,750	\$ 340	\$ 16,900
PROPOSED EXPENDITURES	CDBG-HUD Grant Fund	Neighborhood Improvement Fund	Hotel Occupancy Tax Fund	Muni Court Security Fund	Muni Court Technology Fund	Muni Court Jury Fund	Muni Court Truancy Prevention Fund
Town Manager's Office	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legislative Services	-	-	-	-	-	-	-
Development Services	-	-	-	-	-	-	-
Parks & Recreation Services	-	-	-	-	-	-	-
Library Services	-	-	-	-	-	-	-
Police Services	-	-	-	-	-	-	-
Financial Services	-	-	340,000	36,100	34,515	255	12,670
Administrative Services	-	-	-	-	-	-	-
Fire & Emergency Services	-	-	-	-	-	-	-
Communications	211,786	-	-	-	-	-	-
Public Works	-	100,000	-	-	-	-	-
Environmental Services	-	20,000	-	-	-	-	-
TOTAL EXPENDITURES	\$ 211,786	\$ 120,000	\$ 340,000	\$ 36,100	\$ 34,515	\$ 255	\$ 12,670
NET CHANGE	\$ -	\$ (59,100)	\$ 30,500	\$ (15,525)	\$ (10,765)	\$ 85	\$ 4,230
2020-2021 FUND BALANCE PROJECTION	CDBG-HUD Grant Fund	Neighborhood Improvement Fund	Hotel Occupancy Tax Fund	Muni Court Security Fund	Muni Court Technology Fund	Muni Court Jury Fund	Muni Court Truancy Prevention Fund
Fund Balance 10/1/20	\$ -	\$ 123,947	\$ 52,239	\$ 84,839	\$ 85,527	\$ 255	\$ 12,670
Revenue	211,786	60,900	370,500	20,575	23,750	340	16,900
Expenditure	(211,786)	(120,000)	(340,000)	(36,100)	(34,515)	(255)	(12,670)
Fund Balance 09/30/21	\$ -	\$ 64,847	\$ 82,739	\$ 69,314	\$ 74,762	\$ 340	\$ 16,900

CAPITAL IMPROVEMENT PROGRAM

The first year of the five-year General Government Capital Improvement Program (CIP) addresses needs pertaining to streets, signals, facilities and parks, and totals \$10,095,000. The largest portion of the CIP for FY 2020-2021 is dedicated to street and signal projects for \$6,095,000 and \$4,000,000 for park projects. No new debt will be issued for these projects. These projects will be supported by dedicated sales tax, park development funds, grants and interlocal agreements, impact fees, TIRZ revenue and cash transfers from the General Fund.

The five-year CIP in the Utility Fund is approximately \$21,260,000 for FY 2020-2021, which includes water and wastewater lines and stormwater projects. These projects will be supported by \$17,035,500 in additional debt.

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TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.

BACKGROUND INFORMATION: Section 344.204 of the Local Government Code requires the budget to be adopted by the Fire Control, Prevention, and Emergency Medical Services District (Fire District), Board of Directors.

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

The Flower Mound Town Council acting as the Board of Directors for the Fire District and staff held the FY 2020-2021 Budget Work Session on August 13, 2020, in the Council Chambers. A public hearing for the Fire District's Proposed Budget was held on August 17, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Revenue:	Account Number(s):
\$3,333,330	Fund 319-Fire District
Proposed Expenditure:	Account Number(s):
\$3,184,103	Fund 319-Fire District

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

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

ATTACHMENTS:

1. Resolution

DRAFT MOTION: The Town Council, acting as the Board of Directors for the Fire Control, Prevention, and Emergency Medical Services District, move to approve a resolution adopting the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council acting as the Board of Directors of the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District (Fire District) has adopted procedures for adopting a budget that are different from the procedures outlined in Texas Local Government Code Section 344.204, as permitted by such section; and

WHEREAS, the Town Council acting as the Board of Directors of the Fire District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Fire District for the fiscal year beginning October 1, 2020, and ending September 30, 2021; and

WHEREAS, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and

WHEREAS, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and

WHEREAS, notice of public hearing on the proposed Fire District Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and

WHEREAS, one (1) such public hearing was held on August 17, 2020, prior approval of such date being hereby ratified and confirmed by the Town Council acting as the Board of Directors for the Fire District, and all those wishing to speak on the budget were heard; and

WHEREAS, the Town Council acting as the Board of Directors for the Fire District has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached is in the best interest of the Town of Flower Mound Fire District.

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

RESOLUTION NO. _____**PAGE 2****SECTION 1**

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

SECTION 2

The budget attached in total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2020, and ending September 30, 2021, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget.

SECTION 3

No expenditure of the funds of the Fire District shall hereafter be made except in strict compliance with said budget except that, in the case of public necessity, the Town Council acting as the Board of Directors of the Fire District shall authorize amendments to said budget for emergency expenditures necessary to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

SECTION 4

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

SECTION 5

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

SECTION 6

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Resolution shall take effect immediately from and after its passage.

RESOLUTION NO. _____

PAGE 3

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 21st DAY OF SEPTEMBER, 2020.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____

PAGE 4

EXHIBIT A

**Town of Flower Mound, Texas
FY 20-21**

**FIRE CONTROL, PREVENTION, AND EMERGENCY
MEDICAL SERVICES DISTRICT**

PROPOSED REVENUES	Fire District Sales Tax Fund
Taxes	\$ 3,333,330
Licenses and Permits	-
Intergovernmental Revenue	-
Charges for Services	-
Fines and Forfeitures	-
Interest Earnings	-
Interfund Transfer	-
Other Revenue	-
TOTAL REVENUE	\$ 3,333,330

PROPOSED EXPENDITURES	Fire District Sales Tax Fund
Town Manager's Office	\$ -
Legislative Services	-
Development Services	-
Community Services	-
Police Services	-
Financial Services	-
Fire & Emergency Services	3,184,103
Community Relations Services	-
Infrastructure Services	-
TOTAL EXPENDITURES	\$ 3,184,103
NET CHANGE	\$ 149,227

2020-2021 FUND BALANCE PROJECTION	Fire District Sales Tax Fund
Fund Balance 10/1/20	\$ 222,050
Revenue	3,333,330
Expenditure	(3,184,103)
Fund Balance 09/30/21	\$ 371,277



TOWN COUNCIL AGENDA ITEM NO. 17

REGULAR ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

ITEM: Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.

BACKGROUND INFORMATION: Section 363.204 of the Local Government Code requires the budget to be adopted by the Crime Control and Prevention District (Crime District), Board of Directors.

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

The Flower Mound Town Council acting as the Board of Directors for the Crime District and staff held the FY 2020-2021 Budget Work Session on August 13, 2020, in the Council Chambers. A public hearing for the Crime District's Proposed Budget was held on August 17, 2020.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT:

Proposed Revenue:	Account Number(s):
\$3,355,165	Fund 318-Crime District
Proposed Expenditure:	Account Number(s):
\$3,208,899	Fund 318-Crime District

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

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

ATTACHMENTS:

1. Resolution

DRAFT MOTION: The Town Council, acting as the Board of Directors for the Crime Control and Prevention District, move to approve a resolution adopting the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, ADOPTING AND APPROVING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

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

WHEREAS, the Town Council acting as the Board of Directors of the Crime District caused to be filed with the Town Secretary, in accordance with the procedures adopted therefore, a budget to cover all proposed expenditures of the Crime District for the fiscal year beginning October 1, 2020, and ending September 30, 2021; and

WHEREAS, said budget shows, as definitely as possible, each of the various projects for which appropriations are made in the budget and the estimated amount of money carried in the budget for each such project; and

WHEREAS, said budget has been filed with the Town Secretary and has been available for inspection by any taxpayer; and

WHEREAS, notice of public hearing on the proposed Crime District Budget, stating the date, time, place, and subject matter of said public hearing was given as required by the laws of the State of Texas; and

WHEREAS, one (1) such public hearing was held on August 17, 2020, prior approval of such date being hereby ratified and confirmed by the Town Council acting as the Board of Directors for the Crime District, and all those wishing to speak on the budget were heard; and

WHEREAS, the Town Council acting as the Board of Directors for the Crime District has studied said budget and listened to the comments of the taxpayers at the public hearing held, and therefore has determined that the budget attached is in the best interest of the Crime District.

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

RESOLUTION NO. _____**PAGE 2****SECTION 1**

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

SECTION 2

The budget attached in total hereto as Exhibit "A", and incorporated herein for all purposes, is adopted for the fiscal year beginning October 1, 2020, and ending September 30, 2021, and there is hereby appropriated from the funds indicated and for such purposes, respectively, such sums of money for such projects, operations, activities, purchases, and other expenditures as proposed in the attached budget.

SECTION 3

No expenditure of the funds of the Crime District shall hereafter be made except in strict compliance with said budget except that, in the case of public necessity, the Town Council acting as the Board of Directors of the Crime District shall authorize amendments to said budget for emergency expenditures necessary to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget.

SECTION 4

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

SECTION 5

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

SECTION 6

The necessity of adopting and approving a budget for the next fiscal year as required by the laws of the State of Texas requires that this Resolution shall take effect immediately from and after its passage.

RESOLUTION NO. _____

PAGE 3

**DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE
TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 21st
DAY OF SEPTEMBER, 2020.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

RESOLUTION NO. _____**PAGE 4****EXHIBIT A****Town of Flower Mound, Texas
FY 20-21****CRIME CONTROL AND PREVENTION DISTRICT**

PROPOSED REVENUES	Crime District Sales Tax Fund
Taxes	\$ 3,350,165
Licenses and Permits	-
Intergovernmental Revenue	-
Charges for Services	-
Fines and Forfeitures	-
Interest Earnings	5,000
Interfund Transfer	-
Other Revenue	-
TOTAL REVENUE	\$ 3,355,165

PROPOSED EXPENDITURES	Crime District Sales Tax Fund
Town Manager's Office	\$ -
Legislative Services	-
Development Services	-
Community Services	-
Police Services	3,208,899
Financial Services	-
Fire & Emergency Services	-
Community Relations Services	-
Infrastructure Services	-
TOTAL EXPENDITURES	\$ 3,208,899

NET CHANGE	\$ 146,266
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2020-2021 FUND BALANCE PROJECTION	Crime District Sales Tax Fund
Fund Balance 10/1/20	\$ 1,283,298
Revenue	3,355,165
Expenditure	(3,208,899)
Fund Balance 09/30/21	\$ 1,429,564



TOWN COUNCIL AGENDA ITEM NO. 18

REGULAR ITEM

DATE: September 21, 2020

FROM: Kay Wilkinson, Budget Officer

ITEM: **Public Hearing to consider approval of an ordinance adopting the 2020 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.436500 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2020.**

BACKGROUND INFORMATION: Chapter 26 of the Property Tax Code requires municipalities to comply with truth-in-taxation laws in adopting their tax rates. The laws are designed to make taxpayers aware of tax rate proposals and to allow taxpayers, in certain cases, to limit a tax increase. The Town is required by the Property Tax Code to hold a public hearing and publish a notice in the newspaper and on TV and web site before adopting a tax rate. During the public hearing, taxpayers will be given the opportunity to express their views about the rate as it is proposed.

The no-new-revenue tax rate enables the public to evaluate the relationship between taxes for the current year and taxes that a proposed tax rate would produce if applied to the same properties taxed in both years.

The voter-approval rate calculation is split into two separate components: an operating and maintenance rate and a debt rate. The voter-approval rate calculation allows municipalities to raise 103.5 percent of the operating and maintenance money raised in the prior year, plus the necessary debt rate. The Town's voter-approval rate for FY 2020-2021 is \$0.451415.

The Denton Central Appraisal District and the Tarrant Appraisal District provide the final appraisal rolls during the budget process that are utilized by the Town in the calculation of the Town's property tax revenues. The Chief Appraisers certify the appraisal rolls that allow the Town to calculate and submit the no-new-revenue and voter-approval tax rates and estimate revenues. On August 3, 2020, the Town Council approved the certified appraisal roll. The approval of the tax rolls is an annual process required by Section 26.09(e) of the Texas Tax Code.

This ordinance apportions the tax levy for the purpose of defraying the current expenses of the General Fund (i.e., \$0.347797) and for creating an interest and sinking fund for outstanding bonded indebtedness not otherwise provided for (i.e., \$0.088703); it also provides for the collection and payment of taxes, and assesses penalties and interest for the nonpayment of taxes within the time set.

An ordinance setting a property tax rate that exceeds the no-new-revenue tax rate (as with this ordinance) requires the affirmative vote of at least 60% of the members of the governing body.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$(52,093,557) (based on 9/8/2020 estimated certified roll at collection rate of 99.5%)

Proposed Expenditure/(Revenue):	Account Number(s):
\$(38,100,283)	100-4105 Property Taxes
(9,717,190)	110-4105 Property Taxes
(4,276,084)	308-4105 Property Taxes

Finance Review by: Debra Wallace, Interim Town Manager/CFO 

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

ATTACHMENTS:

1. Ordinance

DRAFT MOTION: “I move that the property tax rate be increased by the adoption of a tax rate of \$0.436500 per \$100 of assessed value, which is effectively a 2.34 percent increase in the tax rate; and move to approve an ordinance adopting the 2020 tax rolls and fixing and levying municipal ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and for each fiscal year thereafter until otherwise provided, at the rate of \$0.436500 per \$100 assessed valuation on all taxable property within the corporate limits of the Town of Flower Mound as of January 1, 2020.”

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, FIXING AND LEVYING MUNICIPAL AD VALOREM TAXES FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2020, AND ENDING ON SEPTEMBER 30, 2021, AND FOR EACH FISCAL YEAR THEREAFTER UNTIL OTHERWISE PROVIDED, AT A RATE OF \$0.4365 PER ONE HUNDRED DOLLARS (\$100) ASSESSED VALUATION ON ALL TAXABLE PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN AS OF JANUARY 1, 2020; DIRECTING THE ASSESSMENT THEREOF TO PROVIDE REVENUES FOR THE PAYMENT OF CURRENT EXPENSES AND TO PROVIDE AN INTEREST AND SINKING FUND ON ALL OUTSTANDING DEBTS OF THE TOWN; PROVIDING FOR DUE AND DELINQUENT DATES TOGETHER WITH PENALTIES AND INTEREST; PROVIDING FOR APPROVAL OF THE 2020 TAX ROLLS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Town Council hereby finds that the tax rate for the fiscal year beginning October 1, 2020, and ending September 30, 2021, hereinafter levied for current expenses of the Town and the general improvements of the Town and its property, must be levied to provide the revenue requirements of the budget for the ensuing year; and

WHEREAS, the Town Council has approved by a separate Ordinance adopting the budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021; and

WHEREAS, the Town Council provided notice of the no-new-revenue tax rate as required by law; and

WHEREAS, all statutory and constitutional requirements concerning the levying and assessing of ad valorem taxes have been completed in due and correct time.

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

SECTION 1

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

ORDINANCE NO. _____**PAGE 2****SECTION 2**

There be and is hereby levied and ordered to be assessed and collected for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, and for each fiscal year thereafter until otherwise provided, on all taxable property, real, personal, and mixed, situated within the corporate limits of the Town of Flower Mound, Texas, and not exempt by the Constitution of the State and valid state laws, a tax rate of \$0.4365 on each One Hundred Dollars (\$100) assessed value of taxable property, which shall be apportioned and distributed as follows:

- A. For the purpose of defraying the current expenses of the municipal government of the Town, a tax rate of \$0.347797 on each One Hundred Dollars (\$100) assessed value of all taxable property within the Town; and
- B. For the purpose of creating an interest and sinking fund to pay the interest and principal of all outstanding debt obligations of the Town, not otherwise provided for, a tax rate of \$0.088703 on each One Hundred Dollars (\$100) assessed value of all taxable property within the Town.

THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.

THE TAX RATE WILL EFFECTIVELY BE RAISED BY 2.34 PERCENT AND WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$(2.65).

SECTION 3

All ad valorem taxes shall become due and payable on October 1, 2020 and all ad valorem taxes shall become delinquent after January 31, 2021. There shall be no discount for payment of taxes prior to said January 31, 2021. If any person fails to pay said ad valorem taxes on or before January 31, 2021, the following penalties shall be payable thereon, to-wit:

During the month of February 2021, six percent	(6%)
During the month of March 2021, seven percent	(7%)
During the month of April 2021, eight percent	(8%)
During the month of May 2021, nine percent	(9%)
During the month of June 2021, ten percent	(10%)
On or after July 1, 2021, twelve percent	(12%)

ORDINANCE NO. _____**PAGE 3****SECTION 4**

Taxes shall be payable at the offices of the Denton County Tax Office. The Town shall have available all rights and remedies provided by law for enforcement of the collection of taxes levied under this Ordinance.

SECTION 5

All delinquent taxes shall bear interest at the rate of twelve percent (12%) per annum, in addition to the penalties.

SECTION 6

The Town Council hereby approves the 2020 tax rolls of the Town of Flower Mound, Texas, in the amount of \$54,456,881, based upon the certified appraisal roll and roll under protest as approved by the Appraisal Review Boards of the Denton Central Appraisal District and the Tarrant Appraisal District, to be used for the authorized collection of ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021.

SECTION 7

Pursuant to the authority granted by Section 33.07 of the Texas Tax Code, in the event that 2020 taxes and taxes for all subsequent years become delinquent on or after February 1 but not later than May 1 of the year in which they become delinquent, and in the event such delinquent taxes are referred to an attorney for collection, an additional amount of twenty percent (20%) of the total amount of tax, penalty and interest then due shall be added as collection costs to be paid by the taxpayer, for all taxes delinquent on or after July 1, 2021.

SECTION 8

Pursuant to the authority granted by Section 33.08 of the Texas Tax Code, the Town further provides that all 2020 taxes and taxes for all subsequent years that become delinquent on or after June 1 of the year in which they become delinquent shall, in order to defray the costs of collection, incur an additional 20% of the delinquent tax, penalty and interest.

SECTION 9

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

ORDINANCE NO. _____**PAGE 4****SECTION 10**

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

SECTION 11

The fact that it is necessary that this Ordinance be enacted in order to authorize the collection of ad valorem taxes for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, requires that this Ordinance shall take effect from and after its passage as the law in such cases provides.

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 21th DAY OF SEPTEMBER, 2020.

APPROVED:

Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 19

REGULAR ITEM

DATE: September 21, 2020

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0001 – Economic Development Waiver Removal), by amending Chapter 98 entitled “Zoning,” of the Town’s Code of Ordinances, as well as the SMARTGrowth Implementation Manual, to remove the option for economic development waivers of either environmental or community character SMARTGrowth requirements within the Town of Flower Mound. *(The SMARTGrowth Commission recommended approval by a vote of 8 to 0, and the Planning and Zoning Commission recommended approval by a vote of 6 to 0 at their September 14, 2020, meetings.)***

SUMMARY DATA:

- This is a Town-initiated joint effort between Planning Services and Economic Development to amend the SMARTGrowth criteria within the Town’s Land Development Regulations and SMARTGrowth Implementation Manual to remove text describing the types of projects eligible for economic development incentives and the option for economic development waivers of environmental or community character criteria.
- This effort was initiated after a development project applicant (and their attorney) claimed that the current wording within Town ordinances automatically granted them status as an economic development project, which exempted them from the need to request a slope exception.

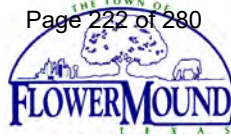
BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and draft ordinance for this item.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

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

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



PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 4
REGULAR ITEM

DATE: September 14, 2020

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0001 – Economic Development Waiver Removal), by amending Chapter 98 entitled “Zoning,” of the Town’s Code of Ordinances, as well as the SMARTGrowth Implementation Manual, to remove the option for economic development waivers of either environmental or community character SMARTGrowth requirements within the Town of Flower Mound.**

I. ITEM SUMMARY

This Town-initiated item proposes to amend the Town’s Land Development Regulations regarding SMARTGrowth requirements, as well as the referenced SMARTGrowth Implementation Manual, to remove the potential for an Economic Development Waiver of either environmental or community character standards.

This item will require final action by the Town Council, which is scheduled for September 21, 2020.

II. APPLICATION ANALYSIS

The SMARTGrowth ordinance and Implementation Manual have always included the ability for Town Council to waive environmental and community character requirements for specific development projects that met outlined criteria. However, there have been projects submitted in recent years that used this capability, or requested to use this capability (which only requires a simple majority approval), to go around processes that would have either resulted in additional scrutiny and review of environmental impacts or held the approval to a super majority standard. In one of these cases, the applicant stated that their (and their attorney’s) review of our adopted language led them to believe that they were automatically granted the economic development (ED) waiver if their project met the economic development criteria outlined in the Implementation Manual.

These concerns were discussed with the SMARTGrowth Commission at their last meeting on October 28, 2019, ([web link](#)). At that time, the Commission unanimously agreed to consider the topic at a future meeting and requested that staff look into and provide recommendations to address the concerns. The proposed updates clarify any potential confusion on the matter by eliminating both the ED criteria and the language that allows for waivers of SMARTGrowth standards. This does not, however, eliminate Council’s ability to incentivize projects as they see fit or to approve projects that have environmental impacts, using existing processes. The one additional change that is

proposed with this ordinance amendment is to create an exception that could be approved by Town Council for impacting water impoundment areas. That is the only environmental quality standard that did not offer a relief mechanism outside of the ED waiver process.

To date, there has not been an ED waiver requested or issued for community character requirements. When incompatibility issues in development projects have presented themselves based on community character, they have been addressed through master plan amendment or meritorious design exception requests. Therefore, no impact is expected from removing the potential for an ED waiver to community character criteria.

Attachment 1 and 2, the draft redline ordinance and SMARTGrowth Implementation Manual, note all of the proposed revisions.

IV. CORRESPONDENCE

The Town Code requires public notice in a newspaper of general circulation (Denton Record Chronicle). At the time this report was written, the Town had not received any correspondence regarding this item.

V. ATTACHMENTS

1. Draft Redline Ordinance
2. Draft Redline SMARTGrowth Implementation Manual

Sec. 98-33. - SMARTGrowth Implementation Manual—Amendments.

From and after the effective date of this section, the town council adopts the amendments to the SMARTGrowth Implementation Manual, ~~which amendments are attached to Ordinance No. 54-02 as exhibit 1 and incorporated herein for all purposes,~~ to assist with the implementation of the SMARTGrowth program, ~~as amended by Ordinance No. 22-03. As shown on exhibit 1, these amendments are to section A, adequate public infrastructure, and subsections 6(B) and 7(B) of the SMARTGrowth Implementation Manual.~~

...

Subdivision E. - Economic Development.

Sec. 98-140. - Economic development incentive policy.

- (a) *Eligibility; purpose.* New private capital investment (exclusive of land values) may be considered for economic development incentives by the town council, pursuant to the town's economic development incentives policy. The purpose of this criterion is to assist in meeting the goals set forth in the town's economic development and marketing plan while promoting a vigorous, diversified and regionally competitive economy, and a balanced tax base to ensure Flower Mound's long-term financial ability to respond to the service demands of both new and existing development without placing a disproportionate tax burden on homeowners. Economic development incentives may be offered ~~for the following projects,~~ in accordance with the town's economic development incentives policy.:

~~—Campus commercial projects include corporate office, office park development, hospitality and/or resort uses, private medical and health care uses, retail uses, and other business uses related to the telecommunications and bio-tech industries.~~

~~—Campus industrial projects include clean manufacturing uses related to electronic components and/or the telecommunications or bio-tech industries, logistical warehousing and distribution uses related to electronic components or other high-value products, and research and development uses.~~

~~—Retail and mixed use projects include single and multiple retail uses and mixed-use developments consisting of both office and retail uses.~~

- (b) *Application.* For nonresidential projects, depending upon the nature of the project, incentives may be applied approved at any appropriate step in the development process, as determined by the town council, in its sole discretion.

(Ord. No. 41-02, § 3.01.1(d)5.d., 7-15-2002; Ord. No. 52-07, § 3, 7-16-2007)

Secs. 98-141—98-144. - Reserved.

Subdivision F. - Environmental Quality

...

Sec. 98-148. - Water impoundment protection.

- (a) *Restrictions; purpose.* No development application or project shall be approved that proposes to eliminate, or to alter or discontinue recharge flows to, existing impoundments of water with

a surface area capacity of one-half acre or more (regardless of whether such impoundments are naturally occurring or constructed), unless an exception is granted by Town Council. All such impoundments shall be integrated into the proposed development and addressed in the development's environmental protection plan, if applicable, which shall at a minimum include such enhancements and restoration as are necessary to provide or maintain reasonable wildlife habitat, to improve the aesthetic quality in areas of shoreline transition and to stabilize shoreline areas subject to erosion. The purpose of this criterion is to protect the natural, scenic and ecological resources that are essential elements of Flower Mound's community character and that provide irreplaceable plant and wildlife habitat.

- (b) *Application*. For residential projects, applicable to applications for development plans and record plats. For nonresidential projects, applicable to applications for record plats and site plans.

(Ord. No. 41-02, § 3.01.1(d)5.e., 7-15-2002)

...

~~Sec. 98-151. —Waiver of environmental quality criteria.~~

~~It is recognized that certain projects that qualify for economic development incentives, pursuant to the town's economic development incentives policy, due to their size, location, amenities and design, may necessitate waivers from the environmental quality criteria contained in this subdivision. Any requested waiver shall be evaluated during the development process and action taken thereon by the planning and zoning commission and the town council in accordance with the purposes and objectives contained in section 98-31 of the SMARTGrowth program and the town's economic development incentives policy.~~

~~(Ord. No. 52-07, § 4, 7-16-2007)~~

Secs. 98-15~~12~~—98-159. - Reserved.

Subdivision G. - Community Character

...

~~Sec. 98-169. —Waiver of community character criteria.~~

~~It is recognized that certain projects that qualify for economic development incentives, pursuant to the town's economic development incentives policy, due to their size, location, amenities and design, may necessitate waivers from the community character criteria contained in this subdivision. Any requested waiver shall be evaluated during the development process and action taken thereon by the planning and zoning commission and the town council in accordance with the purposes and objectives contained in section 98-31 of the SMARTGrowth program and the town's economic development incentives policy.~~

~~(Ord. No. 52-07, § 5, 7-16-2007)~~

Secs. 98-1~~6970~~—98-230. - Reserved.

SMARTGrowth Implementation Manual

1. ECONOMIC DEVELOPMENT INCENTIVE POLICY

A PURPOSE: The purpose of this criterion is to assist in meeting the goals set forth in the Town's Economic Development and Marketing Plan while promoting a vigorous, diversified and regionally competitive economy, and a balanced tax base to ensure Flower Mound's long-term financial ability to respond to the service demands of both new and existing development without placing a disproportionate tax burden on homeowners.

~~**B. CRITERION: Economic Development Incentive Policy.** New private capital investment (exclusive of land values) exceeding the following schedule of taxable valuations may be considered for economic development incentives.~~

~~· **Campus Commercial** including corporate office, office park development, hospitality and/or resort uses, private medical and health care uses, retail uses, and other business uses related to the telecommunications and bio-tech industries exceeding a total valuation of \$10,000,000 for a single structure or \$15,000,000 for multiple buildings in a single related development.~~

~~· **Campus Industrial** including clean manufacturing uses related to electronic components and/or the telecommunications or bio-tech industries, logistical warehousing and distribution uses, and research and development uses exceeding a valuation of \$7,500,000 for a single structure or \$10,000,000 for multiple buildings in a single related development.~~

~~· **Retail and Mixed Use** including single and multiple retail uses and mixed-use developments consisting of both office and retail uses, with a single retail structure exceeding a valuation of \$5,000,000, multiple retail uses in a single related development exceeding \$7,500,000 or mixed-use developments including both office and retail when the cumulative value of all construction valuation exceeds \$10,000,000.~~

CB METHODOLOGY: Incentives will be considered and negotiated on a project-by-project basis commensurate with the quality and character of the development and the extent to which it contributes to the accomplishment of community character and quality of life objectives. Incentives may be considered for approval by the Town Council only after community input and public hearing. The incentives may include but are not limited to the following:

- . Permit fee waivers or reductions
- . Impact fee reductions
- . Infrastructure assistance
- . Public/private partnerships
- . Performance-based tax abatements (with give back provisions in the event of non-performance)

Approval of an incentive for any project shall be at the sole discretion of the Town Council and no project shall automatically be entitled to receive an incentive.

~~D. **EXCEPTIONS:** It is recognized that certain projects that qualify for economic development incentives, due to their size, location, amenities and design, may necessitate waivers from the environmental quality and community character SMARTGrowth Criteria contained in the SMARTGrowth Program. Consequently, an applicant may submit a request for a waiver of one or more environmental quality and/or community character SMARTGrowth Criteria. Each requested waiver shall be evaluated and action taken thereon by the Planning and Zoning Commission and the Town Council in accordance with the purposes and objectives contained in Section (a) of the SMARTGrowth Program adopted by Ordinance No. 41-02.~~

EC. APPLICATION: For nonresidential projects, depending upon the nature of the project, incentives will be applied at the appropriate step in the development process, as determined by the Town. Expedited development review shall be approved administratively.

...

4. WATER IMPOUNDMENT PROTECTION

- A. PURPOSE:** The purpose of this criterion is to protect the natural, scenic and ecological resources that are essential elements of Flower Mound's community character and that provide irreplaceable plant and wildlife habitat.
- B. CRITERION: Water Impoundment Protection.** No development application or project shall be approved that proposes to eliminate, or to alter or discontinue recharge flows to, existing impoundments of water with a surface area capacity of one-half acre or more (regardless of whether such impoundments are naturally occurring or constructed), unless an exception is granted by Town Council. All such impoundments shall be integrated into the proposed development and addressed in the development's Environmental Protection Plan, if applicable, which shall at a minimum include such enhancements and restoration as are necessary to provide or maintain reasonable wildlife habitat, to improve the aesthetic quality in areas of shoreline transition and to stabilize shoreline areas subject to erosion.
- C. METHODOLOGY:** Compliance with this criterion shall be in accordance with the applicable provisions of the Design Criteria and Construction Standards as adopted by the Town Council.
- D. APPLICATION:** For residential projects, applicable to applications for development plans and record plats. For nonresidential projects, applicable to applications for record plats and site plans.

Ordinance No. _____

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 98, "ZONING," OF THE TOWN'S CODE OF ORDINANCES, SECTION 98-33, "SMARTGROWTH IMPLEMENTATION MANUAL-AMENDMENTS," TO REMOVE REFERENCES TO OUTDATED EXHIBITS; AMENDING SECTION 98-140 "ECONOMIC DEVELOPMENT INCENTIVE POLICY," TO REMOVE REFERENCES TO PROJECT TYPES; AMENDING SECTION 93-148, "WATER IMPOUNDMENT PROTECTION," TO INCORPORATE AN EXCEPTION REQUEST; REMOVING IN ITS ENTIRETY SECTION 98-151, "WAIVER OF ENVIRONMENTAL QUALITY CRITERIA;" REMOVING IN ITS ENTIRETY SECTION 98-169, "WAIVER OF COMMUNITY CHARACTER CRITERIA;" AMENDING SMARTGROWTH ANALYSIS SECTION D, "ECONOMIC DEVELOPMENT," AND SMARTGROWTH ANALYSIS SECTION E, "ENVIRONMENTAL QUALITY," SUBSECTION 4, "WATER IMPOUNDMENT PROTECTION," AS SHOWN IN EXHIBIT A; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the Town Council of the Town of Flower Mound previously adopted Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended, establishing provisions for the SMARTGrowth Program within the Town; and

WHEREAS, the Town Council of the Town of Flower Mound previously adopted the SMARTGrowth Implementation Manual by reference, as amended, establishing guidelines for the implementation of the SMARTGrowth Program within the Town; and

WHEREAS, the Town Council finds and determines that the Town's existing Economic Development Incentive Policy, as maintained by the Economic Development Department, is a more appropriate location to detail eligible project types and guidelines for economic development incentives; and

WHEREAS, the SMARTGrowth Commission and the Planning and Zoning Commission of the Town of Flower Mound, Texas held public hearings on September 14, 2020, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 21, 2020, with respect to the amendments described herein; and

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Texas Local Government Code, Chapter 78 of the Town's Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a Land Development Regulations Amendment; and

Ordinance No. _____

WHEREAS, the Town Council finds that the amendments to Chapters 98 and the SMARTGrowth Implementation Manual as outlined herein are in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

SECTION 1

Section 98-33, "SMARTGrowth Implementation Manual – Amendments," of Chapter 98, "Zoning," of Subpart B – "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-33. – SMARTGrowth Implementation Manual – Amendments.

From and after the effective date of this section, the town council adopts the amendments to the SMARTGrowth Implementation Manual to assist with the implementation of the SMARTGrowth program.

Secs. 98-34 – 98-50. – Reserved."

SECTION 2

Section 98-140, "Economic development incentive policy," of Chapter 98, "Zoning," of Subpart B – "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-140. - Economic development incentive policy.

- (a) *Eligibility; purpose.* New private capital investment (exclusive of land values) may be considered for economic development incentives by the town council, pursuant to the town's economic development incentives policy. The purpose of this criterion is to assist in meeting the goals set forth in the town's economic development and marketing plan while promoting a vigorous, diversified, and regionally competitive economy, and a balanced tax base to ensure Flower Mound's long-term financial ability to respond to the service demands of both new and existing development without placing a disproportionate tax burden on homeowners. Economic development incentives may be offered in accordance with the town's economic development incentives policy.
- (b) *Application.* For nonresidential projects, depending upon the nature of the project, incentives may be approved at any appropriate step in the development process, as determined by the town council, in its sole discretion.

Secs. 98-141—98-144. - Reserved."

Ordinance No. _____

SECTION 3

Section 98-148, "Water impoundment protection," of Chapter 98, "Zoning," of Subpart B – "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-148. - Water impoundment protection.

- (a) *Restrictions; purpose.* No development application or project shall be approved that proposes to eliminate, or to alter or discontinue recharge flows to, existing impoundments of water with a surface area capacity of one-half acre or more (regardless of whether such impoundments are naturally occurring or constructed), unless an exception is granted by Town Council. All such impoundments shall be integrated into the proposed development and addressed in the development's environmental protection plan, if applicable, which shall at a minimum include such enhancements and restoration as are necessary to provide or maintain reasonable wildlife habitat, to improve the aesthetic quality in areas of shoreline transition and to stabilize shoreline areas subject to erosion. The purpose of this criterion is to protect the natural, scenic, and ecological resources that are essential elements of Flower Mound's community character and that provide irreplaceable plant and wildlife habitat.

***"

SECTION 4

Section 98-151, "Waiver of environmental quality criteria," of Chapter 98, "Zoning," of Subpart B – "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby removed in its entirety. The following sections will now be listed as reserved:

"Secs. 98-151 – 98-159. – Reserved."

SECTION 5

Section 98-169, "Waiver of community character criteria," of Chapter 98, "Zoning," of Subpart B – "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby removed in its entirety. The following sections will now be listed as reserved:

"Secs. 98-169 – 98-230. – Reserved."

SECTION 6

The Town is hereby directed to amend SMARTGrowth ANALYSIS Section D, "ECONOMIC DEVELOPMENT," and SMARTGrowth ANALYSIS Section E, "ENVIRONMENTAL QUALITY," Subsection 4, "WATER IMPOUNDMENT PROTECTION," as shown in Exhibit A, attached hereto and incorporated herein by reference.

Ordinance No. _____

SECTION 7

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 8

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

SECTION 9

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

SECTION 10

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 11

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

SECTION 12

This Ordinance shall be in full force and effect from and after the date of its passage.

Ordinance No. _____

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 21ST DAY OF
SEPTEMBER, 2020.**

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT “A”
SMARTGROWTH IMPLEMENTATION MANUAL

1. ECONOMIC DEVELOPMENT INCENTIVE POLICY

- A. PURPOSE:** The purpose of this criterion is to assist in meeting the goals set forth in the Town’s Economic Development and Marketing Plan while promoting a vigorous, diversified and regionally competitive economy, and a balanced tax base to ensure Flower Mound’s long-term financial ability to respond to the service demands of both new and existing development without placing a disproportionate tax burden on homeowners.
- B. METHODOLOGY:** Incentives will be considered and negotiated on a project-by- project basis commensurate with the quality and character of the development and the extent to which it contributes to the accomplishment of community character and quality of life objectives. Incentives may be considered for approval by the Town Council only after community input and public hearing. The incentives may include but are not limited to the following:
- . Permit fee waivers or reductions
 - . Impact fee reductions
 - . Infrastructure assistance
 - . Public/private partnerships
 - . Performance-based tax abatements (with give back provisions in the event of non-performance)
- Approval of an incentive for any project shall be at the sole discretion of the Town Council and no project shall automatically be entitled to receive an incentive.
- C. APPLICATION:** For nonresidential projects, depending upon the nature of the project, incentives will be applied at the appropriate step in the development process, as determined by the Town. Expedited development review shall be approved administratively.

4. WATER IMPOUNDMENT PROTECTION

- A. PURPOSE:** The purpose of this criterion is to protect the natural, scenic and ecological resources that are essential elements of Flower Mound's community character and that provide irreplaceable plant and wildlife habitat.
- B. CRITERION: Water Impoundment Protection.** No development application or project shall be approved that proposes to eliminate, or to alter or discontinue recharge flows to, existing impoundments of water with a surface area capacity of one-half acre or more (regardless of whether such impoundments are naturally occurring or constructed), unless an exception is granted by Town Council. All such impoundments shall be integrated into the proposed development and addressed in the development's Environmental Protection Plan, if applicable, which shall at a minimum include such enhancements and restoration as are necessary to provide or maintain reasonable wildlife habitat, to improve the aesthetic quality in areas of shoreline transition and to stabilize shoreline areas subject to erosion.
- C. METHODOLOGY:** Compliance with this criterion shall be in accordance with the applicable provisions of the Design Criteria and Construction Standards as adopted by the Town Council.
- D. APPLICATION:** For residential projects, applicable to applications for development plans and record plats. For nonresidential projects, applicable to applications for record plats and site plans.



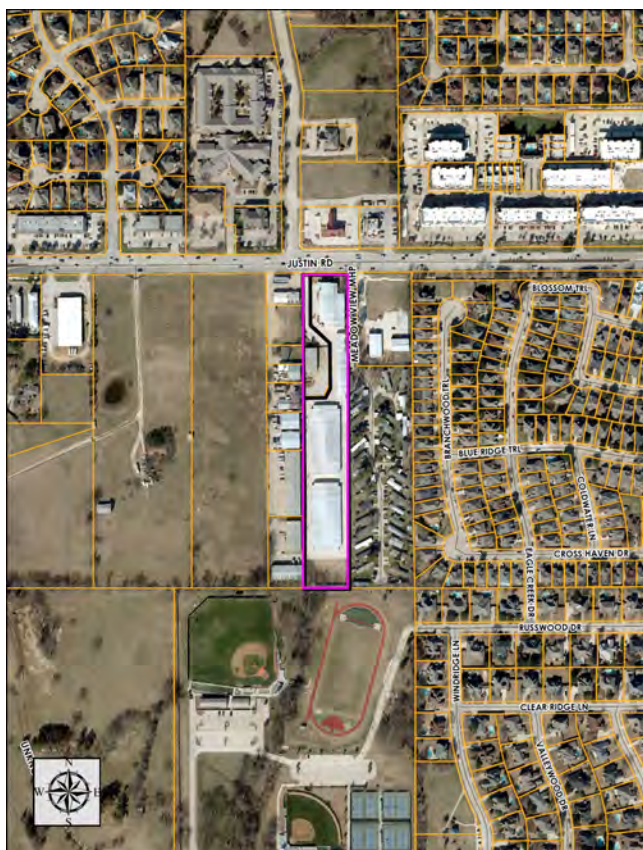
TOWN COUNCIL AGENDA ITEM NO. 20

REGULAR ITEM

DATE: September 21, 2020

FROM: Poornima Kashyap, Principal Planner

ITEM: **Public Hearing to consider an ordinance amending Specific Use Permit No. 421 (SUP20-0006 - Justin Road Storage Center) to allow expansion of an existing mini-warehouse facility, with an exception for meritorious design and a waiver to the Architectural Standards of the Town's Urban Design Plan. The property is generally located south of Justin Road and west of Meadow View. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.*)**



SUMMARY DATA:

- Size – 5.5226 acres
- SUP Request – Expand existing mini-warehouse site
- Building square feet:
Existing – 94,680 square feet (663 storage units)
Proposed – 10,000 square feet (11 storage units)
- SMARTGrowth – Passed
- Traffic Analysis – Passed in 2014. Mini-warehouse facility has very little trip generation. Based on the Institute of Transportation Engineers (ITE) Trip Generation Manual (9th Edition), the Town's Traffic Engineer has determined additional 11 rental spaces do not constitute the need for additional traffic studies.
- Exceptions and waivers (Building F) – The applicant is requesting an exception to the Town's Urban Design Plan to exceed the 50 percent limit on the square footage of doors and windows on east façade and a waiver to the roof pitch standards to allow a flat roof.
- Incentives – N/A

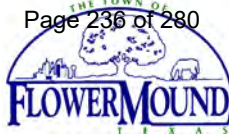
BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. P&Z recommended approval of the SUP subject to the requirement that the developer replat the property to consolidate the two lots into one.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

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

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



PLANNING AND ZONING COMMISSION

AGENDA ITEM NO: 3

REGULAR ITEM

DATE: September 14, 2020

FROM: Poornima Kashyap, Principal Planner

ITEM: **Public Hearing to consider an ordinance amending Specific Use Permit No. 421 (SUP20-0006 - Justin Road Storage Center) to allow expansion of an existing mini-warehouse facility, with an exception for meritorious design and a waiver to the Architectural Standards of the Town's Urban Design Plan. The property is generally located south of Justin Road and west of Meadow View.**

I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission. There is a waiver request to the Town's regulations, which necessitates special consideration by the Commission (see Analysis below).

This application will require final action by the Town Council, which is scheduled for September 21, 2020.

II. APPLICATION ANALYSIS

The purpose of this application is to amend an existing Specific Use Permit (SUP-421) for Justin Road Storage facility to allow for the expansion of an existing mini-warehouse facility on the subject property. The property is zoned Industrial District-1 (I-1), which allows a mini-warehouse use upon approval of a Specific Use Permit (SUP) by the Town Council. The Town defines mini-warehouse as "an enclosed storage facility of a commercial nature containing independent, fully enclosed bays that are leased to persons exclusively for dead storage of their household goods or personal property."

The project is currently located on two platted lots, which will be replatted into one lot in the event this SUP is approved. On April 7, 2014, Town Council approved SUP-421 for Lot 2R (4.685 acres) consisting of four single story buildings, approximately 94,680 square feet with a total of 663 units. The current request is to incorporate Lot 1R consisting of 0.838 acres into the SUP and add 11 more storage units that will be intended for boats and recreational vehicles (RV).

Lot 1R is developed with a 5,000 square-foot metal industrial building, which the applicant is redeveloping, and proposing to add another 5,000 square-foot new building, for a total of a 10,000 square-foot expansion of the SUP. As the 'Redevelopment' section of the Town's Urban Design Plan (UDP) is applicable to the existing metal building, the existing building is not subject to any waivers to the architectural standards

of the UDP. The purpose of this section is to encourage redevelopment of old, existing, non-compliant buildings by bringing them closer to compliance. The applicant is proposing to clad the metal building with bricks on the north (visible from Justin Road) and east facades to match with the existing storage facility. The majority of the south façade shares a common wall with the new building and the applicant is proposing to paint the west metal façade. The building does not have a pitched roof, as would typically be required by the UDP, and the doors and windows on the east façade exceed the 50 percent limit. However, they are moving the building/site closer to conformance and increasing the building's enduring quality and design.

15. Redevelopment

15.1. Buildings / sites planned for redevelopment are subject to the above architectural standards of the Urban Design Plan. In each case, amendments to a building's elevations and/or site plan should meet each requirement above or be in substantial conformance thereto. If complete conformance to the above standards cannot be practically achieved, substantial conformance is demonstrated by illustrating that the proposed changes to the elevations and/or site plan have moved the building / site closer to conformance with the standards and increased the building's enduring quality and design as applicable within the Town's Master Plan.

O

The applicant is requesting waivers to the following architectural standards for the new 5,000 square foot building.

A. Architectural Standards (Roof Pitch)

Section 12.1 of the Town's Urban Design standards states:

Roofs and Parapets

12.1. Roofs of non-residential buildings 15,000 square feet or less are to reflect hip and/or gable styles that replicate residential scale and pitch. In designing a residential scaled roof for non-residential buildings 15,000 square feet or less, the goal shall be a roof that provides for characteristic roof pitches/slopes of residential homes in the Town of Flower Mound (6/12 to 9/12 slope) and high steeply-pitched and/or expansive roof pitches/slopes shall be avoided. The Town Council may approve, upon recommendation from the Planning and Zoning Commission, a waiver to this request for individual projects. Such requests should only be contemplated in areas that are not adjacent to residences, are part of large-scale developments, and provide architectural detail to soften the appearance of large, tall vertical walls.

The proposed building is less than 15,000 square feet and a flat, non-pitched roof is being proposed in order to better integrate with the existing structure. Please refer to the proposed elevations in Attachment B(1).

B. Waiver to Architectural Standards (Meritorious Design)

The Urban Design Plan provides Architectural Standards for non-residential buildings in the Town with the intent of creating developments of "enduring and exemplary quality and design." The purpose of these standards is to encourage building design of meritorious quality throughout the Town and prohibit franchise architecture. Some of the architectural standards addressed are building materials, colors, roof pitch, pedestrian scale, entry points, and building orientation. As allowed by the Urban

Design Plan, an applicant can request a waiver to certain Architectural Standards if their proposal is determined to have meritorious quality and design.

Section 5.1 of the Town's Urban Design standards states:

Elevations of low-rise non-residential buildings (one to two stories) should be a minimum of 50% masonry, excluding doors and windows, consisting of stone, brick, stucco or finished tilt-wall concrete, or a mixture of those materials.

The percentage of doors and windows on the east façade of the new building is at 77 percent due to the large overhead doors designed to accommodate boat and RV storage.

Both lots currently have access from Justin Road. If the SUP were to be approved, the applicant must get site plan and replat applications approved prior to the development of the proposed use. The required parking for this use is 12 spaces and the concept plan shows 11 spaces, which is within the Town's allowable 20 percent deviation. The proposed development complies with the Town's landscape requirements.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all zoning application requests. SUP20-0006 had a total of 20 Property Owner Notifications mailed. At the time this report was written, staff had not received any correspondence regarding this item.

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent

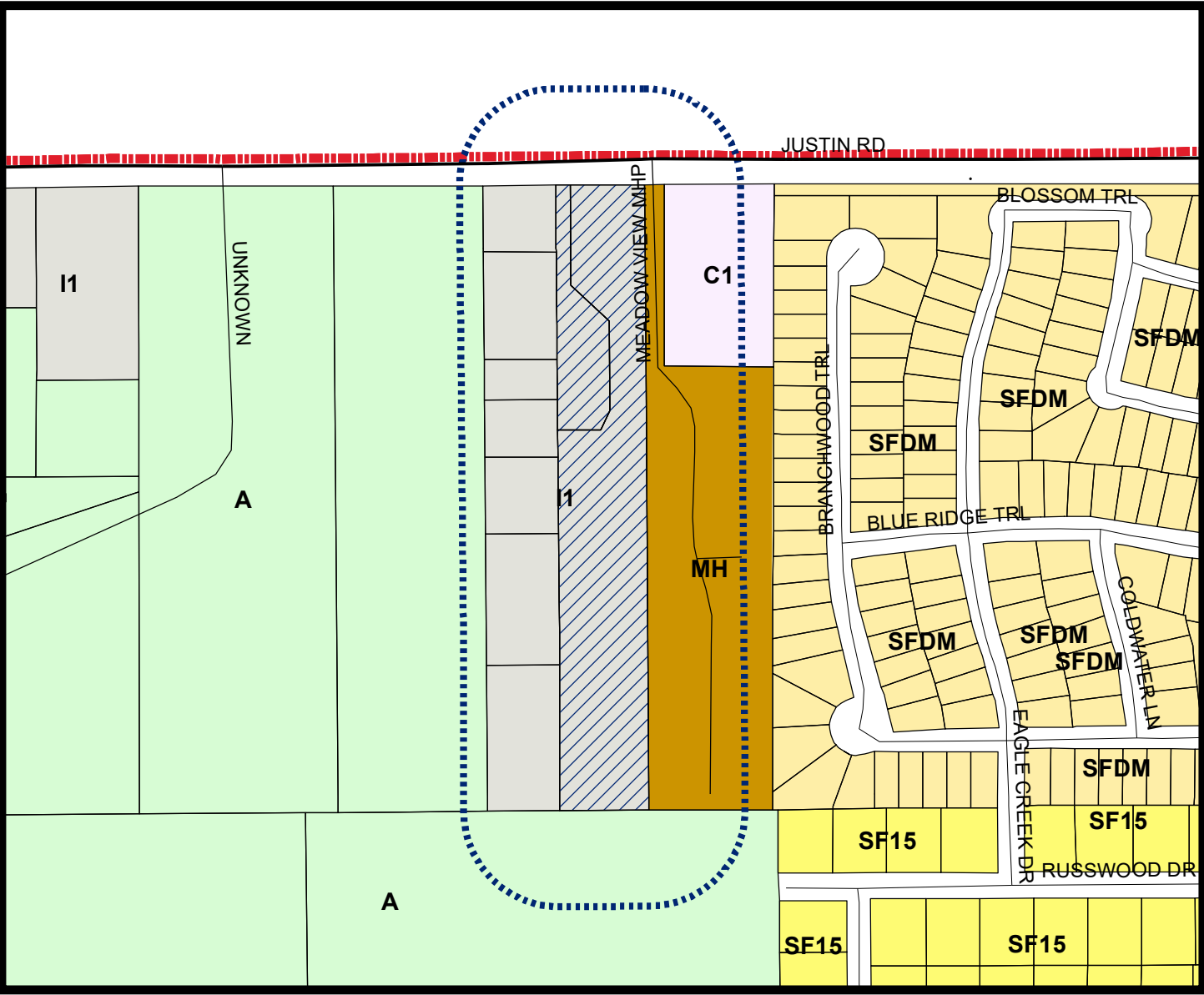
B. Application Details

1. Specific Use Permit Exhibit



Vicinity Map

Reference Project: SUP20-0006



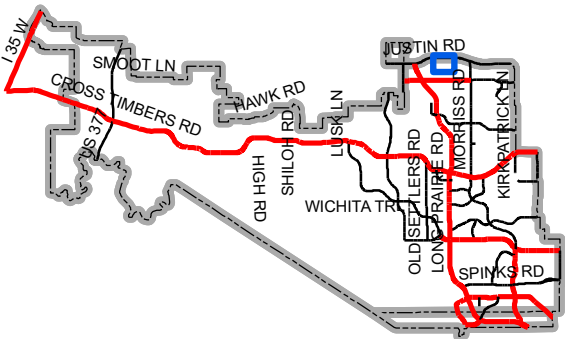
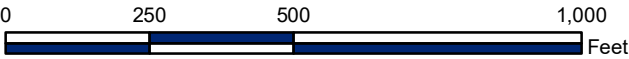
LEGEND

- Agriculture
- Commercial 1
- Industrial 1
- Mobile Home
- Single Family 15
- Single Family Density Medium



Subject Property

200 ft Notification Buffer around Property



Map Location

Advantage Storage
2221 Lakeside Parkway, Suite 1260
Richardson, Texas 75082
972-547-0236
rjones@AdvantageStorage.net



22 June 2020

**Planning Department of the
Town of Flower Mound**

1001 Cross Timbers Road
Flower Mound, TX 76028

Re: Revised Letter of Intent
Amendment to the SUP Concept Plan Ordinance 16-14
And Replat
2711 Justin Road

To Whom it May Concern,

Please accept this letter and attachments as a description of our intent regarding the property located at 2711 Justin Road. We very recently closed on the purchase of the property referenced above. The ownership entity is ADV Flower Mound Justin Property, Owner, LLC, a Delaware limited liability company. The property consists of two separately platted lots, Lot 1 & 2, Justin Road Storage Center Addition. Lot 1 contains approximately 0.8379 acres and is improved with a 50' x 100' metal industrial building. This building shares a common drive with the storage facility and has a rock outside storage yard enclosed by a chain link fence. Lot 2 contains approximately 4.6847 acres and is improved with a class A self-storage facility that was completed in 2018.

Although platted together and sharing a common drive onto Justin Road, the two properties are very dissimilar in terms of architecture, quality of improvements, etc., not to mention being separated by a chain link fence. The metal industrial building currently does not have electricity, sanitary sewer or water service. It would be our goal to improve and enlarge the existing industrial building and remove the chain link fencing to provide a unified, high-quality self-storage property. Our proposed plans would include:

1. Gut the interior of the existing building, provide electrical service, add 4 new overhead and walk-through doors, provide full height brick veneer on three sides of the building and replace trim, gutters and downspouts to match the existing storage facility.
2. The proposed use for the building would be four 1,250 SF storage spaces suitable for fully enclosed boat, RV and vehicle storage.
3. We propose a 50' x 100' addition on the south end of the existing building. This space would share the existing electrical service and be divided into seven storage spaces approximately 14.28' x 50' suitable for boat, RV and vehicle storage. The building addition would be brick veneer matching the existing storage facility.
4. Remove the existing chain link fence separating the two properties.
5. Modify existing curb storm inlets to surface storm inlets.
6. Modify existing concrete to consolidate the drive area.

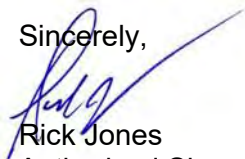
7. Remove existing gravel surface and install concrete.
8. Modify existing wrought iron fencing to secure the area in one compound accessed by the existing access gate.
9. Provide dense, mature living screen on the west side of the property from Justin Road to the north face of the existing industrial building. Currently this area has a dilapidated chain link fence which is an eyesore and provides no screening to the poor-quality property to the west, and the back of the industrial buildings currently being developed.
10. Provide new, high quality landscaping and irrigation system on Lot 1.

We respectfully request the following exceptions be granted as part of the request per staff's comments received June 17, 2020:

1. Grant an exception to the requirement of a maximum of 50% of any façade that can be doors or windows for the east side of the building addition. The building is designed for enclosed boat and RV storage and the east façade faces an interior drive and is not visible from any perimeter perspective from the street or adjoining properties.
2. Grant an exception requiring pitched gable or hip roofs on buildings containing 15,000 SF or less. The exception is needed due to the fact that the new building addition is being added onto an existing building with low sloped, standing seam metal roof. Additionally, the low slope roof pitch is consistent with not only the existing building being expanded, but is also consistent with all of the existing self storage buildings which are part of this development.

Our proposed timeline for this project is to begin immediately following acquisition of necessary planning approvals and building permit. Please let me know if you have any questions.

Sincerely,



Rick Jones

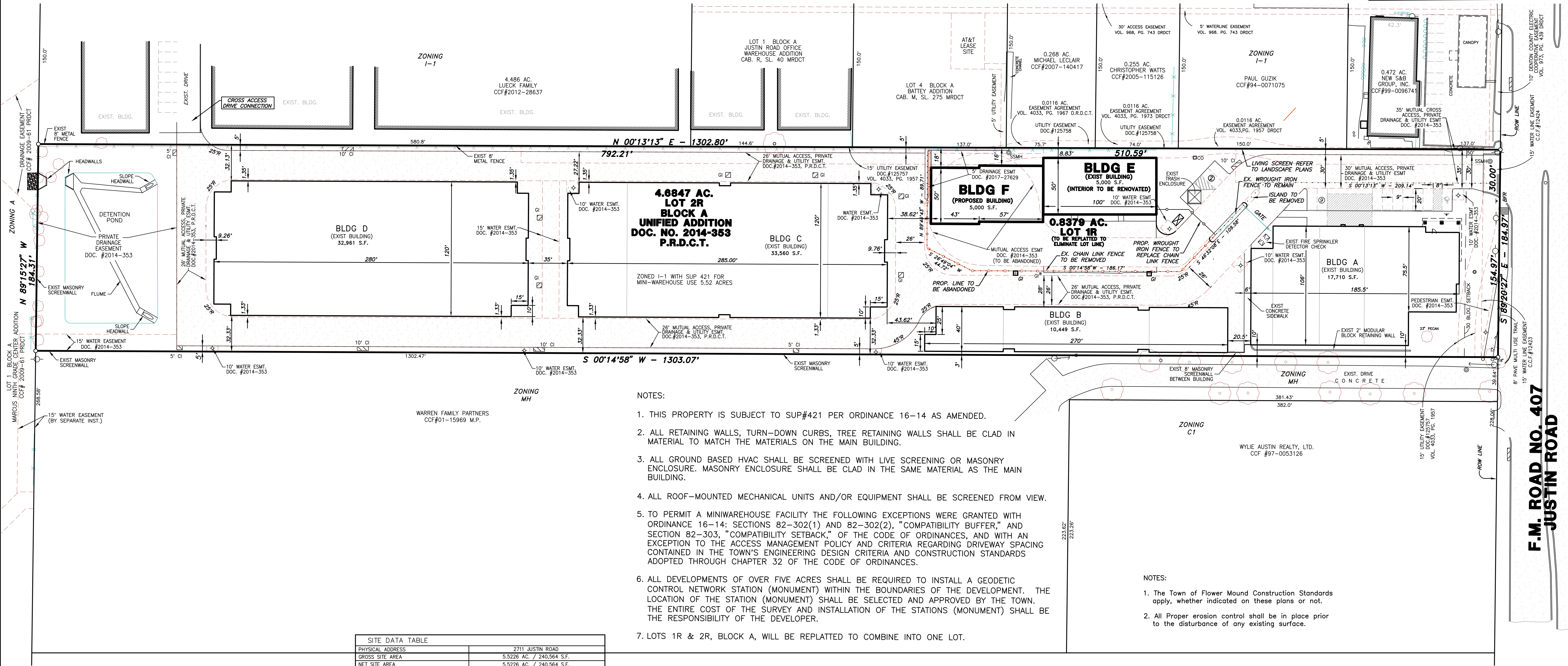
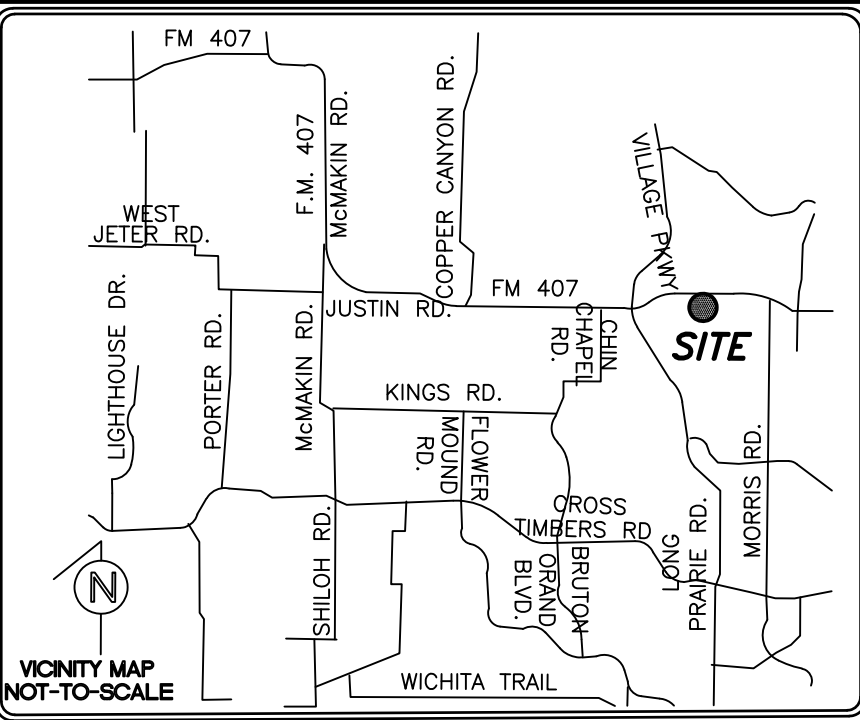
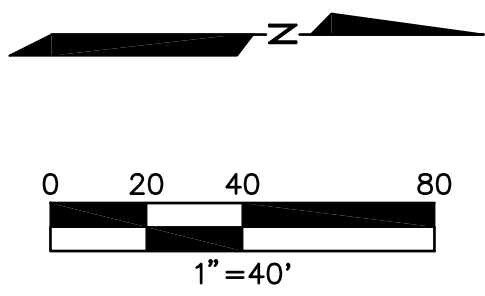
Authorized Signatory

ADV Flower Mound Justin Property Owner, LLC, a Delaware limited liability company

972-832-8933 cell

Rjones@AdvantageStorage.net

MASTER PLAN FEATURES	
LAND USE PLAN	COMMERCIAL/INDUSTRIAL
AREA PLAN	NOT IN A DISTRICT
URBAN DESIGN PLAN	LONG PRAIRIE DISTRICT
PARKS AND TRAILS	8" TRAIL ALONG SOUTH SIDE OF FM 407
OPEN SPACE PLAN	NA
THOROUGHFARE PLAN	URBAN MINOR ARTERIAL
WATER PLAN	EXISTING 12" WATER-WAKETON ELEVATED STORAGE TANK
WASTEWATER PLAN	EXISTING 8" SANITARY SEWER EAST - LONG PRAIRIE
ECONOMIC IMPACT	SEE NARRATIVE



- NOTES:
1. THIS PROPERTY IS SUBJECT TO SUP#421 PER ORDINANCE 16-14 AS AMENDED.
 2. ALL RETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
 3. ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING.
 4. ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
 5. TO PERMIT A MINIWAREHOUSE FACILITY THE FOLLOWING EXCEPTIONS WERE GRANTED BY ORDINANCE 16-14: SECTIONS 82-302(1) AND 82-302(2), "COMPATIBILITY BUFFER," AND SECTION 82-303, "COMPATIBILITY SETBACK," OF THE CODE OF ORDINANCES, AND WITH AN EXCEPTION TO THE ACCESS MANAGEMENT POLICY AND CRITERIA REGARDING DRIVEWAY SPACING CONTAINED IN THE TOWN'S ENGINEERING DESIGN CRITERIA AND CONSTRUCTION STANDARDS ADOPTED THROUGH CHAPTER 32 OF THE CODE OF ORDINANCES.
 6. ALL DEVELOPMENTS OF OVER FIVE ACRES SHALL BE REQUIRED TO INSTALL A GEODETIC CONTROL NETWORK STATION (MONUMENT) WITHIN THE BOUNDARIES OF THE DEVELOPMENT. THE LOCATION OF THE STATION (MONUMENT) SHALL BE SELECTED AND APPROVED BY THE TOWN. THE ENTIRE COST OF THE SURVEY AND INSTALLATION OF THE STATIONS (MONUMENT) SHALL BE THE RESPONSIBILITY OF THE DEVELOPER.
 7. LOTS 1R & 2R, BLOCK A, WILL BE REPLATTED TO COMBINE INTO ONE LOT.

- NOTES:
1. The Town of Flower Mound Construction Standards apply, whether indicated on these plans or not.
 2. All Proper erosion control shall be in place prior to the disturbance of any existing surface.

FLOOD NOTE

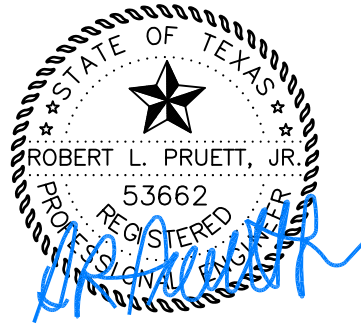
ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) - NATIONAL FLOOD INSURANCE PROGRAM (NFIP) - FLOOD INSURANCE RATE MAP (FIRM) - FOR THE DENTON COUNTY, TEXAS AND INCORPORATED AREAS - MAP NO. 48121C0530G, MAP REVISED, APRIL 18, 2011, THE PROPERTY SHOWN HEREON LIES IN ZONE "X" (OTHER AREAS).

BENCHMARKS	
SITE BENCH MARK NO. 1: CENTER STORM INLET FACE LOCATED ALONG THE SOUTH PAVEMENT LINE OF F.M. 407 WESTERLY AT A DISTANCE OF 53 FEET FROM THE NORTHWEST CORNER OF LOT 2 OF UNIFIED ADDITION. ELEVATION = 645.54'	
SITE BENCH MARK NO. 2: NEC STORM INLET LOCATED ALONG THE SOUTH PAVEMENT LINE OF F.M. 407 EASTERLY AT A DISTANCE OF 86 FEET FROM THE NORTHEAST CORNER OF LOT 1 OF UNIFIED ADDITION. ELEVATION = 640.73'	

SITE DATA TABLE		
PHYSICAL ADDRESS	2711 JUSTIN ROAD	
GROSS SITE AREA	5.5226 AC. / 240,564 S.F.	
NET SITE AREA	5.5226 AC. / 240,564 S.F.	
ZONING	I-1/SUP 421	
CURRENT USE	MINI-WAREHOUSE	
LOT COVERAGE DATA (OVERALL)		
BUILDING COVERAGE EXISTING	94,680 S.F. (39.4%)	
ADDITIONAL BUILDING COVERAGE PROPOSED	10,000 S.F. (4.1%)	
IMPERVIOUS AREA	193,135 S.F. (80.3%)	
PERVIOUS AREA	47,429 S.F. (19.7%)	
PARKING SUMMARY (OVERALL)		
	REQUIRED	PROVIDED
OFFICE (1000 S.F.) EXISTING	3 (1/300 S.F.)	2 (1/300 S.F.)
MINI-WAREHOUSE (663 UNITS) EXISTING	9 (1/75 STORAGE BAYS)	9 (1/75 STORAGE BAYS)
MINI-WAREHOUSE (11 UNITS) PROPOSED		
TOTAL PARKING	12	11
BUILDING DATA		
EXISTING BUILDINGS	ONE STORY	
PROPOSED BUILDINGS	ONE STORY	
EXISTING PEAK HEIGHT	24'-0"	
EXISTING MEAN HEIGHT	11'-0"	
PROPOSED BUILDING E & F PEAK HEIGHT	17'-6" (1 STORY)	
PROPOSED BUILDING E & F MEAN HEIGHT	16'-2" (1 STORY)	
EXISTING TOTAL SQUARE FOOTAGE	94,680 S.F.	
PROPOSED SQUARE FOOTAGE	10,000 S.F.	

LEGEND	
	F.H. EXISTING FIRE HYDRANT
	F.H. PROPOSED FIRE HYDRANT
	W.M. EXISTING WATER METER
	W.M. PROPOSED WATER METER
	W.V. EXISTING WATER VALVE
	W.V. PROPOSED WATER VALVE
	CO SANITARY CLEANOUT
	P.P. POWER POLE
	GUY POWER POLE ANCHOR
	SSMH SANITARY SEWER MANHOLE
	VPP VERIZON PEDESTAL PAD
	CI CURB INLET
	IRS IRON ROD SET
	IRF IRON ROD FOUND
	R.P.R.D.C.T. REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS
	D.R.D.C.T. DEED RECORDS, DENTON COUNTY, TEXAS
	M.R.D.C.T. MAP RECORDS, DENTON COUNTY, TEXAS
	EXISTING BUILDING

THE SEAL APPEARING ON THIS DOCUMENT WAS AUTHORIZED BY ROBERT L. PRUETT, JR., P.E. 53662 ON 8/27/2020



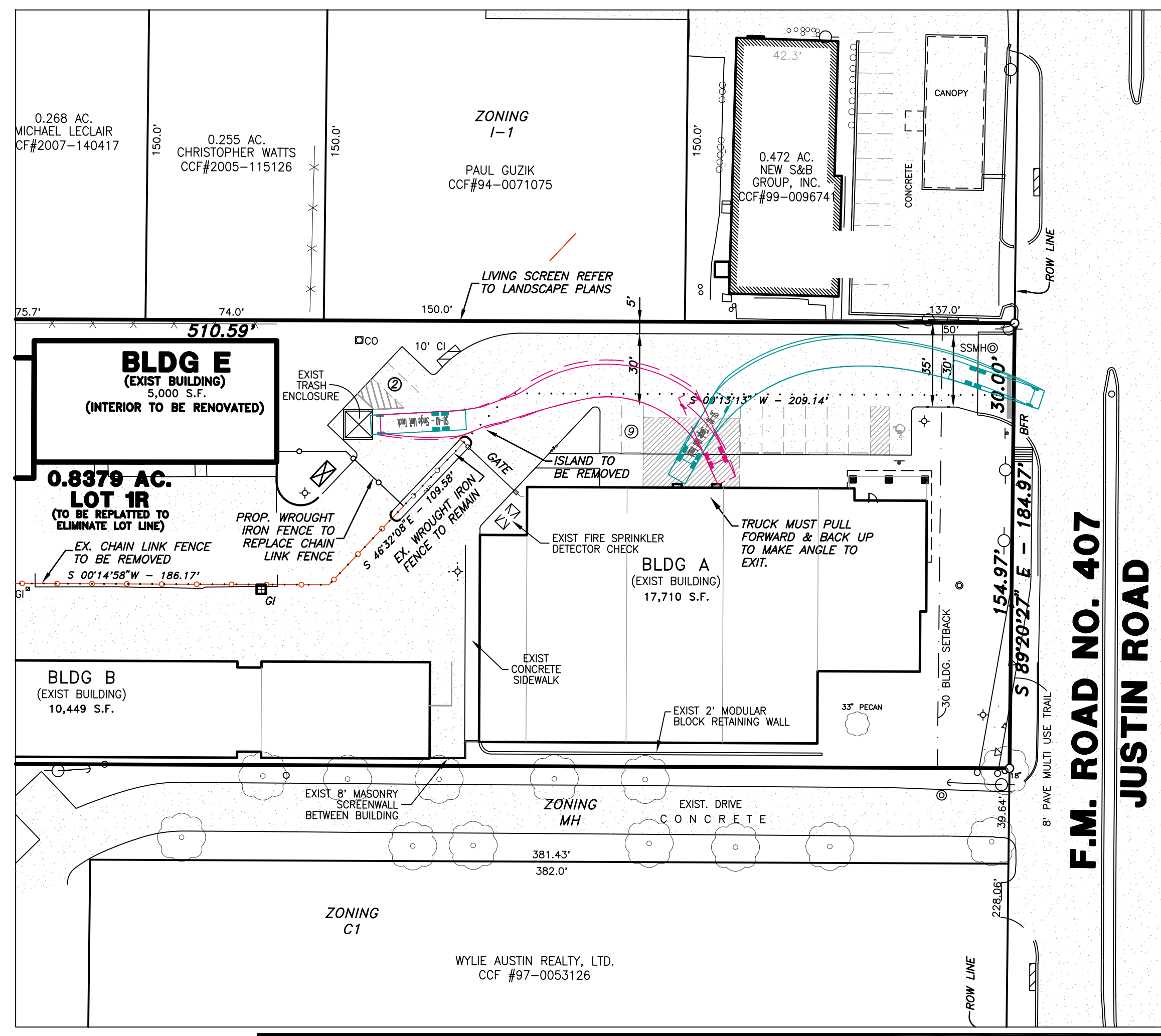
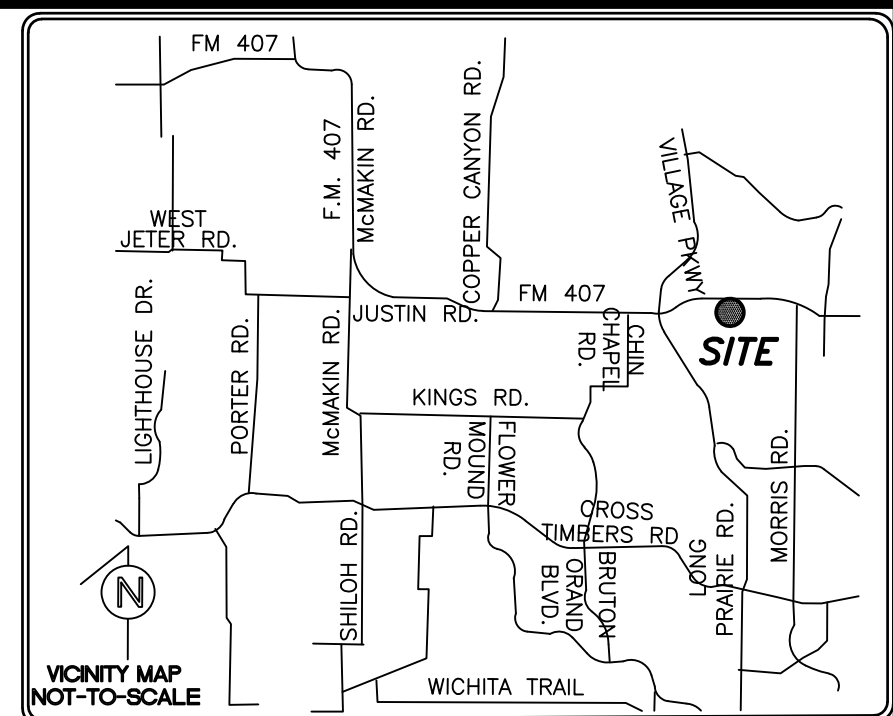
REV.	DATE	SHEET

CONCEPT PLAN
JUSTIN ROAD STORAGE CENTER
LOTS 1R & 2R, BLOCK A, UNIFIED ADDITION
BEING 5.5226 ACRES
IN THE SHELTON LUTTRELL SURVEY, ABSTRACT NO. 744
TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS
AUGUST 2020

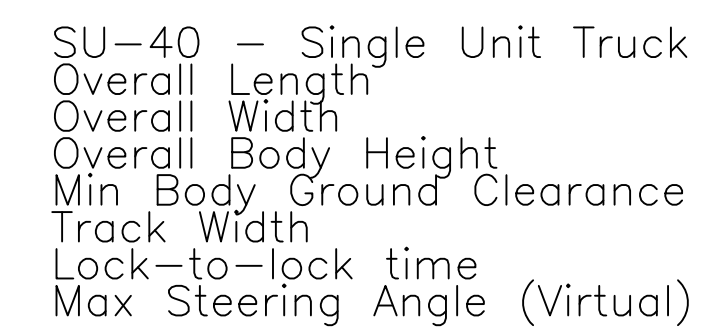
OWNER
ADVANTAGE STORAGE
2221 LAKESIDE BOULEVARD, SUITE 1260
RICHARDSON, TEXAS 75082
(972) 547-0236
CONTACT: RICK JONES
EMAIL: RJONES@ADVANTAGESTORAGE.NET

ENGINEER/SURVEYOR
LANDEV ENGINEERS, INC.
1801 GATEWAY BOULEVARD, SUITE 101
RICHARDSON, TEXAS 75080
(972) 385-2272
CONTACT: ROBERT L. PRUETT, P.E.
EMAIL: RPRUETT@LANDEVENGINEERS.COM





DEPARTURE



39.500ft
8.000ft
13.500ft
1.367ft
8.000ft
5.00s
31.80°

[illegible]

OWNER

ADVANTAGE STORAGE
2221 LAKESIDE BOULEVARD, SUITE 1260
RICHARDSON, TEXAS 75082
(972) 547-0236
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EMAIL: RPRUETT@LANDEVENGINEERS.COM

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 16-14 THAT GRANTED SPECIFIC USE PERMIT NO. 421 (SUP-421) TO PERMIT EXPANSION OF AN EXISTING MINIWAREHOUSE FACILITY, IN ACCORDANCE WITH SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO, ON CERTAIN PROPERTY DESCRIBED AS 5.5226 ACRES OF LAND AND BEING ALL OF LOTS 1R AND 2R, BLOCK A, OF THE UNIFIED ADDITION, AND ZONED INDUSTRIAL DISTRICT-1 (I-1); GRANTING WAIVERS AND EXCEPTIONS TO CERTAIN ARCHITECTURAL STANDARDS IN THE TOWN'S URBAN DESIGN PLAN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which Ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owner of the property described as 5.5226 acres of land and being all of Lots 1R and 2R, Block A, of the Unified Addition, Denton County, Texas, has filed an application for a Specific Use Permit to amend Ordinance No.16-14 that granted Specific Use Permit-421 (SUP-421) for a mini-warehouse facility; and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on September 14, 2020, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 21, 2020, with respect to the Specific Use Permit described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a Specific Use Permit on the property; and

WHEREAS, the Town Council finds that the zoning amendment as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public.

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

ORDINANCE NO. _____**Page 2**

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended to permit the following specific use on the hereinafter described property and area as shown below:

5.5226 acres on Lots 1R and 2R, Block A, of the Unified Addition, Denton County, Texas and zoned Industrial District-1.

Exhibits to Ordinance No. 31-05, are hereby amended to add a concept site plan, concept landscape plan, and concept elevations attached as Exhibits "A," "B," and "C" hereto and incorporated herein.

Specific Use Permit No. 421 is amended to allow approximately 10,000 square-foot expansion of the mini-warehouse facility, subject to the following condition:

- 1) The approval of this Specific Use Permit amendment is subject to the approval of a replat to consolidate Lot 1R and 2R, Block A, of the Unified Addition, Denton County, Texas, into one single lot.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms and conditions contained herein, as well as the applicable regulations contained in Ordinance No. 16-14 for Specific Use Permit No. 421 (SUP-421), the Land Development Regulations, and all other applicable and pertinent ordinances of the Town of Flower Mound, except as noted in Sections 4 and 5 herein.

SECTION 3

The official map of the Town of Flower Mound is amended and the Director of Planning Services is directed to revise the official zoning map to reflect the approved Specific Use Permit, as set forth above.

SECTION 4

An exception is hereby granted to Sections 5.1, "Façade Materials," of the Town's Urban Design standards to waive the minimum masonry requirement for "Building F" as shown on the concept elevations (Exhibit "C").

SECTION 5

An exception is hereby granted to Sections 12.1, "Roofs and Parapets," of the Town's Urban Design standards to waive the roof pitch requirements for structures 15,000 square feet in area and less in accordance with the Town's Master Plan for Building F as shown on the concept elevations (Exhibit "C").

ORDINANCE NO. _____**Page 3****SECTION 6**

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 7

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

SECTION 8

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

SECTION 9

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 10

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

SECTION 11

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

ORDINANCE NO. _____

Page 4

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 21ST DAY OF
SEPTEMBER, 2020.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT "A" - CONCEPT SITE PLAN

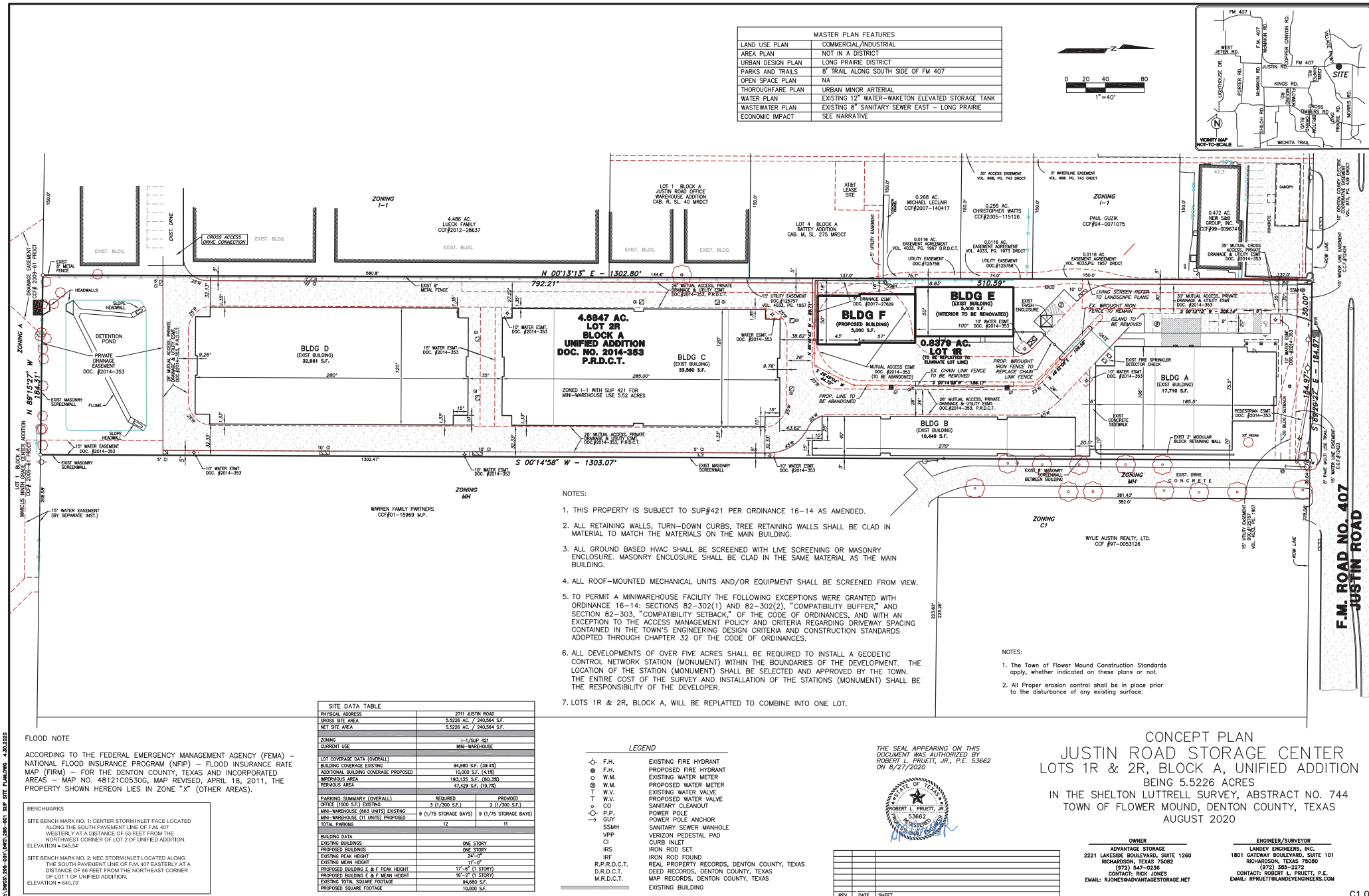
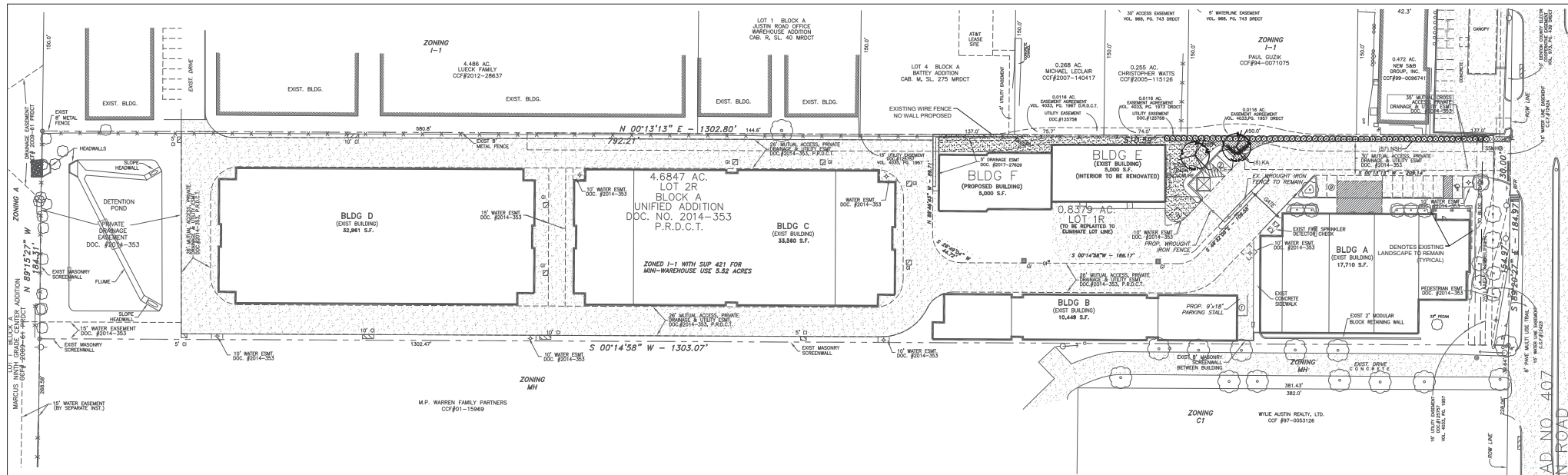


EXHIBIT "B" - CONCEPT LANDSCAPE PLAN



REMOVE ALL TAGS, TRUNKS OR OTHER NON-DESIGNATED MATERIALS ATTACHED TO THE PLANT OR ROOT MASS.

PRUNE PLANT TO REMOVE DEAD OR BROKEN BRANCHES.

4 INCH DEPTH OF MULCH. DO NOT PLACE MULCH IN CONTACT WITH PLANT TRUNK. MAINTAIN THE MULCH WEED FREE.

MULCH SHALL BE HEPT MIN. 2 INCHES AWAY FROM TRUNK OF PLANT.



SHRUB PLANTING DETAIL
NOT TO SCALE

DO NOT HEAVILY PRUNE TREES AT PLANTING. PRUNE ONLY DISCREPANCIES, CO-DOMINANT LEADERS, AND BROKEN OR DEAD BRANCHES.

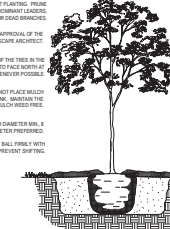
STAKE TREE ONLY AT THE APPROVAL OF THE LANDSCAPE ARCHITECT.

MARK THE NORTH SIDE OF THE TREE IN THE NEARBY AND NEIGHBORLY TREE TO PLACE NORTH AT THE SITE WHENEVER POSSIBLE.

4 INCH DEPTH OF MULCH. DO NOT PLACE MULCH IN CONTACT WITH TREE TRUNK. MAINTAIN THE MULCH WEED FREE.

MULCH RING TO BE 4 INCH DIAMETER MIN. & 4 INCH DEEPER PREFERRED.

TAMP SOIL AROUND ROOT BALL FIRMLY WITH FOOT PRESSURE TO PREVENT SHIFTING.



TREE PLANTING DETAIL
NOT TO SCALE

PLANT PIT TO BE AT LEAST 6 INCHES DEEPER THAN ROOTBALL. SLOPE AND GRADE FEED OF THE HOLE.

REMOVE CONTAMIN FROM ROOT MASS. LOGS, ROOTS FROM POTENTIAL PLANTS BY SCISSORS OR PULLING.

DAMPEN SOIL PRIOR TO PLANTING.

BACKFILL HOLE WITH THOROUGH MIXTURE OF 1 PT. SAND, 1 PT. ORGANIC FIBER, 1 PT. WATER TOPSOIL.

AMENDMENTS SHALL BE ADDED TO SOIL BASED ON RESULTS OF SOIL TESTS.

PLACE BOTTOM OF ROOT BALL ON TAMPED SOIL THAT HAS BEEN SETTLED WITH WATER.

PLANT SOIL LEVEL SHALL BE 1" HIGHER THAN SURROUNDING GRADE.

TAMP SOIL AROUND ROOT BALL LIGHTLY WITH FOOT OR HAND PRESSURE TO PREVENT SHIFTING.

PROVIDE DRAINAGE IN PLANTING PIT AS DETERMINED NECESSARY BY A SOIL PERCOLATION TEST.

PLACE BOTTOM OF ROOT BALL ON TAMPED SOIL THAT HAS BEEN SETTLED WITH WATER.

PLANT SOIL LEVEL SHALL BE 1" HIGHER THAN SURROUNDING GRADE.

TAMP SOIL AROUND ROOT BALL LIGHTLY WITH FOOT OR HAND PRESSURE TO PREVENT SHIFTING.

PROVIDE DRAINAGE IN PLANTING PIT AS DETERMINED NECESSARY BY A SOIL PERCOLATION TEST.

PLACE BOTTOM OF ROOT BALL ON TAMPED SOIL THAT HAS BEEN SETTLED WITH WATER.

PLANT SOIL LEVEL SHALL BE 1" HIGHER THAN SURROUNDING GRADE.

TAMP SOIL AROUND ROOT BALL LIGHTLY WITH FOOT OR HAND PRESSURE TO PREVENT SHIFTING.

PROVIDE DRAINAGE IN PLANTING PIT AS DETERMINED NECESSARY BY A SOIL PERCOLATION TEST.

Notes

No changes shall be made to the plans, including plant material type and location without prior approval from Landscape Architect or Owner.

All plant material shall be guaranteed for a period of 1 year from date of installation completion. Wording to this effect shall be included in Contractor's proposal.

The Contractor shall notify the Landscape Architect in writing of discrepancies between the plans and actual site conditions prior to commencing work. Failure to do so shall be interpreted as the Contractor accepting such conditions and responsible at no additional cost to Owner, for any future adjustments that need to be made.

All work shall be in accordance to plans. Any defective work shall be corrected at no additional cost.

The quality of the plant material is subject to the approval of the Landscape Architect and may be rejected before or after installation. All plant material must meet all American Standard for Nursery Stock Standards (ANSIS).

All areas to be sodded shall first be filled to a uniform depth of 4 inches in two, crossing directions. After the initial tilling operation, incorporate 1,500 pounds per acre of 10-20-10 fertilizer or as specified by a soil test. Apply amendments as specified by a soil test.

Sod strips shall be pulled tightly together in a neat orderly manner. Do not overlap sod strips and do not use any strips that exhibit weak or thin soil.

After installation, the sod shall be rolled in two directions with a roller not weighing less than 100 lbs. per square foot.

Amendments shall be added to each planting pit and bed area.

All burlap material on balled and burtopped plants shall be the type that decomposes within two years. Synthetic or plastic type wrappings are not allowed.

After setting balled and burtopped plants, remove the top 1/3 of the burlap and completely remove all binder twine. No burlap shall show above the surface.

All planting areas shall be graded smooth, without the presence of low spots, depressions or irregular humps. Areas around planting beds shall be constructed to re-direct drainage around and away from planting areas. All planting areas shall be constructed and graded to ensure positive drainage away from structures.

Brown Cedar mulch shall be applied within 24 hours of planting of new plant material. Mulch shall be spread evenly to a settled depth of 4" around all trees and shrubs to the limits of the planting beds as shown on plans.

All plantings shall be "watered in" by flooding the backfill hole within the same working day upon which they were planted. All plants shall be adjusted as necessary to ensure correct depth of planting, vertical alignment and/or to compensate for settling. Soil shall be firmed around around each plant as final adjustments are made.

LANDSCAPE TABULATIONS

Street Buffer Landscaping			
Street		Required Buffer Width	Provided Buffer Width
Justin Road		25'	25'
Street Buffer Trees			
Standard	Street Frontage	Required	Provided
1 Tree per 30 L.F.	Justin Road 183'	6 Trees (3" cal)	6 Ex Tree (3" cal)
Street Yard Trees			
Standard	Total Street Yard (Square Feet)	Required	Provided
1 Tree for every 1,000 sf	Justin Road 6,526.54 sf	7 Trees (3" cal)	7 Ex Tree (3" cal)
Parking Area Landscaping			
Standard	No. of Parking Spaces	Required	Provided
90 sf per 12 Spaces	11 Spaces	90 sf	634 sf
Parking Area Trees			
Standard	No. of Parking Spaces	Required	Provided
1 Tree per 10 Spaces	11 Spaces	2 Trees (3" cal)	2 new (3" cal) 6 Ex. Orn. Trees
All parking spaces to be located within 50' of a parking lot tree			

LANDSCAPE REQUIREMENT CALCULATIONS

Required Street Yard Landscape Area	Min. 50%
Street Yard Area	6,526.45 s.f.
Existing Street Yard Landscape Area	5,191.67 s.f.
Percentage of Street Yard in Living Landscape	79.54%

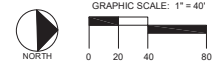
PROPOSED TREES				
Symbol	Key	Name	Size	Spacing
	CE	Elm, Cedar Ulmus crassifolia	3" Cal/ 10' Ht.	As Scattered

PROPOSED PLANTS				
Symbol	Key	Name	Size	Spacing
	KA	Abelia, Radiance Abelia x grandiflora Radiance	5 Gal.	36"
	NSH	Holly, Nellie Stevens Ilex x Nellie R. Stevens	6" Ht.	60"

Common Bermuda Solid Sod or Hydroseeding-4,100 s.f. Shown

Bed Area - 1,550 s.f. Shown
To be Cedar Mulch, 4" Depth.

— Denotes bed line between planting areas - To be 4" x 16" Brown, Commercial Grade, Steel Edging



JUSTIN ROAD
STORAGE CENTER
LOTS 1R & 2R, BLOCK A,
UNIFIED ADDITION

CALL BEFORE YOU DIG - 811



WILLIAMS DESIGN GROUP
LAND PLANNING & LANDSCAPE ARCHITECTURE
4100 Starview Parkway, Suite 100-204 Midland, Texas 79703
P: (409) 406-9431 E: twilliams@wdgpa.com



PROJECT TITLE:

JUSTIN ROAD STORAGE CENTER
FLOWER MOUND, TEXAS

PLAN TITLE:

CONCEPT LANDSCAPE PLAN

REV. DATE

10-19-2020
6-26-2020
9-9-2020

REVISION DESCRIPTION

PER CLIENT COMMENTS
PER CITY COMMENTS
PER CITY COMMENTS

DATE:

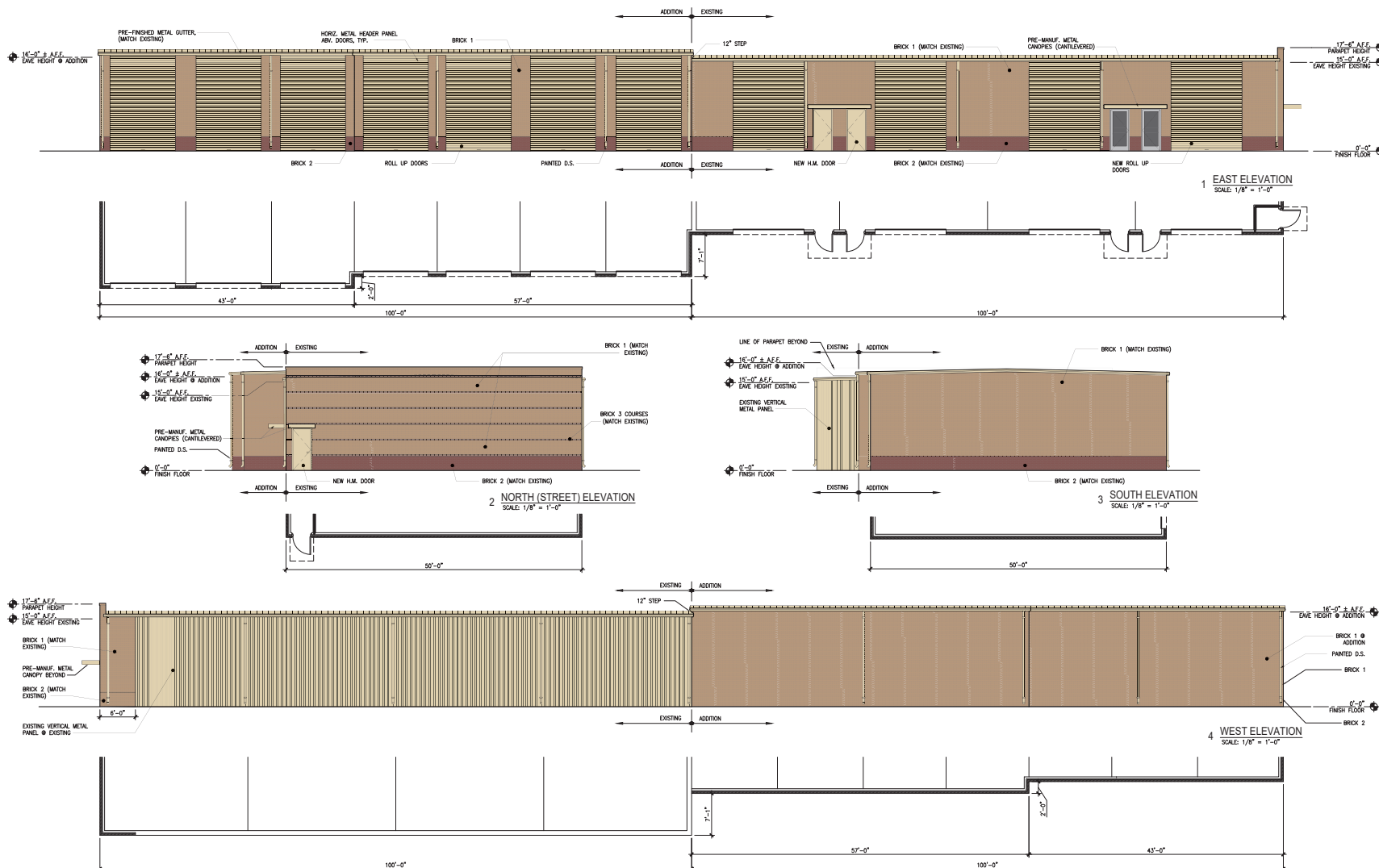
5-14-2020
CONCEPT
LANDSCAPE PLAN

SHEET NO.:

L1.01

Page 253 of 280

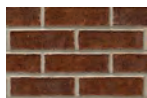
EXHIBIT "C" - CONCEPT ELEVATIONS



MATCH EXISTING STORAGE BUILDINGS FOR ALL MATERIALS - VERIFY IN FIELD



BRICK 1
ACME VIA ROMA



BRICK 2
ACME BURGUNDY



BRICK 3
ACME CASTLE BROWN



ROLL-UP DOORS
JANUS LIGHT STONE



METAL SURFACES
MBCI ALMOND

NOTES:
1. EXISTING DUMPSTER ENCLOSURE TO BE USED
2. ANY EXTERNAL ELECTRICAL PANELS WILL BE PAINTED/TEXTURED TO MATCH THE MATERIAL AND COLOR OF THE BUILDING
3. SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE RIVER WALK SIGN REGULATIONS AND/OR TOWN REGULATIONS

MATERIAL TABULATION CHART - BUILDING "F" (NEW)

	North	South	East	West
1. Total Facade S.F.	148 s.f.	853 s.f.	1817 s.f.	1817 s.f.
2. Facade S.F. (exclusive of doors and windows)	148 s.f.	853 s.f.	371 s.f.	1817 s.f.
3. Doors and Windows S.F.	0 s.f.	0 s.f.	1246 s.f.	0 s.f.
4. Primary Masonry Totals (max. 20%)	148 s.f. and 100% of 2	853 s.f. and 100% of 2	371 s.f. and 100% of 2	1817 s.f. and 100% of 2
• Brick s.f. (as applicable)	148 s.f. and 100% of 2	853 s.f. and 100% of 2	371 s.f. and 100% of 2	1817 s.f. and 100% of 2
• Stone s.f. (as applicable)				
• Rubble s.f. (as applicable)				
• Tile s.f. (as applicable)				
5. Secondary Masonry Totals (max. 20%)				
• EPS s.f. (as applicable)				
• Hardipack s.f. (as applicable)				
• Detail any additional (as applicable)				

MATERIAL TABULATION CHART - BUILDING "E" (EXISTING)

	North	South	East	West
1. Total Facade S.F.	876 s.f.	108 s.f.	1520 s.f.	1520 s.f.
2. Facade S.F. (exclusive of doors and windows)	856 s.f.	108 s.f.	708 s.f.	1520 s.f.
3. Doors and Windows S.F.	21 s.f.	0 s.f.	812 s.f.	0 s.f.
4. Primary Masonry Totals (max. 20%)	856 s.f. and 100% of 2	0 s.f. and 0% of 2	708 s.f. and 100% of 2	94 s.f. and 6% of 2
• Brick s.f. (as applicable)	856 s.f. and 100% of 2	0 s.f. and 0% of 2	708 s.f. and 100% of 2	94 s.f. and 6% of 2
• Stone s.f. (as applicable)				
• Rubble s.f. (as applicable)				
• Tile s.f. (as applicable)				
5. Secondary Masonry Totals (max. 20%)				
• EPS s.f. (as applicable)				
• Hardipack s.f. (as applicable)				
• Existing Metal Panel		108 s.f.		1,426 s.f.



100 NORTH TRAVIS STREET
SUITE NO.500A
SHERMAN, TEXAS 75090
903.893.5800
www.davidbacastudio.com

SCHEMATIC DESIGN REVIEW

NOT FOR REGULATORY
APPROVAL, PERMITTING, OR
CONSTRUCTION

REVISIONS	DATE	DESCRIPTION
NO.		

SHEET TITLE CONCEPTUAL ELEVATIONS

JUSTIN ROAD STORAGE
2711 Justin Rd, Flower Mound, TX 75028

PROJECT NUMBER

2012

DATE

05.04.20

SHEET NUMBER

SUP-1C



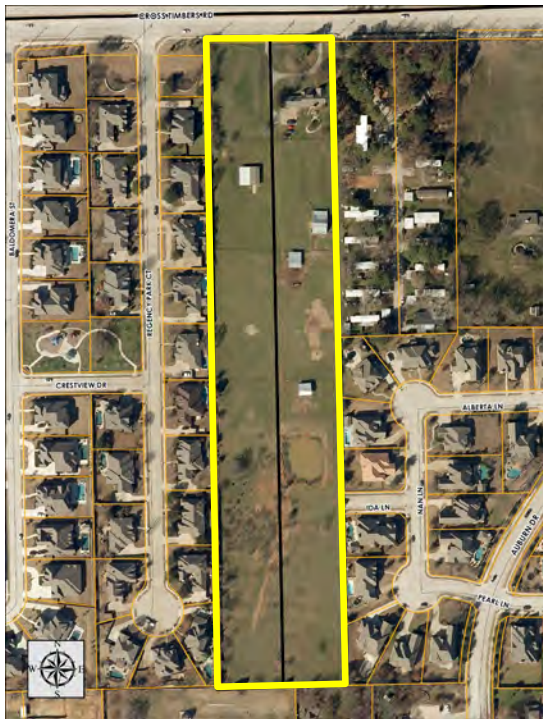
TOWN COUNCIL AGENDA ITEM NO. 21

REGULAR ITEM

DATE: September 21, 2020

FROM: Chuck Russell, Principal Planner

ITEM: Public Hearing to consider a request for rezoning (Z20-0006 – Grace Park Residential) from Agricultural District (A) to Single-Family District-15 (SF-15). The property is generally located south of Cross Timbers Road and east of Regency Park Court. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its September 14, 2020, meeting.)*



SUMMARY DATA:

- Size – 9.796 acres
- Proposed Zoning – SF-15 (min. 15,000 sf lots)
- Proposed Density – Low Density Residential, as designated on the Master Plan
- SMARTGrowth – Passed
- Exceptions – N/A
- Incentives – N/A

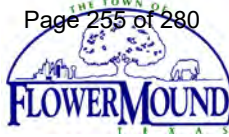
BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

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

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



PLANNING AND ZONING COMMISSION
AGENDA ITEM NO: 2
REGULAR ITEM

DATE: September 14, 2020

FROM: Chuck Russell, Principal Planner

ITEM: **Public Hearing to consider a request for rezoning (Z20-0006 – Grace Park Residential) from Agricultural District (A) to Single-Family District-15 (SF-15). The property is generally located south of Cross Timbers Road and east of Regency Park Court.**

I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission. There are no outstanding issues.

This application will require final action by the Town Council, which is scheduled for September 21, 2020.

II. APPLICATION ANALYSIS

The purpose of this request is to rezone approximately 9.796 acres of land in order to develop residential lots in conformance with the existing Master Plan designation of Low-Density Residential uses, which is defined as single family detached residential development with minimum 15,000 square foot lots or greater. The existing Agricultural zoning permits residential lots containing a minimum of two acres in size.

The property to the west is part of the Regency Park Addition and zoned Single-Family District-15 (SF-15). The property to the north across Cross Timbers Road is a part of the Bridlewood development. Property to the east is zoned a combination of Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility as well as Single-Family District-15 (SF-15) containing the Flower Mound Woods Addition. Property to the south is zoned a combination of Agricultural District (A) and Single-Family Estate District (SFE).

On July 20, 2020, the Town Council denied two applications regarding the subject property:

1. A request for a Master Plan Amendment (MPA19-0005 – Grace Park) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designation from Low Density Uses to Medium Density Uses.
2. A request for rezoning (ZPD19-0013 – Grace Park) from Agricultural District (A) to Planned Development District No. 177 (PD-177) with Single-Family District-10

(SF-10) uses, with certain exceptions, waivers and modifications to the Code of Ordinances.

If the subject rezoning request is approved by Town Council, the applicant will be bringing forward applications for a development plan and record plat in the future.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all Zoning Amendment requests. Project No. Z20-0006 had a total of 56 Property Owner Notifications mailed. At the time this report was written, the Town had received 0 items of correspondence in support and 0 items of correspondence in opposition to the request. All written correspondence was sent directly to the Planning and Zoning Commission according to the new public communication process.

IV. ATTACHMENTS

A. Background Information

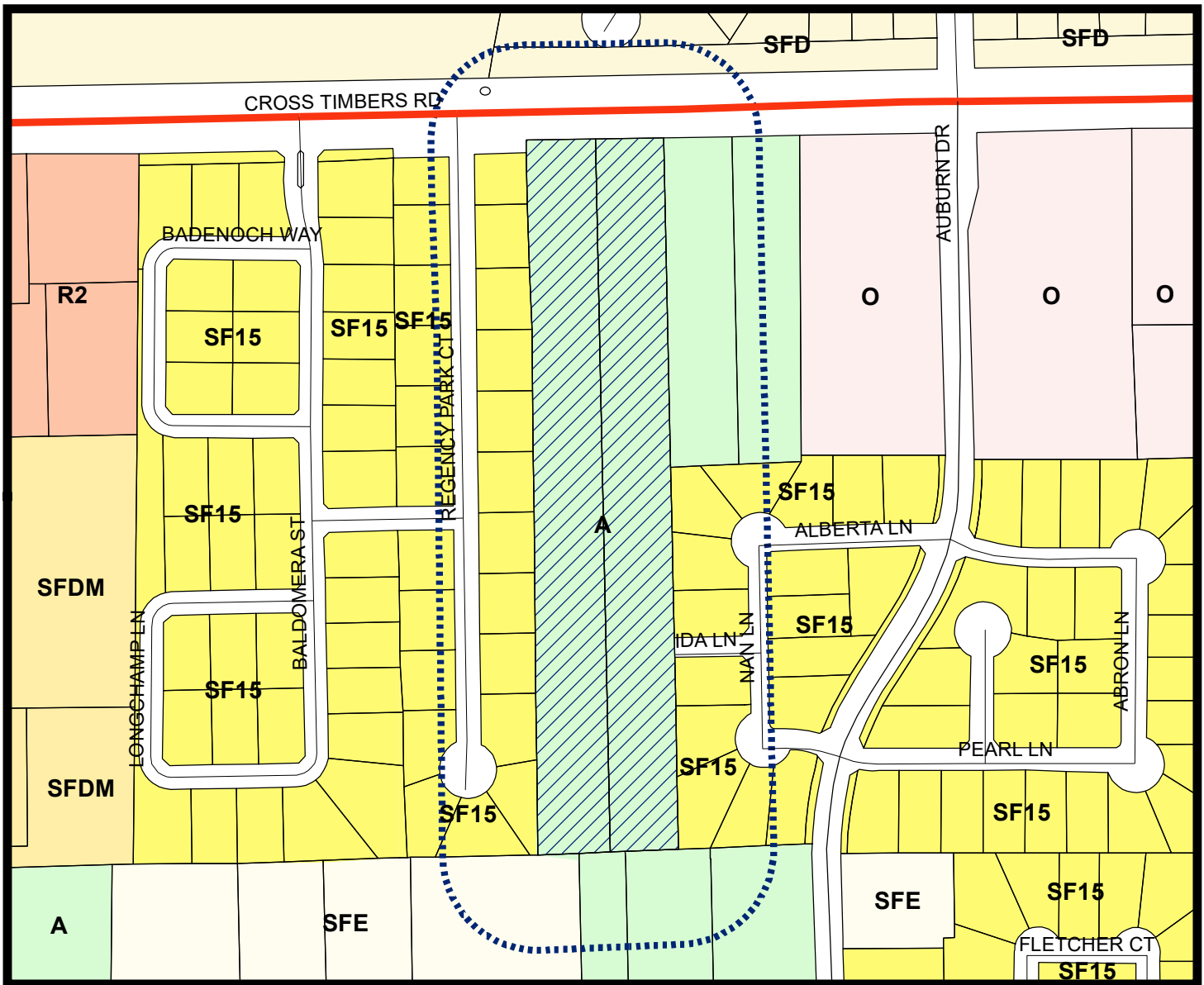
1. Vicinity Map
2. Letter of Intent

B. Application Details

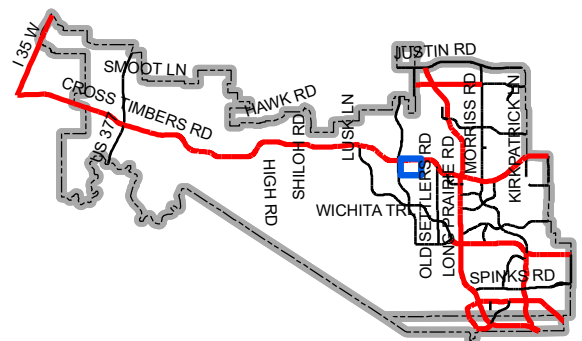
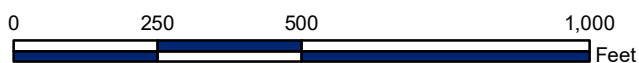
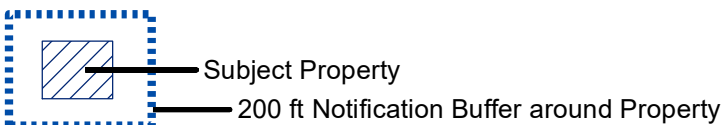
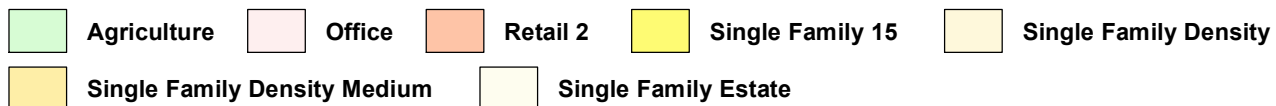
1. Zoning Exhibit

Vicinity Map

Reference Project: Z20-0006



LEGEND



Map Location



Rembert Enterprises, Inc.

3625 Bonanza Lane Flower Mound, TX 75022

July 31, 2020

Planning Division
2121 Cross Timbers Road
Flower Mound, TX 75028

RE: Grace Park (Community)
Flower Mound, Texas

To whom it may concern,

Please accept this as our formal Letter of Intent to describe the requested Zoning application.

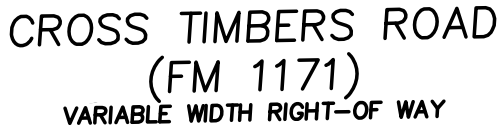
In October of 2019, we began the process of planning this +/- 9.796 acre tract of land near the Intersection of Regency Park Ct. and FM 1171 (also known as Cross Timbers Road, a public roadway), by meeting with the Town's Development Review Committee (DRC). This tract of land is surrounded by two (2) Low-Density Residential communities.

The current zoning for the property is A – Agriculture. We are requesting the zoning to be SF-15 single family detached for the property. The proposed use is consistent with the Master Plan, zoning and density of the surrounding subdivisions.

We appreciate your consideration of our project and should you have any questions, please feel free to contact us.

Sincerely,

Reginald Rembert
Rembert Enterprises, Inc.



LEGEND

**Zoning Standard
SF-15**



VICINITY MAP
N.T.S.

PROPERTY DESCRIPTION:

BEING a 9.796 acre tract of land situated in the P. Malone Survey, Abstract Number 836, being a tract of land conveyed to Joe H. Keahey by deed recorded in Volume 3127, Page 343, Deed Records, Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch rebar found for the southeast corner of Lot 10, Block 2 of REGENCY Park Addition, an addition to the Town of Flower Mound, as recorded in Cabinet R, Page 79, Plat Records, Denton County, Texas also being a point on the north line of a tract of land conveyed to Corp. Pres. Bishop LDS Church by deed recorded in Instrument Number 2001-50205, Deed Records, Denton County, Texas;

THENCE North 01 degrees 10 minutes 00 seconds West, departing the north line of said Corp. Pres. tract, with the east line of said Lot 10 and continuing with the east lines of Lots 8 and 9, Block 2 of said Regency Park, passing a 1/2 inch rebar capped found for the northeast corner of said Lot 8, same being the southeast corner of Lot 7, Block 2 of said Regency Park, a distance of 457.24 feet and continuing with the east lines of Lots 1, 2, 3, 4, 5, 6 and 7, Block 2, of said Regency Park, and continuing with the east line of a 100 foot green belt dedication as recorded in Cabinet R, Page 79, Plat Records, Denton County, Texas and continuing to the south right of way line of Cross Timbers Road (Called 180 foot right of way by Cabinet R, Page 79, P.R.D.C.T.), a total distance of 1,491.02 feet to a 1/2 inch rebar capped "ASC" set for corner;

THENCE the following three calls with the south right of way line of said Cross Timbers Road:

North 88 degrees 51 minutes 27 seconds East, a distance of 57.63 feet to a PK Nail set for corner;

South 86 degrees 47 minutes 01 seconds East, a distance of 65.82 feet to a PK Nail set for corner;

North 88 degrees 51 minutes 27 seconds East, a distance of 164.03 feet to a TXDOT Monument found for the northwest corner of a tract of land conveyed to WSL Flower Mound, LLC by deed recorded in Instrument Number 2018-108342, Deed Records, Denton County, Texas;

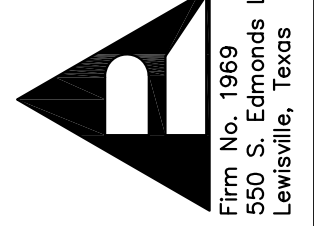
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THENCE South 88 degrees 47 minutes 16 seconds West, with the north line of said Bertie tract, passing a 1/2 inch rebar capped "Concomon" found for the northwest corner of said Bertie tract, same being the northeast corner of said Corp. Pres. tract, a distance of 112.65 feet and continuing with the north line of said Corp. Pres. tract, a total distance of 286.45 feet to THE POINT OF BEGINNING and containing 426,698 square feet or 9.796 acres of land, more or less.

GRACE PARK
RESIDENTIAL SUBDIVISION
9.796 acres Situated in the
P. Malone Survey, Abstract No. 8
in the
Town of Flower Mound
Denton County, Texas

***Ridinger
Associates, Inc.***
Civil Engineers - Planners

One, Suite 101
067
Tel. No. (972) 353-8000
Fax No. (972) 353-8011



Firm No. 1969
550 S. Edmonds Lane, Suite 101
Lewisville, Texas 75067

GRACE PARK
RESIDENTIAL SUBDIVISION
FLOWER MOUND, TEXAS

ZONING EXHIBIT

Scale: 1" = 100'

SHEET

1

OWNER:

Joe H. Keahey
3861 Cross Timbers Rd.
Flower Mound, TX 75028

DEVELOPER/APPLICANT:

Rembert Enterprises, Inc.
3625 Bonanza Lane
Flower Mound, TX 75022
CONTACT: Reginald Rembert
214-213-5982

ENGINEER:

Ridinger Associates, Inc.
550 S. Edmonds Ln. Suite 101
Lewisville, TX 75067
CONTACT: Dale Ridinger
972-353-8000 Office
972-353-8011 Fax

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 9.796 ACRES OF LAND SITUATED IN THE P. MALONE SURVEY, ABSTRACT NUMBER 836, FROM AGRICULTURAL DISTRICT (A) USES TO SINGLE FAMILY RESIDENTIAL DISTRICT-10 (SF-15) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which Ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as 9.796 acres of land situated in the P. Malone Survey, Abstract Number 836, Denton County, Texas, have filed an application to change the zoning from Agricultural District (A) uses to Single Family Residential District-10 (SF-15) uses; and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on September 14, 2020, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on September 21, 2020, with respect to the proposed rezoning as described herein; and

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a rezoning on the property; and

WHEREAS, the Town Council finds that amendment of the Zoning map as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

ORDINANCE NO. _____**Page 2**

SECTION 1

That Subpart B, "Land Development Regulations," of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, is hereby amended on the hereinafter described property and area as shown below:

9.796 acres of land situated in the P. Malone Survey, Abstract Number 836, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Single Family Residential District-15 (SF-15) uses as depicted in the zoning exhibit attached as Exhibit "B" hereto.

SECTION 2

The official map of the Town of Flower Mound is amended and the Director of Planning Services is directed to revise the official zoning map to reflect the approved zoning, as set forth above.

SECTION 3

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 4

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

SECTION 5

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

SECTION 6

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

ORDINANCE NO. _____

Page 3

SECTION 7

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

SECTION 8

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 21ST DAY OF SEPTEMBER, 2020.

APPROVED:_____
Steve Dixon, **MAYOR****ATTEST:**_____
Theresa Scott, **TOWN SECRETARY**

Exhibit A**EXHIBIT "A" – PROPERTY DESCRIPTION**

BEING a 9.796 acre tract of land situated in the P. Malone Survey, Abstract Number 836, being a tract of land conveyed to Joe H. Keahey by deed recorded in Volume 3127, Page 343, Deed Records, Denton County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch rebar found for the southeast corner of Lot 10, Block 2 of Regency Park Addition, an addition to the Town of Flower Mound, as recorded in Cabinet R, Page 79, Plat Records, Denton County, Texas also being a point on the north line of a tract of land conveyed to Corp. Pres. Bishop LDS Church by deed recorded in Instrument Number 2001-50205, Deed Records, Denton County, Texas;

THENCE North 01 degrees 10 minutes 00 seconds West, departing the north line of said Corp. Pres. tract, with the east line of said Lot 10 and continuing with the east lines of Lots 8 and 9, Block 2 of said Regency Park, passing a 1/2 inch rebar capped found for the northeast corner of said Lot 8, same being the southeast corner of Lot 7, Block 2 of said Regency Park, a distance of 457.24 feet and continuing with the east lines of Lots 1, 2, 3, 4, 5, 6 and 7, Block 2, of said Regency Park, and continuing with the east line of a 100 foot green belt dedication as recorded in Cabinet R, Page 79, Plat Records, Denton County, Texas and continuing to the south right of way line of Cross Timbers Road (Called 180 foot right of way by Cabinet R, Page 79, P.R.D.C.T.), a total distance of 1,491.02 feet to a 1/2 inch rebar capped "ASC" set for corner;

THENCE the following three calls with the south right of way line of said Cross Timbers Road:

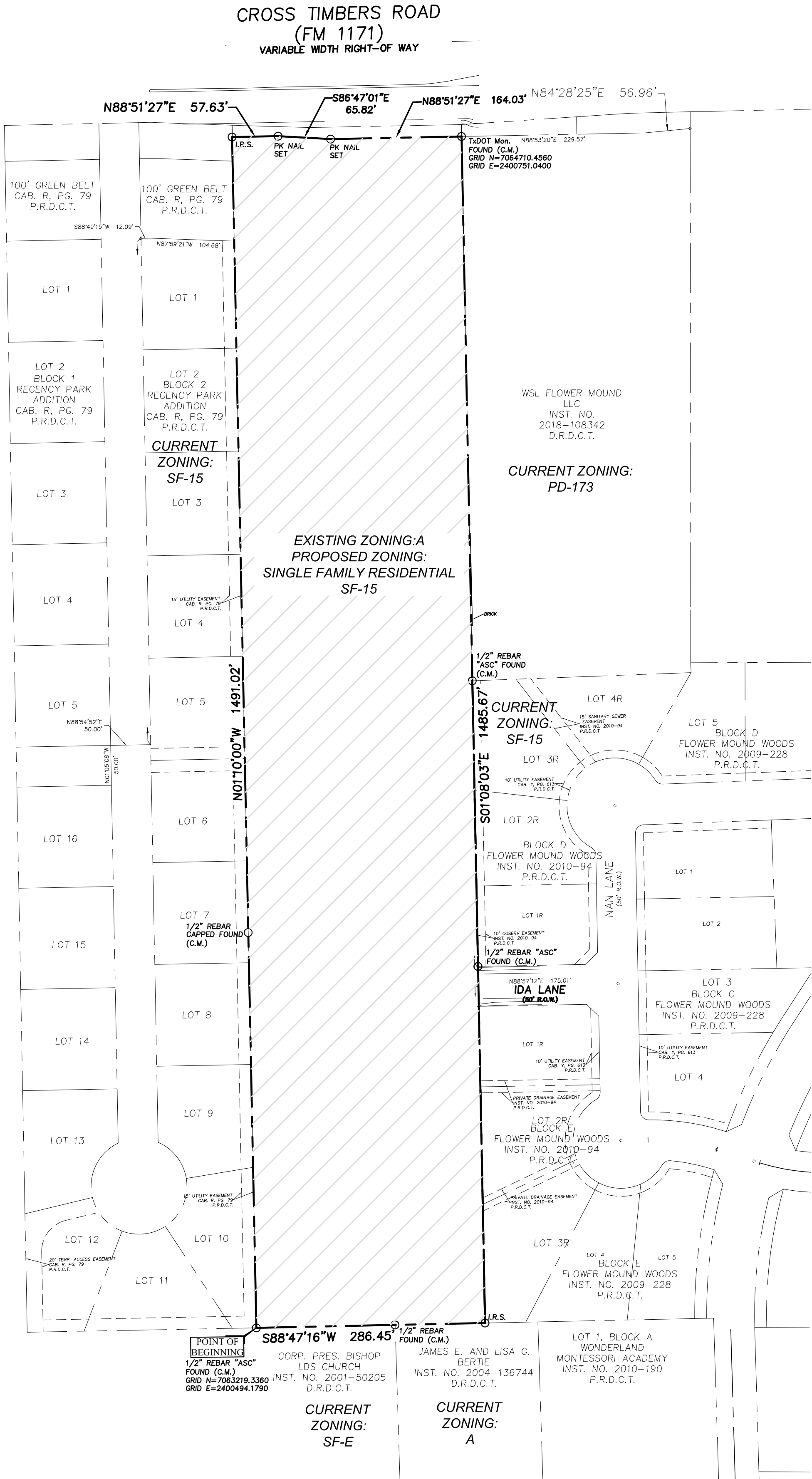
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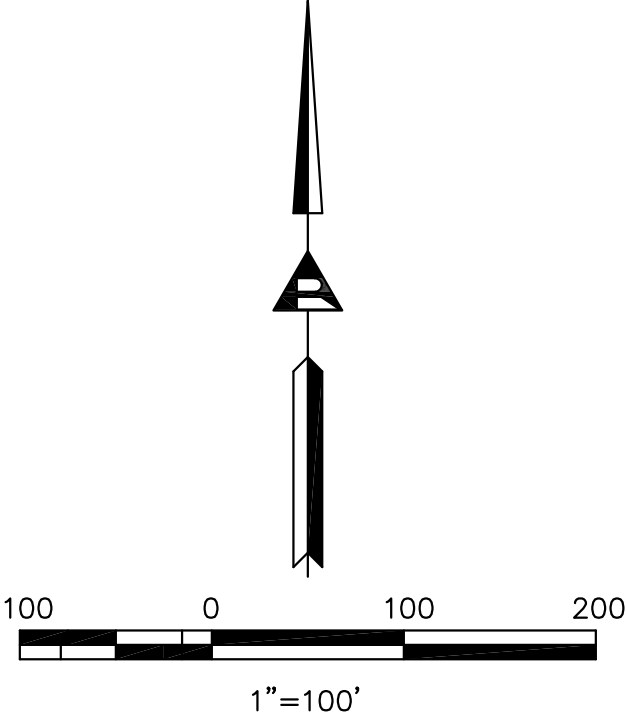
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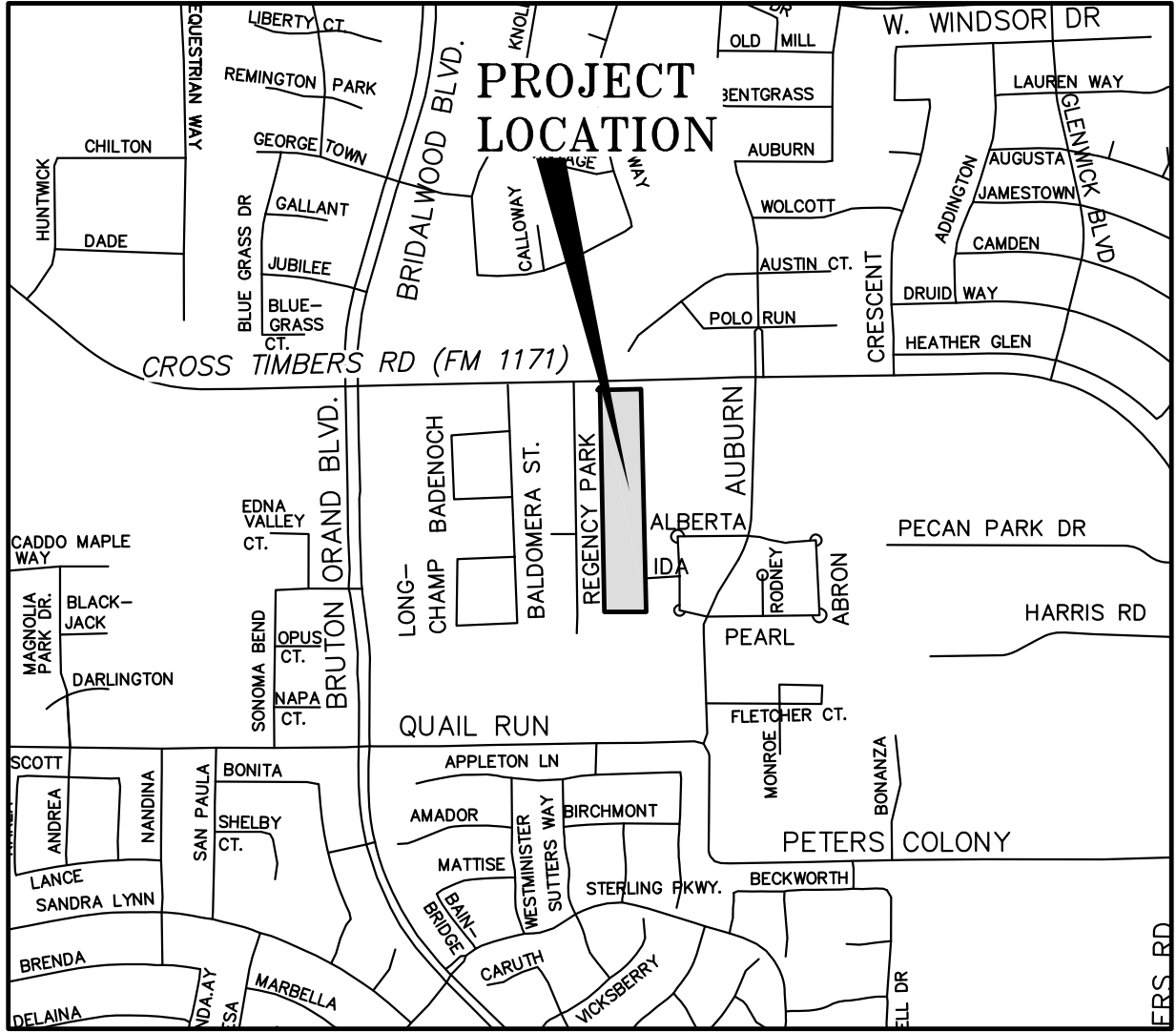


LEGEND	
D.R.D.C.T.	DEED RECORDS, DENTON COUNTY, TEXAS
P.R.D.C.T.	PLAT RECORDS, DENTON COUNTY, TEXAS
R.P.R.D.C.T.	REPLAT RECORD DENTON COUNTY, TEXAS
---	PROPERTY BOUNDARY
---	ADJACENT PROPERTY BOUNDARY



Zoning Standard SF-15	Required
Min. Lot Area	15,000 sf.
Min. Lot Width	80 ft.
Min. Floor Area	1,800 sf.
Min. Front Yard	25 ft.
Min. Side Yard	12 ft.
Min. Rear Yard	30 ft.
Max. Lot Coverage	35 %
Max. Height (stories/ft.)	3/35 ft.

MASTER PLAN FEATURES	
Land Use Plan	Low Density Residential
Specific Plans	None
Urban Design Plan	None
Parks and Trails	8' Trail along F.M. 1171
Open Space Plan	N/A
Thoroughfare Plan	Cross Timbers Road – Major Arterial;
Water Plan	Existing 12" WM, S. Side of Cross Timbers Rd.
Wastewater Plan	Connect to existing SS manhole at Ida Lane & to Existing 8" SS stub, at west property line of subject tract, on Cross Timbers Road.



VICINITY MAP
N.T.S.

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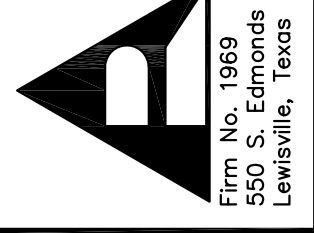
GRACE PARK
RESIDENTIAL SUBDIVISION
9.796 acres Situated in the
P. Malone Survey, Abstract No. 836
in the
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OWNER:
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Flower Mound, TX 75028

DEVELOPER/APPLICANT:
Rembert Enterprises, Inc.
3625 Bonanza Lane
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CONTACT: Reginald Rembert
214-213-5982

ENGINEER:
Ridinger Associates, Inc.
550 S. Edmonds Ln, Suite 101
Lewisville, TX 75067
CONTACT: Dale Ridinger
972-353-8000 Office
972-353-8011 Fax

No.	Date	Revisions	App.



**Ridinger
Associates, Inc.**
Civil Engineers - Planners

Firm No. 1969
550 S. Edmonds Lane, Suite 101
Lewisville, Texas 75067
Tel. No. (972) 353-8000
Fax No. (972) 353-8011

GRACE PARK
RESIDENTIAL SUBDIVISION
FLOWER MOUND, TEXAS

ZONING EXHIBIT

Scale: 1" = 100'
Designed by: LDR
Drawn by: JWH
Checked by: LDR
Date: JULY 30, 2020
Project No. 035-030



TOWN COUNCIL AGENDA ITEM NO. 22

REGULAR ITEM

DATE: September 21, 2020

FROM: Brian Waltenburg, P.E., Assistant Director of Engineering

ITEM: **Consider approval of a Construction Agreement with Fort Worth Civil Constructors, LLC, for the Lift Station Improvements and Decommissioning Phase II project, in the amount of \$1,293,798.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND INFORMATION: On August 18, 2020, bids were received and opened for the Lift Station Improvements and Decommissioning Phase II, Bid No. 2020-114-B. Fort Worth Civil Constructors, LLC submitted the lowest qualified bid of the three responding bidders at a base bid of \$1,293,798.00.

Construction includes improvements to the following lift stations to reduce maintenance and operational costs, keep the facilities within TCEQ compliance, address structural deficiencies, and replace necessary equipment: Garden Ridge, Wichita 1, Wichita 2 and Wickersham.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision not to approve the construction agreement would result in continued maintenance issues, additional operational costs, structural deficiencies, and potential TCEQ actions against the Town due to deteriorating lift stations.

FISCAL IMPACT: \$1,293,798.00.

Proposed Expenditure/(Revenue):	Account Number(s):
\$1,293,798.00.	630-970-98581

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

Total project cost is \$2,550,000. Funding sources are:

- Utility Debt \$ 2,550,000

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 these documents.

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



Town of Flower Mound
Bid Tabulation

Bid No: 2020-114-B - Lift Station Improvements and Decomissioning Phase II

Bid Opening: 8/18/2020 at 11:00 AM

Company	Base Bid
Fort Worth Civil Constructors, LLC	\$ 1,293,798.00
Rey-Mar Construction	\$ 1,392,800.00
Joe Funk Construction, Inc	\$ 1,442,116.30

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

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

Date: August 18, 2020

TOWN OF FLOWER MOUND**LIFT STATION IMPROVEMENTS AND DECOMMISSIONING PHASE II****Bid # 2020-114-B****CONSTRUCTION AGREEMENT**

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this 21st day of September, 2020, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Fort Worth Civil Constructors, a Limited Liability Company, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

LIFT STATION IMPROVEMENTS AND DECOMMISSIONING PHASE II,
Bid # 2020-114-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 HUNDREND NINETY-THREE THOUSAND SEVEN HINDREND NINETY-EIGHT Dollars and 00 cents (\$1,293,798.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of Two hundred and seventy (270) calendar days, and final completion of Three hundred (300) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

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

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

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

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

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

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

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

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____(Signature)
_____(Position)

Town Council Future Agenda Items



SCHEDULED	10/5/2020	Presentation	Presentation and discussion of the Flower Mound Development Process Review by Matrix Consulting.
		Consent	Consider approval to increase the contract funding for additional grounds maintenance and landscape services performed by American Landscape
		Consent	Consider approval of the purchase of Firefighter uniforms in the amount of \$75,000.00 from Gall's LLC through the City of Frisco Cooperative Bid No. 1905-082 (TOFM No. 2019-168-I).
		Consent	Consider approval of the purchase of emergency medical supplies and pharmaceuticals from Bound Tree Medical LLC, through the City of Cedar Hill Contract in the amount of \$120,000.00.
		Consent	Consider approval of the purchase and installation of lightning detection systems at various athletic complexes, for the Lightning Detection System Replacements project, from Earth Networks in the amount of \$56,400.00.
	10/15/2020	Consent	Consider approval of a Construction Agreement with Muniz Construction, Inc., for the Garden Ridge Boulevard Water Line Phase II project, in the amount of \$822,345.00; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Public Hearing to consider approval of a resolution authorizing the application of a grant proposal to the Texas Parks and Wildlife Department, for funding assistance for the development of Peters Colony Memorial Park; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of a Construction Agreement with DDM Construction Corporation for the Waketon Road (Cross Timbers Drive to 1,350' East of Chinn Chapel) project, in the amount of \$4,796,507.45; and authorization for the Mayor to execute same on behalf of the Town.
		Regular	Consider approval of the Guaranteed Maximum Price (GMP) for the construction of the Gibson Grant Log Cabin Restoration Project with Phoenix I Restoration and Construction, Ltd., in the amount of \$1,XXX,XXX.00; and authorization for the Mayor to execute the same on behalf of the Town.
		Regular	Presentation of land use assumptions as they relate to the ongoing Master Plan and Impact Fee update projects, and opportunity for the Council to ask questions and provide input.
	10/15/2020	Work Session	Joint work session with the Planning and Zoning Commission to discuss infill locations.
	10/19/2020	Consent	Lift Station Improvements & Decommissioning Phase II - Testing Award.
		Consent	Waketon Road - Testing Award.

SCHEDULED	10/19/2020	Consent	FM 2499 @ Chaparral Traffic Signal Construction Award
		Consent	Hound Mound Parking and Restroom - Construction Award
		Consent	Garden Ridge Water Line Phase II - Testing Award
		Consent	PLACEHOLDER: Canyon Falls Park - Construction Award
		Consent	Stonehill Pump Station Discharge Valve Replacement & 10 MG GST Rehabilitation
		Consent	Upper Timber Creek Interceptor - CO1
		Consent	Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2021 Independence Fest (The Parks Board recommended approval by a vote of 6 to 0 at its September 3, 2020 meeting).
	11/2/2020	Consent	Canyon Falls Park - Testing Award
		Consent	Consider approval of the purchase of twenty sets of bunker gear from NAFECO, Inc. through BuyBoard Purchasing Contract No. 524-17 and authorization for the Mayor to approve same on behalf of the Town.
	11/19/2020	Work Session	Placeholder: permitted use discussion
	12/7/2020	Consent	Rheudasil Park - Construction Award
		Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Construction Award
		Consent	Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards.
	12/21/2020	Consent	Rheudasil Park - Testing Award
		Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Testing Award
	3/1/2021	Regular	Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2020, and ending on September 30, 2021, as adopted by Ordinance No. xx-xx for adjustments to the General Fund