

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

11/2/2020

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

6:00 P.M.

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

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

A. **CALL MEETING TO ORDER**

B. **INVOCATION**

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

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

D. **PUBLIC COMMENT**

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

- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired
- Please state your name and address when speaking

The purpose of this item is to allow the public an opportunity to address the Town Council on issues that are not indicated as a "Public Hearing" on this agenda. Issues regarding daily operational or administrative matters should first be dealt with by calling Town Hall at 972.874.6000 during business hours.

E. **ANNOUNCEMENTS**

1. Announce recent and upcoming civic and social events.

Proclamation to designate November as Arts Month in Flower Mound.

F. **TOWN MANAGER'S REPORT**

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects

G. **FUTURE AGENDA ITEMS**

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

H. **COORDINATION OF CALENDARS**

1. A regular meeting is scheduled for Monday, November 16.
2. A work session is scheduled for Thursday, November 19.

Town Council Meeting Agenda
November 2, 2020
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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 10/19- Consider approval of the minutes from a regular meeting of the Town Council held on October 19, 2020.
2. Vehicle Purchase - Police Dodge Chargers- Consider approval of the purchase of eight (8) 2021 Dodge Charger Police Pursuit Sedans with Police Equipment Packages per Town of Flower Mound Specifications and Vendor Quote from Holiday Dodge of the Holiday Autogroup for Police Services in the amount of \$271,960.00.
3. Pierce Custom Velocity Tanker- Consider approval of the purchase of a Pierce Custom Velocity Tanker for Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the amount of \$799,728.13; and authorization for the Mayor to execute same on behalf of the Town.
4. Hound Mound Parking Restroom Const- Consider approval of a Construction Agreement with J.B. & Company LLC, for the Hound Mound Parking and Restroom project, in the amount of \$498,945.00.
5. Traffic Signal Rehab Equip Purchase- Consider approval of the purchase of new Traffic Signal Detection Equipment for the Traffic Detection Rehabilitation project, from Twincrest Technologies through the HGAC program, in the amount of \$152,810.00.
6. Land Use Assumptions, CIP, Impact Fees- Consider a resolution setting a date for a public hearing for the purpose of receiving comments and to discuss and review the updated land use assumptions, capital improvements plan and roadway, water and wastewater impact fees.
7. 2020-2021 Strategic Plan- Consider adoption of the Town Council Strategic Plan for Fiscal Year 2020-2021.
8. Development Services Fee Survey- Consider approval of a Professional Services Agreement with Matrix Consulting Group, Inc. to conduct a development services fee study, in the amount of \$30,000.00; and authorization for the Mayor to execute same on behalf of the Town.

J. REGULAR ITEMS

9. LDR20-0004 - Nonconforming Uses- Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0004 – Nonconforming Uses) by amending Chapter 78 entitled "Administration," of the Town's Code of Ordinances to update the definitions and processes related to nonconformities within the Town of Flower Mound, as well as to update the standards for submitting appeals to the Board of Adjustment, in order to comply with new state requirements. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its October 26, 2020, meeting.)

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K. 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.

1. Crossfire Management Group, LLC Ch 380

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 the recruitment process for the Town Manager, and all matters incident and related thereto.
- c. 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.
- 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.

L. 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.

M. 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: October 30, 2020, at 9:45 a.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: November 2, 2020

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on October 19, 2020.

BACKGROUND INFORMATION: The Town Council held a regular meeting on October 19, 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 10.19

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

FLOWER MOUND TOWN COUNCIL MEETING OF OCTOBER 19, 2020

PAGE 1

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 19TH DAY OF OCTOBER 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
Debra Wallace	Interim & Deputy Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Tiffany Bruce	Executive Director of Public Works
Andy Kancel	Police Chief

A. CALL REGULAR MEETING TO ORDER

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

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

Chaplain Russ McNamer gave the invocation and Mayor Dixon led the pledges.

D. PUBLIC COMMENT

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

	Speaker names and address	Subject (as written on the form)
1.	Paul Stone, 4100 Broadway	Items 15 and 16
2.	Yvette Elliott, 1309 Homestead*	Hate has no home here
3.	Diane Beck, SPAN, 1800 Malone St, Denton, TX	SPAN Meals on Wheels

*Submitted a speaker card but did not come forward when called

E. ANNOUNCEMENTS

Several members of Council condemned the messages of hate in response to various postings in the community as was reported to them. Chief Kancel provided background information on the group that posted the messages and outlined steps the Police Department is taking to deter this type of activity.

Councilmember Engel provided a voter turnout update.

Mayor Pro Tem Sharma announced that the Town is accepting nominations for the annual Outstanding Citizenship Award.

F. TOWN MANAGER'S REPORT

Ms. Wallace provided an update on the following projects:

1. Capital improvement projects
 - Peter's Colony round about now open
2. Economic Development projects
 - Now open or coming soon businesses
3. Financial update
 - October sales tax receipts report
4. Mixed-use regulations

Ms. Wallace pointed out that there were recent news articles related to mixed use development, which prompted various questions on social meeting. For that reason, Mr. Dalton gave a presentation identifying or noting:

- Mixed use master plan category
- Land use plan
- Mixed use zoning regulations
- Non-residential uses
- Residential uses allowed
- Mixed use designations

Mayor Dixon requested the Town Attorney provide the Council with information about Rule 11.

G. FUTURE AGENDA ITEMS

1. There were no items requested.

H. COORDINATION OF CALENDARS

Mayor Dixon announced the following upcoming meeting dates:

1. A regular meeting is scheduled for Monday, November 2.
2. A regular meeting is scheduled for Monday, November 16.
3. A work session is scheduled for Thursday, November 19.

FLOWER MOUND TOWN COUNCIL MEETING OF OCTOBER 19, 2020**PAGE 3****I. CONSENT ITEMS**

1. Consider approval of the minutes from a regular meeting of the Town Council held on October 5, 2020, and approval of the minutes from a joint Town Council/Planning and Zoning work session held on October 15, 2020.
2. Consider approval to utilize the handyman contract pricing with Unlimited Hotel Services, Inc. for services performed on the Police Department CID and Jury Room Renovation Project.
3. Consider approval to increase the contract funding for additional grounds maintenance and landscape services performed by American Landscape.
4. Consider approval of an ordinance amending Chapter 18, "Businesses," Article III "Food and Food Establishments," and Article IV "Solicitation Activities," of the Code of Ordinances of the Town of Flower Mound, Texas, by amending Section 18-91, "Definitions," and adding a new Section 18-127, "Ice Cream Trucks," to define and establish permit requirements and regulations for ice cream trucks, by amending Section 18-267, "Solicitation on public property," to allow designated mobile food vendors to operate within the public rights-of-way, and by amending Appendix A "Fee Schedule," relative to adding a permit fee.

ORDINANCE NO. 32-20

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 18, "BUSINESSES," OF THE TOWN'S CODE OF ORDINANCES, SECTION 18-91, "DEFINITIONS," TO ADD DEFINITIONS TO REGULATE ICE CREAM TRUCKS; ADDING SECTION 18-127, "ICE CREAM TRUCKS," TO ESTABLISH REGULATIONS FOR ICE CREAM TRUCKS; AMENDING SECTION 18-267, "SOLICITATION ON PUBLIC PROPERTY," TO ALLOW ICE CREAM TRUCK VENDORS TO OPERATE WITHIN THE PUBLIC RIGHTS-OF-WAY; 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.

5. Consider approval of the purchase of three (3) Chevrolet Tahoe Police Pursuit Vehicles with Equipment and Patrol Application (turn-key units) per Town of Flower Mound Specifications and Vendor Quote from Holiday Chevrolet for Police Services in the amount of \$176,678.00
6. Consider approval of a resolution declaring expectation to reimburse water and sewer project expenditures with proceeds of future debt and authorizing the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations; and providing an effective date.

RESOLUTION NO. 21-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, DECLARING EXPECTATION TO REIMBURSE WATER AND SEWER PROJECT EXPENDITURES WITH PROCEEDS OF FUTURE DEBT, AND AUTHORIZING THE PREPARATION OF THE DOCUMENTS ASSOCIATED WITH THE ISSUANCE, SALE AND DELIVERY OF THE DEBT OBLIGATIONS; AND PROVIDING AN EFFECTIVE DATE.

FLOWER MOUND TOWN COUNCIL MEETING OF OCTOBER 19, 2020**PAGE 4**

7. Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of library services for the benefit of the citizens of Denton County, and authorize the mayor to execute same on behalf of the Town.
8. Consider approval of a fee agreement with City of Lewisville for use of the Jerry R. Galler Public Safety Training Center for the purpose of firearms training and annual qualifications, and authorization for the Mayor to execute same on behalf of the Town.
9. Consider approval of a Professional Services Agreement with Jacobs Engineering Group for design phase services associated with the US 377 and FM 1171 Water Line Loop / Relocation project in the amount of \$134,000.00; and authorization for the Mayor to execute same on behalf of the Town.
10. Consider approval of a Professional Services Agreement with ECS Southwest, LLP to provide construction materials engineering and testing, for the Garden Ridge Boulevard Water Line Phase II project, in the amount of \$21,853.00; and authorization for the Mayor to execute same on behalf of the Town.
11. Consider approval of a License Agreement with Sankey, Ltd. to allow for vehicle parking on park property; and authorization for the Mayor to execute same on behalf of the Town.
12. Consider approval of a Service Contract with The Christmas Light Company, Inc., in an annual amount not-to-exceed \$55,100, to provide holiday lighting services at the Community Activity Center; and authorization for the Mayor to execute same on behalf of the Town.
13. 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).

Mayor Pro Tem Forest moved to approve by consent Items 1 – 13, as presented in the agenda caption. Councilmember Bumgarner seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

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

14. Consider approval of a Construction Agreement with Archer Western Construction, LLC the Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation project, in the amount of \$1,027,000.00; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Ms. Wallace provided background information regarding the purpose of the item.

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

VOTE ON MOTION:*Motion passed***AYES: PIERSON, ENGEL, SHARMA, FOREST, BUMGARNER**

FLOWER MOUND TOWN COUNCIL MEETING OF OCTOBER 19, 2020**PAGE 5****NAYS:**

15. Consider creation of a protocol regarding public comments made by a board or commission member directed toward members of Council. (No packet content - Presentation only)

Council Discussion

There was Council discussion regarding:

- Clarification that the intent for the discussion on this topic is within the context of board and commission members and not the general public
- Process options to resolve issues between members of Council and board or commission members and vice versa
- Clarification regarding the problem that needs resolved
- Past example of a conflict and how it was resolved
- How the Town's Ethic's ordinance addresses many of the concerns and that information is discussed during the in-house training

And Mr. Meredith responded to questions from Council regarding:

- If there is a written policy as it relates to conflict resolution for board and commission members

There was Council direction to formalize in writing that the in-house training be a requirement upon acceptance of a position on a Town board or commission.

16. Consider creation of a voting record document for Town Council and/or board and commission members. (No packet content - Presentation only)

Staff Presentation

Ms. Scott gave a presentation identifying or noting:

- Background information
- Guideline considerations
- Voting record report example

and she responded to the following questions from Council:

- How many people over the years have asked for voting record information
- How much staff time is involved to

Council Discussion

- Interest in having the voting record information more readily available outside of the minutes

There was Council direction to create a searchable voting record report starting with the next election.

K./L. CLOSED/OPEN MEETING

The Town Council did not convene into a closed meeting; therefore, no action was taken on the following items:

FLOWER MOUND TOWN COUNCIL MEETING OF OCTOBER 19, 2020**PAGE 6**

- a. Consultation with Attorney as follows:
- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, cultural arts center, and/or other municipal purposes and all matters incident and related thereto.
- c. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.
- d. Discuss and consider the recruitment process for the Town Manager, and all matters incident and related thereto.

N. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 7:07 p.m. on Monday, October 19, 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: November 2, 2020

FROM: Sabrina Zadow, Purchasing Manager

ITEM: Consider approval of the purchase of eight 2021 Dodge Charger Police Pursuit Sedans with Police Equipment Packages per Town of Flower Mound Specifications and Vendor Quote from Holiday Dodge of the Holiday Autogroup for Police Services in the amount of \$271,960.00.

BACKGROUND INFORMATION: The Police Services Department is requesting the purchase of eight new 2021 Dodge Charger Police Pursuit Vehicles with Equipment Packages per Town of Flower Mound Specifications and Vendor Estimate #29038 in the amount of \$271,960.00 from Holiday Dodge of the Holiday Autogroup through Tarrant County Contract 2020-174.

This purchase is to replace Unit No. 43500-21, a 2014 Tahoe with 108,000 miles, and Unit No. 43500-22, a 2014 Tahoe with 97,000 miles; and are part of the approved Fiscal Year 20-21 Vehicle Equipment Replacement Fund (VERF). Six of the eight chargers are new additions to the Town's Fleet Inventory approved via a Fiscal Year 20-21 Decision Package and approved in Fiscal Year 20-21 budget.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$271,960.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$216,000.00	565-450-84500-6130
\$ 55,960.00	318-560-43500-6130

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Fleet Manager's Bid Award Recommendation for Vehicle
2. Quote – Estimate #29038
3. Town of Flower Mound Specifications

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



Bid Award Recommendation

Date: 10/09/2020

Description: **2021 Dodge Police Pursuit Rated Chargers V8 RWD W/Police Equipment**

Qty.: 8

*Replaces: 43500-21, a 2014 Tahoe/w 108k miles, and 43500-22, a 2014 Tahoe/w 97k miles.
(6 of the 8 chargers are new additions to the fleet)*

Bidder: Holiday Auto Group, Mike Hewitt 903-564-5641, mike@defendersupply.com
Estimate#29038, Tarrant County Cooperative Contract# 2020-174.

Item: 8 – Pursuit Rated Chargers with Police Equipment Packages as per TOFM Specs.

Total Cost of Vehicles, Equipment & Installation:

\$271,960.00

It is Fleet Services recommendation to award the bid to **Holiday Auto Group** in the amount of **\$271,960.00** utilizing the **Tarrant County Cooperative Contract # 2020-174.**

Fleet Services Manager

10/09/2020

Date



Date	10/7/2020
Estimate By	Mike Hewitt mike@defendersupply.com (903) 564-5641



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

Customer Contact	
Customer Phone	972-874-6037 AP
Customer E-mail	accountspayable@flower...
Estimate #	29038

Description	Location	Qty.	Ext. Price
** Pricing Per Tarrant County Cooperative Contract # 2020-174 **			
2021 Dodge Charger Police Pursuit Sedan, RWD, 5.7L V8 HEMI		8	210,816.00
Per attached specifications			
2 Year Texas State Inspection Certificate		8	56.00
Snow Chains/Cables		8	624.00
Window Tint - All Windows - 4 Door Sedan		8	1,432.00
55% Madico			
Whelen LED 8 Degree Spotlight Replacement		8	1,032.00
Whelen Cencom Carbide Siren & PA Amplifier with Light Control Module with CANport™ OBDII Interface with Traffic Advisor™ Module.		8	5,856.00
Installation Kit for CCSRN5 Series for 2018-2020 Ram Classic 1500 and 2018-2020 Dodge Charger and Durango, No Charge when Purchased with Amplifier Control Module		8	0.00
Whelen Cencom Carbide Siren & PA Amplifier & Light Control Head - Includes 3 Section Control Head and 21 Push-Buttons, 4-Position Slide Switch, Microphone with Extension Cable, No Charge When Purchased with Amplifier Control Module.		8	0.00
Whelen 48" Legacy® DUO+™ Color Series Super-LED® Clear Lens Light Bar with Take Downs, Alley Lights with Red/White/Blue/White Front Configuration & Red/Amber/Blue/Amber Rear Configuration.		8	13,352.00
Whelen Surface Mount ION Trio Light Head in Red/Blue/White	Side of Push Bumper	16	1,424.00
Whelen Trio Color Linear ION Red/Blue/White	Push Bumper-Front Facing	16	1,424.00
Whelen Universal Solid State Tail Light Flasher		8	632.00
Whelen 100 Watt All Weather Heavy Duty Composite Siren Speaker		8	1,192.00
Whelen Universal "L" Shape Siren Speaker Bracket		8	184.00
Whelen LED Flush Mount Compartment Light in Red & White	Rear Hatch/Trunk	8	472.00
Universal Mount 6" Round w/ Red LED Night Light, 10-30v - White LEDs/White Lens	Front Cabine	8	392.00
Professional Design of Graphics for Customer's Department by Defender Supply		8	3,912.00
Professional Installation of Graphics by Defender Supply		8	1,200.00
Jotto Desk Magnetic Mic Clip		16	448.00

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

Vehicle and Emergency Equipme ...

SIGNATURE

Date	10/7/2020
Estimate By	Mike Hewitt
	mike@defendersupply.com
	(903) 564-5641



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

Customer Contact	
Customer Phone	972-874-6037 AP
Customer E-mail	accountspayable@flower...
Estimate #	29038

Description	Location	Qty.	Ext. Price
Setina Aluminum Trunk Tray for Dodge Charger		8	2,176.00
Shipping of Above Emergency Parts for Upfit		8	248.00
Misc. Shop Supplies		8	352.00
Defender Supply Wiring Harness, Power Distribution Block and Battery Management System		8	6,984.00
Installation of Above Items and Previously Purchased Vehicle Specific Items		8	17,752.00
Previously Purchased Items:			
Gamber Johnson Console			
Pro-Gard Partition			
Window Barriers			
Light Bar Strap Kit			
Speaker Bracket			
Go Rhino Push Bumper			

Vehicle and Emergency Equipme ...	\$271,960.00
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SIGNATURE _____

Town of Flower Mound

PURCHASING SPECIFICATIONS

SPECIFICATION NO.:

Revised: September 18, 2020

ITEM: (8) Eight New Pursuit Rated Sedans

Police pkg. Sedan, 4-door, ~~All Wheel Drive~~ RWD
(TOFM vehicle replacement program)

(6) Six will be VERF Replacements

(2) Two will be from account 318-560-43500-6130

FUNCTION: Pursuit Application Vehicle. Public Safety unit with rear cargo area for transporting various types of equipment.

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

Example:

Dodge Charger (police pursuit rated)

NOTE:

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

ATTENTION:

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

Bidder / Flower Mound

Y/N Y/N

✓ Y

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

DRIVE TRAIN**Bidder / Flower Mound**

Y/N Y/N

☒ Y

1. Engine: Gasoline, minimum 3.5L or equal

State engine size bid: ~~3.6L V6~~ V8

Flex-Fuel:

☒ Yes ☐ No☒ Y

2. Automatic Transmission

☒ Y

3. Fuel tank: min. 18 gal.

☒ Y

4. Heavy duty battery

☒ Y

5. Power Anti-lock Braking System, 4-wheel Disc

☒ Y

6. All wheel drive

TIRES AND WHEELS**Bidder / Flower Mound**

Y/N Y/N

☒ Y

1. Tires: Radial highway, all season

☒ Y

2. Full size spare tire with jack

☒ Y

3. Matching full size spare tire/wheel

☒ Y

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

CAB & EQUIPMENT**Bidder / Flower Mound**

Y/N Y/N

☒ Y

1. Power Steering

☒ Y

2. Factory Tinted glass

☒ Y

3. Intermittent wipers

☒ Y4. Exterior Paint: **Black**☒ Y

5. Seats: Cloth Front lowback (bucket) seats, Rear Vinyl X5X9

☒ Y

6. Air Conditioning

- ☒ Y__ 7. Radio: Standard AM / FM w/ media reader
☒ Y__ 8. Rear Window Defroster
☒ Y__ 9. Interior cargo area.
 Preferred width: min. 50".
 State width of unit interior bid: 50"
 Preferred cargo volume: min. 20 cu.ft.
 State cargo volume of unit bid: 20 cu ft
- ☒ Y__ 10. Power windows (with inoperative rear window switches) CW6
☒ Y__ 11. Power door locks (with rear door locks and handles inoperative) CW6
☒ Y__ 12. Power Driver/Passenger Mirrors
☒ Y__ 13. Front and Rear: Full black rubber floor covering (no floormats).
☒ Y__ 14. Interior: Dark gray or equivalent dark interior
☒ Y__ 15. Keyless entry
☐ Y N 16. One (1) set of eight (8) keys/fobs (Must be included at time of vehicle delivery)
☒ Y__ 17. **All vehicles keyed alike** G X A
☒ Y__ 18. Flasher System (Headlamp and Tailamp)
☒ Y__ 19. Bluetooth
☒ Y__ 20. Fleet Safety Group (AWC)
☒ Y__ 21. LED Spotlight – Driver Side

OTHER EQUIPMENT

Bidder / Flower Mound

Y/N Y/N

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

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

EQUIPMENT OPTIONS:

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

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

<u>*Interior</u>			<u>COST EACH</u>
Bidder / Flower Mound			
<u>Y</u> Y__		(8) Whelen – CENCOM Carbide 21 push button control head	\$ <u>5856</u> ⁰⁰
<u>Y</u> Y__		(8) Whelen Legacy DUO 48" w/ TA	\$ <u>13,352</u> ⁰⁰
<u>Y</u> Y__		(16) Whelen ION TRIO R/B/W Part# I3SMJ	\$ <u>1424</u> ⁰⁰
<u>Y</u> Y__		(16) Whelen ION Trio R/B/W Part# I3J	\$ <u>1424</u> ⁰⁰
<u>Y</u> Y__		(8) Whelen Headlight/Tailight Flasher Modules Part# Dodge Charger	\$ <u>632</u> ⁰⁰
<u>Y</u> Y__		(8) Whelen 100 Watt Siren speaker	\$ <u>1376</u> ⁰⁰
<u>Y</u> Y__		(8) Whelen 3" Round Super LED Light head (Rear Hatch Red/White) Part # 3SRCCDCR	\$ <u>472</u> ⁰⁰
<u>Y</u> Y__		(8) Soundoff Interior Dome light (Officer) Part #ECVDMLTAL00	\$ <u>392</u> ⁰⁰
<u>Y</u> Y__		(8) FMPD Graphics Kit w/ US/TX Flags Graphix Shoppe	\$ <u>5112</u> ⁰⁰

<u>Y</u>	Y__	(8) 55% Madico Tint on all non tint windows	\$ <u>1432</u> ⁰⁰
<u>Y</u>	Y__	(16) Magnet Mic Holder	\$ <u>498</u> ⁰⁰
<u>Y</u>	Y__	(8) Troy Equipment Trunk Tray	\$ <u>2176</u> ⁰⁰

TOTAL Cost of Materials \$ 43,392⁰⁰

TOTAL Cost of Installation \$ 17,752⁰⁰
(Install Cost includes previously purchased items) 2019/2020

Cost Per Unit \$ 33,995⁰⁰

TOTAL BID PRICE \$ 271,960⁰⁰
 (To include all listed equipment and installation)

Warranty: Standard Manufacturers warranty. Please specify.

Vehicle 5 yr / 100K Drive Train, 3 yr / 36K Bumper-Bumpers.
5 years parts. Vehicle Service Life on labor.

COMMENTS

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



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: November 2, 2020

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of a Pierce Custom Velocity Tanker for Fire and Emergency Services Department from Siddons-Martin Emergency Group, through the Houston-Galveston Area Council of Governments (H-GAC) cooperative purchasing program, in the amount of \$799,728.13; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Fire and Emergency Services Department is requesting the purchase of one (1) Pierce Velocity Tanker with custom chassis, per Town of Flower Mound Specifications and Siddons-Martin Emergency Group Proposal in the amount of \$799,728.13 from Siddons-Martin Emergency Group through H-GAC cooperative purchasing program. This vehicle is part of the approved Fiscal Year 2020-2021 Vehicle Equipment Replacement Fund (VERF) budget and replaces a 2004 Pierce Navistar Tanker (Unit #6300-13) and a 2011 Pierce Arrow Engine (Unit #6300-33) that will be traded in towards this purchase.

Pricing Summary/Breakdown:

Vehicle Price	\$ 909,194.61
Chassis Pre-Payment Discount	(\$13,208.00)
Full Pre-Payment Discount	(\$14,266.00)
Trade-in of Unit 6300-13	(\$47,450.00)
Trade-In of Unit 6300-33	(\$63,250.00)
Preferred Customer Discount	(\$ 3,100.00)
Loose Equipment	<u>\$30,307.52</u>
SUB TOTAL	\$798,228.13
Plus BuyBoard 571-18	<u>\$ 1,500.00</u>
VEHICLE TOTAL	\$799,728.13

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$799,728.13

Proposed Expenditure/(Revenue):	Account Number(s):
\$799,728.13	565-450-84500-6130

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Siddons-Martin Emergency Group Proposal for 2021 Water Tender

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

Siddons Martin Emergency Group, LLC
3500 Shelby Lane
Denton, Texas 76207
GDN P115891
TXDOT MVD No. A115890
EIN 27-4333590



September 23, 2020

Asst Chief John Glover
FLOWER MOUND FIRE DEPARTMENT
3911 S BROADWAY AVE
FLOWER MOUND, TX 75028

Proposal for 2021 Water Tender

Siddons-Martin Emergency Group, LLC is pleased to provide the following proposal to **FLOWER MOUND FIRE DEPARTMENT**. The unit will comply with all specifications attached. Total price includes delivery to **FLOWER MOUND FIRE DEPARTMENT** and training on operation and use of the apparatus.

Description	Amount
1) Pierce-Custom Velocity Tanker	
Unit price - \$909,194.61	
Price guaranteed for 60 days. Delivery within 11-12 months of order date. A warranty term of 12 months is included.	
Vehicle Price	\$909,194.61
Chassis Prepay Discount	(\$13,208.00)
Full Prepay Discount	(\$14,266.00)
IHC Tanker Trade-In	(\$47,450.00)
AXT Pumper Trade-In	(\$63,250.00)
Preferred Cust Discount	(\$3,100.00)
Loose equipment	\$30,307.52
Sub Total	\$798,228.13
BuyBoard 571-18	<u>\$1,500.00</u>
Final Sales Price	<u>\$799,728.13</u>

Additional. Prepayment discounts are calculated considering payment in full within 30 days of contract signing. Both trade in vehicles shall be kept in good working condition, capable of service with valid inspections and certifications. Loose equipment with order is available to be purchased at the customer's discretion.

Taxes. Taxes are not included in this proposal. In the event that the purchasing organization is not exempt from sales tax or any other applicable taxes and/or the proposed apparatus does not qualify for exempt status, it is the duty of the purchasing organization to pay any and all taxes due. Balance of sale price is due upon acceptance of the apparatus at the factory.

Late Fee. A late fee of .033% of the sale price will be charged per day for overdue payments beginning ten (10) days after the payment is due for the first 30 days. The late fee increases to .044% per day after the first 30 days until the payment is received. In the event a prepayment is received after the due date, the discount will be reduced by the same percentages above, increasing the overall cost of the apparatus.

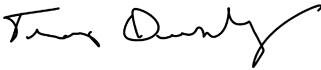
Cancellation. In the event this proposal is accepted, and a purchase order is issued then cancelled or terminated by Customer before completion, Siddons-Martin Emergency Group may charge a cancellation fee. The following charge schedule based on costs incurred and may be applied:

- (A) 10% of the Purchase Price after order is accepted and entered by Manufacturer;
- (B) 20% of the Purchase Price after completion of the approval drawings;
- (C) 30% of the Purchase Price upon any material requisition by Manufacturer.

The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Siddons-Martin Emergency Group endeavors to mitigate any such costs through the sale of such product to another purchaser; however, the customer shall remain liable for the difference between the purchase price and, if applicable, the sale price obtained by Siddons-Martin Emergency Group upon sale of the product to another purchaser, plus any costs incurred by Siddons-Martin Emergency Group to conduct such sale.

Acceptance. In an effort to ensure the above stated terms and conditions are understood and adhered to, Siddons-Martin Emergency Group, LLC requires an authorized individual from the purchasing organization to sign and date this proposal and include it with any purchase order. Upon signing this proposal, the terms and conditions stated herein will be considered binding and accepted by the Customer. The terms and acceptance of this proposal will be governed by the laws of the State of Texas. No additional terms or conditions will be binding upon Siddons-Martin Emergency Group, LLC unless agreed to in writing and signed by a duly authorized officer of Siddons-Martin Emergency Group, LLC

Sincerely,



Travis Ownby

Siddons-Martin Emergency Group, LLC

I, _____, the authorized representative of **FLOWER MOUND FIRE DEPARTMENT**, agree to all of the terms of this proposal and the specifications attached hereto and this proposal will be binding upon **FLOWER MOUND FIRE DEPARTMENT**.

Signature & Date



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: November 2, 2020

FROM: David Bauer, Construction Manager

ITEM: Consider approval of a Construction Agreement with J.B. & Company LLC, for the Hound Mound Parking and Restroom project, in the amount of \$589,345.00.

BACKGROUND INFORMATION: On September 22, 2020 bids were received for the project. A total of 11 bids were tabulated and the lowest qualified bidder was J.B. & Company LLC with a base bid of \$498,945.00. In addition, bid options totaling \$90,400.00 that are within the construction budget for this project are being awarded for a total award amount of \$589,345.00. The bid options include removing the solar lighting parking lot poles, installing electrified LED lighting and converting the solar powered irrigation controllers to AC powered controls.

Since the dog park opened in January of 2016, residents have requested a restroom facility and additional parking spaces as the parking lot fills up quickly on nice weather days and during peak times. Users of the dog park have parked in the grass and across Garden Ridge Blvd with no safe route to cross the street with their dog(s).

The Hound Mound Parking and Restroom project was added to the CIP to be funded in FY19-20. This project was escalated due to the lack of parking spaces during busy times and safety concerns related to residents and their dogs safely crossing Garden Ridge Blvd.

BOARD REVIEW/CITIZEN FEEDBACK: Heritage Park Improvements are listed as a Sustainable Recommendation in the 2017 Parks and Trails Master Plan Update. The project includes the addition of a restroom facility at the Dog Park and LED parking lot lighting improvements. During the FY17-18 budget cycle, the Heritage Park Improvements project was added by the Parks Board at their June 1, 2017 regular meeting, to be included in the Town's Five-Year CIP and funded in FY 20-21.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$598,945.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$79,345.00	532-110-90709
\$510,000.00	310-320-90709

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

Total project cost is \$810,000. Funding sources are:

- Other \$ 300,000
- Park Development Fees \$ 510,000

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



**Town of Flower Mound
Bid Tabulation**

Bid No: 2021-5-B - Hound Mound Parking Lot and Rest Room Project

Bid Opening: 9/22/2020 at 11:00 AM

Company	Total Base Bid	Bid Option 1	Bid Option 2	Total Base Bid w/ Bid Options 1 & 2
J.B. & Co, LLC	\$ 498,945.00	\$ 68,400.00	\$ 22,000.00	\$ 589,345.00
2L Construction, LLC	\$ 500,175.70	\$ 54,000.00	\$ 23,000.00	\$ 577,175.70
L.J. Design & Construction, LLC	\$ 519,497.75	\$ 68,416.96	\$ 18,158.16	\$ 606,072.87
Dallas Harmony Construction, LLC	\$ 701,338.47	\$ 148,155.66	\$ 15,000.00	\$ 864,494.13
Gadberry Construction Company, Inc	\$ 725,615.00	\$ 75,000.06	\$ 25,000.00	\$ 825,615.06
Ratliff Hardscape, Ltd	\$ 764,692.40	\$ 75,996.72	\$ 15,554.76	\$ 856,243.88
Fort Worth Civil Constructors, LLC	\$ 836,493.00	\$ 72,000.00	\$ 20,000.00	\$ 928,493.00
AUI Partners, LLC	N/A	N/A	N/A	\$ -
IWC Texas, LLC	N/A	N/A	N/A	\$ -
North Rock Construction, LLC	N/A	N/A	N/A	\$ -
Tri-North Builders	N/A	N/A	N/A	\$ -

****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: September 22, 2020

TOWN OF FLOWER MOUND**Hound Mound Parking Lot and
Restroom Project****Bid # 2021-5-B****CONSTRUCTION AGREEMENT**

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

**HOUND MOUND PARKING LOT AND RESTROOM PROJECT,
Bid # 2021-5-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 **Four Hundred**

Eighty Nine Thousand, Three Hundred Forty Five Dollars and zero cents \$589,345.00 taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of One Hundred Sixty (160) calendar days, and final completion of One Hundred Ninety (190) 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 **2nd** day of November, 2020.

[The remainder of this page left blank intentionally]

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

(Position)



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: November 2, 2020

FROM: Matthew J. Hotelling, P.E., PTOE, ADAC, Traffic Engineer

ITEM: Consider approval of the purchase of new Traffic Signal Detection Equipment for the Traffic Detection Rehabilitation project, from Twincrest Technologies through the HGAC program, in the amount of \$152,810.00.

BACKGROUND INFORMATION: This item includes the purchase of the detection hardware, mounting equipment and wiring for seven traffic signal locations. Planned intersections include:

- Flower Mound Rd and McKamy Creek Blvd
- Flower Mound Rd/Bruton Orand Blvd and Simmons Road
- FM 407/Briarhill Blvd and Country Meadow Dr
- Morriss Rd. and Waketon Rd
- Flower Mound Rd and Furlong Dr
- Amhearst Ln and Forest Vista Dr
- Morriss Rd. and Firewheel Dr

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$152,810.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 345.00	531-220-78027
\$ 152,465.00	505-220-78027

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. HGAC Quote from Twincrest Technologies

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

HGACBuy		CONTRACT PRICING WORKSHEET For Catalog & Price Sheet Type Purchases		Contract No.:	PE05-19	Date Prepared:	10/7/2020
1							
Buying Agency:	Town of Flower Mound			Contractor:	Twincrest Technologies		
Contact Person:	David Stallings			Prepared By:	Jackie Jameson		
Phone:	972-874-6415			Phone:	817-539-2200		
Fax:				Fax:	817-539-2201		
Email:	david.stallings@flower-mound.com			Email:	jameson@twincresttech.com		
Catalog / Price Sheet Name:	Wavetronix						
General Description of Product:	SmartSensor Matrix System, Quote 5252-JJ. Price is valid until Contract expires 4/30/21						
A. Catalog / Price Sheet Items being purchased - Itemize Below - Attach Additional Sheet If Necessary							
Quan	Description					Unit Pr	Total
INTERSECTION #1							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
INTERSECTION #2							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
INTERSECTION #3							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
INTERSECTION #4							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
INTERSECTION #5							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
INTERSECTION #6							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
INTERSECTION #7							
4	1-WX-225-ASSY 1 SmartSensor Matrix Sensor Assy with Bracket, 6' Pigtail, and J-Box, 2-Year Warranty					4255	17020
1	102-0451-SDLC, Click 656, 6-Sensor SDLC Backplate with 4' SDLC Cable					3875	3875
1000	6-Conductor SmartSensor Home-Run Cable, \$/ft					1.00	1000
Total From Other Sheets, If Any:							
Subtotal A:							153265
B. Unpublished Options, Accessory or Service items - Itemize Below - Attach Additional Sheet If Necessary (Note: Unpublished Items are any which were not submitted and priced in contractor's bid.)							
Quan	Description					Unit Pr	Total
							0
							0
Total From Other Sheets, If Any:							
Subtotal B:							0
Check: Total cost of Unpublished Options (B) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).						For this transaction the percentage is:	0%
C. Other Allowances, Discounts, Trade-Ins, Freight, Make Ready or Miscellaneous Charges							
Credit for removing SDLC cables from Click 656 Items (7 Total)							-455
Subtotal C:							-455
Delivery Date:		45-60 days ARO		D. Total Purchase Price (A+B+C):			152810



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: November 2, 2020

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

ITEM: **Consider a resolution setting a date for a public hearing for the purpose of receiving comments and to discuss and review the updated land use assumptions, capital improvements plan and roadway, water and wastewater impact fees.**

BACKGROUND INFORMATION: The Town periodically provides updates to its Master Plans for infrastructure needs and Impact Fees. Growth trends and population distribution, along with collected field data, are reflected in the updates.

An engineering study has been completed on the proposed roadway, water and wastewater infrastructure to meet the needs of the Town for future development and the Town Council has received an update on the land use assumptions and capital improvements plan.

State Law requires a public hearing to receive comments and to discuss and review the updated land use assumptions, capital improvements plan and roadway, water and wastewater for impact fees to be charged.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS:

FISCAL IMPACT: N/A

LEGAL REVIEW: The resolution was prepared by Bryn Meredith with Taylor, Olson, Sralla, & Elam L.L.P..

ATTACHMENTS:

1. Resolution

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

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

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, SETTING A DATE FOR A PUBLIC HEARING FOR THE PURPOSES OF RECEIVING COMMENTS AND TO DISCUSS AND REVIEW THE UPDATED LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN AND ROADWAY, WATER AND WASTEWATER IMPACT FEES; 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 Texas Local Government Code; and

WHEREAS, Chapter 395 of the Local Government Code has outlined the procedure for amending impact fees; and

WHEREAS, it is desirable to conduct a public hearing for the purposes of receiving comments and to discuss and review the updated land use assumptions, capital improvements plan and roadway, water and wastewater impact fees to be charged in the Town of Flower Mound; and

WHEREAS, an engineering study has been completed on the proposed roadway, water and wastewater infrastructure to meet the needs of the Town for future development and the Town Council has received an update on the land use assumptions and capital improvements plan.

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

SECTION 1.

A public hearing shall be held for the purposes of receiving comments and to discuss and review the updated land use assumptions, capital improvements plan and roadway, water and wastewater impact fees, as provided by chapter 395 of the Texas Local Government Code. The public hearing shall be held on December 7, 2020 at 6:00 pm at Flower Mound Town Hall, located at 2121 Cross Timbers Road, Flower Mound, Texas 75028.

SECTION 2.

Any member of the public has the right to appear at the public hearing and present evidence for or against the plan and assumptions.

SECTION 3.

Public notice shall be given for the public hearing meeting all of the requirements of Chapter 395 of the Texas Local Government Code for the amendment of the land use assumptions, capital improvements plan and roadway, water and wastewater impact fees.

SECTION 4.

This Resolution shall become effective from and after its passage.

PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THIS 9TH DAY OF NOVEMBER, 2020.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: November 2, 2020

FROM: JP Walton, Assistant to the Town Manager

ITEM: **Consider adoption of the Town Council Strategic Plan for Fiscal Year 2020-2021.**

BACKGROUND INFORMATION: The Town is guided by its vision statement: “The vision of Flower Mound is to preserve our unique country atmosphere, heritage, and quality of life while cultivating a dynamic economic environment.” This vision statement is embraced by the Town Council, Town Manager, and Executive Team, and underpins the Town’s strategic planning and daily operations. The Town’s strategic plan to achieve this vision is set by the Town Council during long-term planning sessions held annually. The Town has conducted strategic planning since 1997 when it first adopted its vision statement.

Goals and objectives agreed upon during previous Town Council Strategic Planning Sessions have historically been incorporated into the Town’s budget. Separate adoption of the Town Council Strategic Plan provides clear direction on the Town Council’s goals and objectives while continuing to be incorporated into the Town’s budget.

All goals and objectives identified within the Town Council Strategic Plan for FY 2020-2021 have been previously approved by Town Council during the Strategic Planning Session and Town budget adoption. This is the seventh year the Town has elevated its strategic planning process with documentation and adoption separate of the budget. The purpose is to raise awareness of the Town’s strategic planning efforts as well as strengthen the connection between the Town’s performance and Town Council goals. Upon adoption, staff will monitor the targets and provide updates to the Council as needed or as requested.

BOARD REVIEW/CITIZEN FEEDBACK: It is vital to the Town’s strategic planning and communication efforts to solicit Board and Commission (“Board”) input on various programs and initiatives. It is equally important that the various programs and initiatives created, reviewed, recommended, and acted on by the Town’s Boards are consistent with Town Council goals and strategic planning efforts. Ensuring consistency provides for the most effective use of the Town’s collective resources. In 2014, the Town created an input process that established guidelines to collect feedback in a consistent manner from the Town’s various Boards.

This year the Town Council conducted Joint Work Sessions with the Parks Board and Planning and Zoning Commission. The Town Council held the Strategic Planning Session on June 19, 2020, adopted the Town Council 2020 Strategic Planning Session Summary Report on July 20, 2020, and adopted the FY 2020/2021 Town Budget on September 21, 2020.

ALTERNATIVES/OPTIONS: N/A

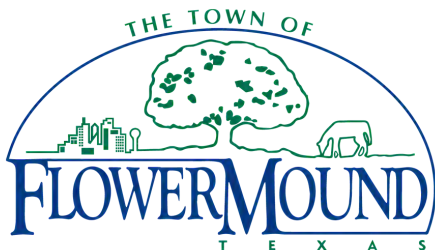
FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Town Council Strategic Plan for FY 2020-2021

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



2020-21 STRATEGIC PLAN



TOWN COUNCIL



Steve Dixon
Mayor



Jim Pierson
Place 1



Sandeep Sharma
Mayor Pro Tem
Place 2



Ben Bumgarner
Place 3



Jim Engel
Place 4



Claudio Forest
Deputy Mayor Pro Tem
Place 5

Vision

Established in 1997, this vision statement is embraced by the Town Council, Town Manager, and Executive Team, and underpins the Town's strategic planning and daily operations. The Town's strategic plan to achieve this vision is set by the Town Council during long-term planning sessions held annually. The Town has conducted strategic planning since 1997, which is designed to set goals and initiatives that accomplish the Town's vision.

The following Strategic Goals were unanimously established by the Town Council during the 2015 strategic planning cycle, and remain for Fiscal Year 2020-2021:



Safety and Security



Dynamic Economic Environment



First Rate Infrastructure



Regional Cooperation



Financial Soundness, and Operational Excellence



Community Engagement



Superior Quality of Life



Quality Workforce

In order to effectively achieve the Town vision, the goals must fit into an overall coherent plan that reflects the Town's adopted vision, its purpose, the community's values, the Town's Master Plan, and the real and perceived needs of residents and businesses.

Purpose and Core Values

The Town's purpose is to provide a healthy and safe community with essential infrastructure and vital services. This is done while protecting property values and the welfare of residents through fair and effective ordinances supported by fiscal responsibility. The community's core values are a reflection of the Town's established vision that translates into a high quality of life. Elements of the Town's vision include country atmosphere, heritage, and dynamic economic development. Those life qualities include: safety, good schools, excellent customer service, great neighborhoods, enduring development, and superior leisure opportunities among others. Residents also value open space; scenic views and corridors; trees and habitat; the ability to live, work, and play in Town; being regionally competitive to encourage employment and quality development; and having a balanced tax base.

Community Core Values:

High Quality of Life: Safety, good schools, excellent customer service, great neighborhoods, enduring development, superior leisure opportunities, open space, scenic views and corridors, trees and habitat, the ability to live, work, and play in Town, regionally competitive, and a balanced tax base

Master Plan

With vision, purpose, and core values in mind, any strategic plan must align with the community's Master Plan. A Master Plan is a statement of a community's current and future goals as well as objectives. Used as a guide to direct future growth, development, and redevelopment of a community, a Master Plan plays an important role in a community's decision-making process. The plan is comprehensive in that it links the different geographic and functional components of the Town to each other in such a way that the community's goals and objectives can be achieved, issues resolved, and opportunities for improved quality of life realized. The Master Plan is a document that sets the framework for the physical development of the Town over a 20-year period. The plan includes sections devoted to land use, parks, trails, open space, roadways, water, wastewater, and economic development.

Master Plan (cont.)

The Master Plan also serves an important policy tool that sets a vision for the orderly growth and development of the Town and provides the framework for many of Flower Mound's governing policies, specifically zoning regulations. Zoning regulations provide the method of implementing the Master Plan by prescribing the use, density, and development standards for each parcel of land.

Since the adoption of the Master Plan in 2001, there have been several major updates to the document with the latest occurring in 2010-2011 to address the Urban Design Plan component. Generally, Master Plans are evaluated every 5 to 10 years which can include minor updates or comprehensive review. The Town completed a focused update of the Town's Master Plan in 2013 to ensure its stated goals are in alignment with the Town's vision, and the community's core values. The vision of the Master Plan is to further the established community-based vision to:

- Preserve the country atmosphere and natural environment that makes Flower Mound a unique and desirable community.
- Mitigate the ill effects of rapid and intense urbanization.
- Create a balanced tax base to ensure the Town's long-term economic health and prosperity.
- Ensure all development is of enduring and exemplary quality and design.

Resident and Business Needs

The Town has several different categories of customers. Taxpayers are considered our largest and most valuable customers. Taxpayers are identified as residents and businesses within the Town's geographic borders, as well as those who receive police, fire, and emergency services; infrastructure repairs and improvements; water, sewer, and trash services; recreational services; and development services. Visitors to Flower Mound are also valued customers, and considered, but not limited to, individuals who live outside the geographic borders and travel Flower Mound's roads; shop within Flower Mound's commercial districts; and utilize Town parks, trails, and other recreational venues. Visitors are also recognized as potential customers who are individuals or companies considering Flower Mound as a place to live or establish a business. These potential customers are identified through community surveys, input at public hearings, requests for information, and marketing efforts by Economic Development staff.

Understanding customers' real and perceived needs is critical in developing a responsive strategic plan to bring forward the Town's vision. Over time, the Town has identified these needs.

Strategic Planning

The desire for a high quality of life is the common link between the Town's vision, community core values, Master Plan, and needs of the community. The quality of life the Town provides places it as one of the most desirable communities in the North Texas area. Sustaining that quality of life requires discipline, obtainable and measurable goals, and commitment.

Strategic planning provides a systematic approach to evaluate the Town's vision and goals, as well as make decisions and actions to guide the organization.

Developing and prioritizing the strategic goals is the first step toward making decisions. Priorities are determined by the Town Council once staff has been able to articulate budget and operational impacts, policy implications, and timing. Measurement of the goals is equally important and provided in the following performance targets.

The following is a list of the Town's strategic goals and definitions, followed by a description of the Strategic Planning process and an implementation plan outlining objectives, action items, and performance targets.

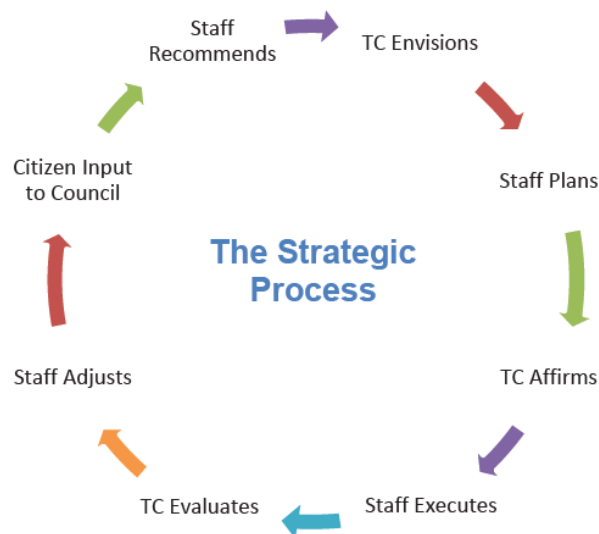
- 1. Safety and Security:** Ensure the safety and security of individuals and property for those who live, work, and play in Flower Mound.
- 2. First Rate Infrastructure:** Provide high-quality water, wastewater, transportation, drainage systems, and facilities to meet the current and future needs of the Town.
- 3. Financial Soundness and Operational Excellence:** Ensure Flower Mound's long-term financial viability and organizational success through reliable financial controls, work systems, and processes.
- 4. Superior Quality of Life:** Provide opportunities for a superior quality of life expected by Flower Mound residents through high development standards, protection of public health, vibrant and sustainable neighborhoods, and ample leisure opportunities.
- 5. Dynamic Economic Environment:** Cultivate a dynamic and diverse economic development environment to strengthen the local economy and ensure the long-term success of Flower Mound.
- 6. Regional Cooperation:** Provide leadership and influence to promote the success of the region and ensure cooperation with other area entities.
- 7. Community Engagement:** Promote open communication, transparency, and partnerships with residents and businesses.
- 8. Quality Workforce:** Ensure Flower Mound's long-term success by attracting, retaining, and empowering a workforce that delivers excellent service for an excellent value.

The Process

At its core, the Town uses strategic planning as a communication tool to provide a reliable system for feedback and adjustments. Below is a visual representation of the process. The process begins with the Town Council thinking about the future and developing a vision to establish the direction for the Town moving forward. This part of this process is typically accomplished during Town Council Strategic Planning Sessions.

Staff is responsible for developing and executing a plan to achieve the Council's vision. The plan is developed in concert with the Council, so there is clear understanding of the Council's vision, mutually agreed upon goals, and the plan to accomplish those goals.

The vision must be in alignment with the Town's purpose, core values, Master Plan, and the real and perceived needs of citizens. In turn, the goals, objectives, and action items must be in alignment with the vision. Creating alignment with the annual budget and the vision is critical to empower the Town to accomplish the vision. Once alignment is achieved, leaders must be diligent to maintain alignment, including continuous adjustment of the vision based on new information, changing situations, and new insights.



Communication and feedback must be maintained between Council and staff in order to preserve alignment, evaluate performance, and make adjustments due to changing factors. This enables leadership to keep the vision relevant, empowering, and achievable. To keep the communication loop open, staff presents updates to the Town Council on a regular basis to report status and performance, and to discuss necessary adjustment in real time.

During budget preparation, the Town Council and staff use the plan as a guide for budget decisions, specifically to compare the priorities of the plan versus the budget priorities. The plan does not assume budget decisions, rather serves to create discussion on the many action items and the limited amount of funds available to implement them.

Goal 1: Safety and Security

1.1 Continue to Provide Police (School Resource Officers) Coverage for all LISD Middle School and High Schools in Flower Mound

Department: Police

Target: Coverage for entire 2020/21 LISD school year

1.2 Continue Crossing Guard Program

Department: Police

Target: Continue Crossing Guard coverage for entire 2020/21 LISD school year

1.3 Joint Fire Training Center

Department: Fire

Target: Provide cost estimates to TC in preparation for FY 2021-22 Budget

1.4 Staff and Equip Fire Station No. 7

Department: Fire

Target: Complete by January 2021

1.5 Complete Annual Training, Education, and Certifications

Department: Fire/Police

Target: Complete by September 2021



Goal 2: First Rate Infrastructure



2.1 Continue Annual Street Light Program

Department: Public Works

Target: 10 Street Lights

2.2 Continue Annual Sidewalk Link and ADA Improvements Program

Department: Public Works

Target: Complete FY2020-21 projects

2.3 Continue Sanitary Sewer Overflow Initiative (Year 7 of 10)

Department: Public Works

Target: 125,000 ft. of linear pipe inspected, 400 manholes inspected

2.4 Begin Construction on Canyon Falls Park

Department: Parks/CIP

Target: Award construction by January 2021

2.5 Begin Construction on Rheudasil Park

Department: Parks/CIP

Target: Award construction by January 2021

2.6 Construct Fire Station No. 7

Department: CIP/Fire/Facilities

Target: Complete construction by December 2020



Goal 2: First Rate Infrastructure (cont.)



2.7 Engineering Design Standards Update

Department: Public Works

Target: Begin review of Engineering Design Standards by March 2021

2.8 Monitor Smart City Technology to Improve Traffic Flow

Department: Public Works

Target: Attend 3 conferences/meetings regarding traffic flow solutions

2.9 Begin Construction of Peters Colony Memorial Park

Department: Parks/CIP

Target: Begin construction by December 2021

2.10 Design FM 2499 at FM 2040 Intersection Improvements

Department: Public Works

Target: Begin design by September 2021

2.11 Continue Water and Wastewater System Model Update

Department: Public Works

Target: Complete FY 2020-21 Update by September 2021



Goal 3: Financial Soundness and Operational Excellence



3.1 Convert Town Documents to Laserfiche

Department: TSO

Target: Convert 10 boxes

3.2 Operational Audit of Financial Processes

Department: Financial Services

Target: Complete by September 2021

3.3 Maintain the Town's Unassigned Fund Balance in the General Fund Per the Town's Adopted Financial Policies

Department: Financial Services

Target: Minimum 20% of annual General Fund expenditures

3.4 Maintain the Town's Fund Balance in the Debt Service Fund per the Town's Adopted Financial Policies

Department: Financial Services

Target: Minimum 4% of Debt Service Fund expenditures

3.5 Maintain the Town's Debt Service Tax Rate at the Lower Level Outlined in the Town's Adopted Financial Policies

Department: Financial Services

Target: 12 cents or lower

3.6 Development Services Fee Study

Department: Development Services

Target: Begin study by March 2021

Goal 4: Superior Quality of Life



4.1 Cultural Arts Center Business Plan

Department: Economic Development

Target: Complete plan by September 2021

4.2 Master Plan of Infill Locations

Department: Development Services

Target: TC Joint Work Session with P&Z by November 2020

4.3 Evaluate Permitted Uses

Department: Development Services

Target: TC Work Session by December 2020

4.4 Tennis Center Feasibility Study

Department: Parks

Target: Begin study by May 2021

4.5 Food Truck and Ice Cream Truck Standards

Department: Development Services

Target: Present to TC by December 2020

4.6 Complete the Library Expansion/Renovation

Department: CIP/Library/Facilities

Target: Complete by November 2020

4.7 Begin Restoration of the Gibson-Grant Log Cabin

Department: CIP/Parks/Facilities

Target: Complete restoration by September 2021

Goal 5: Dynamic Economic Environment



5.1 Work with the Flower Mound Chamber of Commerce on Programs, Including Those Outlined in the 2020-21 Approved MOU

Department: Economic Development

Target: Host Leadercast and 6 ED Forums by September 2021

5.2 Publish the Economic Development Annual Incentives Report

Department: Economic Development

Target: January 2021

5.3 Publish the Economic Growth Report

Department: Economic Development

Target: September 2021



Goal 6: Regional Cooperation



6.1 Continue Town Participation in Leadership Flower Mound

Department: All

Target: 1 Town representative annually

6.2 Continue Staff Involvement in Professional Organizations

Department: All

Target: Percent of Travel Budget

6.3 Identify Opportunities for Elected Officials Through TML and Other Resources

Department: TSO

Target: Six regional events per year

6.4 Continue Participation with the North Central Texas Council of Governments

Department: All

Target: Participate in at least 6 regional meetings



Goal 7: Community Engagement



7.1 Publish the Interactive CIP Map

Department: Communications/CIP/GIS

Target: Publish by December 2020

7.2 Continue the Development Map Notify Me Option

Department: Development Services/Communications/GIS

Target: Increase Notify Me users by 5%

7.3 Continue to promote the Interactive Development Map

Department: Development Services/Communications/GIS

Target: Increase Map Views by 10%

7.4 Continue Website Re-Design

Department: Communications

Target: Complete FY 2020-21 re-design by September 2021



Goal 8: Quality Workforce

8.1 Continue Town Manager Tour & Talks to Discuss Issues Faced by the Town and Ones Important to Employees

Department: TMO

Target: Complete by September 2021

8.2 Continue Organization-Wide Team Building Events

Department: TMO/HR

Target: Complete by September 2021





TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: November 2, 2020

FROM: JP Walton, Assistant to the Town Manager

ITEM: Consider approval of a Professional Services Agreement with Matrix Consulting Group, Inc. to conduct a development services fee study, in the amount of \$30,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: In the FY20-21 Adopted Budget, Town Council approved a Decision Package for the Development Services Department to perform a Development Services Fee Study with a budget of \$30,000. The development services fee study will analyze our current development fees and provide feedback on fee prices, fee name changes, the elimination of fees, and possible additional fees. The review will address topics such as the best metric for assessing fees, appropriate deposit amounts, guidelines and processes to achieve different levels of cost recovery, setting fees at prices that enable a certain amount of cost recovery while also not prohibitive to the community, and various levels of cost recovery and implementation options for support services. The study will perform a total cost analysis which will assist the Town in setting fee prices based on the cost of providing such service. This study will guide the Town in setting fees based on desired levels of cost recovery and provide analysis and documentation to support fee prices.

Due to the specialized services required, the Town recommends Matrix Consulting Group, Inc. to perform the Development Services Fee Study. This recommendation is based on recent positive performance with the Town, their current comprehensive knowledge of our development services department, and their recent development fee work with benchmark cities.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$30,000

Proposed Expenditure/(Revenue):	Account Number(s):
\$30,000	100-620-22000-5110

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 MATRIX CONSULTING GROUP, INC.

This contract is entered into on this 19th day of October, 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 **Matrix Consulting Group, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 1650 S. Amphlett Blvd., Suite 213 San Mateo, CA 94402.

RECITALS

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

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Thirty Thousand and No/100 Dollars (\$30,000.00). 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 "A"; provided however that this Contract shall control in the event of any conflict between the language in Attachment "A" and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;

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

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

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

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

JP Walton
Assistant to the Town Manager

Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6081 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

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

for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;

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

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

IX.

Right to Inspect Records

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

If TOWN agrees that CONSULTANT may retain any subcontractors, CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or 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:

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

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

Richard Brady
President
Matrix Consulting Group
1650 S. Amphlett Blvd., Suite 213
San Mateo, CA 94402
650-858-0507 Telephone

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

XXV.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or

indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

 Town Secretary

CONSULTANT:
Matrix Consulting Group, Inc.

By: _____
 Name: _____
 Title: _____

Date Signed: _____

State of Texas §
 §
 County of _____ §

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

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

 Notary Public, State of Texas

My Commission Expires:

Proposal to Conduct a Development Services Fee Study

FLOWER MOUND, TEXAS



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October 7, 2020

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

Dear Mr. Walton:

The Matrix Consulting Group is pleased to have this opportunity to submit a proposal to Conduct a Development Services Fee Study for the Town of Flower Mound. This study will allow the Town to evaluate current services and fees, determine the current level of cost recovery, and ensure compliance with local and state laws for user fees.

Our firm understands the urgency and importance of maximizing revenue recovery, and is committed to helping our clients create and establish documented and defensible policies and procedures that meet current and future needs. The Matrix Consulting Group stands apart from other firms for the following reasons:

- **Experience in cost of service studies:** Our firm and consulting team have extensive experience conducting financial studies for jurisdictions in Texas and throughout the U.S., including the following jurisdictions: Austin (TX), Dallas (TX), Denton (TX), Asheville (NC), and Ft. Lauderdale (FL).
- **Client accessibility:** The Matrix Consulting Group will help the Town reach its goals because we understand its issues and needs, and are committed to serving our clients providing a personal, hands-on approach. We have prior experience working with the Town on development and code enforcement services.
- **Project team qualifications:** We are proposing a highly qualified team, with the proposed project manager, the leader of our Financial Services Practice, and a GFOA and CSMFO member.

For any questions pertaining to this proposal, please contact me at the address or phone number listed below.

Richard P. Brady
Matrix Consulting Group

Richard Brady
President

1 An Introduction to the Firm

The Matrix Consulting Group specializes in providing analytical services to local governments to assist them in providing responsive, efficient, and effective services to the public. Our service focus is financial, management, staffing and operations analysis of local government. Our firm's history and composition are summarized below:

- We were founded in 2002, and incorporated in California. We are also incorporated in Texas.
- Our headquarters are based in Mountain View, California, with a satellite office in Southern California. We also have offices in Texas, Oregon, Illinois, North Carolina, and Massachusetts.

Financial services are a core service area for the firm, which we have provided since we were founded.

2 Proposed Project Team

The primary staff being proposed by the Matrix Consulting Group are all full-time employees of our firm. The specific roles of each proposed project team member are outlined below:

- **Courtney Ramos:** Financial Services Vice President for the Matrix Consulting Group will serve as the **Project Manager**. Ms. Ramos will be the primary contact for the project and will provide her expertise in discussing draft reviews and presenting results.
- **Khushboo Hussain:** A Senior Manager with the Matrix Consulting Group and will serve as the **Lead Project Analyst**. Ms. Hussain will lead interviews and coordinate necessary data collection for the financial analysis, discuss policies, and work with Data Analysts to compile and analyze the data.
- **Jessica Mizenko:** A Senior Consultant with the Matrix Consulting Group, will serve as a **Data Analyst**. Ms. Mizenko will assist with collection and compilation of necessary data, model development, and provide analytical support.

The following table provides abbreviated biographical summaries for the staff who would manage, lead and conduct the project.

Courtney Ramos
Vice President,
Project Manager

Since joining the firm in 2004, Ms. Ramos has managed and assisted with numerous cost allocation plans, user fee, management, operations, and staffing analyses for our California and national clients. Most recently, Ms. Ramos managed cost of service studies for the following jurisdictions: San Mateo, Redwood City, Cupertino, Sunnyvale, Vacaville, Suisun, Livermore, and Winters (CA), Fort Lauderdale, Kissimmee, and Cape Coral (FL); Asheville, (NC) Austin and Dallas (TX). Ms. Ramos was a member of the project team who conducted the City's previous Cost Allocation Plan and User Fee Study in 2012.

Ms. Ramos developed the Technical Models used by the Matrix Consulting Group. All of the references included have Ms. Ramos as the Project Manager.

Ms. Ramos is a GFOA and CSMFO member and is trained in OMB Cost Allocation Guidelines.

Khushboo Hussain
Senior Manager,
Lead Analyst

Ms. Hussain has been a part of the Matrix Consulting Group for more than seven years. While the primary focus of Ms. Hussain's tenure has been on Financial Services studies, she is also highly knowledgeable with Management Consulting, specializing in policies and procedures. Most recently, Ms. Hussain has led or assisted with studies for the following jurisdictions: South El Monte, Livermore, Downey, Vacaville, Fairfield, Long Beach, Orange, Montebello, Manhattan Beach, as well as Austin and Dallas (TX).

Ms. Hussain is a CSMFO member and is trained in Best Management Practices for User Fee and Revenue Enhancement practices.

Jessica Mizenko
Senior
Consultant,
Data Analyst

A Senior Consultant who has worked with senior staff with cost allocation and user fee studies in Dallas (TX), Miami Beach (FL), Champaign (IL) Hercules (CA), Pacific Grove (CA), Montebello (CA), Orange (CA), Redwood City (CA), and San Bernardino County (CA). She is assigned to support our senior staff with a focus on Financial and Development services. Prior to joining the Matrix Consulting Group, Ms. Mizenko worked in Data Analytics for various Silicon Valley firms.

Each member of our proposed project team has successfully managed or participated in studies similar to the Town's requested scope of work.

3 Fee Study Experience

Our firm has extensive experience in evaluating development review permitting functions for Building, Planning, Engineering, and Fire Prevention. From the basic process steps for submitting, reviewing, inspecting, and approving applications and permits to development of processes, procedures, and cost recovery goals, our project teams are able to address topics such as:

- The best metric for assessing fees, such as building valuation, square footage, construction estimate, or number of fixtures.
- Appropriate deposit amounts, guidelines, and processes to ensure actual cost recovery is achieved.
- Setting fees at levels that both recover costs, but are not prohibitive to the community.
- Cost recovery and implementation options for support services including General Plan Updates, Technology Fees, GIS, etc.

Beyond understanding processes and assessing time estimates provided, our project teams are aware of the cross-departmental support associated with application and permit services. These costs are included in the full cost calculation, and can be expressed as part of the established fee, or pulled out as a separate fee.

The primary focus of our financial studies is to provide documented and defensible cost recovery studies, and most importantly ensure our clients understand the analysis and how to implement results.

2 Project Approach / Scope of Services

The Matrix Consulting Group works with a wide variety of clients ranging from small towns to major metropolitan cities in over 42 states across the U.S. Every project is unique, and is managed according to the following essential project approaches:

- **Reputation for effective project management:** Our clients value the personal attention, enthusiasm, responsiveness, timely delivery, and expertise provided on their projects. This attention to project management is demonstrated in our work approach, as shown in the detailed work plans provided for each project.
- **Cross-trained project team:** Our project team's background in both financial and management analysis provides them with a unique understanding of the work processes and service level assumptions behind cost and fees for service.
- **Communication with the Town:** At the onset of the project, a detailed schedule will be developed outlining key deadlines and deliverables, and regular progress reports will be provided to the Town's Project Manager. We are known for being available to clients and for providing prompt responses to questions or issues.
- **Town staff support:** The Matrix Consulting Group is mindful of the Town's current workload and our approach is to work with our clients' staff to minimize project impacts through strong project management, clear expectations of our roles versus staff roles, and careful as well as realistic scheduling.
- **Workshop data gathering approach:** The facilitation of data gathering workshops allows the project team to obtain more accurate time and service level data. It also provides staff with the knowledge needed to explain how results were derived and the assumptions behind the analysis.

These approaches have led to high rates of implementation for all of our project results. The following sections outline our approach to project management and quality control, scope of services, and project schedule.

1 Project Management and Quality Control

We believe very strongly in the science of our craft, especially as it relates to cost allocation and cost of service studies. As such, our firm utilizes quality control techniques which include:

- **Project Management:** Ensuring our projects meet the needs and timelines of our clients are accomplished through the following:

- The project manager and lead analyst develop general and project specific data collection plans and interview guides for all of our staff in each departmental function.
- All project work activities are defined in advance and tied to each project team member, deliverables, the schedule and the budget.
- We have frequent client review meetings to discuss the quality and direction of the project through interim deliverables and draft documents.
- **Quantitative Results:** Financial analyses are used to develop budgets and projections, and often are subject to public oversight and review. For this reason, our firm ensures data determined quality control through the following:
 - Expenditure data entered into cost models are tied to Town documents or projects.
 - Revenue projections developed are based upon existing workload and projected development activity and can be reconciled based upon numerical assumptions.

The project manager designs and personally reviews all interim and final products before they are delivered to the client. These project management approaches have resulted in all of our projects being delivered at a high level of quality, on time and on budget.

2 Comprehensive Fee Study

The Town of Flower Mound is looking to establish the full cost of providing development services including Building, Planning, and Engineering. The following tasks include a narrative, associated activities, and projected staff time requirements for completing this Comprehensive Fee Study.

Task 1 | Determine and Review Initial Documentation

The project team will provide the Town with a written “Data Collection List” outlining documents and information needed prior to our first onsite visit. This data request typically includes the following items:

- Current Fiscal Year adopted Budget for relevant Departments.
- Most recent completed Fiscal Year revenue reports for relevant Departments.
- List of all budgeted personnel by Department/Division.

- List of all current fees being charged by the Town to be included in the analysis.
- Detailed organizational charts for the relevant Departments.

Before our first on-site visit, we will review this information to familiarize ourselves with strengths, weaknesses and opportunities for improvement related to the Town's existing fee structure. In addition, we will familiarize ourselves with the budgetary and staffing structures relevant to fees for service.

Task 2 | Project Initiation – Establish the Town's Goals and Objectives for the Study, and Identify Trends and Plans Which Impact Cost Recovery Analysis and Policy

To effectively analyze and present the full cost of providing development services, it is important that the project team develops an understanding of key issues which impact and shape the Town's service delivery and cost recovery policies. To develop this perspective and customize the structure of the project, we plan to do the following:

- Conduct an initial meeting with the Town's management staff to solidify the exact parameters of the Study.
- Develop a detailed project management plan, including timelines and associated deliverables.
- Conduct discussions regarding the Town's current fee structure and any potential changes.
- Review and identify existing fee resolutions, cost recovery policies or established subsidies.

Based upon this meeting, the project team will provide the project management plan and schedule and begin meeting with Departments to conduct the fee and nexus study.

Task 3 | Develop a Schedule of Current and Potential Fees for Service

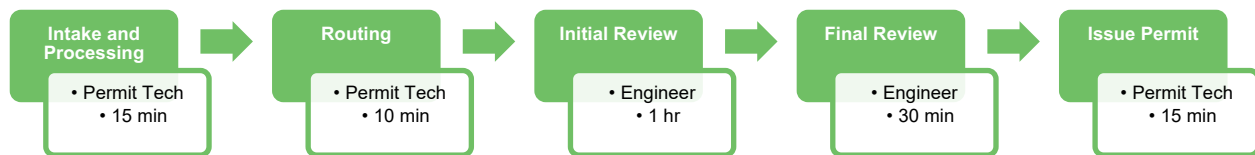
The scope of this effort will be all fees for service charged by the Town. Current as well as potential fees and charges will be identified and documented. The project team will work with staff to go through their current fee schedules in line-item by line-item detail. Options will be discussed regarding renaming of fees, elimination of fees, or addition of new or expanded categories to better reflect the services being provided.

Meetings with staff will identify the areas of greatest potential cost recovery, and structure and expand existing fee schedules for both optimum cost recovery and fairness and equitability to the applicant for services.

The project team will request volume statistics to be used for cost/revenue comparisons.

Task 4 | Conduct Time and Activity Data Gathering Workshops

The project team will conduct workshops to review and gather time and activity estimates for each service included in the study, interviewing key personnel from each department and analyzing the various activities being performed within it that are both revenue and non-revenue generating. The flowchart below shows an example of the steps involved in processing a permit and the staff and time associated with each step.



As the flowchart above shows, basic process steps in application/permit processing will be documented and provided in the Departmental detail for each department represented in the study.

Task 5 | Perform a Total Cost Analysis

The Matrix Consulting Group's costing model is built based on the Town's operations, budget detail and intended uses for the results. This method is a customized approach, specific to each jurisdiction, for cost analysis of user fee services. This costing method uses time and annual activity level data to establish the cost of providing services on both a unit and annual level. Once the time spent for a fee activity is determined for each individual or position, the team uses its fee and rate software to apply applicable Town costs to the calculation of the full cost of providing each service. The chart on the following page describes the typical costs considered as applicable to fees.



Resulting costs are presented on a unit and annual level and are compared to the existing fee schedule and revenue reports. The following graphic shows a sample presentation of results on a per unit and annual level:

Per Unit				
Fee Title	Current Fee	Total Cost Per Unit	Surplus / (Deficit) Per Unit	Cost Recovery %
Lot Line Adjustment	\$900	\$1,557	(\$657)	58%
Temporary Use Permit	\$40	\$325	(\$285)	12%
AVERAGE COST RECOVERY PER UNIT				35%
Annual				
Fee Title	Workload	Revenue at Current Fee	Revenue at Full Cost	Annual Surplus / (Deficit)
Lot Line Adjustment	4	\$3600	\$6,228	(\$2,628)
Temporary Use Permit	60	\$2400	\$19,500	(\$17,100)
TOTAL		\$6,000	\$25,728	\$19,728

As the example in the graphic above indicates, the per unit subsidy for the Lot Line Adjustment at \$657 is more than double the per unit subsidy for the Temporary Use Permit. However, the annual results help provide Department management with some additional context, as due to the volume of activity, the larger impact to the Department is felt by the smaller subsidy for the Temporary Use Permit.

The Town will obtain detailed information similar to that presented in the previous graphic regarding cost recovery surpluses and deficits on both a detailed (per unit) and global (annualized) level, as well as an understanding of cost components for each service.

Task 6 | **Analysis of Recoverable Revenue**

Utilizing each department's billing statistics, receivables, and workload data, the project team will analyze potential and actual recoverable revenue. This will help the Town understand how workload volume impacts revenue and cost subsidies. While potential revenue can be identified, recoverable revenue is dependent upon the following factors:

- Current policies and legal restrictions, which limit the Town's ability to increase fees and thereby revenue recovery.
- Economic and revenue impacts of proposed and recommended fee levels and methodologies, including compliance with policies and fee affordability for small projects and applications.

These factors influence the actual recoverable revenue of a department and directly influence the self-sustainability of a department/division. Town staff can use this information to shape or alter current or future Town policies on cost recovery.

Task 7 | Review / Revise the Fee Study Results with Departments and Town Management

Because the analysis of fees for service is based on estimates and information provided by Town staff, it is extremely important that all participants are comfortable with our methodology and with the data they have provided. Once the departments agree that the analysis reflects the reasonable costs of providing services, Town management will have an opportunity to review the results.

At this point in the process, the project team will provide Departments with Recommended Fee Workbooks. The Recommended Fee Workbooks will provide departments/divisions the results of the fee study in an excel based format. The following table shows an example of the Recommended Fee Workbook:

Current - Per Unit Results				
Fee Title	Current Fee	Total Cost	Surplus / (Deficit) Per Unit	Cost Recovery %
Lot Line Adjustment	\$900	\$1,557	(\$657)	58%
Temporary Use Permit	\$40	\$325	(\$285)	12%
Recommended Fee				
Fee Title	Recommended Fee	\$ Change to Recommended Fee	% Change to Recommended Fee	Recommended Fee Cost Recovery %
Lot Line Adjustment	\$1,200	\$300	33%	77%
Temporary Use Permit	\$100	\$60	150%	31%
Recommended Fee Annual				
Fee Title	Workload	Revenue at Current Fee	Revenue at Recommended Fee	Potential Change in Revenue
Lot Line Adjustment	4	\$3,600	\$4,800	\$1,200
Temporary Use Permit	60	\$2,400	\$6,000	\$3,600
TOTAL		\$6,000	\$10,800	\$4,800

As the table above indicates, the recommended fee workbook, allows the Departments to input information into the Recommended Fee column and then see its impacts such as the true dollar increase, percentage increase, and what percentage of their current costs they are going to recover. Additionally, the workbook allows the Department to calculate potential increases or declines to revenue as a result of the recommended fees.

In conjunction with the recommended fee workbook(s), the project team will address implementation strategies that consider both policy issues and goals for optimum cost recovery. While it is generally desirable to eliminate any subsidies, discussions regarding the feasibility of raising fees based on political climate, legal restrictions, and social and economic consequences must occur.

Task 8 | **Prepare a Final User Fee Study**

Upon conclusion of the fee study, we will prepare a detailed report that summarizes the results of each of the previous work tasks described above. This report will include:

- A succinct executive summary for the study, the methodology, and the results.
- A narrative describing the services included in the study, including any revenue enhancement and operational recommendations specific to your organization and based on our extensive experience with hundreds of jurisdictions, as well as key decision-making points to be considered.
- A section on proposed modifications to the current fee schedule, as well as per unit and annual impacts to changes to fees.

The report will be reviewed, revised and finalized with Department and Town management.

Task 10 | **Present the Final Report to Key Stakeholders**

The presentation of results to Town officials and/or stakeholders is critical to the success of the overall engagement. Because the product from the study is often controversial, the objective of this final step is to present a succinct summary that provides decision makers with key information. The Matrix Consulting Group will attend and present the Study at up to two (2) Council or Committee Meetings. Additional meetings can be arranged at cost.

3 Proposed Schedule and Pricing

The following sections provide an overview of our proposed schedule, as well as a fixed-price fee to conduct a Development Services Fee Study.

1 Proposed Schedule

The typical timeframe to complete a Comprehensive Fee Study is approximately 20 weeks (4 – 5 months) to complete. The following table outlines the proposed project schedule on a task by task, week-by-week, and deliverable basis.

Task	Deliverable Week / Date	Deliverable / Task
Determine & Review Initial Documentation	Weeks 1-2	Initial Data Collection List requesting Fee Schedules, Budget information, Staffing Information, Previous studies
Project Kick-off	Weeks 1-2	Attendance at kickoff meeting, Proposed Project Schedule
Current & Potential Fees	Weeks 2-6	Attendance at Meetings, Provision of proposed fee schedules
Data Workshops	Weeks 4-10	Attendance at Data Workshops, Provision of any time keeping data and workload data.
Total Cost Analysis	Weeks 6-14	Draft Per Unit and Annual Cost Analysis Results
Review / Revise Results	Weeks 12-16	Review of Draft Results, Draft Recommended Fees, Draft Policy Recommendations
Prepare Final Report	Weeks 15-20	Review of Final Report

Presentation of results will occur after delivery of the final report, and in coordination with Town management.

2 Project Cost

The Matrix Consulting Group is proposing to conduct the Development Services Fee Study for a fixed-fee of **\$30,000**, including all travel and production. Our typical practice is to bill on a monthly basis for hours and expenses incurred, however, we are open to invoicing on a deliverable basis.



TOWN COUNCIL AGENDA ITEM NO. 9

REGULAR ITEM

DATE: November 2, 2020

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0004 – Nonconforming Uses) by amending Chapter 78 entitled “Administration,” of the Town's Code of Ordinances to update the definitions and processes related to nonconformities within the Town of Flower Mound, as well as to update the standards for submitting appeals to the Board of Adjustment, in order to comply with new state requirements. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at their October 26, 2020, meeting.*)**

SUMMARY DATA:

- This is a Town-initiated effort to amend the Town's Land Development Regulations governing functions of the Board of Adjustment (BOA). These include administrative appeals, special exceptions for nonconforming structures, and determinations relating to nonconforming uses.
- In 2019, the state legislature passed HB 2497, which introduced state-mandated changes to municipalities' processes for accepting and hearing administrative appeals by the BOA.
- As other sections of the Town's ordinances addressing BOA functions had not been updated since 1989, staff took the opportunity to review and make recommendations for clarifying language to be incorporated prohibiting expansion of nonconforming uses, defining when and how nonconforming uses are abandoned or discontinued, and providing guidance as to when special exceptions to allow nonconforming structures to be rebuilt might be appropriate.

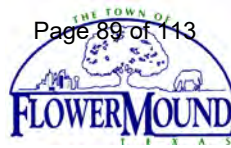
BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and draft ordinance for this item.

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: 5
REGULAR ITEM

DATE: October 26, 2020

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0004 – Nonconforming Uses) by amending Chapter 78 entitled “Administration,” of the Town’s Code of Ordinances to update the definitions and processes related to nonconformities within the Town of Flower Mound, as well as to update the standards for submitting appeals to the Board of Adjustment, in order to comply with new state requirements.**

I. ITEM SUMMARY

This Town-initiated item proposes to amend the Town’s Land Development Regulations to update the definitions and processes associated with nonconforming uses and structures in Flower Mound, as well as to incorporate new standards for submitting appeals to the Board of Adjustment, based on changes the state legislature adopted during the 2019 session.

This item will require final action by the Town Council, which is scheduled for November 2, 2020.

II. APPLICATION ANALYSIS

The existing ordinance language governing Board of Adjustment (BOA) cases, including guidelines on nonconforming uses and structures, as well as administrative appeals, has remained largely unchanged since it was adopted in 1989. Required updates to the language on appeals after the 2019 legislative session presented an opportunity to take a more comprehensive look at modernizing this section of the Town’s regulations. Of particular concern were the guidelines governing maintenance of nonconforming uses, as the Town has been faced with situations in recent years where staff was challenged in requiring site development to comply with the Town’s Master Plan and zoning regulations, due to the ambiguity of the existing text.

On October 12, 2020, staff presented suggested language to the Planning and Zoning Commission (P&Z) to update the regulations governing nonconformities and appeals to BOA during a work session ([web link](#)).

P&Z requested that staff consider the following suggestions in finalizing the draft ordinance:

- Have the Town’s Economic Development Department review the draft standards to ensure there are no concerns about unintended impacts to the Town’s ability to recruit or maintain businesses.

- Review any existing records or statistics that would help the Commission have a better understanding of the scope of the proposed changes.
- Incorporate language that would prevent government-mandated closures or closures due to unanticipated disasters from counting against existing businesses, insofar as it would establish that a site had been discontinued.

Andrea Roy, Flower Mound's Economic Development Director, reviewed the draft ordinance and stated she was in agreement with the proposed changes. To address the second request, staff compiled a list of the BOA cases over the past five years (Attachment 1). This information will also be presented to P&Z during the public hearing. The last item has been incorporated into the most recent version of the Draft Redline Ordinance (Attachment 2).

III. CORRESPONDENCE

The Town Code requires public notice in a newspaper of general circulation (Denton Record Chronicle). At the time this report was written, the Town had not received any correspondence regarding this item.

IV. ATTACHMENTS

1. Recent BOA Cases
2. Draft Redline Ordinance

Board of Adjustment Cases over the Last Five Years

2020

1. BOA20-0001 – nonconforming structure – approved (residential)
2. BOA20-0002 – setback variance – approved (residential)
3. BOA20-0003 – setback variance – approved (residential)
4. BOA20-0004 – nonconforming structure – approved (residential)

2019

1. BOA19-0001 – building coverage variance – approved (residential)
2. BOA19-0002 – setback variance – approved (residential)
3. BOA19-0003 – setback variance – approved (residential)
4. BOA19-0004 – setback variance – denied (residential)
5. BOA19-0005 – setback variance – approved (residential)
6. BOA19-0006 – setback variance – approved (residential)
7. BOA19-0009 – setback variance – approved (residential)
8. BOA19-0010 – setback variance – approved (residential)
9. BOA19-0011 – nonconforming structure – denied (residential)
10. BOA19-0013 – setback variance – approved (residential)

2018

1. BOA18-0003 – setback variance – approved (residential)
2. BOA18-0004 – height & building coverage variance – approved (residential)
3. BOA18-0005 – setback variance – approved (non-residential)
4. BOA18-0006 – nonconforming structure – approved (residential)
5. BOA18-0007 – setback variance – approved (residential)
6. BOA18-0009 – sign variance – approved (non-residential)
7. BOA18-0010 – appeal of staff determination – denied (residential)

2017

1. BOA17-0001 – sign variance – approved (non-residential)
2. BOA17-0002 – lot coverage variance – approved (residential)
3. BOA17-0003 – setback variance – denied (residential)
4. BOA17-0004 – sign variance – approved (non-residential)
5. BOA17-0005 – setback variance – denied (residential)
6. BOA17-0006 – setback variance – approved (residential)
7. BOA17-0007 – setback & height variance – approved (residential)

2016

1. BOA16-0001 – setback variance – denied (residential)

Sec. 78-84. - Appeals.

- (a) *Authority of board.* In exercising its powers, the board of adjustment may, in conformity with the provisions of the state statutes, as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and make such order, requirement, decision or determination, in the board's opinion, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.
- (b) *Application for appeal.*

1. Appeals to the board of adjustment of a decision made by an administrative official that is not related to a specific application, address or project can be taken by any person aggrieved by the decision or by any officer, department, ~~or board or bureau~~ of the municipality affected by the decision ~~of the building official~~.
2. Appeals to the board of adjustment of a decision made by an administrative official that is related to a specific application, address or project can be taken by:
 - i. a person who:
 - a. filed the application that is the subject of the decision;
 - b. is the owner or representative of the owner of the property that is the subject of the decision; or
 - c. is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or
 - ii. any officer, department, board or bureau of the municipality affected by the decision.

Such appeal shall be ~~taken~~ ~~filed not later than the~~ ~~within 15~~ ~~20th days~~ after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

- (c) *Stay of proceedings.* An appeal shall stay all proceedings of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order that may be granted by the board of adjustment or by a court of record on application and notice to the officer from whom the appeal is taken and on due cause shown.
- (d) *Hearing and notice.* The board of adjustment shall ~~schedule the appeal at the next meeting for which notice can be provided, and shall render a decision on the appeal following the hearing and not later than the 60th day after the date the appeal is filed. fix a reasonable time for the hearing of an appeal, give the public notice by depositing such notice in the mail addressed~~ Notices shall be mailed to all owners of real property located within 200 feet of the property on which the appeal is made, and ~~by publishing~~ notice of ~~such~~ the hearing shall also be published in a newspaper of general circulation in the town. Both the mailed and published notice shall be given at least ten days prior to the date set for the hearing. At the hearing any party may appear in person or by attorney or agent.
- (e) *Appeals to court.* Any persons, jointly or severally, aggrieved by any decision of the board, or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board of adjustment and not

thereafter. The board's decision shall be deemed filed in the office of the board of adjustment on the first business day following the date on which action was taken by the board.

...

Sec. 78-86. - Special exceptions.

The board of adjustment shall have the power to hear and decide the following special exceptions to the terms of subpart B of this Code:

- (1) *Reconstruction of nonconforming building.* The board of adjustment shall be authorized to permit the reconstruction of a nonconforming building pursuant to ~~section 78-231(e), nonconforming uses and structures, destruction~~ section 78-240, Destruction or damage to nonconforming structure or use.
- ~~(2) Expansion of nonconforming building. The board shall be authorized to permit the addition of off-street parking or off-street loading to a nonconforming use pursuant to section 78-231(b), nonconforming uses and structures, expansion.~~
- ~~(3)(2)~~ *Discontinuance of nonconforming use.* The board shall be authorized to require the discontinuance of nonconforming uses of land or structures under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of subpart B of this Code. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard to the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of the property.
- ~~(4)(3)~~ *Status of nonconforming uses.* The board shall, from time to time, on its own motion or upon cause presented by interested property owners or on request of the town council or planning and zoning commission inquire into the existence, continuation or maintenance of any nonconforming use within the town.

...

ARTICLE V. – NONCONFORMITIES

~~Sec. 78-231. – Nonconforming uses and structures.~~

- ~~(a) Nonconforming status.~~ The use of land, use of a structure, or a structure itself shall be deemed to have nonconforming status when each of the following conditions exist:
 - ~~(1) The use or structure that does not conform to the regulations prescribed in the district in which such use or structure is located was in existence and lawfully constructed, located and operating prior to, and at the time of, the event or action that made such use or structure nonconforming.~~
 - ~~(2) The event or action that made such use or structure nonconforming was one of the following: annexation into the town, adoption of subpart B of this Code or a previous zoning ordinance, or amendment of subpart B of this Code or a previous zoning ordinance.~~
 - ~~(3) The nonconforming use has been operating since the time that the use first became nonconforming without abandonment, as abandonment is defined in subsection (d) of this section.~~
- ~~(b) Expansion.~~
 - ~~(1) No nonconforming use may be expanded or increased beyond the lot or tract upon which such nonconforming use is located as of the effective date of subpart B of this Code, except to provide off-street loading or off-street parking space upon approval of the board of adjustment.~~

~~(2) No structure, occupied by a nonconforming use shall be altered so as to increase the gross floor area.~~

~~(3) No nonconforming structure shall be altered or expanded so as to increase the degree of nonconformity.~~

~~(c) Change of use.~~

~~(1) Any nonconforming use may be changed to a conforming use, and once such change is made, the use shall not thereafter be changed back to a nonconforming use.~~

~~(2) Where a conforming use is located in a nonconforming structure, the use may be changed to another conforming use by securing a certificate of occupancy.~~

~~(d) Abandonment. Whenever a nonconforming use is abandoned, all nonconforming rights shall cease, and the use of the premises shall henceforth be in conformance to subpart B of this Code. Abandonment shall involve the intent of the user or owner to discontinue a nonconforming operation and the actual act of discontinuance. Any nonconforming use that is discontinued, or that remains vacant for a period of six months, shall be considered to have been abandoned. Any nonconforming use that is moved from the premises shall be considered to have been abandoned.~~

~~(e) Destruction. If a nonconforming structure is destroyed by fire, the elements or other cause, it may not be rebuilt except to conform to the provisions of subpart B of this Code. In the case of partial destruction, where the cost of repairing or replacing the structure does not exceed 60 percent of its most recent appraised property tax value, reconstruction may be permitted after a hearing and favorable action by the board of adjustment, provided that the repaired or new structure shall not exceed the original structure in lot coverage, gross floor area or height and shall not increase the degree of any nonconformity.~~

Sec. 78-232. – Nonconforming lots.

~~A lot of record that has less area than required in this subpart B may be used for a single family dwelling, and no lot shall be reduced in area below the minimum requirements set forth in subpart B of this Code.~~

Sec. 78-231. – Intent.

Where a lawful use of property, a lawful structure or lot of record exists at the effective date of adoption of this ordinance which would not be permitted by the regulations imposed by this ordinance, the use, structure or lot of record may be continued so long as it remains otherwise lawful, subject to the provisions in this article. The provisions of this article shall also apply to any use, structure or lot of record made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation). The date of nonconformity shall be the first date the prior lawful use, structure or lot of record was made noncompliant by the adoption of the revised zoning regulations or by governmental action. It is the intent of this ordinance to permit these nonconformities to continue (whether by the same or different owners or tenants) until they are removed, but not to encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere within the same district. A nonconforming use of a structure or land shall not be extended or enlarged after passage of this ordinance by the addition of uses of a nature which would be prohibited generally in the district involved.

If the Town determines that proposed work on a nonconforming structure, or a lot or structure housing a nonconforming use, requires a new site plan, as outlined in Chapter 82, the planning and zoning commission and/or town council shall not be authorized to waive or vary conditions and requirements contained in subpart B or other ordinances of the town through the site plan process,

unless authority for such waiver or variation is specifically authorized in subpart B, pursuant to Sec. 82-35(c).

Sec. 78-232. – Existing building permits.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or land development project for which a building permit was lawfully issued no more than six months prior to the date of adoption or amendment of this ordinance, unless that building permit was issued in error. Construction on a building permit issued prior to the adoption of this ordinance must be begun and completed prior to the expiration of the permit, as outlined in Chapter 78 of the Town's ordinances. Such permit shall not be renewed or extended without all other conditions of the Town's regulations having been met.

Sec. 78-233. – Nonconforming lots.

In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot at the effective date of adoption or amendment of this ordinance where zoning under this ordinance is otherwise proper. This provision shall apply even though such lot fails to meet requirements for width or area, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located, and that the lot was previously platted or identified to be a lot of record, as defined in Section 74-3 of the Town's Land Development Regulations. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

Sec. 78-234. – Nonconforming signs.

Any sign that is permitted to remain in place as a nonconforming use may be continued in use until the sign, or a substantial part of it, is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols or other matter on the sign. A sign, or a substantial part of it, shall be considered to have been destroyed or dismantled if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location, based on documentation submitted by the applicant. **Notwithstanding the foregoing,** a nonconforming ground sign meeting the requirements of section 86-67 of this Code, that is damaged or destroyed by any force beyond the owner's control, may be reconstructed in accordance with the provisions of paragraph (10) thereof.

Sec. 78-235. – Nonconforming uses of land.

Where, at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended or the use was made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation), such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- a. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
- b. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use;
- c. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance;

- d. No additional structures shall be erected or additional equipment brought on-site in connection with such nonconforming use of land.

Sec. 78-236. – Nonconforming structures.

Where a lawful structure exists at the effective date of this ordinance or amendment thereof or the structure was made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation) and such structure could not be built under the terms of the Town's zoning regulations by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. Such structure may not be enlarged in a way which increases its nonconformity;
- b. Such structure may not be altered in a way which increases its nonconformity;
- c. Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

Sec. 78-237. – Nonconforming uses of structures.

If a lawful use of a structure exists at the effective date of adoption or amendment of this ordinance or the lawful use of a structure was made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation), such that the use of the structure would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- a. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- b. A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use;
- c. Any nonconforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such structure.

Sec. 78-238. – Repairs and maintenance.

On any nonconforming structure or any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding twenty-five percent (25%) of the most recent tax appraisal value of the building, provided that the cubic content of the building as it existed at the time the building was made nonconforming shall not be increased.

- a. If a nonconforming structure or a building or portion of a building containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized Town official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be repaired or rebuilt except in conformity with the regulations of the district in which it is located.
- b. Nothing in this ordinance shall be deemed to prevent the temporary strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Sec. 78-239. – Abandonment or Discontinuance.

If a legal, non-conforming use is either discontinued or abandoned under the terms and conditions of this section, such use shall not be resumed and any further use shall be in conformity with the provisions of this ordinance.

- a. For the purpose of this section, "abandonment" shall be defined as intent by the owner to permanently close or cease the use. The following conduct shall be presumed to constitute intent to abandon a nonconforming use:
 1. The failure of the owner to repair the structure or property used to operate the non-conforming use within thirty (30) days after the building official or code enforcement officer has given the owner written notice that the building, structure or property is:
 - i. in an advanced stage of dilapidation, as determined by either the fire marshal or the building official;
 - ii. in violation of one or more applicable health and safety codes adopted by the Town that govern the use or condition of structures designed for human occupancy, as amended, including but not limited to the applicable building, plumbing, electrical, mechanical, and life safety codes as adopted by the Town; or
 - iii. otherwise unsafe for the continuation of the current use or occupancy.
- b. For the purpose of this section, "discontinuance" shall be defined as follows:
 1. When a non-conforming use has historically been operated on a continuous basis, a closure or cessation of a use for a period of one hundred eighty (180) consecutive days, irrespective of whether the owner has actual intent to abandon the use.
 2. When a non-conforming use has historically been operated only on a seasonal basis, such use shall be deemed to have been discontinued, regardless of whether the owner has actual intent to abandon the use, if either:
 - i. the structure or property upon or in which the use has been operated is closed or the non-conforming use ceases to operate for a period of one hundred eighty (180) consecutive days; or
 - ii. the structure or property upon or in which the use has been operated is closed or the non-conforming use ceases to operate during one or more normal and customary seasons or periods of operation during which the non-conforming use has historically been operated.
 3. Closure during time of a government-mandated shutdown or disaster declaration will not be counted toward a discontinuance assessment.
- c. Upon the request of the Town or any other interested complainant, including the owner, of any real property located within one thousand (1,000') feet of the real property containing a legal non-conforming use or structure, the building official shall make a written determination as to whether such use has been abandoned or discontinued as provided herein.
- d. If the complainant or the owner of the nonconforming use wishes to appeal a determination of the building official as to whether the non-conforming use has been abandoned or discontinued, such person may appeal by filing a written notice of appeal with the building official and paying the applicable fee within twenty (20) business days of the building official's decision. Upon the filing of such an appeal, the board of adjustment shall, as soon as practicable, hold a public hearing on such appeal, and, render a decision on the matter. The concurring vote of 75 percent of the members of the board is necessary to reverse the decision of the building official.

Sec. 78-240. – Destruction or damage to nonconforming structure or use.

If a legal nonconforming structure, or a structure used in the operation of a legal nonconforming use, is totally destroyed or partially damaged by the elements, fire, other catastrophe, or through an intentional renovation process (these four potential causes are hereinafter referred to as “casualty”), the structure may not be repaired or reconstructed and the nonconforming use may not be recommenced, except in conformity with the provisions of this ordinance.

- a. If a nonconforming structure, or a structure used in the operation of a legal nonconforming use, is partially damaged by casualty, and the owner of the nonconforming structure wishes to repair or reconstruct the damaged structure, upon submission of a request for a building permit, the building official shall first determine in writing whether the cost of repair or reconstruction is less than sixty percent (60%) of the structure's most recent tax appraisal value immediately preceding the casualty, exclusive of the value of the real property, based on documentation submitted by the applicant. In making a determination regarding the cost of repair or reconstruction, the building official shall consider all costs to make all repaired or reconstructed portions of the structure conform to all applicable health and safety codes adopted by the Town that govern the use or condition of structures designed for human occupancy, as amended, including but not limited to the applicable building, plumbing, electrical, mechanical, and life safety codes as adopted by the Town.
- b. If the building official determines that the cost of repair or reconstruction is less than sixty percent (60%) of the structure's most recent tax appraisal value immediately preceding the casualty, exclusive of the value of the real property, and the owner of the nonconforming structure complies with all other requirements of the Town Code, the owner of the nonconforming use or structure shall be eligible to apply for a special exception for reconstruction of a nonconforming building. The board of adjustment shall, as soon as practicable, hold a public hearing on this request.
- c. The board of adjustment may grant a special exception for reconstruction when they find that:
 1. The granting of such exception will not be injurious or otherwise detrimental to the public health, safety, morals and general welfare of the public;
 2. The granting of such exception will not be detrimental or injurious to the property or improvements in the area or neighborhood in which the property is located; and
 3. The granting of such exception will be in harmony with the general purpose and intent of the zoning regulations of the Town, and will serve the general welfare and preserve the community interest.

In determining its findings, the board shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such building or upon such land, traffic conditions in the vicinity, and the conformance of such area to the official zoning map and comprehensive plan.

- d. If the building official determines that the cost of repair or reconstruction is equal to or greater than sixty percent (60%) of the structure's most recent tax appraisal value immediately preceding the casualty, exclusive of the value of the real property, the owner of the nonconforming structure shall only be entitled to a building permit for repair or reconstruction that completely eliminates any structural non-conformity, and with the understanding that the structure can no longer be used to house a nonconforming use; otherwise, the owner shall be

required to demolish the damaged structure and bring the property into full conformity with the terms of this ordinance.

- e. If a legal nonconforming structure is:
 - 1. totally destroyed or partially damaged by casualty; and
 - 2. the nonconformity is completely or partially the result of noncompliance with minimum yard (building setback), maximum lot coverage or maximum impervious coverage regulations; and
 - 3. the lot where the structure is or was located was decreased in size before the destruction or damage as the result of land or right-of-way acquisition by a public agency having the power of eminent domain; the building official shall include the area acquired by the public agency with the area of the lot when deciding whether the structure complies with the minimum yard (building setback), maximum lot coverage and maximum impervious coverage regulations.

This subsection only applies when deciding whether a property owner is entitled to a building permit after a legal nonconforming structure is totally destroyed or partially damaged. Any reconstruction or replacement shall not cause a greater extent of nonconformance than the pre-existing structure excluding the area acquired by the public agency. The reconstruction or replacement shall not be in conflict with the real estate interest of any public agency and must otherwise conform to the regulations of this Ordinance. The expansion, enlargement or intensification of a preexisting nonconforming use or structure during reconstruction or replacement shall not be allowed under this subsection.

- f. The building official and/or Board of Adjustment may also impose other conditions on repair or reconstruction to prevent such repair or reconstruction from unduly delaying the return of such property to a conforming use and to prevent the increase of any nonconformity of a nonconforming structure or use beyond what existed prior to the casualty, and to require that the reconstructed structure conforms in all other respects to the requirements of the ordinances of the Town.
- g. With regard to any request to repair or reconstruct under this section, if the owner of a nonconforming use or structure fails to begin reconstruction of the structure (when permitted to do so by the terms of this ordinance) within six (6) months of the date of issuance of a building permit, the nonconforming structure or use shall be deemed to be “discontinued” pursuant to and in accordance with section – 78-239 hereof.

Ordinance No. _____

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 78, "ADMINISTRATION," OF THE TOWN'S CODE OF ORDINANCES, SECTION 78-84, "APPEALS," TO REFLECT NEW STATE REQUIREMENTS; AMENDING SECTION 78-86 "SPECIAL EXCEPTIONS," TO REMOVE THE SPECIAL EXCEPTION THAT ALLOWED FOR EXPANSION OF NONCONFORMING BUILDINGS; AMENDING ARTICLE V, "NONCONFORMITIES," TO UPDATE AND REPLACE THE TOWN'S ORDINANCE LANGUAGE GOVERNING NONCONFORMING USES AND STRUCTURES; 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 78, "Administration," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended, establishing provisions for the consideration of administrative appeals, special exceptions, and nonconformities in the Town; and

WHEREAS, Chapter 211 of the Texas Local Government Code establishes procedures for appeals to a board of adjustment; and

WHEREAS, the Town Council finds and determines that there should be clear guidelines identifying processes and allowances for nonconforming uses and structures; and

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on October 26, 2020, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on November 2, 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

WHEREAS, the Town Council finds that the amendments to Chapters 78 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 78-84, "Appeals," of Chapter 78, "Administration," of Subpart B, "Land

Ordinance No. _____

Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

“Sec. 78-84. - Appeals.

(a) *Authority of board.* In exercising its powers, the board of adjustment may, in conformity with the provisions of the state statutes, as existing or hereafter amended, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and make such order, requirement, decision or determination, in the board's opinion, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.

(b) *Application for appeal.*

(1) Appeals to the board of adjustment of a decision made by an administrative official that is not related to a specific application, address or project can be taken by any person aggrieved by the decision or by any officer, department, board or bureau of the municipality affected by the decision.

(2) Appeals to the board of adjustment of a decision made by an administrative official that is related to a specific application, address or project can be taken by:

a. a person who:

- i. filed the application that is the subject of the decision;
- ii. is the owner or representative of the owner of the property that is the subject of the decision; or
- iii. is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

b. any officer, department, board or bureau of the municipality affected by the decision.

Such appeal shall be filed not later than the 20th day after the decision has been rendered by the administrative officer, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

(c) *Stay of proceedings.* An appeal shall stay all proceedings of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order that may be granted by the board of adjustment or by a court of record on application and notice to the officer from whom the appeal is taken and on due cause shown.

Ordinance No. _____

- (d) *Hearing and notice.* The board of adjustment shall schedule the appeal at the next meeting for which notice can be provided, and shall render a decision on the appeal following the hearing and not later than the 60th day after the date the appeal is filed. Notices shall be mailed to all owners of real property located within 200 feet of the property on which the appeal is made, and notice of the hearing shall also be published in a newspaper of general circulation in the town. Both the mailed and published notice shall be given at least ten days prior to the date set for the hearing. At the hearing any party may appear in person or by attorney or agent.
- (e) *Appeals to court.* Any persons, jointly or severally, aggrieved by any decision of the board, or any taxpayer or any officer, department or board of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the board of adjustment and not thereafter. The board's decision shall be deemed filed in the office of the board of adjustment on the first business day following the date on which action was taken by the board."

SECTION 2

Section 78-86, "Special exceptions," of Chapter 78, "Administration," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 78-86. - Special exceptions.

The board of adjustment shall have the power to hear and decide the following special exceptions to the terms of subpart B of this Code:

- (1) *Reconstruction of nonconforming building.* The board of adjustment shall be authorized to permit the reconstruction of a nonconforming building pursuant to section 78-240, Destruction or damage to nonconforming structure or use.
- (2) *Discontinuance of nonconforming use.* The board shall be authorized to require the discontinuance of nonconforming uses of land or structures under any plan whereby the full value of the structure and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of subpart B of this Code. All actions to discontinue a nonconforming use of land or structure shall be taken with due regard to the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated nonconforming use and the conservation and preservation of the property.
- (3) *Status of nonconforming uses.* The board shall, from time to time, on its own motion or upon cause presented by interested property owners or on request of the town council or planning and zoning commission inquire into the existence, continuation or maintenance of any nonconforming use within the town."

SECTION 3

Article V, "Nonconformities," of Chapter 78, "Administration," of Subpart B, "Land

Ordinance No. _____

Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

“ARTICLE V. - NONCONFORMITIES

Sec. 78-231. - Intent.

Where a lawful use of property, a lawful structure or lot of record exists at the effective date of adoption of this ordinance which would not be permitted by the regulations imposed by this ordinance, the use, structure or lot of record may be continued so long as it remains otherwise lawful, subject to the provisions in this article. The provisions of this article shall also apply to any use, structure or lot of record made nonconforming by a prior zoning regulation, a subsequent amendment to the Town’s zoning regulations, or by a governmental action (such as annexation). The date of nonconformity shall be the first date the prior lawful use, structure or lot of record was made noncompliant by the adoption of the revised zoning regulations or by governmental action. It is the intent of this ordinance to permit these nonconformities to continue (whether by the same or different owners or tenants) until they are removed, but not to encourage their survival. Such uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. It is further the intent of this ordinance that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere within the same district. A nonconforming use of a structure or land shall not be extended or enlarged after passage of this ordinance by the addition of uses of a nature which would be prohibited generally in the district involved.

If the Town determines that proposed work on a nonconforming structure, or a lot or structure housing a nonconforming use, requires a new site plan, as outlined in Chapter 82, the planning and zoning commission and/or town council shall not be authorized to waive or vary conditions and requirements contained in subpart B or other ordinances of the town through the site plan process, unless authority for such waiver or variation is specifically authorized in subpart B, pursuant to Sec. 82-35(c).

Sec. 78-232. - Existing building permits.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or land development project for which a building permit was lawfully issued no more than six months prior to the date of adoption or amendment of this ordinance, unless that building permit was issued in error. Construction on a building permit issued prior to the adoption of this ordinance must be begun and completed prior to the expiration of the permit, as outlined in Chapter 78 of the Town’s ordinances. Such permit shall not be renewed or extended without all other conditions of the Town’s regulations having been met.

Sec. 78-233. - Nonconforming lots.

In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this ordinance, a single-family dwelling and customary accessory buildings may be erected on any single lot at the effective date of adoption or amendment of this ordinance where zoning under this ordinance is otherwise proper. This provision shall apply even though such lot fails to meet requirements for width or area, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located, and that the lot was previously platted or identified to be a lot of record, as defined in Section 74-3 of the

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Town's Land Development Regulations. Variance of yard requirements shall be obtained only through action of the Board of Adjustment.

Sec. 78-234. - Nonconforming signs.

Any sign that is permitted to remain in place as a nonconforming use may be continued in use until the sign, or a substantial part of it, is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols or other matter on the sign. A sign, or a substantial part of it, shall be considered to have been destroyed or dismantled if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location, based on documentation submitted by the applicant. Notwithstanding the foregoing, a nonconforming ground sign meeting the requirements of section 86-67 of this Code, that is damaged or destroyed by any force beyond the owner's control, may be reconstructed in accordance with the provisions of paragraph (10) thereof.

Sec. 78-235. - Nonconforming uses of land.

Where, at the effective date of adoption or amendment of this ordinance, lawful use of land exists that is made no longer permissible under the terms of this ordinance as enacted or amended or the use was made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation), such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- (a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
- (b) A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use;
- (c) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this ordinance;
- (d) No additional structures shall be erected or additional equipment brought on-site in connection with such nonconforming use of land.

Sec. 78-236. - Nonconforming structures.

Where a lawful structure exists at the effective date of this ordinance or amendment thereof or the structure was made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation) and such structure could not be built under the terms of the Town's zoning regulations by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) Such structure may not be enlarged in a way which increases its nonconformity;

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- (b) Such structure may not be altered in a way which increases its nonconformity;
- (c) Should such structure be moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

Sec. 78-237. - Nonconforming uses of structures.

If a lawful use of a structure exists at the effective date of adoption or amendment of this ordinance or the lawful use of a structure was made nonconforming by a prior zoning regulation, a subsequent amendment to the Town's zoning regulations, or by a governmental action (such as annexation), such that the use of the structure would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (a) No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- (b) A nonconforming use, if changed to a conforming use, may not thereafter be changed back to a nonconforming use;
- (c) Any nonconforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such structure.

Sec. 78-238. - Repairs and maintenance.

On any nonconforming structure or any building devoted in whole or in part to any nonconforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing, to an extent not exceeding twenty-five percent (25%) of the most recent tax appraisal value of the building, provided that the cubic content of the building as it existed at the time the building was made nonconforming shall not be increased.

- (a) If a nonconforming structure or a building or portion of a building containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized Town official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be repaired or rebuilt except in conformity with the regulations of the district in which it is located.
- (b) Nothing in this ordinance shall be deemed to prevent the temporary strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Sec. 78-239. – Abandonment or discontinuance.

If a legal, non-conforming use is either discontinued or abandoned under the terms and conditions of this section, such use shall not be resumed and any further use shall be in conformity

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with the provisions of this ordinance.

(a) For the purpose of this section, "abandonment" shall be defined as intent by the owner to permanently close or cease the use. The following conduct shall be presumed to constitute intent to abandon a nonconforming use:

(1) The failure of the owner to repair the structure or property used to operate the non-conforming use within thirty (30) days after the building official or code enforcement officer has given the owner written notice that the building, structure or property is:

a. in an advanced stage of dilapidation, as determined by either the fire marshal or the building official;

b. in violation of one or more applicable health and safety codes adopted by the Town that govern the use or condition of structures designed for human occupancy, as amended, including but not limited to the applicable building, plumbing, electrical, mechanical, and life safety codes as adopted by the Town; or

c. otherwise unsafe for the continuation of the current use or occupancy.

(b) For the purpose of this section, "discontinuance" shall be defined as follows:

(1) When a non-conforming use has historically been operated on a continuous basis, a closure or cessation of a use for a period of one hundred eighty (180) consecutive days, irrespective of whether the owner has actual intent to abandon the use.

(2) When a non-conforming use has historically been operated only on a seasonal basis, such use shall be deemed to have been discontinued, regardless of whether the owner has actual intent to abandon the use, if either:

a. the structure or property upon or in which the use has been operated is closed or the non-conforming use ceases to operate for a period of one hundred eighty (180) consecutive days; or

b. the structure or property upon or in which the use has been operated is closed or the non-conforming use ceases to operate during one or more normal and customary seasons or periods of operation during which the non-conforming use has historically been operated.

(3) Closure during time of a government-mandated shutdown or disaster declaration will not be counted toward a discontinuance assessment.

(c) Upon the request of the Town or any other interested complainant, including the owner, of any real property located within one thousand (1,000') feet of the real property containing a legal non-conforming use or structure, the building official shall make a written determination as to whether such use has been abandoned or discontinued as provided herein.

(d) If the complainant or the owner of the nonconforming use wishes to appeal a determination of the building official as to whether the non-conforming use has been abandoned or

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discontinued, such person may appeal by filing a written notice of appeal with the building official and paying the applicable fee within twenty (20) business days of the building official's decision. Upon the filing of such an appeal, the board of adjustment shall, as soon as practicable, hold a public hearing on such appeal, and, render a decision on the matter. The concurring vote of 75 percent of the members of the board is necessary to reverse the decision of the building official.

Sec. 78-240. - Destruction or damage to nonconforming structure or use.

If a legal nonconforming structure, or a structure used in the operation of a legal nonconforming use, is totally destroyed or partially damaged by the elements, fire, other catastrophe, or through an intentional renovation process (these four potential causes are hereinafter referred to as "casualty"), the structure may not be repaired or reconstructed and the nonconforming use may not be recommenced, except in conformity with the provisions of this ordinance.

- (a) If a nonconforming structure, or a structure used in the operation of a legal nonconforming use, is partially damaged by casualty, and the owner of the nonconforming structure wishes to repair or reconstruct the damaged structure, upon submission of a request for a building permit, the building official shall first determine in writing whether the cost of repair or reconstruction is less than sixty percent (60%) of the structure's most recent tax appraisal value immediately preceding the casualty, exclusive of the value of the real property, based on documentation submitted by the applicant. In making a determination regarding the cost of repair or reconstruction, the building official shall consider all costs to make all repaired or reconstructed portions of the structure conform to all applicable health and safety codes adopted by the Town that govern the use or condition of structures designed for human occupancy, as amended, including but not limited to the applicable building, plumbing, electrical, mechanical, and life safety codes as adopted by the Town.
- (b) If the building official determines that the cost of repair or reconstruction is less than sixty percent (60%) of the structure's most recent tax appraisal value immediately preceding the casualty, exclusive of the value of the real property, and the owner of the nonconforming structure complies with all other requirements of the Town Code, the owner of the nonconforming use or structure shall be eligible to apply for a special exception for reconstruction of a nonconforming building. The board of adjustment shall, as soon as practicable, hold a public hearing on this request.
- (c) The board of adjustment may grant a special exception for reconstruction when they find that:
 - (1) The granting of such exception will not be injurious or otherwise detrimental to the public health, safety, morals and general welfare of the public;
 - (2) The granting of such exception will not be detrimental or injurious to the property or improvements in the area or neighborhood in which the property is located; and
 - (3) The granting of such exception will be in harmony with the general purpose and intent of the zoning regulations of the Town, and will serve the general welfare and preserve the community interest.

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In determining its findings, the board shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such building or upon such land, traffic conditions in the vicinity, and the conformance of such area to the official zoning map and comprehensive plan.

- (d) If the building official determines that the cost of repair or reconstruction is equal to or greater than sixty percent (60%) of the structure's most recent tax appraisal value immediately preceding the casualty, exclusive of the value of the real property, the owner of the nonconforming structure shall only be entitled to a building permit for repair or reconstruction that completely eliminates any structural non-conformity, and with the understanding that the structure can no longer be used to house a nonconforming use; otherwise, the owner shall be required to demolish the damaged structure and bring the property into full conformity with the terms of this ordinance.
- (e) If a legal nonconforming structure is:
 - (1) totally destroyed or partially damaged by casualty; and
 - (2) the nonconformity is completely or partially the result of noncompliance with minimum yard (building setback), maximum lot coverage or maximum impervious coverage regulations; and
 - (3) the lot where the structure is or was located was decreased in size before the destruction or damage as the result of land or right-of-way acquisition by a public agency having the power of eminent domain; the building official shall include the area acquired by the public agency with the area of the lot when deciding whether the structure complies with the minimum yard (building setback), maximum lot coverage and maximum impervious coverage regulations.

This subsection only applies when deciding whether a property owner is entitled to a building permit after a legal nonconforming structure is totally destroyed or partially damaged. Any reconstruction or replacement shall not cause a greater extent of nonconformance than the pre-existing structure excluding the area acquired by the public agency. The reconstruction or replacement shall not be in conflict with the real estate interest of any public agency and must otherwise conform to the regulations of this Ordinance. The expansion, enlargement or intensification of a preexisting nonconforming use or structure during reconstruction or replacement shall not be allowed under this subsection.

- (f) The building official and/or Board of Adjustment may also impose other conditions on repair or reconstruction to prevent such repair or reconstruction from unduly delaying the return of such property to a conforming use and to prevent the increase of any nonconformity of a nonconforming structure or use beyond what existed prior to the casualty, and to require that the reconstructed structure conforms in all other respects to the requirements of the ordinances of the Town.
- (g) With regard to any request to repair or reconstruct under this section, if the owner of a nonconforming use or structure fails to begin reconstruction of the structure (when permitted to do so by the terms of this ordinance) within six (6) months of the date of issuance of a building permit, the nonconforming structure or use shall be deemed to be "discontinued" pursuant to and in accordance with section 78-239 hereof.

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Secs. 78-241-78.260. – Reserved.”**SECTION 4**

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the Town of Flower Mound, Texas, as amended, except when the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 5

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

SECTION 6

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

SECTION 7

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the 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 8

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

SECTION 9

This Ordinance shall be in full force and effect from and after the date of its passage.

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DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 2ND DAY OF
NOVEMBER, 2020.

APPROVED:

Steve Dixon, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

Town Council Future Agenda Items



SCHEDULED	11/16/2020	Consent	Consider approval of Crosspoint Communications proposal for providing and installing a Bi Directional Amplifier system to boost first responder radio equipment in the Fire Station No.7 Facility in the amount of \$25,593.00.
		Consent	Consider approval of a Construction Agreement with Durable Specialties, Inc., for the FM 2499 at Chaparral Traffic Signal project and Partial Signal Rehabilitation at FM 2499/Churchill and Flower Mound Road/McKamy Creek, in the amount of \$287,400.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Professional Services Agreement with Pacheco Koch Consulting Engineers, Inc., for the design phase services associated with the Sentinel Oaks Water Line Replacement (Three Bridges to Simmons) project, in the amount of \$39,700.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a contract with TBD in the amount of TBD for reinsurance for the Town's Group Health Plan and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the award of RFP No. 2021-3-A for Employee Basic Life Insurance & Accidental Death Insurance, Long Term Disability Insurance, Employee and Dependent Optional Life and Accidental Death Insurance to CIGNA Group Insurance in the estimated amount of TBD and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of a Memorandum of Agreement with Dr. Sean Fleming, MD in the amount of \$55,375.00 for EMS Medical Direction and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consent to approve Contract No. 2021-11-A Various Flags & Accessories Services to ConServ Flag Company
		Consent	Consider approval of a Contract for Services with the University of Texas Southwestern Medical Center to provide continuing education services for the Department's licensed and certified EMS personnel, and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of Amendment No. 1 to the Fiscal Year 2020-2021 Capital Improvement Program.
		Consent	Consider approval of a Professional Services Agreement with Innovative Transportation Solutions, Inc., to provide professional transportation services in the amount of \$75,000.00 annually, with a one year renewal option; and authorization for the Mayor to execute same on behalf of the Town.

SCHEDULED	11/16/2020	Consent	Consider approval of the purchase and installation of the 2019-20 Playground Replacements project, for Pecan Orchard Playground, from Child's Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$212,221.00.
		Consent	Consider approval of the annual firefighter physical examinations with Huguley Memorial Medical Center through contract No. 2018-2-A in the total amount of \$64,760.00 and authorization for the Mayor to approve same on behalf of the Town.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on November 2, 2020.
		Regular	Consider approval of a Construction Agreement with DDM Construction Corporation for the Waketon Road (Cross Timbers Drive to 1,350 feet 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	Placeholder: ELECTION CANVASS (new officers - oath of office)
		Regular	Consider approval of a Construction Agreement with MSB Contractors, Inc., for the Canyon Falls Park project, in the amount of \$2,625,996.00; and authorization for the Mayor to execute same on behalf of the Town.
	11/19/2020	Work Session	Placeholder: permitted use discussion
	12/7/2020	Consent	Wastewater Treatment Plant Phase V - Change Order 2
		Consent	Upper Timber Creek Interceptor - CO1
		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.
		Consent	Bruton-Orand @ FM 1171 Right Turn Lane - Construction Award
		Consent	Consider a recommendation for a proposed street name change for cul-de-sac immediately south of FM 1171 and west of Pocahontas to Navajo Bluffs Court for the 9100 – 9200 block to the Town Council. (Transportation Commission recommended approval by a vote of X to X at the November 10, 2020, meeting.)
		Consent	Consider approval of a Professional Services Agreement with ECS Southwest, LLP to provide construction materials engineering and testing, for the Waketon Road (Cross Timbers Drive to 1,350' East of Chinn Chapel) project, in the amount of \$121,308.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Canyon Falls Park - Testing Award
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on November 16, 2020, and approval of the minutes from a work session held on November 19, 2020.

SCHEDULED	12/7/2020	Regular	Public Hearing for the purpose of receiving comments and to discuss and review the updated land use assumptions, capital improvements plan and roadway, water and wastewater impact fees.
		Regular	Public Hearing to consider an ordinance amending the zoning (ZPD20-0005 - Niagara Conservation) from an Agricultural (A) Zoning district to Planned Development District No.179 (PD-179) with Campus Industrial uses, with certain waivers, exceptions and modifications to the Code of Ordinances including but not limited to an exception to Section 98-147, "Topographical Slope Protection." The property is generally located north of Enterprise Road and east of Old Gerault Road. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its November 9, 2020, meeting.)
	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