

AGENDA

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

4/5/2021

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

6:00 P.M.

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

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

A. CALL MEETING TO ORDER

B. INVOCATION

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

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

D. PUBLIC COMMENT

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

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

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

E. PRESENTATIONS

1. Veterans Liaison Board Update
2. Outstanding Citizen Award

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members

G. TOWN MANAGER'S REPORT

Update and discussion on:

1. Capital improvement projects
2. Economic Development projects

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H. FUTURE AGENDA ITEMS

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

I. COORDINATION OF CALENDARS

1. A joint work session with Planning & Zoning is scheduled for Thursday, April 15.
2. A regular meeting is scheduled for Monday, April 19.

J. CONSENT ITEMS

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

1. Minutes 3/1- Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on March 1, 2021.
2. Alt. Municipal Court Judge- Consider approval of an ordinance to reappoint Alternate Municipal Judge Stephanie Askew for the period of April 17, 2021, through April 16, 2023.
3. Records Management Program- Consider approval of an ordinance updating the Records Management Program and Disaster Prevention & Recovery Plan for Town Records.
4. Rescue Vehicle Purchase- Consider approval of the purchase of a 2022 Ford F250 Crew Cab XL as a Water Rescue Vehicle for Fire and Emergency Services from Sam Pack's Five Star Ford in the amount of \$65,473.00 under BuyBoard Contract #601-19.
5. Water Rescue Equipment- Consider approval of the purchase of Water Rescue Equipment in lieu of Fire Turnout Gear/Personal Protective Equipment in the amount of \$17,340.00
6. Forensic Narcotic Testing- Consider approval of using budgeted funds for the purpose of forensic narcotic testing.
7. In Car Video Purchase- Consider approval of the Axon Enterprise, Inc. Master Service Agreement, for the acquisition of in car video camera products and storage; and authorization for the Mayor to execute same on behalf of the Town.
8. Vehicle Purchases- Consider approval of the purchase of two Ford 1/2 Ton Regular Cab Pick-Up Trucks with 8 Foot Bed per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's Five Star Ford and Chevrolet for Public Works in the amount of \$58,886.00.
9. Vehicle Purchases- Consider approval of the purchase of two Ford 3/4 Ton Super Cab Pick-Up Trucks with 6-3/4 Foot Bed per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's Five Star Ford and Chevrolet for Public Works in the amount of \$61,168.50.

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10. Stonehill Pump Station CO2- Consider approval of Change Order No. 2 for the Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation projects, amending the contract with Archer Western Construction, LLC, to provide for an increase to the contract in the amount of \$40,295.75; and authorization for the Mayor to execute same on behalf of the Town.
11. Water and Wastewater Model Update- Consider approval of a Professional Services Agreement for the 2020 Water and Wastewater Model Update project, with Kimley-Horn, for \$25,750.00; and authorization for the Mayor to execute same on behalf of the Town..
12. Slurry Seal Contract- Consider approval of an increase to the annual contract amount for Annual Slurry Seal Services with Viking Construction, Inc, contract 2014-53, from an estimated annual total of \$49,500.00 to an estimated annual total of \$100,500.00.
13. ADA Transition Plan Update- Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services associated with the ADA Transition Plan & Implementation project – 2021 Update, in the amount of \$200,000.00; and authorization for the Mayor to execute same on behalf of the Town.
14. Senior Lunch Meals- Consider approval of a contract with Metroport Meals on Wheels, Inc. to establish an annual fixed-price contract to provide meals for the Town's Senior In Motion program.

K. REGULAR ITEMS

Staff requests that this item be postponed until 4/19

15. Niagara - Ch 380 & Tax Abatement- Public Hearing to consider approval of a Chapter 380 and Tax Abatement Agreement with Niagara Conservation, Inc. (aka Deus, LLC), for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town. (The Town Council postponed this item at its December 7, 2020, and January 4, February 1, and March 1, 2021, meetings.)
16. ZPD20-0006 Lakeside Crossing- Public Hearing to consider an ordinance for rezoning (ZPD20-0006 – Lakeside Crossing) to amend Planned Development No. 153 (PD-153) with both residential and non-residential uses to modify approved development standards related to the phasing of this development. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive. (The Planning and Zoning Commission recommended approval with a modified motion by a vote of 4 to 2 at its March 22, 2021, meeting.)
17. LDR20-0007 Regulated Uses Updates- Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0007 - Regulated Uses Updates) by amending Chapter 82 entitled "Development Standards," and Chapter 98 entitled "Zoning," of the Town's Code of Ordinances to amend and propose new regulated uses, definitions, and parking standards for the purpose of clarifying and updating certain sections to reflect current planning practices and uses. (The Planning and Zoning Commission recommended approval/denial by a vote of 5 to 1 at its February 22, 2021, meeting.) (The Town Council moved to postpone this item to April 5, 2021 by a vote of 5 to 0 at its March 1, 2021, meeting.)

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18. TRP21-0002 Townlake- Public Hearing to consider an application for a tree removal permit (TRP21-0002) for one (1) specimen tree on Lot 16, Block B of the Townlake PH 2 subdivision. The property is located at 3900 Dashiell Dr. (The Environmental Conservation Commission recommended approval by a vote of 6 to 0 at its March 2, 2021, meeting).
19. TRP21-0003 Oakbridge- Public Hearing to consider an application for a tree removal permit (TRP21-0003) for one (1) specimen tree on Lot 15, Block B of the Oakbridge at Flower Mound PH 2 subdivision. The property is located at 1624 Quimby Ln. (The Environmental Conservation Commission recommended approval by a vote of 4 to 2 at its March 2, 2021, meeting).
20. Colonial Dr Reconstruction- Consider approval of a Construction Agreement with Quality Excavation, LLC., for the Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Street) project, in the amount of \$1,432,054.00; and authorization for the Mayor to execute same on behalf of the Town..

L. CLOSED MEETING

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

a. Consultation with Attorney.

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

1. Keystone Exploration, LTD. and EXPRO Engineering, Inc. vs. The Town of Flower Mound and the Flower Mound Oil and Gas Board of Appeals.
- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, cultural arts center, and/or other municipal purposes and all matters incident and related thereto.
- c. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, senior housing, hospitality projects, and performance related to certain incentive agreements.

M. RECONVENE TO REGULAR MEETING

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

N. ADJOURN MEETING

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: April 1, 2021, at 2:15 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: April 5, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting held on March 1, 2021.

BACKGROUND INFORMATION: The Town Council held a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on March 1, 2021.

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 3.1

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

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 1****THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING; TOWN OF FLOWER MOUND FIRE CONTROL; PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT SPECIAL MEETING; AND CRIME CONTROL AND PREVENTION DISTRICT SPECIAL MEETING HELD ON THE 1ST DAY OF MARCH 2021, VIA VIDEOCONFERENCE 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
Jim Engel	Mayor Pro Tem
Ben Bumgarner	Deputy Mayor Pro Tem
Jim Pierson	Councilmember Place 1
Sandeep Sharma	Councilmember Place 2
Ann Martin	Councilmember Place 5

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
Debra Wallace	Interim Town Manager/CFO
Tommy Dalton	Assistant Town Manager
Lexin Murphy	Director of Planning Services
Tiffany Bruce	Assistant Town Manager/Town Engineer
JP Walton	Director of Economic Development
Eric Greaser	Fire Chief
Chuck Jennings	Director of Parks and Recreation
James Hoefert	Environmental Review Analyst

A. CALL REGULAR MEETING TO ORDER

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

B. INVOCATION

Mayor Dixon gave the invocation.

C. GENERAL 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.	Derek France, 2908 Pioneer Park Dr	Candidate for Mayor
2.	Kendra Stephenson, 4801 Steinbeck Cir	Item 26
3.	Mike Boswell, Toll Brothers (no address provided)	Item 26
4.	David Lehde, 5816 W Plano Pkwy, Plano	Item 26

D. ANNOUNCEMENTS

Mayor Dixon announced that he will not be seeking reelection as Mayor.

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Mayor Dixon and several members of Council expressed appreciation for everyone that worked to keep things going during the recent winter storm.

Mayor Pro Tem Engel announced that registration is now open for the Flower Mound Police Department Citizen Police Academy.

Councilmember Martin expressed the importance of emergency preparedness and encouraged residents to sign up to receive *Notify Me* alerts from the Town as part of that preparation.

Councilmember Sharma announced that the Lion's Club is accepting dog and cat food.

E. TOWN MANAGER'S REPORT

Ms. Wallace provided an update on the following projects or topics:

1. Capital Improvement projects
 - Lakeside Parkway improvements
 - Gibson-Grant log cabin
 - Rheudasil Park construction
2. Economic Development projects
 - Businesses that recently opened or coming soon
3. All Together Flower Mound
 - General information regarding what's planned for the upcoming focus group meetings, including timing, expectations, and next steps

F. FUTURE AGENDA ITEMS

1. At the request of Mayor Dixon, Ms. Scott provided information regarding a concern from a resident as it relates to the Briefing newspaper distributed by the *Dallas Morning News*.

Mayor Dixon indicated if there is Council interest to discuss the topic they can bring it up now or later.

G. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, April 5.
Mayor Dixon announced the April 5 meeting.
3. Consider a joint work session with the Planning & Zoning Commission on April 15 to include a presentation and discussion involving Furst Ranch.

Mr. Dalton provided background information regarding the purpose of the meeting, and he responded to the following questions from Council:

- Make sure there is substance to meet about
- Is the meeting with the Parks Board an actual work session or meeting with action to be taken
- Possibility of a joint work session with the Parks Board

There was Council consensus to have the April 15 joint work session with the Planning and Zoning Commission.

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 3****H. CONSENT ITEMS**

1. Consider approval of the minutes from a regular meeting of the Town Council held on February 1, 2021.
2. Consider approval of a resolution adopting a new voting system for Town elections (Denton County); and providing an effective date.

RESOLUTION NO. 08-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ADOPTING A NEW VOTING SYSTEM FOR TOWN ELECTIONS; AND PROVIDING AN EFFECTIVE DATE.

3. Consider approval of a resolution supporting House Bill 1538 relating to proposed amendments to the municipal sales and use tax for street maintenance; and providing an effective date.

RESOLUTION NO. 09-21

A RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS SUPPORTING HOUSE BILL 1538 RELATING TO PROPOSED AMENDMENTS TO THE MUNICIPAL SALES AND USE TAX FOR STREET MAINTENANCE; AND PROVIDING AN EFFECTIVE DATE.

4. Consider approval of an ordinance requiring Town sponsored open government training for all boards, commissions, and committees.

ORDINANCE NO. 12-21

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ARTICLE III, "BOARDS, COMMITTEES, COMMISSIONS," DIVISION 1, "GENERALLY," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS BY ADDING SECTION 2-92 "OPEN GOVERNMENT TRAINING" TO REQUIRE ALL BOARD, COMMITTEE, AND COMMISSION MEMBERS TO ATTEND TOWN SPONSORED OPEN GOVERNMENT TRAINING; PROVIDING A CUMULATIVE CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

5. Consider approval of the 2021 US Army Corps of Engineer (USACE) solicitation for contract with the Town of Flower Mound for law enforcement services at Lake Grapevine and authorize the Mayor to execute same.
6. Consider approval to replace rooftop condenser at Police and Court Facility.
7. Consider approval to renew the Town's three year Enterprise Enrollment Agreement with Microsoft to provide the town with licensing for Office 365 , Servers, Sharepoint, Advanced Threat Protection and Desktop Operating Systems from Software One in the amount of \$233,477.34.

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8. Consider approval of the purchase of one 2022 International HV607 6x4 13/15 Yard Tandem Axle Dump Truck with Snow Plow Hitch, Hook-Ups, PTO, Hydraulics and Controls to Include Sand Spreader Controls and Hydraulics per Town of Flower Mound Specifications and Vendor Quote from Southwest International Trucks in the amount of \$116,979.71.
9. Consider approval of a Professional Services Agreement with CP&Y, Inc., for the design phase services associated with the FM 2499 at FM 3040 Intersection Improvements project, in the amount of \$249,985.00; and authorization for the Mayor to execute same on behalf of the Town.
10. Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., for the design phase services associated with the Morriss Road Water Line Phase III (Eaton to Waketon) project, in the amount of \$222,600.00; and authorization for the Mayor to execute same on behalf of the Town.
11. Consider approval of an increase to the annual contract amount for Miscellaneous Concrete Replacement Services with F&F Concrete LLC., and Apex Concrete Construction Inc., contract 2018-50-A, from an estimated annual total of \$475,000.00 to an estimated annual total of \$745,000.00.
12. Consider approval of the purchase of wastewater flow meters and components from Hach Company, a sole source provider, associated with the Inflow-Infiltration/Evaluation and Repair project, in the amount of \$51,351.64.
13. Consider approval of an ordinance vacating and abandoning the eastern 2 feet of the existing 15-foot utility easement located along the eastern property line of Lot 1, Block 7, of the Woods at Lake Forest subdivision, which lot is more commonly known as 2033 Brook Lane.

ORDINANCE NO. 11-21

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, VACATING AND ABANDONING THE EASTERN 2 FEET OF THE EXISTING 15-FOOT UTILITY EASEMENT LOCATED ALONG THE WESTERN PROPERTY LINE OF LOT 1, BLOCK 7, OF THE WOODS AT LAKE FOREST ADDITION, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS, WHICH LOT IS MORE COMMONLY KNOWN AS 2033 BROOK LANE; AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED RELEASING THE PUBLIC OWNERSHIP INTEREST AND CONTROL IN THE PROPERTY; REQUIRING A HOLD HARMLESS AGREEMENT; AUTHORIZING THE TOWN SECRETARY TO FILE THE QUITCLAIM DEED AND HOLD HARMLESS AGREEMENT IN THE DEED RECORDS OF DENTON COUNTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

14. *Item 14 was moved from Consent to Regular with related item 30.*
15. Consider approval of Amendment No. 2 to the Fiscal Year 2020-2021 Capital Improvement Program.
16. Consider approval of the purchase and installation of playground surfacing and shade structures at the Heritage Park Fort Wildflower playground, from Child's Play, Inc. in the amount of \$248,545.00.

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17. Consider approval of the Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2020.
18. Consider approval of a resolution extending the bank depository agreement with JPMorgan Chase Bank, NA, for a two-year renewal period, declaring an effective date; and authorization for the Mayor to execute same on behalf of the Town.

RESOLUTION NO. 10-21

A RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, EXTENDING THE BANK DEPOSITORY AGREEMENT WITH JPMORGAN CHASE BANK, NA, FOR A TWO-YEAR RENEWAL PERIOD AND DECLARING AN EFFECTIVE DATE.

19. 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. 27-20 and amended by Ordinance No. 37-20 for adjustments to the General Fund, Utility Fund, Stormwater Utility Fund, Tree Preservation Fund, and IRS Equitable Sharing Fund.

ORDINANCE NO. 09-21

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE TOWN'S BUDGET FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2020, AND ENDING ON SEPTEMBER 30, 2021, AS ADOPTED BY ORDINANCE NO. 27-20 AND AMENDED BY ORDINANCE NO. 37-20, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL FUND, UTILITY FUND, STORMWATER UTILITY FUND, TREE PRESERVATION FUND, AND IRS EQUITABLE SHARING FUND; PROVIDING THAT EXPENDITURES FOR SAID FISCAL YEAR SHALL BE MADE IN ACCORDANCE WITH SAID BUDGET, AS AMENDED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

20. Town Council acting as the Board of Directors for the Town of Flower Mound Crime Control and Prevention District to consider approval of a resolution amending the Town of Flower Mound Crime Control and Prevention District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as adopted by Resolution No. 19-20 and amended by Resolution No. 02-21.

RESOLUTION NO. 06-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, AS ADOPTED BY RESOLUTION NO. 18-20; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

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21. Town Council acting as the Board of Directors for the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District to consider approval of a resolution amending the Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District budget for the fiscal year beginning on October 1, 2020, and ending on September 30, 2021, as adopted by Resolution No. 18-20.

RESOLUTION NO. 07-21

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ACTING AS THE BOARD OF DIRECTORS OF THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT, AMENDING THE BUDGET FOR THE TOWN OF FLOWER MOUND CRIME CONTROL AND PREVENTION DISTRICT FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021, AS ADOPTED BY RESOLUTION NO. 19-20 AND AMENDED BY RESOLUTION NO. 02-21; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EFFECTIVE DATE.

Councilmember Sharma moved to approve by consent Items 1 – 13; 15 - 21, as presented in the agenda caption. Mayor Pro Tem Engel 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:**AYES: PIERSON, MARTIN, ENGEL, BUMGARNER, SHARMA****NAYS: NONE***Motion passed***I. REGULAR ITEMS**

Administrative Note: Mayor Dixon moved Item 28 to the first regular item.

28. Update on the River Walk at Central Park.

Mr. Dalton provided background information as to why the item is coming before Council.

Mehrdad Moayed, Centurion America, provided an update on the progress of the River Walk development, and gave a presentation identifying or noting:

- Project history
- Site overview
- River Walk level overview
- Signature restaurant concepts
- River Walk Chapel + Water Works Hall
- The Promenade (including rezoning request for mixed-use proposal)
- Total taxes since 2013
- Amphitheater site
- The Hub Experience (activations, key uses)

and he responded to the following questions from Council:

- Is the space allocated for the amphitheater large enough to accommodate a concept like The Hub
- How many Hub concepts are on the ground now and what is the timing for getting information to Council on the concept
- Is the farmer's market and splash pad still part of the concept

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- What is the occupancy level for the Hub Experience concept
- Clarification on when the restaurants are expected to open
- Try to expand the retail and restaurant footprint instead of more residential

There was Council consensus to learn more about the Hub Experience concept.

Mayor Dixon opened items 22 – 25 at the same time.

22. 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. The property is generally located north of Enterprise Road and east of Old Gerault Road. (The Planning and Zoning Commission recommended approval of the rezoning request and denial of the exception request to Section 82-376 of the Town Code that requires overhead utilities to be placed underground, by a vote of 6 to 0 at its November 9, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its December 7, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its January 4, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its February 1, 2021, Meeting.)

Mayor Pro Tem Engel moved to approve as presented, excluding the overhead line burial request (as the applicant has withdrawn that request). Councilmember Pierson seconded the motion.

ORDINANCE NO. 13-21

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 7.594 ACRES OF LAND SITUATED IN THE J. TURNER SURVEY, ABSTRACT NO. 1251, FROM AGRICULTURAL DISTRICT (A) USES TO PLANNED DEVELOPMENT DISTRICT-179 (PD-179) WITH CAMPUS INDUSTRIAL (CI) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

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

23. Public Hearing to consider an application for a tree removal permit (TRP20-0021) for twenty-two (22) specimen trees on property proposed for development as Niagara Conservation. The property is generally located north of Enterprise Road and east of Old Gerault Road. (The Environmental Conservation Commission recommended approval by a vote of 4 to 3 at its November 4, 2020, meeting. (The Town Council moved to postpone this item by a vote of 4 to 1 at its December 7, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its January 4, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its February 1, 2021, meeting.)

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

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

24. Public Hearing to consider approval of an ordinance establishing a Tax Abatement Reinvestment Zone for commercial tax abatement at 300 Old Gerault Road (Niagara Conservation, Inc., aka Deus, LLC). (The Town Council moved to postpone this item by a vote of 4 to 1 at its December 7, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its January 4, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its February 1, 2021, Meeting.)

Mayor Pro Tem Engel moved to approve as presented in the agenda caption. Councilmember Pierson seconded the motion.

ORDINANCE NO. 10-21

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

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

25. Public Hearing to consider approval of a Chapter 380 and Tax Abatement Agreement with Niagara Conservation, Inc. (aka Deus, LLC), for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town. (The Town Council moved to postpone this item by a vote of 4 to 1 at its December 7, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its January 4, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 4 to 1 at its February 1, 2021, Meeting.)

Council Discussion

Councilmember Martin moved to postpone item 25 to the April 5, 2021 Town Council meeting, pending the applicant's ability to obtain written confirmation from the HOA regarding the fence construction as discussed. Deputy Mayor Pro Tem Bumgarner seconded the motion.

VOTE ON MOTION:*Motion passed (to postpone)***AYES: PIERSON, MARTIN, ENGEL, BUMGARNER, SHARMA****NAYS: NONE****Staff Presentation**

Ms. Murphy gave a presentation for items 22 and 23 identifying or noting:

- General and detailed location

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- Site photos
- Conceptual site plan
- Conceptual landscape plan
- Elevations
- Trees
- Roadway requirements

Mr. Walton gave a presentation for items 24 and 25 identifying or noting:

- Item #24 reinvestment zone
- Aerial map of property
- Item #25 tax abatement/Chapter 380 agreement
- Project stats
- Site obstacles
- Niagara incentive

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

- Clarification regarding
 - o Options for the truck route
 - o have the numbers changed since the last time
 - o fire apparatus turning radius and grade needs
 - o current slope information and the difference in elevation based on what is required
- Possibility of a driveway on Enterprise

Applicant Presentation

Carl Wehmeyer, Niagara Conservation; John Walsh, TIG Real Estate Services, Alex Camunez, Pacheco Koch Consulting Engineers

Mr. Wehmeyer and Mr. Walsh gave a presentation identifying or noting:

- Company background
- Summary of Zoom meeting they hosted with residential homeowners and occupants
- Offsite improvements to the park across Old Gerault
- Letter from HOA
- Enterprise Drive entry analysis
- New construction – Old Gerault Rd
- Location of Explorer pipeline easement
- Development obstacles
- Traffic study

and they responded to the following questions from Council:

- Clarification regarding
 - o anticipated truck traffic
 - o the design of the building
 - o hours of operation
- What is different since the last time this item was before Council
- Was the topic of the fence discussed with the HOA, and if so, was there any indication by them that they would want a longer fence on their side

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 10**

Mayor Dixon opened the Public Hearing for items 22 – 25 at 8:35 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 8:36 p.m.

Council Discussion

There was Council discussion regarding:

- Value Niagara as a Flower Mound business
- Concerns regarding the safety of residents in the area due to the truck traffic
- Possibility of having a less intense use at the site
- Possibility of having a fence span the full 700 feet
- Unable to support the driveway on Old Gerault Road

26. Consider the approval of an ordinance adopting updated land use assumptions and updated capital improvements plans, and to update and amend certain provisions of Chapter 42, "Impact Fees," regarding the imposition of impact fees and amending Appendix A, "Fee Schedule", accordingly. (The Capital Improvements Advisory Committee recommended approval by a vote of 9 to 0 at its November 9, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 5 to 0 at its December 7, 2020, meeting.) (The Town Council moved to postpone this item by a vote of 5 to 0 at its January 4, 2021, meeting.) (The Town Council moved to postpone this item by a vote of 5 to 0 at its February 1, 2021, meeting.)

Staff Presentation

Mr. Waltenburg gave a presentation identifying or noting:

- Background information
- Roadway impact fees
- Service units
- Service unit calculations – vehicle miles
- Capital improvement plan
- Roadway impact fee CIP map
- Existing roadway impact fee/service unit – 2015 adopted rates
- Roadway impact fee/service unit - 2020 calculated maximum assessable
- Impact fee examples: Single family detached (Service area B); 100,000 SF retail shopping center (Service area C); 3,000 SF fast food restaurant without drive-thru (Service area C); 11,000 SF pharmacy with drive-thru (Service area C)
- 2020 roadway impact fee
- Land use category reductions
- Set 2020 adopted roadway impact fee/land use
- Set impact fee exceptions
- Set economic development incentive policy

and he, Ms. Wallace, or Anthony Samarripas with Kimley Horn, responded to the following questions from Council:

- Clarification regarding:
 - o Who pays the difference in the percentage, and what is it covered by
 - o What is the deadline for Council action to be taken
 - o Cost recovery calculations
 - o Where does the money come from if the Town doesn't have the road impact fees

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 11****Council Discussion**

There was Council discussion regarding:

- Return on Investment for the improvements
- Concerns that if the roadway impact fees are adopted at 100% development will not come to Flower Mound
- Council has the option to change the impact fees in the future as warranted, and prior to the five-year requirement
- What is considered a fair share
- Whether there has been an economic development impact as a result of the previously discounted fees
- How there are other tools available to attract economic development
- Possibility of postponing the item in the interest of getting more information and real-life scenarios to understand the bottom line
- How the feedback to date has been from developers
- How the Town ended up subsidizing roads for developers when they should have been doing themselves
- Interest in getting the fees up to help maintain the roads that exist today
- Possibility of addressing residential and commercial differently

Administrative Note: The Public Hearing for this item was held on February 1, 2021.

Councilmember Pierson moved to approve 100% of the impact fees for residential and not discount anything else (e.g. industrial, lodging, recreational, institutional, medical, office, commercial, services); and to set the allowable assessment for economic development at 50% and adopting the land use assumptions and updated capital improvements plan. Councilmember Sharma seconded the motion.

ORDINANCE NO. 14-21

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING CHAPTER 42, "IMPACT FEES," TO ADOPT UPDATED LAND USE ASSUMPTIONS AND UPDATED CAPITAL IMPROVEMENTS PLANS; PROVIDING AN UPDATE TO CERTAIN PROVISIONS REGARDING THE IMPOSITION OF IMPACT FEES; AMENDING APPENDIX A "FEE SCHEDULE" OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS RELATIVE TO CHAPTER 42 IMPACT FEES; MAKING FINDINGS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Council Discussion

- There was Council discussion regarding clarification for the intent of the motion in that it means 100% of the impact fees at 100% (no discount); however, if they meet SmartGrowth they get 50% off
- There is the option to have a work session later to go through the numbers again

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 12****VOTE ON MOTION:***Motion passed***AYES: SHARMA, MARTIN, PIERSON****NAYS: BUMGARNER, ENGEL**

Administrative Note: Council action was taken on February 1, 2021, by a vote of 5 - 0 for the wastewater and water impact fees, which are part of this same ordinance, and as indicated below:

Approve the wastewater and water impact fees for 2020 for commercial and residential projects at 80% of the calculated maximums and to approve the capital improvements plans and land use assumptions.

27. Public Hearing to consider an application for a tree removal permit (TRP20-0025) for one (1) specimen tree on property proposed for development as Grace Park. The property is generally located south of Cross Timbers Road and east of Regency Park Court. (The Environmental Conservation Commission recommended approval by a vote of 7-0 at its February 2, 2021, meeting).

Staff Presentation

Mr. Hoefert gave a presentation identifying or noting:

- Background information
- Project information
- General and detailed location
- Tree survey
- Water plan north
- Photo of tree requested to be removed
- Legal consideration

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

- What happened between then and now regarding the request
- What is the main reason they are making the request
- Why couldn't the water line have been run down the dotted line (on the diagram)
- What is the mitigation plan if the tree is removed
- Is the applicant amenable to planting the number of trees needed or pay the fees
- Does the applicant have some room to plant new trees
- Clarification regarding the legal aspects of the request
-

Mayor Dixon opened the Public Hearing at 11:02 p.m. No one spoke. Mayor Dixon closed the Public Hearing at 11:02 p.m.

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

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

28. Item 28 was moved to the first regular item.

29. Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0007 - Regulated Uses Updates) by amending Chapter 82 entitled "Development Standards," and Chapter 98 entitled "Zoning," of the Town's Code of Ordinances to

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 13**

amend and propose new regulated uses, definitions, and parking standards for the purpose of clarifying and updating certain sections to reflect current planning practices and uses. (The Planning and Zoning Commission recommended approval/denial by a vote of 0 to 0 at its February 22, 2021, meeting.)

Mayor Dixon opened item 29 at 11:03 p.m., including the Public Hearing.

Staff Presentation

Mr. Dalton provided background information regarding the reason why staff is requesting this item to be postponed.

Mayor Dixon opened the Public Hearing at 11:04 p.m. No one spoke. Mayor Dixon announced that the Public Hearing for this item will be continued at the next Council meeting.

Councilmember Martin moved to postpone item 29 to the April 5, 2021, Town Council meeting, including the Public Hearing. Mayor Pro Tem Engel seconded the motion.

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

Mayor Dixon opened items 30 and 14.

30. Consider approval of a Construction Agreement with North Rock Construction, LLC., for the Rheudasil Park Improvements project, in the amount of \$2,460,731.85; and authorization for the Mayor to execute same on behalf of the Town.

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

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

14. Consider approval of a professional services agreement with Alliance Geotechnical Group, Inc., to provide testing services in the amount of \$40,545.00 for the Rheudasil Park Improvements project; and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Jennings gave a presentation for items 30 and 14 identifying or noting:

- Background information
- Original Master Plan (2014)
- New site plan, including renderings
- Playground equipment
- Bid options/project cost and alternates

FLOWER MOUND TOWN COUNCIL MEETING OF MARCH 1, 2021**PAGE 14**

- Background information about North Rock (current/recent projects)

and he responded to the following questions from Council:

- Would people be allowed to fish from the boardwalk
- Is there adequate parking
- Was there supposed to be a statue of Bob Rheudasil on the site
- The general style of the park

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

VOTE ON MOTION:*Motion passed***AYES: SHARMA, BUMGARNER, ENGEL, MARTIN, PIERSON****NAYS: NONE****J./K. CLOSED/OPEN MEETING**

The Town Council convened into a closed meeting at 11:23 p.m. on March 1, 2021, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, and 551.087 for consultation with attorney, and to discuss matters relating to real property, and economic development negotiations, and reconvened into an open meeting at 12:06 a.m. on March 2, 2021. No action was taken on the following items:

- a. Consultation with Attorney.
- 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.

L. ADJOURN REGULAR MEETING

Mayor Dixon adjourned the meeting at 12:06 a.m. on Tuesday, March 2, 2021, 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: April 5, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of an ordinance to reappoint Alternate Municipal Judge Stephanie Askew for the period of April 17, 2021, through April 16, 2023.

BACKGROUND INFORMATION: Stephanie Askew was appointed to serve as Alternate Municipal Judge on April 17, 2017, and reappointed on April 15, 2019, and with a term renewal date of April 16, 2021. State law dictates a two-year term for both the main and alternate Municipal Judge. In addition, any action of the governing body regarding the appointment or reappointment must be done by ordinance.

The attached draft ordinance allows for a two-year renewal term of April 17, 2021, through April 16, 2023.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

Proposed Expenditure:	Account Number(s):
As outlined in the following schedule:	100-650-56000-5110
Attending Jail Magistrations (in person or on-line)	\$100.00
Signing Court Documents	\$75.00
Attending Full Court Dates (morning & afternoon dockets)	\$550.00
Attending Half Court Dates (morning or afternoon docket only)	\$275.00
Reviewing and Executing Arrest or Search Warrants (in person or on-line)	\$75.00
Attending Municipal Court quarterly meetings	\$100.00
Court Cancellation Fee (payable only when court has been scheduled, but cancelled less than twenty-four (24) hours prior to the scheduled docket)	\$100.00

The total amount invoiced in 2020 was \$16,092.99. The proposed compensation change would reflect an approximate annual increase in the amount of \$6,500.

Finance Review by: N/A

LEGAL REVIEW: No change to the ordinance originally reviewed by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. (Ord. No. 11-19), except for compensation and term dates, has been made.

ATTACHMENTS:

1. Draft Ordinance

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

TOWN OF FLOWER MOUND, TEXAS**ORDINANCE NO. __-21**

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS APPOINTING AN ALTERNATE JUDGE OF THE MUNICIPAL COURT OF RECORD IN THE TOWN OF FLOWER MOUND; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the Town Council has created a municipal court of record pursuant to Chapter 30 of the Texas Government Code; and,

WHEREAS, Chapter 30, Section 30.00006, of the Texas Government Code relating to municipal courts of record provides that the governing body shall by ordinance appoint its municipal judges; and,

WHEREAS, pursuant to the section 4.04.1 of the Town Charter and section 26-51 of the Town's Code of Ordinances, the Town Council appointed an Alternate Municipal Court Judge for Flower Mound Municipal Court of Record; and

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

SECTION 1

It is hereby found that the office of Alternate Municipal Judge of the Town of Flower Mound, Texas is of benefit to the State of Texas and to the Town of Flower Mound.

SECTION 2

Stephanie Askew is hereby appointed as Alternate Municipal Judge of the Town of Flower Mound Municipal Court of Record for a two-year term to begin on April 17, 2021, and to expire on April 16, 2023. At the expiration of said term, in accordance with Article 16, Section 17 of the Texas Constitution, Stephanie Askew shall continue to serve until the Alternate Judge's successor shall be duly qualified.

SECTION 3

Stephanie Askew shall perform those duties and responsibilities provided in Exhibit "A" attached hereto and incorporated herein.

SECTION 4

A. As compensation for all required services, the Town agrees to pay the Alternate Judge according to a flat rate per job duty according to the following schedule:

ORDINANCE NO. _____**PAGE 2**

Attending Jail Magistrations (in person or on-line)	\$100.00
Signing Court Documents	\$75.00
Attending Full Court Dates (morning & afternoon dockets)	\$550.00
Attending Half Court Dates (morning or afternoon docket only)	\$275.00
Reviewing and Executing Arrest or Search Warrants (in person or on-line)	\$75.00
Attending Municipal Court quarterly meetings	\$100.00
Court Cancellation Fee (payable only when court has been scheduled, but cancelled less than twenty-four (24) hours prior to the scheduled docket)	\$100.00

B. In the event the Alternate Judge is required to testify at a court proceeding relative to the Alternate Judge's duties, the Alternate Judge shall be entitled to receive compensation at an amount of \$100.00 per half day of appearance in court, to be approved by the Town in advance of such testimony, when feasible.

C. The Alternate Judge shall send a bill to the Town once per month not later than the fifth day of each month. The bill shall indicate each date that the Alternate Judge performed a compensable duty outlined in above, the duty performed, and the applicable flat daily rate. The bill shall also provide a total invoiced amount for the month.

D. The Town shall pay the Alternate Judge once per month within twenty-one (21) days from the date the invoice is received by the Town unless the invoice is disputed by the Town, in which instance the Town may withhold the amount(s) of the disputed charges until such dispute is settled.

E. The Town understands and agrees that certain judicial training is mandated by the State of Texas for the Alternate Judge. Such training and expenses associated with such training, and payment therefor, shall be coordinated with the Town's Chief Financial Officer in advance of any such training. Alternate Judge will not be otherwise compensated for such training.

SECTION 2

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 3

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

ORDINANCE NO. _____

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SECTION 4

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ON THIS 5th DAY OF APRIL, 2021.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

ORDINANCE NO. _____

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Exhibit "A"
Duties and Responsibilities
Alternate Judge, Town of Flower Mound

Duties.

- a. The Alternate Judge shall preside over the Flower Mound Municipal Court and perform all duties set forth below in accordance with the schedule promulgated by the Presiding Judge.
- b. The Alternate Judge shall perform the functions and duties specified in the applicable sections of the Town Charter and Town Ordinances, and shall perform such other legally permissible and proper duties and functions as the Town shall assign from time to time.
- b. The Alternate Judge shall perform all services and duties customarily performed by a judge of a municipal court in the State of Texas.
- c. The Alternate Judge is required to keep abreast of state law and local ordinances, including state-mandated fees for the Flower Mound Municipal Court. Although a recognized function of judicial discretion, the Alternate Judge shall endeavor to enforce the law consistently and within suggested state guidelines and pursuant to the Standing Orders, and shall be uniform and consistent in the implementation of judicial policy in accordance with State law and local ordinances. The Alternate Judge shall apply the law and enter judgments in accordance with State law and local ordinances, shall abide by all mandatory provisions of the law, and shall not create or apply exceptions where none exist under law. Judicial discretion shall only be applied where allowed under law.
- d. The Alternate Judge shall operate within the docket schedule prepared and coordinated by the Presiding Judge, the Court Administrator, the Municipal Court Prosecutor, the Town Attorney and the Town Manager, or designees thereof. The Alternate Judge shall timely perform all duties, including, but not limited to, the dockets set forth in the docket schedule.

Standing Orders.

- a. The Town Council desires uniformity and consistency in the implementation of judicial policy in accordance with state law and local ordinances. Therefore, the Alternate Judge shall utilize the "Bench Book" produced by the Texas Municipal Court Education Center.
- b. The Presiding Judge shall promulgate and maintain judicial policies and procedures for insertion into "Standing Orders" which addresses the daily administration of the municipal court and trial procedures, for matters such as dismissals, installment payments, deferred disposition, and continuances. The Standing Orders shall be signed by each judge appointed by the Town Council. Any changes to the Standing Orders must be in writing and acknowledged by the Alternate Judge. No policy

ORDINANCE NO. _____

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will be implemented by the clerks of the court prior to the same being in written form and executed by the Presiding Judge. Court clerks will not enforce oral policies.

- c. The Alternate Judge shall adhere to the Standing Orders.

On Call Procedures.

- a. A written schedule setting the assigned judges' duty report days shall be created and provided by the Presiding Judge to the Court and to the Police Department on a monthly basis no later than seven (7) days prior to the end of the previous month. Each day of the month shall have an assigned judge on duty for arraignments and on duty for the scheduled court sessions. Duty days for the assigned judge shall begin at 7:00 a.m. and continue for the next twenty-four (24) hours. Changes to the "On Call" status shall be made by agreement between the Presiding Judge and any alternate judges; any modification to the schedule shall be submitted to the Court and to the Police Department, in writing, including the effective date, seven (7) days (or within a reasonable amount of time) prior to any previously established schedule, excluding exigent circumstances. It is the responsibility of each judge to notify the Court and the Police Department of current telephone numbers and locations where the "On Call" judge may be reached while on duty if said number or locations are different from any such numbers or locations on file.
- b. When "On Call," the Alternate Judge must return calls within thirty (30) minutes.

Municipal Court Operations.

- a. The Presiding Judge and Court Administrator shall coordinate a specific date and time, two (2) days per week, to allow the Presiding Judge to review and execute all necessary court documents. This schedule shall be a permanent responsibility, which must be maintained other than for emergencies or upon advance notice. The Alternate Judge shall be available to sign documents when scheduled to do so by the Presiding Judge or in exigent circumstances when requested by the Court Administrator.
- b. Court shall commence promptly for scheduled docket times on designated court dates. The Alternate Judge shall make every effort to take the bench and convene court dockets at the designated docket time.

Arraignments.

- a. Jail arraignments shall be performed on a daily basis in accordance with the rules in the Standing Orders and all applicable state and federal laws. An officer or community services officer shall be made available for assisting with arraignments.

ORDINANCE NO. _____

PAGE 6

- b. All paperwork from jail arraignments must be properly completed. The Alternate Judge shall ensure that no judicially-inputted information is omitted on judgments, warrants and probable cause affidavits. Any documents prepared by Town staff that are not properly completed will be returned for correction by the Alternate Judge; however, this shall in no way be read to create a duty for the Alternate Judge to correct the document or to give legal advice to Town staff.
- c. The Alternate Judge shall be available when "On Call" to sign warrants, probable cause affidavits or emergency arraignments (such as for medical emergencies) at times other than as scheduled, or for times outside the normal business day of 8:00 a.m. to 5:00 p.m.
- d. The Alternate Judge shall be "On Call" according to the schedule promulgated by the Presiding Judge and when acting as a substitute for the Presiding Judge, unless alternate arrangements have been agreed upon twenty-four hours prior to the changed date and time.
- e. Every effort shall be made by the Alternate Judge to give at least thirty (30) minutes' notice to police personnel (either by contacting the CSO on duty or the main Flower Mound Police Department telephone number) prior to arrival on Town premises to conduct arraignments.



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: April 5, 2021

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of an ordinance updating the Records Management Program and Disaster Prevention & Recovery Plan for Town Records.

BACKGROUND INFORMATION: The Town's Records Management Program (Program) and Disaster Plan (Plan) for Town records has not been updated since 1988-1989. The revised Program and Plan replaces both documents in their entirety due to the amount of dated information and is more streamlined and reflective of current practices. For example, the previous Program spelled out how public information request should be handled, and this information is defined in Government Code, Chapter 552 – Public Information, so a reference to that statute is satisfactory. The Program also listed various documents and their associated retention period. This text was also not needed with a reference to the Town's adoption of the Texas State Library and Archives Commission retention schedule. Archaic terms were also replaced with plain language. The new Plan incorporates a disaster prevention component in the interest of being proactive.

The new Program also provides instructions regarding the handling of electronic documents.

BOARD REVIEW/CITIZEN FEEDBACK: The attached documents were created in collaboration and/or in consultation with the Deputy Town Secretary/Records Management Coordinator, Records Liaisons, IT Department, and the Town's Emergency Management Officer.

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

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

Finance Review by: N/A

LEGAL REVIEW: Ben Gibbs, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the ordinance and Records Management Program and Disaster Prevention and Recovery Plan as to form and legality.

ATTACHMENTS:

1. Draft Ordinance

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, REPEALING ORDINANCE NO. 43-88, AND NO. 33-89 IN THEIR ENTIRETY, ADOPTING REGULATIONS RELATING TO RECORDS MANAGEMENT, INCLUDING THE RECORDS MANAGEMENT PROGRAM AND THE DISASTER PREVENTION AND RECOVERY PLAN FOR TOWN RECORDS, PROVIDING A REPEALER CLAUSE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF OTHER ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Title 6, subtitle C, Texas Local Government Code (Local Government Records Act) provides that a municipal government must establish by Ordinance an active and continuing Records Management Program (RMP) to be administered by a Records Management Officer (RMO), and as described in Exhibit A; and

WHEREAS, the Town of Flower Mound desires to update the Town policies and procedures consistent with the Local Government Records Act and in the interests of efficient recordkeeping; and

WHEREAS, the establishment of uniform standards and procedures is essential in the handling of Town records; and

WHEREAS, the RMO shall establish a Disaster Prevention and Recovery Plan (DPRP) for Town Records to preserve and protect essential and permanent records, which includes establishing records handling procedures in the event of a disaster, and as described in Exhibit B.

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

SECTION 1

That the Ordinances of the Town of Flower Mound, Chapter 2, (Administration), Article IX (Public Records), Division 2 (Records Management Administration) and Division 3 (Records Management and Preservation Program), created by Ordinance No. 43-88 and No. 33-89, shall be repealed in it's entirely and replaced by a new Division 2 as follows:

DIVISION 2. - RECORDS MANAGEMENT

Sec. 2-471. - Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Term	Definition
a. Custodian of Records	Town Secretary or Designee.
b. Department	A Town Department, or the functional equivalent that provides specific responsibilities for Town operations.
c. Department Head	The officer or employee who is in charge of a Town Department.
d. Division	A subsection of a Town Department.

Term	Definition
e. Essential Record	Any Town record necessary for the resumption or continuation of Town operations in the event of an emergency or disaster, and for the re-creation of the Town's legal and financial status, or for the protection and fulfillment of its obligations.
f. Librarian	The Director/Librarian, Texas State Library and Archives Commission.
g. Permanent Record	A Town record identified on the records control schedule that has a retention period of permanent.
h. Record	All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic, created or received by any of its officers or employees in the transaction of public business.
i. Records Control Schedule	A document prepared by or under the authority of the RMO listing the records maintained by the Town, their retention periods, and other records disposition information.
j. Records Disposition	The removal of a Town record from a Department/Division or from an inactive records storage center, regardless of its medium, that has passed its minimum legal retention period and no longer has value to the Town.
k. Records Liaison	The person designated under Section 9 of this Ordinance.
l. Records Management	Providing for efficient, economical and effective controls over the creation, distribution, organization, maintenance, use, disposition, training, and preservation of records. The term includes: a. The development of records retention and disposition schedules. b. The management of manual, micrographic, electronic, and other records storage systems. c. The protection of essential and permanent records. d. The economical and space-saving storage of inactive records. e. The control over the creation and distribution of forms, reports, and correspondence.
m. Records Management Officer (RMO)	The Town Secretary under Local Government Code 203.025, as amended.
n. Records Management Program (RMP)	The program developed under Section 6 of this Ordinance.
o. Retention Period	The minimum amount of time required to keep records before eligible for destruction.

	Term	Definition
p.	Texas Open Records Act	The Public Information Act in Chapter 552 of the Texas Government Code, as amended.
q.	Texas State Library and Archive Commission (TSLAC) (Commission)	An organization that provides an infrastructure for managing state and local public records.
r.	Town	Town of Flower Mound, Texas.

Sec. 2-472. – Town records public property

All Town records as defined in Section 2 of this Ordinance are to be the property of the Town. No Town official or employee has, by virtue of their position, any personal or property right to such records even though they may have created or compiled them. Files shall not be destroyed or removed without authorization, and in accordance with the Records Management Program (RMP).

Sec. 2-473. - Policy

It is the policy of the Town to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all records through a comprehensive records management system that is consistent with the requirements of the Local Government Records Act and accepted records management practices. This policy applies to all employees, agents, independent contractors, and volunteers of the Town.

Sec. 2-474. – Designation of Records Management Officer (RMO)

The Town Secretary, and the successive holders of said office, shall serve as the RMO for the Town.

Sec. 2-475. - Records Management Program (RMP) to be developed; Approval of program; Authority of program

- a. The RMO shall develop a RMP for Town records for submission to the Town Council. The RMP must contain policies and procedures designed to effectively and efficiently manage Town records, including the preservation of records with a permanent and historical value. The design of the RMP must allow the RMO to effectively perform their duties in accordance with state law and this Ordinance.
- b. Once approved by the Town Council the RMP shall be binding on all departments, boards, commissions, committees, or similar entities of the Town, and records shall be created, maintained, or disposed of in accordance with the RMP.

Sec. 2-476. – Duties of Records Management Officer

In addition to other duties assigned by Ordinance or state law, the RMO shall:

- a. Administer the Town's RMP and provide advice and assistance to Department Heads and Records Liaisons in its implementation.
- b. Recommend and prepare for review by the records management policy committee, requirements, policies, and procedures for the RMP.

- c. Serve as the Town's liaison for the TSLAC Librarian for RMP requirements.
- d. Review and submit for approval of the Town Council records retention and disposition schedules for the Town.
- e. In cooperation with Department Heads and Records Liaisons, identify essential records and ensure availability of those records in order to re-establish operations quickly.
- f. Monitor records retention schedules and administrative rules issued by the TSLAC to ensure the RMP remains compliant with state regulations, and disseminate information concerning state laws and administrative rules related to Town records to Department Heads and Records Liaisons.
- g. File a written certification of compliance with the TSLAC Librarian stating that the Town has adopted a records retention and disposition schedule, or an amended schedule that meets minimum requirements adopted by the TSLAC, in lieu of filing the records retention and disposition schedule with the Librarian.
- h. File any revisions to the RMP with the TSLAC Librarian within 30 days after adoption as required by state law.
- i. Direct and assist Records Liaisons and other personnel in the conduct of records audits or inventories as warranted.
- j. Conduct surveys, interviews, and inspect and review departmental records policies, to ensure compliance with the RMP and state law, including Texas Administrative Code Title 13, Section 7.164 (required minimal storage conditions) for permanent records.
- k. Inform the Town Manager of noncompliance by Department Heads or other personnel with the requirements, policies, and procedures of the RMP or state law.
- l. Develop procedures to ensure the permanent preservation of the historically valuable records of the Town, in coordination with the Records Management Coordinator or the Records Management Policy Committee.
- m. Provide the resources necessary for the management of Town records to all employees, including uniform standards and efficient controls over the creation, identification, appraisal, maintenance, protection, preservation, transfer, retention, and disposition of Town records, and all applicable forms.
- n. Create policies to address records requirements and needs as technology evolves.
- o. Maintain confidentiality of information in records to which access is restricted by law.

Sec. 2-477. – Duties and responsibilities of department heads

Every Department Head shall:

- a. Cooperate with the RMO in executing the RMP, DPRP, and this Ordinance in a way that is both efficient and economical for the management of records.
- b. Designate a Records Liaison(s) within their offices and provide the RMO the name(s) of such designee(s). Persons designated as Records Liaisons must report directly to the Department Head on matters relating to the RMP and should have full access to all files in their Department or Division.
- c. Document the transaction of government business and the services, programs, and duties for which the Department Head and their staff are responsible.

- d. Maintain the records in their department and be responsible for records transfers and dispositions, and other activities within their areas of responsibility, in coordination with the designated Records Liaison(s), and in accordance with the RMP and this Ordinance.
- e. Be prepared to appear in court in response to the Town being served a subpoena regarding records that were created or received by the department or division for which they are the legal custodian, or to complete an Affidavit of Authenticity to that effect, as applicable. Department Heads may also select a designee for this purpose.

Sec. 2-478. – Duties and responsibilities of records liaisons

The Records Liaison(s) in each Department or Division is responsible for coordinating with the RMO or Records Management Coordinator to ensure that provisions of the RMP are complied with. This responsibility shall include:

- a. Promoting the RMP and serve as the primary resource on records information within their Department or Division.
- b. Overseeing the application of records schedules within the Department or Division and coordinating with the RMO or Records Management Coordinator for proper records handling procedures, including the filing and disposition of records, and use of all applicable forms.
- c. Working with the Records Management Coordinator in gathering records within their Department or Division for Public Information Requests, litigation, or other requests as warranted, and in accordance with state law.
- d. Coordinating with the RMO to ensure the Legislative Services Department is provided an original copy of all records involving Town Council approval.
- e. Informing the RMO if there are space limitations for records storage, or any other records needs.
- f. Serving on the Records Management Policy Committee and Disaster Recovery Team, as applicable.
- g. Duties and responsibilities that may be imposed by law, and to protect the confidentiality of information for records by which access is restricted by law.

Sec. 2-479. – Records control schedules

- a. The TSLAC Records Retention and Disposition Schedules, and as amended, shall serve as the Town's official record control schedule. Any destruction of Town records will be in accordance with the adopted schedules, the Local Government Records Act, and state law. These schedules constitute full authority for the RMO to destroy, transfer, image, microphotograph, or take other actions noted therein with regard to the retention and disposition of Town records.
- b. The RMO will file with the TSLAC written certification of compliance that the Town has adopted all applicable records control schedules, as updated and amended, by the Commission.

Sec. 2-480. – Implementation of records control schedules; Destruction of records under schedule

- a. A records control schedule for a Department that has been approved and adopted under Section 10 shall be implemented by Department Heads and Records Liaison(s) according to the policies and procedures of the RMP.
- b. A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending law suit, or if the Department Head provides, in writing to the RMO, an acceptable explanation as to why the record be retained for an additional period.
- c. Prior to the destruction of a record under an approved records control schedule, authorization for the destruction must be obtained from the Department Head responsible for the record.

Sec. 2-481. – Destruction of unscheduled records

Prior to the destruction of a record not listed in the approved records control schedule, authorization must be obtained by the RMO from the Department Head responsible for the record.

Sec. 2-482. – Method of destruction

Except when restricted by state law, a Town record may be destroyed by burning, shredding, pulping, burial in a landfill, or recycled.

Sec. 2-483. – Personal liability

The custodian of Town records, RMO, or other officer or employee of the Town may not be held personally liable for the destruction of a Town record if the destruction is in compliance with this Ordinance and state law.

Sec.2-484. – Penalty: Destruction or alienation of a record

An officer or employee of the Town commits an offense if the officer or employee knowingly or intentionally violates this Ordinance, state law, or rules adopted under it by destroying or alienating a Town record, or by intentionally failing to deliver records to a successor in office.

Any person violating any of the provisions of this Ordinance; shall be deemed guilty of a misdemeanor, and upon conviction, will be fined a sum not to exceed Two Hundred Dollars (\$200.00) for each offense and a separate offense shall be deemed committed for each day thereafter in which a violation occurs or continues.

Sec. 2-485. – Application for public information

Records shall be released to the public in accordance with the Texas Open Records Act (Chapter 552 of the Texas Government Code, as amended).

Sec. 2-486. – Disaster Prevention and Recovery Plan (DPRP)

- a. The RMO shall develop a DPRP for Town records for submission to the Town Council. The program must contain policies and procedures designed to protect the essential records of the Town.

- b. Once approved by the Town Council, the DPRP shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of the Town.

SECTION 2

All Ordinance or parts of Ordinances of the Town in conflict with or inconsistent with this Ordinance are repealed to the extent of the conflict or inconsistency including but not limited to Ordinance No's. 43-88, and 33-89 which are repealed in their entirety.

SECTION 3

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

SECTION 4

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

SECTION 5

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, ON THIS THE 5TH DAY OF APRIL, 2021.

APPROVED:

Steve Dixon, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

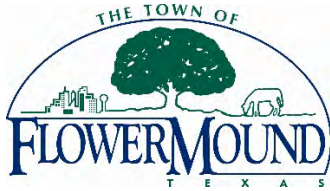


EXHIBIT A

TOWN OF FLOWER MOUND RECORDS MANAGEMENT PROGRAM

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1.0 INTRODUCTION

The Texas Local Government Records Act of 1989 (Title 6, Subtitle C, Local Government Code) requires that each local government, including municipalities, designate a Records Management Officer and establish a Records Management Program by ordinance, order, or resolution. This document must provide methods and procedures to enable the governing body, custodians, and the Records Management Officer to fulfill the duties and

responsibilities as described in [Local Government Code \(LGC\) Sections 203.021, 203.022, and 203.023](#) concerning the management of records.

2.0 DEFINITIONS

	Term	Definition
1.	Commission	The Texas State Library and Archives Commission (TSLAC).
2.	Custodian of Records	The Town Secretary or Town employees.
3.	Department	A Town Department, or the functional equivalent that provides specific responsibilities for Town operations.
4.	Department Head	The officer or employee who is in charge of a Town Department.
5.	Disaster	A sudden event, such as an accident or a natural catastrophe, that causes great damage, loss, or destruction.
6.	Disaster Plan	The Disaster Prevention and Recovery Plan for Town records that outlines preventative measures to avoid a disaster or to be used in the event of a disaster.
7.	Disaster Recovery Team	Any Town employee and/or volunteer who will be utilized to recover records in the event of a disaster.
8.	Disaster Team Manager	The Town Secretary.
9.	Division	A subsection of a Town Department.
10.	Employee	A person employed by the Town (full or part time).
11.	Essential Record	Any Town record necessary for the resumption or continuation of Town operations in the event of an emergency or disaster, and for the re-creation of the Town's legal and financial status, or for the protection and fulfillment of its obligations.
12.	Librarian	The Director/Librarian, Texas State Library and Archives Commission.
13.	Local Government Records Act	Title 6 (Records), Subtitle C (Records provisions applying to more than one type of local government), of the Texas Local Government Code, and includes the rules adopted by the commission under the Local Government Records Act.
14.	Medium	The form in which the record is available (e.g., paper, electronic, audio, video, etc.)
15.	Official	The Mayor, a member of the Town Council, a Municipal Court Judge (including a Substitute Judge), and a person appointed by the Mayor or the

Term	Definition
16. Original Record	Town Council to a Town board, commission, committee, task force, or other Town body. Only copy of a record to which no duplicates exist.
17. Permanent Record	A Town record identified on the records control schedule that has a retention period of permanent.
18. Record	All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic, created or received by any of its officers or employees in the transaction of public business.
19. Records Audit	The process of examining Town records to determine if they are accurate and in accordance with the RMP, and state law
20. Records Center	The primary facility used to provide centralized and secure storage for inactive and permanent Town records.
21. Records Control Schedule	A document prepared by or under the authority of the RMO listing the records maintained by the Town, their retention periods, and other records disposition information.
22. Records Disposition	The removal of a Town record from a Department/Division or from an inactive records storage center, regardless of its medium, that has passed its minimum legal retention period and no longer has value to the Town.
23. Records Inventory	The process of locating, identifying, and describing in detail the records of a Department.
24. Records Liaison	Any person(s) assigned this responsibility by the Department Head.
25. Records Management	Providing for efficient, economical and effective controls over the creation, distribution, organization, maintenance, use, disposition, training, and preservation of records. The term includes: a. The development of records retention and disposition schedules. b. The management of manual, micrographic, electronic, and other records storage systems. c. The protection of essential and permanent records. d. The economical and space-saving storage of inactive records.

Term	Definition
	e. The control over the creation and distribution of forms, reports, and correspondence.
26. Records Management Coordinator (RMC)	The position that is subject to the direction of the Town Secretary who performs records management duties.
27. Records Management Office (RMO)	The Town Secretary under Local Government Code, 203.025.
28. Records Management Policy Committee	The Town Secretary, Deputy Town Secretary/Records Management Coordinator, and Records Liaisons.
29. Records Management Program (RMP)	The requirements, policies, and procedures in place for managing Town records.
30. Records Control Schedule	A document prepared by or under the authority of the RMO listing the records maintained by the Town, their retention periods, and other records disposition information.
31. Retention Period	The minimum amount of time required to keep records before eligible for destruction.
32. Texas Open Records Act	The Public Information Act in Chapter 552 of the Texas Government Code.

3.0 POLICY STATEMENT

It is the policy of the Town to utilize a comprehensive system of procedures for the efficient and economical management of records, and consistent with the requirements of the Local Government Records Act, and accepted records management practices. This policy shall apply to all employees, agents, contractors, and volunteers of the Town.

4.0 RECORDS MANAGEMENT PROGRAM

4.1 Objectives

- a. To protect and maintain the records of the Town, including essential information in the event of a disaster.
- b. To ensure prompt and accurate retrieval of records regardless of medium.
- c. To ensure compliance with legal and regulatory requirements and to minimize litigation risks.

4.2 Purpose

- a. To identify all documents, thereby improving efficiency and productivity.
- b. To maintain Town records in a manner that reduces operating costs.
- c. To dispose of records in the normal course of business according to records retention schedules.

4.3 Authority

The RMP requirements, policies, and procedures are binding on all Town officers, employees, departments, offices, divisions, boards and commissions, task forces, ad hoc committees, and similar entities of the Town.

5.0 RESPONSIBILITIES IN THE RECORDS MANAGEMENT PROGRAM (RMP)

5.1 Mayor and Town Council

- a. Establish, promote, and support an active and continuing program for the efficient and economical management of all Town records.
- b. Cause policies and procedures to be developed for the administration of the RMP under the direction of the RMO.
- c. Facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Town and designed to furnish the information necessary to protect the legal and financial rights of the town, the state, and persons affected by the activities of the Town.
- d. Be subject to the same duties and responsibilities required of a Department regarding records and any policy or procedure established by Ordinance or state law.
- e. Cooperation with the Commission in its conduct of statewide records management surveys.

5.2 Employees/Custodians

All Town employees (also known as custodians) shall:

- a. Be responsible for properly managing records that were created or received during the course of daily operations for which they serve as the custodian.
- b. Utilize available resources, and coordinate with the Department/Division Records Liaison or the RMO for instructions regarding the proper care of Town records.
- c. Notify the RMO immediately should they observe or suspect actual or potential damage to Town records
- d. Cooperate with the RMO in carrying out the policies and procedures established by the Town for the efficient and economical management of records.
- e. Adequately document the transaction of Town business and the services, programs, and duties for which the custodian and the custodian's staff are responsible

5.3 Records Management Officer (RMO)

In addition to other duties assigned by Ordinance or state law, the RMO shall:

- a. Administer the Town's RMP and provide advice and assistance to Department Heads and Records Liaisons in its implementation.
- b. Recommend and prepare for review by the records management policy committee, requirements, policies, and procedures for the RMP.

- c. Serve as the Town's liaison for the TSLAC Librarian for RMP requirements.
- d. Review and submit for approval of the Town Council records retention and disposition schedules for the Town.
- e. In cooperation with Department Heads and Records Liaisons, identify essential records and ensure availability of those records in order to re-establish operations quickly.
- f. Monitor records retention schedules and administrative rules issued by the TSLAC to ensure the RMP remains compliant with state regulations, and disseminate information concerning state laws and administrative rules related to Town records to Department Heads and Records Liaisons.
- g. File a written certification of compliance with the TSLAC Librarian stating that the Town has adopted a records retention and disposition schedule, or an amended schedule that meets minimum requirements adopted by the TSLAC, in lieu of filing the records retention and disposition schedule with the Librarian.
- h. File any revisions to the RMP with the TSLAC Librarian within 30 days after adoption as required by state law.
- i. Direct and assist Records Liaisons and other personnel in the conduct of records audits or inventories as warranted.
- j. Conduct surveys, interviews, and inspect and review departmental records policies, to ensure compliance with the RMP and state law, including Texas Administrative Code Title 13, Section 7.164 (required minimal storage conditions) for permanent records.
- k. Inform the Town Manager of noncompliance by Department Heads or other personnel with the requirements, policies, and procedures of the RMP or state law.
- l. Develop procedures to ensure the permanent preservation of the historically valuable records of the Town, in coordination with the Records Management Coordinator or the Records Management Policy Committee.
- m. Provide the resources necessary for the management of Town records to all employees, including uniform standards and efficient controls over the creation, identification, appraisal, maintenance, protection, preservation, transfer, retention, and disposition of Town records, and all applicable forms.
- n. Create policies to address records requirements and needs as technology evolves.
- o. Maintain confidentiality of information in records to which access is restricted by law.

5.4 Department Heads

Every Department Head shall:

- a. Cooperate with the RMO in executing the RMP, DPRP, and this Ordinance in a way that is both efficient and economical in the management of records.
- b. Designate a records liaison(s) within their offices and provide the RMO the names of such designee(s). Persons designated as Records Liaisons must report directly to the Department Head on matters relating to the RMP and should have full access to all files in their Department or Division.

- c. Document the transaction of government business and the services, programs, and duties for which the Department Head and their staff are responsible.
- d. Maintain the records in their department and be responsible for records transfers and dispositions, and other activities within their areas of responsibility, in coordination with the designated Records Liaison(s), and in accordance with the RMP and this Ordinance.
- e. Be prepared to appear in court in response to the Town being served a subpoena regarding records that were created or received by the department or division for which they are the legal custodian, or to complete an Affidavit of Authenticity to that effect, as applicable. Department Heads may also select a designee for this purpose.

5.5 Records Liaisons

The Records Liaison(s) in each Department or Division is responsible for coordinating with the RMO or Records Management Coordinator to ensure that provisions of the RMP are complied with. This responsibility shall include:

- a. Promoting the RMP and serve as the primary resource on records information within their Department or Division.
- b. Overseeing the application of records schedules within the Department or Division and coordinating with the RMO or Records Management Coordinator for proper records handling procedures, including the filing and disposition of records, and use of all applicable forms.
- c. Working with the Records Management Coordinator in gathering records within their Department or Division for Public Information Requests, litigation, or other requests as warranted, and in accordance with state law.
- d. Coordinating with the RMO to ensure the Legislative Services Department is provided an original copy of all records involving Town Council approval.
- e. Informing the RMO if there are space limitations for records storage, or any other records needs.
- f. Serving on the Records Management Policy Committee and Disaster Recovery Team, as applicable.
- g. Duties and responsibilities that may be imposed by law, and to protect the confidentiality of information for records by which access is restricted by law.

6.0 ELECTRONIC RECORDS

6.1 Standards and Procedures

Employees are encouraged to create and store records electronically to the extent possible, and within the procedures of the RMP. Consult with the RMO or IT Division to determine if the program or application Town records are created or stored in are acceptable for long-term storage needs.

Data of permanent value for any Town record whose retention period is at least ten years on the Town's adopted records retention schedule must be saved on the Town's server or other method approved by the Town's IT Division.

All employees must adhere to the IT Policies and Procedures as described in the Town's Personnel and Administrative Regulations Manual (PARM).

6.2 Electronic Mail (Email)

The retention requirements are the same for emails as paper correspondence. The content of the email will determine the retention period.

Refer to the Town's official [retention schedule](#) to determine what emails (correspondence or information) you need to keep and how long.

When an employee leaves, the IT Division secures and archives email records of former employees in accordance with the Town's retention schedule.

7.0 ESSENTIAL RECORDS PROGRAM POLICY

Records essential to the survival of the Town must be identified for protection from destruction in the event of a disaster as part of the RMP.

Each Department will determine which records in their area contain essential information needed for continued operations should a disaster occur and by which method those records will be protected, in accordance with the RMP.

8.0 OWNERSHIP AND CUSTODY OF TOWN RECORDS

- a. Every Town record is the property of the Town. No Town officer or employee has, by virtue of their position, any personal or property right to a Town record even though they may have developed or compiled the record. The unauthorized alteration, destruction, deletion, or file removal of a Town record is prohibited.
- b. A Town record will not be sold, loaned, donated, destroyed, or alienated from the Town's custody, unless one of the following applies:
 - A district court issues an expunction order pursuant to state law.
 - After the expiration of the record's retention period under the local government's records control schedule and authorized by the RMO or the Records Management Coordinator.

This subsection does not apply to a Town record that is temporarily transferred to a contractor for purposes of microfilming, duplication, conversion to electronic media, restoration, or a similar records management and preservation procedure if the transfer is authorized by the RMO or Records Management Coordinator.

- c. A Town record created or received by a Department will remain in the custody of the Department personnel (legal custodian), except when transferred into the archival custody of the records center. However, this does not relinquish the responsibility for the care, preservation, or legal disposition by the legal custodian, as guardian of the record.
- d. An original Town record may not leave the custody of the Department by a member of the public.
- e. Every officer or employee will deliver to their Department Head, or any successor, all Town records pertaining to the office held.
- f. The records center will have legal and physical custody of a Town record belonging to any defunct Department that does not have a named successor.

9.0 RECORDS INVOLVED IN PUBLIC INFORMATION REQUESTS, PENDING LITIGATION, OR PENDING AUDITS

The destruction of a Town record involved in a public information request, pending litigation, or a pending audit is prohibited, even if authorized by an approved records retention and disposition schedule.

10.0 ESTABLISHMENT OF THE RECORDS MANAGEMENT POLICY COMMITTEE

A Records Management Policy Committee consisting of the Records Liaisons and the Deputy and Town Secretary is established and shall:

- a. Review and provide input on policy and procedural recommendations submitted by the RMO and assist in establishing other requirements.
- b. Review the RMP as necessary and propose changes and improvements.
- c. Actively support and promote the RMP throughout the Town.
- d. Review Town-wide and Departmental policies necessary to ensure compliance with the RMP and state law.

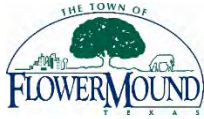


EXHIBIT B

Disaster Prevention & Recovery Plan for Town Records

It is the intent of the Town of Flower Mound to preserve and protect essential and permanent records, which includes establishing preventative measures and records handling procedures in the event of a disaster.

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1.0 PURPOSE

This administrative regulation outlines policies and procedures for safeguarding and preserving Town records in the event of a disaster.

2.0 DEPARTMENTS AFFECTED

All Departments and Divisions.

3.0 DISTRIBUTION

All staff with assigned or potential responsibility in the handling and recovery of records in the event of a disaster.

4.0 POLICY

In disasters involving extensive damage to facilities and equipment and presenting risks to personnel, the Town gives priority to the safety and security of personnel and facilities. Once safe, the Records Disaster Recovery Team will begin the recovery and reconstruction process by first recovering those Town records identified as essential to the Town operations and obligations and will protect them through duplication and storage in off-site locations. Records Identified as important due to their informational content, uniqueness, historical value, and the perishability of the medium they were created on will then be protected. All other records remaining will be prioritized accordingly.

5.0 GENERAL

This Disaster Prevention and Recovery Plan (DPRP) provides the necessary steps and procedures to mitigate and repair the effects from major natural disasters, including tornado, fire, flood, or damage from other causes, such as chemical contamination, or insect, rodent, or fungal infestation, for the recovery of essential and important Town records.

The processes outlined focus mainly on the recovery of water-damaged records because 95% of all disasters result in water damage, and mold causes additional damage, so swift action is necessary.

Records considered essential to the Town operations, along with those of important informational content, historical value, or uniqueness, are the focus of the recovery efforts outlined in this DPRP. The method for determining this is through the record's appraisal process, which includes a review of the Town's official retention schedule. All Department Heads or Records Liaisons are required to submit to the RMO an itemized list of essential records in their departments.

6.0 DEFINITIONS

Term	Definition (means)
1. Custodian of Records	Town Secretary or Employee.
2. Department	A Town Department, or the functional equivalent that provides specific responsibilities for Town operations.
3. Department Head	The officer or employee who is in charge of a Town Department.
4. Disaster Prevention & Recovery Plan (DPRP)	Document that will be used to dictate proper handling of Town records and appropriate action to be taken in the event of a disaster.
5. Disaster Recovery Team (DRT)	Employees or volunteers that will be utilized in the event of a disaster and as further defined in Section 9.
6. Disaster Team Leader (DTL)	Town Secretary.
7. Disaster	A sudden event, such as an accident or a natural catastrophe, that causes great damage, loss, or destruction.
8. Division	A subsection of a Town Department.
9. Electronic Record	Any information that is recorded in a form for computer processing.
10. Electronic Storage	The maintenance of records in the form of digital electronic signals on a computer hard disk, magnetic tape, optical disk, or similar machine-readable medium.
11. Employee	A person employed by the Town (full or part time).
12. Essential Record	Any Town record necessary to the resumption or continuation of Town operations in an emergency or disaster, to the re-creation of the legal and financial status of the Town, or to the protection and fulfillment of obligations to the Town.
13. Information Technology (IT)	A Town Division that provides computing resources and network access to employees.
14. Permanent Record	A Town record for which the retention period on a records control schedule is given as permanent.
15. Professional Consultant	A company that has been pre-determined to meet the qualifications necessary for the proper handling of records.
16. Record	All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information-

Term	Definition (means)
	recording media, regardless of physical form or characteristic, created or received by any of its officers or employees in the transaction of public business.
17. Records Control Schedule	A document prepared by or under the authority of the RMO listing the records maintained by the Town, their retention periods, and other records disposition information.
18. Record Copy	A duplicate of the original signed document or a digital scan of the original.
19. Records Management Coordinator (RMC)	The position that is subject to the direction of the Town Secretary who performs records management duties.
20. Records Management Officer (RMO)	The Town Secretary under Local Government Code, 203.025.
21. Redundant Backup Server	Electronic storage equipment located away from the main server for retrieval in the event of a catastrophe to allow Town operations to resume.
22. Town	Town of Flower Mound, Texas.

7.0 DISASTER PREVENTION

Protective measures are to be followed and evaluated regularly to ensure appropriate levels of protection are in place for Town records.

8.0 PREVENTATIVE MEASURES

- 8.1 Town employees shall handle permanent and essential records that they prepare in the following manner:
 - a. Store in compliance with [Texas Administrative Code Title 13, Section 7.164](#) (required minimal storage conditions).
 - b. Follow approved retention periods to ensure the timely destruction/deletion of obsolete records.
- 8.2 The Department Head is responsible for emphasizing the importance of locking windows and doors where records are maintained.
- 8.3 The Department Head will maintain strict control of all building keys, codes, and electronic key cards. If a key or keycard is lost or stolen, they will request that the keycard is disabled or the locks changed.
- 8.4 Staff shall maintain strict supervision of non-staff who enter the building, including cleaners and maintenance workers.

Specific Media Formats

Electronic format

- 8.5 Data must be backed up on a regular schedule throughout the day and replicated to an off-site redundant backup server located a safe distance from Town Hall. This server is recommended to be in a location equipped to withstand catastrophic events, allowing for the rapid recover of records and software applications in the case of widespread devastation.
- 8.6 All electronic systems are to be stored off the floor to avoid damage in the case of a flood.
- 8.7 Computer passwords should not be shared with any other employee or non-employee.
- 8.8 Records with a retention period of at least ten years must be saved on the Town's server (e.g., shared drive, designated server, etc.), within a program that has backup storage capabilities, or other method as approved by the IT Department.
- 8.9 All employees and elected officials will complete state mandated annual cybersecurity training.

Paper

- 8.10 Do not use water-soluble marking pens for the creation of records. Handwritten entries in logbooks or other records that have long-term or historical value should be made in permanent ink to prevent loss of information through damage or fading.
- 8.11 Store shelving units or filing cabinets off the floor to avoid damage in case of a flood.
- 8.12 Keep paper records in file cabinets or drawers when not in use.
- 8.13 Create a unique way to identify filing cabinets that hold essential records.

Photographs and negatives (including aerial photos)

- 8.14 Store negatives and photographs separately.
- 8.15 Do not expose photographs or negatives to direct sunlight.
- 8.16 Use lint-free cotton gloves when handling original photos and negatives.
- 8.17 Store photographs and negatives individually in a paper or plastic enclosure (polyester, polyethylene, or polypropylene). Keep in cool dry place away from overhead steam or water pipes, washrooms, or other sources of water.
- 8.18 Do not use manila envelopes, glassine envelopes, polyvinylchloride, rubber bands, paper clips, bulldog clips, ACCO fasteners, etc.
- 8.19 Never write on the back of a photograph with anything but a pencil.

Maps (including architectural drawings)

- 8.20 Avoid storing maps and drawings in areas exposed to heat or moisture.

9.0 RESPONSIBILITY/AUTHORITY

The DRT has the primary responsibility for the recovery of records in a disaster. The DRT consists of the Records Management Officer (Team Leader), Records Management Coordinator (Alternate Team Leader), and personnel from IT, Fire, Facility Services, Finance, and Records Liaisons from any Town department whose records have been damaged in a disaster. Volunteers may also be utilized depending on the nature of the disaster.

The Team Leader activates this DPRP when a preliminary assessment of conditions indicates its necessity. Once notified of the activation, all members of the DRT immediately assemble at the crisis site or an alternative location, as directed.

Records Liaisons are responsible for maintaining a list of essential records within their Department or Division.

Any employee that observes or suspects actual or potential damage to Town records has the responsibility to notify the RMO immediately.

Listed below are specific responsibilities of DRT members, including both general and post-disaster responsibilities.

9.1 Records Management Officer (Team Leader)

General Responsibilities

- 9.1.1 Refer to the DPRP before, during, and after a disaster and revise as necessary.
- 9.1.2 Make the DPRP available for all employees and provide training as needed.

Post-Disaster Responsibilities

- 9.1.3 Perform a preliminary assessment of the extent and types of damage to records as soon as possible.
- 9.1.4 Notify the DRT based on the severity of the damage and activate the DPRP as warranted.
- 9.1.5 Coordinate entire recovery effort.
- 9.1.6 Alert arriving personnel to potential hazards and work with Fire, Environmental and Facilities Services as needed to stabilize the environment and establish safe work areas for recovery operations.
- 9.1.7 Establish priorities for reconstructing and salvaging records.
- 9.1.8 Assemble and brief reconstruction and salvage teams, assigning specific tasks.
- 9.1.9 Supervise staff and administer exceptions to the DPRP.
- 9.1.10 Document the nature and extent of loss through written and photographic evidence regardless of the size or extent of damage.
- 9.1.11 Document the recovery process and keep a record of decisions made during the recovery process. This documentation will help later to reevaluate the DPRP or to verify which records were beyond recovery and were immediately destroyed.
- 9.1.12 Contact outside consultants and professional agencies as needed.

- 9.1.13 Keep management informed of the progress of recovery operation.
- 9.1.14 Be available to the DRT and to the overall recovery operation to answer questions, to initiate subsequent phases of the recovery operations, to acquire additional tools and supplies, and to determine other remedial steps.

9.2 Records Management Coordinator (Alternate Team Leader)

General Responsibilities

- 9.2.1 Assist Team Leader in primary duties, and responsible for delivering the disaster recovery supply kit(s) (Appendix C) and securing additional recovery supplies during the recovery process and have ready a list of contact persons should consultation be needed for recovery of records (Appendix D).
- 9.2.2 Assume responsibility of Team Leader in his/her absence.

9.3 Fire Inspection/Emergency Management

Post-Disaster Responsibilities

- 9.3.1 Identify the dangers associated with disaster recovery, including the following:
 - a) electrical shock hazards
 - b) the handling of file cabinets that have been damaged by fire and that have retained heat
 - c) delayed ignition
 - d) submerged objects
 - e) strong fumigants used to kill mold and fungus
 - f) other hazards detrimental to the safety of employees

9.4 Facilities Services

General Responsibilities

- 9.4.1 Ensure Facilities personnel are always on-call after normal business hours in the event services are needed in response to a disaster.

Post-Disaster Responsibilities

- 9.4.2 Establish an environment in which the DRT can begin recovery procedures.
- 9.4.3 Use pumps, portable generators, fans, dehumidifiers and other available equipment to remove standing water, circulate air, expel humidity and otherwise prevent the occurrence of further record damage.
- 9.4.4 Work toward attaining the ideal condition of 65 degrees and 40-50% relative humidity to prevent the growth of mold.
- 9.4.5 Monitor and restrict access to record areas to authorized personnel to ensure salvage operations are not compromised.
- 9.4.6 In the event of theft, change locks, combinations, or disable electronic key cards to protect important or confidential records.

9.5 Police DepartmentGeneral Responsibilities

- 9.5.1 In the event of an emergency, prevent staff and volunteers from entering the building until Town officials, or a building inspector determines the building is safe to enter.

9.6 Finance/Purchasing DepartmentGeneral Responsibilities

- 9.6.1 Assist in the risk assessment and procurement of supplies in accordance with financial policies and procedures.

9.7 Environmental ServicesGeneral Responsibilities

- 9.7.1 Assist in the identification of any biohazards (e.g., sewer damage).

9.8 Information TechnologyGeneral Responsibilities

- 9.8.1 Electronic records (data) and software applications recovery.
- 9.8.2 In the event of theft, change computer passwords as necessary to protect important and confidential records.

9.9 EmployeesGeneral Responsibilities

- 9.9.1 Create and ensure back-up copies are in place for all essential records.
- 9.9.2 The Records Manager must be contacted immediately by any employee or the Records Liaison in the event any Town record(s) have been identified as damaged.

10.0 DISASTER RECOVERY

Despite all reasonable efforts, disasters with unanticipated consequences sometimes occur. Employees must act promptly and decisively to mitigate damage to records in the event of a disaster and to protect the interests of the Town and its residents, employees, and clients.

The objectives of document recovery following a disaster are:

1. Stabilize the environment to prevent further damage to Town records.
2. Prioritize recovery of the most essential of the damaged records.
3. Recover as many records as possible in the most cost-effective manner possible.

10.1 Taking Action

Coordination of the recovery effort is done both before and after the disaster.

Before:

- Each department will determine which records in their area contain information essential for continued operations should a disaster occur and the method used to protect them.
- Establish an emergency contact list.
- Map the location of essential records.
- Identify appropriate supplies and vendors for use in the recovery effort as warranted.
- Purchase supplies which are practical to have on hand, including those in Appendix C.

After:

- Recovery is to begin within 24 hours of the disaster unless there exist such conditions to prohibit immediate action and to be completed within 72 hours where possible. Should conditions exist which prohibit such recovery being completed within the time prescribed, the Team Leader shall make provisions for the freezing or retention under proper conditions of unrecovered records.
- No Team member is to enter any disaster area until directed to do so by the Team Leader or Alternate Team Leader.
- Records which are by law not public, are required to be kept under secure conditions, shall be separated from other damaged records, and secured as soon as possible.
- Conduct a damage assessment.
- Prioritize records for recovery.
- Get approval for the purchase of supplies or use of vendors.
- Contact vendors and gather supplies.
- Mobilize a recovery team.
- Remove damaged records from the contaminated area.

Once access to the building is allowed, the recovery process must begin immediately for the best chance of retrieval.

Once completed, the Team shall meet to review and critique the salvage effort by asking the following questions:

- What went wrong?
- What went right?
- Were supply and facility sources adequate?
- Was the DPRP adequate? If not, should it be revised?
- Is more staff training needed?
- What other records need to be listed as essential or permanent?

10.2 Safety and Security Precautions

Entry into the disaster area is permitted once determined safe and contains no hidden hazards such as submerged objects and severed or loose electrical wires.

Use caution in these areas; make sure all electrical equipment is grounded. Standing water, wet carpeting, and wet records make the use of electrical equipment potentially hazardous.

The restoration of confidential records will need to take place under proper secure conditions. While being moved, a staff member needs to accompany them. Staff shall maintain the same level of security as normal operations throughout the process.

Specialized clothing or equipment may be necessary to work in the damage area.

Water Damage:

Water makes records heavier and could cause them to expand, making cabinets and shelves collapse or deform and recovery more difficult. Staff or volunteers must use caution when lifting.

Fire Damage:

Fire damage may leave cabinets hot and delayed ignition may occur. The Recovery Team shall not open any cabinet, safe, or other storage areas unless it is cool to the touch, and caution used in opening drawers. A fire extinguisher and firefighter shall always be available during the recovery of fire-damaged records.

10.2.1 Paper Records

When removing paper records from damaged areas, keep a complete inventory. Include the type of record, normal location within the filing system, and recovery location. Remove all records from the damaged area even if they are not wet. Even if the paper records are not wet, they have been in an area that once was. Exposure to a high humidity environment can promote mold growth.

Tips for removing records from heavily damaged areas:

- Keep records in the exact order as found.
- Do not remove records from file folders while packing.
- If possible, remove file drawers from cabinets or transport the entire cabinet intact. Use extreme caution – the weight will be an issue.
- Use dollies or human chains to remove records. Elevator service is unlikely following an emergency.
- Separate the records by type (e.g., paper from film, photos from magnetic tape). Each type of media has unique drying methods.

Recovery of paper records:

- The first goal of recovery is to bring down temperature and humidity in the contaminated area.
- Keep rooms containing water-damaged materials well vented to inhibit mold growth. Do not use fans as they can cause mold to transfer to more records.
- Keep the temperature as cold as possible in rooms containing water-damaged materials to inhibit mold growth.

- Sewer damage is considered hazardous waste. Before you can start recovery, the material must be cleaned by biohazard experts. Contact Environmental Health Services immediately.

Vacuum drying:

- Very expensive.
- Requires special equipment.
- Always performed by a vendor.
- A special chamber is used to remove oxygen and moisture.
- Best used for small volume of only the most essential records.
- Contact Records Management Coordinator for help finding a vendor.

Freeze drying:

- Most common way to recover essential records.
- Inexpensive.
- Records are loosely packed and transferred to a freezer facility.
- Over the course of three months, the moisture turns into a vapor and records dry.
- Best used for large volumes of records.
- Contact the Records Management Coordinator for help finding a freezer facility.

10.2.2 Computers/Electronics

Coordinate with IT for recovery of electronic records.

Electronic devices that have experienced damage should be placed in airtight bags and immediately transferred to the IT Division for proper handling. Although it seems counterintuitive, hard drives should remain moist until an IT specialist can look at them.

11.0 PROCEDURES

- 11.1 Recovering records by their media type is always a secondary process within the recovery priorities process. First, to be recovered are essential records as identified in Appendix A, then records with a permanent value as identified in Appendix B.
- 11.2 Essential and important information should be backed up and always stored away from original records. If back-up records are available, no further recovery efforts should be taken with the damaged materials. Further recovery efforts should be confined to original records having intrinsic value. New back-up copies should be made as quickly as possible to ensure back-up protection.
- 11.3 Any decision to discard records should be documented for future records management purposes for legal and financial reasons.

- 11.4 For emergency purchases of supplies and services that require deviation from established procurement policies and procedures, follow Purchasing regulations.
- 11.5 Most records are generated and stored electronically and backed up on the Town's off-site server; however, they remain at risk depending on the nature of the disaster.

12.0 STABILIZATION, RESTORATION, RECOVERY BY MEDIUM

The following table defines the record medium and the associated action based on the type of damage. The Records Manager and Records Liaison are responsible for carrying out the associated action. A professional consultant may be utilized for cleaning and restoring records as needed.

The first step after a disaster, regardless of the medium, is to immediately assess whether the information is essential or important, and if a back-up exists. That determination will dictate next steps and essential records take priority.

The following action list is based on the non-existence of a backup and outlines steps to be taken for both stabilization and restoration of various record mediums.

Table 1.

Record Medium	Action (Water Damage)	Action (Fire Damage)
1. Magnetic Media – tapes, floppy diskettes, audio and video cassettes, compact discs, flash drives, etc.	a) Take action immediately. b) If water continues to leak onto records at the disaster site, attempt to cover records, not in active retrieval, with plastic sheeting to reduce further damage. Remove plastic once the area is controlled and to reduce humidity. c) Freeze or vacuum dry if professional help must be delayed. d) To avoid further damage, do not use damaged magnetic media until they are cleaned and dried and their protective coverings or containers are replaced. e) Contact IT or professional consultants about cleaning techniques for the retrieval of data. f) Drain if stored in water and blot dry with a soft, lint-free cloth. g) Rinse diskette with distilled water and place in a tray of water. Wipe submerged diskette with a soft cloth. Rinse, drain, and place flat on a	i) If retrieval of data on magnetic media is necessary, contact IT. j) High temperatures of 125 degrees and above destroy magnetic tapes, discs, and diskettes. Store back-ups of important or essential information off-site. k) If restoration possible – duplicate immediately and destroy original, damaged media.

Record Medium	Action (Water Damage)	Action (Fire Damage)
	clean, lint-free bed sheet. Let air dry for eight hours.	
	h) Copy the data to a new medium.	
2. Photographic materials – color film or photographs	a) Take action immediately. b) Keep wet to avoid further image loss. c) Freeze if professional help must be delayed longer than 48 hours. d) Obtain professional assistance as warranted. e) Air dry (if there are not too many and if there is time) either flat or on lines. f) If too many to air dry, store in cold water (65 degrees or below) for up to three days. Add Formaldehyde to water at a ratio of 15 ml. to one liter. g) Transport to or have picked up by a professional photography laboratory within 24 hours. h) If time does not permit air drying or transporting to a professional laboratory, freeze quickly. i) See 1b.	j) Obtain assistance of a professional restorer.
3. Maps, blueprints, or other drawings	a) Wettest records must be removed first. b) Air dry in a cool, dry environment if only a small volume is involved or if water damage to individual records is not extensive. Enhance air circulation by reducing volume in full cabinets, opening drawers, or spreading records out on a flat surface, or rust-proof screening. Fan the pages of bound volumes. Be careful to label any materials removed from the original location or container. Interleave records with clean, absorbent paper. c) If mold erupts, contact a professional consultant regarding treatment with fungicide. d) Restore frozen materials worth restoring by vacuum freeze drying or air drying.	i) Obtain assistance of a professional restorer.

Record Medium	Action (Water Damage)	Action (Fire Damage)
	e) Allow vacuum freeze-dried materials to acclimate afterwards for at least one month. f) Perform air drying only in an environment with a temperature of 50-60 degrees and 25-35% relative humidity. g) Do not stack wet records. h) See 1b.	
4. Paper records	a) Take action within 48 hours to prevent the development of mold and mildew. b) See 3e. c) Otherwise, prepare records for removal to a freezing facility. Loosely wrap units of 200 sheets in freezer paper. Pack tightly in plastic crates or cubic food records storage boxes. d) See 3f. e) Handle wet paper carefully and as little as possible – it is fragile. f) See 1b. g) Remove metal clips and staples from paper to avoid rust. h) Records which are not essential or permanent may be placed in a microwave oven if there is only a small amount of damaged papers (remove staples and metal fasteners first).	i) If records are not fragile, trim the charred edges and clean the surface with a soft bristle brush, or rub gently with an art gum eraser, or mildly abrasive drawing paper, or wallpaper cleaner. Typed material should first be tested to determine if correctable ribbon was used; if so, do not use paper cleaner. j) If records are too fragile, enclose them in Mylar folder and copy them on to paper or microfilm. Discard the original and keep a record of such action. Consult a restoration specialist.

All other types of damage will be assessed on a case by case basis, and action will be taken as warranted.

APPENDIX A

ESSENTIAL RECORDS

- 1) Accounts Payable
- 2) Appointment books
- 3) Bank records
- 4) Charter
- 5) Code Books
- 6) Contracts
- 7) Court Cases (active)
- 8) Court Judicial Orders
- 9) Criminal Case Files
- 10) Emergency Management Plan, National Incident Management System (NIMS)
- 11) Emergency contact information (How do you contact various staff members via phone or email; or foot, if lines of communication are down)
- 12) Grant Records
- 13) Maps and building plans (where is the computer server room located in relation to the area of the facility that's flooded, for example)
- 14) Licenses (professional)
- 15) Court Master Docket
- 16) Minutes
- 17) Ordinances
- 18) Organization Chart
- 19) Payroll records
- 20) Personnel Records (proof of benefit coverage, retirement records)
- 21) Prison, jail records
- 22) Security Codes
- 23) Tax Records
- 24) Warrants

This is not an all-inclusive list, and employees are advised to consult with the RMO to determine if a document/record carries a classification of being essential record. *Source: Records Liaisons, TSLAC, National Archives and Records Administration*

APPENDIX B

PERMANENT RECORDS

- 1.0 Administrative/Legal
 - 1) Affidavits of Publication (Municipal Ordinance Only)
 - 2) Annexation, Disannexation, Abolition, and Other Jurisdictional Records
 - 3) Annual and Special Reports
 - 4) Dedications
 - 5) Deed Files
 - 6) Easement and Right-of-Way Files
 - 7) Fidelity and Performance Bonds (Elected and Appointed officials)
 - 8) Legal Opinions
 - 9) Maps (in department of origin)
 - 10) Minutes
 - 11) Orders
 - 12) Ordinances
 - 13) Publications (employee – 1 copy)
 - 14) Publications (public – 1 copy)
 - 15) Records Destruction Authorizations
 - 16) Records Disposition Schedules
 - 17) Resolutions
 - 18) Town Charter
- 2.0 Development Services
 - Building and Inspection
 - 1) Annual Reports of Building Permits Issued
 - 2) Certificates of Occupancy
 - 3) Permits
 - 4) Street Name and House Number Files
 - Planning
 - 1) Zoning Maps and Plats
 - 2) Zoning Permit Records
 - 3) Planning Studies and Reports

3.0 Environmental Services

- 1) Environmental Protection and Natural Resources Management Plans
- 2) Environmental Quality Review Records

4.0 Financial

- 1) Annual Budgets
- 2) Annual Financial Reports
- 3) Audit Reports
- 4) Bond Administrative Files
- 5) Bond Registers
- 6) Capital Improvement Reports
- 7) Individual Employee Pension Records
- 8) Payroll year-to-date registers
- 9) Pension Deduction Registers
- 10) State Property Tax Board Annual Reports
- 11) Marshal's Procedure Manual

5.0 Fire

- 1) Annual Activity Reports
- 2) Emergency Operations Records
- 3) Fire Plans, Studies, Analyses
- 4) Operational Orders

6.0 Personnel

- 1) Individual Employee Pension and Retirement Records
- 2) Texas Municipal Retirement System Reports

7.0 Police

- 1) Arrest/Criminal History Files (Adult)
- 2) Booking Records (Adult)
- 3) Evidence Files
- 4) General and Operational Orders and related documentation
- 5) Incident Reports
- 6) Inquest Case Files
- 7) Internal Affairs/Investigation Records
- 8) Jail Records
- 9) Narcotics Evidence Files

10) Officer Call Activity Reports

11) Training Records (Class)

8.0 Public Works

Engineering

1) Capital Construction Project Files

2) Land Survey Records

3) Private Utility Plans and Maps

Traffic Engineering

1) Annual Operations Report

2) Traffic Signs and Signals Inventory Records (excludes junked signs and signals)

Water and Wastewater

1) Annual Water Operations and Monitoring Reports

2) Maps and Plats

3) Tap and Hook-up Logs

4) Water and Wastewater Planning Studies and Reports

5) Annual and Biennial Reports to Regulatory Authorities

6) Water and Wastewater Permit Files

This is not an all-inclusive list, and employees are advised to refer to the Town's records retention schedule to determine if a document/record carries a classification of permanent.

APPENDIX C

DISASTER RECOVERY SUPPLIES

These materials will be the initial supplies used at a disaster recovery site. It is the responsibility of the Alternate Team Leader to purchase and maintain these supplies and make them available upon notification that a disaster has occurred.

1. Create a document with the names and mobile numbers of individuals serving in the positions identified in Appendix D. Update as needed.
2. A copy of this DPRP – (updated as necessary).
3. A copy of the Town's Emergency Operations Plan, National Incident Management System (NIMS) Implementation Plan, and Debris Management Plan.
4. Interleaving supplies (a minimum of six reams of 9/12 blank newsprint paper; or five rolls of paper towels) wrapped in plastic.
5. One 20-foot roll of plastic sheeting (clear or black)
6. Two boxes of manila file folders.
7. Five waterproof marking pens.
8. Ten (10) records storage boxes or plastic storage containers.
9. Two utility knives with retractable blades.
10. Two flashlights with extra batteries (batteries must be replaced periodically).
11. Four pairs of latex (surgical) gloves (replace bi-annually).
12. 200 feet clothesline.
13. Four pairs of cotton (photographer's) gloves.
14. Ten cotton terrycloth towels or cotton rags.
15. Two pairs of quality scissors.
16. Box of 30-gallon plastic heavy duty garbage bags – 20 count minimum (used to store other items when no disaster recovery is occurring).
17. Other supplies based on recovery needs.

APPENDIX D

DISASTER RECOVERY TEAM (DRT) PROFESSIONAL CONSULTANTS

Town Staff

Department	Job Title	Team Member Title	Office #
Legislative Services	Town Secretary	Disaster Team Manager	972.874.6076
Legislative Services	Deputy Town Secretary	Alternate Disaster Team Manager	972.874.6071
Environmental Services	Director of Environmental Services	DRT Member	972.874.6348
Fire Dept.	Emergency Management Officer	DRT Member	972.874.6209
Facilities	Director of Facilities Management	DRT Member	972.874.6064
Finance	Chief Financial Officer	DRT Member	972.874.6020
Information Technology Division	Director of Information Technology	DRT Member	972.874.6051
Police Dept.	Police Chief	DRT Member	972.874.3310
Purchasing	Purchasing Manager	DRT Member	972.874.6007

Mobile phone numbers for the Town staff serving in the above referenced positions are retained separately from this document.

Professional Consultant(s)

The Town has a standing Restoration Services Agreement with the following company that may be executed at the time of a disaster:

Cotton Global Disaster Solutions (Headquarters)
5443 Katy Hockley Cut-Off Road
Katy, TX 77493
877.900.0493
<https://cottonqds.com/locations/dallas-tx>

Dallas Field Office
8400 John Carpenter Freeway
Dallas, TX 75247

Other companies that provide commercial fire and water restoration services in the DFW area are:

Belfor
15600 Trinity Blvd, Ste 106
Fort Worth, TX 76155
972.975.1600 (24/7 emergency 800.749.2665)
<https://www.belfor.com/en/us/belfor-usa-offices/texas/dallas>

SERVPRO of Flower Mound/Lewisville
650 S. Edmonds Ln
Lewisville, TX 75067
972.420.4771
<https://www.servproflowermoundlewisville.com/>

Dalworth Restoration
12750 S. Pipeline Rd, Ste 2A
Euless, TX 76040
817.203.2944
<https://www.dalworthrestoration.com/>

SRT Specialty Restoration of Texas
2024 Exchange Dr.
Arlington, TX 76011
817.349.6255 (24/7 emergency 888.502.1546)
<http://www.specialtyrestorationoftexas.com/>



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: April 5, 2021

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of a 2022 Ford F250 Crew Cab XL as a Water Rescue Vehicle for Fire and Emergency Services from Sam Pack's Five Star Ford in the amount of \$65,473.00 under BuyBoard Contract #601-19.

BACKGROUND INFORMATION: The Fire and Emergency Services Department is requesting the purchase of one (1) Ford F250 Crew Cab XL with Special Service Package. This vehicle will be purchased through Sam Pack's Five Star Ford under BuyBoard Contract #601-19 for a total amount of \$65,473.00 for use as a Water Rescue Vehicle. The water rescue vehicle is a prime conveyance for the movement of response personnel and their gear including ropes, dry suits and rafts, used for water rescue. The vehicle is a light truck capable of off-road use and able to pull boats used for rescue.

The vehicle is replacing the F450 designated as Utility 503 which was a former brush truck with its firefighting capabilities removed. Utility 503 was used for a tow vehicle for department trailers and carrying equipment and supplies with its flat bed/stake body design. That truck is over ten (10) years old and is only a single cab, transporting only two (2) personnel. The water rescue vehicle replacing the Utility is a four (4) door vehicle capable of transporting up to five (5) personnel if needed.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$65,473.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$65,473.00	565-450-84500-6130

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

ATTACHMENTS:

1. Sam Pack's Five Star Ford Quotation - BuyBoard Contract #601-19
2. Holiday Autogroup Upfit – Quote #30752
3. Fleet Bid Award Recommendation

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

Off Menu	Options limited to 25% of Published Price	Current %	88.34%	Total of D. - Off Menu Options	\$29,727.00
	Delivery Charges		0 Miles @ \$1.49/mile		\$ -
	Floorplan Expense		Days	\$9.55 Per Diem	\$ -
	Lot Insurance Expense		Days	\$9.55 Per Diem	\$ -
	Manufacturer Delivery Fee				\$ 1,695.00
				Total Each	\$ 65,073.00
	Quantity Ordered	<u>1</u>	X F =		\$ 65,073.00
	Administrative Fee				\$ 400.00
	Trade In Allowance - Non-Equipment debits and credits				\$ -
	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE				\$65,473.00



Date	3/26/2021
Estimate #	30752
Estimate By	Mike
	mike@defendersupply.com
	903-771-1089



Bill To
Five Star Ford

Customer Contact	
Customer Phone	
Customer E-mail	vickie.porter@flower-mound.com

Description	Location	Qty	Price	Total
2021 Ford F250 Crew Cab XL, 4WD, 6.75' Bed				
Professional Design & Installation of Graphics for Customer's Department by Defender Supply		1	651.00	651.00
Rear Chevron				
2017F3DSDD, ARE DCU COMMERCIAL TOPPER FORD SUPERDUTY 2017+ SWB		1	3,389.00	3,389.00T
DCU 26" PAINTED TO MATCH REAR HALF LIFTH DOOR				
Roof Mounted Topper Rack		1	489.00	489.00T
TRUCK DRAWER UNIT 20"H X 48"W X 58"D WITH ROLLOUT DRAWER CONFIGURATION C/W BOX: - OPEN STORAGE BOX WITH NO TOP PANEL - CUT-OUT IN SIDE PANELS BOOSTING PLATFORM: - 0.75" THICK WOOD FOR FRONT SILL 36"W x 52.5"D BASE ASSEMBLY: - CARGO BED SLIDE - 36"W x 60"D (80% EXTENSION) (FRAME ONLY) - PLYWOOD BASE WITH ABS ON TOP SIDE BARRIER: - 2" DIAMOND CUTOUTS CABINET: - OPTION B: POWDERCOAT BLACK TOP PANEL & BARRIER - ALUMINUM CONSTRUCTION		1	4,267.00	4,267.00T

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 & Emergency Equipment Total

Signature



Date	3/26/2021
Estimate #	30752
Estimate By	Mike
	mike@defendersupply.com
	903-771-1089



Bill To
Town of Flower Mound 3911 S Broadway Ave Flower Mound, TX 75028

Customer Contact	
Customer Phone	
Customer E-mail	vickie.porter@flower-mound.com

Descript ion	Location	Qty	Price	Total
Back up Camera		1	472.00	472.00T
Winch Ready Replacement Front Bumper and Grill Guard		1	1,632.00	1,632.00T
95950 Warn Zeon Winch		1	1,276.00	1,276.00T
25852 Winch Cradle		1	312.00	312.00T
Westin Black Round Steps/Nerf Bars		1	192.00	192.00T
110609 CTC Multi-Mode Vehicle Kit (2100 GPS VCU/Radio, 794HM, Cable & Hdwre)		1	3,967.00	3,967.00T
Whelen 54' WecanX Legacy light bar - RED Front = RW + R/W Rear = R/A + R/A		1	1,478.00	1,478.00T
Whelen Light Bar Strap Mount Kit for a 2004 - 2014 Ford Trucks with 54' Light Bar		1	59.00	59.00T
Whelen Cencom Core Amp Control Module		1	679.00	679.00T
Whelen WeCanX Console Mount 21 Button/Slide Control Head		1	79.00	79.00T
Whelen OBDII CanPort? Installation Kit for C399 for 2016-2019 Ford Interceptor Utility, 2020 Ford Interceptor Utility used with Factory Option 61B, 2016-2020 Ford F-150, 2018-2019 Ford, F-250/350/450/550, Expedition and Transit 150/250/350, 2017-2019 Ford Fusion (All Models), 2020 Ford Fusion Hybrid and 2016-2017 Dodge Charger		1	84.00	84.00T
Whelen 100 Watt All Weather Heavy Duty Composite Siren Speaker		1	169.00	169.00T
Whelen Universal 'L' Shape Siren Speaker Bracket		1	29.00	29.00T
Whelen Trio Color Llinear ION Red/Blue/White	Grill Guard-Front Facing	2	89.00	178.00T
Whelen Surface Mount ION Trio Light Head in Red/Blue/White	Grill Guard-Side Facing	2	89.00	178.00T
Whelen Surface Mount ION Trio Light Head in Red/Blue/White	2 Each Side of Upper Topper	6	89.00	534.00T

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 & Emergency Equipmen t Total

Signature



Date	3/26/2021
Estimate #	30752
Estimate By	Mike
	mike@defendersupply.com
	903-771-1089



Bill To
Town of Flower Mound 3911 S Broadway Ave Flower Mound, TX 75028

Customer Contact	
Customer Phone	
Customer E-mail	vickie.porter@flower-mound.com

Descript ion	Location	Qty	Price	Total
Whelen Surface Mount ION Trio Light Head in Red/Blue/White	Rear Topper - Upper	2	89.00	178.00T
Whelen Surface Mount ION Trio Light Head in Red/Blue/White	Rear Topper - Lower	2	89.00	178.00T
Defender Intersector 180 Degree Output LED Tricolor - Red/Blue/White Under Mirror Mounted Light for Critical Intersection & Side Warning Purposes	Below Sideview Mirrors	2	179.00	358.00T
Whelen Trio Color Llinear ION Red/Blue/White	2 each Running Board	4	89.00	356.00T
Whelen Trio Color Llinear ION Red/Blue/White	Rear Side Window-Side Facing	2	89.00	178.00T
Whelen Trio Color Llinear ION Red/Blue/White	Rear Trailer Hitch Area	2	89.00	178.00T
Whelen 36' Flourent Plus LED	Inside Topper	2	122.00	244.00T
Whelen Nano-3 Pioneer LED, Bail Mount	Front Bumper Illumination	4	114.00	456.00T
Whelen Nano Pioneer 6 LED w/Bail Bracket	Top of Topper-Illumination	2	141.00	282.00T
Havis Vehicle Specific Console for 2017-2019 Ford F-250, 350, 450 XL and XLT Super Duty pickup, F-450 and 550 cab chassis, 2015-2019 Ford F-150 XL and XLT pickup 30' Long 12.5' Wide Style Console		1	644.00	644.00T
Jotto Desk Magnetic Mic Clip		2	28.00	56.00T
Havis Self-Adjusting Double Console Cup Holder		1	44.00	44.00T
Kussmaul Auto Eject		1	312.00	312.00T
Kussmaul Auto Charge 11		1	531.00	531.00T
Shipping of Above Emergency Parts for Upfit		1	129.00	129.00T
Defender Supply Wiring Harness, Power Distribution Block and Battery Management System		1	632.00	632.00T

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 & Emergency Equipmen t Total

Signature

Customer Contact	
Customer Phone	
Customer E-mail	vickie.porter@flower-mound.com

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.

Signature _____



Bid Award Recommendation

Date: 03/26/2021

Description: **Water Rescue Support Vehicle**

Qty.: 1

Replaces: 6300-26, a 2009 Ford F550 4x4 Truck

Bidder: Sam Pack's Five Star Ford, Kevin Moore

Item: New 2021 Ford F250 4x4 Truck with Water Rescue Support Upfit as per TOFM Specifications.

Total Cost of Vehicle, Equipment & Installation:

\$65,473.00

It is Fleet Services recommendation to award the bid to **Sam Pack's Five Star Ford** in the amount of **\$65,473.00** utilizing BuyBoard **Cooperative Contract 601-19**.

Fleet Services Manager

03/26/2021

Date



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: April 5, 2021

FROM: Eric Greaser, Fire Chief *EG*

ITEM: Consider approval of the purchase of Water Rescue Equipment in lieu of Fire Turnout Gear/Personal Protective Equipment in the amount of \$17,340.00

BACKGROUND INFORMATION: In the FY19/20 budget a Decision Package was approved for a second set of Turnout Gear/PPE for each Firefighter. To be as cost-effective as possible, yet remain in accordance with the NFPA 1851 mandates, a decision was made to issue new recruits a second set of existing older, but still compliant, gear.

This will result in a one-time reduction in the number of sets of structural gear purchased in this (FY20/21) fiscal year. We are requesting to use some of the funds to purchase equipment for our Water Rescue members to properly protect them during rescue incidents.

FISCAL IMPACT: \$17,340.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$17,340.00	100-660-63000-2300

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

ATTACHMENTS:

1. Rescue Gear Quote
2. Budget Transfer Request
3. FY19/20 Decision Package for Turnout Gear

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



RESCUEGEAR

1-800-321-8022 - 5909 BURNET RD. AUSTIN, TX 78757 - RESCUEGEAR.COM

Bill to:

Flower Mound FD
Steve Beagle
3911 South Broadway Ave
Flower Mound TX 75028
(214) 763-0122
peggy.durbin@flower-mound.com

Contact:

Ship To:

Flower Mound FD
Steve Beagle
3911 South Broadway Ave
Flower Mound TX 75028
(214) 763-0122
peggy.durbin@flower-mound.com

Phone:

Estimate # Q16574

Date:
3/22/2021

Expiration Date:
4/22/2021

Sales Rep.
Jamie Lofton

jamie@rescuegear.com

Email:

Memo: raptors

Item	Item Description	Vendor	QTY	Orig \$	Disc %	Price	Ext P\$
DR13571LG	Raptor Breathable Drysuit - LG	Aqualung - Public Safety	16	\$1,395.00	23.3%	\$1,070.00	\$17,120.00

Subtotal: \$17,120.00

Tax: \$0.00

Freight: \$220.00

Order Total: \$17,340.00

Town of Flower Mound Budget Transfer Request Form

Date Initiated: 3/4/2021
 Department Name: Fire and Emergency Services
 Division Name: Fire Supression Services
 Fund Number: General 100

Account Code			Object Code Description	Amount Decrease (From)	Amount Increase (To)
Dept	Division	Obj. Code			
660	63000	2270	Public Service Official Uniforms	\$ 17,340.00	\$
660	63000	2300	Other Equipment		\$17,340.00

Reason for Availability of Funds:

Will not purchase the number of sets of structural firefighting gear ("bunker" coats and pants) as originally forecast.

Justification of Need for Transfer:

Need to properly equip members for water rescue. Specifically this is to purchase dry suits so that members are properly protected during water rescue incidents.

I certify that to the best of my knowledge, unencumbered funds are available in the account from which this transfer is to be made, and that this transfer will not result in that account being overencumbered within the current fiscal year.

Approval:

 Department/Division Head

 Date

 Budget Officer

 Date

 Interim Town Manager/ CFO

 Date

Reason for Not Approving Transfer:

FUND		TOWN OF FLOWER MOUND		DIVISION	
GENERAL		FIRE AND EMERGENCY SERVICES		FIRE SUPPRESSION SERVICES 100-660-63000	
SUPPLEMENTAL DETAILS - ACTIVE					
TITLE	WATER RESCUE EQUIPMENT		TYPE	DECISION PACKAGE REQUEST	
Has Fleet approved this request?	N/A	Has IT approved this request?	N/A	Has this been requested in previous years?	YES
RESOURCES REQUESTED					
LINE ITEM	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
2300 - OTHER EQUIPMENT	16,000.00	16,000.00	16,000.00	16,000.00	5,000.00
TOTAL \$ 16,000.00 \$ 16,000.00 \$ 16,000.00 \$ 16,000.00 \$ 5,000.00					
COMMENTS					
WHAT IS THE PURPOSE OF THIS REQUEST?			DESCRIBE THE BENEFITS THAT WILL BE GAINED FROM THIS REQUEST?		
This request is to provide the minimum equipment necessary for the Fire Department to respond safely and efficiently to water rescue scenarios. This request is specifically to provide Personal Flotation Devices/Life Vests, Climate Suits, Throw Ropes, and Water Rescue Helmets. The Department already responds to these type calls, but lacks the fundamental safety equipment. It does not have much, if any of the above listed equipment.			The Department has to be prepared for many different rescue scenarios including water rescue. The Town has a boat on the lake and a RHIB (Rigid Hull Inflatable Boat) on a trailer for rescue purposes. The Department needs the safety equipment to protect the responders while responding to these calls. Firefighters will be safer and have better rescue capabilities with this equipment. Last year (FY 17-18): 7 each of wetsuits, swift water rescue life vests, helmets, water boots, gloves, water rescue rope throw bags for all apparatus and life vests for each apparatus for \$9,000.00. This year (FY 18-19): 7 each of wetsuits, swift water rescue life vests, helmets, water boots, gloves, water rescue rope throw bags for all apparatus and life vests for each apparatus (will be completed) for \$16,000.00. Next Year (FY 19-20): 14 each wetsuits, swift water rescue life vests, helmets, water boots, gloves, Rescue ropes, rigging and hardware for \$16,000.00. Following Year (FY 20-21): Drysuits, Rescue ropes, rigging and hardware, extra items like flashlights, gear cache \$16,000.00.		
WHAT ARE THE REVENUE ENHANCEMENTS ASSOCIATED WITH THIS REQUEST?			WHAT ARE THE CONSEQUENCES OF NOT FUNDING THIS REQUEST?		
N/A			If not funded, firefighters will continue to be at risk of injury or death while trying to complete a rescue in the water. The lack of equipment also has a negative effect on the victims as well, preventing the rescue personnel from accessing them in a timely manner, if at all, during a rescue.		
SUMMARIZE NEW POSITIONS IN THIS REQUEST (INCLUDE NUMBER OF FTE)			FINANCE COMMENTS		
N/A					



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: April 5, 2021

FROM: Lavona Burgess, Director of Police Support Services

ITEM: Consider approval of using budgeted funds for the purpose of forensic narcotic testing.

BACKGROUND INFORMATION: During the 86th Regular legislative session House Bill 1325 was signed into law. The law redefined marijuana to allow for the sale of hemp products. Based on the bill analysis, marijuana is now defined as cannabis products with more than 0.3% of tetrahydrocannabinol (THC), the active chemical in marijuana that causes one to get high. Alternatively, anything below 0.3% THC is considered hemp, and is now legal.

On August 19, 2019, the Town Council approved, and the Mayor executed an agreement with Armstrong Forensic Laboratory, Inc to pay for forensic testing of these substances. This agreement is still in effect and the prices for the testing services have not changed. The budget for this testing in the previous fiscal year was \$18,000. However, due to the number of tests requested, this amount fell short in meeting the needs of the department. As such, additional funding was requested and approved in the 20-21 FY budget. At this time the department is requesting authorization to use the additional funds budgeted for forensic testing services.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: We do not have many options for this type of testing in the DFW area and the state laboratory does not offer quantitative testing for THC. This testing is necessary to file these felony level cases with the district attorney's office.

FISCAL IMPACT: The proposed expenditure is the increase of funds authorized for forensic testing. The total fiscal impact is \$33,000.

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 15,000.00	100-640-43500-5110

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Armstrong Lab Agreement

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

Armstrong

Forensic Laboratory, Inc.

PROPOSAL FOR LABORATORY TESTING SERVICES AND STATEMENT OF QUALIFICATIONS

For

Services Associated with Controlled Substance
Identification and Blood Alcohol Concentration Analyses

Submitted to:

Assistant Chief Wendell Mitchell
Flower Mound Police Department
4150 Kirkpatrick Lane
Flower Mound, Texas 75028
Wendell.Mitchell@Flower-Mound.com

Submitted by:

Armstrong Forensic Laboratory, Inc.
330 Loch'n Green Trail
Arlington, Texas 76012
www.AFLab.com
(817) 275-2691



July 18, 2019

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Tables

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Attachments

Attachment A:	Copies of Accreditations, Certifications, Licenses and Registrations
A-1:	ANAB Certificate of Accreditation and Certificate of Scope of Accreditation
A-2:	TxFSC Crime Lab Accreditation
A-3:	U.S. DOJ DEA Controlled Substance Registration Certificate
Attachment B:	Client Specific Chain of Custody Example
Attachment C:	Client Specific Laboratory Report Example

1.0 INTRODUCTION

Armstrong Forensic Laboratory, Inc. (Armstrong) offers this Proposal for Controlled Substance Identification and Blood Alcohol Concentration Analyses (Proposal) and Armstrong's Statement of Qualifications (SOQ) to the Flower Mound Police Department (Flower Mound PD). This Proposal includes Armstrong's full range of qualifications and support services directly related to laboratory analysis of evidence submitted for controlled substances identification or blood alcohol concentration.

1.1 ORGANIZATIONAL QUALIFICATIONS

As an ISO/IEC 17025; 2005 Accredited Crime Lab through ANSI National Accredited Board (ANAB) and the Texas Forensic Science Commission (TxFSC), Armstrong is uniquely qualified to serve as Flower Mound PD's support laboratory of choice based on Armstrong's competency, knowledge, and experience in the fields of forensic investigation, laboratory analysis, and courtroom testimony that directly correlate with the identification of controlled substances and analysis of evidence blood alcohol concentration (BAC).

Armstrong was incorporated in 1981. Armstrong's services began in the field of forensic investigations and expanded to include environmental and industrial hygiene analysis and supporting services. Located in Arlington, Texas - the heart of the Dallas/Fort Worth area - and focused on providing quality, credentialed services to all of its clients, Armstrong quickly grew to become a full-service consulting analytical laboratory with a mission committing the organization to excellence in the production of analytical data and consulting services.

Armstrong's expertise is in comprehensive, analytical laboratory services that produce accurate, timely, and cost-effective results. Both the civilian and criminal litigation throughout the United States rely on the years of experience Armstrong's Consulting Experts have interpreting and presenting data and conclusions. Sample handling policies and procedures (sample receipt, chain-of-custody, control, and disposition) are able to withstand the scrutiny of any courtroom.

Armstrong also holds accreditations, certifications, licensures, and registrations through several other national and international organizations as well as State licenses and registrations, including: American Industrial Hygiene Association (AIHA), Texas Commission on Environmental Quality (TCEQ), National Environmental Laboratory Accreditation Committee (NELAC), Environmental Protection Agency (EPA), and Texas Department of Licensing and Regulation (TDLR). Copies of these certificates are available upon request.

1.2 OVERVIEW OF SERVICES

Armstrong is committed to performing the described scope of services in a competent, professional manner that includes timeliness of analysis and detailed report submittal. The general services proposed include:

- Client Representative assigned specifically to Flower Mound PD for administrative aspects of all projects;
- Project Manager/Technical Advisor (PM/TA) available to assure Flower Mound PD and regulatory requirements are met as well as provide interpretive support as necessary;
- Experienced and qualified personnel for the secured transportation of evidence;

- Project specific chain-of-custody (COC) as requested;
- Analysis of evidence by a team of competent and qualified ANAB Analysts and Technical Reviewers to ensure accurate, defensible data with a case specific Analytical Report;
- Case specific affidavit and/or experienced and qualified ANAB Testifying Experts to provide supporting courtroom testimony as scheduled; and
- Secure temporary or long-term storage of evidence.

1.3 LABORATORY CONTACTS

Contact information related to this Proposal includes:

Project Manager/Technical Advisor:

Kelly Wouters, PhD
Laboratory Director

(817) 275 - 2691 ext 312 (Office)
KWouters@AFLab.com (Email)

Administrative Questions:

Dawn Jones
Office Manager

(817) 275 - 2691 ext 324 (Office)
DJones@AFLab.com (Email)

Armstrong's physical location and general contact information is:

330 Loch'n Green Trail
Arlington, Texas 76012
(817) 275 - 2691 (Office)

(817) 275 - 1883 (Fax)
www.AFLab.com (Website)
AFLab@AFLab.com (General Email)

1.4 LABORATORY PERSONNEL QUALIFICATIONS

Armstrong's Associates available to support Flower Mound PD case work include: fully qualified Analysts, fully qualified Technical Reviewers (as defined by ANAB), and technical support and administrative personnel qualified and trained to ensure all work submitted by Flower Mound PD related to this Proposal meets or exceeds recommendations and requirements for court-ready data/reports. In addition, Armstrong has fully qualified, knowledgeable and experienced expert consultants available for consultation and support from initial evidence receipt through courtroom presentation.

Table 1 notes Key Personnel assigned to support Flower Mound PD case work.

Table 1: Key Personnel				
Position/ Job Function	Name	Degrees & Certifications	Years Exp.	Years @ Armstrong
Senior Consultant/Technical Advisor; ANAB Technical Reviewer, Analyst & Testifying Expert	Andrew Armstrong	PhD; Fellow-ABC; Fellow-AAFS	58	42
Contract Project Manager; Laboratory Director; Senior Consultant; ANAB Technical Reviewer, Analyst & Testifying Expert	Kelly Wouters	PhD; Fellow-ABC	20	10
Laboratory Supervisor; ANAB Technical Reviewer, Analyst & Testifying Expert	Karen Deiss	BS	34	16
End of Table 1				

Additional ANAB Qualified Analysts and Technical Support Personnel (TSP) may be assigned as appropriate. Qualifications of any of Armstrong personnel associated with Flower Mound PD projects may be requested.

1.5 REFERENCES

ARLINGTON POLICE DEPARTMENT

MS. DEBBIE LANGJAHR - BAC REPORT

Arlington Police Department

(817) 459-5356

MS. DARLA TAYLOR - DRUG REPORTS

Arlington Police Department

(817) 804-2780

Since 2017, Armstrong has provided analytical and consultative support to Arlington Police Department in the area of controlled substance identification, blood alcohol analysis, evidence transport, testimony, and evidence storage as requested. In 2018, Armstrong has analyzed over 1,500 samples for the Arlington Police Department.

GRAND PRAIRIE POLICE DEPARTMENT**SERGEANT KENNETH ZACHARIAS**

kzacharias@gptx.org

(972) 237-8768

Since 2018, Armstrong has provided analytical and consultative support to Grand Prairie Police Department in the area of controlled substance identification, testimony, and evidence storage as requested. In 2018, Armstrong has analyzed over 800 samples for the Grand Prairie Police Department.

TRAVIS COUNTY**MR. MIKE LONG**

Purchasing Agent Assistant III

(512) 854-4850 (Office)

Mike.Long@co.travis.tx.us

(512) 854-9185 (Fax)

Armstrong provided support to Travis County as a third-party, independent consulting lab performing services that include: analysis of evidence seized for controlled substance identification, evidence transport, expert testimony, and other analytical and consulting services as requested since the initial Contract was awarded in September 2007.

Armstrong received a Contract Modification dated July 2008 automatically renewing the Contract on October 1 every year for succeeding terms of one year unless earlier terminated by either party.

Contract Period: September 2007 – 2015. Armstrong has examined over 746 individual cases ranging in evidence count from 1 to 15 samples per case with a total sample analyzed count of 1,163 over the life of the Contract.

2.0 SCOPE OF SERVICES

2.1 OVERVIEW

Armstrong operates under the highest level of professional ethics and professional standards of care. Armstrong has no known conflicts of interest or current association with any Officials or employees of Flower Mound PD. Armstrong proposes a project specific scope of service that includes:

- Project Specific COC as required;
- Evidence transport, as requested;
- Evidence receipt and confirmation of information;
- Photographic documentation of controlled substance evidence upon receipt at laboratory;
- Examination of evidence indicated for analysis;
- Identification and selection of samples and sub-samples;
- Initial and final weight of evidence, as appropriate;
- Appropriate and necessary analyses for controlled substance is based on characteristics of evidence, including but not limited to:
 - FTIR;
 - Qualitative GC/MS;
 - Microscopical Examination(s);
 - Spot Test(s).

Analyses will conform to ASTM or SWGDrug standards and guidelines as appropriate.

- Blood alcohol concentration is performed by GC-FID on a specialized piece of equipment, an Agilent 6890 Series GC Flex AutoSampler;
- Court-ready Laboratory Analytical Report;
- Affidavit of Analysis as requested; and
- Secure, temporary evidence storage pending return shipment or transport.

Armstrong will perform the appropriate testing as described in the Scientific Working Group for Analysis of Seized Drugs (SWGDrug) Recommendations for Code of Professional Practice; Education and Training; Methods of Analysis; and Quality Assurance and/or ASTM Standard Methods/Practices. Unless otherwise noted, Armstrong proposes to analyze only those items of evidence that are not considered extraneous items or paraphernalia. Only the physical material (solid or liquid) that would comprise the controlled substance will be analyzed. Unless otherwise allowed, sub-samples will be established in accordance with standard operating procedures.

For bulk submissions that exceed thirty (30) individual units, Armstrong proposes to release final laboratory reports in smaller groups as case files are completed. That is, Armstrong will not hold reports for individual arrest cases pending completion of other laboratory work.

2.2 EVIDENCE REVIEW AND CONFIRMATION OF CASE INFORMATION

Upon formal evidence receipt, the evidence is placed in the custody of a qualified ANAB Analyst for initial processing prior to analysis. The evidence and related administrative documentation are again compared against the COC to verify all information. Where discrepancies between the information (physical evidence, evidence labeling, and the COC) are identified the Flower Mound PD will be contacted for resolution. Any changes made should be initialed and dated by the Flower Mound PD and a corrected COC resubmitted to Armstrong.

Armstrong's SOP related to Forensic Recovery (FR) case work, such as evidence submitted by the Flower Mound PD, require that the evidence and all related information be handled based on the presumption that the information and data generated by the laboratory will be presented in court. Given the variability of the projects that may be submitted for Forensic Recovery, the handling of the evidence upon check-in must be considered on a case-by-case basis and must always maintain the integrity of the evidence submitted. Many of these samples may require special examination, photographic documentation, and/or individual analytical assignment. After the submitted documentation (including the COC) is examined for completeness and a case file number is assigned, these samples are moved to a separate, secured evidence area until processing is begun.

2.3 REPORT FORMAT AND AFFIDAVIT OF ANALYSIS

Armstrong's Forensic Recovery Reports are generated by the consulting staff under the direction of the Vice President of Services and are processed under the direction of the Office Manager. Forensic Recovery Reports are issued for forensic case work designated as case type FR.

In accordance with Armstrong's SOPs and ANAB requirements, the Consultant(s) (ANAB Technical Reviewer/Analysts) responsible for the Case File will oversee report creation and submission. The Consultant may conduct, participate in, observe or supervise any tests, or will complete and document a review of all test documentation prior to preparing the final report. The responsible Consultant will document the review by initialing and dating each page of the data reviewed or a Document Review Cover Sheet identifying the data produced and reviewed that forms the basis of the conclusion(s) reached.

Any opinions and interpretations included in the report will be clearly identified and the basis upon which those opinions and interpretations are made will be documented. If no definitive conclusions can be reached, the reason(s) will be documented.

The final report will contain the following information, at a minimum:

- Date the report is issued;
- Name, address, and phone number of the Laboratory;
- Name and address of the Client;
- Name of Evidence Submitter;
- Name of all parties receiving a copy of the report;
- Page number and total number of pages of the report on each page;
- Name, title, and signature of the Analyst and/or Technical Reviewer;

- Unique Laboratory Case File identification number on every page;
- Description and identification of the samples and date(s) received by the laboratory, including the laboratory's unique identifier;
- Identification of the test method(s), the sample results, and conclusions;
- The condition/acceptability of the samples;
- Identification of the test method, analytical results, and reporting limit (if results are quantitated);
- Where relevant, a statement to the effect that the results relate only to the items tested; and
- Name, title, and signature of signatories accepting technical responsibility for the Report and of the analysis. The Technical Reviewer is considered the Primary Signatory and the Analyst is the Second Signatory.

In addition, where necessary for the interpretation of the analytical results, the report will include:

- Date of analysis;
- Deviations from, additions to, or exclusions from the test method, and information on specific test conditions, such as environmental conditions;
- A statement of compliance/non-compliance with requirements and/or specifications;
- If applicable, a statement on the estimated uncertainty of measurement, if relevant to the validity or application of the test results, when requested by the Client, or when the uncertainty affects compliance to a specification limit;
- Where appropriate and needed, opinions and interpretations; and
- Additional information required by the analytical method or by the Client.

If provided by the Client, and necessary for the interpretation of the test results, the report will include the following:

- Date of sample collection;
- An unambiguous identification of the substance, material or product sampled (including manufacturer, model or type designation, and serial number);
- The sample location, including diagrams, sketches or photographs;
- A reference to the sampling plans and sampling procedures used; and
- Standards or specifications for the sampling method or procedure and deviations, additions or exclusions from the standards or specifications.

All laboratory reports are stored electronically and the final report is printed on letterhead paper. Only one original is generated unless otherwise requested by the Flower Mound PD. The Office Manager, Vice President of Services, President, or designated qualified office personnel will review all Forensic Recovery Reports as the Administrative Reviewer. All signatories will have reviewed the final report prior to signing in blue ink. Final reports issued to the Client via electronic delivery methods (email, facsimile, etc.) and/or mailed by U.S. Postal Service are considered final reports. If a determination is made that a report that has been issued in the U.S. Postal Service should be modified

or amended, it will only be reissued with a notation at the top of the report as “Amended”. There will be an “Amended Report Tracking” table inserted at the end of the report and before the signature block noting the specifics related to any revision. To the extent possible, all signatures included on the original report will be included with the amended report.

Armstrong shall, where standard report format does not already, incorporate any requirements and recommendations for Final Reports as required, which may include:

- Title: Name of lab performing analysis;
- Date received by analyzing lab;
- Defendant(s) Name;
- Date of Offense;
- Offense Number;
- Findings: name(s) of controlled substance identified as listed in the Texas Controlled Substance Act;
- Net weight of sample; and
- Name of Analyst.

Attachment C is an example of an Armstrong Laboratory Report to be considered for use by Flower Mound PD. Armstrong welcomes any changes/modifications considered appropriate by Flower Mound PD. An Affidavit of Analysis is available for each case file upon request.

3.0 PROPOSED COST OF SERVICES

Armstrong presents the following Cost of Services for Controlled Substance Identification and Blood Alcohol Concentration Analyses (Table 2) as its best cost proposal for laboratory analysis of controlled substances and supporting services. Included in the table is Armstrong's standard rate for non-contract/negotiated work (i.e., list price). This information is included as a good faith effort to indicate Armstrong's willingness to provide Flower Mound PD with an aggressive pricing structure.

Compensation for analysis or services not identified in this Proposal shall be agreed to by the Flower Mound PD and Armstrong prior to assignment of analysis or services. Where time is of the essence, Flower Mound PD may forgo negotiation of pricing and accept Armstrong's currently published fee schedule.

Table 2: Cost of Services		
Line Item	Description of Service	Proposal Rate
<i>Controlled Substance Identification and Blood Alcohol Analysis and Related Services</i>		
1A	Controlled Substances Full Scan (Note 1):	\$75.00/Unit
1B	Add'tl Component(s) Reported, Same Sample (Note 2)	\$50.00/ Add'tl Cmpnt
1C	Quantitation of Component	\$75.00/Unit
2	THC Identification and Quantitation	\$125.00/Unit
3	Blood Alcohol Analysis	\$90.00/Unit
4	Affidavit of Laboratory Analysis: On Request	\$100.00/Case
5	Evidence Storage (6 mos.): On Request	\$75.00/ Case
6	Evidence Photo Documentation: Controlled Substance	No Charge
7	Evidence Pickup and Return	TBD upon request
<i>Consulting Services</i>		
8	<i>Andrew T. Armstrong, Ph.D., C.P.C (ALL)</i>	
8a	Consultation, Travel, Phone and Standby	\$265.00/ Hr
8b	Court Presentation and Deposition	\$365.00/ Hr
8c	Video Deposition	\$465.00/ Hr
9	<i>Kelly Wouters, Ph.D. (ALL)</i>	
9a	Consultation, Travel, Phone and Standby	\$235.00/ Hr
9b	Court Presentation and Deposition	\$335.00/ Hr
9c	Video Deposition	\$435.00/ Hr

Table 2: Cost of Services		
Line Item	Description of Service	Proposal Rate
10	<i>Karen Deiss, BS (Controlled Substance)</i>	
10a	Consultation, Travel, Phone and Standby	\$200.00/ Hr
10b	Court Presentation and Deposition	\$300.00/ Hr
10c	Video Deposition	\$400.00/ Hr
	<i>Other Services</i>	
11	Technician (In-house or Field)	\$95.00/ Hr
12	Video Taping and Production	\$95.00/ Hr
13	Computer Services (e.g. CAD, database search)	\$95.00/ Hr
14	Fax Transmission	No Charge
15	Mileage	\$0.70/ Mile
16	Expenses Related to Travel	PTC
17	Event Charge (Note 4): Cost/Person/4-hr event	\$200.00
Note 1	Controlled Substance Full Scan represents a full analysis (including weight) and report of the primary controlled substance in the item or sub-sample. Quantitative results (purity) are not included. Depending on the number of different units submitted as a single item, multiple sub-samples may be required for a complete analysis. Armstrong maintains a library of reference standards including numerous synthetic drugs. If a submitted sample contains a controlled substance not already included in Armstrong's libraries, the purchase of a reference standard may be necessary to confirm the identification. In the event that additional cost is necessary, Armstrong will contact the Client for approval.	
Note 2	Additional Component: considered to mean any other potentially significant analyte identified within the results; controlled or non-controlled by the State of Texas.	
Note 3	PTC = Pass Through Cost	
Note 4	Event Charges may be incurred when Armstrong is requested to provide services that require efforts beyond the scope of its standard work-shift. (Mon.- Fri., 7a.m. - 6 p.m.)	
End of Table 2		

3.1 ANALYTICAL AND RELATED SERVICES

Analytical Service charges are proposed in Line Items 1 through 7 and include analysis, evidence return shipment via traceable carrier as well as evidence disposition and handling.

Armstrong is proposing a controlled substance identification analysis at a significantly reduced cost from its standard pricing (Line Item 1A). Additional component(s) identified in the same sample will be reported at a charge of \$50.00 per additional component per sample (Line Item 1B). For evidence that must be sub-sampled to meet analytical methodologies, each sub-sample will be treated as an individual unit.

3.2 TURN-AROUND TIMES AND BATCH SIZES

Armstrong is proposing a Standard TAT for Flower Mound PD cases work of fifteen (15) business days for batch sizes that do not exceed thirty (30) units (discreet samples). Batch sizes greater than thirty (30) units may extend the TAT of the batch set. There are expedited turn-around times available with an associated surcharge on the analytical cost. Details are below:

ASAP TAT	100% Analytical Surcharge
5 TAT	50% Analytical Surcharge

3.3 CONSULTING AND OTHER SERVICES

Armstrong has included hourly rates for the Consultants available for expert testimony and/or consultation services. Refer to Line Items 8 through 10. Additionally, Table 2 provides a section labeled "Other Services" for Flower Mound PD's consideration (Line Items 11 through 17). These items include costs/expenses related to non-standard services such as Field Technician.

4.0 PROPOSAL ACKNOWLEDGEMENT

Pricing detailed in Table 2, as well as within the text of this proposal, is valid through September 30, 2020, should Flower Mound PD contract with Armstrong for these services. All Consulting Services associated with case work submitted within the agreement performance period will be guaranteed at the proposed rate(s) up to one (1) year from the date the case work was submitted.

As a standard business policy, Armstrong's General Terms and Conditions effective at the time services are performed for Flower Mound PD, will be incorporated into this proposal and any services provided by Armstrong by reference. A copy of Armstrong's General Terms and Conditions is available on request.

4.1 PROPOSAL ACCEPTANCE

This proposal is accepted and forms an agreement between Flower Mound PD and Armstrong Forensic Laboratory, Inc.

For Flower Mound Police Department:

Steve Dixon

Signature of Authorized Personnel

Mayor

Title

8/21/2019 | 8:07 PM PDT

Date

For Armstrong Forensic Laboratory, Inc.:

Ben Armstrong

Benjamin Armstrong

President

Title

8/21/2019 | 7:58 AM PDT

Date

Attachment A

**Copies of Accreditations, Certifications,
Licenses and Registrations**

- A-1: ANAB Certificate of Accreditation
and Certificate of Scope of Accreditation
- A-2: TxFSC Crime Lab Accreditation
- A-3: U.S. DOJ DEA Controlled Substance Registration Certificate

Attachment A-1: ANAB Certificate of Accreditation and Certificate of Scope of Accreditation



CERTIFICATE OF ACCREDITATION

ANSI-ASQ National Accreditation Board

2000 Regency Parkway, Suite 430, Cary, NC 27518

This is to certify that

Armstrong Forensic Laboratory, Inc.

has been assessed by ANAB
and meets the requirements of

ISO/IEC 17025:2005

ASCLD/LAB-International Supplemental Requirements
for Forensic Science Testing Laboratories:2011

while demonstrating technical competence in the field of

FORENSIC SCIENCE TESTING

Refer to the accompanying Scope of Accreditation for information
regarding the types of tests to which this accreditation applies

Certificate Number: ALI-037-T

Valid to: 06/30/2021

Pamela L. Sale
Vice President, Forensics



Attachment A-1: ANAB Certificate of Accreditation and Certificate of Scope of Accreditation



ANSI-ASQ National Accreditation Board

SCOPE OF ACCREDITATION TO:
ISO/IEC 17025:2005
ASCLD/LAB-International Supplemental Requirements
for Forensic Science Testing Laboratories:2011

Armstrong Forensic Laboratory, Inc.
330 Loch'n Green Trail
Arlington, Texas 76012

FORENSIC SCIENCE TESTING

Valid to: June 30, 2021

Certificate Number: ALI-037-T

Discipline(s)	Categories of Testing
1.0 Drug Chemistry	1.1 Controlled Substances 1.2 Quantitative Analysis 1.3 General Chemical Testing
2.0 Toxicology	2.1 Human Performance Forensic Toxicology (blood alcohol only)
4.0 Trace Evidence	4.1 Paint 4.3 Fiber and Textiles 4.10 Fire Debris 4.15 General Physical and Chemical Analysis

Pamela L. Sale
Vice President, Forensics

Version 002 Issued: 01/09/2018



2000 Regency Parkway, Suite 430, Cary, NC 27518
414-501-5494 www.anab.org



Page 1 of 1

Attachment A-2: TxFSC Crime Lab Accreditation



TEXAS FORENSIC
SCIENCE COMMISSION
Justice Through Science
1700 North Congress Ave., Suite 445
Austin, Texas 78701

January 20, 2018

Armstrong Forensic Laboratory, Inc.
Dr. Andrew T. Armstrong
330 Loch'n Green Trail
Arlington, Texas 76012

RE: Renewal application for Texas Forensic Science Commission Accreditation under Title 37, Texas Administrative Code, Chapter 651.

Dear Dr. Armstrong:

With some exceptions, the Texas Code of Criminal Procedure, Article 38.35, requires Texas Forensic Science Commission (FSC) accreditation as a predicate to the admission of the forensic analysis of physical evidence and expert testimony relating to the evidence in a criminal case.

As the designee of the Texas Forensic Science Commission Presiding Officer, I have considered your renewal application based on your national accreditation from ANAB and grant full FSC Accreditation to Armstrong Forensic Laboratory, Inc. for the following forensic disciplines:

Controlled Substances
Trace Evidence
Toxicology (limited to blood alcohol only)

The term of ANAB accreditation is from 05/26/2017 to 06/30/2021 unless they have extended their accreditation as part of a routine renewal process. The term of FSC accreditation is from 9/1/2015 until such time that the accreditation from ANAB is no longer current.

FSC accreditation is contingent upon compliance with Title 37, Texas Administrative Code, Chapter 651, including requirements of reporting correspondence, reports or communication between the laboratory and the accrediting body. FSC accreditation will be automatically rescinded at the same date and time as ANAB withdraws your laboratory accreditation.

Best regards.

Sincerely,

Leigh M. Savage

Leigh M. Savage
FSC Accreditation Program Administrator

[P] 1.888.296.4232 • [F] 1.888.305.2432 • [E] info@fsc.texas.gov

Attachments

Attachment A-3: U.S. DOJ DEA Controlled Substance Registration Certificate

CONTROLLED SUBSTANCE REGISTRATION CERTIFICATE UNITED STATES DEPARTMENT OF JUSTICE DRUG ENFORCEMENT ADMINISTRATION WASHINGTON D.C. 20537		
DEA REGISTRATION NUMBER	THIS REGISTRATION EXPIRES	FEE PAID
RA0135295	06-30-2019	\$244
SCHEDULES	BUSINESS ACTIVITY	ISSUE DATE
1,2, 3,3N,4,5	ANALYTICAL LAB	05-14-2018
ARMSTRONG FORENSIC LAB 330 LOCH'N GREEN TRAIL ARLINGTON, TX 76012-0000		
THIS CERTIFICATE IS NOT TRANSFERABLE ON CHANGE OF OWNERSHIP, CONTROL, LOCATION, OR BUSINESS ACTIVITY, AND IT IS NOT VALID AFTER THE EXPIRATION DATE.		

Form DEA-223 (9/2016)

Sections 304 and 1008 (21 USC 824 and 958) of the Controlled Substances Act of 1970, as amended, provide that the Attorney General may revoke or suspend a registration to manufacture, distribute, dispense, import or export a controlled substance.

Attachment B
Client Specific Chain of Custody Example

Attachment C
Client Specific Laboratory Report Examples

Armstrong

Forensic Laboratory, Inc

330 Loch'n Green Trail Texas 76012-3458
817-275-2691 Fax: 817-275-1883



Andrew T. Armstrong, PhD
Marion K. Armstrong, MSPH, MBA, CIH
Kelly L. Wouters, PhD
Karen M. Deiss, BS

LABORATORY REPORT FOR CONTROLLED SUBSTANCE IDENTIFICATION

Evidence Released By:	Date Released:	XXXXX
Evidence Released To: Armstrong Forensic Laboratory, Inc.	Date Received:	XXXXX
Contract: XXXXX	Lab File No.:	B9FRXXXX
General Offense No.: XXXXX	Date of Offense:	XXXXX
Defendant's Name: XXXXX	No. of Items:	X
Submitted: X Evidence Bags	Type of Items:	XXXXX

Laboratory ID	Agency Item	Analysis Requested	Evidence Description
B9-XXXXA-001A	XXXXX	Controlled Substances	XXXXX

Lab Number: B9-XXXXA-001A		Type: XXX	Weight of evidence on receipt:		X.XX ± X.XX grams
			Weight of evidence at completed analysis:		X.XX ± X.XX grams
Requested Analysis	Results	Identification per Texas CSA	Method of Analysis	Analytical Technique	Date of Analysis
Controlled Substance	Positive	XXX	FTIR	Cat A	XX/XX/XX
	Positive	XXX	GC/MS	Cat B/Cat A	XX/XX/XX

Karen M. Deiss, BS Senior Analyst Texas Forensic Analyst License #0000010 ANAB, Certificate ALI-037-T	Date	Kelly L. Wouters, PhD Laboratory Director Fellow, American Board of Criminalistics Texas Forensic Analyst License #0000008	Date
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Evaluations for drugs of abuse are done by High Resolution Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS) and Attenuated Total Reflectance-Fourier Transform Infrared Spectroscopy (ATR-FTIR) against a defined target analyte list (TAL). The analyses may detect other compounds of interest; these compounds will be reported. This combination of analytical techniques will detect and identify a broad range of drugs of abuse. They will not, however, detect all controlled substances. The uncertainty values reported represent an expanded uncertainty estimate at the 95.45% level of confidence.

Armstrong Forensic Laboratory, Inc. (Armstrong) is accredited through ANAB and the Texas Forensic Science Commission for criminal casework in the disciplines of Controlled Substances; Toxicology in the category of Blood Alcohol; and Trace Evidence in the categories of Paint, Fibers & Textiles, Fire Debris, and General Physical & Chemical Analysis. Unless noted otherwise, all work performed on this case was in accordance with these requirements and Armstrong's standard operating procedures.

Armstrong

Forensic Laboratory, Inc

330 Loch'n Green Trail Texas 76012-3458
817-275-2691 Fax: 817-275-1883



Andrew T. Armstrong, PhD
Marion K. Armstrong, MSPH, MBA, CIH
Kelly L. Wouters, PhD
Karen M. Deiss, BS

LABORATORY REPORT FOR BLOOD ALCOHOL ANALYSIS

Evidence Released By:	Lab File No: B9FRXXXX
Evidence Released To: Armstrong Forensic Laboratory, Inc.	Date Received: XXXXX
Report Number: XXXXX	Date of Offense: XXXXX
Defendant's Name/DOB: XXXXX	Submitted: XXXXX

Laboratory ID	Agency Item	Analysis Requested	Evidence Description
B9 -XXXXA-002		Blood Alcohol Concentration	Whole Blood

Date of Analysis:			
Requested Analysis	Results	Units	
Blood Alcohol Concentration (BAC)	± UM	grams of ethyl alcohol/100 milliliters of whole blood	

Alexandra E. Easley, PhD	Date	Kelly L. Wouters, PhD	Date
Senior Analyst		Laboratory Director	
Texas Forensic Analyst License #0001414		Texas Forensic Analyst License #0000008	
ANAB, Certificate ALI-037-T		Fellow, American Board of Criminalistics	

Evaluations for ethyl alcohol are done by heated dual column head-space gas chromatography in duplicate. Quantitative results are reported as Result +/- Uncertainty of Measurement (UM). The ethyl alcohol results are reported at a coverage probability 99.73%.

Armstrong Forensic Laboratory, Inc. (Armstrong) is accredited through ANAB and the Texas Forensic Science Commission for criminal casework in the disciplines of Controlled Substances; Toxicology in the category of Blood Alcohol; and Trace Evidence in the categories of Paint, Fibers & Textiles, Fire Debris, and General Physical & Chemical Analysis. Unless noted otherwise, all work performed on this case was in accordance with these requirements and Armstrong's standard operating procedures.



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: April 5, 2021

FROM: Wendell Mitchell, Assistant Police Chief

ITEM: Consider approval of the Axon Enterprise, Inc. Master Service Agreement, for the acquisition of in car video camera products and storage; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The use of in-car cameras by law enforcement agencies is a best practice and proven to be an effective tool for law enforcement to collect valuable evidence, enhance officer training, improve transparency and building greater community trust, as well as reduce frivolous complaints against officers for several decades. In June of 2019, the Flower Mound Police Department acquired and began deploying Axon Enterprise, Inc. fleet in-car cameras following field trial to determine if they would be an alternative to begin replacing our current in-car systems, WatchGuard Video, as those units come due for replacement. The trial of Axon's in-car camera found it was a well-designed replacement that provided functionality for patrol officers and a more efficient an effective administrative software and data management solution for our property technicians. The purchase of these 6 units will replace 6 WatchGuard units that are being retired.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Although the use of in-car cameras is commonplace and a best practice for police agencies it is not required by statute, so the department could operate without them. Alternatively, we could remain with our current vendor, running two separate platforms.

FISCAL IMPACT: The fiscal impact over the 3-year term is \$22,734

Proposed Expenditure/(Revenue):

\$8,478.00

Account Number(s):

100-640-43500-5020

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

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

ATTACHMENTS:

1. Axon Master Services Purchasing Agreement
2. Axon Quote

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



Master Services and Purchasing Agreement

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc., a Delaware corporation ("**Axon**"), and the agency on the Quote ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement act as a master agreement governing all subsequent purchases by Agency for the same Axon products and services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties therefore agree as follows:

1 **Definitions.**

"**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Evidence.com and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.

"**Axon Device**" means all hardware provided by Axon under this Agreement.

"**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.

"**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2 **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin after shipment of the applicable Axon Device. If Axon ships the Axon Device in the first half of the month, the start date is the 1st of the following month. If Axon ships the Axon Device in the second half of the month, the start date is the 15th of the following month. For purchases solely of Axon Evidence subscriptions, the start date is the Effective Date. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").

Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3 **Payment.** Axon invoices upon shipment. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4 **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5 **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are FOB shipping point via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6 **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.



Master Services and Purchasing Agreement

7 Warranty.

7.1 Hardware Limited Warranty. Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm, which Axon warrants for 30 months from the date of Agency's receipt. Axon warrants its Axon-manufactured accessories for 90-days from the date of Agency's receipt. Used conducted energy weapon ("CEW") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. Non-Axon manufactured Devices are not covered by Axon's warranty. Agency should contact the manufacturer for support of non-Axon manufactured Devices.

7.2 Claims. If Axon receives a valid warranty claim for an Axon manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Device with the same or like Device, at Axon's option. A replacement Axon Device will be new or like new. Axon will warrant the replacement Axon Device for the longer of (a) the remaining warranty of the original Axon Device or (b) 90-days from the date of repair or replacement.

If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering a Axon Device for service, Agency must upload Axon Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon Device sent to Axon for service.

7.3 Spare Axon Devices. For qualified purchases, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose. .

7.4 Limitations. Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number.

7.4.1 To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.

7.4.2 Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the 12 months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.

8 Statement of Work. Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9 Axon Device Warnings. See www.axon.com/legal for the most current Axon Device warnings.



Master Services and Purchasing Agreement

- 10 Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
- 11 Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
- 12 Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
- 13 Indemnification.** Axon will indemnify Agency's officers, directors, and employees ("**Agency Indemnitees**") against all claims, demands, losses, and reasonable expenses arising out of a third-party claim against an Agency Indemnitee resulting from any negligent act, error or omission, or willful misconduct by Axon under this Agreement, except to the extent of Agency's negligence or willful misconduct, or claims under workers compensation.
- 14 IP Rights.** Axon owns and reserves all right, title, and interest in Axon devices and services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
- 15 IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
- 16 Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; and (c) a dispute between Agency and a third-party over Agency's use of Axon Devices.
- 17 Termination.**
- 17.1 For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
- 17.2 By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
- 17.3 Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
- 18 Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be



Master Services and Purchasing Agreement

understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5-years thereafter. Axon pricing is Confidential Information and competition sensitive. If Agency is required by law to disclose Axon pricing, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

19 General.

19.1 Force Majeure. Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.

19.2 Independent Contractors. The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

19.3 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

19.4 Non-Discrimination. Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.

19.5 Export Compliance. Each Party will comply with all import and export control laws and regulations.

19.6 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.

19.7 Waiver. No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.

19.8 Severability. If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.

19.9 Survival. The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.

19.10 Governing Law. The laws of the state where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

19.11 Notices. All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Contact information for notices:

Axon: Axon Enterprise, Inc.
Attn: Legal
17800 N. 85th Street
Scottsdale, Arizona 85255
legal@axon.com

Agency:
Attn:
Street Address
City, State, Zip
Email

19.12 Entire Agreement. This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or

understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each representative identified below declares they have been expressly authorized to execute this Agreement as of the date of signature.

Axon Enterprise, Inc.

Agency

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



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Axon Cloud Services Terms of Use Appendix

1 **Definitions.**

“Agency Content” is data uploaded into, ingested by, or created in Axon Cloud Services within Agency’s tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.

“Evidence” is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.

“Non-Content Data” is data, configuration, and usage information about Agency’s Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.

“Personal Data” means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- 2 **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data (**“TASER Data”**). Agency may not upload non-TASER Data to Axon Evidence Lite.

- 3 **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content are not business records of Axon. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will have limited access to Agency Content solely for providing and supporting Axon Cloud Services to Agency and Agency end users.

- 4 **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

- 5 **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user’s use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user’s access to Axon Cloud Services.

Agency will also maintain the security of end user names and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency’s account or Agency Content, or if account information is lost or stolen.

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Department: Legal

Version: 12.0

Release Date: 12/18/2020

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To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

- 6 **Privacy.** Axon will not disclose Agency Content or information about Agency except as compelled by a court or administrative body or required by law or regulation. If Axon receives a disclosure request for Agency Content, Axon will give Agency notice, unless legally prohibited from doing so, to allow Agency to file an objection with the court or administrative body. Agency agrees to allow Axon access to certain information from Agency to (a) perform troubleshooting services upon request or as part of regular diagnostic screening; (b) enforce this Agreement or policies governing the use of Axon Evidence; or (c) perform analytic and diagnostic evaluations of the systems.
- 7 **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
- 8 **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- 9 **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
- 10 **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent.

Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
- 11 **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
- 12 **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.

An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and



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functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.

New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.

- 13 Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 13.1** copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - 13.2** reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - 13.3** access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 13.4** use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - 13.5** access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - 13.6** remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - 13.7** use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.
- 14 After Termination.** Axon will not delete Agency Content for 90-days following termination. There will be no functionality of Axon Cloud Services during these 90-days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these 90-days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
- 15 Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
- 16 U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
- 17 Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



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Professional Services Appendix

- 1 **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.

- 2 **Body-Worn Camera Full Service (BWC Full Service).** BWC Full Service includes advance remote project planning and configuration support and up to 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, Agency must purchase additional days. BWC Full Service options include:

System set up and configuration - Instructor-led setup of Axon View on smartphones (if applicable) - Configure categories and custom roles based on Agency need - Register cameras to Agency domain - Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access - One on-site session included
Dock configuration - Work with Agency to decide the ideal location of Docks and set configurations on Dock - Authenticate Dock with Axon Evidence using admin credentials from Agency - On-site assistance, not to include physical mounting of docks
Best practice implementation planning session - Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies - Discuss the importance of entering metadata in the field for organization purposes and other best practice for digital data management - Provide referrals of other agencies using the Axon camera devices and Axon Evidence - Recommend rollout plan based on review of shift schedules
System Admin and troubleshooting training sessions Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon instructor training (Train the Trainer) Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations
Evidence sharing training Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies
End user go-live training and support sessions - Assistance with device set up and configuration - Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide
Post go-live review

- 3 **Body-Worn Camera Starter Service (BWC Starter).** BWC Starter includes advance remote project planning and configuration support and one day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency requires more than 1 day of on-site Services, Agency must purchase additional on-site Services. The BWC Starter options include:



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System set up and configuration (Remote Support) • Instructor-led setup of Axon View on smartphones (if applicable) • Configure categories & custom roles based on Agency need • Troubleshoot IT issues with Axon Evidence and Axon Dock (“Dock”) access
Dock configuration • Work with Agency to decide the ideal location of Dock setup and set configurations on Dock • Authenticate Dock with Axon Evidence using “Administrator” credentials from Agency • Does not include physical mounting of docks
Axon instructor training (Train the Trainer) Training for Agency’s in-house instructors who can support Agency’s Axon camera and Axon Evidence training needs after Axon’s has fulfilled its contracted on-site obligations
End user go-live training and support sessions • Assistance with device set up and configuration • Training on device use, Axon Evidence, and Evidence Sync
Implementation document packet Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

- 4 **Body-Worn Camera Virtual 1-Day Service (BWC Virtual)**. BWC Virtual includes all items in the BWC Starter Service Package, except one day of on-site services.

- 5 **CEW Services Packages**. CEW Services Packages are detailed below:

System set up and configuration • Configure Axon Evidence categories & custom roles based on Agency need. • Troubleshoot IT issues with Axon Evidence. • Register users and assign roles in Axon Evidence. • For the CEW Full Service Package: On-site assistance included • For the CEW Starter Package: Virtual assistance included
Dedicated Project Manager Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout
Best practice implementation planning session to include: • Provide considerations for the establishment of CEW policy and system operations best practices based on Axon’s observations with other agencies • Discuss the importance of entering metadata and best practices for digital data management • Provide referrals to other agencies using TASER CEWs and Axon Evidence • For the CEW Full Service Package: On-site assistance included • For the CEW Starter Package: Virtual assistance included
System Admin and troubleshooting training sessions On-site sessions providing a step-by-step explanation and assistance for Agency’s configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence
Axon Evidence Instructor training • Provide training on the Axon Evidence to educate instructors who can support Agency’s subsequent Axon Evidence training needs. • For the CEW Full Service Package: Training for up to 3 individuals at Agency • For the CEW Starter Package: Training for up to 1 individual at Agency



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TASER CEW inspection and device assignment

Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.

Post go-live review

For the CEW Full Service Package: On-site assistance included.

For the CEW Starter Package: Virtual assistance included.

6 Smart Weapon Transition Service. The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs

Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.

Return of Old Weapons

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.

Axon will provide Agency with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7 Signal Sidearm Installation Service. If Agency purchases Signal Sidearm Installation Service, Axon will provide one day of on-site Services and one professional services manager and will cover the installation of up to 100 Signal Sidearm devices per package purchased. Agency is responsible for providing an appropriate work area and ensuring all holsters that will have Signal Sidearm installed onto them are available on the agreed-upon installation date(s). Installation includes:

Removal of existing connection screws that affix a holster to a holster mount
Proper placement of the Signal Sidearm Mounting Plate between the holster and the mount
Reattachment of the holster to the mount using appropriate screws
Functional testing of Signal Sidearm device

8 Out of Scope Services. Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

9 Delivery of Services. Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.

10 Access Computer Systems to Perform Services. Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.

11 Site Preparation. Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it. If Axon



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modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it

- 12** **Acceptance.** When Axon completes professional Services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.
- 13** **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



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Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

- 1 **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the 1-year Hardware Limited Warranty.
- 2 **Officer Safety Plan.** If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
- 3 **OSP 7 Term.** OSP 7 begins after Axon ships the Axon Body 3 or TASER 7 hardware to Agency. If Axon ships in the first half of the month, OSP 7 starts the 1st of the following month. If Axon ships in the second half of the month, OSP 7 starts the 15th of the following month ("**OSP 7 Term**").
- 4 **TAP BWC Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("**BWC Upgrade**") as scheduled in the Quote. If Agency purchased TAP Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
- 5 **TAP Dock Upgrade.** If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("**Dock Upgrade**"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
- 6 **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least 90 days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote 60 days before the end of the Subscription Term without prior confirmation from Agency.
- 7 **Upgrade Change.** If Agency wants to change Axon Device models for the offered BWC or Dock Upgrade, Agency must pay the price difference between the MSRP for the offered BWC or Dock Upgrade and the MSRP for the model desired. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
- 8 **Return of Original Axon Device.** Within 30 days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
- 9 **Termination.** If Agency's payment for TAP, OSP, or Axon Evidence is more than 30 days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1 TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2 Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3 Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.



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TASER 7 Appendix

This TASER 7 Appendix applies to Agency's TASER 7, OSP 7, or OSP 7 Plus purchase from Axon.

- 1 **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
- 2 **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
- 3 **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer's warranty plus the 4-year extended term.
- 4 **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

Agency Size	Days to Return from Start Date of TASER 7 Subscription
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

- 5 **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.
- 6 **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not upload any non-TASER 7 data or any other files to Axon Evidence. Agency may not exceed the number of end users than the Quote specifies.
- 7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body. Agency acknowledges and agrees that Axon may access Agency Content to: (a) perform troubleshooting services upon request or as part of Axon's maintenance or diagnostic screenings; (b) enforce this Agreement or policies governing use of Axon Evidence; (c) generate aggregated data, excluding information that can be used to distinguish



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or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (collectively, "**PII**"), to improve, analyze, support, and operate Axon's current and future devices and services.

- 8** **Termination.** If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:
- 8.1** TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.
 - 8.2** Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.
 - 8.3** Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.



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Axon Auto-Tagging Appendix

- 1 **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("CAD") or Records Management Systems ("RMS"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
- 2 **Support.** For thirty days after completing Auto-Tagging Services, Axon will provide up to 5 hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, so long as long as Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
- 3 **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
- 4 **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 4.1 Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 4.2 Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 4.3 Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 4.4 Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 4.5 Promptly install and implement any software updates provided by Axon;
 - 4.6 Ensure that all appropriate data backups are performed;
 - 4.7 Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 4.8 Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 4.9 Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 4.10 Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
- 5 **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.



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Axon Fleet Appendix

- 1 **Agency Responsibilities.** Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "Axon Fleet") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
- 2 **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
- 3 **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
- 4 **Wireless Offload Server.**
 - 4.1 **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("WOS"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
 - 4.2 **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
 - 4.3 **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("WOS Updates") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
 - 4.4 **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
- 5 **Axon Vehicle Software.**
 - 5.1 **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "Axon Vehicle Software"). "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
 - 5.2 **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.



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- 6 **Axon Fleet Upgrade.** If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("Fleet Upgrade") as schedule on the Quote.

If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.

Within 30 days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.

- 7 **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body. Agency acknowledges and agrees that Axon may access Agency Content to: (a) perform troubleshooting services upon request or as part of Axon's maintenance or diagnostic screenings; (b) enforce this Agreement or policies governing use of Axon Evidence; (c) generate aggregated data, excluding information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual (collectively, "**PII**"), to improve, analyze, support, and operate Axon's current and future devices and services.

- 8 **Axon Fleet Termination.** Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:

- 8.1 Axon Fleet subscription coverage terminates, and no refunds will be given.
- 8.2 Axon will not and has no obligation to provide the Axon Fleet Upgrade.
- 8.3 Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



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Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus.

- 1 **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency.

If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date.

The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.

- 2 **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.

- 3 **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.

- 4 **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.

- 5 **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.

With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.

- 6 **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Aware services, including any Axon-provided LTE service.



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Add-on Services Appendix

This Appendix applies to Axon Citizen for Communities, Axon Redaction Assistant, and Axon Performance.

- 1 **Subscription Term.** If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.

If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.

The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.

- 2 **Axon Citizen Storage.** For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal (“**Portal Content**”), within Agency’s Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.

- 3 **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency’s CAD or RMS.



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Axon Auto-Transcribe Appendix

This Appendix applies to Axon Auto-Transcribe.

- 1) **Subscription Term.** If Agency purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Agency. If Agency purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Agency.

Axon Auto-Transcribe minutes expire one year after being provisioned to Agency by Axon.

If Agency cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.

- 2) **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Agency a set number of minutes, Agency may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Agency will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Agency additional fees for exceeding the number of purchased minutes.
- 3) **Axon Auto-Transcribe On-Demand.** Upon Axon granting Agency an On-Demand subscription to Axon Auto-Transcribe, Agency may utilize Axon Auto-Transcribe with no limit on the number of minutes. The scope of Axon Auto-Transcribe On-Demand is to assist Agency with reviewing and transcribing individual evidence items. In the event Agency uses Axon Auto-Transcribe On-Demand outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Auto-Transcribe On-Demand to better meet Agency's needs.
- 4) **Warranty.** Axon does not warrant the accuracy of Axon Auto-Transcribe.



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Axon Virtual Reality Content Terms of Use Appendix

- 1 **Term.** The Quote will detail the duration of the Virtual Reality Content license.
- 2 **Headsets.** Agency may purchase additional virtual reality headsets from Axon. In the event Agency decides to purchase additional virtual reality headsets for use with Axon's Virtual Reality Content, Agency must purchase those headsets from Axon.
- 3 **License Restrictions.** All licenses will immediately terminate if Agency does not comply with any term of this Agreement. If Agency utilizes more users than stated in this Agreement, Agency must purchase additional Virtual Reality Content licenses from Axon. Agency may not use Virtual Reality Content for any purpose other than as expressly permitted by this Agreement. Agency may not:
 - 3.1 modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Content;
 - 3.2 reverse engineer, disassemble, or decompile Virtual Reality Content or apply any process to derive the source code of Virtual Reality Content, or allow others to do the same;
 - 3.3 copy Virtual Reality Content in whole or part, except as expressly permitted in this Agreement;
 - 3.4 use trade secret information contained in Virtual Reality Content;
 - 3.5 resell, rent, loan or sublicense Virtual Reality Content;
 - 3.6 access Virtual Reality Content to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Content; or
 - 3.7 remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Content or any copies of Virtual Reality Content.
- 4 **Termination.** Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement.



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Flock Software Terms of Use Appendix

1 **Definitions.**

"Aggregated Data" means information that relates to a group or category of customers, from which individual customer identities have been removed, that is not linked or reasonably linkable to any customer, including via a device.

"Authorized End User" shall mean any individual employees, agents, or contractors of Customer accessing or using the Flock Services through the Web Interface, under the rights granted to Customer pursuant to this Agreement.

"Customer" will mean the Customer.

"Customer Data" will mean the data, media and content provided by Customer through the Flock Services. For the avoidance of doubt, the Customer Data will include the Footage and geolocation information and environmental data collected by sensors built into the Units.

"Documentation" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Flock Services which are provided by Flock to Customer in accordance with the terms of this Agreement.

"Embedded Software" will mean the software and/or firmware embedded or preinstalled on the Flock Hardware.

"Flock IP" will mean the Flock Services, the Documentation, the Flock Hardware, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Customer and/or its Authorized End Users in connection with the foregoing.

"Flock Hardware" shall mean the Flock Gate Cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term "Flock Hardware" excludes the Embedded Software.

"Flock Services" means the provision, via the Web Interface, of Flock's software application for automatic license plate detection, searching image records, and sharing Footage.

"Flock System" means collectively, the Flock Hardware, Embedded Software, and Flock Services.

"Footage" means still images and/or video captured by the Flock Hardware in the course of and provided via the Flock Services.

"Non-Customer End User" means a Flock customer that has elected to give Customer access to its data in the Flock System.

"Non-Customer End User Data" means the Footage, geolocation data, environmental data and/or notifications of a Non-Customer End User.

"Unit(s)" shall mean the Flock Hardware together with the Embedded Software.

"Web Interface" means the website(s) or application(s) through which Customer and its Authorized End Users can access the Flock Services in accordance with the terms of this Agreement.

2 **Flock Services.**

2.1 Provision of Access. Subject to the terms of this Agreement, Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of



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the Flock Services via the Web Interface during the term of Customer's agreement, solely for the Authorized End Users. The Footage will be available for Customer to access via the Web Interface for 30 days. Authorized End Users will be required to sign up for an account, and select a password and username ("User ID"). Flock will also provide Customer the Documentation to be used in accessing and using the Flock Services. Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Flock Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, including without limitation using a third party to host the Web Interface which make the Flock Services available to Customer and Authorized End Users. Customer agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Customer from time to time.

- 2.2 Embedded Software License.** Subject to all terms of this Agreement, Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Flock Hardware by Flock; in each case, solely as necessary for Customer to use the Flock Services.
- 2.3 Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Customer a non-exclusive, non-transferable right and license to use the Documentation during the Service Term for Customer's internal purposes in connection with its use of the Flock Services as contemplated herein.
- 2.4 Usage Restrictions.** Customer will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (vi) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Application IP; (vii) use the Flock Services for timesharing or service bureau purposes or otherwise for the benefit of a third party or any purpose other than the Purpose; or (viii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under Sections 2.1, 2.2, or 2.3.
- 2.5 Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.
- 2.6 Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on



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any of the Flock IP; (b) Customer's or any Authorized End User's use of the Flock Service disrupts or poses a security risk to the Flock Service or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Flock Services to Customer or any Authorized End User is prohibited by applicable law; or (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Customer to access the Flock (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Customer (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Application Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will extend the Customer's term by the duration of any suspension (for any continuous suspension lasting at least one full day) where the service suspension is not caused by the direct Customer's actions or by the actions of parties associated with the Customer. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Customer or any Authorized End User may incur as a result of a Service Suspension.

3 Installation Services.

3.1 Designated Locations. Prior to performing the physical installation of the Units, Flock shall advise Customer on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. While Flock will provide advice regarding the location of positioning of such Units, Customer will have the ultimate decision regarding the location, position, and angle of the Units (each Unit location so designated by Customer, a "**Designated Location**"). Due to the fact that Customer selects the Designated Location, Flock shall have no liability to Customer resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations, or delay in installation due to Customer's delay in identifying the choices for the Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready. Designated Locations that are suggested by Flock and accepted by Customer without alteration will be known as Flock Designated Locations. After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan ("**Reinstalls**") driven by Customer's request will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like

3.2 Customer's Installation Obligations. Customer agrees to allow Flock and its agents reasonable access to the designated installation locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. The "Customer Installation Obligations" include, to the extent required by the Deployment Plan, but are not limited to electrical work to provide a reliable source of 120V AC power that follow Flock guidelines and comply with local regulations if adequate solar exposure is not available. Customer is solely responsible for (i) any permits or associated costs, and managing the permitting process; (ii) any permits or associated costs, any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Flock Hardware, its use, or any other services performed in connection therewith and that Customer shall be solely responsible for the



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foregoing. Customer represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

- 3.3 Flock's Installation Obligations.** The Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time the Designated Locations are selected by Customer. Following the initial installation of the Flock Hardware, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units, and receive access to the Footage for a period of 3 business days for maintenance purposes. Customer can opt out of Flock's access in the preceding sentence, which would waive Flock's responsibility to ensure such action was successful. Customer understands and agrees that the Flock Services will not function without the Flock Hardware.
- 3.4 Theft and Damage.** Flock agrees to replace the Flock Hardware up to 1 time during the Term, at no cost to Customer, in the event of theft or damage. Subsequent replacement due to damage or theft will be at Customer's own expense, at a replacement cost of \$300 per camera. Customer shall not be required to replace subsequently damaged or stolen units; however, Customer understands and agrees that functionality, including Footage, will be materially affected due to such subsequently damaged or stolen units and that Flock will have no liability to Customer regarding such affected functionality nor shall the Fees owed be impacted.
- 3.5 Security Interest.** The Flock Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of Customer's Agreement. Customer agrees to perform all acts which may be necessary to assure the retention of title of the Flock Hardware by Flock. Should Customer default in any payment for the Flock Services or any part thereof or offer to sell or auction the Flock Hardware, then Customer authorizes and empowers Flock to remove the Flock Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.
- 3.6 Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Customer and shall be paid promptly upon billing.

- 4 Customer Representations and Warranties.** Customer represents, covenants, and warrants that Customer will use the Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content and retention thereof. Customer hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses, including without limitation costs and attorneys' fees, in connection with any claim or action that arises from an alleged violation of the foregoing, Customer's Installation Obligations, or otherwise from Customer's use of the Services, Hardware and any Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Customer's use of the Services, Flock may do so and may prohibit any use of the Services it

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believes may be (or alleged to be) in violation of the foregoing

5 **Data, Feedback; Aggregated Statistics.**

5.1 Customer and Non-Customer End User Data. As between Flock and Customer, all right, title and interest in the Customer Data and Non-Customer End User Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Customer Data and Non-Customer End User Data and perform all acts with respect to the Customer Data and Non-Customer End User Data as may be necessary for Flock to provide the Flock Services to Customer, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Customer Data and Non-Customer End User Data as a part of the Aggregated Data (as defined in Section 5.3 below). This Agreement does not by itself make any Non-Customer End User Data the sole property or the Proprietary Information of Customer. Flock will automatically delete Footage older than 30 days. Customer has a 30-day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

5.2 Feedback. If Customer provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Customer hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

5.3 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Customer or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Flock Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom). Customer acknowledges that Flock will be compiling Aggregated Data based on Customer Data and Non-Customer End User Data input into the Flock Services. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to use and distribute such Aggregated Data to improve and enhance the Services and for other marketing, development, diagnostic and corrective purposes in connection with the Flock Services and other Flock offerings. No rights or licenses are granted except as expressly set forth herein.

6 Fees and Term. The initial term of the Flock Services shall be for the time period set forth on the Quote ("**Initial Flock Term**"). Following the Initial Flock Term, this Agreement will automatically renew for successive renewal terms of the length set forth on the Quote (each, a "**Flock Renewal Term**", and together with the Initial Flock Term, the "**Service Term**") unless either Party gives the other Party notice of non-renewal at least 30 days prior to the end of the then-current Service Term. The Service Term begins when all Flock Hardware is installed and has been validated as operational by Flock.

7 **Remedy; Warranty; and Disclaimer.**

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a "**Defect**"), Customer must first make commercially reasonable efforts to address the problem by contacting Flock's technical support. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to, in its sole discretion, repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit; provided that such inspection and test shall occur within 72 hours after Customer notifies the Flock of defect. Except for cameras owned by Customer, Flock agrees to replace cameras at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer shall not be required

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to replace subsequently damaged or stolen units; however, Customer understands and agrees that functionality, including Footage, will be materially affected due to such subsequently damaged or stolen units and that Flock will have no liability to Customer regarding such affected functionality nor shall the Fees owed be impacted.

- 7.2 Exclusions.** Flock will not provide the remedy described in Section 6.1 above if any of the following exclusions apply: (a) misuse of the Flock Hardware or Embedded Software in any manner, including operation of the Flock Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Flock Hardware or Embedded Software in any way; or (c) combination of the Flock Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.
- 7.3 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Flock Services. Flock Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.
- 7.4 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 6.1 ABOVE IS CUSTOMER'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE FLOCK HARDWARE AND/OR EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE FLOCK SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE FLOCK SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE FLOCK SERVICES AND INSTALLATION SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 7.5 Insurance.** Flock and Customer will each maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of their business risk. Certificates of Insurance will be provided upon request.

8 Limitation of Liability and Indemnity.

- 8.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL FLOCK HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER

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CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE FLOCK SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, CUSTOMER SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE FLOCK SERVICES.

- 8.2 Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Customer will not pursue any claims or actions against Flock's suppliers.
- 8.3 Indemnity.** Customer hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of Section 3, a breach of this Agreement, Customer's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Customer End Users, or otherwise from Customer's use of the Flock Services, Flock Hardware and any Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Customer's use of the Flock Services, Flock may do so and may prohibit any use of the Flock Services it believes may be (or alleged to be) in violation of the Section 3 or this Agreement.
- 9 Data Preservation.** The Customer agrees to store Customer Data and Non-Customer End User Data in compliance with all applicable local, state, and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Customer's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to store the Customer Data or the Non-Customer End User Data, Customer agrees to preserve and securely store this data on Flock's behalf so that Flock can delete the data from its servers and, should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Customer upon demand.
- 10 Publicity.** Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Flock Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.
- 11 Export.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in FAR section 2.101, the Flock Services, the Flock Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.



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Axon Commander™ Software Appendix

- 5 **License.** Axon owns all executable instructions, images, icons, sound, and text in Commander. All rights are reserved to Axon. Axon grants a non-exclusive, royalty-free, worldwide right and license to use Commander. "Use" means storing, loading, installing, or executing Commander exclusively for data communication with an Axon Device. Agency may use Commander in a networked environment on computers other than the computer it installs Commander on, so long as each execution of Commander is for data communication with an Axon Device. Agency may make copies of Commander for archival purposes only. Agency shall retain all copyright, trademark, and proprietary notices in Commander on all copies or adaptations.
- 6 **Term.** The Quote will detail the duration of the Commander license, as well as any maintenance. The term will begin upon installation of Commander by Axon.
- 7 **License Restrictions.** All licenses will immediately terminate if Agency does not comply with any term of this Agreement. Agency may not use Commander for any purpose other than as expressly permitted by this Agreement. Agency may not:
 - 7.1 modify, tamper with, repair, or otherwise create derivative works of Commander;
 - 7.2 reverse engineer, disassemble, or decompile Commander or apply any process to derive the source code of Commander, or allow others to do the same;
 - 7.3 access or use Commander to avoid incurring fees or exceeding usage limits or quotas;
 - 7.4 copy Commander in whole or part, except as expressly permitted in this Agreement;
 - 7.5 use trade secret information contained in Commander;
 - 7.6 resell, rent, loan or sublicense Commander;
 - 7.7 access Commander to build a competitive device or service or copy any features, functions, or graphics of Commander; or
 - 7.8 remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Commander or any copies of Commander.
- 8 **Support.** Axon may make available updates and error corrections ("**Updates**") to Commander. Axon will provide Updates electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate access to the Internet to receive Updates. Agency is responsible for maintaining the computer equipment necessary to use Commander. Axon may provide technical support of a prior release/version of Commander for 6 months from when Axon made the subsequent release/version available.
- 9 **Termination.** Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement. Upon termination, Axon may disable Agency's right to login to Axon Commander.



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Axon Application Programming Interface Appendix

- 1 **Definitions.**

"API Client" means the software that acts as the interface between Agency's computer and the server, which is already developed or to be developed by Agency.

"API Interface" means software implemented by Agency to configure Agency's independent API Client Software to operate in conjunction with the API Service for Agency's authorized Use.

"Axon Evidence Partner API, API or AXON API" (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Agency's Axon Evidence account or integrate Agency's Axon Evidence account with other systems.

"Use" means any operation on Agency's data enabled by the supported API functionality.
- 2 **Purpose and License.**
 - 2.1 Agency may use API Service and data made available through API Service, in connection with an API Client developed by Agency. Axon may monitor Agency's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Agency agrees to not interfere with such monitoring or obscure from Axon Agency's use of API Service. Agency will not use API Service for commercial use.
 - 2.2 Axon grants Agency a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Agency's Use in connection with Agency's API Client.
 - 2.3 Axon reserves the right to set limitations on Agency's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.
- 3 **Configuration.** Agency will work independently to configure Agency's API Client with API Service for Agency's applicable Use. Agency will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Agency will inform Axon promptly of any updates. Upon Agency's registration, Axon will provide documentation outlining API Service information.
- 4 **Agency Responsibilities.** When using API Service, Agency and its end users may not:
 - 4.1 use API Service in any way other than as expressly permitted under this Agreement;
 - 4.2 use in any way that results in, or could result in, any security breach to Axon;
 - 4.3 perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
 - 4.4 interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
 - 4.5 reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
 - 4.6 create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
 - 4.7 provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
 - 4.8 frame or mirror API Service on any other server, or wireless or Internet-based device;
 - 4.9 make available to a third-party, any token, key, password or other login credentials to API Service;
 - 4.10 take any action or inaction resulting in illegal, unauthorized or improper purposes; or disclose Axon's API manual.
- 5 **API Content.** All content related to API Service, other than Agency Content or Agency's API Client



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content, is considered Axon's API Content, including:

- 5.1 the design, structure and naming of API Service fields in all responses and requests;
- 5.2 the resources available within API Service for which Agency takes actions on, such as evidence, cases, users, or reports; and
- 5.3 the structure of and relationship of API Service resources; and
- 5.4 the design of API Service, in any part or as a whole.

6 Prohibitions on API Content. Neither Agency nor its end users will use API content returned from the API Interface to:

- 6.1 scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
- 6.2 copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
- 6.3 misrepresent the source or ownership; or
- 6.4 remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).

7 API Updates. Axon may update or modify the API Service from time to time ("**API Update**"). Agency is required to implement and use the most current version of API Service and to make any applicable changes to Agency's API Client required as a result of such API Update. API Updates may adversely affect how Agency's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Agency to update API Client to the most current version of API Service. Axon will provide support for 1 year following the release of an API Update for all depreciated API Service versions.



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Advanced User Management Appendix

- 1 **Scope.** Advanced User Management allows Agency to (a) utilize bulk user creation and management, (b) automate user creation and management through System for Cross-domain Identity Management (“**SCIM**”), and (c) automate group creation and management through SCIM.
- 2 **Advanced User Management Configuration.** Agency will work independently to configure Agency’s Advanced User Management for Agency’s applicable Use. Upon request, Axon will provide general guidance to Agency, including documentation that details the setup and configuration process.



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Axon Channel Services Appendix

- 1 **Definitions.**

“Axon Digital Evidence Management System” means Axon Evidence or Axon Commander, as specified in the attached Channel Services Statement of Work.

“Active Channel” means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.

“Inactive Channel” means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.
- 2 **Scope.** Agency currently has a third-party system or data repository from which Agency desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Agency's third-party data into an Axon Digital Evidence Management System or the transfer of Agency data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work (**“Channel Services SOW”**). Channel Services will not delete any Agency Content. Agency is responsible for verifying all necessary data is migrated correctly and retained per Agency policy.
- 3 **Purpose and Use.** Agency is responsible for verifying Agency has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Agency is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Agency's network and systems to perform the Services described in the Channel Services SOW. Agency is responsible for facilitating this access per all laws and policies applicable to Agency.
- 4 **Project Management.** Axon will assign a Project Manager to work closely with Agency's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
- 5 **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.
- 6 **Monitoring.** Axon may monitor Agency's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure from Axon Agency's use of channel services.
- 7 **Agency's Responsibilities.** Axon's successful performance of the Channel Services requires Agency:
 - 7.1 Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);
 - 7.2 Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Agency (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Agency premises with laptop personal computers and any other materials needed to perform the Channel Services);
 - 7.3 Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;
 - 7.4 Ensure all appropriate data backups are performed;
 - 7.5 Provide Axon with remote access to the Agency's network and third-party systems when required for Axon to perform the Channel Services;
 - 7.6 Notify Axon of any network or machine maintenance that may impact the performance of

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- the Channel Services; and
- 7.7** Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators, and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).



Master Services and Purchasing Agreement

VIEVU Data Migration Appendix

- 1 **Scope.** Agency currently has legacy data in the VIEVU Solution from which Agency desires to move to Axon Evidence. Axon will work with Agency to copy legacy data from the VIEVU solution into Axon Evidence ("**Migration**"). Before Migration, Agency and Axon will work together to develop a Statement of Work ("**Migration SOW**") to detail all deliverables and responsibilities. The Migration will require the availability of Agency resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Agency's request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon's resource availability.

A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Agency. The Migration SOW will provide further detail.

- 2 **Changes.** Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
- 3 **Project Management.** Axon will assign a Project Manager to work closely with Agency's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
- 4 **Downtime.** There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Agency is migrating. Axon will work with Agency to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.
- 5 **Functionality Changes.** Due to device differences between the VIEVU solution and the Axon's Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration.
- 6 **Acceptance.** Once the Migration is complete, Axon will notify Agency and an acceptance form. Agency is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Agency policy. Agency will have 90 days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.

In the event Agency does not accept the Migration, Agency agrees to notify the Axon within a reasonable time. Agency also agrees to allow Axon a reasonable time to resolve any issue. In the event Agency does not provide the Axon written rejection of the Migration during these 90 days, Agency may be charged for additional monthly storage costs. After Agency provides acceptance of the Migration, the Axon will delete all data from the VIEVU solution 90 days after the Migration.

- 7 **Post-Migration.** After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Agency elects to maintain data within the VIEVU solution, Axon will provide Agency 90 days' notice before ending support for the VIEVU solution.
- 8 **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.
- 9 **Monitoring.** Axon may monitor Agency's use of Migration to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure from Axon Agency's use of Migration.

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Axon Support Engineer Appendix

- 1 **Axon Support Engineer Payment.** Axon will invoice for Axon Support Engineer (“**ASE**”) services, as outlined in the Quote, when the Axon Support Engineer commences work on-site at Agency.
- 2 **Full-Time ASE Scope of Services.**
 - 2.1 A Full-Time ASE will work on-site four (4) days per week.
 - 2.2 Agency’s Axon sales representative and Axon’s Agency Success team will work with Agency to define its support needs and ensure the Full-Time ASE has skills to align with those needs. There may be up to a 6-month waiting period before the Full-Time ASE can work on-site, depending upon Agency’s needs and availability of a Full-Time ASE.
 - 2.3 The purchase of Full-Time ASE Services includes 2 complimentary Axon Accelerate tickets per year of the Agreement, so long as the ASE has started work at Agency, and Agency is current on all payments for the Full-Time ASE Service.

The Full-Time ASE Service options are listed below:

Ongoing System Set-up and Configuration - Assisting with assigning cameras and registering docks - Maintaining Agency’s Axon Evidence account - Connecting Agency to “Early Access” programs for new devices
Account Maintenance - Conducting on-site training on new features and devices for Agency leadership team(s) - Thoroughly documenting issues and workflows and suggesting new workflows to improve the effectiveness of the Axon program - Conducting weekly meetings to cover current issues and program status
Data Analysis - Providing on-demand Axon usage data to identify trends and insights for improving daily workflows - Comparing Agency’s Axon usage and trends to peers to establish best practices - Proactively monitoring the health of Axon equipment and coordinating returns when needed
Direct Support - Providing on-site, tier 1 and tier 2 technical support for Axon devices - Proactively monitoring the health of Axon equipment - Creating and monitoring RMAs on-site - Providing Axon app support - Monitoring and testing new firmware and workflows before they are released to Agency’s production environment
Agency Advocacy - Coordinating bi-annual voice of customer meetings with Axon’s Device Management team - Recording and tracking Agency feature requests and major bugs

- 3 **Regional ASE Scope of Services**
 - 3.1 A Regional ASE will work on-site for 3 consecutive days per quarter. Agency must schedule the on-site days at least 2 weeks in advance. The Regional ASE will also be available by phone and email during regular business hours up to 8 hours per week.
 - 3.2 There may be up to a 6-month waiting period before Axon assigns a Regional ASE to Agency, depending upon the availability of a Regional ASE.
 - 3.3 The purchase of Regional ASE Services includes 2 complimentary Axon Accelerate tickets per year of the Agreement, so long as the ASE has started work at Agency and Agency is current on all payments for the Regional ASE Service.

The Regional ASE service options are listed below:



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Account Maintenance

- Conducting remote training on new features and devices for Agency's leadership
- Thoroughly documenting issues and workflows and suggesting new workflows to improve the effectiveness of the Axon program
- Conducting weekly conference calls to cover current issues and program status
- Visiting Agency quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Agency's goals for your Axon program, and continue to ensure a successful deployment of Axon devices

Direct Support

- Providing remote, tier 1 and tier 2 technical support for Axon devices
- Creating and monitoring RMAs remotely

Data Analysis

- Providing quarterly Axon usage data to identify trends and program efficiency opportunities
- Comparing an Agency's Axon usage and trends to peers to establish best practices
- Proactively monitoring the health of Axon equipment and coordinating returns when needed

Agency Advocacy

- Coordinating bi-yearly Voice of Agency meetings with Device Management team
- Recording and tracking Agency feature requests and major bugs

- 4 **Out of Scope Services.** The ASE is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.
- 5 **ASE Leave Time.** The ASE will be allowed up 7 days of sick leave and up to 15 days of vacation time per each calendar year. The ASE will work with Agency to coordinate any time off and will provide Agency with at least 2 weeks' notice before utilizing any vacation days.



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

Attachment 2

Q-280806-44256.735KP

Issued: 03/01/2021



Quote Expiration: 05/15/2021

Account Number: 157674

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

SALES REPRESENTATIVE

Kyle Panasewicz
Phone: (480) 905-2071
Email: kylep@axon.com
Fax: (480) 905-2071

PRIMARY CONTACT

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

SHIP TO

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

BILL TO

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

Year 1

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80216	FLEET 2 UNLIMITED 60 PAYMENT	6	6	594.00	594.00	3,564.00
80216	FLEET 2 UNLIMITED 60 PAYMENT	30	6	2,970.00	780.00	4,680.00
Hardware						
80214	FLEET EVIDENCE.COM UNLIMITED STORAGE	30	6	0.00	0.00	0.00
71088	AXON FLEET 2 KIT		6	0.00	0.00	0.00
74110	CABLE, CAT6 ETHERNET 25 FT, FLEET		6	15.00	0.00	0.00
80181	EXTENDED WARRANTY, 4 YEAR, FLEET 2 KIT		6	39.00	39.00	234.00
Other						
87050	FLEET VIEW XL ACCESS LICENSE	30	6	0.00	0.00	0.00
Subtotal						8,478.00
Estimated Shipping						0.00
Estimated Tax						0.00
Total						8,478.00

Year 2

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80216	FLEET 2 UNLIMITED 60 PAYMENT	12	6	1,188.00	1,188.00	7,128.00
					Subtotal	7,128.00
					Estimated Tax	0.00
					Total	7,128.00

Year 3

Item	Description	Term (Months)	Quantity	List Unit Price	Net Unit Price	Total (USD)
Axon Plans & Packages						
80216	FLEET 2 UNLIMITED 60 PAYMENT	12	6	1,188.00	1,188.00	7,128.00
					Subtotal	7,128.00
					Estimated Tax	0.00
					Total	7,128.00
					Grand Total	22,734.00



Discounts (USD)

Quote Expiration: 05/15/2021

List Amount	35,964.00
Discounts	13,230.00
Total	22,734.00

**Total excludes applicable taxes*

Summary of Payments

Payment	Amount (USD)
Year 1	8,478.00
Year 2	7,128.00
Year 3	7,128.00
Grand Total	22,734.00

STATEMENT OF WORK & CONFIGURATION DOCUMENT

Axon Fleet In-Car Recording Platform

This document details a proposed system design

Agency Created For: Flower Mound Police Dept. - TX

Quote: Q-280806-44256.735KP

Sold By:	Kyle Panasewicz
Designed By:	Jake Borro
Installed By:	Customer
Target Install Date:	

VEHICLE OVERVIEW

SITE NAME	CUSTOMER NAME
Headquarters	Flower Mound Police Dept. - TX
Total Configured Vehicles • 6 Total Vehicles with this Configuration Video Capture Sources • 12 Total Cameras Deployed • 1 Axon Signal Unit(s) Per Vehicle Mobile Data Terminal Per Vehicle • 1 Located In Each Vehicle Mobile Router Per Vehicle • 1 Cradlepoint IBR900-1200 Offload Mechanism • Wi-Fi Evidence Management System • Evidence.com  Axon Camera  Signal Unit  In-Car Router  Battery Box	

SYSTEM CONFIGURATION DETAILS

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

Vehicle Hardware

Vehicle Hardware	2	Axon Fleet Cameras will be installed in each vehicle
	2	Axon Fleet Battery Boxes will be installed in each vehicle
	1	Axon Signal Units will be installed in each vehicle
	1	Cradlepoint IBR900-1200 router will be installed in each vehicle
Axon Battery Boxes	The battery box provides power to its connected camera for up to 4 hours allowing for video offload while the vehicle ignition state is OFF and the MDT is connected and available.	
Signal Activation Methods	When triggered, the Axon Signal Vehicle (ASV) device will activate the recording mechanism for all configured Axon cameras within 30 feet of the vehicle.	
Mobile Data Terminal	Each vehicle will be equipped with a Mobile Data Terminal provided by the customer.	
Mobile Data Terminal Requirements	Operating System: Windows 7 or Windows 10 - x32 or x64 with the most current service packs and updates Hard Drive: Must have 25GB+ of free disk space RAM/Memory: Windows 7 - 4GB or greater Windows 10 - 8GB or greater Ethernet Port: The system requires the MDT to have one dedicated and available Ethernet port reserved for an Ethernet cable from router. The Ethernet port can be located on an electronic and stationary mobile docking station. If a docking station is used, it is the preferred location for the Ethernet port. Wi-Fi Card: The system requires an 802.11n compatible Wi-Fi card using 5Ghz band. USB Ports: If the computer is assigned to the officer and does not remain with the vehicle, then the number dongles ordered should equal the number of officers or the number of computers assigned. At least one dedicated and available USB 2.0 port for the Fleet USB dongle USB Port on MDT or Dock.	

Additional Considerations	If the customer has a MiFi hotspot, embedded cellular, or USB 4G, then the customer must purchase a Cradlepoint router with an external antenna and Cradlecare. For agencies that use NetMotion Mobility, Axon traffic must be passed through; such that it does not use the Mobility VPN tunnel. Customer must provide IT and / or Admin resources at time of installation to ensure data routing if functional for Axon Fleet operation.	
	In the event an Agency is unable to support the IT requirements associated with the installation, Axon reserves the right to charge the Agency for additional time associated with on-site work completed by an Axon Employee.	
Hardware Provisioning	Customer will provide the following router for all vehicles:	Cradlepoint IBR900-1200
	The customer will provide a MDT for each vehicle	

In-Car Network Considerations

Network Requirements	Cradlepoint IBR900-1200 will create a dedicated 5Ghz WiFi network within each vehicle. This network will join the Axon Fleet cameras and Mobile Data Terminal together.			
Network Addressing	IP Addressing		Total IPs Required	
	Axon Fleet Cameras	12	24	
	Mobile Data Terminal	6		
	Cradlepoint IBR900-1200	6		
Hardware Provisioning	Customer to provide all IP addressing and applicable network information			

Network Consideration Agreement

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

Professional Services & Training

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

WiFi Offload Considerations

WiFi Offload Standards	There will be a maximum of 10 concurrent vehicles offloading at any given time.
	0 servers are required to facilitate the offload of in-car data to Evidence.com
	0 wireless access point(s) are required to facilitate the offload of data to Evidence.com
	When in proximity, the Cradlepoint IBR900-1200 will connect to the agency's wireless access point(s) and initiate the upload of recorded video content
	Axon will not assume any responsibility for the management of/or configuration of an Axon Fleet compatible 3rd party router purchased by the Agency
	Upon completion of solution connectivity, meaning Axon Fleet is operational and appropriately connected to the Agency's WAP/Network Infrastructure, the Agency will then assume responsibility for their network workflow.
	In the event the Agency has a VPN/APN, Axon requires the appropriate Administrator of the Agency be present during the entire installation of Fleet.
	In the event the Agency is using Wi-Fi Offload and a WOS server is being used, Axon requires the appropriate Administrator of the Agency be present for the installation of Fleet in the initial vehicle.
	Customer will provide all wireless access points for installation.
	Customer will provide all server(s) for this installation.
	will provide the data switch for this installation.
	will provide the server rack for this installation.
	will provide the KVM, monitor and mouse for this installation.
	will provide the Uninterruptible Power Supply (UPS) for this installation.
	Servers will maintain a Sustained Disk Write Speed of Mbps.
	An Axon representative will provide the Agency detailed instructions for the WOS server setup and configuration (to include racking the server, setup of the server, and configuration of Axon WOS Software and Microsoft IIS Server). It is the responsibility of the Agency to ensure the WOS Server(s) are operational before the scheduled deployment date. Axon will provide remote assistance per the Agency's request.

Network Considerations

Agency Provided Metrics	Camera Bitrate (see Comments)	7	Mbps	
	Shifts per Day	3	Shifts	
	Maximum Offline Time	1	Days	
	Hours Of video Recorded Per Shift	2	Hours	
	Number of Vehicles per Shift at Site	12	Vehicles	
	Max Concurrent Vehicles Offloading	10	Vehicles	
	Available Internet Upload Bandwidth	600	Mbps	
Variables	Vehicle Offload Time	30	Minutes	
	Wi-Fi Overhead	20	Percent	
	Network Protocol Overhead	20	Percent	
	Max Storage Utilization %	40	Percent	
Results	Data Size per Vehicle / Shift	6300	MB	

Network Considerations

Results	Required Throughput Per Verhicle	28	Mbps	
	Minimum Wi-Fi Speed	28	Mbps	
	Total Data per Shift	73.83	GB	
	Total Data per Day	221.48	GB	
	Total Offload Bandwidth	281	Mbps	
	Total Storage	55371.09	GB	
	Required Sustained Network Bandwidth	302	Mbps	
	Sustained Disk Write Speed	35	Mbps	
	Min. Supportable Throughput to E.com	21	Mbps	
	E.com Throughput Difference	579	Mbps	

Notes

This quote is co-termed with quote Q-156470 (executed contract #00019126). Year one has been prorated to 6 months to align with agency annual billing dates. This has been done according to an anticipated ship date range of 5/1/2021-5/15/2021 as the end date of these subscriptions is subject to change if the ship/start date changes.

BuyBoard 568-18 used for purchasing justification.

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

Axon's Sales Terms and Conditions

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

Signature: _____ Name (Print): _____ PO# (Or write N/A): _____	Date: _____ Title: _____
---	---

Please sign and email to Kyle Panasewicz at kylep@axon.com or fax to (480) 905-2071

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

The trademarks referenced above are the property of their respective owners.

Axon Internal Use Only

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



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: April 5, 2021

FROM: Chris Allen, Utility Services Manager

ITEM: Consider approval of the purchase of two Ford 1/2 Ton Regular Cab Pick-Up Trucks with 8 Foot Bed per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's Five Star Ford and Chevrolet for Public Works in the amount of \$58,886.00.

BACKGROUND INFORMATION: The Public Works Department is requesting the purchase of two new Ford 1/2 Ton Regular Cab Pick-Up Trucks with 8 Foot Bed per Town of Flower Mound Specifications and Vendor Quote in the amount of \$58,886.00 from Sam Pack's Five Star Ford and Chevrolet through State of Texas 070 or 072 A1 Texas SmartBuy Cooperative Contract.

This purchase is to replace Unit No. 92320-10 and 92320-09; and are part of the approved Fiscal Year 20-21 Vehicle Equipment Replacement Fund (VERF).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$58,886.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$58,886.00	565-450-84500-6130 - VERF

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Fleet Supervisor's Bid Award Recommendation for Vehicle
2. Vendor Quote
3. Town of Flower Mound Specifications

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



Bid Award Recommendation

Date: 02/19/2021

Description: **Two ½ Ton Regular Cab Pick-Up Trucks W/8' Bed**

Qty.: 2

Replaces: 92320-10, a 2011 F150 w ~ 98,000 miles, previously Removed From Service due to transmission failure and 92320-09 a 2011 F150 w ~ 171,000 miles.

Bidder: Sam Packs Five Star Ford, Kevin Moore 888-835-3389, KevinMoore@spford.com

Item: 2 – Ford F150 Regular Cab Pick-Up Trucks as per Attached TOFM Spec “Two ½ Ton Regular Cab Pick-Up Trucks W/8' Bed”

Total Cost of Vehicles, Equipment & Installation:

\$58,886.00

It is Fleet Services recommendation to award the bid to **Sam Packs Five Star Ford** in the amount of **\$58,886.00** utilizing the **State of Texas 070 or 072 A1 Texas SmartBuy Cooperative Contract** .

Fleet Services Manager

02/19/2021

Date

Contract Name: State of Texas 070 or 072 A1 Texas Smartbuy Contract 2020/2021 Fiscal Year

F.	Delivery Charges	0 Miles @ \$2.45/mile	\$ -
G.	Option Discounts		\$ -
H.	Total of A + B + C + D + E = F		\$ 29,443.00
I.	Floor Plan Assistance		\$0.00
J.	Lot Insurance Coverages		\$0.00
K.	Quantity Ordered	2 X F =	\$ 58,886.00
L.	Administrative Fee		\$ -
M.	Non-Equip Charges & Credits		
N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE		\$58,886.00



Town of Flower Mound

(2) 1/2 Ton Regular Cab Pick-Up Trucks W/8' Bed

General Information

The Town of Flower Mound is seeking Cooperative quotes for two (2) 1/2-ton regular cab pick up trucks, 2 wheel drive, with a 8 foot bed and 141" wheelbase in accordance with the specifications herein. The equipment/vehicle must be new, of current production model, and available to the commercial market.

General Specifications

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

YES	NO	
☒	☐	Unit offered is an E-85 Flex-Fuel vehicle (if available)
☐	☐	Unit offered is EPA LEV certified (or greater)

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

Drive Train

YES	NO	
☒	☐	4X2 Two Wheel Drive
☒	☐	5.0L V8 Gas engine --State Engine Size, HP, TQ >
☒	☐	Automatic 10 speed Transmission with Selectable Drive Modes
☒	☐	3.31 Electronic Locking Rear Axle
☒	☐	6,750 lb. GVWR
☒	☐	141" Wheelbase
☒	☐	Four-Wheel Anti-Lock Brakes
☒	☐	Axle, Front - Independent Front Suspension
☒	☐	Steering - Power Rack-and-Pinion Steering
☒	☐	Trailer Sway Control
☒	☐	Auto Start-Stop Engine Technology
☒	☐	Fully-Boxed, High-Strength Steel Frame

Tires and Wheels

YES	NO	
☒	☐	17" Silver Steel Wheels
☒	☐	LT245/70R17 Black Side Wall All Season Tires
☒	☐	Full Size Spare Tire With Jack & Spare Tire Carrier - Rear Underframe

Cab and Equipment		
YES	NO	
/		F1C - F150 Regular Cab XL w/8' Bed 4x2
/		Exterior Paint = Oxford White
/		Interior = Gray/Medium Dark Slate
/		Air Conditioning
/		Floor Covering - black vinyl
/		Ford Class IV Receiver Hitch
/		7-Way Trailer Plug/Socket, Wired and Mounted in Bumper Recess
/		23 Gallon Fuel Tank
/		Rear View Camera with Dynamic Hitch Assist
/		SecuriLock Passive Anti-Theft System w/ Perimeter Alarm
/		SOS Post-Crash Alert System
/		AdvanceTrac with Roll Stability Control
/		Airbags - Front, Driver and Passenger/seat Mounted/Safety Canopy Side Curtain
/		Cargo Box Tie Downs-x4
/		Tire Pressure Monitoring System (TPMS)
/		Manual Air Conditioning, Single Zone
/		4-Inch Productivity Screen
/		Pre-Collision Assist with Automatic Emergency Braking
/		Intermittent Windshield Wipers
/		Power Locks with Flip Key and Integrated Key Transmitter Keyless-entry
/		Powerpoint, 12V
/		Steering Wheel, Manual Tilt/Telescoping
/		AM/FM Stereo
/		SYNC 4
/		8-Inch Center-Stack Screen
/		FordPass Connect with 4G LTE Wi-Fi Hot Spot
/		Seats - Front - 40/20/40, Vinyl
/		Side Mirrors - Manual-Folding, Power Glass with Black Skull Caps
/		Autolamp - Automatic on/off Headlamps with Rainlamp Wiper Activated Headlamps
/		Headlamps - Halogen w/Automatic High-Beams
/		Power Tailgate Lock
/		Daytime Running Lamps
/		Cargo Lamp, Integrated with Center High Mounted Stop Lamp (CHMSL)
/		Front Power Windows, Rear - Fixed Glass with Solar Tint
State Inspection		
YES	NO	
/		Current Texas Vehicle State Inspection when delivered (2 year certificate-if available)
Options - (Include installation as applicable)		
3 Sets of keys and or FOBs/Remotes		\$ 325
Across The Bed Tool Box W/Gull Wing Doors (Rawson Koeing ST63)		\$ 725
Heavy Duty Louvered Headache Rack (Rawson Koenig WG15)		\$ 475
Spray in Bed Liner - To Include Bed Floor, Interior side walls and Interior Tailgate Surface		\$ 495
Class IV Trailer Hitch <i>In spec</i>		\$ 375
Integrated Electric Trailer Brake Controller		\$ 275
5.0L Gas Engine		\$ —
110-Volt/400 Watt AC outlet		\$ 175
XL Power Equipment Group <i>In spec</i>		\$ —
3.31 Electronic Locking Rear Axle <i>In spec</i>		\$ —
Total Options		\$ 2845

Total Price**State Warranty Terms**

3yr-36K Bumper To Bumper
5yr-60K Power Train.

Warranty Svc @ Location

5 Star Lewisville.

Comments/Exceptions



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: April 5, 2021

FROM: Christopher Allen, Utility Services Manager

ITEM: Consider approval of the purchase of two Ford 3/4 Ton Super Cab Pick-Up Trucks with 6-3/4 Foot Bed per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's Five Star Ford and Chevrolet for Public Works in the amount of \$61,168.50.

BACKGROUND INFORMATION: The Public Works Department is requesting the purchase of two new Ford 3/4 Ton Super Cab Pick-Up Trucks with 6-3/4 Foot Bed per Town of Flower Mound Specifications and Vendor Quote in the amount of \$61,168.50 from Sam Pack's Five Star Ford and Chevrolet through State of Texas 070 or 072 A1 Texas SmartBuy Cooperative Contract.

This purchase is to replace Unit No. 9242-07 and 92420-04; and are part of the approved Fiscal Year 20-21 Vehicle Equipment Replacement Fund (VERF).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$61,168.50

Proposed Expenditure/(Revenue):	Account Number(s):
\$61,168.50	565-450-84500-6130 - VERF

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Fleet Supervisor's Bid Award Recommendation for Vehicle
2. Vendor Quote
3. Town of Flower Mound Specifications

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



Bid Award Recommendation

Date: 02/19/2021

Description: **Two 3/4 Ton Super Cab Pick-Up Trucks W/6-3/4' Bed**

Qty.: 2

Replaces: 9242-07, a 2011 F250 w~ 99,000 miles and 92420-04 a 2011 F250 w~ 110,000 miles.

Bidder: Sam Packs Five Star Ford, Kevin Moore 888-835-3389, KevinMoore@spford.com

Item: 2 – Ford F250 Super Cab Pick-Up Trucks as per Attached TOFM Spec “Two 3/4 Ton Super Cab Pick-Up Trucks W/6-3/4' Bed”

Total Cost of Vehicles, Equipment & Installation:

\$61,168.50

It is Fleet Services recommendation to award the bid to **Sam Packs Five Star Ford** in the amount of **\$61,168.50** utilizing the **State of Texas 070 or 072 A1 Texas SmartBuy Cooperative Contract** .

Fleet Services Manager

02/19/2021

Date

F.	Delivery Charges		25 Miles @ \$2.45/mile	\$	61.25
G.	Option Discounts			\$	-
H.	Total of A + B + C + D + E = F			\$	30,584.25
I.	Floor Plan Assistance				\$0.00
J.	Lot Insurance Coverages				\$0.00
K.	Quantity Ordered	2	X F =	\$	61,168.50
L.	Administrative Fee			\$	-
M.	Non-Equip Charges & Credits				
N.	TOTAL PURCHASE PRICE INCLUDING ADMIN FEE				\$61,168.50

Town of Flower Mound



(2) 3/4 Ton Super Cab Pick-Up Trucks W/6-3/4' Bed

General Information

The Town of Flower Mound is seeking Cooperative quotes for two (2) 3/4-ton super cab pick up trucks, 2 wheel drive, with a 6-3/4 foot bed and 148" wheelbase in accordance with the specifications herein. The equipment/vehicle must be new, of current production model, and available to the commercial market.

General Specifications

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

YES	NO	
☒	☐	Unit offered is an E-85 Flex-Fuel vehicle (if available)
☐	☐	Unit offered is EPA LEV certified (or greater)

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

Drive Train

YES	NO	
☒	☐	4X2 Two Wheel Drive, Single Rear Wheel - SRW
☒	☐	6.2L V8 Gas engine --State Engine Size, HP, TQ >
☒	☐	Automatic 6 Speed Torq Shift Transmission
☒	☐	3.73 Electronic Locking Rear Axle
☒	☐	10,000 lb. GVWR
☒	☐	148" Wheelbase
☒	☐	Axle - Twin I-beam front axle with coil spring suspension
☒	☐	Four-wheel disc Anti-lock Brake System (ABS)
☒	☐	Shock absorbers - heavy-duty gas
☒	☐	AdvanceTrac With Roll Stability Control (RSC)
☒	☐	Stabilizer Bar - Front Stationary
☒	☐	Power Steering w/Damper
☒	☐	Trailer Sway Control

Tires and Wheels

YES	NO	
☒	☐	17" Argent - Painted Steel Wheels
☒	☐	LT245/75R17E Black Side Wall All Season Tires
☒	☐	Full Size Spare Tire With Jack

Cab and Equipment		
YES	NO	
/		X2A - F250 Super Cab XL
/		Exterior Paint = Oxford White
/		Interior = Gray
/		Air Conditioning
/		Floor Covering - black vinyl
/		Ford 2.5" Receiver Hitch
/		7-Way Trailer Plug/Socket, Wired and Mounted in Bumper Recess
/		29 Gallon Fuel Tank
/		Two (2) 12v Powerpoints Located in Instrument Panel
/		Rear View Camera-Tailgate Mounted
/		Tilt/Telescoping Steering Wheel
/		Windshield Wipers - intermittent
/		Tire Pressure Monitoring System
/		Airbags - Front Seat & Side with Passenger Side Deactivation Switch
/		Safety Canopy System with side-curtain airbags
/		Belt-Minder, chime and flashing warning light
/		SecuriLock Passive Anti-Theft System
/		SOS Post Crash Alert System
/		MyKey
/		Upfitter Interface Module
/		FordPass™ Connect 4G Wi-Fi Modem
/		Headlamps - Quad-Dual beam halogen W/ Automatic High-Beam
/		1 USB Port in Lower Center Console
/		Seats - Front, HD Vinyl 40/20/40 Split Bench
/		Seats Front, Manual Lumbar Support, Driver Side
/		Seats Rear, Vinyl 60/40 Fold-Up Bench Seat
/		Instrument Cluster - 2.3" Productivity Screen
/		Audio - AM/FM Stereo W/ SYNC
/		Steering Wheel Mounted Audio Controls
/		Bumpers black painted steel
/		Mirrors - Manual Telescoping/Folding Trailer Tow with Manual Glass
/		Tow hooks - (2) Front
/		Tie-down hooks - pickup box
State Inspection		
YES	NO	
/		Current Texas Vehicle State Inspection when delivered (2 year certificate-if available)
Options - (Include installation as applicable)		
3 Sets of keys and or FOBs/Remotes		\$ 325
Left and Right "Pork Chop" Tool Boxes (Weather Gard 162-3-01 & 163-3-01)		\$ 755
Heavy Duty Louvered Headache Rack (Rawson Koenig WG11)		\$ 475
Spray in Bed Liner - To Include Bed Floor, Interior side walls and Interior Tailgate Surface		\$ 495
Integrated Electric Trailer Brake Controller		\$ 275
Exterior Back-Up Alarm		\$ 175
110-Volt/400 Watt AC outlet		\$ 175
Up fitter Switches		\$ 160
3.73 Electronic Locking Rear Axle		\$ —
Total Options		\$ 2875

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TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: April 5, 2021

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

ITEM: Consider approval of Change Order No. 2 for the Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation projects, amending the contract with Archer Western Construction, LLC, to provide for an increase to the contract in the amount of \$40,295.75; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On October 19, 2020, Archer Western Construction, LLC was awarded the construction contract for the Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation project in the amount of \$1,027,000.00.

On January 14, 2021, Change Order No. 1 was approved by the Interim Town Manager in the amount of \$11,758.00, to allow for the recoating of the electrical room floor, installation of a rubberized coating on the pump bases to minimize corrosion, and replacement of an additional bolt and gasket set because of constructability issues.

If approved, Change Order No. 2 will allow for additional bid item quantities, above what was included in the contract, to repair additional locations with exposed reinforcing, additional wall and floor locations that exhibit hairline cracking, and work required on the exterior dome to repair construction joints that have been found to be passing water. The extent of these joint/cracks was unknown at bid time and were discovered after a thorough inspection once the tank was taken offline. Additional work also includes the installation of suction lines driers for the HVAC system. Change Order No. 2 would increase the contract by \$40,295.75, for a total contract of \$1,079,053.75

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision not to approve the change order will result in the incomplete rehabilitation of the 10MG tank and pump station. A future project would be required to address the additional deficiencies inside the tank and pump station.

FISCAL IMPACT: \$40,295.75

Proposed Expenditure/(Revenue):	Account Number(s):
\$20,147.88	630-960-96003 Stonehill Discharge Valve
\$20,147.87	630-960-98930 Stonehill Tank Rehab

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

Total project cost is \$1,200,000. Funding sources are:

- Other \$ 100,000
- Utility debt \$ 1,100,000

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Change Order No. 2

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

CHANGE ORDER No. 2

Effective Date: Upon execution by the Mayor

Owner: Town of Flower Mound

Contractor: Archer Western Construction, LLC

Project: Stonehill Pump Station Discharge Valve Replacement and 10 MG Ground Storage Tank Rehabilitation

CHANGE ORDER NO. 2

The compensation agreed upon in this Change Order is a full, complete, and final payment for all costs the Contractor incurs as a result of or relating to the change, whether said costs are known, unknown, foreseen, or unforeseen at this time, including without limitation, any costs for delay, extended overhead, ripple or impact costs, or any other effect on changed or unchanged work as a result of this change.

You are directed to make the following changes in the Contract Documents:

Item No.	Description	Unit	Add/ Deduct	Qty.	Unit Price	Extended Amount
8	Ground Storage Tank Internal Spalling Repair	SF	Add	65	\$ 60.00	\$ 3,900.00
9	Ground Storage Tank Internal Crack Repair	LF	Add	305	\$ 35.00	\$ 10,675.00
CO2-A	Exterior Dome Construction Joint Repair	LF	Add	445	\$ 30.75	\$ 13,683.75
CO2-B	HVAC - High Acid Filter Driers	EA	Add	4	\$ 882.00	\$ 3,528.00
CO2-C	Unit Heater wiring, conduit, and breakers	LS	Add	1	\$ 8,509.00	\$ 8,509.00
SUBTOTAL						\$ 40,295.75

JUSTIFICATION

Change Order No. 2 provides for the following:

Item 8 allows for additional quantity to repair locations with exposed reinforcing.

Item 9 allows for additional quantity to repair wall and floor locations that exhibit hairline cracking.

Item CO2-A allows for work on exterior dome to repair construction joints that have been found to be passing water. The extent of these joint/cracks was unknown at bid time and will require a more extensive repair procedure that is specified for other exterior crack repair rehab.

Item CO2-B allows for the installation of suction lines driers and isolation valves on the refrigerant suction lines going into the compressor. This filter will catch the contaminants before reaching the compressor.

Item CO2-C allows for the installation of replacement wiring, conduit, and breakers for the unit heaters.

REVISED CONTRACT AMOUNTS

Original Contract	\$ 1,027,000.00
Change Order #1	\$ 11,758.00
	\$ 40,295.75
Revised Contract Price	\$ 1,079,053.75

Recommended

for Approval

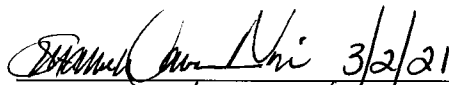

 Brian Waltenburg, P.E.
 Assistant Director of Engineering

3/2/21

Date

Contractor

Contractor Title

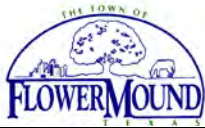

 3/2/21
 APM - Archer Western

Date

Approved

 Steve Dixon
 Mayor

Date



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: April 5, 2021

FROM: Robert Pegg, P.E., Assistant Director of Engineering

ITEM: Consider approval of a Professional Services Agreement for the 2020 Water and Wastewater Model Update project, with Kimley-Horn, for \$25,750.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The 2018 Water and Wastewater Model Update project is used to keep the Town's water and wastewater models updated. This agreement will provide for all changes that were made during fiscal year 2020. The consultant will update the computer models to reflect commercial, residential and CIP projects that impacted the Town's water and wastewater systems. By keeping the models up to date the Town is able to ensure that future developments will meet the requirements of SmartGrowth and that the Town is able to adequately plan for future CIP projects.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$25,750.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$12,650.00	610-980-95040 Water
\$12,100.00	610-980-95050 Wastewater
\$1,000.00	601-900-95040 Water

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 this Professional Services Agreement.

ATTACHMENTS:

1. Professional Service Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
KIMLEY-HORN and ASSOCIATES, INC.**

This contract is entered into on this 5th day of April, 2021, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and through its Mayor, and **Kimley-Horn and Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 13455 Noel Road, Two Galleria Office Tower, Suite 700, Dallas, TX 75240.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to providing technical reports and services for the 2020 Water and Wastewater Model Update project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide services for the 2020 Water and Wastewater Model Update project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”). Attachment “A” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Twenty-Five Thousand Seven Hundred Fifty and No/100 Dollars (\$25,750.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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:

Robert Pegg, P.E.,
Assistant Director of Engineering
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6312 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 respondent superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

The terms of Sections XII entitled Indemnification, and 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:

Robert Pegg, P.E.,
Assistant Director of Engineering
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6312 Telephone

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

Anthony Samarripas, P.E.
Vice President
Kimley-Horn and Associates, Inc.
13455 Noel Road, Two Galleria Office Tower, Suite 700
Dallas, Texas 75240
972-770-1314 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:

Kimley-Horn and Associates, Inc.

By: Sarah Williamson
Name: SARAH WILLIAMSON
Title: VICE PRESIDENT

Date Signed: MARCH 1, 2021

State of Texas §

County of Dallas §

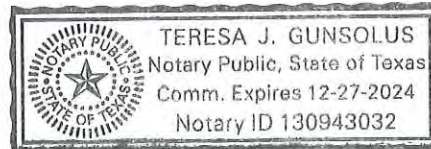
This instrument was acknowledged before me on the 1st day of March, 2021, by Sarah Williamson in his capacity as Vice President of Kimley-Horn and Associates a North Carolina Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Vice President.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 1st DAY OF March 2021.

Teresa J. Gunsolus
Notary Public, State of Texas

My Commission Expires:

12.27.2024



ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: 2020 Water and Wastewater Model Updates

PROJECT UNDERSTANDING

The Town has asked Kimley-Horn and Associates, Inc. (Kimley-Horn) to assist in updating the current water and wastewater models. Two major tasks are included with model updates: adding new developments and their associated demands to the water and wastewater models, and adding new Capital Improvement infrastructure to the models. Kimley-Horn will add developments and infrastructure to account for changes since the prior Master Plan updates. Kimley-Horn will revise and evaluate system capacities, update Capital Improvement Project Maps, and prepare a technical memorandum detailing the model updates.

SCOPE OF PROFESSIONAL SERVICES

A. Demand (Development) Update

This task includes adjusting the percent developed for land use parcels in the model to reflect the current amount and type of development in the Town. The Town provided the following list of developments that will be included in the update:

1. Alpha Warehouse Park
2. Autozone – FM 407
3. Bradford Park Phase 2
4. Cross Timbers Addition Lot 1, Block A
5. DFW North 4
6. Enterprise Storage
7. Galactic Gallery
8. Lake Forest Plaza Lot 10
9. Lakeside 2 At Lakeside Ranch Business Park
10. Lakeside Building 21
11. Lakeside Crossing Town Homes
12. Lakeside Tower (Lakeside DFW)
13. Magnolia Court
14. PPG – Lakeside
15. Quiktrip
16. RES High School
17. Service First
18. Stone Hill Farms Retail East II
19. Tinley Park
20. Townlake Phase Three (water only)
21. Villas At Southgate Phase Two

22. Wentwood Retail Center Phase II

23. Windsor Ridges

The cost associated with adding a development to the model is \$550 for water and \$550 for wastewater for each development. Developments located in the Denton Creek and Prairie Vista sewer service areas are not included in the Town's wastewater model because they are served by Trinity River Authority (TRA); the percent developed and projected wastewater flows for these developments will be updated in GIS and wastewater tracking spreadsheets.

As part of these updates, Kimley-Horn will also log the building square footage of non-residential developments in the GIS files to facilitate land use updates with future Master Plan Amendments.

B. CIP Infrastructure Update

This task includes adding water and wastewater infrastructure to the existing models which has been constructed since the last model update.

Infrastructure to be added to the model includes:

1. Lake Forest Blvd Roadway Improvements & 12" Water Line
2. Aberdeen 12" Water Line (FM 2499 to Lake Forest) (installed by developer)

The Town's preliminary list of CIP to be added to the model also included Lift Station Improvements & Decommissioning Ph. I, High Road Water Line Replacement Ph. I, and Pintail Pump Station improvements. These improvements were added to the wastewater and water models as part of the 2020 Master Plan updates. Therefore, limited water and no wastewater updates are needed as part of this update.

This task includes calibration of the water model as necessary to include the above project.

Kimley-Horn will also update the Capital Improvements Project map for water projects. The revised maps will show current aerial photography as available, existing infrastructure, projects under design or construction, and future capital improvement projects. Kimley-Horn will also provide a revised Wastewater Manhole Connection Map for the Town.

C. Deliverables

1. Kimley-Horn will prepare a technical memorandum describing the model update, including the above lists of developments and infrastructure added to the model. The memo will also include updated water demand and wastewater load projections. Kimley-Horn will provide one PDF copy of the draft

memorandum prior to the project review meeting (see task D) and one PDF of copy of the final memorandum.

2. Kimley-Horn will provide one PDF copy of the updated Water CIP map.
3. Kimley-Horn will provide one PDF copy of the updated Wastewater Manhole Connection map.

D. Meetings

Kimley-Horn will attend one project review meeting with the Town. This meeting is anticipated to be held virtually.

E. Future Developments

Below is a list of current proposed developments which are not included in this model update but are anticipated to be included in a future update:

1. Lakeside Crossing
2. Pepper Creek Ranch

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Providing surveying and engineering design of future Capital Improvement Projects.
- Providing presentations to the Town Council.
- Attending additional public meetings during the project.
- Preparing an Opinion of Probable Construction Cost for improvement projects.
- Assisting Town or Contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Kimley-Horn on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Town.
- Reviewing Contractor's References.
- Any services not listed in the Scope of Services.



ATTACHMENT B

COMPENSATION

Kimley-Horn will provide the Scope of Services for a lump sum fee.

Demand Update	\$24,750
Infrastructure Update (Water)	\$1,000
<u>TOTAL</u>	<u>\$25,750</u>

Additional services will be negotiated at the time they are identified.

ATTACHMENT C

TIME OF COMPLETION

We are prepared to begin our services immediately upon authorization. Upon receipt of a notice to proceed, we anticipate performing the model updates and preparing a draft memorandum within 35 calendar days.



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: April 5, 2021

FROM: Clay Riggs, PE, CFM, Assistant Director of Public Works

ITEM: Consider approval of an increase to the annual contract amount for Annual Slurry Seal Services with Viking Construction, Inc, contract 2014-53, from an estimated annual total of \$49,500.00 to an estimated annual total of \$100,500.00.

BACKGROUND INFORMATION: On June 16, 2014, Town Council awarded the Annual Slurry Seal Services contract (#2014-53) to Viking Construction, Inc. for an annual estimated amount of \$49,500.00 with annual one-year renewal options.

On September 21, 2020, Council approved a Non-Discretionary Decision Package in the amount of \$149,300.00 and a Decision Package in the amount of \$200,000.00 to increase funding to Street Maintenance as part of the Council's strategic goal of first-rate infrastructure.

Authorizing the increase in estimated annual expenditures to contract 2014-53 with Viking Construction, Inc. will allow for the Public Works Department to purchase materials and services used by the Street Services Division to slurry seal the Roanoke Hills Subdivision.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$51,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$51,000.00	100-690-92240-4303

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

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Executed Contract with Viking Construction

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

**TOWN OF FLOWER MOUND
CONTRACT FOR ANNUAL SLURRY SEAL SERVICES
BID NO. 2014-53**

This Contract is made by the Town of Flower Mound, Texas, a municipal Corporation ("Town") and Viking Construction, Incorporated ("Contractor"). The Town and Contractor agree:

1. **EMPLOYMENT OF THE CONTRACTOR.** The Town agrees to retain the Contractor, and the Contractor agrees to provide services relative to: Street Leveling Services (hereinafter referred to as "Services") in connection with the terms and conditions as set forth in the Contract Documents, attached hereto and incorporated by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in the Contract Documents. Deviations from the scope of work may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Contractor agrees to begin work upon receipt of written authorization from the Town. Time is of the essence for this Contract and work is to commence immediately.
4. **CONTRACT PERIOD.** The initial contract period is for one (1) year from date of award of contract. All pricing is to remain firm during the contract period. The contract is renewable for up to an additional four (4) one (1) year periods at the Town's sole option, if written notice of the intent to renew is provided to the Contractor not less than sixty (60) days prior to the termination date of the initial contract period or then current extension.
5. **COMPENSATION.** Contractor's total compensation for services to be performed and expenses to be incurred is specified in the Bid Form.
6. **PAYMENTS.** Payments will be processed on a monthly basis with payment available within 30 days after receipt of the invoice for the previous month's service or as set forth in the Contract Documents.
7. **INVOICING.** Invoices should be prepared and submitted to the Town for payment in accordance with the Contract Documents. Invoices should be mailed to Accounts Payable, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028 or accountspayable@flower-mound.com.
8. **RIGHTS OF WITHHOLDING.** The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by the Contractor. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and will not be paid to the Contractor.
9. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to Contractor.

10. **INSURANCE.** The Contractor shall provide proof that it has obtained and will continue to maintain throughout the duration of the Contract the insurance requirements set forth in Exhibit A, Insurance Requirements. Failure to maintain the required insurance may result in immediate termination of the Contract.
11. **INDEMNIFICATION.** As specified in the Standard Terms and Conditions.
12. **TRANSFER OF INTEREST.** Neither Town nor Contractor may assign or transfer their interests in the Contract without the written consent of the other party. Such consent shall not be unreasonably withheld. This Contract is binding on Town, Contractor, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.
13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Contractor shall make available to the Town for examination all of its records with respect to all matters covered by the Contract and will permit the Town to audit, examine and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to the Contract.
14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

The Contractor agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provisions will be binding upon each subcontractor, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.

The Contractor shall keep records and submit reports concerning the racial and ethnic origin(s) of applicants from employment and employees as the law may require.

15. **TERMINATION OF CONTRACT.** Town may terminate this contract upon sixty (60) days written notice to Contractor, except in the event (i) Contractor is in breach of this Contract or (ii) Contractor fails to comply with the terms of Exhibit A. If either of the foregoing conditions exists, Town shall

notify Contractor and Contractor shall be given two (2) days to cure such breach. Should Contractor fail to cure to the satisfaction of the Town, Town may terminate this Contract upon written notice.

Furthermore, the Town retains the right to terminate this Contract at the expiration of each Town budget period (September 30) during the term of this Contract, even without prior notice as described in the preceding sentence.

In the event of any termination hereunder, the Contractor consents to Town's selection of another Contractor to assist the Town in any way in completing the Services. Contractor further agrees to cooperate and provide any information requested by Town in connection with the completion of the Services.

Contractor shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that Contractor shall receive a portion of fees and expenses permitted under this Contract in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against Contractor that may be available under applicable law.

16. **CONTRACTOR'S REPRESENTATIONS.** Contractor hereby represents to Town that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required.
17. **TOWN APPROVAL FOR ADDITIONAL WORK.** No payment, of any nature whatsoever, will be made to Contractor for additional work without the Town's written approval before such work begins.
18. **PERFORMANCE BY CONTRACTOR.** All Services provided by the Contractor hereunder shall be performed in accordance with the highest professional standards and in accordance with the Contract Documents, and Contractor shall be responsible for all Services provided hereunder whether such services are provided directly by contractor or by any contractors hired by Contractor. The Contractor shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. Contractor shall not utilize subcontractors to perform Services without the Town's prior written consent.
19. **DAMAGE.** In all instances where Town property and/or equipment is damaged by the Contractor's employees, a full report of the facts, extent of the damage and estimated impact on the Contractor's schedule shall be submitted to the Town's Public Works Division by 8 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Contractor must notify Police Dispatch immediately. The contractor shall be fully liable for all damage to Town property or equipment caused by the Contractor's officers, employees or agents.
20. **TOWN OBJECTION TO PERSONNEL.** If at any time after entering into this Contract, Town has any reasonable objection to any of Contractor's personnel, or any personnel retained by Contractor, then Contractor shall promptly propose substitutes to whom the Town has no

reasonable objection, and the Contractor's compensation shall be equitably adjusted to reflect any difference in the Contractor's costs occasioned by such substitution.

21. **COMPLIANCE WITH LAWS.** The contractor warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town's Representative are followed.
22. **PAYMENT BONDS.** The Contractor shall procure and pay for payment bond applicable to the work in the amount of the total bid price. The payment bond shall be issued in the form attached to and included in the Contract Documents. Other payment bond forms shall not be accepted. Among other things, this bond shall apply to any work performed during the ten-year warranty period after acceptance as described in this Contract.

The payment bond 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 payment bond upon Town request. In addition to the foregoing requirements, if the amount of the bond exceeds One Hundred Thousand Dollars (\$100,000) 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 Dollars (\$100,000) 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.

23. **ENTIRE CONTRACT.** This instrument together with the Contract Documents of which this Contract is a part contains the entire Contract between the Town and Contractor concerning the Services. There will be no understandings or contracts other than those incorporated herein. The Contract may not be modified except by an instrument in writing signed by the parties hereto. In the event of a conflict between an attachment to this Contract and this Contract, this Contract shall control.
24. **MAILING ADDRESSES.** All notices and communications concerning this Contract to be mailed or delivered to the Town shall be sent to the address of the Town as follow, unless and until the Contractor is otherwise notified:

Rochelle M. Ragas, CPPB
Purchasing Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

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

Name: Barry H. Dunn
Title: President
Company Name: Viking Construction, Incorporated
Address: 2592 Shell Road
City, State, Zip: Georgetown, Texas 78628

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

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

AGREED TO BY:

TOWN OF FLOWER MOUND, TEXAS

By: [Signature]

By: [Signature]

Name: Barry H. Dunn

Thomas E. Hayden
Mayor

Title: PRES

Date: 6/25/14

Date: 7-21-14

ATTEST:

By: [Signature]

Theresa Scott
Town Secretary

TOWN OF FLOWER MOUND STANDARD TERMS & CONDITIONS FOR PROCUREMENTS

1. **APPLICABILITY:** These standard terms and conditions apply to all goods or services procured by the Town of Flower Mound, unless otherwise stated in the specifications. The instructions contained herein shall be incorporated into the contract as well as any subsequent purchase order(s) issued for goods or services, and shall be included as part of the specifications issued herewith.
2. **NOTIFICATION:** The Town of Flower Mound advertises procurement opportunities through www.flower-mound.com, www.bidsync.com and the *Denton Record Chronicle*. The Town shall not be responsible for information distributed by sources other than those listed.
3. **ADDENDA:** Any revisions to the information contained herein will be issued in the form of addenda. The sole issuing authority shall be vested in the Town of Flower Mound Purchasing Division. If addenda contain material changes to the specifications or pricing form, the respondent shall acknowledge receipt of addenda in the designated section on the Bid/Proposal Certification Form. It is the responsibility of the bidder/respondent to obtain and acknowledge any and all addenda. Failure to acknowledge receipt of addenda may be cause to deem such submission non-responsive.
4. **SILENCE OF SPECIFICATION:** The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
5. **MINOR DEFECT:** The Town of Flower Mound reserves the right to waive any minor defect, irregularity, or informality in any bid/proposal. Minor defects, irregularities or informalities will not affect the end product/performance intended by the specifications. The Town also reserves the right to reject any or all bids/proposals with or without cause prior to award.
6. **ELECTRONIC SUBMISSIONS:** The Town of Flower Mound utilizes BidSync to advertise and receive bids and proposals electronically over the Internet. Electronic submissions through BidSync shall be electronically signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents should clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.

The Town of Flower Mound has elected to fund a monthly fee to BidSync in order to eliminate all costs for vendors to utilize the system for standard bids and proposals solicited by the Town. For **Cooperative Procurements and Reverse Auctions ONLY**, respondent agrees to pay to BidSync a transaction fee of one percent (1%) of the total awarded amount of all contracts for goods or services awarded to the respondent. Cooperative procurements and Reverse Auctions will be clearly identified in the bid/proposal documents. To assure that all respondents are treated equally, the fee will be payable whether the bid/proposal is submitted electronically, or by paper means. Refer to www.bidsync.com for further information.

7. **PAPER SUBMISSIONS:** Paper submissions shall be submitted on the forms provided by the Town of Flower Mound and must be signed and dated by a duly designated representative or agent of the company submitting the bid/proposal. Respondents shall clearly and concisely provide all requested information as stated in the bid/proposal document. Failure to provide the requested information may be reason to deem such submission non-responsive.
8. **PRESENTATION OF BIDS/PROPOSALS:** Paper submissions shall be presented to The Town of Flower Mound Purchasing Division, 2121 Cross Timbers Road, Flower Mound, Texas 75028 by the stated deadline. Paper submissions shall be presented in a sealed envelope with respondent's name and the bid/proposal number clearly identified on the outside of the envelope.
9. **LATE SUBMISSIONS:** The date/time stamp located in the Town of Flower Mound Purchasing Division serves as the official time clock. Submissions received in the Purchasing Division after the stated deadline shall be refused and returned unopened. The Town of Flower Mound is not responsible for issues encountered with methods of delivery.
10. **PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting minor errors in bid price after bid opening. However, a bidder may be able to withdraw a bid only if it contains a substantial mistake that would, in the sole opinion of the Town, cause a great hardship if enforced against the bidder.

11. **TAXES:** The Town of Flower Mound is exempt from paying federal excise and transportation taxes and Texas State or local sales and use taxes. Tax shall not be included in prices offered. A Tax Exempt Form will be provided by the Town of Flower Mound

upon request. A request for a Tax Exempt Form can be submitted in writing to purchasing@flower-mound.com or by contacting the Purchasing Division at 972.874.6006. In no event is it the Town's responsibility to provide a tax exempt form without a request for the same.

12. **WITHDRAWAL OF OFFER:** Respondent agrees that an offer may not be withdrawn or cancelled for a period of one hundred twenty (120) days following the date and time designated for the receipt of bid/proposal without written approval of the Purchasing Manager.
13. **F.O.B./DAMAGE:** Prices offered shall be F.O.B. Final Destination, Town of Flower Mound, Texas, and shall be all inclusive of shipping, handling and packaging costs. The Town accepts and assumes no liability for goods delivered in damaged or unacceptable condition. The successful respondent shall be responsible for handling all claims with carriers, and in case of damaged or unacceptable goods, shall ship replacement goods immediately upon notification by the Town.
14. **PREPARATION COST:** All costs associated with the preparation of an offer shall be borne by the respondent. The Town of Flower Mound will not be liable for any costs associated with the preparation, transmittal, or presentation of submissions, or with any materials submitted in response to the same.
15. **TESTING:** At the Town of Flower Mound's discretion, testing may be required prior to award of bid/proposal or prior to delivery of goods or services. Testing shall be performed without expense to the Town.
16. **SAMPLES:** At the Town of Flower Mound's discretion, samples may be required prior to award of bid/proposal, or prior to delivery of goods or services. Samples shall be provided at no cost to the Town. Samples should not be enclosed with submission unless specifically requested.
17. **QUALITY:** Any catalog, brand names, or manufacturer's reference in this bid/proposal packet is descriptive and not restrictive, and is intended to indicate type and minimum quality level desired for comparison purposes, unless otherwise stated herein. All products and/or optional equipment offered shall be new and of current manufacture. No items of a demonstrator, leased, reconditioned, rebuilt, repossessed or used nature shall be considered, unless otherwise specifically stated herein.
18. **BID/PROPOSAL OPENINGS:** All offers will be read aloud at the Town of Flower Mound's scheduled opening for the designated bid/proposal. However, the reading of an offer shall not be construed as a comment on the responsiveness of such offer, or as any indication that the Town accepts such offer as responsive.

The Town of Flower Mound will make a determination regarding the responsiveness of offers submitted based upon compliance with all applicable laws and the Town of Flower Mound's purchasing guidelines and project documents including, but not necessarily limited to, the bid/proposal specifications and contract documents. The Town will notify the successful respondent upon award of the contract; and, if required by State law, all offers received will be available for inspection after award.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.

19. **SUMMARY SHEET:** Bid/Proposal summary results are typically published within one (1) business day after the scheduled opening. Bid/Proposal summary results will be available for public viewing at www.flower-mound.com and www.bidsync.com. Interested parties desiring a copy of a bid/proposal summary sheet may request the same by submitting a written request to purchasing@flower-mound.com. **RESULTS WILL NOT BE RELAYED OVER THE TELEPHONE.**
20. **ANTI-COLLUSION:** In submitting an offer, respondent certifies that they have not participated in nor have they been party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.
21. **NO PROHIBITED INTEREST:** Respondent acknowledges awareness of the state laws including chapter 176 of the Local Government Code, the Town Charter, and the Town Code of Ethics regarding conflicts of interest and agrees to comply with each. No officer, employee or agent of the Town of Flower Mound shall participate in the negotiation, selection, discussion, award or administration of a contract or procurement supported by public funds if: 1) that individual has a substantial interest in a person or entity, as defined by Section 13.00, Chapter 1 of the Town's Code of Ordinances and/or Chapter 171 of the Texas Local Government Code, that is the subject of the contract or procurement; or 2) a conflict of interest, either real or apparent, would be involved, as defined herein.
22. **NON-RESIDENT BIDDERS:** Texas Government Code, Chapter 2252: Non-Resident Bidders. Texas law prohibits city and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid the non-resident bidder on a bid/proposal for goods and services in the non-resident bidder's state, or the amount by which a resident bidder would be required to underbid the non-resident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

23. **DELINQUENT TAXES:** Any person, firm, or corporation that is in arrears to the Town of Flower Mound for delinquent taxes or otherwise, will not be recommended for award of any bid/proposal until the arrearage has been cleared in writing. If a contractor or vendor becomes delinquent while a contract is in force, payment for goods or services provided to the Town under said contract or purchase order may be withheld until the arrearage has been cleared in writing.
24. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The Town of Flower Mound may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Ability to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Be otherwise qualified and eligible to receive an award.
25. **AWARD OF CONTRACT:** The Town of Flower Mound reserves the right to award single or multiple contracts for the goods or services as stated herein. Furthermore, the Town reserves the right to take administration costs into consideration when awarding to multiple vendors.

The Town may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the Town. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

 - A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the Town's needs;
 - E. The respondent's past relationship with the Town;
 - F. The total long-term cost to the Town to acquire the respondent's goods or services;
 - G. Any relevant criteria specifically listed herein or in the contract documents.
26. **ACCEPTANCE:** Respondent agrees that acceptance of any or all items by the Town of Flower Mound, Texas within a reasonable period of time, not to exceed one hundred twenty (120) days following the date and time designated for the receipt of the bid/proposal, shall be binding upon respondent. Respondent shall thereafter execute all documents necessary to enter into a contract in a form acceptable to and properly executed by the Town to provide such goods and services.
27. **CONTRACT PERIOD:** Unless otherwise stated in the specifications contained herein, the contract period for the bid/proposal will be for one (1) year upon Town approval, with three (3) optional one (1) year renewal periods if agreeable to both parties. Renewal periods will be subject to the Town's availability of funds.
28. **FUNDING:** The Town of Flower Mound is a home-rule municipal corporation operated and funded on a fiscal year basis from October 1 to September 30. Accordingly, the Town reserves the right to terminate at any time, without liability to the Town, any contract for which funding is not available.
29. **ASSIGNMENT:** The successful vendor shall not sell, assign, transfer or convey any contract, in whole or in part, without the prior written consent of the Town obtained through the Town's Purchasing Division.
30. **INTERLOCAL AGREEMENT:** The successful vendor agrees to extend prices for goods and services under the same terms and conditions of this bid/proposal to all governmental entities that have entered into, or will enter into, interlocal cooperative purchasing agreements with the Town of Flower Mound.
31. **CHANGE ORDER:** The Town of Flower Mound reserves the right to modify or change plans and specifications as deemed necessary after the performance of the contract has commenced, to decrease or increase the quantity of work to be performed, materials, equipment or supplies to be furnished, or address other provisions of the contract as approved by the Town Manager or Town Council, and as appropriate under state law. No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the contract. All change orders or modifications to the contract will be documented in written form by the Town of Flower Mound and acknowledged by the contracted vendor. All change orders and modifications to the contract shall be processed through the Purchasing Division only.

32. **DELIVERY PROMISE – PENALTIES:** Where indicated, respondents must provide number of calendar days required to deliver goods or services to the Town of Flower Mound after receipt of order (ARO). Do not quote shipping dates. When delivery delay can be foreseen, the vendor shall provide advance notice to the Purchasing Manager, who shall have the right to extend the delivery date if reasons for delay are acceptable. Default in promised delivery, without acceptable reason(s), or failure to meet specifications as contained herein or in the contract documents, authorizes the Purchasing Division to purchase goods or services from an alternate source. The defaulting vendor may be subject to re-procurement costs.
33. **DELIVERY TIMES:** Unless otherwise specified herein, deliveries will only be accepted during normal working hours at the designated Town of Flower Mound location(s).
34. **INSPECTION:** Upon receipt of goods or services, the same will be inspected for compliance with the specifications contained herein or in the contract documents. If the goods or services do not pass inspection, the vendor will be required to remedy the situation at the vendor's sole expense. The vendor will be required to retrieve the rejected goods at the delivery point and provide the necessary repairs or replacement and return of the goods in new condition to the original point of delivery; or re-perform services in accordance with the terms and conditions of the contract and to the Town of Flower Mound's satisfaction.
35. **INVOICES:** Invoices shall be submitted to the attention of Accounts Payable Department, 2121 Cross Timbers Road, Flower Mound, Texas 75028, or electronically to accountspayable@flower-mound.com.
36. **PAYMENT TERMS:** Payment terms are net 30 days, unless otherwise specified by the Town in the bid/proposal document.
37. **AUDIT:** The Town of Flower Mound shall have access to, and the right to examine, monitor and audit all records, documents, conditions and activities related to contracts awarded by the Town. It shall be the responsibility of the vendor to maintain records associated with this procurement for a period of three (3) years after completion of the contract, or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.
38. **INSURANCE:** The Town of Flower Mound requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents.
39. **PRICE ESCALATION:** Unless otherwise stated in the specifications herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitting a request in written form to the Purchasing Manager. Basis for price escalation should be based on the Consumer Price Index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject any and all requests for price escalations.
40. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Flower Mound's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.
41. **INDEMNITY:** The bidder shall defend, indemnify and hold the Town of Flower Mound, its officers, agents and employees harmless from any and all costs, expenses, suits, demands, claims, liabilities, liens, encumbrances or damages, including attorneys' fees and costs of suit, of any character, name and description, incurred or resulting from any injuries or damages received or sustained by any person, persons or property on account of any intentional wrongful conduct or negligent act or fault of the successful bidder, or of any agent, employee, subcontractor or supplier in the execution of, or performance under, any contract which may result from bid award and the bidder so agrees upon the submission of the bid. The bidder shall deliver, if so requested by the Town of Flower Mound, a written release of all liens or other proper evidence of same, to the satisfaction of the Town prior to the issuance of final payment by the Town.
42. **PATENT RIGHTS:** Respondent agrees to indemnify and hold harmless the Town of Flower Mound from any claim involving patent right infringement or copyright infringement on goods or services supplied to the Town.
43. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Director of General Services within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications contained herein or in the contract documents.

Post-award protests must be submitted in written form to the Director of General Services within five (5) working days after award.

The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest. The Director of General Services, having authority to make the final determination, will respond within ten (10) working days to each substantive issue raised in the protest. Allowances for reconsiderations shall be made only if data becomes available that was not previously known, or if there has been an error of law or regulation.

44. **TERMINATION FOR DEFAULT:** The Town of Flower Mound reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the Town in the event of breach or default of the contract. The Town reserves the right to terminate the contract immediately in the event the contracted vendor fails to meet delivery schedules, or otherwise perform in accordance with the specifications contained herein or in the contract documents. Breach of contract or default authorizes the Town to award the contract to another vendor, or purchase from an alternate source, and charge the full increase in cost to the defaulting contracted vendor.
45. **TERMINATION FOR TOWN CONVENIENCE:** Whenever the Town, in its discretion, deems it to be in the Town's best interests, it may terminate this contract for the Town's convenience. Such termination shall be effective thirty (30) days after Town delivers written notice of such termination for convenience to the contracted vendor. Upon receipt of such notice from the Town, Vendor shall not thereafter incur, and Town shall have no liability for, any costs under this contract that are not necessary for actual performance of the contract between the date of the notice of termination for convenience and the effective date of that termination for convenience. In the event of a termination for convenience hereunder, Town shall have no liability to Vendor for lost or anticipated profit resulting therefrom.
46. **REMEDIES:** The successful vendor and the Town of Flower Mound agree that each party may have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.
47. **VENUE:** The validity of the contract and of any of its terms or provisions, as well as the rights and duties hereunder or the contract documents, shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue for any legal action shall lie in Denton County, Texas.
48. **DETERMINATION OF NON-RESPONSIBLE BIDDER:** The Town may disqualify a vendor as non-responsible and its bid shall not be considered for reasons including, but not limited to, the following:
 - A. Reason for believing collusion exists among vendors.
 - B. Where the vendor, any subcontractor, supplier, or the Surety on any bond given, or to be given, is in litigation with the Town, or where such litigation is contemplated or imminent, in the sole opinion of the town.
 - C. The vendor being in arrears on any existing contract or having defaulted on a previous contract.
 - D. Lack of competency, in the judgment of the Town, as revealed by pertinent factors, including but not necessarily limited to, experience and equipment, financial statement and questionnaires.
 - E. Uncompleted work that, in the judgment of the Town, will prevent or hinder the prompt completion of additional work if awarded.
 - F. Where the vendor, or subcontractor thereof, in the judgment of the Town, has failed to perform in a satisfactory manner on a previous contract.
 - G. Where a vendor or subcontractor thereof has failed to disclose a potential conflict of interest or discovered to have a conflict of interest in accordance with the Town's Code of Business Ethics.
 - H. Where a vendor, its subcontractor, or individual officer/principal of the bidder or subcontractor is under criminal indictment or been convicted of a criminal offense.
49. **DETERMINATION OF NON-RESPONSIVE BID:** The Town may disqualify a bid as non-responsive and it shall not be considered for reasons including, but not limited to, the following:
 - A. The bid shows any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind, in the sole determination of the Town.
 - B. Bid received after the time limit for receiving bids.
 - C. Bid was not signed.
 - D. Unbalanced value of any items.
 - E. Improper or insufficient bid guaranty, if required.
 - F. Bid did not meet specifications.
 - G. Bid did not contain all requested/required documents, submittals and/or samples.

**Town of Flower Mound
Bid No. 2014-53
Annual Slurry Seal Services**

I. Introduction

The Town of Flower Mound is soliciting bids to establish an annual fixed-price contract for slurry seal services to be performed at various locations within the Town of Flower Mound, as described in the following bid specifications. The term of the contract will be one year with four optional one-year renewal periods. The contract will be awarded to the lowest responsive and responsible bidder meeting specifications.

This contract will contain a fixed pricing structure for the term of the contract. Bid prices will be held firm during the contract period. The successful vendor will be required to execute a written contract, as included in this bid document.

II. Specifications – Item No. 3314, Polymer Modified Emulsified Asphalt Slurry Seal

314.1 Description

This item shall govern for a slurry seal surface course composed of a mixture of an approved polymer modified asphalt emulsion, mineral aggregate, water and specified additives, proportioned, mixed, and uniformly spread over a properly prepared surface in accordance with the details shown on the plans and contract documents, the requirements of this Item, or as established by the Engineer. The completed slurry seal shall leave a visibly homogeneous mat of consistent high quality and uniform appearance, adhere firmly to the prepared surface, and have a friction resistant surface texture throughout its service life.

314.2 Materials

The Contractor shall furnish materials to meet the requirements specified herein and shall be solely responsible for the quality and consistency of the product delivered to and placed on the Project.

(1) Emulsified Asphalt. The emulsified asphalt shall conform to Item No. 301 "Asphalts, Oils, and Emulsions", Grade CSS-1P or approved Polymer Modified CQ-S to achieve a quick-set mix. Each load of emulsified asphalt shall be accompanied with a certificate of analysis/compliance to assure that it is the same as that used in the mix design.

(2) Aggregate.

(a) General. The mineral aggregate used shall be the type and grade specified for the particular use of the slurry seal. The aggregate shall be manufactured crushed stone such as granite, slag, chat, or other high quality aggregate, or combination thereof. However, limestone will not be considered as an appropriate surface course aggregate and shall not be used. To assure the material is totally crushed, 100% of the parent aggregate shall be

larger than the largest stone in the gradation to be used. Aggregate shall conform to Item No. 302 "Aggregates for Surface Treatments" with the exception of using the ISSA gradations shown below in 314.2(2)(c) "Gradation" and the "Quality Tests" shown in 314.2(2)(b).

- (b) **Quality Tests.** When tested according to the following tests, the aggregate shall meet these requirements.

Table 1
Aggregate Quality

Test Method	Requirement	Specified Value
TxDOT TEX-203-F	Sand Equivalent	70 min.
TxDOT TEX-411-A	Soundness	30% max. using MgSO ₄
TxDOT TEX-410-A	Abrasion Resistance	30 max.
TxDOT TEX-438-A, Part 1	Polish Value	RSPV = 30 min.

* the abrasion test shall be run on the aggregate before it is crushed.

- (c) **Gradation.** The target (mix design) aggregate gradation (including the mineral filler) shall be within the appropriate design band specified in the table below. The gradation shall be tested in conformance with test method TxDOT TEX-200-F, Part II, Washed Sieve analysis gradation requirements.

Table 2
Aggregate Gradation
Percent Passing by Weight or Volume

Sieve Size	ISSA Gradation				Stockpile Tolerance
	Type I	Type II	Type III	Type II Mod	
3/8 (9.5 mm)	100	100	100	100	—
#4 (4.75 mm)	100	90-100	70-90	90-100	+/- 5%
#8 (2.36 mm)	90-100	65-90	45-70	65-90	+/- 5%
#16 (1.18 mm)	65-90	45-70	28-50	25-46	+/- 5%
#30 (600 um)	40-65	30-50	19-34	15-35	+/- 5%
#50 (300 um)	25-40	18-30	12-25	10-25	+/- 4%
#100 (150 um)	15-25	10-21	7-18	5-15	+/- 3%
#200 (75 um)	10-15	5-15	5-15	5-15	+/- 2%

- (3) **Mineral Filler.** Mineral filler shall consist of thoroughly dried stone dust, Portland Cement, fly ash, hydrated lime, or other mineral dust approved by the Engineer. Mineral filler shall be used if required by the mix design and shall be considered as part of the dry aggregate.
- (4) **Water.** The water shall be free from harmful salts and contaminants.
- (5) **Polymer Modifier.** Polymer modifier shall consist of a compatible cationic asphaltic modifier meeting the requirements set forth in Special Specification Item No. 301S "Asphalts, Oils, and Emulsions".
- (6) **Additives.** Additives may be used to accelerate or retard the break-set of the slurry seal, or improve the resulting finished surface: The use of additives in the slurry mix (or individual

materials) shall be made initially in quantities predetermined by the mix design with field adjustments if required, after approval by the Engineer.

314.3 Paving Mixtures

Before work begins, the Contractor shall submit a signed mix design covering the specific materials to be used on the Project. This design shall be performed by a laboratory who has sufficient experience in designing Emulsified Asphalt Slurry Seal Surfacing. After the mix design has been approved, no substitution will be permitted, unless approved by the Engineer.

- (1) **Mix Design.** The Contractor shall submit to the Engineer for approval a complete mix design prepared and certified by the laboratory. Compatibility of the aggregate, emulsion, mineral filler, and other additives shall be verified by the mix design. The mix design shall be made with the same aggregate gradation that the Contractor will provide on the Project. A quick-set mix design is required to minimize street closures. Slurry placed on high traffic volume collector and arterial streets must cure sufficiently that uniformly moving traffic can be allowed in one hour with no damage to the surface. However, locations subject to sharp turning or stopping and starting traffic may require additional curing. Tests and the required values are as follows:

Table 3
Mix Design

Requirement	Test Method	Specified Value
Modified Cup Flow Test	TxDOT TEX-240-F, Part II	_____
Wet Cohesion 30 minutes min. (set) 60 minutes min.	TxDOT TEX-240-F, Part III (for quick-traffic systems)	12 kg-cm min. 20 kg-cm min.
Excess Asphalt by LWT Sand Adhesion	ISSA TB-109 (for heavy traffic areas only)	50 g/ft ² max. (538 g/m ² max.)
Wet Stripping	ISSA TB-114	Pass (90% min.)
Wet Track Abrasion Test	TxDOT TEX-240-F, Part IV	75 g/ft ²
* Mixing Time Test	TxDOT TEX-240-F, Part I	Controllable to 180 seconds min.

* The abrasion test shall be run on the aggregate before it is crushed.

** the wet track abrasion test is used to determine the minimum asphalt content.

The mixing test is used to predict how long the material can be mixed in the machine before it begins to break. It is more for information to be used by the Contractor than for the quality of the end product. It is however, a good field test to check for consistent sources of material, both emulsified asphalt and aggregate.

The laboratory shall also report the quantitative effects of moisture content on the unit weight of the aggregate (bulking effect). The report must clearly show the proportions of aggregate, mineral filler (min. and max.), water (min. and max.), additive(s) (usage), and asphalt emulsion based on the dry weight of the aggregate.

All the component materials used in the mix design shall be representative of the materials proposed by the Contractor to be used on the Project.

The percentages of each individual material required shall be shown in the laboratory report. Adjustments may be required during the construction, based on the field conditions. The Engineer will give final approval for all such adjustments.

The Engineer shall approve the mix design and all slurry seal materials and methods prior to use. The component materials shall be within the following limits in Table 4 below:

Table 4
Mix Design Components

Component	Specified Value	Comments
Residual Asphalt	Type I: 10%-16% Type II: 8% - 13.5% Type III: 7%- 12%	based on dry weight of aggregate.
Polymer Modifier	2.0% min.	Weight % (solids basis)
Mineral Filler	0.5%-2.0%	based on dry weight of aggregate
Additives	As needed.	Follow manufacturer's recommendations
Water	As needed to achieve proper mix consistency.	Total mix liquids should not exceed the loose aggregate voids- ISSA T-106 should be used to check optimum liquids

- (2) **Rate of Application.** The slurry seal shall be of proper consistency at all times so as to provide the application rate required by the surface condition. The average application rate, as measured by the Engineer, shall be as specified in the unit bid form of the Contract Documents. Application rates are affected by the unit weight of the aggregate, the gradation of the aggregate, and the demand of the surface to which the slurry seal is being applied. ISSA technical bulletin 112 gives a method to determine expected application rates.
- (3) **Tolerances.** Tolerances for individual materials as well as the slurry seal mixture are as follows:
- (a) After the designed residual asphalt content is determined, a plus or minus one percentage point variation will be permitted.
 - (b) Polymer modifier shall not be more than 0.5% less than the minimum rate specified in the job mix formula (JMF).
 - (c) The percentage of aggregate passing each sieve shall be within stockpile tolerance range as stated. (d) The percentage of aggregate passing shall not go from the high end to the low end of the specified range of any two successive sieves.
 - (e) The slurry consistency shall not vary more than ± 0.5 cm from the job mix formula (JMF) after field adjustments.
 - (f) The rate of application once determined by the Engineer shall not vary more than ± 2 lbs./SY, while remaining within the design application rate.

314.4 Equipment

All equipment, tools, and machines used in performance of this Work shall be maintained in satisfactory working condition at all times to ensure a high quality product.

- (1) **Mixing Equipment.** The machine shall be specifically designed and manufactured to lay slurry seal. The material shall be mixed by a self-propelled slurry seal mixing machine of continuous run design. Continuous run machines are those that are equipped to self load materials while continuing to lay slurry seal. The machine shall be able to accurately deliver and proportion the aggregate, emulsified asphalt mineral filler, control setting additive, and water to a revolving mixer and discharge the mixed product on continuous flow basis. The machine shall have sufficient storage capacity for aggregate, emulsified asphalt, mineral filler, control additive, and water to maintain an adequate supply to the proportioning controls.

Continuous run equipment capable of a 13 feet wide pass shall be used for continuity of mix and the reduction of start up joints and longitudinal joints. Continuous run equipment shall be equipped to allow the operator to have full control of the forward and reverse speed during application of the slurry seal. It shall be equipped with a self-loading device, opposite side driver stations, and forward and reverse speed controls.

Limited use of truck mounted machines may be employed on cul-de-sacs, small narrow roadways, parking lots, and other special areas with the Engineer's approval. An approved truck mounted machine shall be able to accurately deliver and proportion the aggregate, emulsified asphalt, mineral filler, control setting additive, and water to a revolving mixer and discharge the mixed product on a continuous flow basis. The Machine shall have sufficient storage capacity for aggregate, emulsified asphalt, mineral filler, control additive, and water to maintain an adequate supply to the proportioning controls.

- (2) **Proportioning Devices.** Individual volume or weight controls for proportioning each material to be added to the mix (i.e. aggregate, mineral filler, emulsified asphalt, and additive) shall be provided and properly marked.

The proportioning devices are usually revolution counters or similar devices and are used in material calibration and determining the material output at any time.

- (3) **Spreading Equipment.** The mixture shall be spread uniformly by means of a conventional surfacing spreader box attached to the mixer and equipped to agitate and spread the material evenly throughout the box. A front seal shall be provided to insure no loss of the mixture at the road contact point. The rear seal shall act as a strike-off and shall be adjustable. A secondary strike-off shall be provided to improve surface texture. The secondary strike-off shall have the same adjustments as the rear seal the mixture shall be spread to fill cracks and leave a uniform, skid resistant application of aggregate and asphalt on the surface. The spreader box and rear strike-off shall be so designed and operated that a uniform consistency is achieved to produce a free flow of material to the rear strike-off. The spreader box shall have suitable means provided to side shift the box to compensate for variations in the pavement geometry.

- (4) **Auxiliary Equipment.** Suitable surface preparation equipment, traffic control equipment, hand tools, and any other support equipment shall be provided as necessary to perform the Work.
- (5) **Calibration.** Each mixing unit to be used in performance of the Work shall be calibrated in the presence of the Engineer prior to construction. Previous calibration documentation covering the exact materials to be used may be acceptable, provided they were made during the calendar year. The documentation shall include an individual calibration of each material at various settings, which can be related to the machine's metering devices. No machine will be allowed to work on the Project until the calibration has been completed and/or accepted.
- (6) **Verification.** Test strips will be made by each machine after calibration and prior to construction. Test strips shall be a portion of the Project. Samples of the slurry seal will be taken and verification made as to mix consistency and proportioning. Verification of rate of application will also be made. Upon failure of any of these tests, additional test strips, at no cost to Owner, will be required until each unit is authorized to work. Any unit failing to pass the tests after the third trial will not be permitted to work on the Project. Test strips must be accepted or rejected within 24 hours after application.

314.5 Construction Methods

- (1) **General.** The Contractor shall be responsible for the production, transportation, placement, and surface finishing of the specified slurry mixture to the requirements of this specification.

Leakage of fuels, oils, grease, hydraulic or brake fluids or other contaminants onto the prepared surface or newly-laid mat will not be allowed.

The slurry seal shall not be applied if either the pavement or air temperature is below 65° F (18° C) and falling, but may be applied when both pavement and air temperature are above 60° F (15° C) and rising. No slurry seal shall be applied when there is danger that the finished product will freeze before curing for 24 hours. The mixture shall not be applied when weather conditions prolong opening to traffic beyond a reasonable time. Contractor will be responsible for checking the local and national weather services for advance forecasts to determine scheduling.

The slurry seal shall be of the desired consistency upon leaving the mixer. A sufficient amount of material shall be carried in all parts of the spreader at all times so that a complete coverage is obtained. Overloading of the spreader shall be avoided.

No lumping, balling, or unmixed aggregate shall be permitted.

- (2) **Finished Surface.** The finished slurry seal shall have a uniform texture free from excessive scratch marks, tears or other surface irregularities. Level up courses or scratch coats that will be covered by a final course are exempted from this requirement.

No streaks or scratch marks such as those caused by oversized aggregate shall be left in the finished surface. If excess oversize develops, the job will be stopped until the Contractor proves to the Engineer that the situation has been corrected.

Other surface irregularities such as corrugations (ripples in the driving profile) added by the application of slurry seal will be considered unacceptable and require remediation. Contractor shall remedy or remove and replace any such surface irregularities at the Contractor's expense.

- (3) **Joints.** No excess buildup, uncovered areas, or unsightly appearance shall be permitted on longitudinal or transverse joints. The Contractor shall provide suitable width spreading equipment to produce a minimum number of longitudinal joints throughout the Project. When possible, longitudinal joints shall be placed on lane lines. Half passes and odd width passes will be used only in minimum amounts. If half passes are used, they shall not be the last pass of any paved area. A maximum of six inches (6") (152 mm) shall be allowed for overlap of longitudinal lane line joints. The seams where two spreads join shall be neat appearing and uniform. Joints without gaps will be considered acceptable if no more than 1/2 inch vertical space exists between the pavement surface and a four (4) foot straight edge placed perpendicular on the longitudinal joint nor 1/4 inch vertical space for a transverse joint.

No excessive tears such as gaps in the joints shall be left in the finished surface. Tears are considered excessive if there is more than one mark in any 100 feet of machine pull that is 1/4 inch wide or wider and 10 feet in length, 1/2 inch wide or wider and more than six (6) feet in length, or 1 inch wide or wider and four (4) feet in length.

At the edges of the street, a small overlap onto the concrete gutter area of no more than two (2) inches shall be considered acceptable for sealing over the asphalt to concrete interface provided the slurry edge line is neat and straight. However, if there is an open crack at this interface greater than 3 inches it must be sealed with rubberized crack sealant prior to the application of slurry.

- (4) **Mix Stability.** The slurry seal shall possess sufficient stability so that premature breaking of the material in the spreader box does not occur. The mixture shall be homogeneous during and following mixing and spreading. It shall be free of excess water and emulsion and free of segregation of the emulsion and aggregate fines from the coarser aggregate. Spraying of additional water into the spreader box will not be permitted.
- (5) **Handwork.** Areas which cannot be reached with slurry seal machines shall be surfaced using hand squeegees to provide complete and uniform coverage. The area to be hand-worked shall be lightly dampened prior to mix placement and the slurry worked immediately. Care shall be exercised to leave no unsightly appearance from handwork. The same type finish as applied by the spreader box shall be required in hand-worked areas. Handwork shall be completed during machine applying process. All reasonable efforts should be made to minimize the amount of hand-worked area.

- (6) **Lines.** Care shall be taken to insure straight lines along curbs and shoulders. No runoff on these areas will be permitted. Lines at intersections shall be kept straight to provide good appearance.
- (7) **Vacuum Sweeping.** A minimum of one pass with a vacuum street sweeper is required on all cured slurry seal surfaces to minimize loose rock on the street, in the gutter, and in driveways. A second pass is also required on cul-de-sac streets between one and two weeks after the first sweeping. Additional sweeping may be required where significant raveling of the slurry aggregate occurs, loose rock accumulates, or where there are citizen complaints about excess aggregate.
- (8) **Clean-up.** All areas, such as manholes, gutters and intersections, shall have the slurry seal removed as specified by the Engineer. The Contractor shall remove any debris associated with the performance of the Work on a daily basis.

314.6 Stockpiling and Storage

- (1) **Aggregate Storage.** If the mineral aggregates are stored or stockpiled, they shall be handled in such a manner as to prevent segregation, mixing of the various materials or sizes, and contamination with foreign materials. The grading of aggregates proposed for use and as supplied to the mixing plant shall be uniform. Suitable equipment of acceptable size shall be furnished by the Contractor to work the stockpiles and prevent segregation of the aggregates. The aggregate shall be passed over a 31inch vibratory scalping screen prior to transfer to the slurry mixing machine to remove oversized material.
- (2) **Storage of Asphaltic Materials.** The asphaltic material storage shall be ample to meet the requirements of the plant. All equipment used in the storage and handling of asphaltic material shall be kept in a clean condition at all times and shall be operated in such a manner that there will be no contamination with foreign matter.

314.7 Notification and Traffic Control

- (1) **Notification.** All entities affected by the paving shall be notified two days in advance of the surfacing. Should work not occur on the specified day, a new notification will be distributed. Deferred work shall be rescheduled as soon as possible after all other pending work that notifications have gone out for is complete. All practical efforts must be made to minimize the amount of work that must be deferred and rescheduled to control citizen inconvenience.

The notification shall be in a form of written posting, stating the date that the surfacing will take place and a general description of the process. Notices shall be placed in secure, prominent locations and information shall be written legibly in ink that will not run if the notice gets wet.

- (2) **Traffic Control.** Suitable methods shall be used by the Contractor to protect the slurry seal from all types of vehicular traffic without damage. Opening to traffic does not constitute acceptance of the Work. The Engineer shall be notified of the methods to be used.

In areas which are subject to an increased rate of sharp turning vehicles, additional time may be required for a more complete cure of the slurry seal mat to prevent damage. Slight tire marks may be evident in these areas after opening but will diminish over time with rolling traffic. If these areas are not severely rutted they should be considered as normal characteristics of a slurry seal and should be accepted.

314.8 Surface Preparation

- (1) General.** Immediately prior to applying the slurry seal the surface shall be cleared of all loose material, oil spots, vegetation, and other objectionable material. Any standard cleaning method will be acceptable. If water is used, cracks shall be allowed to dry thoroughly before slurry surfacing. Manholes, valve boxes, drop inlets, and other service entrances shall be protected from the slurry seal by a suitable method. The Engineer shall approve the surface preparation prior to surfacing.
- (2) Cracks.** All cracks in the pavement surface wider than 3 inches or as specified in the Contract Documents shall be sealed prior to slurry surfacing. Cracks shall be pre-treated in accordance with Item No. 313, "Rubber Asphalt Joint and Crack Sealer". Grass, dirt, and other deleterious materials shall be removed or routed out before crack sealing.
- (3) Other.** Other types of surface preparation may be necessary to provide a smooth, high quality final slurry seal. These preparations could include level-up, areas of HMAC surface replacement, pothole repairs, and full-depth repairs of failure areas. Contractor shall notify Engineer of any preparation work that is not included in the current scope of work to achieve a high quality slurry seal surface.

314.9 Sampling and Testing

- (1) Quality Control and Inspection.** Contractor shall allow the Engineer appropriate, safe access to materials, equipment, and Work to take samples and assess conformance to specification requirements. Any material delivered to the Project that by visual inspection can reasonably be expected not to meet specification requirements (i.e. wrong ISSA gradation type, poor gradation, contaminants, emulsion that has prematurely broke), as determined by the Engineer, shall not be used or left in place. Equipment shall be inspected prior to use and, if found to be defective or in an operating condition that could potentially affect the quality of the finished surfacing, as determined by the Engineer, its use will not be allowed.
- (2) Materials.** The Contractor shall permit the Engineer to take samples of the aggregate and asphalt emulsion used in the Project at the Engineer's discretion. Gradation and sand equivalent tests may be run on the aggregate and residual asphalt content tests on the emulsion. Test results will be compared to specifications.
- (3) Testing.** The first set of tests will be run at the Owner's expense; however, retesting for compliance shall be at the Contractor's expense. If the results of retesting indicate that the original testing was erroneous, the original test results will be discarded. When, in the opinion of the Engineer, test results appear unrepresentative, additional testing may be authorized at

the Owner's expense. If the Contractor desires additional testing, it shall be at his entire expense.

314.10 Acceptance Plan

All areas meeting the requirements of this specification including, but not limited to, sections 314.3 "Paving Mixtures" ("Mix Design", "Rate of Application", and "Tolerances") and 314.9 "Sampling and Testing" ("Quality Control and Inspection", "Materials", and "Testing") will be accepted for payment. Finished Work must be of consistent high quality and uniform appearance throughout the Project Area.

Limited substandard portions of the Work, as determined by the Engineer, shall be remedied or removed and replaced to the satisfaction of the Engineer at the expense of the Contractor. Patching shall be minimized and must be completed such that any patching is blended into the original Work to the degree reasonably possible. A second application of slurry is acceptable to remedy most unacceptable and slightly rough areas; however, excessively rough areas, highly non-uniform appearance, or otherwise severely unacceptable Work will require surface milling or heating and scraping and full-width reapplication of the slurry seal. Remedied areas satisfactory to the Engineer will be included in the area accepted for payment.

Subsequent Work that requires reapplication of slurry after the original slurry seal has aged and lightened in color, such as whitish "flushed" slurry that has been rained on or later repairs at the one-year warranty phase, will require restoration to a uniform appearance for the entire block of all affected streets or cul-de-sac. This must be achieved by either patching as necessary and a full width fog seal, or depending upon severity, a full width reapplication of slurry seal.

314.11 Measurement

All accepted "Emulsified Asphalt Slurry Seal" will be measured by the square yard of surface treated.

314.12 Payment

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Emulsified Asphalt Slurry Seal" of the type specified. This price shall be full compensation for furnishing all labor, equipment, time, materials, and incidentals necessary to complete the Work.

Surface preparation and cleaning will not be measured or paid directly but shall be considered subsidiary to Item No. SS314 "Emulsified Asphalt Slurry Seal".

Payment for work meeting specifications will be made under Emulsified Asphalt Slurry Seal (Cul-de-sac), Type II Mod., at a rate of 18 lbs/SY- Per Square Yard (SY).

(Ref: 301S, 302S, 313S, 340S)

III. Special Conditions

A. Working Hours

1. The Contractor will be permitted to work Monday through Friday, 7 am to 7 pm and with a 48-hour notice to the Town, Saturday 9 am to 5 pm.
2. Work on Sunday will be for emergency only and if Town has given written permission. The work time will be specified in the written correspondence from the Town.

B. Permits

1. If a TXDOT permit is required for this project, it will be obtained by the Town.
2. The Contractor will be required to obtain any and all other permits, if required.

C. Safety and Protection

1. The Contractor shall comply with the provisions of the Occupational Safety and Health Act of 1970.
2. The Contractor agrees to indemnify and hold harmless the Town or the Town representatives for all damages suffered by the Town as a result of the Contractor's failure to comply with the Act.
3. The Contractor shall also comply with all the pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of American, Inc.
4. The Contractor shall furnish to the Town the name and phone number of their OSHA approved Competent Person and the name and phone number of the person responsible for safety.

D. Shop Drawings and Samples

1. After checking and verifying all field measurements, and after complying with applicable procedures specified herein, the Contractor shall submit four copies to the Town for their review or other appropriate action.
2. The Town will retain two copies, which will bear a stamp that Contractor has satisfied Contractor's responsibility under the Contract Documents with respect to the review of the submission.

E. Tests and Inspections

1. All costs associated with testing required by the contractor shall be considered to be included in the bid item pricing, as specified in Item 15 of the Standard Terms and Conditions of Procurements. Testing may include, but not be limited to:
 - a. Hydro-insensitive polyurethane tests

F. Progress Payments

1. The estimate period shall run monthly and end on the last day of each month.

G. Water for Construction

1. The Contractor shall make all necessary arrangements for securing and transporting all water required in the construction.
2. The Contractor is responsible for obtaining a fire hydrant meter from the Town and paying for all charges assessed to the meter.
3. All costs associated with acquiring and paying for water shall be considered to be included in the bid price.

H. Staking

1. The engineer shall flag for the contractor's use all major control points used for each project.
2. It shall be the contractor's responsibility to do all other construction staking for each project.

I. Beginning Period of Payment Bonds

1. The beginning period of the payment bond shall be the date the contract becomes effective.

J. Notification of Property Owners

1. The Town of Flower Mound will provide the contractor with door hangers and/or signs to be placed 48 hours prior to the commencement of work on any street.
2. The contractor shall provide the Town of Flower Mound a list indicating order and dates of work to be performed.

K. Barricades/Traffic Control

1. The Contractor shall be solely responsible for supplying and replacing barricades and for the barricade maintenance and public protection at all hours.
2. All barricades shall conform to the Texas Manual on Uniform Traffic Control Devices.
3. After hours hazards appearing at the construction site will be remedied immediately upon notification by the Town.
4. In accordance with the *Standard Specifications for Public Works Construction – North Central Texas* (Latest Edition) (by reference). The Contractor is responsible for submitting a traffic control plan for any activity within the street and/or right-of-way that may affect vehicular or pedestrian traffic.
5. No direct payment shall be made for supplying and replacing barricades. Payment shall be included in the unit price bid for asphalt overlay.

IV. Contractor Requirements

1. The contractor shall have a minimum of three (3) years experience in performing this type of work and a minimum of 20 projects on which the contractor has successfully completed this type of work. Prior to beginning work, the contractor shall submit certification to the Town representative that the contractor meets the minimum required experience. The certification shall include a listing of previous clients with contact names and phone numbers. Failure to comply with this request may be cause to deem the bid as a non-responsible bid.
2. Prior to being approved for performing this type of work, the following documents shall be supplied by the contractor to the Town representative and found to be acceptable:
 - a. A report from an industrial hygienist who has conducted a personnel, production vehicle and typical jobsite safety review of the contractor's implementation procedures involving the polyurethane material.
 - a. A copy of the contractor's Employee Safety Manual specific to polyurethane pavement raising and under-sealing working.

V. Insurance Requirements

ALL RESPONDENTS must submit, with the bid, proof of insurance coverage as indicated in Exhibit A. Proof shall be by submission of copies of current policies or current Certificates of Insurance, including the effective dates of coverage. The Town requires the following provisions by the SUCCESSFUL CONTRACTOR ONLY:

- A. Town of Flower Mound to be named as additional insured or an insured on all required policies, except worker's compensation.
- B. Town of Flower Mound to be names as a Loss Payee on Builder's Risk Insurance.
- C. Town of Flower Mound to be provided with a waiver of subrogation, in favor of the Town on all policies.
- D. Be provided with unconditional, thirty (30) days advance written notice of cancellation or material change (i.e. no limiting language in the notice of cancellation) on all policies.
- E. Prior to the execution of any resulting contracts, the Town of Flower Mound Purchasing Office shall be supplied with an original certificate of insurance evidencing the stated requirements. This insurance shall be effective for the contract duration and renewal certificates shall also be supplied upon expiration.

VI. Questions Deadline

The Town of Flower Mound requires that all questions relating to this bid be entered through the "Create New Question" option available through www.bidsync.com or directed

via email to Rochelle M. Ragas, CPPB, Purchasing Manager, at rochelle.ragas@flower-mound.com by **12:00pm local time on May 14, 2014. No questions will be answered over the phone.** Questions in regards to the specifications will only be accepted until the stated deadline.

EXHIBIT A

INSURANCE REQUIREMENTS CONSTRUCTION SERVICES

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the contractor's bid. A certificate of insurance meeting all requirements and provisions outlined herein shall be provided to the Town prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Comprehensive General Liability. "Occurrence" form only, "claims made" forms are unacceptable.
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract.

B. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises / Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Explosion Collapse and Underground (XCU) Coverage.
2. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 per injury, \$300,000 per occurrence, and \$100,000 per occupational disease.
3. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the Town. Automobile liability shall apply to all owned, hired and non-owned autos.
4. Builders' Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. Town shall be listed as Loss Payee.

5. **\$1,000,000 Umbrella Liability Limit** that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverages.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions in excess of \$10,000 must be declared to and approved by the Town.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. **General Liability and Automobile Liability Coverages:**

- a. The Town, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Town, its officers, officials, employees or volunteers.
- b. The contractor's insurance coverage shall be primary insurance in respects to the Town, its officers, officials, employees and volunteers. Any insurance or self- insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its officers, officials, employees, boards and commissions or volunteers.
- d. The contractor's insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limits of liability.

2. **Workers Compensation and Employer's Liability Coverage:**

The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the contractor for the Town.

3. **All Coverages:**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the Town.

E. ACCEPTABILITY OF INSURERS

The Town prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A- VI**, or better.

F. VERIFICATION OF COVERAGE

Contractor shall provide the Town with certificates of insurance indicating coverage's required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates 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.

BID CERTIFICATION FORM

The Undersigned Bidder proposes to complete the work as described in the specifications for the following price:

ITEM NO.	'ESTIMATED' ANNUAL QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL BID
1.	20,000 SY	Polymer Modified Emulsified Asphalt Slurry Seal, Complete and in Place	\$ 2.10	\$ 42,000.00
2.	1 L.S.	Mobilization	\$ 7,500.00	\$ 7,500.00

Company Information

The following information must be provided in its entirety for your bid to be considered:

Company Name: Viking Construction Inc
Principal Place of Business Address: 2592 Shell Rd.
Principal Place of Business City, State, Zip: Georgetown, TX. 78628
Principal Place of Business Phone Number: 512-930-5777
Principal Place of Business Fax Number: 512-868-1955
Remittance Address (if different from above): _____
Remittance City, State, Zip: _____
Tax Identification No: 742653491

Addendums

If an addendum to this bid is issued, acknowledge addendum by initialing beside the addendum number:

Add. No. 1 _____ Add. No. 2 _____ Add. No. 3 _____ Add. No. 4 _____ Add. No. 5 _____

Certification

The undersigned hereby certifies that he/she understands the specifications, has read the document in its entirety and that the prices contained in this bid have been carefully reviewed and are submitted as correct and final. Vendor further certifies and agrees to furnish any or all products/services upon which prices are extended at the price offered, in accordance with the terms and conditions contained herein. Vendor agrees that acceptance of any or all bid items by the Town of Flower Mound, Texas, within the time frame indicated in this bid constitutes a contract.

The individual signing this bid certifies that he/she is a legal agent of the company, authorized to bid on behalf of the company, and is legally responsible for the decisions as to the prices and supporting documentation provided.

Authorized Representative:

Barry H. Dunn 5/19/14
Signature Date
Barry H. Dunn
Printed Name
PRESIDENT
Title
BRAD @ VCISS.COM
Email Address



TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: April 5, 2021

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

ITEM: Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., to provide professional engineering services associated with the ADA Transition Plan & Implementation project – 2021 Update, in the amount of \$200,000.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Under Title II of the Americans with Disabilities Act (ADA), municipalities with more than 50 employees are required to have an ADA Transition Plan. The ADA Transition Plan has the following basic requirements:

- Designate an ADA Coordinator
- Develop and post an ADA Policy Statement
- Grievance Procedures
- Self-Evaluation (Public Right of Way, Buildings, Parks, Programs, Design Criteria, Website etc.)
- Develop a Transition Plan

This project will continue the work done as part of the initial and subsequent updates to the ADA Transition Plan that was adopted in November of 2015 and two subsequent updates. One of the major aspects of the ADA Transition Plan is to complete the self-evaluation. The self-evaluation portion of the ADA Transition Plan will take several years/updates to complete. This update will inventory the remaining facilities until new ones are opened, six additional parks and 15 linear miles of sidewalk segments. It will update the Town's Construction Standards as well. The ADA Transition Plan is a living document that lays out priorities for implementation of corrective actions with a yearly schedule that ultimately will bring all aspects of the Town into compliance with the ADA. The Town will continue to use summer interns to catalog residential streets. Over 80 miles of residential street sidewalks have already been cataloged by summer interns. Future interns will begin to add cost estimates to these catalogued sidewalks so they can be added to the overall Transition Plan for implementation.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: ADA Transition Plan is required by Federal Law

FISCAL IMPACT: \$200,000

Proposed Expenditure/(Revenue):	Account Number(s):
\$200,000.00	531-220-70050

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

Total project cost is \$150,000 yearly. Funding sources are: Other, Cash from General Fund

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
KIMLEY-HORN AND ASSOCIATES, INC.**

This contract is entered into on this 5th day of April, 2021, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and through its Mayor, and **KIMLEY-HORN AND ASSOCIATES, INC.**, (“hereinafter referred to as “CONSULTANT”) whose address is 801 Cherry St, Fort Worth, TX 76102.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to the Town’s ADA Self-Evaluation and Transition Plan – 2021 Update project; and

WHEREAS, CONSULTANT is a professional engineering and planning 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 ADA Self-Evaluation and Transition Plan – 2021 Update project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”). Attachment “A” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

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

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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:

Matthew J. Hotelling, P.E., PTOE, ADAC
Traffic Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6303 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:

Matthew J. Hotelling, P.E., PTOE, ADAC
Traffic Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6303 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:

Erin P. Eurek, P.E.
Project Manager
Kimley-Horn and Associates, Inc.
801 Cherry Street
Fort Worth, Texas 76102
817-335-6511 Telephone

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

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

[The remainder of this page is left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

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

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
KIMLEY-HORN AND ASSOCIATES, INC.**

By: Scott R. Arnold
Name: Scott R. Arnold
Title: Vice President

Date Signed: March 12, 2021

State of Texas §
 §
County of TARRANT §

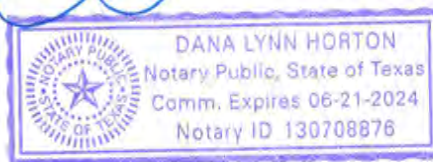
This instrument was acknowledged before me on the 12th day of MARCH, 2021, by SCOTT R. ARNOLD in his capacity as VICE PRESIDENT of KIMLEY-HORN AND ASSOCIATES, INC. a NORTH CAROLINA Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of KIMLEY-HORN AND ASSOCIATES, INC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 12th DAY OF MARCH 2021.

Dana Lynn Horton
Notary Public, State of Texas

My Commission Expires:

06-21-2024



ATTACHMENT A

SCOPE OF WORK

PROJECT NAME: ADA Self-Evaluation and Transition Plan – 2021 Update

PROJECT UNDERSTANDING

The Consultant will prepare an update to the Town of Flower Mound’s ADA Self-Evaluation and Transition Plan. The update will include an ADA compliance review of Town parks and associated parking lots including paths of travel, park sidewalk and associated curb ramps, unpaved pedestrian trails, pedestrian bridges, and public rights-of-way sidewalks and associated curb ramps and railroad crossings. Possible solutions to bring any non-compliant elements that are not considered to be a de minimis barrier and are not “safe harbored” into compliance will be provided. The Town’s Transition Plan will be updated and include formal documentation of tasks and associated findings outlined in this Scope of Services.

SCOPE OF PROFESSIONAL SERVICES

Task 1 – Project Management

- 1.1 The Consultant will maintain project records, budgets, and communications for the duration of the project. It is understood the project will have a 9-month duration.
- 1.2 The Consultant will prepare monthly progress reports for the duration of the project.

Task 2 – Self-Evaluation

- 2.1 Facilities Review. The Consultant will establish field teams which will conduct evaluations based on forms developed by the Consultant. The evaluation forms for facilities listed in **Tasks 2.1.1.1 – 2.1.1.2** will be based on the 2010 ADA Standards for Accessible Design and applicable access-related state and local standards. The evaluation forms for facilities listed in **Tasks 2.1.1.3 – 2.1.1.5** will be based on the 2011 Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) and applicable access-related state and local standards. All field data will be compatible with the Client’s existing Geographic Information System (GIS).

2.1.1 Facilities Listing

2.1.1.1 Parks and Parking Lots – The following parks will be evaluated:

Location Name	Property Address
1. Colony Park	1015 Colony St.
2. Culwell Park	1813 Southwicke Dr.
3. Grand Park	6201 Madeline Ln.
4. Lone Tree Park	3909 Regency Park Ct.
5. Post Oak Park	3000 Skillern Rd.
6. Prairie Creek Park	1200 Colony St.

Location Name	Property Address
7. Spring Meadow Park	4001 Spring Meadow Ln.
8. Twin Coves Park	5001 Wichita Tr.

- 2.1.1.2 Park Sidewalks/Multi-Use Trails – Up to three (3) linear miles of park sidewalk or multi-use trails will be evaluated. All curb ramps, ramps, stairs, pedestrian bridges and other paths of travel required to be ADA compliant along this sidewalk will be evaluated.
- 2.1.1.3 Sidewalk Corridors – Up to 51 linear miles of sidewalks shown in **Exhibit A** will be evaluated.
- 2.1.1.4 Unsignalized Intersections and Driveways – Unsignalized intersections and driveways along the sidewalk in **Task 2.1.1.3** will be evaluated. The Consultant estimates this task will include the evaluation of up to 408 intersections and up to 1,275 curb ramps. Evaluation of additional curb ramps will be considered Additional Services.
- 2.1.1.5 Railroad Crossings – Existing pedestrian railroad crossings along the sidewalk in **Task 2.1.1.3** will be evaluated. Railroad crossing along the pedestrian path of travel that do not currently have sidewalk leading up to the railroad tracks will not be evaluated.

Facility Reports. The Consultant will create a separate report for each facility type. Each facility report will identify compliance status of each facility and include the following:

- Listing of facilities that are in compliance with ADA requirements.
- Listing of facilities that are not in compliance with ADA requirements.
- Possible solutions to resolve non-compliance issues for each facility.
- Prioritized list of improvements using criteria developed by the Consultant.
- “Cost report” that assigns conceptual budget estimates to each possible solution. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- Pay item descriptions, units, and unit prices will be based on the current Texas Department of Transportation (TxDOT) 12-month moving average unit prices. Changes to the pay item units after project commencement will be considered Additional Services.
- Photolog summary for each facility (photos for sidewalks can be hyperlinked in GIS but will not be provided on each facility report).
- Catalog of all field data compatible with the Client’s existing GIS databases.
- The compliance status and possible solutions for facilities listed in **Tasks 2.1.1.1 – 2.1.1.2** will be based on the 2010 ADA Standards for Accessible Design and applicable access-related state and local standards. The compliance status and possible solutions for facilities listed in **Tasks**

2.1.1.3 – 2.1.1.5 will be based on the 2011 Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (PROWAG) and applicable access-related state and local standards.

Task 3 – Transition Plan Update

The Consultant will coordinate with Client staff in updating the Transition Plan as follows:

3.1 Draft Transition Plan. Based on the Self-Evaluation, the Consultant will prepare a draft Transition Plan for the Client. The plan will include:

- Executive summary which will describe the project purpose, process, and most significant findings;
- Summary and detailed findings of Self-Evaluation; and
- A phased schedule with cost estimates for the removal of facility barriers that cannot be resolved through relocation of services, the provision of auxiliary aids, or equivalent facilitation.

The Consultant will provide electronic copies of the Draft Transition Plan in Microsoft Word and Adobe PDF formats to the Client.

3.2 Final Transition Plan. The Consultant will address one (1) round of comments from Client staff to prepare a Final ADA Self-Evaluation and Transition Plan for the Client. The Consultant will provide the following deliverables to the Client:

- Electronic copies of the Final Transition Plan in Microsoft Word and accessible Adobe PDF formats;
- Two (2) printed copies of the Final Transition Plan; and
- Electronic copy of the Appendices in Adobe PDF format. Printed copies of the Appendices will be considered Additional Services.
- Two (2) flash drives with the electronic copies of the Final Transition Plan and Appendices.

Task 4 – Meetings

4.1 Progress Meeting. The Consultant will prepare for and attend up one (1) in-person progress meeting with Client staff. The Consultant will produce meeting materials and handouts and prepare a summary of action items resulting from the meeting (2-hour meeting).

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Evaluation and reporting of facilities not listed in **Task 2.1**;
- Evaluation of areas used only by employees as work areas.
- Providing printed copies of Appendices.

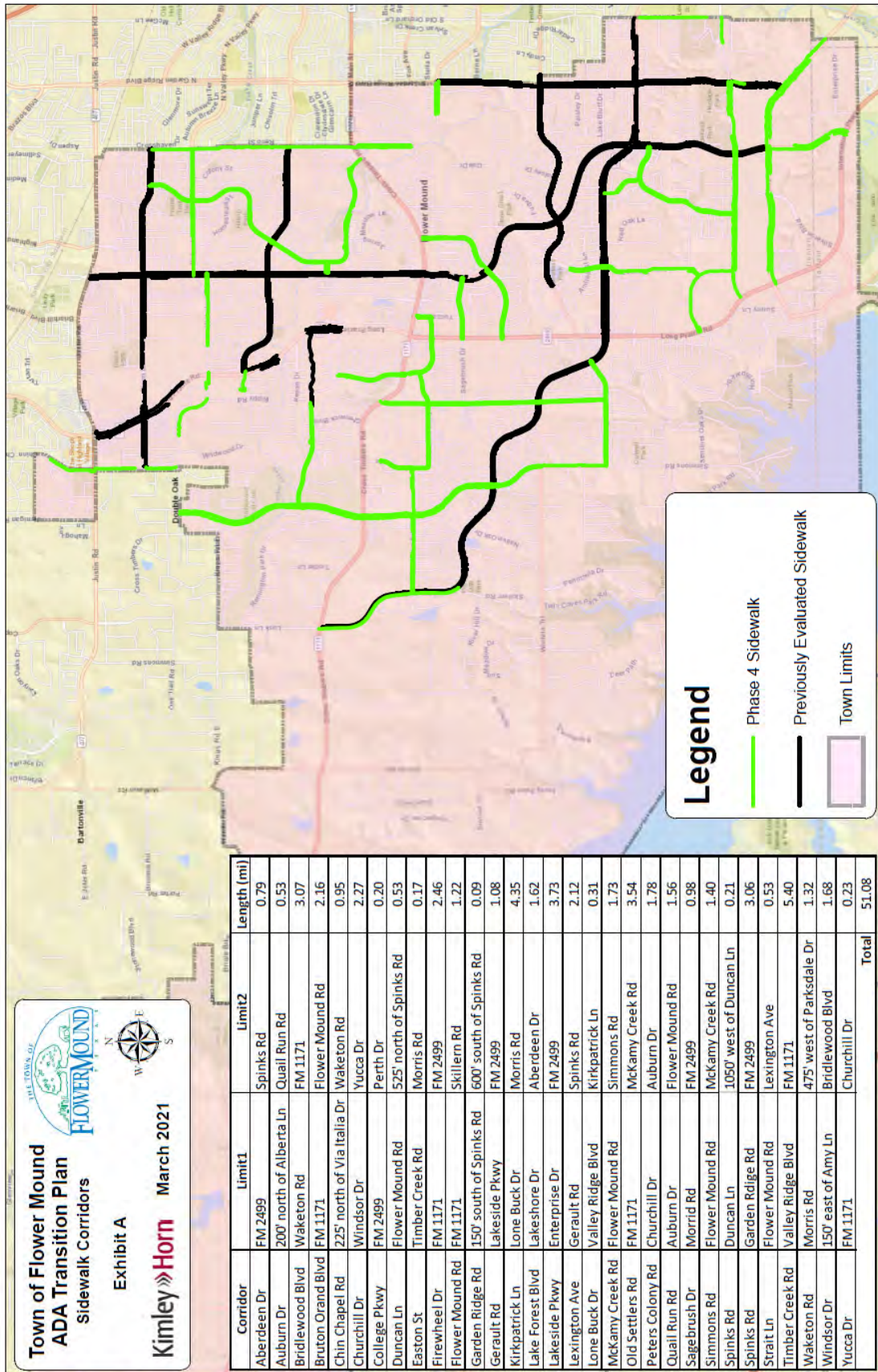
Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

Schedule: The Consultant will provide its services as expeditiously as practicable and work with the Client to develop a mutually agreeable schedule.

Deliverables: The Consultant will deliver the following materials to the Client:

- Electronic copies of the Draft Transition Plan in Microsoft Word and Adobe PDF formats;
- Electronic copies of the Final Transition Plan in Microsoft Word and Adobe PDF formats;
- Two (2) printed copies of the Final Transition Plan. Two (2) electronic copies of the Appendices will be provided on flash drives. Printed copies of the Appendices will be considered Additional Services.
- Field work data in GIS format, compatible with the Client's GIS system.



ATTACHEMENT B

PAYMENT FOR SERVICES

The Consultant will provide the Scope of Professional Services for a lump sum fee of \$200,000.

Additional services will be negotiated at the time they are identified.



TOWN COUNCIL AGENDA ITEM NO. 14 CONSENT ITEM

DATE: April 5, 2021

FROM: Jaime Jaco-Cooper, Senior Center Manager

ITEM: Consider approval of a contract with Metroport Meals on Wheels, Inc. to establish an annual fixed-price contract to provide meals for the Town's Senior In Motion program.

BACKGROUND INFORMATION: On January 5, 2021, a Request for Proposals was issued and a notice to proposers was advertised. One (1) response was received by the due date of March 20, 2021. An evaluation committee consisting of representatives from the Parks and Recreation Department evaluated the sole response to ensure that Metroport Meals on Wheels, Incorporated (MMOW) met all requirements as specified for this service.

MMOW partners with local restaurants and caterers to provide a nutritious lunch to the Seniors in Motion (SIM) members at the contracted rate of \$5.95 per person, per meal. The SIM lunch program serves approximately 160 meals per lunch offering. Each SIM member purchases their lunch for \$4.00 per meal. The revenue collected each week will be credited back to the expenditure line item that will be utilized to fund this lunch program. The current SIM budget is \$21,600 for the lunch program, which will be utilized in part to defray the difference of \$1.95 per meal, per person to the Town, after SIM member contributions.

Based on the \$.10 increase in the cost per meal, per lunch offering, the total estimated annual expenditure for this service, prior to SIM member contributions is \$88,536. After the SIM member contributions, the Town's estimated annual expenditure for this service is \$29,106.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Town Council can deny the request and ask that Town staff rebid the service.

FISCAL IMPACT: \$14,553.00 (remainder of this fiscal year)

Proposed Expenditure/(Revenue):	Account Number(s):
\$14,553.00	100-630-34300-5110

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

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

ATTACHMENTS:

1. Professional Services Agreement

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

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

This Contract is made by the Town of Flower Mound, Texas, a municipal Corporation ("Town") and Metroport Meals on Wheels, Inc. ("Contractor"). The Town and Contractor agree:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Name: Mary King
 Title: Executive Director
 Company Name: Metroport Meals On Wheels
 Address: PO Box 204
 City, State, Zip: Roanoke TX 76262

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

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

AGREED TO BY:

TOWN OF FLOWER MOUND, TEXAS

By: Metroport Meals

By: _____

Name: Mary King

Title: Executive Director

Mayor Steve Dixon

Date: 3/3/2021

Date: _____

**Town of Flower Mound, Texas
Bid Certification Form
RFP No. 2021-47-A
Seniors in Motion Lunch Program**

Company Information

The following information must be provided in its entirety for your bid to be considered:

Company Name: METROPORT MEALS ON WHEELS, INC.

Principal Place of Business Address: 428 N HWY 377

Principal Place of Business City, State, Zip: ROANOKE TX 76262

Principal Place of Business Phone Number: 817 491-1141

Principal Place of Business Fax Number: 817 491-0661

Remittance Address (if different from above): PO Box 204

Remittance City, State, Zip: ROANOKE TX 76262

Tax Identification No: 75-2298847

Addendums

If an addendum to this bid is issued, acknowledge addendum by initialing beside the addendum number:

Add. No. 1 _____ Add. No. 2 _____ Add. No. 3 _____ Add. No. 4 _____ Add. No. 5 _____

Certification

The undersigned hereby certifies that he/she understands the specifications, has read the document in its entirety and that the prices contained in this bid have been carefully reviewed and are submitted as correct and final. Vendor further certifies and agrees to furnish any or all products/services upon which prices are extended at the price offered, in accordance with the terms and conditions contained herein. Vendor agrees that acceptance of any or all bid items by the Town of Flower Mound, Texas, within the time frame indicated in this bid constitutes a contract.

The individual signing this bid certifies that he/she is a legal agent of the company, authorized to bid on behalf of the company, and is legally responsible for the decisions as to the prices and supporting documentation provided.

Authorized Representative:

Mary King 2/1/21
Signature Date

MARY KING
Printed Name

Executive Director
Title

maryking@metroportmaw.org
Email Address

Metroport Meals On Wheels

Proposal to the Town of Flower Mound

Solicitation No. 2021-47-A

Due Date: February 3, 2021 at 11:00 a.m. CST

Attention: Marquita Shamlin, Purchasing Buyer

Seniors in Motion Lunch Program

Proposal

Metroport Meals On Wheels, Inc. proposes to provide meals and personnel to order, set-up, serve, and clean-up serving area after each meal for the Seniors in Motion Luncheon Program in quantities as needed and approved by the Town of Flower Mound on Tuesdays and Thursdays.

Company Information

Metroport Meals On Wheels (MMOW) is a grassroots volunteer advocate for the elderly and those in need through home-delivered meals, senior center luncheons, and other support services. MMOW is *Neighbors Helping Neighbors* to alleviate hunger, isolation, and loneliness in our communities, and to foster the independence, worth, and dignity of each individual we serve.

MMOW has continuously provided meals for senior center luncheons for forty years. MMOW currently provides senior center luncheons in Colleyville, Denton Creek Senior Living, Evergreen/Keller, Flower Mound, Grapevine, Haslet, Highland Village, Justin, Keller, Richland Hills, Roanoke, Southlake. Luncheon frequency varies by community and is defined by community specification. Luncheon frequency ranges from one luncheon per month to three luncheons per week. Because of the social distancing and safety measures implemented to keep people safe during the Covid-19 Pandemic, MMOW transitioned the format for senior community meals from in person dining to to-go meals safely delivered curbside in March, 2020. We will continue the to-go meals until we can safely resume traditional community meals and our city partners are comfortable hosting in person activities.

Unlike the majority of Meals On Wheels programs, MMOW is NOT federally funded, nor is it a United Way agency. MMOW has tailored its program to meet the needs of the participants and communities we serve. MMOW believes that the participants and communities benefit most with the local approach, with the partnership of local food partners and local volunteers.

MMOW has made a conscious effort to diversify sources of income. Historically, individual donors, special events, and our resale shop have provided the greatest sources of revenue. The

Pandemic played havoc with special events and the resale store in 2020, but individual donors provided invaluable support. In 2020, total revenue was derived from the following sources:

Individuals	39.6%	Foundation, Civic, Church	17.3%
Events	12.8%	City contracts	11.6%
Resale	9.1%	Misc. (fees, interest)	9.6%

What began as concerned volunteers cooking and delivering a weekly meal to elderly or sick neighbors has grown into a strong grassroots organization that provided 118,209 meals to over 1,200 participants in twenty-three communities in three counties in fiscal 2020 and over 1.75 million meals to seniors since delivering our first meal on April 1, 1980.

Lunch Program

MMOW's luncheon program is built on the philosophy of providing seniors with a "not-to-be-missed" special occasion. In many centers, seniors actually dress up for the luncheons. Birthdays are celebrated monthly. Attendance is encouraged regardless of whether the participants are lifelong residents or new to the community. MMOW operates most senior center luncheons on a "No Reservations Necessary" basis and whole-heartedly welcomes any senior seeking a meal or fellowship.

MMOW strives to plan menus that include foods that the seniors like and enjoy eating. Because food preferences are highly personal and involve individual tastes, MMOW incorporates a variety of food partners and a wide variety of food selections during the year. No matter how talented the chef and how varied the menus might be, a steady diet of food from a single source becomes monotonous. The advantage of working with food partners rather than an institutional kitchen is the continual variety of styles, seasonings, and preparations that provide an enhanced dining experience. The wide variety of food partners also allows maximum flexibility in planning menus that complement special program events and activities at the Senior Center.

During fiscal 2020, MMOW served 13,398 meals for Flower Mound's Seniors in Motion program—an increase of 54% over 2019 meals served. Luncheon attendance ranged from a monthly low of 523 in March to a high of 1,667 in September.

Restaurant partners during 2020 included

- Boston Market
- Chasin Tail BBQ
- Chef Tyler/The Brown Bag Club
- Dickey's
- East Ocean Restaurant
- Enzos NY Pizzeria
- Mama's Daughter's Diner
- Market Street
- Rosa's

Salerno Restaurant
 Schlotzsky's
 Swirl Bakery
 Wok & Roll

Sample menu that were served during 2020

Pecan crusted chicken	Meatloaf
Pasta	Mashed potatoes
Salad	Carrots
Bread	Roll
Baked Ham	Beef and chicken soft tacos
Sweet Potatoes	Mexican rice
Peas	Refried beans
Roll	Chips & salsa
Fried Catfish	Grilled chicken
Rice and Beans	Creamed Spinach
Cole Slaw	Roasted New Potatoes
Cornbread	Corn Bread
Pulled Pork	Chicken Fried Steak
Baked Beans	Black Eyed Peas
Potato Salad	Mashed Potatoes
Bread	Roll
Sesame Chicken	Salisbury Steak
Beef Lo Mein	Mashed Potatoes
Chinese Vegetables and Rice	Green Beans
Egg Roll	Roll

MMOW provides a Luncheon Coordinator for each center. The Luncheon Coordinator is an employee of MMOW whose sole responsibility is to handle all aspects of the luncheon from planning to kitchen clean-up after the meal. All costs of this employee are borne by MMOW and included in the meal price quoted in this proposal.

Experience

MMOW has served the senior community in Flower Mound since the inception of the Town's formal senior program in April, 2005, when MMOW was invited by the Town of Flower Mound to provide luncheons. In 2011, the Town initiated an RFP for the Seniors in Motion luncheon program and MMOW was awarded the contract. (Note: MMOW also provides home-delivered meals to elderly, frail, chronically ill or disabled individuals of any age in Flower Mound. Home-delivered meals do not fall within the auspices of this RFP.)

In addition to Flower Mound, MMOW currently provides the following senior center luncheons:

Colleyville

1st & 3rd Fridays

Contact: Cody Ashton 817.503.1195

Evergreen/Keller—facility temporarily closed due to Covid-19

4th Mondays

Contact: Jan Heineman 817-741-6000

Grapevine Senior Center—facility temporarily closed due to Covid-19

Tuesdays, Wednesdays, and Thursdays

Haslet

Every Thursday

Contact: Mayor Bob Golden 817-439-5931

Highland Village—facility temporarily closed due to Covid-19

1st & 3rd Thursdays

Justin

Every Wednesday

Contact: Josh Armstrong 940-648-2541

Keller

Tuesdays, Wednesdays, and Fridays

Contact: Crystal Lopez 817-743-4371

Richland Hills

4th Fridays

Contact: Dona Roth Kinney, CPRP 817-616-3740

Roanoke

Every Wednesday

Contact: Ronnie Angel 817-837-9930

Southlake

Every Tuesday

Contact: Soheila Mashat Phelps 817-748-8398

MMOW believes that the seniors benefit most with a local approach. MMOW forms relationships with local food partners who provide maximum variety and value to meals within the constraints of our budget. Our food partners are usually very generous in the portions they provide thus allowing some flexibility in the ability to accommodate drop-in guests for a luncheon.

As a local nonprofit charity serving seniors, MMOW's mission resonates with our food partners and inspires their benevolence. This relationship enables MMOW to provide meals that far exceed the fee or suggested donation seniors pay for the meal. MMOW's mission also resonates with donors who value the opportunity for seniors to participate in senior center luncheon programs. It is their donations as well as proceeds from special events and MMOW's resale shop that provide funds which bridge the gap between the cost per person per meal that is proposed under this RFP and the \$8.11 actual cost to MMOW in providing the meal.

Two significant factors differentiate MMOW from other Meals On Wheels programs.

- Since its inception in 1980, MMOW has chosen not to accept federal reimbursement for meals. This enables MMOW to make decisions based on local needs, preferences, and conditions. It enables MMOW to serve anyone of any age in the home delivered meal program. It enables the formation of local partnerships which have yielded so many benefits for senior center participants.
- Many Meals On Wheels programs provide only home delivered meals. MMOW believes that both programs are vitally important to seniors. A growing body of research links chronic loneliness to serious physical and mental health risks. For MMOW, isolation is as compelling a need for meals as is hunger. Because we feel that socialization is such an important combatant to isolation, MMOW often adjusts home delivery schedules to enable a senior to attend a senior center luncheon.

Because food preferences are highly personal and involve individual tastes, MMOW occasionally receives complaints about a meal based on those preferences. As a collaborative party dedicated to the success and growth of the SIM program, MMOW strives to engage in dialogue and works to resolve concerns before a situation escalates to a formal complaint.

Organizationally, MMOW has not had a formal complaint filed about its programs. MMOW has had one Workers Comp claim during the past ten years and was the subject of a lawsuit by a disgruntled former employee fifteen years ago.

Metroport Meals On Wheels

Proposal to the Town of Flower Mound

Solicitation No. 2021-47-A

Due Date: February 3, 2021 at 11:00 a.m. CST

Attention: Marquita Shamlin, Purchasing Buyer

Seniors in Motion Lunch Program

Metroport Meals On Wheels proposes to provide meals for the Seniors in Motion luncheons in quantities as needed and confirmed by the Town of Flower Mound Seniors In Motion representative the day prior to the luncheon.

Metroport Meals On Wheels will provide a designated employee to serve as the Luncheon Coordinator for Seniors in Motion luncheons. The Luncheon Coordinator will be responsible for all aspects of the luncheon and all costs of this employee will be borne by Metroport Meals On Wheels and will be included in the quoted price per meal.

Metroport Meals On Wheels will performs services as described in RFP No. 23021-47-A at a total cost of \$5.95 per person per meal with no extraneous or additional costs to the Town of Flower Mound.

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY Date Received
1 Name of vendor who has a business relationship with local governmental entity. <u>METROPORT MEALS ON WHEELS</u>	
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.) <u>N/A</u>	
3 Name of local government officer about whom the information is being disclosed. <u>N/A</u> Name of Officer	
4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor? <u>N/A</u> ☐ Yes ☐ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity? <u>N/A</u> ☐ Yes ☐ No	
5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more. <u>N/A</u>	
6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1). <u>N/A</u>	
7 <u>Thany King</u> <u>2/3/21</u> Signature of vendor doing business with the governmental entity Date	

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/5/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Cavnar Insurance Agency 250 Miron Dr Southlake TX 76092		CONTACT NAME: Carolyn Lease PHONE (A/C, No, Ext): 8173377844 E-MAIL ADDRESS: carolyn@cavnarinsurance.com FAX (A/C, No):															
INSURED Metroport Meals On Wheels 428 N Hwy 377 Po Box 204 Roanoke TX 76262		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: AmGUARD Insurance Company</td> <td></td> </tr> <tr> <td>INSURER B: TEXAS MUT INS CO</td> <td>22945</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: AmGUARD Insurance Company		INSURER B: TEXAS MUT INS CO	22945	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER C:																	
INSURER D:																	
INSURER E:																	
INSURER F:																	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			C1GP101484	12/30/2020	12/30/2021	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☒ SCHEDULED AUTOS NON-OWNED AUTOS ONLY			C2GP101153	12/30/2020	12/30/2021	GENERAL AGGREGATE \$ 3,000,000
							PRODUCTS - COM/PO/AGG \$ 1,000,000
							COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			C3GP100636	12/30/2020	12/30/2021	BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							EACH OCCURRENCE \$ 1,000,000
							AGGREGATE \$ 1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	001120840	12/30/2020	12/30/2021	PER STATUTE ☒ OTH-ER ☐
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability			C1GP101484	12/30/2020	12/30/2021	Occurrence \$ 1,000,000 Aggregate \$ 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

See ACORD 101

CERTIFICATE HOLDER

CANCELLATION

Town of Flower Mound 2121 Cross Timbers Road Flower Mound TX 75028	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>B. L. Carr</i>
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AGENCY CUSTOMER ID: _____
LOC #: _____**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Cavnar Insurance Agency		NAMED INSURED Metroport Meals On Wheels
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate Of Liability Insurance

The General Liability policy includes a blanket automatic additional insured endorsement that provides additional insured status to the certificate holder only when there is a written contract between the named insured and the certificate holder that requires such status per endorsement GL10802 01/19 Social Services General Liability Enhancement Endorsement. The Workers Compensation policy includes a blanket automatic waiver of subrogation endorsement that provides this feature only when there is a written contract between the named insured and the certificate holder. A 30 day notice of cancellation has been endorsed to General Liability, Auto and Workers Compensation. Umbrella is follow form.



TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: April 5, 2021

FROM: JP Walton, Interim Director of Economic Development/Assistant to the Town Manager

ITEM: **Public Hearing to consider approval of a Chapter 380 and Tax Abatement Agreement with Niagara Conservation, Inc. (aka Deus, LLC), for the economic development of Flower Mound, and authorization for the Mayor to execute same on behalf of Town. (The Town Council postponed this item at its December 7, 2020, and January 4, February 1, and March 1, 2021, meetings.)**

BACKGROUND INFORMATION: Staff requests to postpone this item until the April 19th Town Council meeting. The item was postponed at the March 1, 2021 Town Council meeting pending the applicant's ability to obtain written confirmation from the HOA regarding fence construction as discussed. The applicant is in the process of obtaining, but has not submitted, written confirmation from the HOA as requested by Town Council.

The subject request relates to the proposed Tax Abatement and Chapter 380 Agreement between the Town and Niagara Conservation, Inc. (aka Deus, LLC). Niagara Conservation proposes to make an approximately \$12+ million capital investment in the land and construction of a 127,810 square foot office, warehouse, and distribution facility, as well as related site improvements on 7.59 acres at 300 Old Gerault Road. The site is generally located at the northeast corner of Old Gerault and Enterprise Roads, on an unimproved portion of Old Gerault Road in the Lakeside Business District. The facility will be owned and occupied by Niagara, serving as the company's corporate headquarters, with staff relocating from Niagara's current leased space in Suite 450 at 1200 Lakeside Parkway and their current offices in New Jersey. Niagara has been a Flower Mound resident since 2014 but has been in existence since 1977. The facility is expected to employ approximately 70+ individuals.

Niagara Conservation is one of the leading manufacturers and wholesalers of water and energy conservation products in the world. The company offers toilet tanks and bowls under the Niagara flapperless brand, providing also showerheads, low-flow aerators, compact fluorescent lamps, water-, energy- and gas-efficient conservation kits and various weatherization products. The company has explored various real estate options in the area, with the desire to remain in Flower Mound, but found limited options. The identification of this site was ideal, as it allows the company to construct a facility according to their specific needs, and is near their current operations, which will aid in employee retention and limit the disruption due to the relocation.

The subject property at 300 Old Gerault Road has attracted several interested parties over the years, including a truck rental facility, construction storage yard, mini-storage, speculative industrial, co-working and daycare, religious institutions, and now Niagara Conservation. On the surface, the site is of interest to many users, but contains significant development obstacles, which has caused most to walk away. The site is an irregular shape, has topography issues, requires construction of a large retaining wall along the rear of the site, possesses uncertainty surrounding the presence and potential burial of the overhead powerlines and poles, contains a number of trees requiring mitigation, requires construction of Old Gerault with its development, includes an existing home to be demolished that possesses asbestos, and the land requires environmental remediation due to oil contamination.

Niagara Conservation has requested incentive assistance in order to offset the extraordinary costs associated with developing the subject site, which are estimated at well over \$750,000.

On August 17, 2020, and September 9, 2020, Town Council met in Closed Session to discuss Niagara's incentive request. Most recently, on November 9, 2020, Planning & Zoning Commission recommended

approval of the rezoning of the property from (A) Agricultural Zoning to (PD #179) Planned Development with Campus Industrial uses.

The proposed Tax Abatement and Chapter 380 Agreement provides for an 8-year, 75% real property tax abatement (total estimated savings \$193,249), a grant equal to 75% of impact fees (\$62,250 in savings), and a building permit fee waiver (\$107,348). A 10-year cost-benefit analysis indicates a total cost to the Town of \$362,847, providing a minimum net benefit of \$446,260. The payback period to the Town is approximately 8 years; however, the applicant and staff's estimates related to estimated values are extremely conservative, which will likely result in a reduced payback period. A secondary cost-benefit analysis was also conducted, which considers additional factors, such as anticipated purchases at the site, hotel stays for visitors to the site, spin-off jobs as a result of the additional business activity, additional sales tax generated as a result employee purchases, and the cost of needed government services. When factoring in these additional estimated revenues and expenses for the Town, the secondary cost-benefit analysis indicates a payback period of 6 years, resulting in a 10-year net benefit to the Town of \$462,063.

In accordance with Section 312.207 of the Texas Tax Code, on November 28, 2020, notice of the subject public hearing was posted on the Town's bulletin board and on the Town's website.

Town Council moved to postpone this item by a vote of 4 to 1 at its December 7, 2020, meeting. At the January 4 meeting the applicant requested to be postponed until February 1, 2021, and Town Council moved to postpone the item by a vote of 4 to 1. At the February 1st meeting the applicant requested to be postponed until February 15, 2021, and Town Council moved to postpone the item by a vote of 4 to 1. At the March 1st meeting Town Council moved to postpone the item until the April 5, 2021 Town Council meeting, pending the applicant's ability to obtain written confirmation from the HOA regarding the fence construction as discussed.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: One-time grant equal to 75% of assessed impact fees.

Proposed Expenditure/(Revenue):	Account Number:
\$62,250	100-600-57000-5320

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

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

ATTACHMENTS:

1. Tax Abatement & Chapter 380 Agreement
2. Cost-Benefit Analysis and Summary

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

**TAX ABATEMENT AND CHAPTER 380 AGREEMENT
BETWEEN
THE TOWN OF FLOWER MOUND &
DEUS, LLC
(NIAGARA CONSERVATION)**

This Tax Abatement and Chapter 380 Agreement (“**Agreement**”) is made and entered into by and between the Town of Flower Mound, Texas (“**Town**”) and Deus, LLC., a Texas limited liability company (“**Owner**”). Town and Owner may sometimes hereafter be referred to individually as a “**Party**” or collectively as the “**Parties**.”

WITNESSETH:

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

WHEREAS, the Town also adopted and/or reaffirmed tax abatement guidelines and criteria, in accordance with Section 312.002 of the Texas Tax Code (hereinafter referred to as the “**Town’s Tax Abatement Guidelines and Criteria**”); and

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

WHEREAS, on or about March 1, 2021, the Town Council of the Town of Flower Mound, Texas, adopted Ordinance No. ____ establishing a Tax Abatement Reinvestment Zone (“**Zone**”) in the Town of Flower Mound, Texas, for commercial-office tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code; and

WHEREAS, the Owner owns the real property located within the Zone and seeks to receive incentives from the Town, including tax abatement; and

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

WHEREAS, the Town Council of the Town of Flower Mound, Texas, finds that the contemplated use of the real property, and the Improvements to the Real Property as set forth in this Agreement, and the other terms hereof are consistent with encouraging continued reinvestment within the Zone in the Town of Flower Mound, Texas, in accordance with the purposes for its creation, and are in compliance with the Town’s Tax Abatement Guidelines and Criteria, and Chapter 312 of the Texas Tax Code; and

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

WHEREAS, the Town also desires to provide incentives to the Owner pursuant to Chapter 380 of the Texas Local Government Code to locate an office-warehouse building in the Town; and

WHEREAS, the Town has concluded and hereby finds that this Agreement promotes economic development in the Town of Flower Mound, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution, by assisting in the development and diversification of the economy of the State and Town, by eliminating unemployment or underemployment in the State and Town, and enhancing business and commercial activity within the State and Town; and

WHEREAS, the Town finds that it is in the public interest to provide the tax abatement and 380 agreement.

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

ARTICLE 1 DEFINITIONS

The following words shall have the following meanings when used in this Agreement:

The terms “Agreement”, “Town”, “Owner”, “Parties”, “Party”, “Zone”, and “Town’s Tax Abatement Guidelines and Criteria” shall have the meanings provided above.

“Affiliate” means any person or entity which directly or indirectly controls, is controlled by or is under common control with Owner, during the term of such control. A person or entity will be deemed to be “controlled” by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise; (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity; or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity. Notwithstanding the foregoing, the term “Affiliate” includes Niagara Conservation Corp. (“Niagara”) and any Affiliate of Niagara.

“Base Year Tax Value” means the assessed value of the Real Property (land only) according to the Tarrant Appraisal District as of January 1, 2021.

“Capital Investment” means the actual costs attributable to the construction of the Improvements and related infrastructure, including the actual construction costs of all buildings, site preparation, structures, infrastructure, utilities, landscaping and on-site improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, permit and

inspection fees. It does not include insurance costs, marketing costs, or any interest paid to finance the cost of Capital Investment.

“Certificate of Occupancy” means the document issued by the Town to Owner certifying the Improvements’ compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupation.

“Effective Date” shall mean the last date this Agreement is executed by the Parties.

“Expiration Date” shall mean the 10th anniversary date of the date Owner receives a Certificate of Occupancy for the Improvements, unless sooner terminated as provided herein.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a Party’s existence as a going business, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“First Year of Abatement” shall mean January 1 of the calendar year immediately following the date Owner receives a Certificate of Occupancy for the Improvements.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions, floods, strikes, slowdowns or work stoppages.

“Impact Fee Grant” means the grant from the Town in an amount equal to 75% of the Town impact fees (water, wastewater, and roadway) paid by Owner and received by the Town, which are attributable to the construction of the Improvements.

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

“Improvements” means the one-story, approximately 127,810 square foot office-warehouse building identified on Exhibits “A” and “B” and other ancillary improvements such as reasonably required parking and landscaping more fully described in the submittals filed by Owner with the Town, and to be constructed upon the Real Property.

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

“Person” means an individual, a corporation, partnership, limited liability company, association, trust, or other legal entity or organization.

“Real Property” means the approximately 7.59-acre tract of land located at 300 Old Gerault Road, generally at the northeast corner of Old Gerault and Enterprise Road, Town of Flower Mound, Texas, and as depicted on the attached Exhibit “A” and more particularly described by metes and bounds description on the attached Exhibit “C”.

“Related Agreement” means any agreement (other than this Agreement) by and between Town and Owner.

“Taxable Value” shall mean the appraised value of the Improvements as certified by the Tarrant Appraisal District, or its successor, for a given year.

“Term” shall have the meaning assigned to such term in Section 2.2.

ARTICLE 2 PROGRAM AND TERM

2.1 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Owner and the Improvements to the Town. The terms of this Agreement shall implement the program.

2.2 Term. The Term of this Agreement will commence on the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 OWNER OBLIGATIONS

As consideration for the tax abatements, Impact Fee Grant, and waiver of fees by Town, the Owner agrees and covenants as follows:

3.1 Construction of Improvements. Owner agrees to design and construct, or cause to be designed and constructed, the Improvements. Owner must: (i) submit a full and complete building permit application for construction of the Improvements, as deemed acceptable by the Town, no later than September 1, 2021; (ii) receive all necessary permits permitting construction of the Improvements from all applicable governmental authorities no later than January 1, 2022; and (iii) subject to events of Force Majeure, receive a Certificate of Occupancy for the Improvements on or before June 1, 2023.

3.2 Capital Investment. Owner agrees to make a Capital Investment of at least \$7,000,000 million. In addition, Owner agrees to provide Town with documentation evidencing a minimum Capital Investment of \$7,000,000 no later than ninety (90) days from the date the Owner receives a Certificate of Occupancy for the Improvements. Such documentation must be in a form

reasonably acceptable to Town, and must contain a breakdown of costs paid by Owner and proof of payment in the form of contractor and/or subcontractor paid invoices and receipts.

3.3 Compliance with Laws. Owner agrees to construct the Improvements in accordance with the site plan attached hereto as Exhibit "A", the elevations and materials shown on the attached Exhibit "B", and all applicable federal, state and local laws, codes, and regulations (or valid waivers thereof).

3.4 Tenancy. Owner agrees that Owner or an Affiliate will continuously operate an office, warehouse, and distribution operation within the Improvements beginning on the date the Owner or Affiliate receives a Certificate of Occupancy for the Improvements and continuing thereafter throughout the Term of this Agreement.

3.5 Good Standing. Owner shall not have an uncured breach or default of this Agreement or a Related Agreement.

3.6 Audit. Owner shall grant access to Town, or such other persons or entities designated by Town for the purposes of inspecting, at Owner's office, during Owner's normal business hours, paper and electronic records, books, documents, tangible accounting procedures, tangible practices or any other items related to Owner's performance of this Agreement ("Owner Records"), provided that Town has provided five (5) business days prior notice, and Town or its representatives shall not unduly disrupt Owner's operations. The foregoing notwithstanding, all records, books, documents, accounting procedures, practices or any other items relevant to the performance of this Agreement shall be subject to examination or audit by Town, or such other persons or entities designated by Town in accordance with state and federal laws, regulations or directives applicable to Owner's performance of this Agreement. Town agrees, to the extent allowed by law, to maintain the confidentiality of the Owner Records. The Parties acknowledge that the Texas Public Information Act, Texas Government Code, Section 552.001 et seq. ("Act") requires that public records must be promptly disclosed by the Town upon request unless specifically exempted from disclosure. If compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or public records request (including under the Act or any Town ordinance, resolution or regulation implementing the Act), or similar processes, to disclose any of the Owner Records, the Town, as appropriate, shall use its best efforts to immediately provide Owner with prompt notice. Notwithstanding any term in this Agreement to the contrary, the Town's disclosure of Owner Records in compliance with a court order or an opinion from the Attorney General of Texas will not be considered a default or breach of this Agreement.

ARTICLE 4

TOWN OBLIGATIONS

Subject to Owner's continued satisfaction of its obligations as required by this Agreement, and subject to the provisions of this Article, Town will be obligated to do the following:

4.1 Tax Abatement.

(a) Subject to the terms and conditions of this Agreement, Town hereby grants Owner

an abatement of seventy-five percent (75%) of the Taxable Value of the Improvements constructed upon the Real Property for a period of eight (8) consecutive years, beginning with the First Year of Abatement. The actual percentage of Taxable Value of the Real Property subject to abatement for each year this Agreement is in effect will apply only to the portion of the Taxable Value of the Improvements that exceeds the Base Year Tax Value.

(b) The Real Property and Improvements are not in an improvement project financed by tax increment bonds.

(c) This Agreement is entered into subject to the rights of the holders of outstanding bonds of the Town.

(d) The Real Property is not owned or leased by any member of the Town's Town Council or any member of the Town's Planning and Zoning Commission.

(e) Owner shall, before May 1 of each calendar year that the Agreement is in effect, certify in writing to the Town that it is in compliance with each term of the Agreement.

(f) The Real Property and the Improvements constructed thereon at all times shall be used in the manner (i) that is consistent with the Town's Comprehensive Zoning Ordinance and all other Town development and building regulations, as amended or otherwise specified in this Agreement, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment of the Zone.

(g) It shall be the responsibility of the Owner to file an annual exemption application form for the Real Property with the Tarrant Appraisal District. A copy of the respective exemption application shall be submitted to the Town upon request.

(h) Upon the receipt of reasonable notice, Owner will provide access to and authorize inspection of the Real Property and Improvements by Town employees to ensure that the Improvements are made according to the specifications and conditions of this Agreement.

4.2 Impact Fee Grant. The Town agrees to pay Owner the Impact Fee Grant within forty-five (45) days after: (i) the Owner receives a Certificate of Occupancy for the Improvements; and (ii) the Town's receipt of a Payment Request.

4.3 Permit Fee Waiver. The Town agrees to waive the following permit and related fees for construction of the Improvements: building permit fees, electrical permit fees, mechanical permit fees, plumbing permit fees, plan review fees, development permit fees, engineering inspection fees, and lighting plan review fees. Any fees not referenced herein as being waived are specifically deemed not to be waived by the Town.

ARTICLE 5

TERMINATION; REPAYMENT; OFFSET

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Owner or Town, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by Town, if any Impositions owed to Town or the State of Texas by Owner shall have become delinquent (provided, however, Owner retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) upon written notice by Town, if Owner suffers an Event of Bankruptcy or Insolvency; or
- (e) upon written notice by Owner or Town, if any subsequent Federal or State legislation or any final non-appealable judgment of a court of competent jurisdiction declares or renders this Agreement invalid, illegal, or unenforceable.

5.2 Repayment.

(a) Owner Repayment. In the event this Agreement is terminated by Town pursuant to Section 5.1 (b), (c), or (d), Owner shall within thirty (30) days of termination refund to Town: (i) an amount equal to the amount of the Impact Fee Grant and all fee waivers that have been provided by Town to Owner prior to the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Town) as its prime or base commercial lending rate, accruing from the Effective Date until paid; and (ii) all real property taxes abated under this Agreement.

(b) Additional Remedies. Upon termination of this Agreement by Town, all taxes abated as a result of this Agreement shall become a debt to the Town as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is provided. The Parties acknowledge that actual damages in the event of default would be speculative and difficult to determine. The Town shall have all remedies for the collection of the abated tax provided in the Texas Tax Code for the collection of delinquent property tax. The Town at its sole discretion has the option to provide a repayment schedule. The liquidated damages shall constitute a tax lien against the Real

Property. Further, the liquidated damages shall incur penalties and interest as provided for delinquent taxes in the Texas Tax Code and shall commence to accrue after expiration of the thirty (30) day payment period.

(c) Survival of Repayment Obligations. The repayment obligations of Owner set forth in this Section 5.2 shall survive termination of this Agreement.

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

ARTICLE 6 MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and assigns of the Parties.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Owner, in satisfying the conditions of this Agreement, is deemed to have acted independently, and Town assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter if sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Town, to:

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

With a copy to:

Flower Mound Town Attorney
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

If intended for Owner, to:

Niagara Conservation
Attn: Kyle Cutler

1200 Lakeside Parkway, #450
Flower Mound, TX 75028
RE: TA & Ch 380 Agrmnt.-Flower
Mound/Niagara/Deus

With a copy to:

Brown Moskowitz & Kallen, PC
180 River Road
Summit, New Jersey 07901
Attention: Keith E. Marlowe, Esq.

6.6 Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any exhibits attached hereto.

6.7 Governing Law. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action concerning this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and the balance of this Agreement will be deemed enforceable and must be read as if the Parties intended at all times to delete said invalid, illegal, or unenforceable provisions.

6.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.11 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.12 Successors and Assigns. Except for an assignment to an Affiliate of Owner, this Agreement may not be assigned without the prior written consent of the Town.

6.13 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination for such period of time. All other representations, warranties, covenants, and obligations shall expire.

6.14 Limitation of Damages. The Parties agree that no Party will be liable to the other under this Agreement for indirect, special, consequential damages (including lost profits), or exemplary damages.

6.15 Legislative or Judicial Changes. In the event of any legislative or judicial interpretation that limits or restricts Town's ability to pay the Impact Fee Grant, abate taxes, or otherwise extracts or imposes any penalty or other restriction upon the payment of the Impact Fee Grant or abatement of taxes, such payment and abatements will cease as of the effective date of such limitation or restriction and be of no further force, effect, or consequence in which event Town shall be under no further obligation to Owner as of the effective date of such limitation or restriction and Owner shall not be obligated to repay or compensate Town for any prior benefits provided to Owner, unless required to do so by law or court order. Town shall not take any action to seek a legislative interpretation or file an original petition in any action seeking a judicial interpretation which would limit or restrict Town's ability to pay the Impact Fee Grant, abate taxes, or otherwise extract or impose any penalty or other restriction upon the payment of the Impact Fee Grant or abatement of taxes. In any suit brought by a person not a Party to this Agreement, Owner shall have a reasonable time period to appeal any such judicial interpretation at its sole cost and expense and Town shall reasonably cooperate with any such appeals; provided, however, that Town is not obligated to become a party in any suit or expend any funds in cooperating with Owner.

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

6.17 Governmental Function. The Parties agree that this Agreement concerns tax collection and serves the public purpose of contributing to the retention or expansion of primary employment or to attraction of major investment in the Zone that would be a benefit to the Real Property. The Parties further agree this Agreement serves the public purpose of assisting in the development and diversification of the economy of the Town and the State of Texas, eliminating unemployment or underemployment of the State, and developing and expanding commerce in the State, and is for all purposes a governmental function of Town for the benefit of the citizens of Town and the State of Texas. The Parties further agree that this Agreement is entered into for the purpose of carrying out governmental functions which are enjoined on the Town by law and given to it by the State of Texas as part of the State's sovereignty.

6.18 Attorney's Fees. If either Party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing Party in any final judgment or award agrees to pay the other Party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.

**PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, on this ____ day of _____, 2021.**

TOWN:

TOWN OF FLOWER MOUND, TEXAS

Steve Dixon, Mayor

STATE OF TEXAS)
)
COUNTY OF DENTON)

This instrument was acknowledged before me on the ____ day of _____, 2021,
Steve Dixon, Mayor of the Town of Flower Mound, Texas, a Texas home rule municipality, on
behalf of said Town.

Notary Public, State of Texas

OWNER:

DEUS, LLC.

By: _____
Name: Kyle Cutler
Title: Manager

STATE OF _____)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2021,
by _____, the _____ of DEUS, LLC.

Notary Public, State of Texas

EXHIBIT “A”

Site Plan

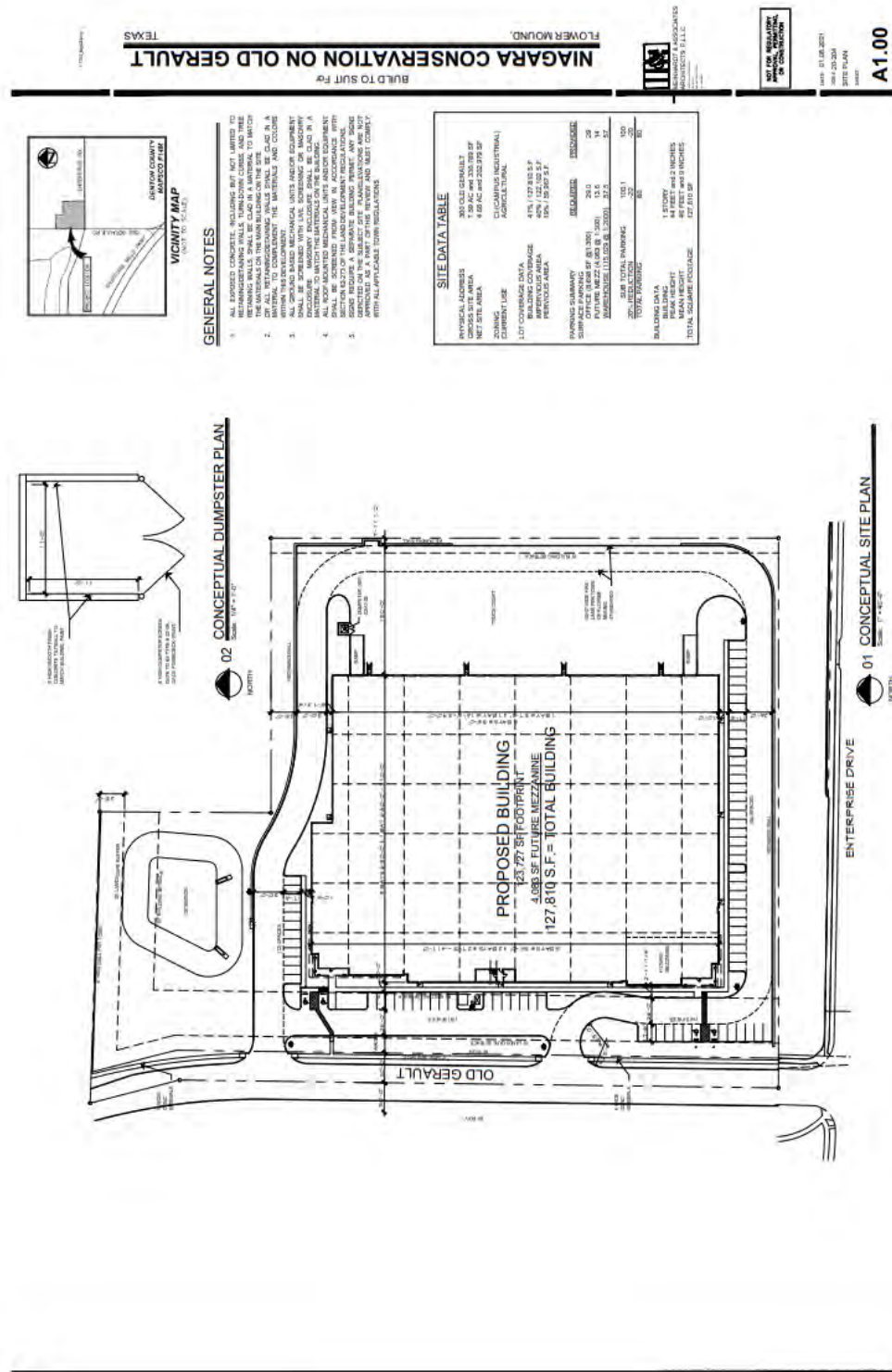


EXHIBIT “B”

Building Elevations

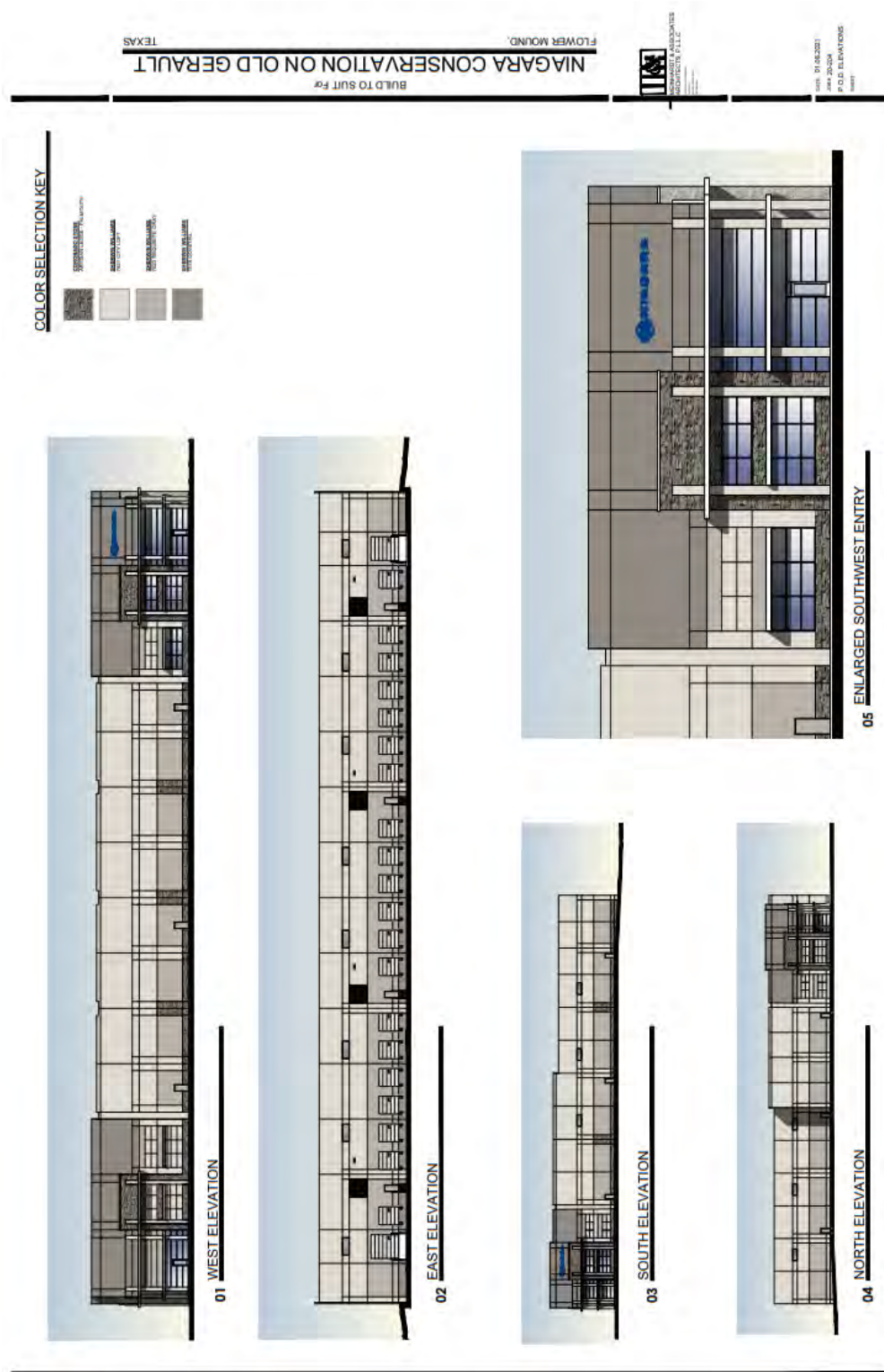


EXHIBIT "C"

Legal Description

DESCRIPTION, of a 7.594 acre tract of land situated in the J. Turner Survey, Abstract No. 1251, Denton County, Texas; said tract being all of that certain tract of land described in Warranty Deed to Robert C. Douglas & Patricia Ann Douglas recorded in Volume 456, Page 343 of the Deed Records of Denton County, Texas; said 7.594 acre tract being more particularly described as follows:

BEGINNING, at a 5/8-inch iron rod with "A.R.S." cap set for corner in Old Gerault Road (a variable width right-of-way);, said point being the northwest corner of said Old Gerault Road as dedicated by plat recorded in Cabinet U, Page 484 of the Plat Records of Denton County, Texas;

THENCE, North 00 degrees, 51 minutes, 35 seconds West, along the approximate centerline of said Old Gerault Road, a distance of 603.83 feet to a 5/8-inch iron rod with "A.R.S." cap set for corner;

THENCE, North 16 degrees, 06 minutes, 35 seconds West, continuing along the said approximate centerline of said Old Gerault Road a distance of 93.03 feet to a 5/8-inch iron rod with "A.R.S." cap set for corner; said point being the southwest corner of that certain tract of land described in Warranty Deed to YO-KO LLC recorded in Instrument No. D215290774 of the Official Public Records of Denton County, Texas;

THENCE, South 89 degrees, 44 minutes, 44 seconds East, departing the said centerline of Old Gerault Road and along the south line of said YO-KO LLC tract, a distance of 293.99 feet to a 1/2-inch iron rod found for corner; said point being the southeast corner of said YO-KO LLC tract and being in the west line of Lot 7X, Block A of the lakeside Ranch Business Park Addition, an addition to the Town of Flower Mound, Texas recorded in Cabinet X, Page 78 of said Plat Records;

THENCE, South 01 degrees, 14 minutes, 44 seconds East, along the said west line of Lot 7X, a distance of 172.65 feet to a 5/8-inch iron rod found for corner at the southwest corner of said Lot 7X;

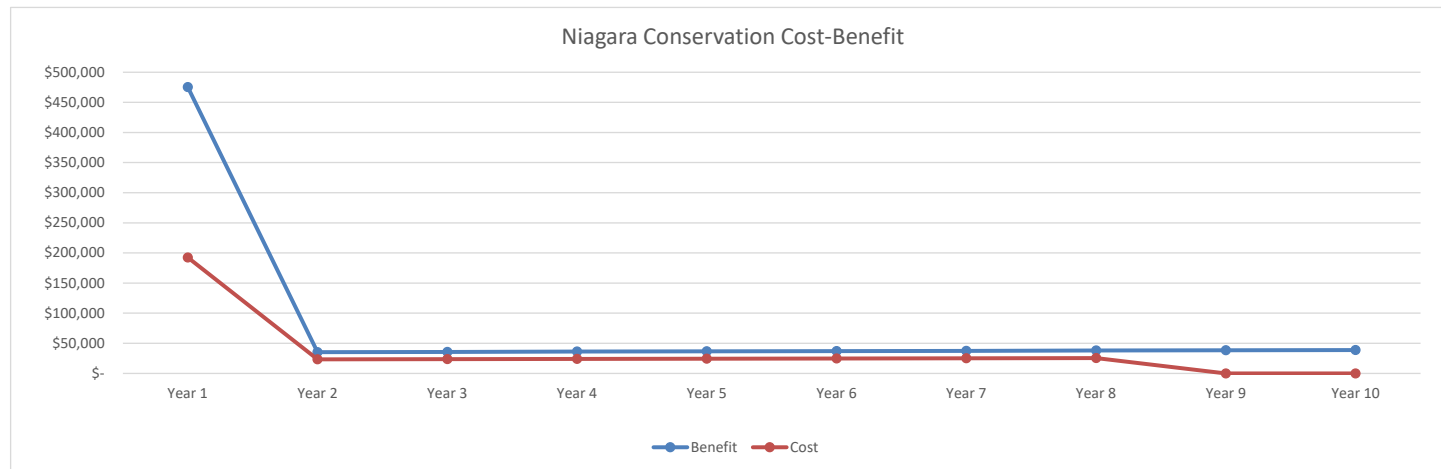
THENCE, North 88 degrees, 23 minutes, 25 seconds East, along the south line of said Lot 7X, a distance of 276.97 feet to a 1-inch pipe found for corner at the northernmost northwesterly corner of Lot 1R, Block A of Lakeside Trade Center, an addition to the Town of Flower Mound, Texas recorded in Cabinet V, Page 843 of said Plat Records;

THENCE, South 01 degrees, 36 minutes, 35 seconds East, departing the said south line of Lot 7X and along the west line of said Lot 1R, a distance of 511.64 feet to a 5/8-inch iron rod with "A.R.S." cap set for corner; said point being an ell corner of said Lot 1R;

THENCE, South 88 degrees, 23 minutes, 25 seconds West, a north line of said Lot 1R, passing at a distance of 520.67 feet, the westernmost northwest corner of said Lot 1R, continuing for a total distance of 554.32 feet to the POINT OF BEGINNING;

CONTAINING: 330,798 square feet or 7.594 acres of land, more or less.

Niagara Incentive												
Benefit		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
+1.5% rate	Real Property Value (75% of cap inv.)	\$ 7,000,000	\$ 7,105,000	\$ 7,211,575	\$ 7,319,749	\$ 7,429,545	\$ 7,540,988	\$ 7,654,103	\$ 7,768,914	\$ 7,885,448	\$ 8,003,730	
	Real Property Tax Revenue	\$ 30,555	\$ 31,013	\$ 31,479	\$ 31,951	\$ 32,430	\$ 32,916	\$ 33,410	\$ 33,911	\$ 34,420	\$ 34,936	\$ 327,022
1% Depreciation	Business Personal Property Value	\$ 1,000,000	\$ 990,000	\$ 980,100	\$ 970,299	\$ 960,596	\$ 950,990	\$ 941,480	\$ 932,065	\$ 922,745	\$ 913,517	
	Business Personal Property Tax Revenue	\$ 4,365	\$ 4,321	\$ 4,278	\$ 4,235	\$ 4,193	\$ 4,151	\$ 4,110	\$ 4,068	\$ 4,028	\$ 3,988	\$ 41,737
	Building Permit Fees	\$ 49,348	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 49,348
	Impact Fees	\$ 83,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 83,000
	Engineering Inspection Fee	\$ 8,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,000
	Development Permit Fee	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000
	Tree Mitigation	\$ 250,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 250,000
Cost		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
75%	Real Property Abatement	\$ 22,916	\$ 23,260	\$ 23,609	\$ 23,963	\$ 24,322	\$ 24,687	\$ 25,058	\$ 25,433			\$ 193,249
100%	Fee Waivers	\$ 107,348	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 107,348
75%	Grant (Equal to 75% of paid Impact Fees)	\$ 62,250	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 62,250
												\$ 362,847
Analysis		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
	Benefit	\$ 475,268	\$ 35,335	\$ 35,757	\$ 36,186	\$ 36,623	\$ 37,067	\$ 37,520	\$ 37,980	\$ 38,448	\$ 38,924	\$ 809,107
	Cost	\$ 192,514	\$ 23,260	\$ 23,609	\$ 23,963	\$ 24,322	\$ 24,687	\$ 25,058	\$ 25,433	\$ -	\$ -	\$ 362,847
	Net Benefit	\$ 282,754	\$ 12,075	\$ 12,148	\$ 12,223	\$ 12,300	\$ 12,380	\$ 12,462	\$ 12,546	\$ 38,448	\$ 38,924	\$ 446,260



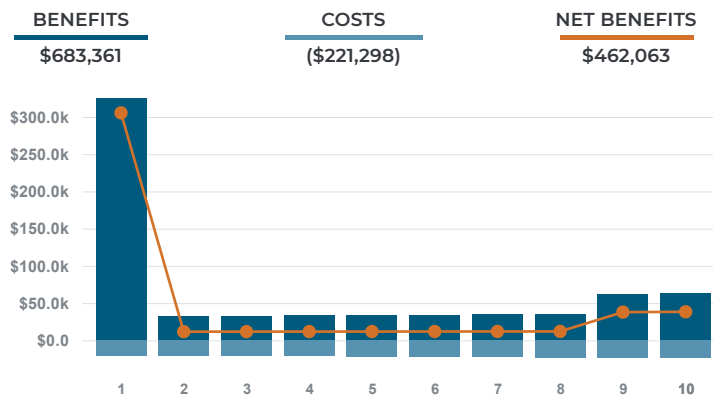
IMPACT REPORT - EXPANSION ONLY

NIAGARA CONSERVATION

Niagara Scenario 1-8=Yr TA, Fee Waiver, 75% Impact Fee Rebate

Business Retention & Expansion

Town of Flower Mound



JOBS



45.5 Total

30.0 Direct

15.5 Spin-off

30.0 New Jobs @ \$50,000

This summary does not include the impact from the company's current activity including:

41.0 Retained Jobs @ \$50,000

SALARIES



\$49,412 Avg

\$50,000 Direct

\$48,272 Spin-off

CAPITAL INVEST.



\$8.0M

Buildings + FF&E

NET BENEFITS

\$462,063

Present Value \$402,125

BENEFITS

Sales Taxes	\$47,082
Real Property Taxes*	\$133,773
FF&E Property Taxes	\$41,737
Inventory Property Taxes	\$0
New Residential Property Taxes	\$1,917
Building Permits and Fees**	\$270,750
Utility Revenue	\$163,465
Utility Franchise Fees	\$0
Miscellaneous Taxes and User Fees	\$24,637

Benefits Subtotal \$683,361

COSTS

Cost of Government Services	(\$57,833)
Cost of Utility Services	(\$163,465)

Costs Subtotal (\$221,298)

*Above values exclude

Real Property Abatement \$193,249

**Above values exclude

Grant (Equal to 75% of paid Impact Fees) \$62,250

Fee Waivers \$107,348

INCENTIVE ANALYSIS

\$362,846

Total Incentive

\$12,095

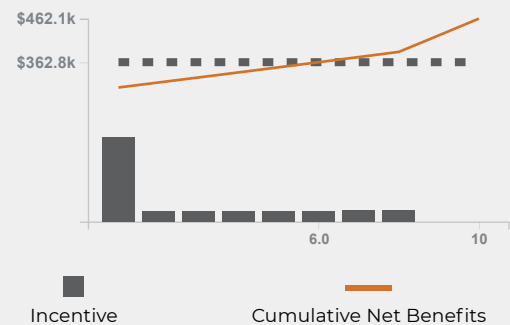
Per Job

12.7%

Rate of Return

6.0 Yrs

Payback Period



NET BENEFITS OVER 10 YEARS

CITY	\$462,063
COUNTY	\$196,487
SCHOOL	\$255,709
OTHER	\$306,447



TOWN COUNCIL AGENDA ITEM NO. 16 REGULAR ITEM

DATE: April 5, 2021

FROM: Poornima Kashyap, Principal Planner

ITEM: Public Hearing to consider an ordinance for rezoning (ZPD20-0006 – Lakeside Crossing) to amend Planned Development No. 153 (PD-153) with both residential and non-residential uses to modify approved development standards related to the phasing of this development. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive. *(The Planning and Zoning Commission recommended approval by a vote of 4 to 2 at its March 22, 2021 meeting.)*



SUMMARY DATA:

- Size – 10.921 acres
- No. of Lots: 7 buildable lots & 1 open space lot
- SMARTGrowth – Passed
- Phasing – Request to modify the Phasing requirement for PD-153 to defer the installation of parking, landscape and hardscape, lighting, and fire lanes to future phases.
- Incentives – There are no active incentives for this project.

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and backup for this item. During P&Z's deliberations, commissioners expressed concerns regarding the timing of improvements within and around the central open space amenity area. In order to ensure the work within and around the open space lot is completed in a timely manner, P&Z recommended approval of the zoning amendment with modifications to the staff's initial draft ordinance to allow issuance of a Certificate of Occupancy to the first building upon completion of Phase 1 improvements as listed in the draft ordinance; to allow

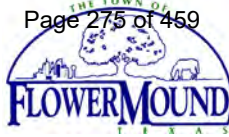
issuance of a Certificate of Occupancy to the second building upon completion of landscape, hardscape, and lighting improvements within Lot 8x, Block A; and to allow issuance of a Certificate of Occupancy to the third building upon completion of installation of trails and lighting along Lot 8x, Block A. The attached draft ordinance incorporates P&Z's recommendation.

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: March 22, 2021

FROM: Poornima Kashyap, Principal Planner

ITEM: **Public Hearing to consider an ordinance for rezoning (ZPD20-0006 – Lakeside Crossing) to amend Planned Development No. 153 (PD-153) with both residential and non-residential uses to modify approved development standards related to the phasing of this development. The property is generally located south of Lakeside Parkway along and between Long Prairie Road and Northwood Drive.**

I. ITEM SUMMARY

This application has been reviewed by DRC and determined to be ready for consideration by the Planning and Zoning Commission.

This application will require final action by the Town Council.

II. APPLICATION ANALYSIS

The purpose of the application is to request modifications to certain standards related to the Phasing section, as outlined in Ordinance No. 25-17, for Planned Development No. 153 (PD-153).

On July 17, 2017, Town Council approved the ordinance establishing Planned Development District-153 (PD-153) for Lakeside Crossing, consisting of both residential and non-residential uses in compliance with the Campus Commercial land use designation within the Lakeside Business District Area Plan. The area of the entire PD is approximately 12 acres, containing 9.23 acres of non-residential development, 1.09 acres of residential development, and approximately 1.691 acres of open space. The zoning amendment request is to modify the phasing section for the non-residential component of the PD.

Phasing:

The current phasing section in the development standards requires certain site infrastructure improvements and landscaping to be completed prior to the issuance of a Certificate of Occupancy (CO) for the first building within the Lakeside Crossing development. The developer is requesting to delay the installation of some of the improvements until the issuance of a CO for the third building within this development and to install the remaining improvements within the buildable lots as each of the individual non-residential lots develop in the future. Below is a screen shot of the existing phasing language in the PD development standards.

F. PHASING: The first phase of development shall include the detention reservoirs, fire lanes, median cuts/turn lanes to support the first phase, curb cuts, and utilities within Phase 1, perimeter landscaping (Exhibit C), stream area and installation of trails around the stream. A Certificate of Occupancy shall not be issued for the first building until all of the above improvements are complete.

The proposed draft development standards [Attachment B(2)] lists the improvements that will be installed with the different phases of this development.

In addition to the development standards within PD-153, the approved site plan for Phase 1 (SP17-0020) included detailed landscape, hardscape, and lighting plans for enhanced improvements within and around the open space/detention area [see Attachment A(4)]. The plans indicated sidewalks around the open space lots, benches, trash receptacles, lighted bollards on the perimeter of the sidewalk, and enhanced plantings to be installed prior to the acceptance of the subdivision. The developer is proposing to delay the installation of these improvements to a future date. As a reduction in the amount of required landscaping cannot be approved administratively through an Amended Site Plan (ASP) process, the proposed development standards address the installation of improvements in and around the open space in the phasing requirements. The developer has indicated in the letter of intent that they intend to start installation of these improvements within 12 months of approval of the this zoning amendment application and has agreed to tie these improvements to the issuance of a Certificate of Occupancy (CO) for the third building within this development.

The approved site plan for Phase 1 indicated sidewalks around the open space lot (Lot 8x) would be installed prior to the acceptance of the subdivision. However, since the sidewalks are not located within the x-lot, but around it on buildable lots, the developer is requesting to defer the installation of the sidewalks around the open space until each individual lot develops. Due to the concern that this will leave fragments of sidewalks installed piecemeal, leading to disconnected, unusable sidewalks, staff recommends the developer install all of the sidewalks adjacent to the open space lot with the next phase of development, prior to the issuance of a CO for the third building.

If the developer were to receive approval of the proposed amendments to the phasing requirements, the developer must complete the following steps prior to receiving a Certificate of Occupancy (CO) for the first building within this development.

- Step 1: Submit an Amended Site Plan (ASP) to amend approved site plan (SP17-0020) to indicate amended Phase 1 improvements.
- Step 2: Submit revised plans to Development Permit (DEV) to match the ASP in Step 1.
- Step 3: Construct Phase 1 Improvements as approved on the DEV permit plans.
- Step 4: Inspection and acceptance of the subdivision (close DEV permit).
- Step 5: Address all permit comments and pass all inspections for the shell building permits.
- Step 6: Receive building finals on the shell permits.
- Step 7: Address all permit comments and pass all inspections for each finish-out permit.
- Step 8: Obtain CO's for each suite as the finish-out permits are completed.

III. CORRESPONDENCE

The Town Code requires both public notice in a newspaper of general circulation (Denton Record Chronicle) and notification of the property owners within 200 feet of the subject property for all zoning application requests. ZPD20-0006 had a total of 43 Property Owner Notifications mailed. At the time this report was written, staff had not received any correspondence regarding this item in response to the property owner notice. However, staff has been in communication with a future Lakeside Crossing Townhome owner who has expressed some concerns over the proposed phasing of this development. Three correspondence received from this future home owner is attached as Attachment C(1).

IV. ATTACHMENTS

A. Background Information

1. Vicinity Map
2. Letter of Intent
3. Pages from Approved Plans for PD-153
4. Pages from Approved Phase 1 Site Plan Package

B. Application Details

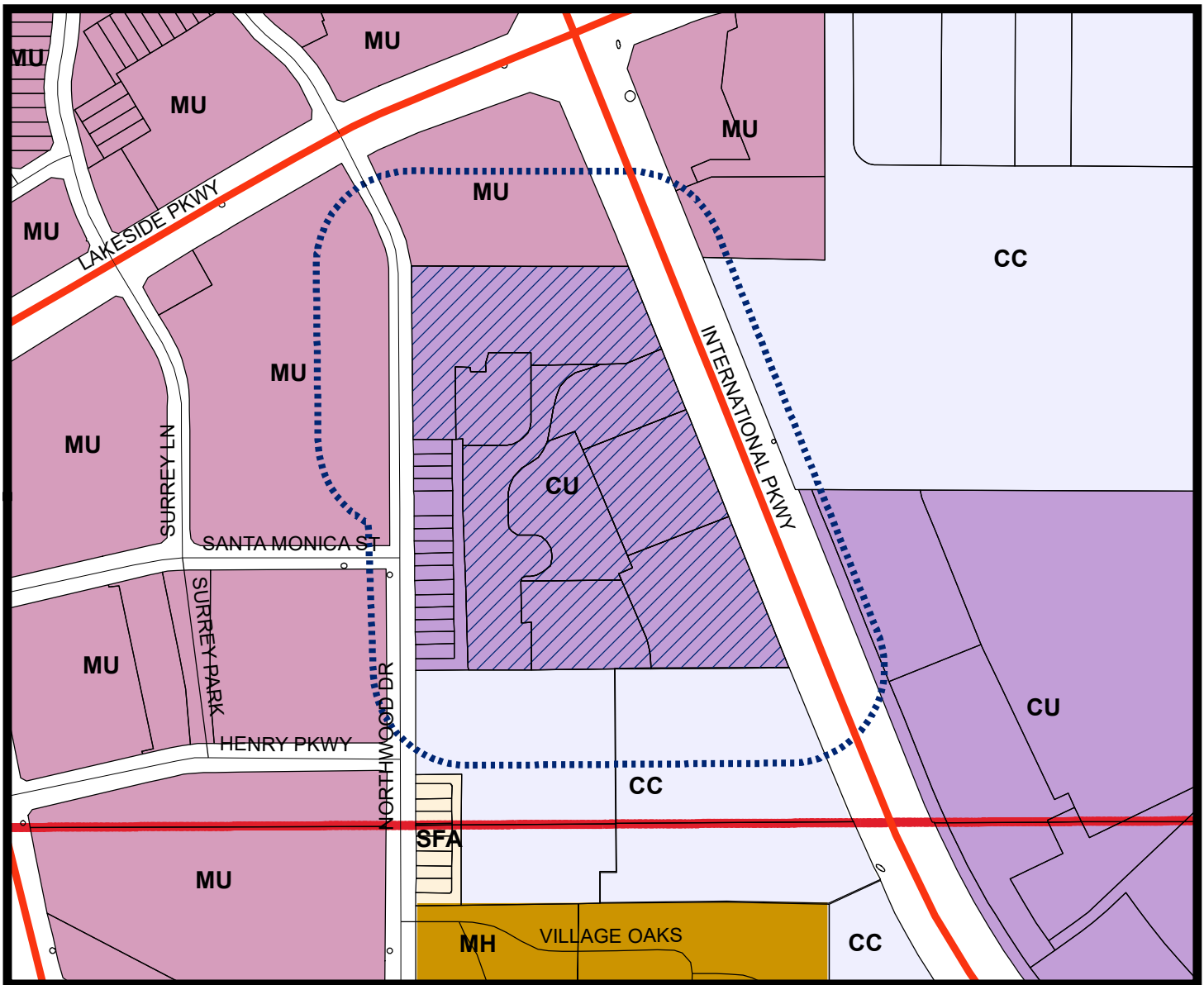
1. Zoning Planned Development Exhibits
2. Draft Development Standards

C. Correspondence

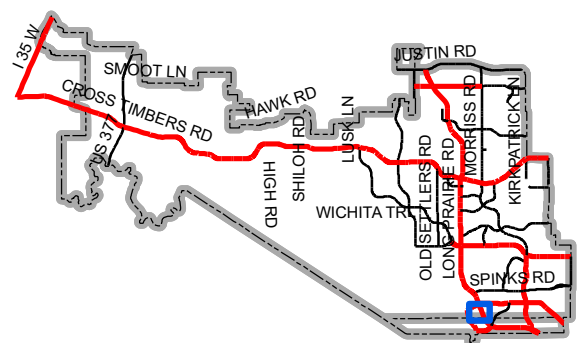
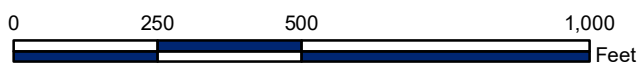
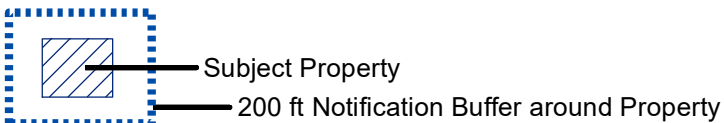
1. Lakeside Crossing Townhome resident correspondence

Vicinity Map

Reference Project: ZPD20-0006



LEGEND



Map Location



March 17th, 2021

Mrs. Poornima Kashyap, AICP
Principal Planner
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

RE: Lakeside Crossing - Letter of Intent

Dear Poornima:

Pursuant to our DRC meeting on September 29, 2020, please accept our application for Amending the Phasing for Lakeside Crossing. We want to make sure that you know that we are not asking to eliminate any requirements for the improvements within Lakeside Crossing. We are proposing to have some items deferred to be started by a future date under the terms of the development standards within the PD. Our immediate focus is to complete all that we need to do for buildings 4 & 5 (Lot 4, Block A and Lot 5, Block A) to receive their Certificate of Occupancies so that the new tenants can obtain their respective C/O's once they complete finish out of their spaces so they can immediately open for business without delays.

We understand that Section III.F of the planned development standards require certain items to be installed prior to the issuance of a certificate of occupancy for the first building. Per our discussion, we would like to modify this section as follows:

PHASING: The first phase of development shall include the fire lanes from Northwood Drive, to the cross-access drive installed by the development to the north, continuing to the south property line to meet the development near our Southeast Property Corner. All median cuts, curb cuts, turn lanes, and site utilities will be completed. We will provide perimeter landscaping along FM 2499 and Northwood Drive in Phase 1.

ALL OTHER LOTS - Each other pad site (Lot 1, Block A | Lot 2, Block A | Lot 3, Block A | Lot 6, Block A | Lot 7, Block A) will be place into their own phase (NOT numbered) and each new pad site owner that purchases the lot for development will be responsible for submitting their own Amended site plan for that lot. All required landscape, irrigation and lighting around each other pad site within the Lakeside Crossing development will be completed when each respective lot is developed prior to the building obtaining its own C/O.

REMAINING COMMON AREA IMPROVEMENTS – All remaining common area improvements inside the detention area and adjacent to the south/west/north sides of the creek will be started within 12-months from the date this amended plan is approved by the Town of Flower Mound. The scope of this work will be in line with what was

originally designed on the HS/LS/Lighting Plans as shown in the zoning exhibits provided with this submittal. We understand there will be no perquisites to start this work in this timeframe, and we understand that we may be required to have ASP approval prior to issuance of any permits to install irrigation, lighting, sidewalks, etc. Per the ordinance, the completion and acceptance of these items will be tied to the issuance of a CO for the 3rd building within this development. In the event that the 3rd building in this development is constructed and ready to obtain a CO in less than 12 months, we understand a CO will not be issued for that building unless the Lot 8x improvements are complete.

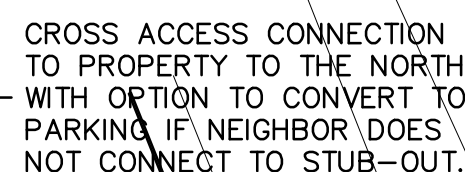
We appreciate your consideration and hope that we can reach an agreeable solution to move this project forward, and to be able to get the new tenants open and operational on time, so they have a good experience getting open in the Town of Flower Mound and in the Lakeside Crossing development.

Please contact me if you have any questions or comments regarding this submittal.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Tim Nystrom', with a stylized flourish at the end.

Tim Nystrom
Managing Member
Lakeside Crossing Land Partners LP



50 0 50 100 150 Feet

SCALE: 1"=50'

Building Summary				
Bldg	Square Feet (SF)	Use	Units	# of Stories
1	60,836	Hotel	134 Rooms	5
	5,364	Restaurant		
2	5,427	Retail		2
	5,427	Office		
3	11,340	Office		2
	8,514	Restaurant		
4	7,356	Office		2
	2,520	Retail		
	6,843	Restaurant		
5	8,342	Office		2
	5,670	Retail		
	15,778	Office		
6	15,778	Office		3
7	18,068	Office		3
	161,485			

SCHEDULE OF MIXED USE PARKING - BLDGS. 1-7					
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight 6A
Office	266	27	27	14	14
Retail	28	50	55	39	3
Restaurant	139	277	277	277	28
Hotel	94	134	94	134	94
Totals	527	488	453	464	139

	SCHEDULE OF MIXED USE PARKING - PERCENTAGES				
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight 6A
Office	100%	10%	10%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

LEGEND

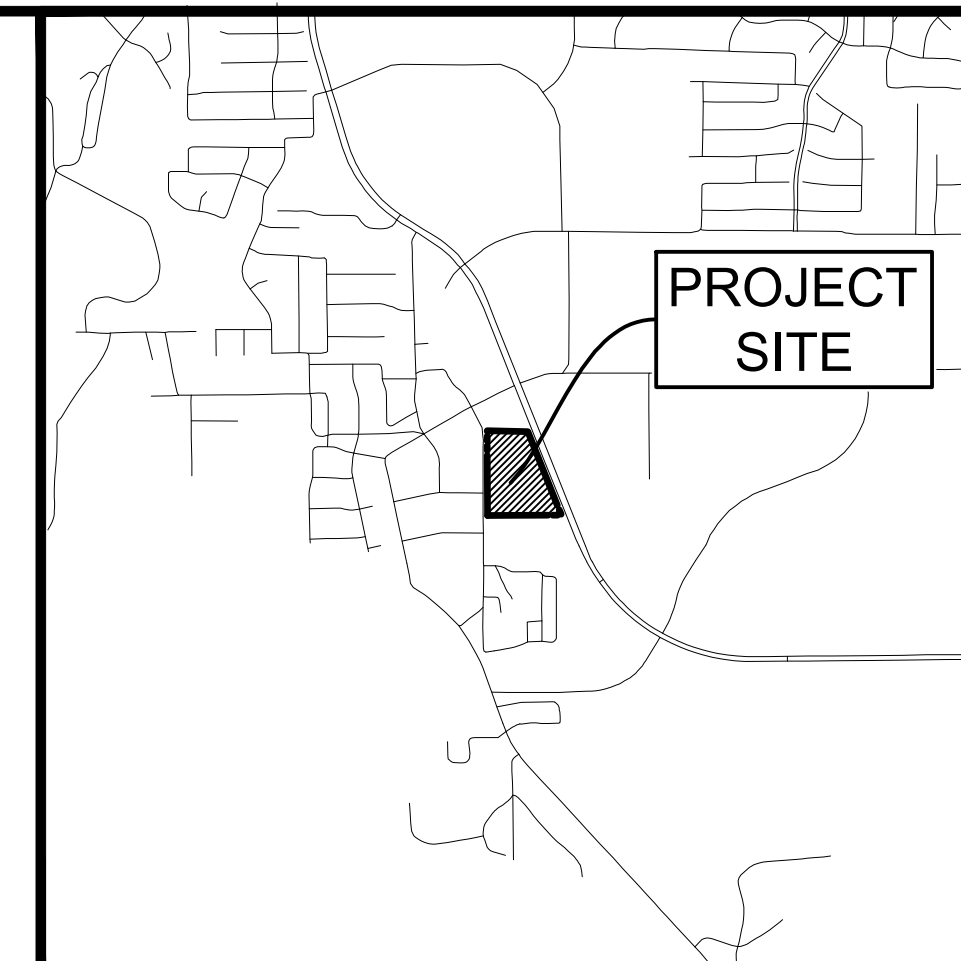
C.R.F.	Capped Rebar Found		Overhead Power Lines
C.R.S.	Capped Rebar Set		
C.M.	Control Monument		Down Guy Wire
Mon.	Monument		Existing Contours
BM	Benchmark		
WH	Water Hydrant		Proposed Contours
WM	Water Manhole		
WV	Water Valve		Concrete Pavement
W/L	Water Line		Asphalt Pavement
ICV	Irrigation Control Valve		
SSMH	Sanitary Sewer Manhole		Wood Fence
SSWC	Sanitary Sewer Cleanout		Chain Link Fence
UP	Utility Pole		Wire Fence
LP	Light Pole		
TC	Top of Curb		Masonry Wall
TP	Top of Pavement		Existing Tree
TW	Top of Wall		(FL) Flowline
FG	Finished Grade		
U.E.	Utility Easement		Centerline of Creek, Swale, or Waterway
D.E.	Drainage Easement		
B.L.	Building Line		Creek, Swale, or Waterway Embankment
D.W.	Right-of-Way		
R.D.	Deed Records		
P.R.	Plot Records		

GENERAL NOTES

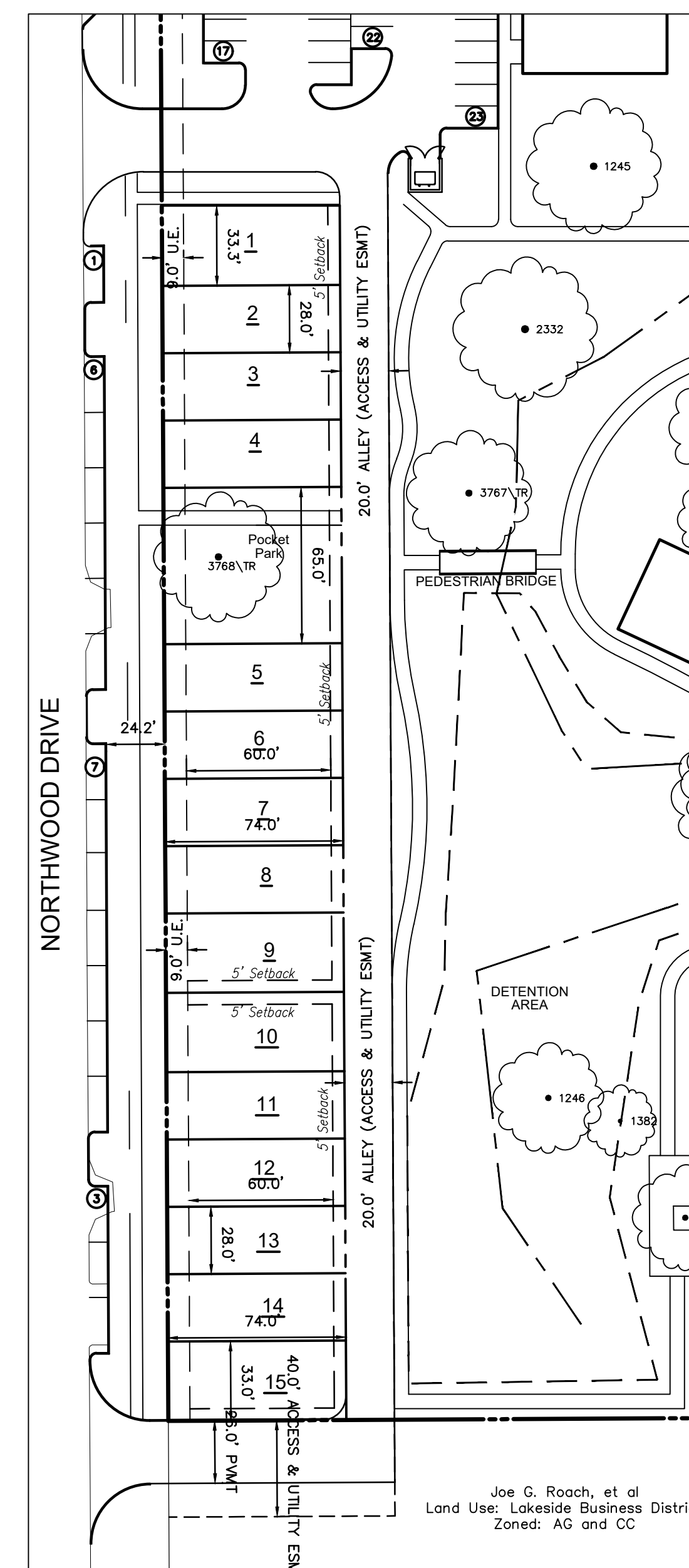
1. ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO COMPLEMENT THE MATERIALS AND COLORS WITHIN THIS DEVELOPMENT.
2. RETAINING WALL LOCATIONS AND HEIGHTS SHOWN ON THIS PLAN ARE BASED ON A PRELIMINARY GRADING CONCEPT AND ARE SUBJECT TO CHANGE. FINAL RETAINING WALL LOCATIONS AND HEIGHTS WILL BE DETERMINED AT THE SITE PLAN STAGE.
3. ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING.
4. ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
5. DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
6. DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
7. SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS UNLESS A COMPREHENSIVE SIGN PACKAGE FOR A SPECIFIC SIGN WAS INCLUDED IN THE APPROVED PD.
8. LOCATIONS OF OUTDOOR SEATING AREAS AND OUTDOOR DINING AREAS MAY BE ADJUSTED BASED ON FINAL BUILDING FOOTPRINT. ADDITIONAL DINING AREAS MAY BE INCLUDED AT THE SITE PLAN STAGE. SEATING AREAS MAY BE PATIOS OR DECKS.
9. BUILDING FACADES TYPES A THROUGH D ARE INDICATED ON THE PLAN TO IDENTIFY THE TYPES OF FACADES FOR THE NON-RESIDENTIAL BUILDINGS. THEY ARE ALSO SHOWN ON THE APPROVED CONCEPTUAL ELEVATIONS AND ARE AS FOLLOWS:

TYPE A - FRONT FACADE
TYPE B - SIDE FACADE
TYPE C - REAR FACADE
TYPE D - CREEK FACADE

THE FOLLOWING REPRESENTS THE
APPROVED DOCUMENT / GRAPHIC
P & Z 05/08/2017
T C 07/17/2017
SEE FILE FOR CONDITIONS ZPD17-0001



Vicinity Map 1"=1000'



INSET "A"

**SITE PLANNING CIVIL ENGINEERING PLATTING
CONSULTANTS, LLC**
LAND SURVEYING LANDSCAPE ARCHITECTURE



111 Hillside Drive • Lewisville, TX 75057 • P: 972.436.9712 • F: 972.436.9715
44 Old Town Blvd. North, Ste 2 • Argyle, TX 76226 • P: 940.240.1012 • F: 940.240.1028

LAKE SIDE CROSSING
12,001 Acres
in the
J. N. TANNERHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPT PLAN

PRELIMINARY PLANS

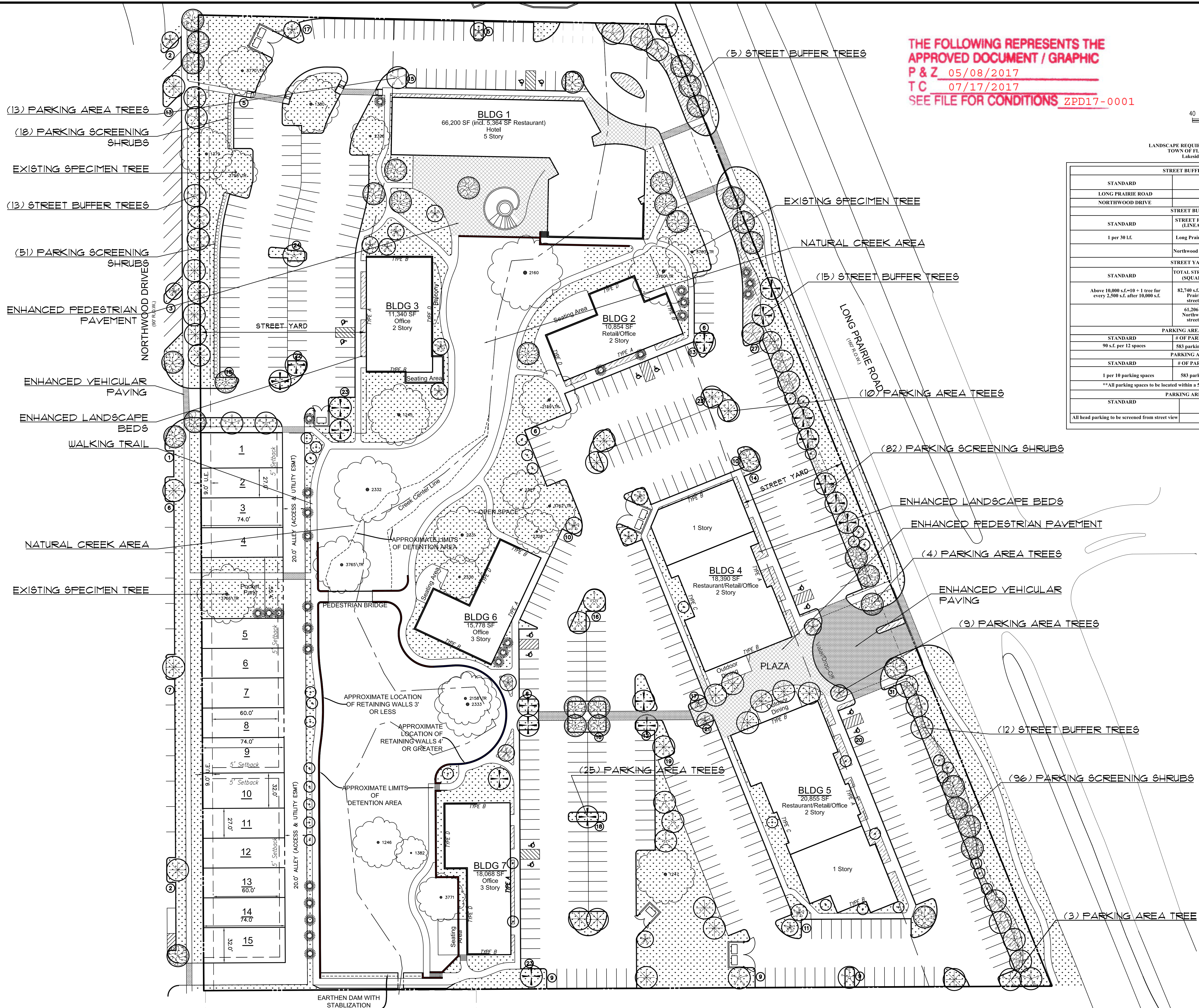
THIS DOCUMENT IS FOR
INTERIM REVIEW AND IS
NOT INTENDED FOR
CONSTRUCTION, BIDDING,
OR PERMIT PURPOSES.
G&A CONSULTANTS, F-1798
ROBERT JOHN DOLLAH, JR.,
P.E. #86898
DATE 7/20/2017

Drawn By: SM
Date: 01/09/2017
Scale: 1"=50'
Revisions:
02/24/2017
03/27/2017
04/24/2017
05/01/2017
05/03/2017
05/10/2017
07/20/2017

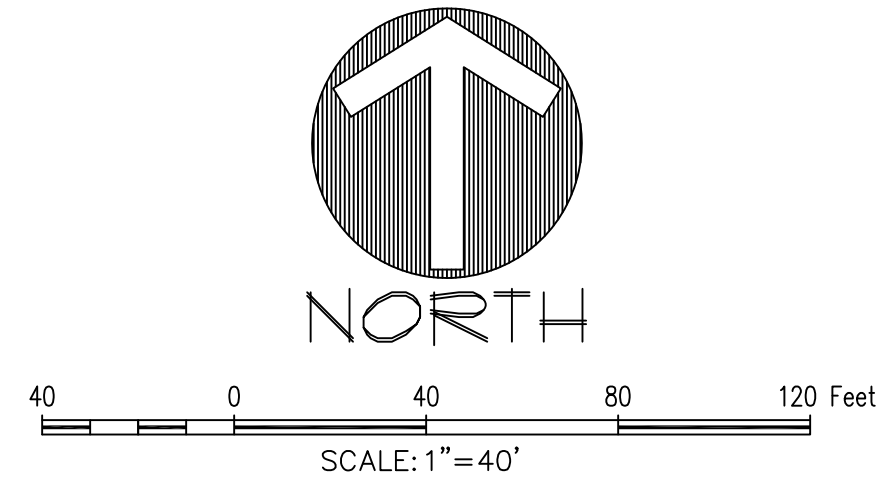
16326

CP

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 8175862252
Contact: Tim Nystrom



THE FOLLOWING REPRESENTS THE
APPROVED DOCUMENT / GRAPHIC
P & Z 05/08/2017
T C 07/17/2017
SEE FILE FOR CONDITIONS ZPD17-0001



STREET BUFFER LANDSCAPING			
STANDARD		REQUIRED BUFFER WIDTH	PROVIDED
LONG PRAIRIE ROAD		25 ft.	15-25 ft.
NORTHWOOD DRIVE		15 ft.	15 ft.
STREET BUFFER TREES			
STANDARD	STREET FRONTAGE (LINEAR FEET)	REQUIRED	PROVIDED
1 per 30 LT.	Long Prairie - 939 LT.	32 trees (3" cal.)	32 trees (3" cal.)
	Northwood Dr. - 380 LT.	13 trees (3" cal.)	13 trees (3" cal.)
STREET YARD TREES			
STANDARD	TOTAL STREET YARD (SQUARE FEET)	REQUIRED	PROVIDED
Above 10,000 s.f.=10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	82,740 s.f. of Long Prairie Rd. street yard	39 trees (3" cal.)	48 trees (3" cal.) + 2 existing specimen
	61,206 s.f. of Northwood Dr. street yard	31 trees (3" cal.)	27 trees (3" cal.) + 5 existing specimen
PARKING AREA LANDSCAPING			
STANDARD	# OF PARK SPACES	REQUIRED	PROVIDED
90 s.f. per 12 spaces	583 parking spaces	4,372 s.f.	24,462 s.f.
PARKING AREA TREES			
STANDARD	# OF PARK SPACES	REQUIRED	PROVIDED
1 per 10 parking spaces	583 parking spaces	59 trees (3" cal.)	66 trees (3" cal.) + 7 existing specimen
**All parking spaces to be located within a 50 ft. avg. of parking lot tree.			
PARKING AREA SCREENING			
STANDARD		landscape berm or screening shrubs	PROVIDED
All head parking to be screened from street view		3' ht. screen	screening shrubs (3' ht.)

STE PLANNING CIVIL ENGINEERING PLANNING
CONSULTANTS, LLC
LAND SURVEYING LANDSCAPE ARCHITECTURE
111 Hillside Drive • Lewisville, TX 75057 • P: 972.336.9712 • F: 972.436.9715
144 Old Country Road • Irving, TX 75039 • P: 972.436.1028
LSCS Firm No. 1798 LSCS Firm No. 10047700

LAKESIDE CROSSING
12,001 Acres
in the
J. N. TANNEHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPT LANDSCAPE PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
FOR CONSTRUCTION.
AND IS NOT INTENDED
FOR BIDDING, OR PERMIT
JAMESON PINSON LANDSCAPE ARCHITECTS
DATED 7/20/2017

Drawn By: JPP
Date: 01/09/2017
Scale: 1" = 40'
Revisions:
02/24/2017
03/27/2017
04/24/2017
05/01/2017
05/03/2017
05/10/2017
07/20/2017

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 817.586.2252
Contact: Tim Nystrom

16326

L1.0

LAKESIDE CROSSING



LAKESIDE CROSSING
12,001 Acres
In the
J. N. TANNEHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPTUAL OPEN SPACE PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT PERMITTED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
JAMESON PINSON LANDSCAPE ARCHITECT
JAMESON PINSON
2826
STATE OF TEXAS

Drawn By: JPP
Date: 01/09/2017
Scale: 1"=40'
Revisions:
02/24/2017
03/27/2017

16326

L1.0

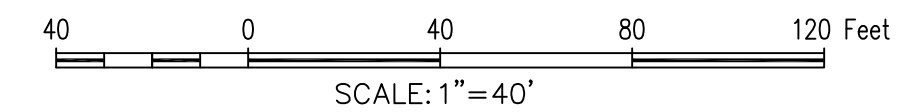
OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 8175862252
Contact: Tim Nystrom



TREE PROTECTION FENCE

EXISTING SPECIMEN TREE

EARTHEN DAM WITH STABILIZATION



LIST #	TREE #	CAL. "	COMMON NAME	BOTANICAL NAME	PROTECTED	SPECIMEN	REMOVED	CANOPY DIA.	REMARKS
1	1245	26	POST OAK	Quercus stellata	Yes	Yes	No	56'	
2	1246	23	POST OAK	Quercus stellata	Yes	Yes	No	36'	
3	1247	22	POST OAK	Quercus stellata	Yes	Yes	No	44'	
4	1379	22.5	POST OAK	Quercus stellata	Yes	Yes	No	48'	
5	1380	22.5	POST OAK	Quercus stellata	Yes	Yes	No	52'	
6	1382	23	POST OAK	Quercus stellata	Yes	Yes	No	30'	
7	2158	21	CEDAR ELM	Ulmus crassifolia	Yes	Yes	No	48'	
8	2159	30	POST OAK	Quercus stellata	Yes	Yes	No	54'	Health Issue
9	2160	32	POST OAK	Quercus stellata	Yes	Yes	No	68'	
10	2326	25	POST OAK	Quercus stellata	Yes	Yes	No	36'	Cavity/Bee Hive
11	2327	22	POST OAK	Quercus stellata	Yes	Yes	No	36'	
12	2328	22	POST OAK	Quercus stellata	Yes	Yes	No	40'	
13	2330	23	POST OAK	Quercus stellata	Yes	Yes	No	40'	
14	2331	22	POST OAK	Quercus stellata	Yes	Yes	No	52'	
15	2332	28	POST OAK	Quercus stellata	Yes	Yes	No	60'	
16	2333	23	POST OAK	Quercus stellata	Yes	Yes	No	60'	
17	3758	27.5	POST OAK	Quercus stellata	Yes	Yes	No	40'	
18	3760	29	POST OAK	Quercus stellata	Yes	Yes	No	62'	
19	3762	25	POST OAK	Quercus stellata	Yes	Yes	No	48'	Cavity/ Storm Damage
20	3763	31	POST OAK	Quercus stellata	Yes	Yes	No	48'	
21	3765	31	POST OAK	Quercus stellata	Yes	Yes	No	52'	
22	3766	28	POST OAK	Quercus stellata	Yes	Yes	No	56'	
23	3770	29	POST OAK	Quercus stellata	Yes	Yes	No	44'	
24	3771	26	POST OAK	Quercus stellata	Yes	Yes	No	44'	Health Issue

THERE ARE 61 PROTECTED TREES LOCATED OUTSIDE THE UPLAND WOODED HABITAT.

 UPLAND WOODED HABITAT

LAKESIDE CROSSING
12.001 Acres

J. N. TANNEHILL SURVEY, ABSTRACT NO. 1252
FLOWER MOUND
DENTON COUNTY, TEXAS

SPECIMEN TREE SURVEY

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
JAMESON PINSON LANDSCAPE ARCHITECT
DATED 7/20/2017
REGISTERED LANDSCAPE ARCHITECT
JAMESON P. PINSON
2826
2826

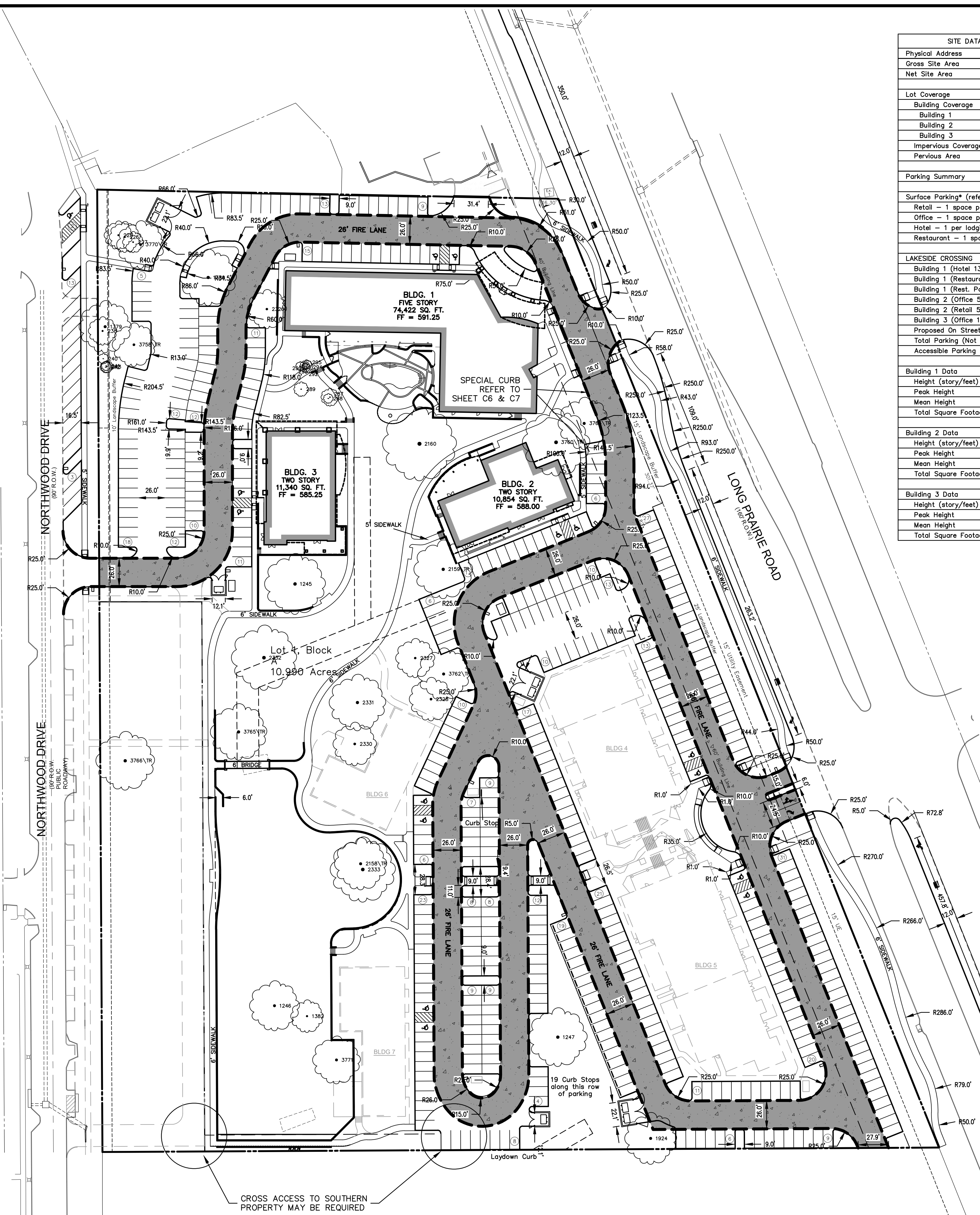
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Revisions:
02/24/2017
03/27/2017
04/24/2017
05/01/2017
05/03/2017
05/10/2017
07/20/2017

16326

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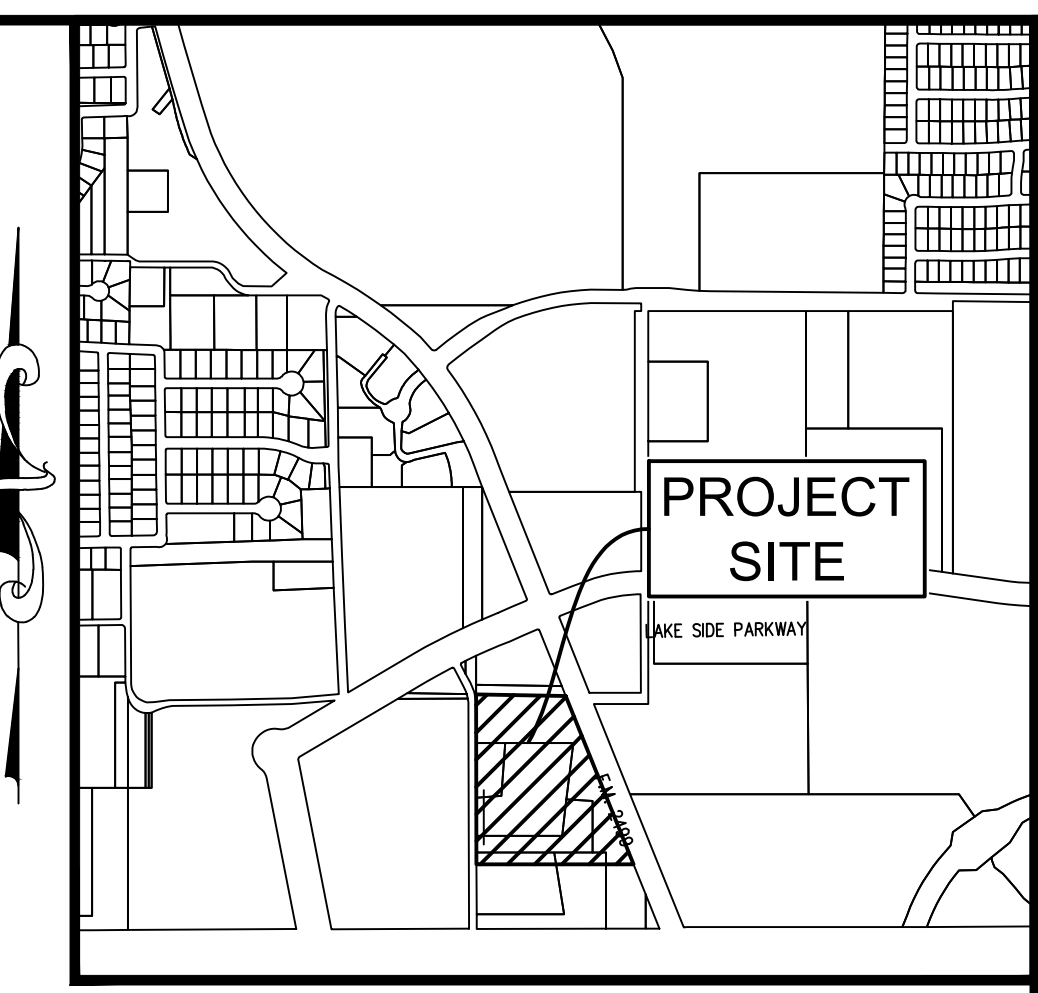
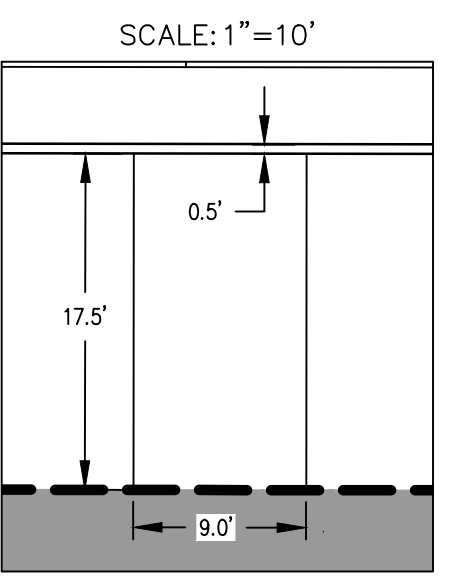
OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
4200 HERITAGE TRACE PKWY
FORT WORTH, TEXAS
Ph. 8175862252
Contact: Tim Nystrom

File: Z:\2016\16326\Drawings\Zoning\Sheets\16326 SPECIMEN TREE SURVEY
 Plotted: 7/20/2017 1:08 PM, by Jameson Pison; Saved: 7/20/2017 10:35 AM, by Jameson



SITE DATA TABLE – LAKESIDE CROSSING		
Physical Address	TBD	
Gross Site Area	12,000 A; 522,720 SF	
Net Site Area	12,000 A; 522,720 SF	
Lot Coverage		
Building Coverage		
Building 1	17,061 SF; ±3.3%	
Building 2	6,316 SF; ±1.2%	
Building 3	6,610 SF; ±1.3%	
Impervious Coverage	±65%	
Pervious Area	±35%	
Parking Summary		
Surface Parking* (refer to the shared parking charts)		
Retail – 1 space per 250 Square Feet		
Office – 1 space per 300 Square Feet		
Hotel – 1 per lodging room		
Restaurant – 1 space per 75 SF		
LAKESIDE CROSSING		
Building 1 (Hotel 134 Rooms)	Required	Provided
Building 1 (Restaurant 3,154 SF)	134	136
Building 1 (Restaurant 3,154 SF)	42	42
Building 1 (Rest. Patio 1,142 SF)	16	16
Building 2 (Office 5,427 SF)	19	19
Building 2 (Retail 5,427 SF)	22	22
Building 3 (Office 11,340 SF)	38	38
Proposed On Street Parking	00	18
Total Parking (Not Inc. Residential)	264	491
Accessible Parking	9	15
Building 1 Data		
Height (story/feet)	5 Story, 74' 6"	
Peak Height	76' 7"	
Mean Height	71' 7"	
Total Square Footage	74,722 SF	
Building 2 Data		
Height (story/feet)	2 Story, 26' 0"	
Peak Height	33' 10"	
Mean Height	31' 6"	
Total Square Footage	10,854 SF	
Building 3 Data		
Height (story/feet)	2 Story, 29' 6"	
Peak Height	41' 3"	
Mean Height	35' 5"	
Total Square Footage	11,340 SF	

FUTURE PARKING TABLE – LAKESIDE CROSSING		
Physical Address	TBD	
Gross Site Area	12,000 A; 522,720 SF	
Net Site Area	12,000 A; 522,720 SF	
Parking Summary		
	Required	Provided
Surface Parking		
Retail – 1 space per 250 Square Feet		
Office – 1 space per 300 Square Feet		
Hotel – 1 per lodging room		
Hotel Conference Area – 1 space per 150 SF		
Restaurant – 1 space per 75 SF		
LAKESIDE CROSSING		
	Required	Provided
Phase I Parking	296	491
Phase I Parking for Fut. Com. Bldgs.	191	0
Future On Street Parking	00	16
Parking for Future Residential	30	30
Total Parking – all uses @ Buildout	517	537



- NOTES:
- CONTRACTOR IS TO CONTACT THE TOWN'S TREE ARBORIST PRIOR TO THE START OF CONSTRUCTION TO OBTAIN TREE PRESERVATION REQUIREMENTS DURING CONSTRUCTION.
 - ALL PAVEMENT DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
 - ALL SIDEWALK DIMENSIONS SHOWN ARE TO THE EDGE OF PAVEMENT UNLESS OTHERWISE SHOWN.
 - ALL RADII ARE 3.0 FEET UNLESS OTHERWISE NOTED.
 - ALL PARKING SPOTS ARE 9.0' WIDE UNLESS OTHERWISE NOTED.
 - THE LOCATION OF THE EXISTING UTILITIES SHOWN IS APPROXIMATE. THE CONTRACTOR IS TO FIELD VERIFY LOCATION AND DEPTH PRIOR TO CONDUCTING ANY WORK.
 - REFER TO SHEET C4 FOR PAVING HATCH LEGEND. THE HATCHED AREAS ON THIS SHEET REPRESENT THE PROPOSED FIRE LANES.
 - ALL RETAINING WALLS ARE TO BE CLAD IN A MATERIAL THAT MATCHES THE PROPOSED BUILDINGS.
 - THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
 - ALL BUILDING MOUNTED UTILITY OR EQUIPMENT BOXES SHALL BE SCREENED FROM A STREET VIEW BY A MINIMUM SIX FOOT HIGH SCREENING DEVICE WHETHER SHOWN IN THESE PLANS OR NOT. SUCH SCREENING DEVICE SHALL CONSIST EITHER OF PLANT MATERIAL OR A SCREENING WALL CONSTRUCTED OF OR FINISHED WITH A MATERIAL TO MATCH THE BUILDING, PROVIDED HOWEVER THAT WOOD FENCING OR SCREENING SHALL BE PROHIBITED. THIS RELATES TO ONLY THE NORTHERN, SOUTHERN AND WESTERN BUILDING FACADES, SINCE THESE ARE THE ONLY FACADES ABUTTING A STREET.
 - SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SITE PLAN OR ELEVATIONS ARE NOT APPROVED AS PART OF THIS REVIEW AND MUST COMPLY WITH THE RIVER WALK SIGNAGE REGULATIONS.
 - THE DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
 - A TXDOT PERMIT WILL BE REQUIRED BEFORE ANY WORK CAN OCCUR WITHIN THE TXDOT RIGHT-OF-WAY.
 - REFER TO THE PAVING PLAN FOR ADDITIONAL INFORMATION REGARDING THE PROPOSED TURN LANES.

THE FOLLOWING REPRESENTS THE APPROVED DOCUMENT / GRAPHIC P & Z 02/26/2018 T C SEE FILE FOR CONDITIONS SP17-0020

SCHEDULE OF MIXED USE PARKING - BLDGS. 1-3					
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight -6A
Office	56	6	6	3	3
Retail	11	20	22	16	2
Restaurant	36	72	72	72	8
Hotel	94	134	94	134	94
Totals	197	232	194	225	107

* 491 Parking Spaces Provided

SCHEDULE OF MIXED USE PARKING - BLDGS. 1-7					
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight -6A
Office	222	23	23	12	12
Retail	28	50	55	39	3
Restaurant	139	277	277	277	28
Hotel	94	134	94	134	94
Totals	483	484	449	462	137

* 491 Parking Spaces Provided

REVIEWED TOWN OF FLOWER MOUND Released for Construction Date Town of Flower Mound Engineering Services

SITE PLANNING CIVIL ENGINEERING PLANNING CONSULTANTS, LLC
LAND SURVEYING LANDSCAPE ARCHITECTURE
111 Hillside Drive • Lewisville, TX 75057
P: 972.436.9712 • F: 972.436.9715
144 Old Town Blvd. North, Ste 2 • Argyle, TX 76226
P: 940.240.1012 • F: 940.240.1028
TBEIS Firm No. 1798 TBEIS Firm No. 10047700

LAKESIDE CROSSING
Lot 1, Block A
12.00 Acres
in the
JUN. TANNEHILL SURVEY; ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.
G&A CONSULTANTS, F-1798
ROBERT JOHN DOLLAK, JR., P.E. #86898
DATE 2/20/2018

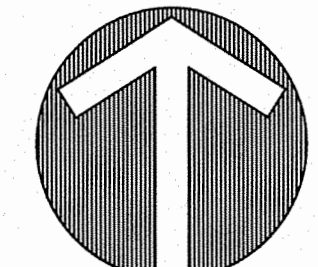
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Date: 10/30/2017
Scale: 1"=50'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018

16326

C3

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS

ENHANCED PAVEMENT TYPE (A)



40 0 40 80 120 Feet
SCALE: 1"=40'

ENHANCED PAVEMENT TYPE (B)

ENHANCED PAVEMENT TYPE (C)

ENHANCED PAVEMENT TYPE (A)

TREX DECKING

RETAINING WALL

ENHANCED PAVEMENT TYPE (C)

LONG PRAIRIE ROAD

6' BROOM FINISH CONCRETE SIDEWALK

LEGEND

- TYPE (A) STAMPED AND STAINED PATTERN CONCRETE
PATTERN: CORBELSTONE
COLOR: BASE - 126 LAMON STONE, RELEASE - R2 STORM GRAY
- TYPE (B) STAMPED AND STAINED PATTERN CONCRETE
PATTERN: TETRA STONE
COLOR: BASE - 102 SOKORAN TAN, RELEASE - R4 WALNUT
- TYPE (C) STAINED CONCRETE
PATTERN: TROUSSEL FINISH BUFFED CONCRETE
BASE COLOR - P22 ARENA BUFF+ ACCENT COLOR - P23 SMOKE
- TYPE (D) BROOM FINISH CONCRETE SIDEWALK
- TYPE (E) STAINED CONCRETE
PATTERN: TROUSSEL FINISH ACID WASH
BASE COLOR - P22 ARENA BUFF+ ACCENT COLOR - P23 SMOKE
- TYPE (F) ALAMO STONE (Pavement Collection)
PATIO BANDING STONE SIZE: 12"x12"
POOL COPING - 2" THICKNESS
- TYPE (G) TREX DECKING
- TYPE (H) CRUSHED GRANITE

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date: 10/11/18
Town of Flower Mound
Engineering Services Division

HARDSCAPE PLAN



9/18/2018

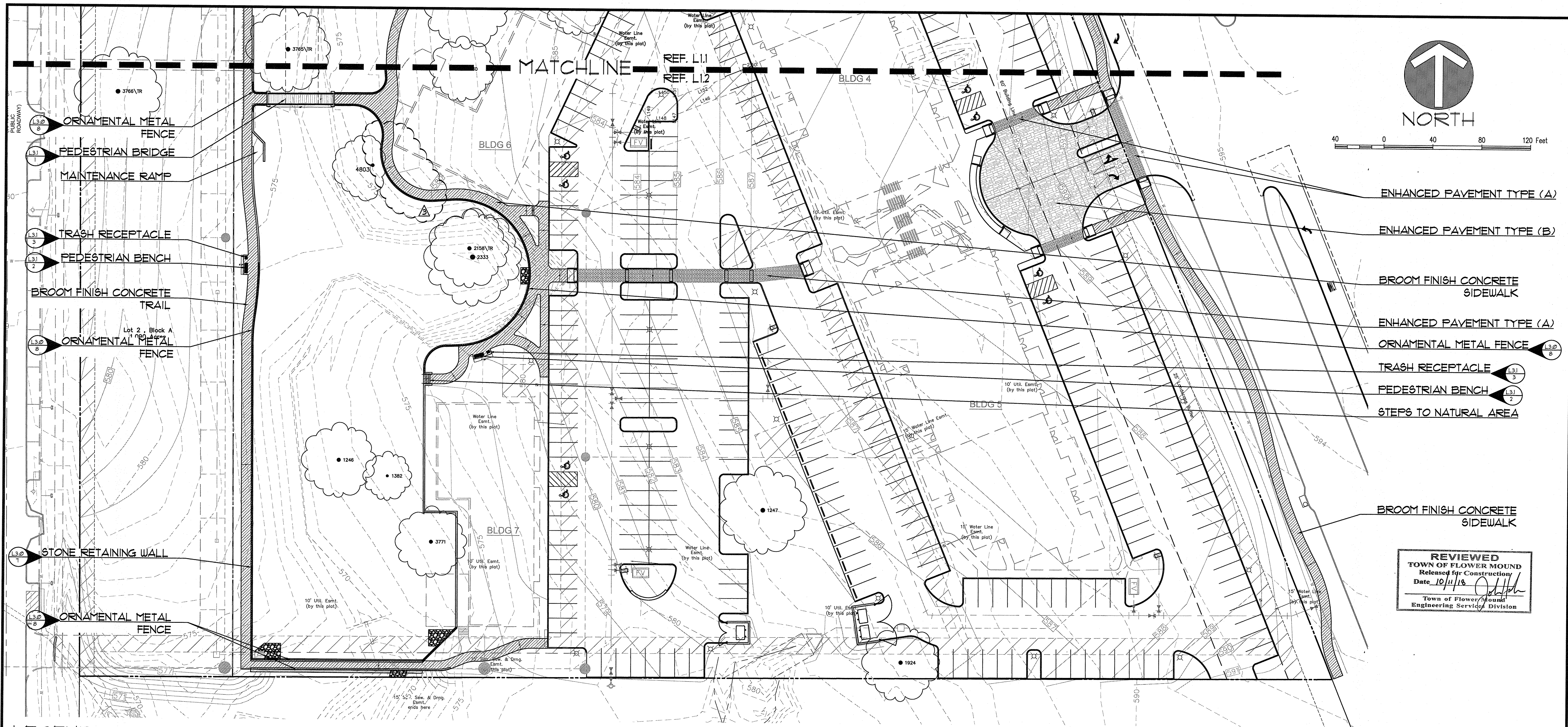
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Scale: 1"=40'
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11/20/2017
12/14/2017
01/17/2018
02/07/2018
9/17/2018

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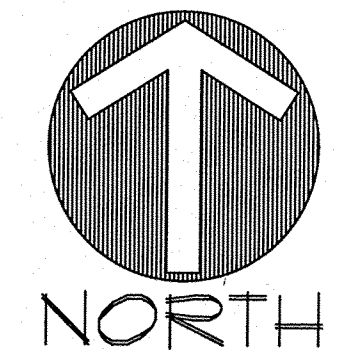
OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-802-0578
Contact: MR. TROY LEWIS



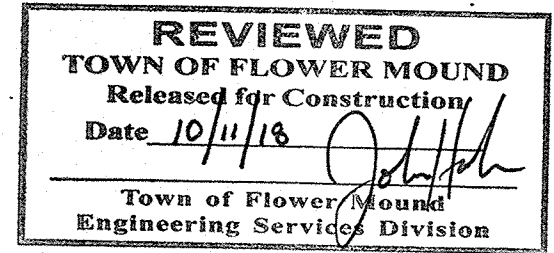


LEGEND

- TYPE (A) STAMPED AND STAINED PATTERN CONCRETE
PATTERN: COBBLESTONE
COLOR: BASE - U26 LAMON STONE, RELEASE - R12 STORM GRAY
- TYPE (B) STAMPED AND STAINED PATTERN CONCRETE
PATTERN: TETRA STONE
COLOR: BASE - U26 SONORAN TAN, RELEASE - R14 WALNUT
- TYPE (C) STAINED CONCRETE
PATTERN: TROQUEL FINISH BUFFED CONCRETE
BASE COLOR - F22 ARENA BUFF ACCENT COLOR - F23 SMOKE
- TYPE (D) BROOM FINISH CONCRETE SIDEWALK
- TYPE (E) STAINED CONCRETE
PATTERN: TROQUEL FINISH ACID WASH
BASE COLOR - F22 ARENA BUFF ACCENT COLOR - F23 SMOKE
- TYPE (F) ALAMO STONE (Pavement Collection)
COGNAC BROWN
PATIO BANDING STONE SIZE - 12"x12"x4"
POOL COPING - 2" THICKNESS
- TYPE (G) IPE DECKING
- TYPE (H) CRUSHED GRANITE



- ENHANCED PAVEMENT TYPE (A)
- ENHANCED PAVEMENT TYPE (B)
- BROOM FINISH CONCRETE SIDEWALK
- ENHANCED PAVEMENT TYPE (A)
- ORNAMENTAL METAL FENCE
- TRASH RECEPTACLE
- PEDESTRIAN BENCH
- STEPS TO NATURAL AREA



The John R. McAdams Company, Inc.
(DBA, G&A | McAdams)
111 Hillside Drive
Lewisville, Texas 75057
972.436.9712
201 Country View Drive
Rockwall, Texas 75087
972.436.2410
TBP# 19762 TBP#LS 10194440
www.gamc.com

LAKESIDE CROSSING

12.00 Acres
in the
JUN. TANNERHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

HARDSCAPE PLAN



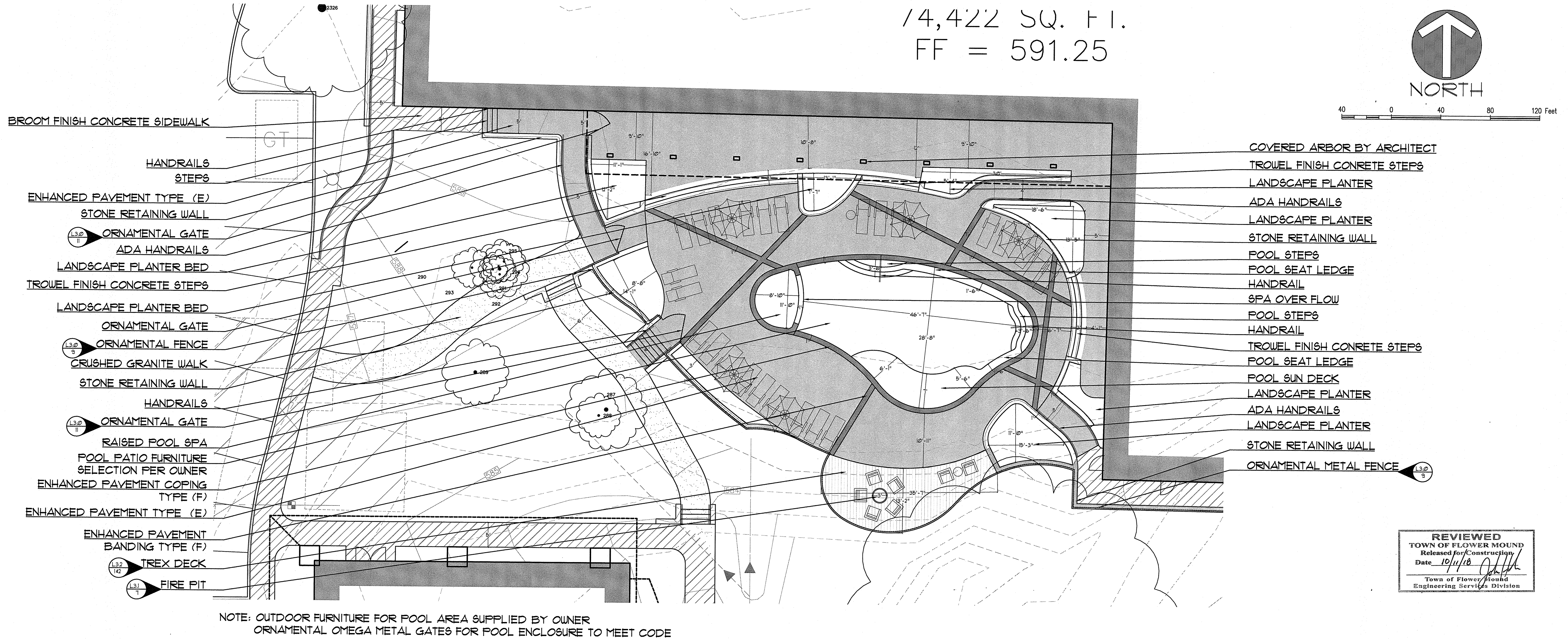
9/18/2018

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Date: 10/30/2017
Scale: 1" = 40'
Revisions:
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12/14/2017
01/17/2018
02/07/2018
9/17/2018

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0576
Contact: MR. TROY LEWIS

16326

L1.2



The John R. McAdams Company, Inc.
(DBA, G&A McAdams)
111 Hillside Drive
Lewisville, Texas 75057
972.436.9712
207 Country View Drive
Rockwall, Texas 75087
940.940.1012
TBP: 19762 TBP S: 10194440
www.mcadams.com

McADAMS

LAKESIDE CROSSING
12.00 Acres
in the
JUN. TANNER HILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

HARDSCAPE PLAN

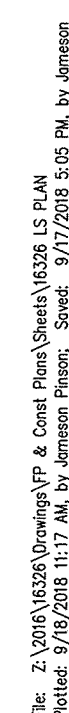
REGISTERED LANDSCAPE ARCHITECT
JAMESON P. PETERSON
2826
STATE OF TEXAS
9/18/2018

Drawn By: JLP
Date: 10/30/2017
Scale: 1" = 40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018

16326

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LAKESIDE CROSSING



- ***Note #1: Trees #379, 238, 240, 241, 242, 243 (1 credits each = 6 credits) + 7 new trees (3" cal.) = 13 landscape buffer trees
- ***Note #2: Trees #362 (6 credits) + #219 (6 credits) + #362 (5 credits) + #247 (4 credits) + #924 (5 credits) + 47 new trees = 13 parking trees

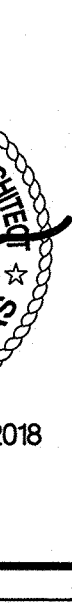
1. Plant material shall be measured and sized according to the latest edition of the Texas Nursery and Landscape Association (TNLA) grades and standards.
2. All plant beds shall be top-dressed with a minimum of 3 inches of hardwood or other mulch.
3. Trees shall be planted at least 4 feet from utility line, curb, walk, fire connection, and outside all utility easements.
4. Trees overhanging walks and parking shall have a minimum clear trunk height of 7 ft.
5. All utility trunks must be provided at all intersections. Shrubs are not to exceed 30 inches in height. Trees shall have a minimum clear trunk height of 9 feet.
6. The owner, tenant, and/or their agents, if any, shall be jointly and severally shall be responsible for the maintenance, establishment, and permanence of plant material. All landscaping shall be maintained in a neat and orderly manner at all times. This shall include, but not limited to, mowing, edging, pruning, fertilizing, watering, and other activities necessary for the maintenance of landscaped areas.
7. All plant material shall be maintained in a healthy and growing condition as is appropriate for the season of the year. Plant material that is damaged, destroyed, or removed shall be replaced with plant material of similar size and variety within 30 days unless otherwise approved in writing by the Town of Flower Mound.
8. Before construction, landscape contractor and general contractor shall verify and locate all existing utilities in areas of excavation.
9. Please refer to all landscape and irrigation specifications.
10. All landscape beds and turf areas to be separated with edging.
11. All landscape beds to be 6" below finished floor.
12. All hydromulch or sod areas to be brought to +/- 1/4" by site grading contractor. Landscape contractor to bring all areas to final grade and remove all clod, rocks or debris >1" in diameter.
13. All landscape to be 100% irrigated. All irrigation within Drip lines of existing trees to be hand dug, and line to be installed in a radial fashion toward the trunk.
14. Please note that the permeable areas under the drip line of specimen and protected trees should be left at natural grade. No cutting or filling are to occur in these areas.
15. All areas of grading disturbance are to have grass reestablished at 75% coverage prior to letter of acceptance from the Town of Flower Mound. Means and methods of grass establishment and application of water for grass establishment are at the discretion of the owner and contractor.

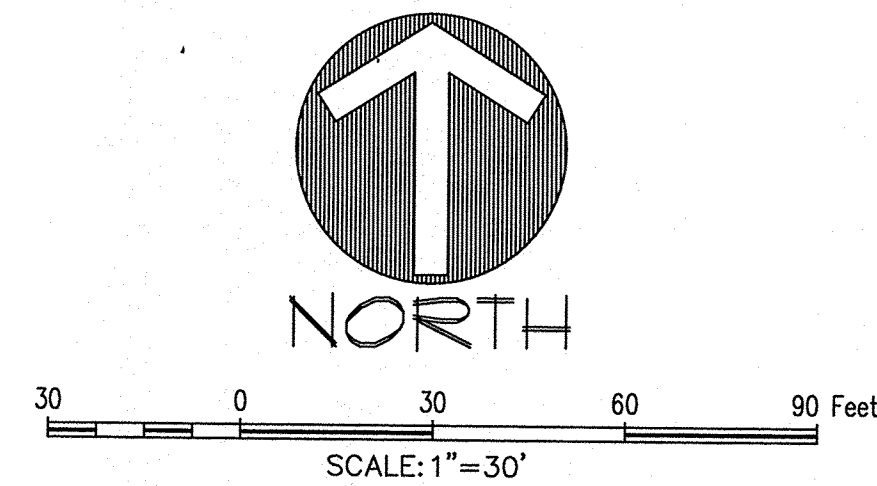
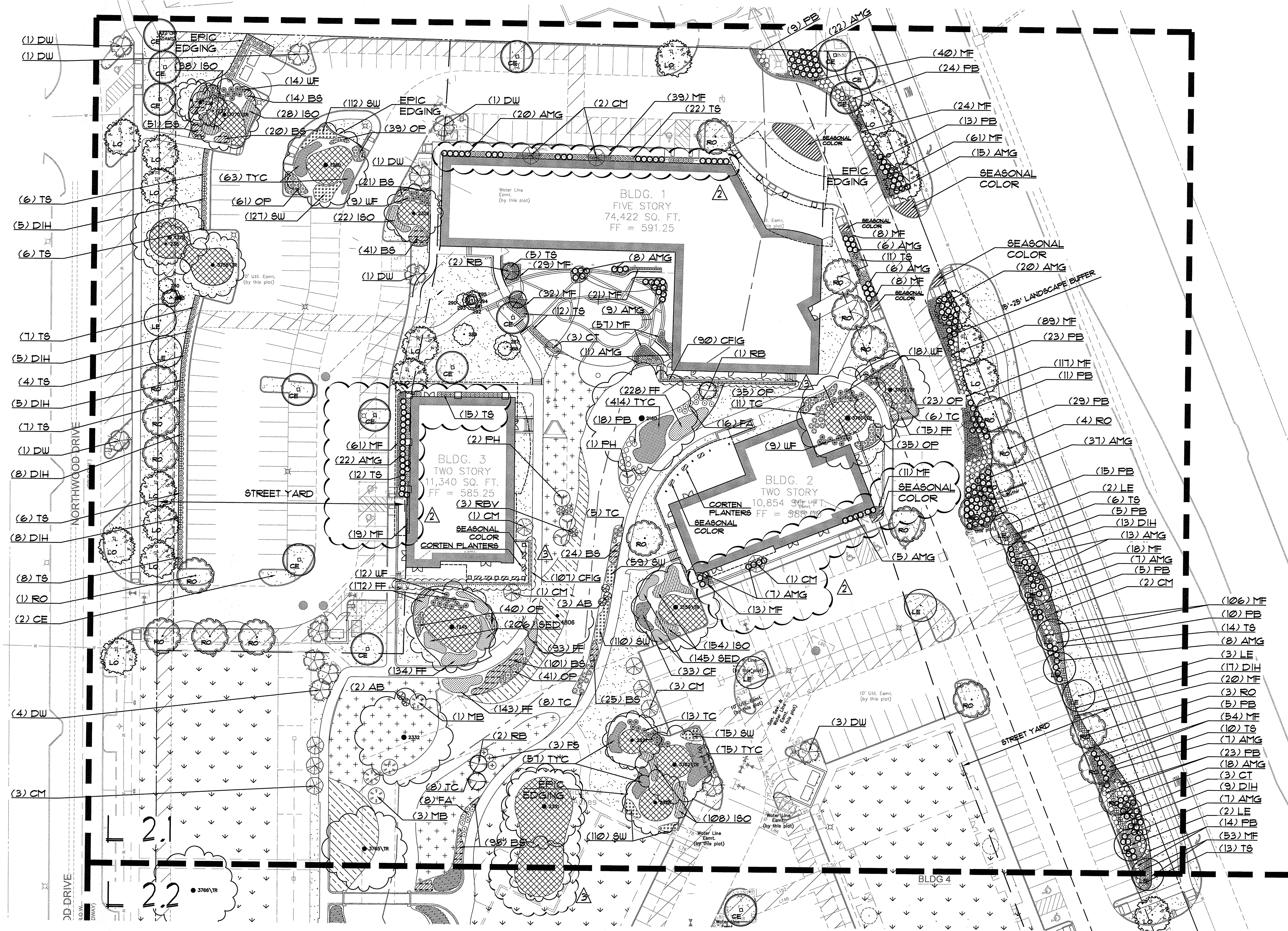
LANDSCAPE PLAN TREE LABELS:

- (BT) = LANDSCAPE BUFFER TREE
- (MIT) = MITIGATION TREE
- (PT) = PARKING LOT TREE

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date 10/11/18 *[Signature]*
Town of Flower Mound
Engineering Services Division

**OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76282
Ph. 817-602-0578
Contact: MR. TROY LEWIS**

 McADAMS		LAKESIDE CROSSING 12.00 Acres In the J.N. TANNEHILL SURVEY, ABSTRACT NO. 252 TOWN OF FLOWER MOUND DENTON COUNTY, TEXAS	LANDSCAPE PLAN	 9/18/2018	Drawn By: JP Date: 10/30/2017 Scale: 1" = 40' Revisions: 11/20/2017 12/14/2017 01/17/2018 02/07/2018 9/17/2018	16326
					L2.0	
The John R. McAdams (DBA, G&A) McAdams) 111 Hillside Drive Lewisville, Texas 75057 972.438.9712		201 Country View Drive Reno, Texas 75682 940.363.4444 TXPE: 19762 TBP: S: 10194440 www.giacon.com www.mcadamsco.com		LAKESIDE CROSSING		



PLANT LEGEND

(LO) LIVE OAK	(RO) RED OAK	(LE) LACEBARK ELM	(CE) CEDAR ELM	(DW) DESERT WILLOW	(CT) CRAPETREE	(RB) RED BUD	(CT) CHASTE TREE	(FH) FOXTAIL HOLLY	(MB) MEXICAN BUCKEYE	(REB) RUSTY BLACKHAW VIBURNUM	(AB) AMERICAN BEAUTYBERRY	(FB) FRAGRANT SUMAC	(AMG) ADAGIO MAIDEN GRASS	(TS) DWARF TEXAS SAGE	(FA) FLAME ACANTHUS	(DIH) DWARF INDIAN HAWTHORN	(TC) TURKSCAP	(PB) PYGMY BARBERRY	(MF) MEXICAN FEATHER GRASS	(UF) WOOD FERN	(IS) INLAND SEA OATS	(OP) OBEDIENT PLANT	(BS) BLACKEYED BUSH	(CF) CARDINAL FLOWER	(AW) SPIDERWORT	(TYC) TEXAS YELLOW COLUMBINE	(ME) TEXAS BEEDEE	(PF) FROG FRUIT	SEASONAL COLOR	ENHANCED LANDSCAPE BED	CLIMBING VINE	BERLIDA BOD	SEEDED INLAND SEA OATS	SEEDED SHADE-FRIENDLY GRASS MIX	BARK MULCH DEPTH OF (6) INCHES	BERLIDA HYDRO-MULCH
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REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date: 10/18/2017
Town of Flower Mound
Engineering Services Division

The John R. McAdams Company, Inc.
(DBA: G&A McAdams)
111 Hillside Drive
Lewisville, Texas 75057
972.435.9712
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LAKESIDE CROSSING
in the
1200 Acres
J.N. TANNERHILL SURVEY ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LANDSCAPE PLAN

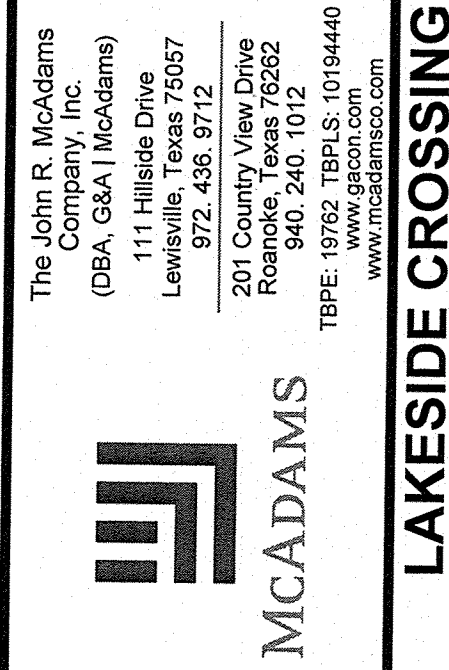


Drawn By: JP
Date: 10/30/2017
Scale: 1" = 30'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
9/17/2018

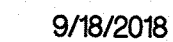
OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76282
Ph. 817-602-0578
Contact: MR. TROY LEWIS

16326

L2.1



LANDSCAPE PLAN

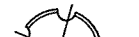
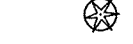
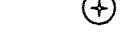
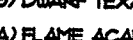
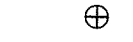


16326

(L2.2)

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76282
Ph. 817-602-0578
Contact: MR. TROY LEWIS

PLANT LEGEND

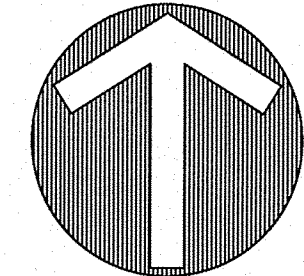
	(LO) LIVE OAK		(DW) DESERT WILLOW		(RBW) RUSTY BLACKHAW VIBURNUM		(ISO) INLAND SEA OATS		CLIMBING VINE
	(RO) RED OAK		(CPM) CRAFTMYRTLE		(AB) AMERICAN BEAUTYBERRY		(BS) BLACKEYED SUSAN		BERMUDA SOO
	(LE) LACEBARK ELM		(REB) RED BUD		(AGM) ADAGIO MAIDEN GRASS		(BD) BRIDELORT		SEEDED INLAND SEA OATS SEEDED SHADE-FRIENDLY GRASS MIX SEEDED SHADE-FRIENDLY GRASS MIX SEEDED SHADE-FRIENDLY GRASS MIX
	(CE) CEDAR ELM		(GHT) GHASTE TREE		(DXT) DISANT TEXAS SAGE		(PLA) PLAVE ACANTHUS		SEEDED SHADE-FRIENDLY GRASS MIX SEEDED SHADE-FRIENDLY GRASS MIX SEEDED SHADE-FRIENDLY GRASS MIX
			(POH) POBBINHAU HOLLY		(IND) DISANT INDIAN HAWTHORN		(TDS) TEXAS SEDGE		BARK MULCH, DEPTH OF (6) INCHES
			(Y) YOGHINIA HOLLY		(TUN) TUNSCAP		(PFB) PYGMY BARBERRY		BERMUDA HYDRO-MULCH
			(MEX) MEXICAN BUCKEYE		(FEA) MEXICAN FEATHER GRASS		(WDF) WOOD FERN		

JUTE EROSION
CONTROL MATTING

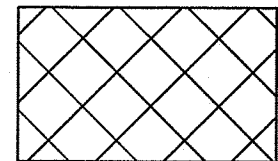
NORTHWOOD DRIVE
(876.03.9)

NORTHWOOD DRIVE
(80 R.O.W.
PUBLIC
ROADWAY)

LONG PRAIRIE ROAD
(806.00.0)



40 0 40 80 120 Feet
SCALE: 1"=40'



JUTE EROSION CONTROL MATTING
WITHOUT NYLON MESH

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date 10/11/18
Town of Flower Mound
Engineering Services Division

LAKEVIEW CROSSING

12.00 Acres
in the
JUN. TANNERHILL SURVEY, ABSTRACT NO. 1282
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LANDSCAPE EROSION
CONTROL PLAN



Drawn By: JLP
Date: 10/30/2017
Scale: 1"=40'
Revisions:
11/23/2017
12/14/2017
01/17/2018
02/07/2018

16326

L2.3

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS

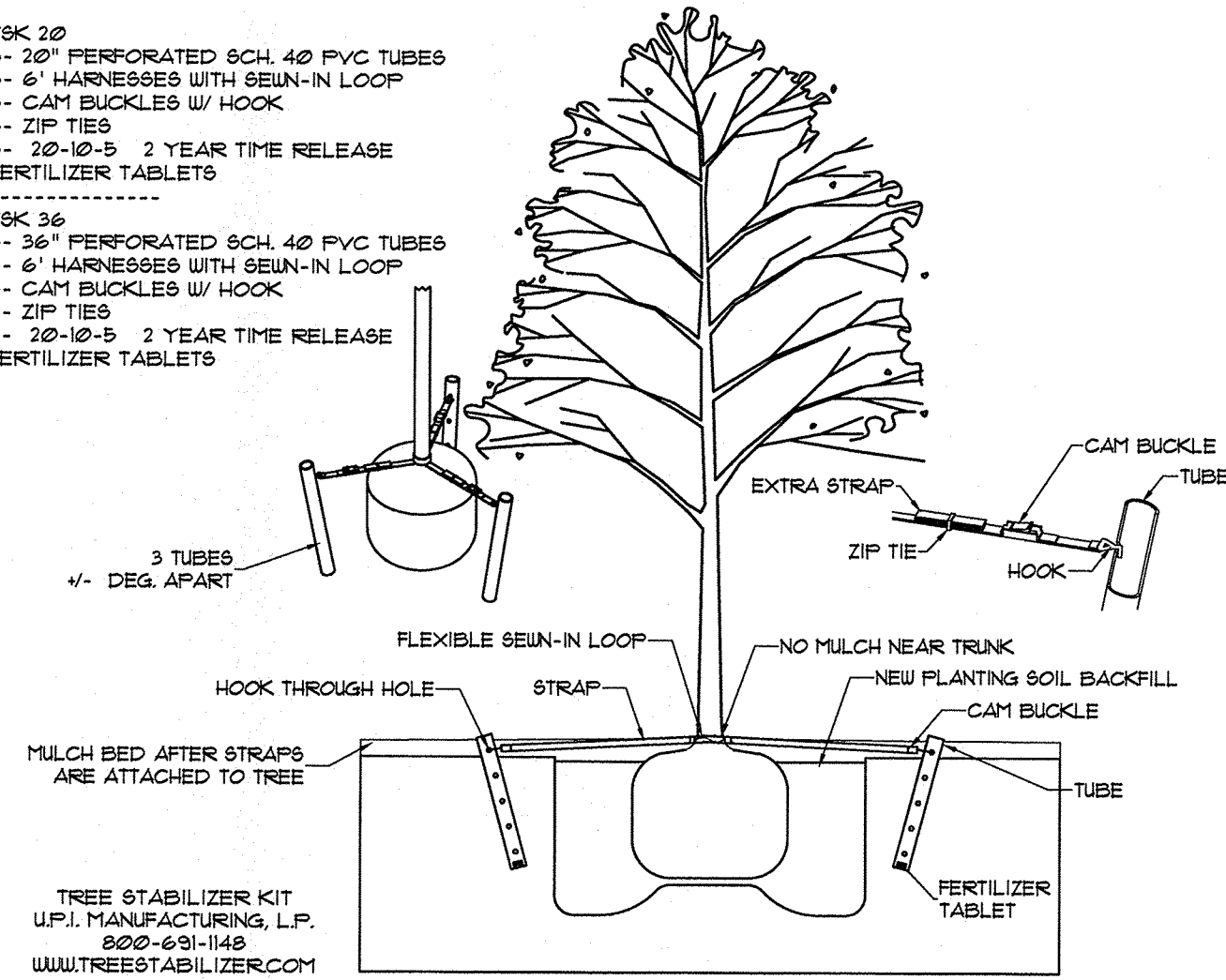
The John P. McAdams
Company, Inc.
(DBA: G&A McAdams)
111 Hillside Drive
Lewisville, Texas 75067
972.436.8712
201 County View Drive
Roanoke, Texas 76262
Phone: 817.240.7401
TBP#: 18762 TBPIS: 10194440
www.gacom.com



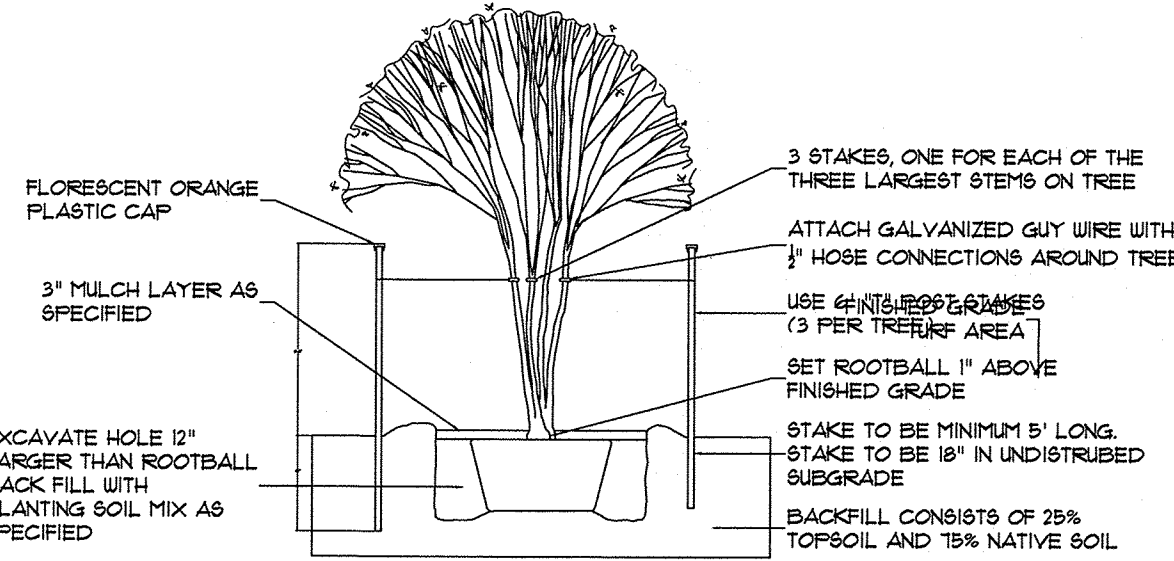
LAKEVIEW CROSSING

SPECIFICATIONS:

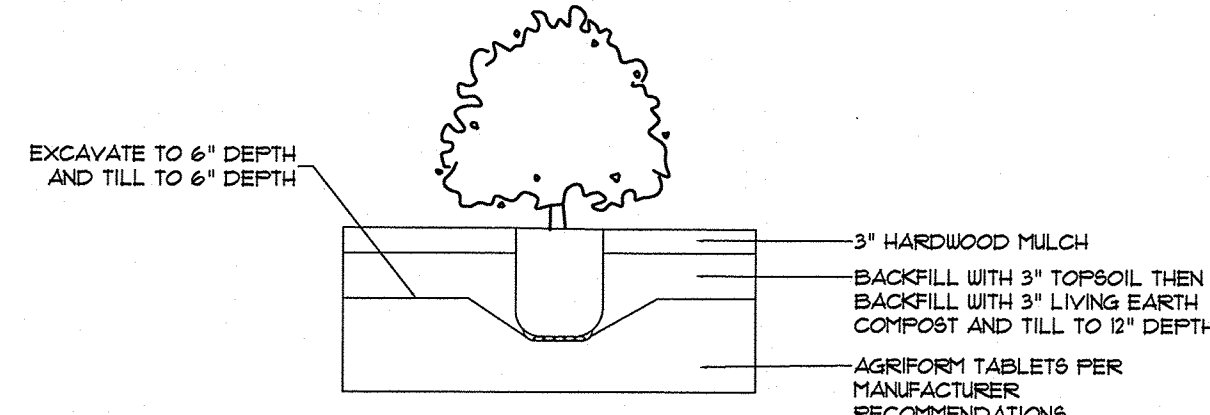
- TSK 20
3- 20" PERFORATED SCH. 40 PVC TUBES
3- 6' HARNESSES WITH SEW-IN LOOP
3- CAM BUCKLES W/ HOOK
3- ZIP TIES
3- 20-10-5 2 YEAR TIME RELEASE
FERTILIZER TABLETS
- TSK 36
3- 36" PERFORATED SCH. 40 PVC TUBES
3- 6' HARNESSES WITH SEW-IN LOOP
3- CAM BUCKLES W/ HOOK
3- ZIP TIES
3- 20-10-5 2 YEAR TIME RELEASE
FERTILIZER TABLETS



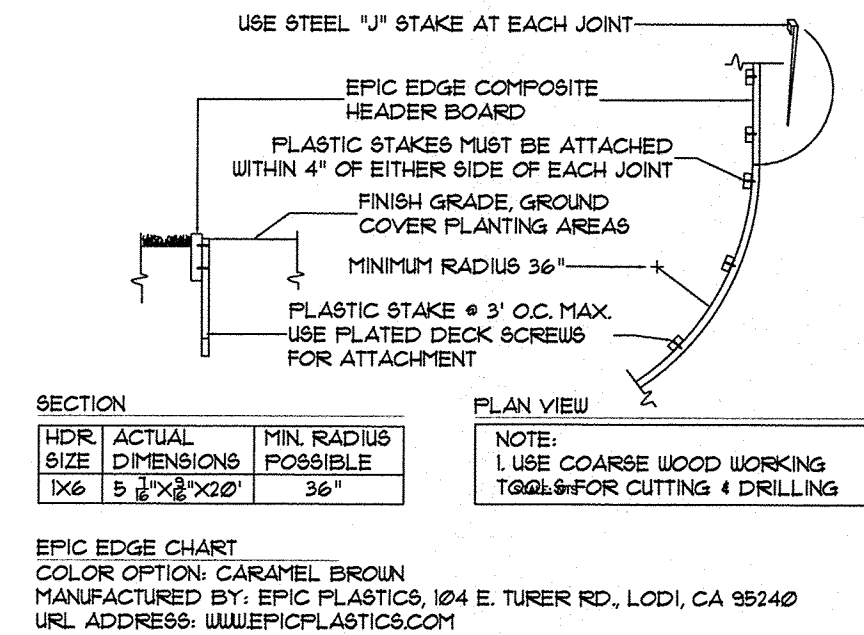
1. TREE STABILIZER KIT
1/4"=1'



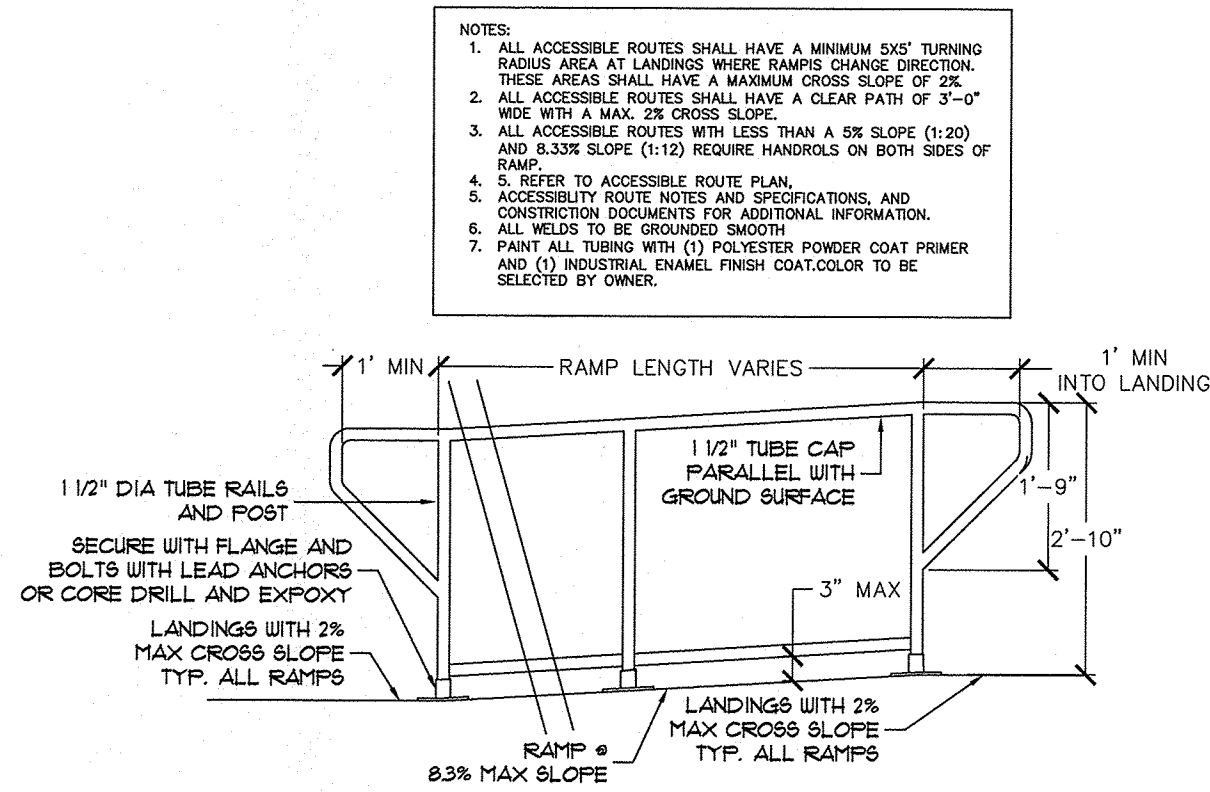
2. MULTI TRUNK TREE STAKING
1/4"=1'



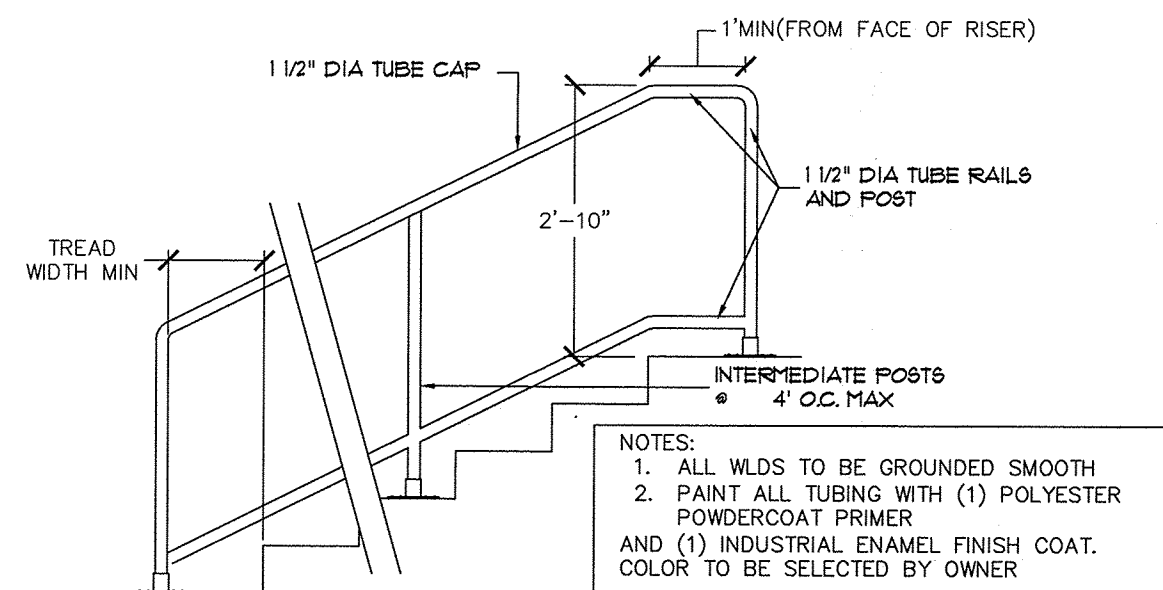
3. SHRUB PLANTING DETAIL
1/2"=1'



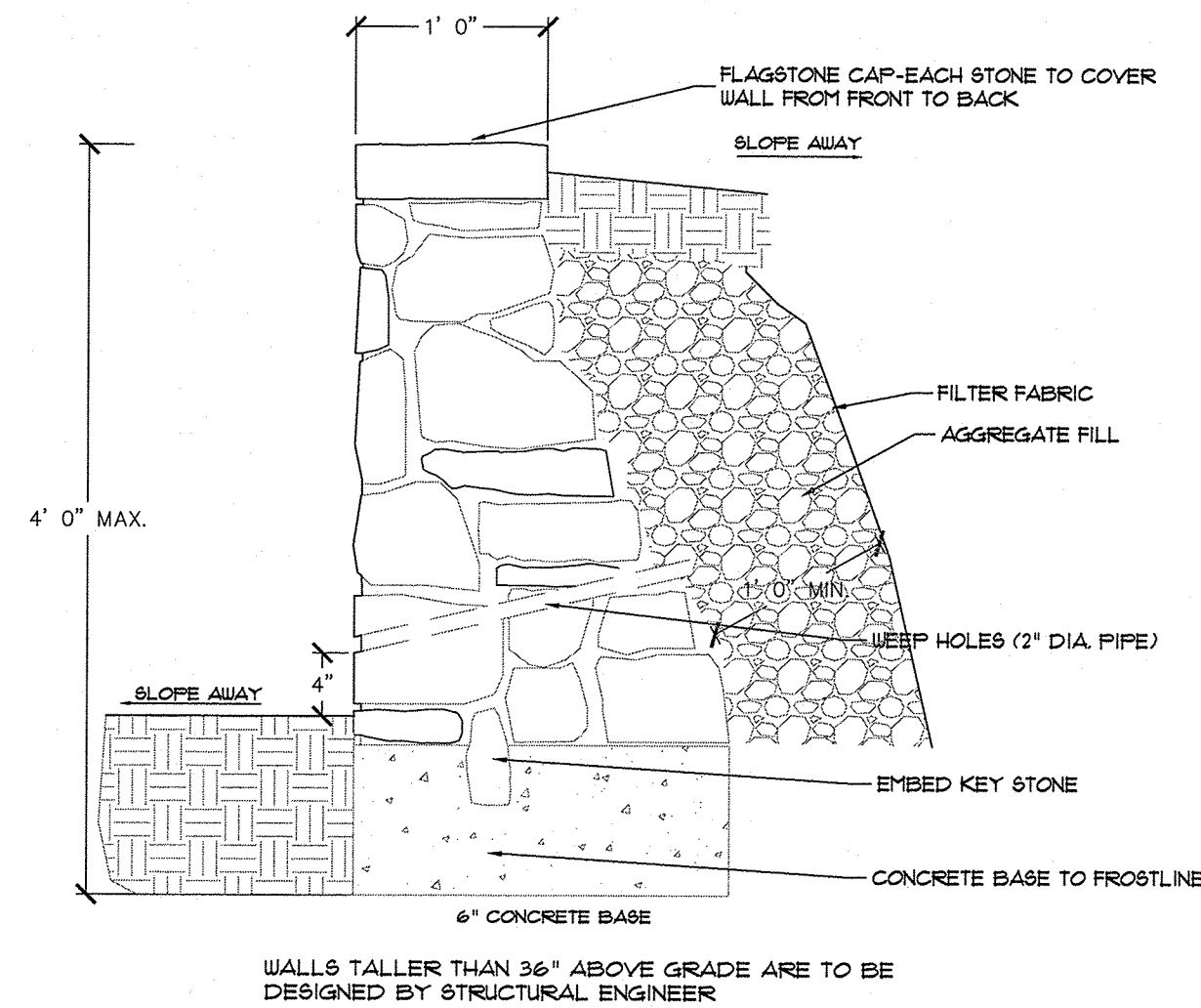
4. EPIC EDGE COMPOSITE HEADER BOARD
NTS



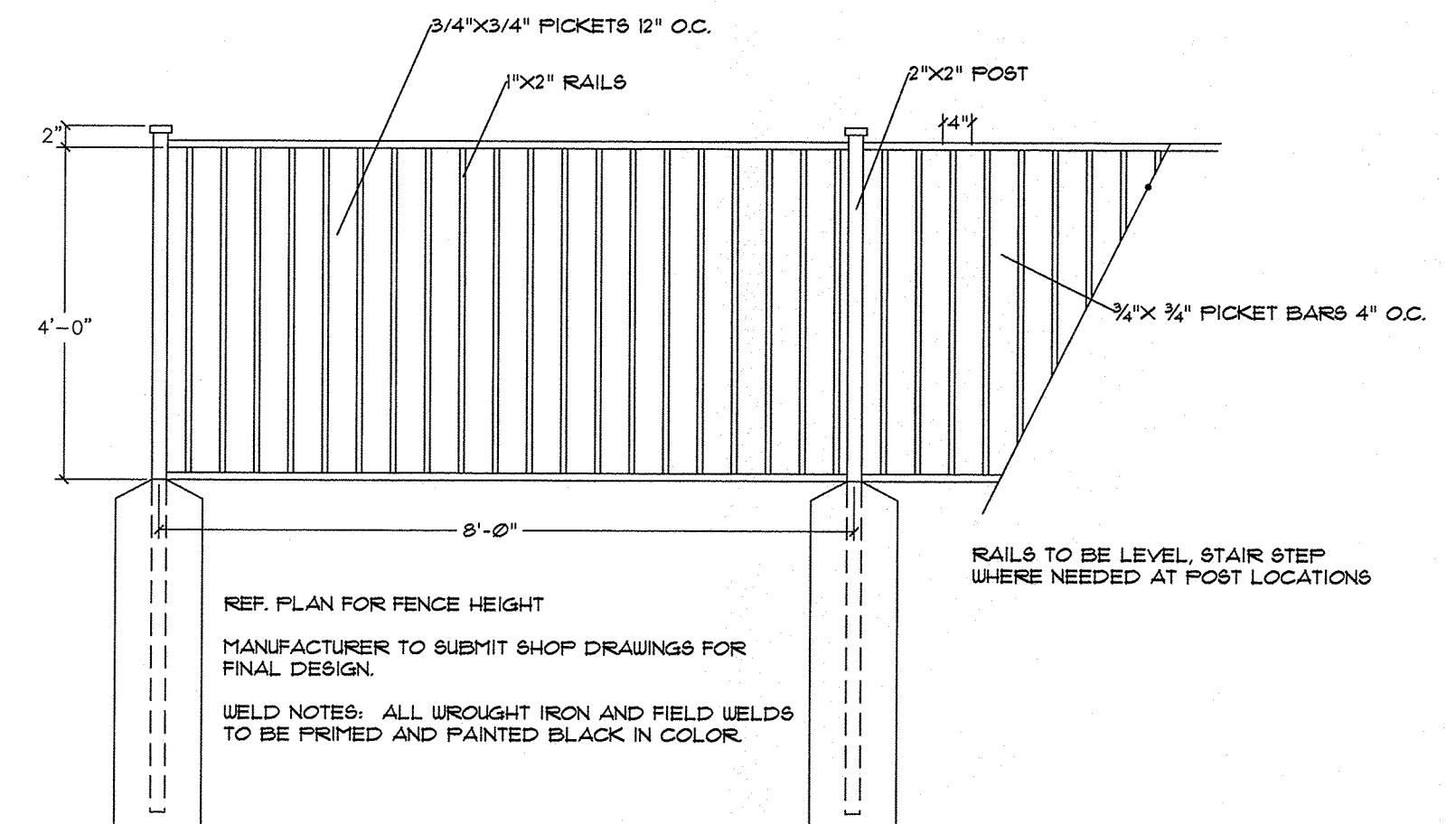
5. TUBE STEEL HANDRAIL AT RAMP
1/2"=1'



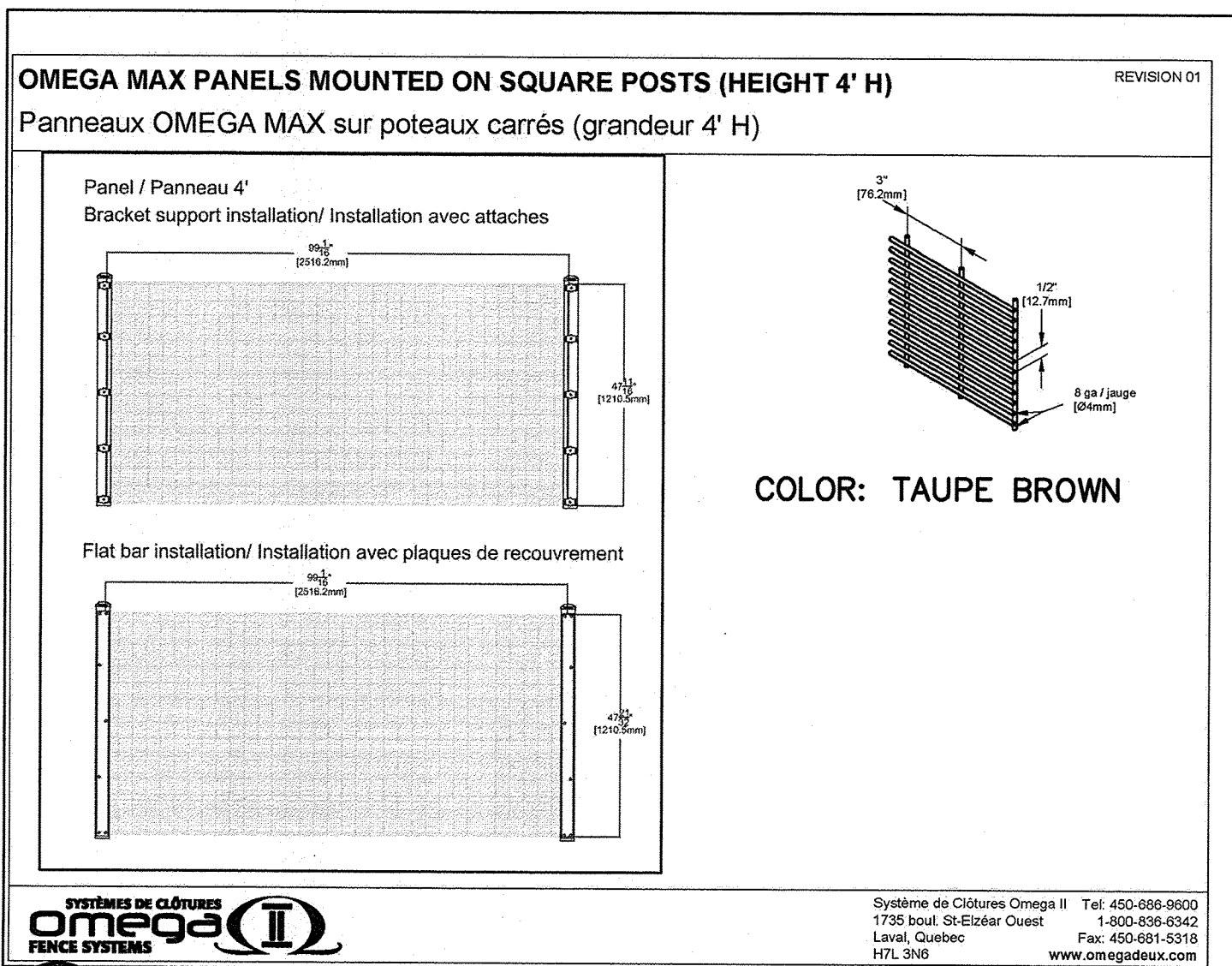
6. TUBE STEEL HANDRAIL AT STEPS
1/2"=1'



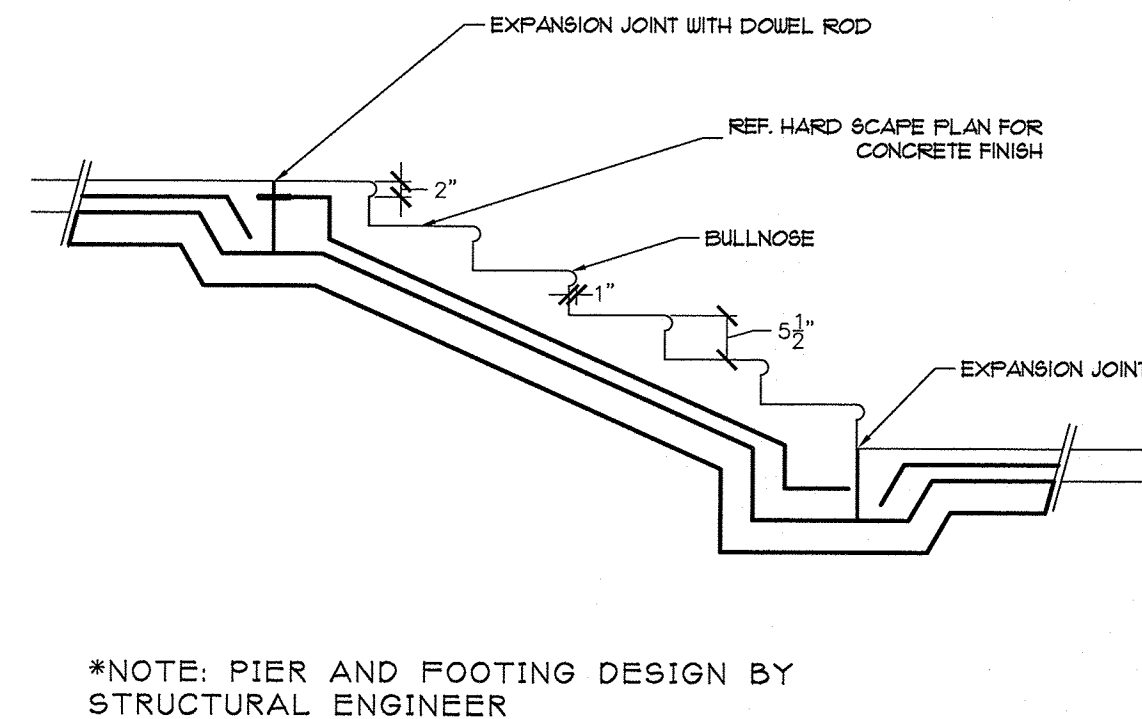
7. STONE RETAINING WALL
SCALE: NTS



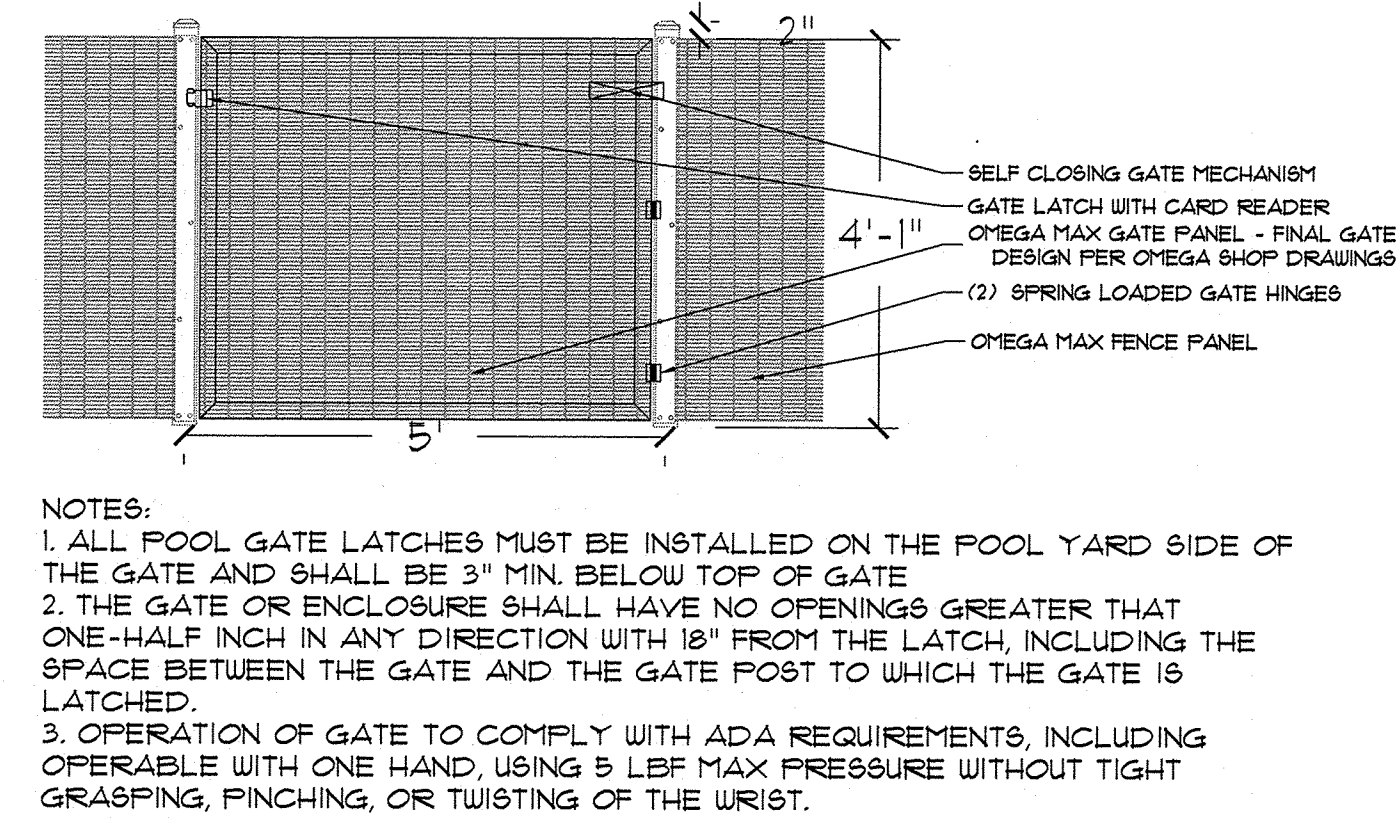
8. 4' ORNAMENTAL METAL FENCE
SCALE: NTS



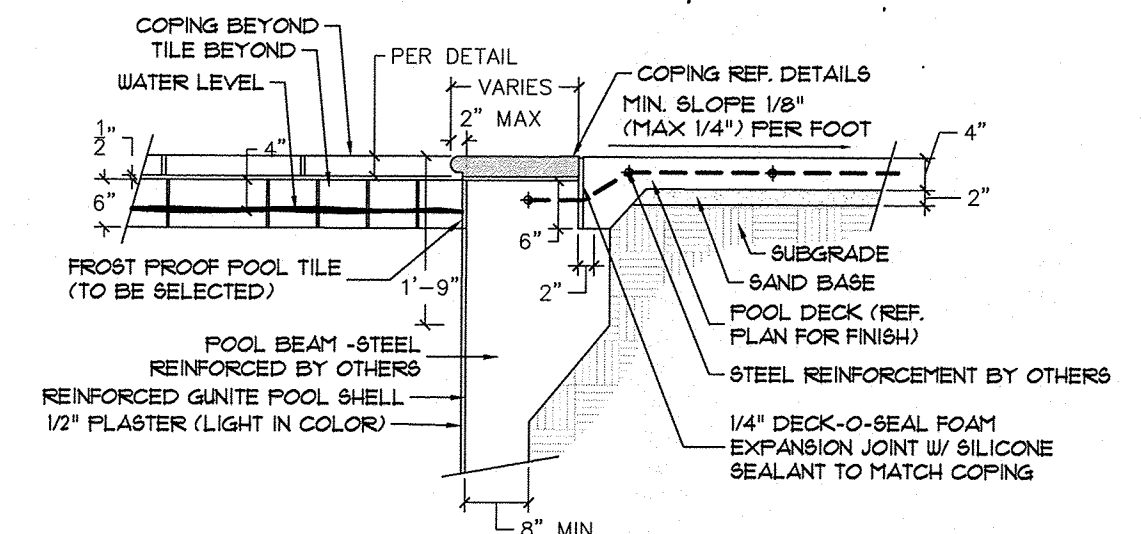
9. 4' OMEGA PANEL FENCE
SCALE: NTS



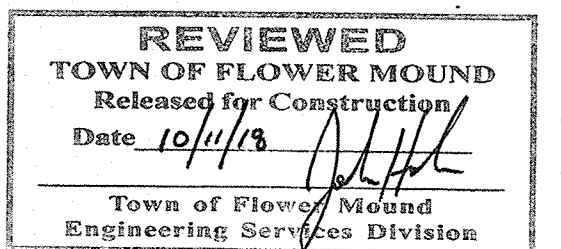
10. CONCRETE STEPS DETAIL
1/2"=1'



11. OMEGA POOL FENCE GATE
1/2"=1'



12. COPING AT POOL DECK
1/2"=1'





Project: D19-0005
Landscape Crossing

Approved by:
ALA LLC

Issued: June 2016
D19-0005-100 40K 5YM MVOLT D0602

Name:



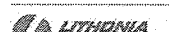
Ordering Information									
EXAMPLE: D5X3 LED 16C 700 40K 5YM MVOLT D0602									
D5X3 LED									
OPTION	Comments	DC Voltage	DC Current	DC Power	DC Voltage	DC Current	DC Power	DC Voltage	DC Current
16C	16C	16V	16V	16V	16V	16V	16V	16V	16V
40K	40K	40K	40K	40K	40K	40K	40K	40K	40K
5YM	5YM	5YM	5YM	5YM	5YM	5YM	5YM	5YM	5YM
MVOLT	MVOLT	MVOLT	MVOLT	MVOLT	MVOLT	MVOLT	MVOLT	MVOLT	MVOLT
D0602	D0602	D0602	D0602	D0602	D0602	D0602	D0602	D0602	D0602

Accessories

www.alfalighting.com

Notes

1. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
2. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
3. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
4. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
5. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
6. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
7. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
8. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
9. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.
10. D5X3 LED is a 16C, 40K, 5YM, MVOLT, D0602.



One Lighthouse Way • Canyon Junction, AZ 85901 • Phone 920.271.0041 • Fax 920.271.0041 • www.littronia.com

LAKESTIDE CROSSING
1200 Acres
 in the
 JUN. TANNER HILL SURVEY, ABSTRACT NO. 1252
 TOWN OF FLOWER MOUND
 DENTON COUNTY, TEXAS

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date 10/11/18
Town of Flower Mound
Engineering Services Division

MAJOR BRANCH

STRONG ARTERIAL LIMB
SCREW HOLES FOR MOUNTING, LEAVE
SPACE FOR CALIPER GROWTH

ADJUSTABLE KNUCKLE
FIXTURE AS SPECIFIED

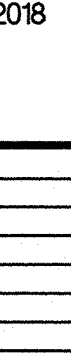
25'-35' VERIFY WITH
LANDSCAPE ARCHITECT

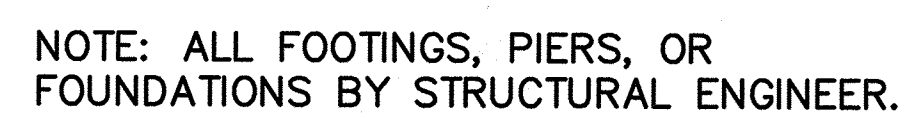
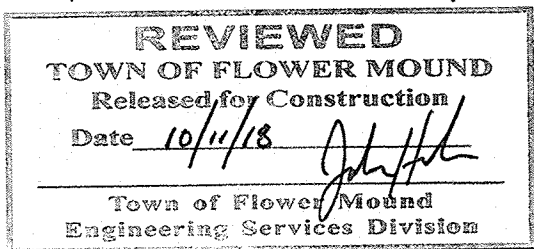
15' MIN.

CONDUIT

CONDUIT DEPTH
SHALL CONFORM TO
ELECTRICAL CODE

FINAL LOCATION AND PORTION OF FIGURE TO BE APPROVED IN FIELD BY LANDSCAPE ARCHITECT

LANDSCAPE & HARDSCAPE DETAILS	
 9/18/2018	
Drawn By: JRP Date: 10/30/2017 Scale: 1"=40' Revisions: 7/20/2017 7/14/2017 7/17/2018 2/07/2018 7/17/2018	
16326	
L3.1	



Company, Inc.
(DBA, G&A | McAdams)
111 Hillside Drive
Lewisville, Texas 75057
972.436.9712

201 Country View Drive
Roanoke, Texas 76262
940.240.1012

3PE: 19762 TBPLS; 10194440
www.gacon.com
www.mcadamsco.com

CROSSING



LAKESIDE CROSSING
12.00 Acres
in the
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LANDSCAPE & HARDSCAPE DETAILS



18/2018

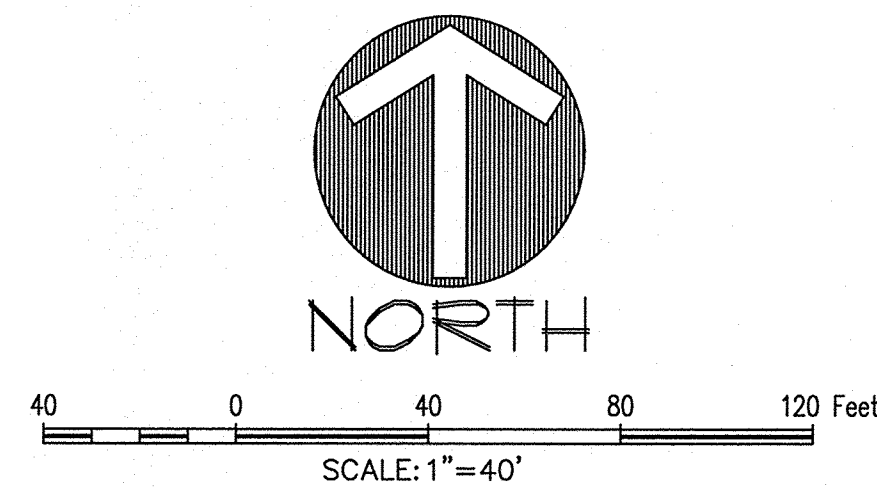
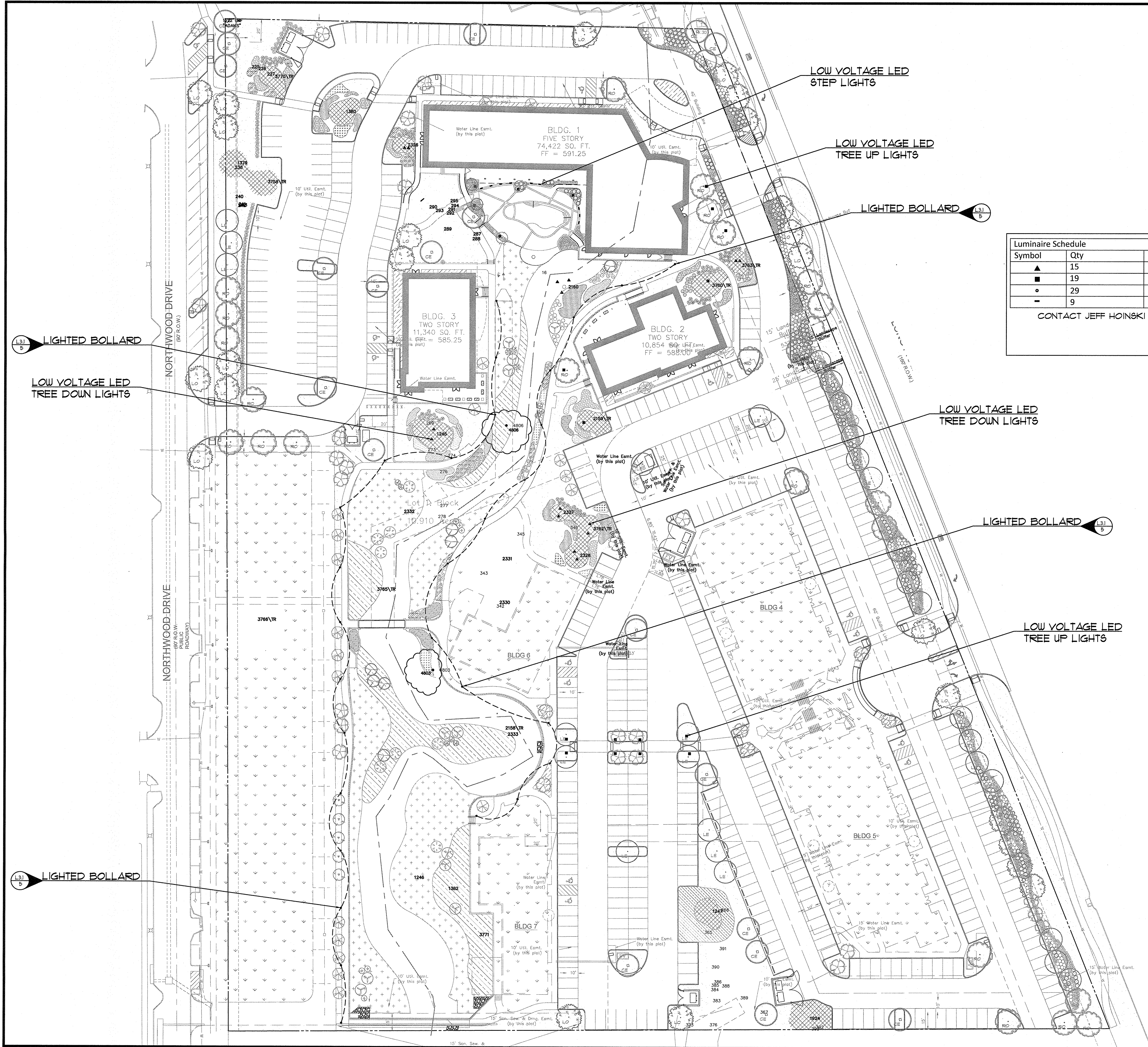
Drawn By: JP
Date: 10/30/2017
Scale: 1"=40'
Revisions:
1/20/2017
2/14/2017
01/17/2018
02/07/2018
09/17/2018

16326

3.2

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76282
Ph. 817-802-0578
Contact: MR. TROY LEWIS

FILE: Z:\010\NEW\Drawings\VP & Civil Plans\Drawings\16326 LIGHTING PLAN
Plotted: 9/18/2018 11:29 AM by: Jmason P
Scale: 9/17/2018 5:08 PM by: Jmason P



Luminaire Schedule			
Symbol	Qty	Arrangement	Description
▲	15	SINGLE	SLS-GEM-6-2-3-X LED GIM OPEN 120" WIDE FLOOD-1
■	19	SINGLE	SLS-GEM-6-1-3-X LED GIM OPEN 120" WIDE FLOOD-1
●	29	SINGLE	LIGHTED BOLLARD
—	9	SINGLE	RECTANGLE STEP LIGHT 12V

CONTACT JEFF HOINSKI @ JHOINSKI@SITELIGHTINGSOLUTIONS-USA.COM FOR PRICING

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date 10/11/18
Town of Flower Mound
Engineering Services Division

The John R. McAdams Company, Inc.
(DBA, G&A McAdams)
111 Hillside Drive
Lewisville, Texas 75057
972.435.9712
201 Country View Drive
Rockwall, Texas 75087
940.240.1012
TBP# 19762 TBP#S: 10194440
www.jrma.com

McADAMS
G&A

LAKESIDE CROSSING
12.00 Acres
in the
JUN TANNER HILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LIGHTING PLAN

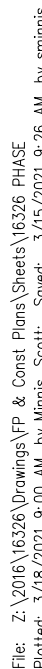


Drawn By: JLP
Date: 10/30/2017
Scale: 1"=40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
9/17/2018

16326

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76282
Ph. 817-602-0578
Contact: MR. TROY LEWIS

L4.0



OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS



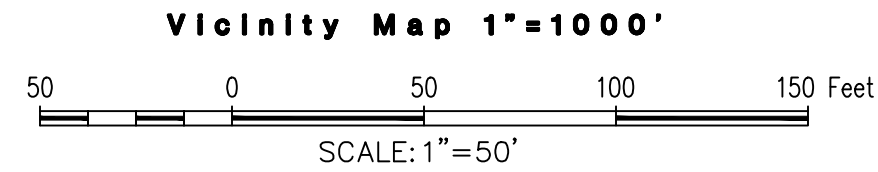
	SCHEDULE OF MIXED USE PARKING - PERCENTAGES				
	Weekday		Weekend		Night
	Daytime 6A-6P	Evening 6P-Mid	Daytime 6A-6P	Evening 6P-Mid	Midnight 6A
Office	100%	10%	10%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

SCALE: 1"=10'

17.5'

0.5'

9.0'



BOX CUT ON THE NORTHEAST CORNER OF A CURB INLET LOCATED ALONG THE WESTERN CURB OF NORTHWOOD DRIVE APPROXIMATELY 58' NORTH OF THE SOUTHWEST CORNER OF THE PROPERTY ELEV=577.78

1. CONTRACTOR IS TO CONTACT THE TOWN'S TREE ARBORIST PRIOR TO THE START OF CONSTRUCTION TO OBTAIN TREE PRESERVATION REQUIREMENTS DURING CONSTRUCTION.
2. ALL PAVEMENT DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
3. ALL SIDEWALK DIMENSIONS SHOWN ARE TO THE EDGE OF PAVEMENT UNLESS OTHERWISE SHOWN.
4. ALL RADII ARE 3.0 FEET UNLESS OTHERWISE NOTED.
5. ALL PARKING SPOTS ARE 9.0' WIDE UNLESS OTHERWISE NOTED.
6. THE LOCATION OF THE EXISTING UTILITIES SHOWN IS APPROXIMATE, THE CONTRACTOR IS TO FIELD VERIFY LOCATION AND DEPTH PRIOR TO CONDUCTING ANY WORK.
7. ALL RETAINING WALLS ARE TO BE CLAD IN A MATERIAL THAT MATCHES THE PROPOSED BUILDINGS.
8. THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
9. ALL BUILDING MOUNTED UTILITY OR EQUIPMENT BOXES SHALL BE SCREENED FROM STREET VIEW BY A MINIMUM SIX FOOT HIGH SCREENING DEVICE. WHETHER SHOWN IN THESE PLANS OR NOT, SUCH SCREENING DEVICE SHALL CONSIST EITHER OF PLANT MATERIAL OR A SCREENING WALL CONSTRUCTED OF OR FINISHED WITH A MATERIAL TO MATCH THE BUILDING, PROVIDED HOWEVER THAT WOOD FENCING OR SCREENING SHALL BE PROHIBITED. THIS RELATES TO ONLY THE NORTHERN, SOUTHERN AND WESTERN BUILDING FACADES, SINCE THESE ARE THE ONLY FACADES ABUTTING A STREET.
10. SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SITE PLAN OR ELEVATIONS ARE NOT APPROVED AS PART OF THIS REVIEW AND MUST COMPLY WITH THE TOWN OF FLOWER MOUND REGULATIONS.
11. THE DISCRETE SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
12. A TxDOT PERMIT WILL BE REQUIRED BEFORE ANY WORK CAN OCCUR WITHIN THE TxDOT RIGHT-OF-WAY.
13. REFER TO THE PAVING PLAN FOR ADDITIONAL INFORMATION REGARDING THE PROPOSED TURN LANES.
14. 3' CONCRETE TEMPORARY SIDEWALK TO BE CONSTRUCTED FROM THE PEDESTRIAN BRIDGE TO BUILDINGS 4&5.

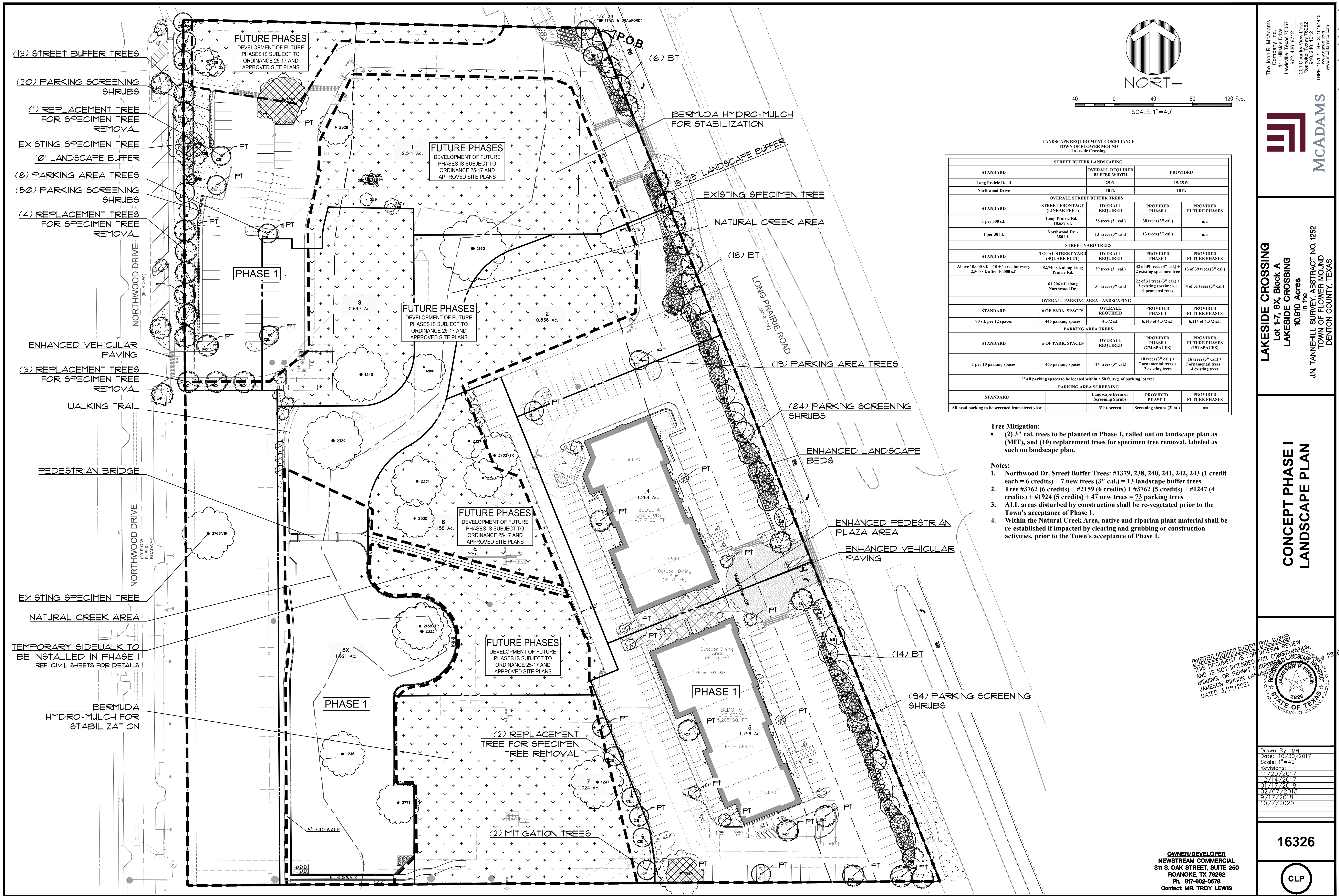
CONCEPT SITE PLAN

THIS DOCUMENT IS FOR
INTERIM REVIEW AND IS
NOT INTENDED FOR
CONSTRUCTION, BIDDING,
OR PERMIT PURPOSES.
THE JOHN R. MCADAMS
COMPANY, INC.
TBPE: 19762
ROBERT JOHN DOLLAH, JR.,
P.E. #86898
DATE 3/18/2021

Drawn By: AR
Date: 10/30/2017
Scale: 1"=50'
Revisions:
10/07/2020
01/26/2021
03/18/2021

C3.2

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS

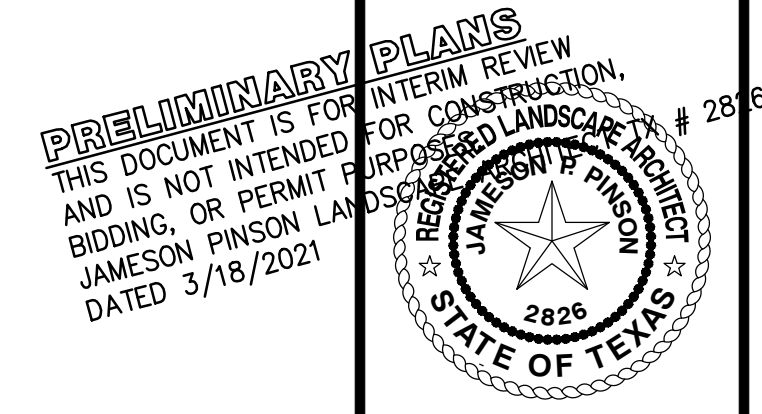


LANDSCAPE REQUIREMENT COMPLIANCE
TOWN OF FLOWER MOUND
Lakeside Crossing

STREET BUFFER LANDSCAPING				
STANDARD		OVERALL REQUIRED BUFFER WIDTH	PROVIDED	
Long Prairie Road		25 ft.	15-25 ft.	
Northwood Drive		10 ft.	10 ft.	
OVERALL STREET BUFFER TREES				
STANDARD	STREET FRONTAGE (LINEAR FEET)	OVERALL REQUIRED	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
1 per 500 s.f.	Long Prairie Rd. - 18,657 s.f.	38 trees (3" cal.)	38 trees (3" cal.)	n/a
1 per 30 L.F.	Northwood Dr. - 380 L.f.	13 trees (3" cal.)	13 trees (3" cal.)	n/a
STREET YARD TREES				
STANDARD	TOTAL STREET YARD (SQUARE FEET)	OVERALL REQUIRED	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
Above 10,000 s.f. = 10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	82,740 s.f. along Long Prairie Rd.	39 trees (3" cal.)	32 of 39 trees (3" cal.) + 2 existing specimen tree	13 of 39 trees (3" cal.)
	61,206 s.f. along Northwood Dr.	31 trees (3" cal.)	22 of 31 trees (3" cal.) + 3 existing specimen + 9 protected trees	4 of 31 trees (3" cal.)
OVERALL PARKING AREA LANDSCAPING				
STANDARD	# OF PARK SPACES	OVERALL REQUIRED	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
90 s.f. per 12 spaces	446 parking spaces	4,372 s.f.	6,145 of 4,372 s.f.	6,114 of 4,372 s.f.
PARKING AREA TREES				
STANDARD	# OF PARK SPACES	OVERALL REQUIRED	PROVIDED PHASE 1 (274 SPACES)	PROVIDED FUTURE PHASES (191 SPACES)
1 per 10 parking spaces	465 parking spaces	47 trees (3" cal.)	18 trees (3" cal.) + 7 ornamental trees + 2 existing trees	16 trees (3" cal.) + 7 ornamental trees + 4 existing trees
**All parking spaces to be located within a 50 ft. avg. of parking lot tree.				
PARKING AREA SCREENING				
STANDARD		Landscape Berm or Screening Shrubs	PROVIDED PHASE 1	PROVIDED FUTURE PHASES
All head parking to be screened from street view		3' ht. screen	Screening shrubs (3' ht.)	n/a

Tree Mitigation:
• (2) 3" cal. trees to be planted in Phase 1, called out on landscape plan as (MIT), and (10) replacement trees for specimen tree removal, labeled as such on landscape plan.

- Notes:
- Northwood Dr. Street Buffer Trees: #1379, 238, 240, 241, 242, 243 (1 credit each = 6 credits) + 7 new trees (3" cal.) = 13 landscape buffer trees
 - Tree #3762 (6 credits) + #2159 (6 credits) + #3762 (5 credits) + #1247 (4 credits) + #1924 (5 credits) + 47 new trees = 73 parking trees
 - ALL areas disturbed by construction shall be re-vegetated prior to the Town's acceptance of Phase 1.
 - Within the Natural Creek Area, native and riparian plant material shall be re-established if impacted by clearing and grubbing or construction activities, prior to the Town's acceptance of Phase 1.



OWNER/DEVELOPER
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Ph. 817-602-0576
Contact: MR. TROY LEWIS

THE JOHN R. MCADAMS COMPANY, INC.
111 Hillside Drive
Lewisville, Texas 75057
972-265-8800
201 Country Club Lane, Suite 200
Roanoke, Texas 76262
940.240.1012
TBP#: 19762 TBP#LS: 10194440
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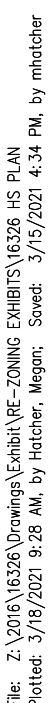
LAKESIDE CROSSING
Lot 1-7, 8X, Block A
LAKESIDE CROSSING
in the
10,970 ACROSS
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

**CONCEPT PHASE I
LANDSCAPE PLAN**

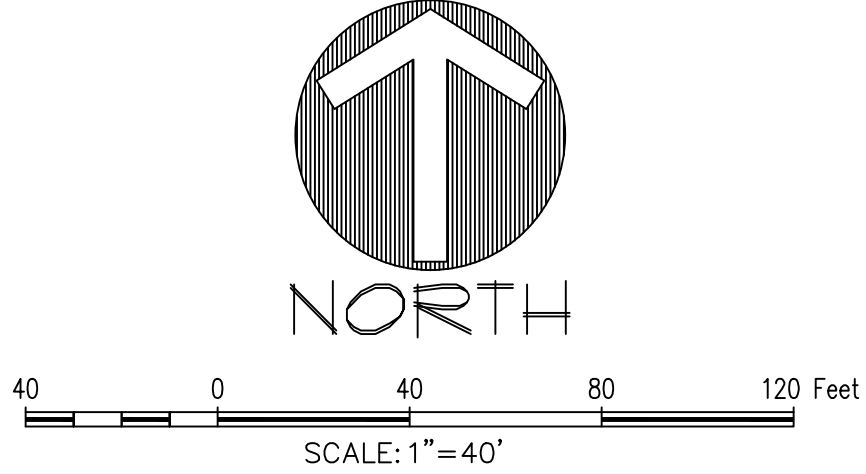
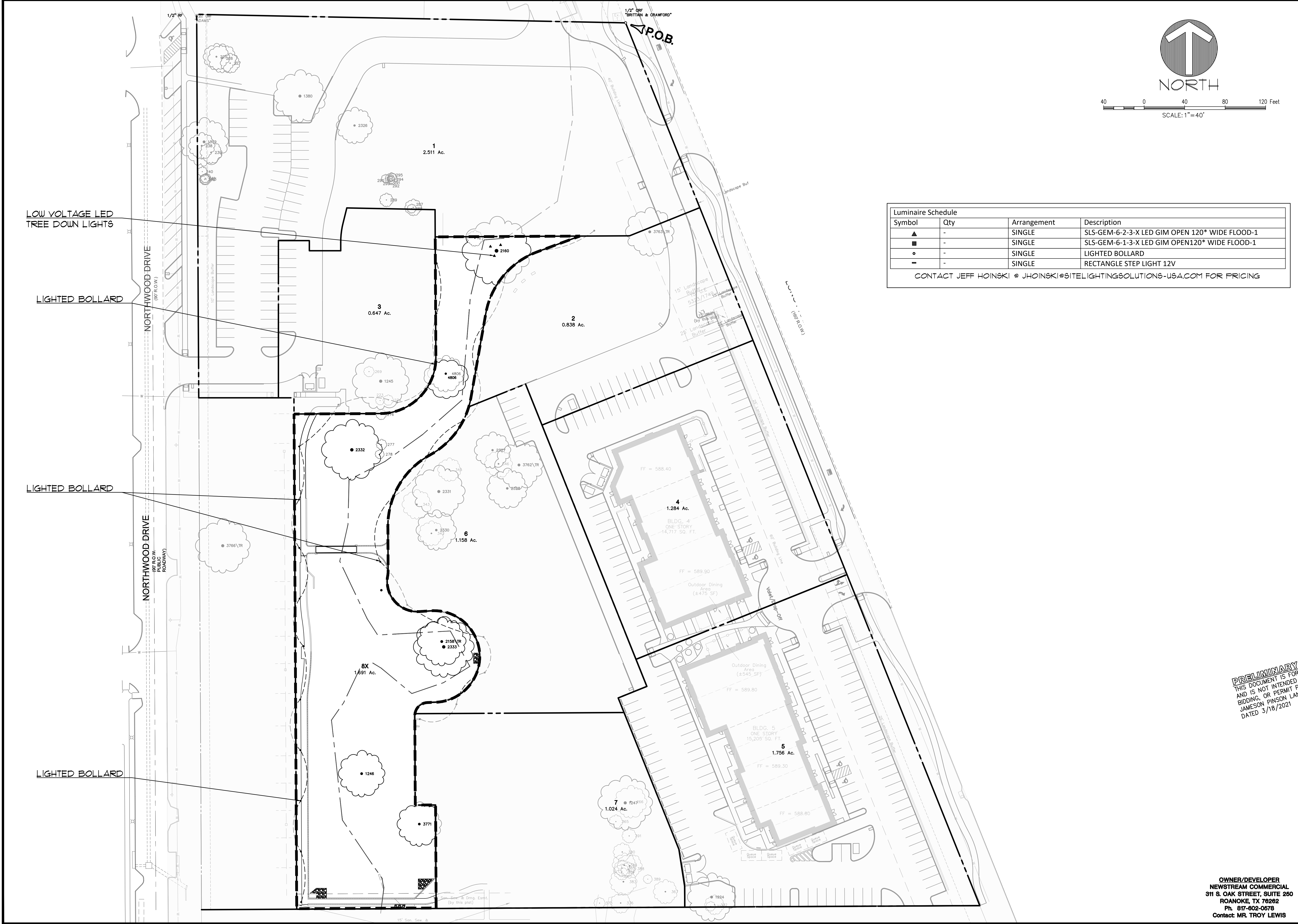
Drawn By: MH
Date: 10/30/2017
Scale: 1" = 40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
9/17/2018
10/7/2020

16326

CLP



The John R. McAdams Company (DBA: G&A McAdams) 111 Hillside Drive Lewisville, Texas 75057 972.436.9712 201 County View Drive Roanoke, Texas 75282 940.240.1012 TEPE: 19762 TPLS: 10194440 www.jrmc.com www.mcadamsco.com	 MCADAMS	LAKESIDE CROSSING Lot 1-7, 8X, Block A LAKESIDE CROSSING 10.910 Acres in the J.N. TANNERHILL SURVEY, ABSTRACT NO. 1252 TOWN OF FLOWER MOUND DENTON COUNTY, TEXAS																										
ZONING EXHIBIT HARDSCAPE PLAN																												
PLANS FOR INTERIM REVIEW FOR CONSTRUCTION UNRECORDED LANDSCAPE ARCHITECTURE  # 2816																												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Drawn By: JUP</td> <td style="width: 50%;"></td> </tr> <tr> <td>Date: 10/30/2017</td> <td></td> </tr> <tr> <td>Scale: 1" = 40'</td> <td></td> </tr> <tr> <td>Revisions:</td> <td></td> </tr> <tr> <td>11/20/2017</td> <td></td> </tr> <tr> <td>12/14/2017</td> <td></td> </tr> <tr> <td>01/17/2018</td> <td></td> </tr> <tr> <td>02/07/2018</td> <td></td> </tr> <tr> <td>9/17/2018</td> <td></td> </tr> <tr> <td>10/7/2020</td> <td></td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td> </td> <td></td> </tr> </table>			Drawn By: JUP		Date: 10/30/2017		Scale: 1" = 40'		Revisions:		11/20/2017		12/14/2017		01/17/2018		02/07/2018		9/17/2018		10/7/2020							
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10/7/2020																												
16326																												
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Luminaire Schedule			
Symbol	Qty	Arrangement	Description
▲	-	SINGLE	SLS-GEM-6-2-3-X LED GIM OPEN 120* WIDE FLOOD-1
■	-	SINGLE	SLS-GEM-6-1-3-X LED GIM OPEN120* WIDE FLOOD-1
●	-	SINGLE	LIGHTED BOLLARD
—	-	SINGLE	RECTANGLE STEP LIGHT 12V
CONTACT JEFF HOINSKI @ JHOINSKI@SITELIGHTINGSOLUTIONS-USA.COM FOR PRICING			



MCADAMS

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Company, Inc.
111 Hillside Drive
Lewisville, Texas 75057
972-385-1111
201 Custer Parkway
Roanoke, Texas 76262
940.240.1012
TBE: 19762 TBE/LS: 10194440
www.mcadamsco.com

LAKESIDE CROSSING

LAKESIDE CROSSING
Lot 1-7, 8X, Block A
LAKESIDE CROSSING
in the
10.910 Acres
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

**ZONING EXHIBIT
LIGHTING PLAN**

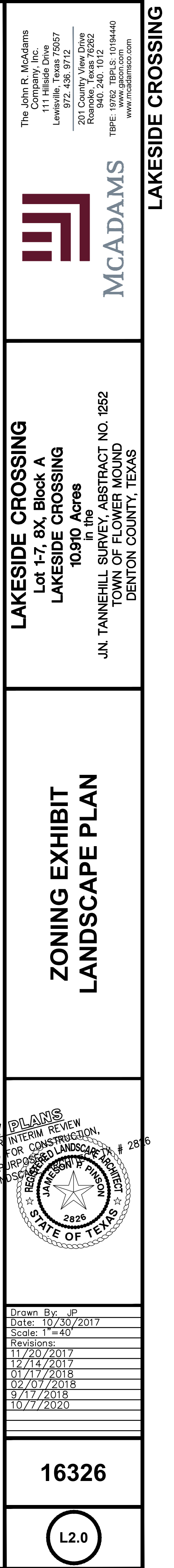
PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
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JAMESON PINSON LANDSCAPE ARCHITECTS
2826
STATE OF TEXAS
DATED 3/18/2021

Drawn By: JLP
Date: 10/30/2017
Scale: 1" = 40'
Revisions:
11/20/2017
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09/22/2020

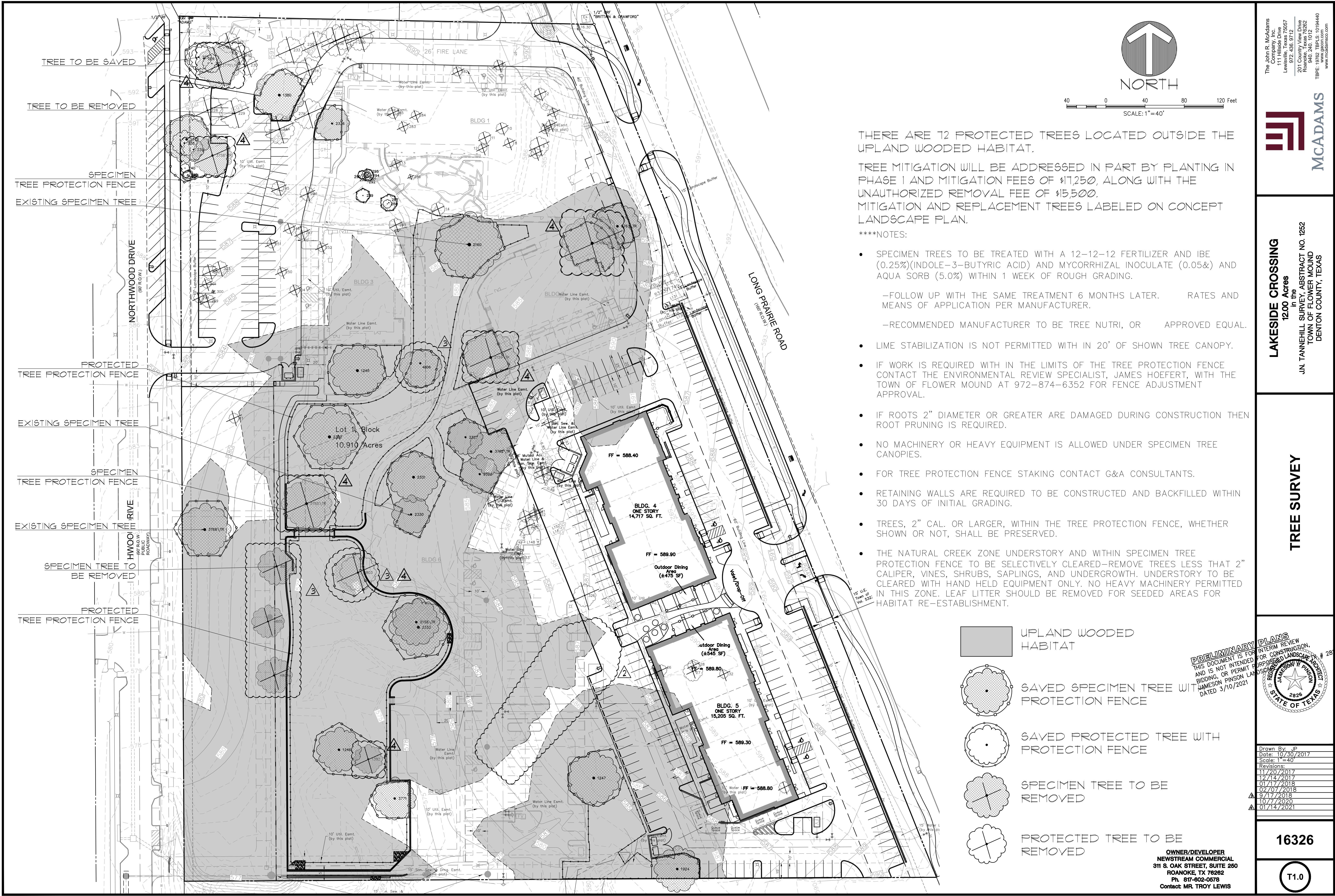
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ROANOKE, TX 76262
Ph. 817-802-0678
Contact: MR. TROY LEWIS

16326

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Plotted: 1/10/2021 9:23 PM by: hntb, sngm. Saved: 1/10/2021 9:20 PM by: mchadler



McADAMS

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Rockwall, Texas 75087
940.240.1012
TPE: 19762 TPELS: 10194440
www.mcadamsco.com

LAKESIDE CROSSING
12.00 Acres
in the
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

TREE SURVEY

PRELIMINARY PLANS
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JAMESON PINSON LANDSCAPE ARCHITECTS
#286
DATED 3/10/2021

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01/14/2021

16326

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TREE CHART

LIST #	TREE #	CAL. "	COMMON NAME	BOTANICAL NAME	PROTECTED	SPECIMEN	REMOVED	CREDITS	DEBITS	UWH	REMARKS
1	1	7	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
2	2	8	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
3	3	6	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
4	4	6.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
5	5	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
6	6	13	AMERICAN ELM	Ulmus americana	Yes	No	Yes	0	1	No	
7	7	7	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
8	8	6.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
9	10	8	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
10	11	8.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
11	12	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
12	13	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
13	14	9.5	AMERICAN ELM	Ulmus americana	Yes	No	Yes	0	1	No	
14	25	8.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
15	26	7.5	TEXAS ASH	Fraxinus texensis	Yes	No	Yes	0	1	No	
16	27	13.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
17	28	8	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
18	32	6	TEXAS ASH	Fraxinus texensis	Yes	No	Yes	0	1	No	
19	35	8	TEXAS ASH	Fraxinus texensis	Yes	No	Yes	0	1	No	
20	83	25.5	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Previously Removed
21	225	17.5	POST OAK	Quercus stellata	Yes	No	No	4	0	No	
22	226	19	POST OAK	Quercus stellata	Yes	No	No	4	0	No	
23	227	13	POST OAK	Quercus stellata	Yes	No	No	4	0	No	
24	228	21	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
25	229	20.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
26	230	14	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
27	231	13.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
28	232	14.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
29	233	17.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
30	234	17.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
31	235	18	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	Damaged
32	236	21.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	Damaged
33	237	17.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	Damaged
34	238	17.5	POST OAK	Quercus stellata	Yes	No	No	0	0	No	Street buffer
35	239	14.5	POST OAK	Quercus stellata	Yes	No	No	0	0	No	Street buffer
36	240	6.5	POST OAK	Quercus stellata	Yes	No	No	0	0	No	Street buffer
37	241	6	POST OAK	Quercus stellata	Yes	No	No	0	0	No	Street buffer
38	242	7	POST OAK	Quercus stellata	Yes	No	No	0	0	No	Street buffer
39	243	7.5	POST OAK	Quercus stellata	Yes	No	No	0	0	No	Street buffer
40	244	20.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
41	245	10	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
42	246	9.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
43	248	7	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
44	250	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
45	251	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
46	252	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
47	263	9.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
48	279	20.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
49	280	20.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	Damaged
50	282	6.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
51	283	6.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
52	284	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
53	285	8	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
54	286	12	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	Multi-trunk

***UWH = UPLAND WOODED HABITAT

***UPLAND WOODED HABITAT MITIGATION FOR RESIDENTIAL PORTION OF THE DEVELOPMENT (0.882 OF AN ACRE) WILL BE PAID AT THE PRE-CON (\$13250).

***TREE MITIGATION WILL BE ADDRESSED BY PLANTING MITIGATION TREES LABELED A9 (MIT) ON LANDSCAPE PLAN.

TREE MITIGATION CALCULATION:

Total # of specimen trees:	30
Specimen trees to be removed:	10 (2 are located on res.)
Specimen tree mitigation (2X cal. inches removed):	25.5"(2x = 51")

*All specimen trees preserved were Post Oaks.

Protected trees located outside UWH:	72
Protected tree mitigation:	62
Protected tree credits (less post oaks) w/in B.A.:	1
Credits for post oak trees preserved w/in B.A.:	30

Total required tree mitigation:	48+10 (near removal location)
Total provided 3" cal. replacement trees	10 (3" cal.) trees
Total provided 3" cal. mitigation trees	2 (3" cal.) trees

***NOTES:

- TREES #3160 & #2159 HAVE DIED DUE TO HYPOXYLON CANKER AND NEED TO BE REMOVED.
- PROTECTED POST OAK TREE SW OF TREE #4803 HAS DIED AND NEEDS TO BE REMOVED.
- (10) REPLACEMENT TREES AND (2) MITIGATION TREES TO BE PLANTED IN PHASE I.
- ADDITIONAL (46) MITIGATION TREES TO BE MITIGATED PER TOWN'S FEE SCHEDULE.
- REMAINING BALANCE FOR TREE MITIGATION SHALL BE PAID FOR WITH PHASE I (46 trees X \$175/tree = \$17250), IN ADDITION TO THE UNAUTHORIZED REMOVAL PENALTY OF \$15500 FOR SPECIMEN TREE #3165. COMBINED TOTAL = \$32,750

LIST #	TREE #	CAL. "	COMMON NAME	BOTANICAL NAME	PROTECTED	SPECIMEN	REMOVED	CREDITS	DEBITS	UWH	REMARKS
55	287	11	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
56	288	6	CEDAR ELM	Ulmus crassifolia	Yes	No	No	1	0	No	
57	289	8	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
58	290	5.5	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
59	291	8	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
60	292	5	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
61	293	4	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
62	294	4.5	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
63	295	5.5	HACKBERRY	Celtis occidentalis	No	No	No	0	0	No	
64	298	7	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
65	299	9	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
66	300	10.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	Multi-trunk
67	301	6	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
68	302	10	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
69	303	10.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
70	304	7	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
71	311	7	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
72	314	12	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
73	315	9	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
74	316	6	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
75	317	7.5	POST OAK	Quercus stellata	Yes	No	Yes	0	1	No	
76	321	12	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	Multi-trunk
77	322	8	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
78	323	8	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
79	324	11.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
80	325	10	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
81	326	15.5	CEDAR ELM	Ulmus crassifolia	Yes	No	Yes	0	1	No	
82	1245	26	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
83	1246	23	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
84	1247	22	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
85	1379	22.5	POST OAK	Quercus stellata	Yes	Yes	No	0	0	No	Street buffer
86	1380	22.5	POST OAK	Quercus stellata	Yes	Yes	No	6	0	No	
87	1382	23	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Dead/Removed
88	1924	25	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
89	2158	21	CEDAR ELM	Ulmus crassifolia	Yes	Yes	No	0	0	Yes	
90	2159	30	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Dead due to Hypoxylon Canker
91	2160	32	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
92	2326	25	POST OAK	Quercus stellata	Yes	Yes	No	6	0	No	Cavity/Bee Hive
93	2327	22	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
94	2328	22	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
95	2330	23	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
96	2331	22	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
97	2332	28	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	Watch for Future Health
98	2333	23	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
99	3758	27.5	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	No	Dead / Removed
100	3760	29	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Dead due to Hypoxylon Canker
101	3762	25	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	Cavity / Storm Damage
102	3763	31	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
103	3765	31	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Dead, Unauthorized Removal Fee = \$15,500
104	3766	28	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	
105	3770	29	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	No	Dead / Removed
106	3771	26	POST OAK	Quercus stellata	Yes	Yes	No	6	0	No	Health Issue
107	4803	25	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Dead
108	4804	25	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Previously Removed
109	4805	22.5	POST OAK	Quercus stellata	Yes	Yes	Yes	0	0	Yes	Previously Removed
110	4806	24	POST OAK	Quercus stellata	Yes	Yes	No	0	0	Yes	

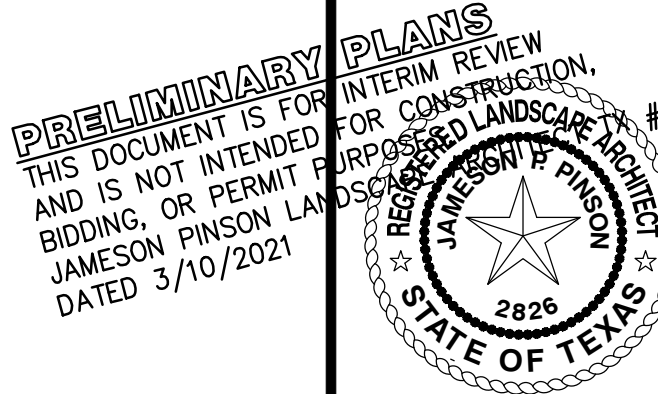
The John R. McAdams Company, Inc.
111 Hillside Drive
Lewisville, Texas 75057
972.435.9712
201 Country View Drive
Rockwall, Texas 75087
940.240.1012
TBE# 19762 TBP# 10194440
www.mcadamsco.com



McADAMS

LAKESIDE CROSSING
12.00 Acres
in the
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

TREE SURVEY



Drawn By: JP
Date: 10/30/2017
Scale: 1"=40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
01/22/2018
02/08/2018
03/21/2018
09/17/2018

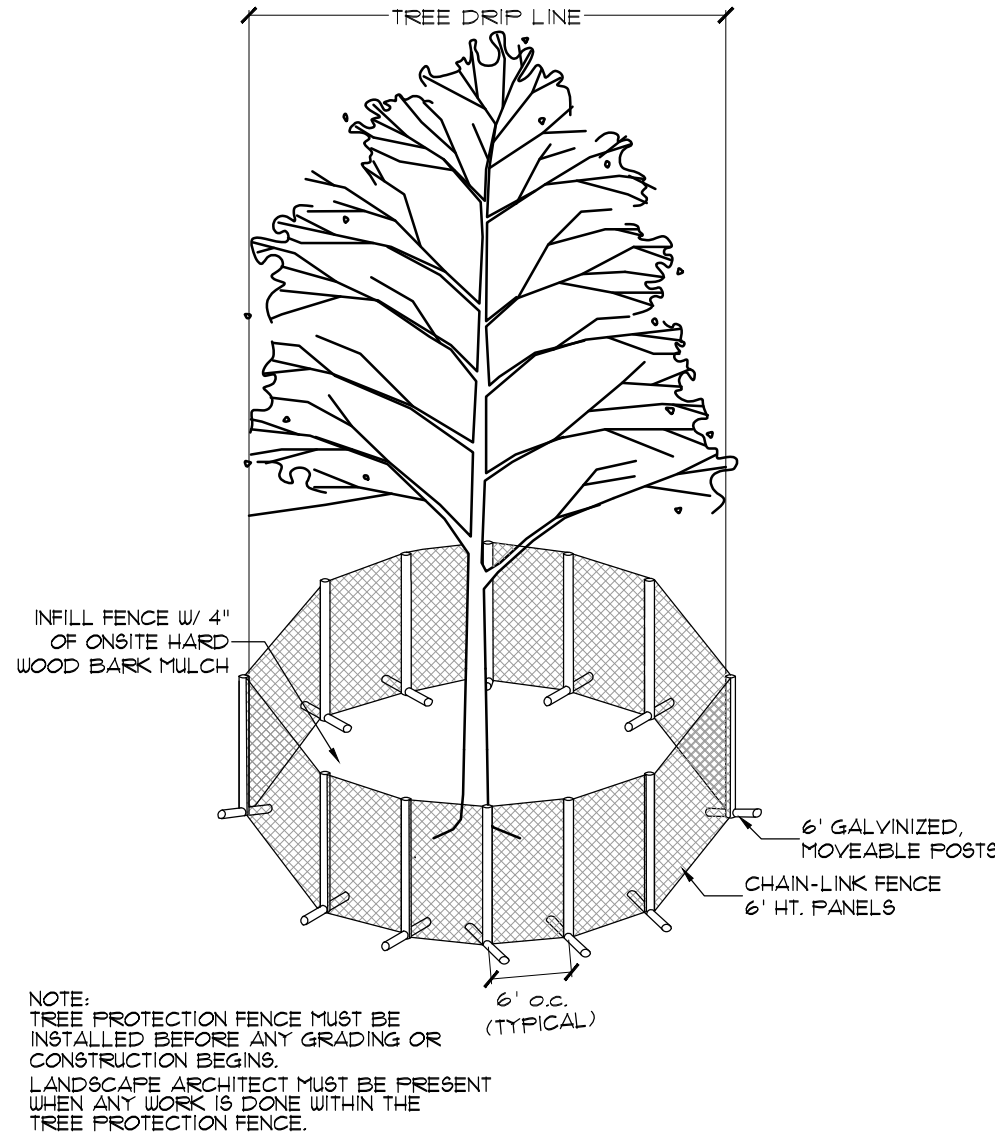
16326

T1.1

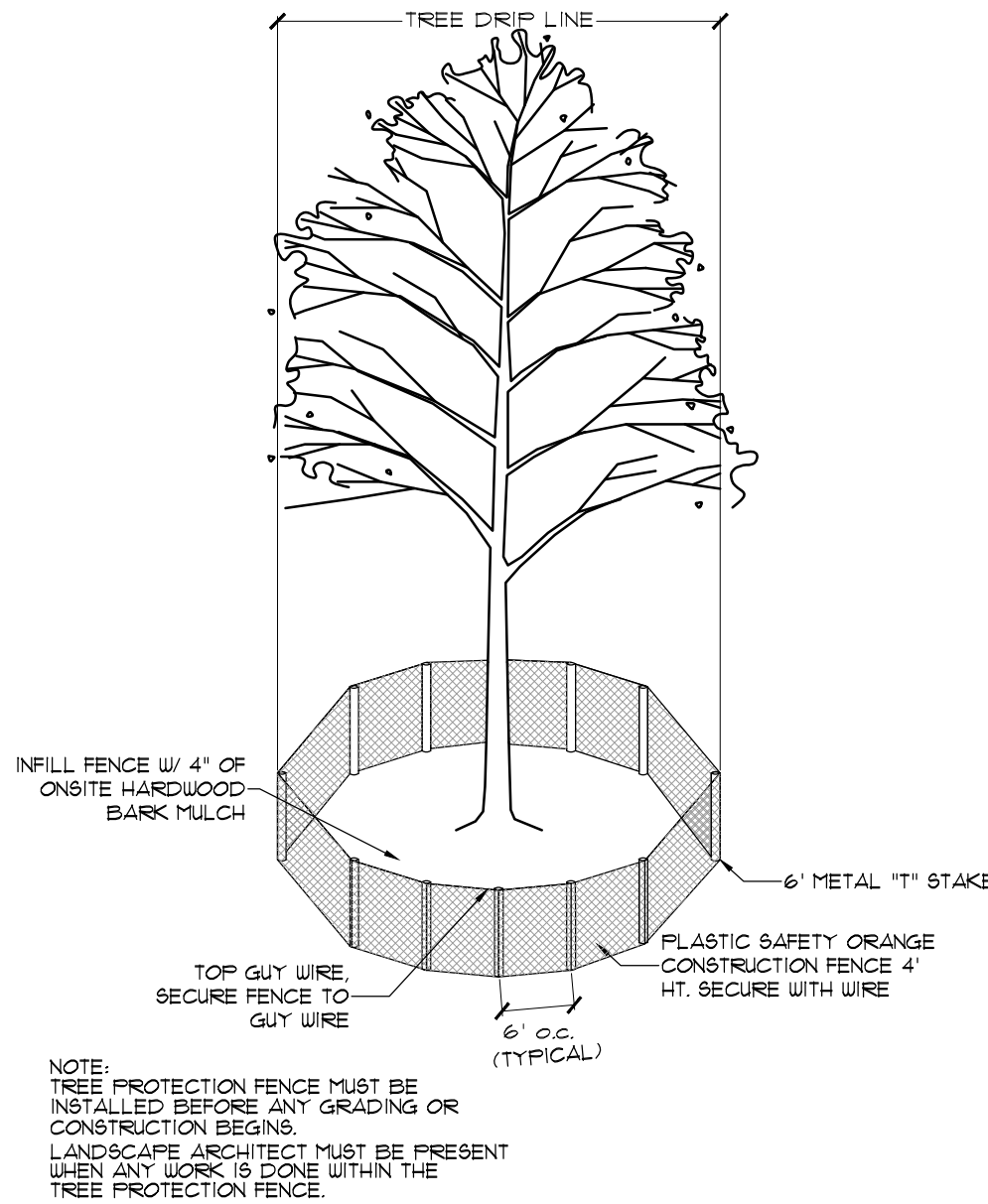
OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-802-0578
Contact: MR. TROY LEWIS

TREE PRUNING, REMOVAL AND PROTECTION MEASURES

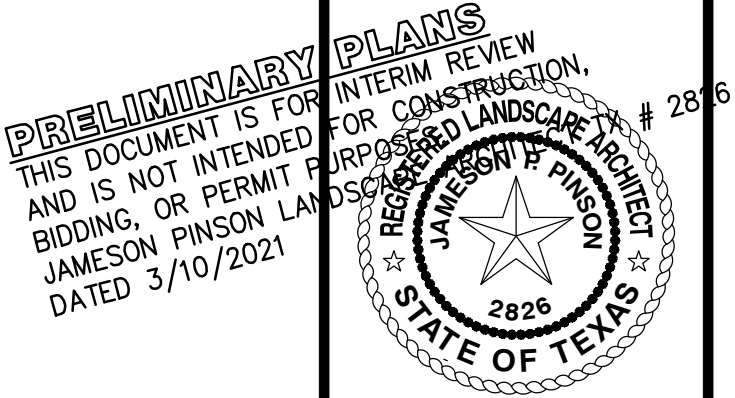
- A. QUALITY ASSURANCE
- 1) Comply with applicable Federal, state, county and local regulations governing landscape work.
 - 2) employ only experienced personnel. Provide adequate supervision by qualified foreman.
- B. JOB CONDITIONS
- 1) Coordination: Coordinate and cooperate with other contractors to enable the work to proceed as rapidly and efficiently as possible.
 - 2) In order to minimize conflict, secure from the Construction Manager copies of layout drawings showing the location of all underground utility lines and other structures
- C. PRODUCTS
- 1) MULCH: Double shredded hardwood mulch free of sticks, dirt and other debris and derived from the site clearing.
- D. DEFINITIONS
- 1) CRZ: Critical Root Zone: The soil space directly under the canopy of any tree, extending out at least 7 feet from the trunk or 2/3 the distance to the dripline, whichever is greater.
 - 2) TPZ: Tree Protection Zone: The entire soil space located directly under the dripline of any tree (the entire dripline).
 - 3) CRS: Complete Root System: The soil space directly under the dripline of any tree and an additional 7 feet beyond said dripline.
 - 4) TPF: Tree Protection Fence: The orange safety barrier netting that shall extend around the entire circumference of the tree at the TPZ.
- E. PRE-CONSTRUCTION TREE PRUNING
- 1) Personnel Qualifications: All pruning shall be performed under the supervision of an international Society of Arboriculture (ISA) Certified Arborist.
 - 2) All trees within the project area shall be pruned to:
 - (i) Clear the crown of diseased, crossing, weak and dead wood to a minimum of 1 ½ inches in diameter
 - (ii) Provide 14 feet of vertical clearance over streets and 8 feet over sidewalks.
 - (iii) Remove stubs, cutting outside the woundwood tissue that has formed around the branch.
 - (iv) Reduce end weight on heavy, horizontal branches by selectively removing small diameter branches, no greater than 2 to 3 inches, near the ends of the scaffolds.
 - 3) Pruning cuts shall be made in accordance with ANSI 300 Pruning Standard and work shall be performed in accordance with ANSI Z133.1 Safety Standards. Pruning shall be in accordance with ISA's Best Management Practices: Tree Pruning.
 - 4) No more than 20 percent of live foliage shall be removed from any tree.
 - 5) Brush shall be chipped and chips shall be spread underneath trees within the tree protection zone to a maximum depth of 4 inches, leaving the trunk clear of mulch.
- F. TREE REMOVAL
- 1) Trees preservation requires a commitment to preserving and maintaining retained trees, as well as removal of any unsuited trees within the Project Area.
 - 2) All wood debris from all tree removals at the Project Site is to be chipped and stored on site for use in the tree preservation efforts at the discretion of the Landscape Architect.
 - 3) The limits of all tree protection zones shall be staked in the field and observed by all contractors,
 - 4) Any brush clearing required within the tree protection zone shall be accomplished with hand operated equipment.
 - 5) Trees to be removed from within the tree protection zone shall be removed under the supervision of a Certified Arborist. The trees shall be cut near ground level and the stump
- III. TREE PROTECTION
- 1) Before beginning work, the Project Manager, Landscape Architect and/or Owner of their agents are required to meet at the site to review all work procedures, access routes, storage areas, and tree protection measures. Any intended construction activities inside the TPZ shall be clearly outlined.
 - 2) Fences shall be erected to protect trees to be preserved prior ro construction equipment arriving on the Project Site. Fences will define the specific protection zone for each tree or group trees.
 - 3) Fences are to be maintained and remain until all site work has been completed and final landscape operations begin. Fences may not be relocated or removed without written perission from the Landscape Architect. Fences may be constructed from 6 "T" stakes and orange web fence material
 - 4) All trees to be preserved shall have 4 inches of hardwood mulch applied inside the tree protection zone. This hardwood mulch shall be replenished as necessary to maintain a 4 inch depth.
 - 5) Construction trailers, traffic and storage areas must remain outside fenced areas at all times.
 - 6) Tree roots extend out in a straight, radial direction from the tree much like spokes on a wheel (to a depth generally not exceeding 24"). All underground utilities and drain or irrigation lines shall be routed outside the tree protection zone. If lines must traverse the protection area, they shall be tunneled or bored under the tree. Trenches "airdug" with Air Spade (registered trademark) or similar technology are the exceptions. Irrigation line may routed in any direction outside the dripline of retained trees. Irrigation lines inside the dripline must be in a straight, radial direction towards the tree trunk and terminate in a dead end sprinkler head no grater than 7 feet from a tree trunk (irrigation lines shall not in any way bisect and therefore damage the "spoke-like" root system).
 - 7) No materials, equipment, spoil, or waste or washout water may be deposited, stored, or parked within the tree protection zone.
 - 8) If unintentional injury should occur to any tree during construction, it shall be reported to the Landscape Architect within six hours so that remedial action can be taken. Timeliness is critical to tree health. The cost of any remedial treatments will become the burden of the offending contracting company.
 - 9) Any grading, construction, demolition, or other work that in expected to encounter tree roots must be monitored by the Landscape Architect. Specific locations or tree tag numbers should be identified



1. SPECIMEN TREE PROTECTION FENCE
NTS



2. PROTECTED TREE PROTECTION FENCE
NTS



Drawn By: JLP
Date: 10/30/2017
Scale: 1"=40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
10/7/2020
01/14/2021

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS

16326

T.1.2

LAKESIDE CROSSING
12.00 Acres
in the
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

TREE SURVEY



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972.435.9712
201 Country View Drive
Rockwall, Texas 75087
940.240.1812
TPE: 19762 TEPIS: 10194440
www.mcadamsco.com

LAKESIDE CROSSING

**Exhibit “B”
Development Standards**

**Planned Development District - 153 (PD-153)
Lakeside Crossing**

III. Miscellaneous Standards

~~F. PHASING: The first phase of development shall include the detention reservoirs, fire lanes, median cuts/turn lanes to support the first phase, curb cuts, and utilities within Phase 1, perimeter landscaping (Exhibit C), stream area and installation of trails around the stream. A Certificate of Occupancy shall not be issued for the first building until all of the above improvements are complete.~~

~~F. PHASING:~~

- ~~1. Phase 1 – A Certificate of Occupancy (CO) shall not be issued for the first building until all of the improvements listed below are complete.
 - ~~a. Detention reservoirs consisting of southern portion of Lot 8X, Block A, shown as Phase 1 development on Exhibit A - Concept Phasing Plan and Concept Phase 1 Site Plan.~~
 - ~~b. Phase 1 fire lanes as indicated on Exhibit A - Concept Phasing Plan and Concept Phase 1 Site Plan~~
 - ~~c. Median cuts, curb cuts, turn lanes, and site utilities necessary for Phase 1 development.~~
 - ~~d. Perimeter landscaping along FM 2499 and Northwood Drive as indicated on Exhibit B – Concept Landscape Phasing Plan.~~
 - ~~e. Re-vegetation and irrigation of disturbed areas located within Future Phases.~~
 - ~~f. There shall be 10 replacement trees and two (2) mitigation trees planted prior to acceptance of Phase 1 development. Remaining balance of \$17,250 for mitigation trees and \$15,000 for the unauthorized removal of specimen tree #3765 for a combined total of \$ 32,750 shall be paid for prior to acceptance of Phase 1 development.~~~~
- ~~2. Future Phases – Lot 1, Block A, Lot 2, Block A, Lot 3, Block A, Lot 6, Block A, and Lot 7, Block A, shall be developed as its own phase (in no particular order). The lot owner shall be responsible for installing required improvements including but not limited to landscape, hardscape, lighting, parking, fire lanes, and irrigation within each lot. A Certificate of Occupancy (CO) shall not be issued for the each buildings until all of the improvements listed above are completed.~~
- ~~3. Improvements within and adjacent to Open Space Lot (Lot 8X, Block A) must comply with Exhibit C – Improvements within and around Lot 8x (Hardscape, Landscape and Lighting Plans) attached to this ordinance must be installed prior to the issuance of a Certificate of Occupancy (CO) for the third building within this development.~~

From: [REDACTED]
To: [Poornima Kashyap](#)
Subject: NewStream Commercial Proposed Zoning Changes - Lakeside Crossing Development (ZPD20-0006)
Date: Friday, November 13, 2020 2:46:24 PM

Dear Poornima,

Thank you for your follow up email.

On Thursday, I had the opportunity to speak with Bill Leak, with Encore Luxury Homes, and his construction supervisor, the builder of the 15 luxury townhouse project which is the sole residential component of the Lakeside Crossing development project approved by the Town of Flower Mound. We discussed the proposed letter of NewStream signed by Troy Lewis, the current status of the proposal with your group and our concerns if the original amenities as set out in the originally approved master plan by NewStream are changed and how this will impact the 10 current homeowners of the Lakeside Crossing townhouse project.

By way of information, construction is ongoing with units 5 - 9 of the townhouse project. Estimate completion and occupancy is February 2021. The next phase (our phase) includes units 1 - 4 is estimated to commence in January 2021 with completion in 6 months. The final phase, units 10 - 15 will commence while our phase is ongoing.

Our concerns with the proposed zoning changes based upon our reading of the NewStream letter and review of the attachments indicate that the developer of Lakeside Crossing with delay originally agreed to amenities to the detriment of the overall development and specifically will impact the Lakeside Crossing townhouse project and its owners.

Under the original plan, Newstream committed to the Town as part of its original obligation as developer of Lakeside Crossing to install fire lanes, median and curb cuts for entry, utilities, landscaping, installation of irrigation systems and finalization of the creek area and walking trails around and through the property. Under the new proposal, NewStream now proposes to only include those amenities as it applies to buildings 4 and 5 which are the two commercial/retail buildings facing Hwy 2499 which are currently in their late stage of completion and which have ongoing and active leasing operations.

The new proposal by NewStream will severely impact the Lakeside Crossing Townhomes development. Approval of this rezoning will allow the following items to be delayed indefinitely until such time as NewStream completes the entire build out of all its pads and lease occupants are finalized. The following items will be deferred, delayed if not eliminated as NewStream to the detriment of the development.

The following items will not be finalized until builder's future decision or election:

- No fire line installation - potential security issue
- Delay completion of creek area, trails and access. This will have a serious impact on our townhome project. This will eliminate from Lakeside Crossing Townhomes to any access to building 4 and 5 retail, food and commercial establishments in these two buildings. The ADA ramps and access to each side of the bridge will not be completed, eliminating back door access from the townhouses to building 4 and 5 tenants. The creek area will remain in its current rough state and no walking trails will be installed.

Bottomline, we have learned the hard way how actions or better said inaction by the developer, NewStream Commercial have impacted our townhome project. Delays, failure to meet obligations to the Town recently in the non-payment of the "park fees" assessed to the residential portion of the overall development delayed construction of the ongoing townhome units 5 - 9 some three (3) plus months. To commence construction of the Lakeside Crossing townhome project, the builder made the "park fee payment" out of his pocket to the Town. To date, Bill Leak and Encore Luxury Homes have not been reimbursed by NewStream for payment of the park fee. The irony here is now NewStream who had the obligation to pay the 'park fee' on behalf of the development to the Town did not make the payment and now wants to delay completion of critical components of the development with may impact the safety, federal ADA mandates and amenities included in the development to make it a livable enjoyable and safe area. The potential elimination of the development of the creek area and trails that provide aesthetics critical to the beauty of the development, eliminate access to the residents to both the creek area, trails and retail, food and commercial proprietors in buildings 4 and 5. The creek area and trails are integral components and amenities to this development and a critical and key reason we as a both a lot owner for 2 1/2 years and future homeowner in the townhouse project elected to make our original purchase.

I have taken the liberty to include a few pictures of the items that NewSteam is proposing to defer or delay.

Picture 1 - Looking East from alleyway of Lakeside Crossing Townhomes showing bridge across creek area to back side of buildings 4 and 5

Picture 2 - Looking South from alleyway of townhomes showing stairs and unpaved access to creek bridge

Picture 3 - Looking East showing back side of Buildings 4 and 5

Picture 4 - Looking North showing partial ADA ramp but no completion of ADA access to creek bridge

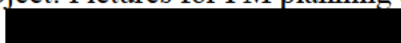
Best regards
James

James C. Harris

International Oil and Gas Consultancy
Principal



----- Forwarded message -----

From: **James Harris** 
Date: Fri, Nov 13, 2020 at 2:25 PM
Subject: Pictures for FM planning & zoning department
To: 

From: [REDACTED]
To: [Poornima Kashyap](#)
Subject: Re: Town of Flower Mound - Zoning Change Proposal No. ZPD20-0006
Date: Monday, December 14, 2020 2:36:51 PM

Hi Poornima,

Thank you for the updated filing and plans from NewStream. Did they provide a narrative or only the plans?

From my review, the following items are either missing or not addressed. These include

- The fire lane on the north side of the property now appears to be included in Phase 1
- Phase 1 landscaping behind Lakeside Crossing Townhomes covers on townhouses unit numbers 5 - 15 in Phase 1. All 15 units (1- 15 need inclusion) in Phase 1 landscaping.
- The ADA ramps behind the townhouses are not included in the Phase 1 giving no access to the bridge which now is included in Phase 1. This may be NewStreams intention but it does not appear on their plat as being included in Phase 1 work.
- There is no access in Phase 1 to the soon to be occupied business in buildings 4 and 5 – this impacts all 15 Lakeside townhouses plus hundreds of apartment dwellers in Nexus and Overture Apartments
- Phase 1 specifically excludes both the walking trail and creek areas. These are both amenities that provide both aesthetics and recreation in the development and developer obligation. The dedicated park and trails are no longer required is Phase 1 while the required park fee of obligation of NewStream was eventually paid by the builder of Lakeside Crossing Townhomes to commence construction.

I am happy to speak with you by telephone at your convenience. If NewStream provided any letter or narrative with its recent plat filings is this available for review.

Regards

James

James C. Harris

International Oil and Gas Consultancy
Principal

[REDACTED]

From: [REDACTED]
To: [Poornima Kashyap](#)
Subject: Town of Flower Mound - Proposed Zoning Changes by NewStream Commercial - ZPD20-0006
Date: Monday, February 8, 2021 12:49:44 PM

Dear Poornima,

Thank you for your email and contact details for NewStream Commercial. On January 22, 2021, I had the opportunity to have a Zoom meeting with both Tim Nystrom, President & CEO of NewStream and Troy Lewis, Vice-President of Acquisitions & Development. Highlights of our meeting as it concerns the Lakeside Crossing Development are listed below:

Highlights:

- Sales of three (3) pad sites have fallen through in 2020 due to COVID-19
- Budget is very tight and any expenses will potentially cause "debt" issues for NewStream per Tim. NewStream is budget constrained and has only minimal funds to do any additional discretionary work.
- In the proposed revised Phase 1, NewStream only wants to undertake amenities, lighting, the park and trails in future Phases going forward and have this work dependent upon pad sales and dependent upon pending approval by Town, construction and occupancy permits.
- Currently, Town will not sign off on certificates of occupancy for buildings 4 and 5 until Phase 1 and Phase 2 revised proposal under review by Town P&Z and need approval by Town Council
- In NewStream's revised Phase 1 proposal, NewStream will agree to install the fire lane along the North side of development
- In revised Phase 1, HWY 2499 landscaping and entry cuts to road will be installed
- In revised Phase 1, minimal landscaping facing Northwood Drive fronting parking lot north of Lakeside Crossing townhomes will be installed
- NewStream does not want to include in the proposed revised Phase 1, access to the existing ADA access ramp to the bridge. This ADA ramp is installed but ends in grass. NewStream does not want to spend funds to complete access on the West side of the

bridge nor install a temporary sidewalk from the east side of the bridge for pedestrian or ADA access to buildings 4 and 5.

- During our conversation, Troy suggested constructing a temporary sidewalk from the East side of the bridge to the parking lot of Buildings 4 and 5 for both ADA and pedestrian access. Estimated cost would be \$30K. I advised Tim that this was one of the necessary amenities, ADA required and one of the reasons we purchased Lot 4 and other homeowners purchased lots in the Townhome development for access to shops, restaurants, etc.
- Troy with NewStream indicated that the existing east-west sidewalk along the north side of Unit 1 of Lakeside Crossing Townhomes could be hooked up to ADA ramp but no definitive plan from there to bridge. Tim was non-committal on the timing of this in Phase 1.
- Tim wants this zoning amendment resolved and receives the Certificates of Occupancy for building 4 and 5 finished within 60 days.

I have again spoken with Bill Leak, builder of the Lakeside Crossing Townhome and along with the additional 9 lot owners of the project, we again express our concerns with the potential lack of funds by NewStream dedicated to Lakeside Crossing development. Approval of any certificates of occupancy for buildings 4 and 5 without specifically addressing the required obligations of NewStream in any agreed to revised Phase 1 work commitment (and definitive additional Phases) to the overall development of the Lakeside Crossing may have the potential for long term damage to this development both financially and aesthetically. If the Planning and Zoning department and Town Council is considering these revisions to the original plans for the development, we recommend that NewStream provide assurances of the financial viability of the development by posting a financial bond or deposit funds for this development for deferred work previously agreed to as its commitment to the original Lakeside Crossing development. This would help ensure the financial viability of the development and protect the Town, the development and current 10 homeowners of the Lakeside Crossing Townhomes in the event unforeseen financial events occur.

Please do not hesitate to contact me if you have any questions.

Regards

James

James C. Harris

International Oil and Gas Consultancy

Principal



TOWN OF FLOWER MOUND, TEXAS
ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 25-17, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 153 (PD-153) ON CERTAIN PROPERTY DESCRIBED AS APPROXIMATELY 10.91 ACRES OF LAND AND BEING ALL OF LOT 1, BLOCK A; LOT 2, BLOCK A; LOT 3, BLOCK A; LOT 4, BLOCK A; LOT 5, BLOCK A; LOT 6, BLOCK A; LOT 7, BLOCK A; AND LOT 8X, BLOCK A, OF THE LAKESIDE CROSSING ADDITION BY MODIFYING DEVELOPMENT STANDARDS RELATED TO PHASING; AND BY ADDING CONCEPT PHASING PLAN, CONCEPT PHASE 1 SITE PLAN, CONCEPT PHASE 1 LANDSCAPE PLAN, CONCEPT HARDSCAPE PLAN, AND CONCEPT LANDSCAPE, HARDSCAPE, AND LIGHTING PLAN FOR LOT 8X; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound is a home rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5, of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which Ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as approximately 10.91 acres of land and being all of Lot 1, Block A; Lot 2, Block A; Lot 3, Block A; Lot 4, Block A; Lot 5, Block A; Lot 6, Block A; Lot 7, Block A; and Lot 8x, Block A, of the Lakeside Crossing Addition, Denton County, Texas applied for a Zoning Planned Development amendment to amend Ordinance No. 25-17 for Planned Development District No. 153 (PD-153); and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on March 22, 2021, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on April 5, 2021, with respect to the proposed Zoning Planned Development amendment as described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a Zoning Planned Development amendment on the property;

ORDINANCE NO. _____

Page 2

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

SECTION 1

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area as shown below:

10.91 acres of land and being all of Lot 1, Block A, Lot 2, Block A, Lot 3, Block A, Lot 4, Block A, Lot 5, Block A, Lot 6, Block A, Lot 7, Block A, and Lot 8x, Block A, of the Lakeside Crossing Addition, Denton County and Tarrant County, Texas.

- A. Exhibit "B," entitled "Development Standards," for Planned Development District No. 153 (PD-153), as amended, is hereby amended by replacing Paragraph III.F., "Phasing," to read as follows:

"F. PHASING:

1. A Certificate of Occupancy (CO) shall not be issued to the first building identified as Building # 5 (Lot 5, Block A) on Exhibit A - Concept Phasing Plan until all of the improvements listed below are complete.
 - a. Detention reservoirs consisting of southern portion of Lot 8X, Block A, as indicated on Exhibit A - Concept Phasing Plan and Exhibit B - Concept Phase 1 Site Plan.
 - b. Phase 1 fire lanes as indicated on Exhibit A - Concept Phasing Plan and Exhibit B - Concept Phase 1 Site Plan
 - c. Median cuts, curb cuts, turn lanes, and site utilities necessary for Phase 1 development.
 - d. Perimeter landscaping along FM 2499 and Northwood Drive as indicated on Exhibit C - Concept Phase 1 Landscape Plan.
 - e. Re-vegetation and irrigation of disturbed areas located within Future Phases.
 - f. There shall be 10 replacement trees and two (2) mitigation trees planted prior to acceptance of Phase 1 development. Remaining balance of \$17,250 for mitigation trees and \$15,500 for the unauthorized removal of specimen tree #3765 for a combined total of \$ 32,750 shall be paid for prior to acceptance of Phase 1 development.

ORDINANCE NO. _____

Page 3

2. A Certificate of Occupancy (CO) shall not be issued to the second building identified as Building # 4 (Lot 4, Block A) on Exhibit A - Concept Phasing Plan until all of the improvements listed below are complete.
 - a. Installation of improvements within Lot 8x, Block A, as indicated on Exhibit D – Concept Lot 8x Improvements (consisting of Hardscape, Landscape, and Lighting Plans).
 3. A Certificate of Occupancy (CO) shall not be issued to the third building fully constructed within this development until all sidewalks adjacent to Lot 8x, Block A, and located on Lot, 1 Block A, Lot 2, Block A, Lot 3, Block A, Lot 6, Block A, and Lot 7, Block A, have been installed in accordance with the approved Phase 1 Hardscape Plan attached as Exhibit E to this ordinance.
 4. Future Phases – Lot 1, Block A, Lot 2, Block A, Lot 3, Block A, Lot 6, Block A, and Lot 7, Block A, shall be developed as its own phase (in no particular order). The lot owner shall be responsible for installing required improvements including but not limited to landscape, hardscape, lighting, parking, fire lanes, and irrigation within each lot. A Certificate of Occupancy (CO) shall not be issued to any building until all of the improvements listed above are completed.”
- B. Ordinance No. 25-17, is hereby amended to add a Concept Phasing Plan attached hereto as Exhibit “A” and incorporated herein.
- C. Ordinance No. 25-17, is hereby amended to add a Concept Phase 1 Site Plan attached hereto as Exhibit “B” and incorporated herein.
- D. Ordinance No. 25-17, is hereby amended to add a Concept Phase 1 Landscape Plan attached hereto as Exhibit “C” and incorporated herein.
- E. Ordinance No. 25-17, is hereby amended to add a Concept Lot 8x Improvements (consisting of Hardscape, Landscape, and Lighting Plans) attached hereto as Exhibit “D” and incorporated herein.
- F. Ordinance No. 25-17, is hereby amended to add a Concept Hardscape Plan attached hereto as Exhibit “E” and incorporated herein.

ORDINANCE NO. _____**Page 4**

SECTION 2

The use of the property described above shall be subject to all restrictions, terms, and conditions contained herein, as well as the applicable regulations contained in Ordinance No. 25-17 for Planned Development District No. 153 (PD-153), the Land Development Regulations, and all other applicable and pertinent ordinances of the Town of Flower Mound.

SECTION 3

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

SECTION 4

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

SECTION 5

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

SECTION 6

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

ORDINANCE NO. _____

Page 5

SECTION 7

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

SECTION 8

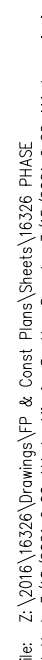
This Ordinance shall take effect and be in full force from and after the date of its passage and publication as required by law, and it is so ordained.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 5TH DAY OF APRIL, 2021.

APPROVED:

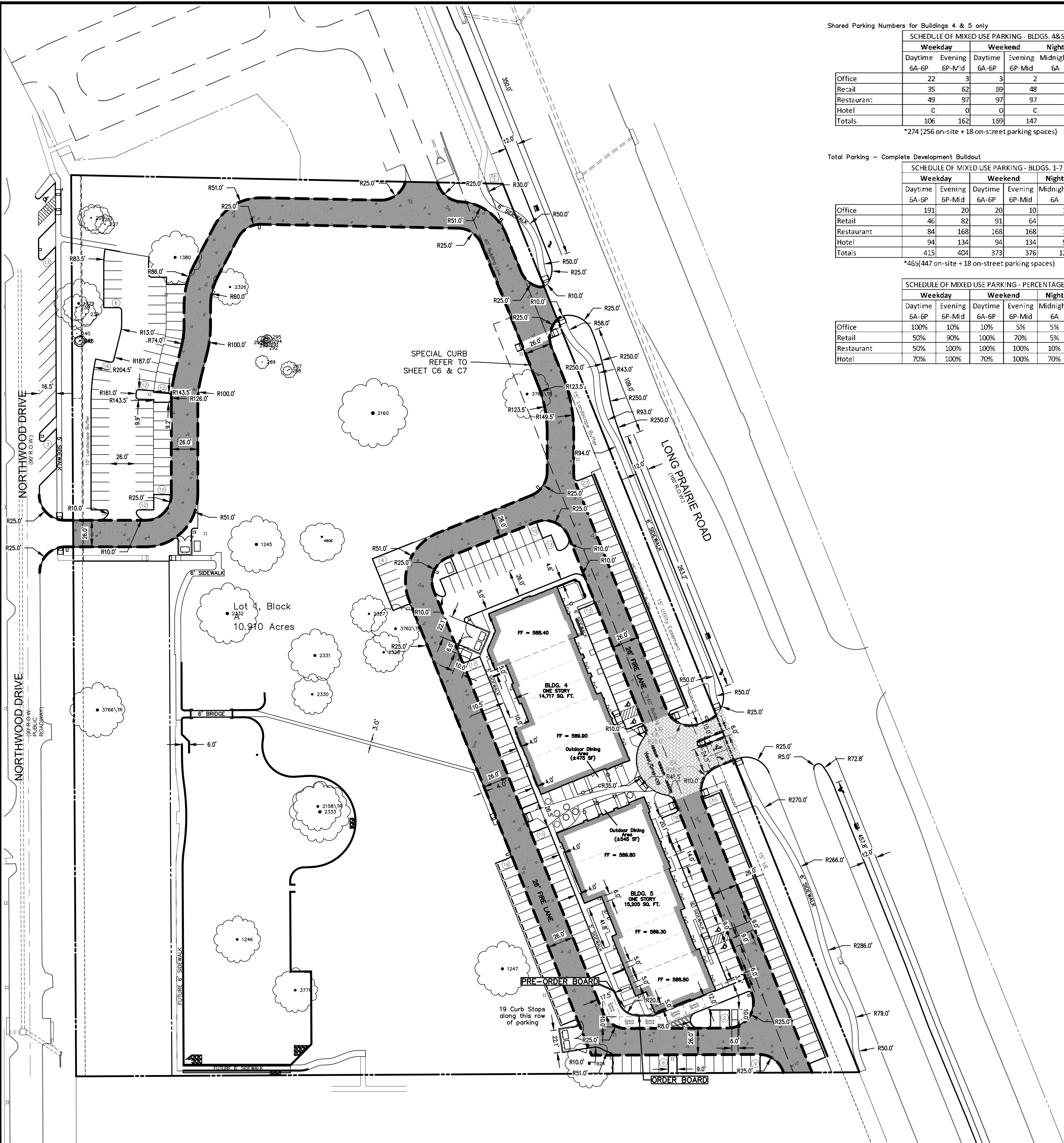
Steve Dixon, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY



OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 250
ROANOKE, TX 76262
Ph. 817-602-0578
Contact: MR. TROY LEWIS

Fig. 2: 2/10/2018 14:28 (Drawing) TP & Carol Pina (Owner) 16326 SITE
Printed: 1/18/2021 9:00 AM by Minnie Scott. Sheet: 1/18/2021 8:25 AM by minnie



Shared Parking Numbers for Buildings 4 & 5 only

SCHEDULE OF MIXED USE PARKING - BLDGS. 4&5					
Weekday		Weekend		Night	
Daytime	Evening	Daytime	Evening	Midnight	
6A-6P	6P-Mid	6A-6P	6P-Mid	6A	
Office	22	3	3	2	2
Retail	35	62	89	48	4
Restaurant	49	97	97	97	10
Hotel	C	0	0	C	0
Totals	106	162	189	147	16

*274 (256 on-site + 18 on-street parking spaces)

Total Parking - Complete Development Buildout

SCHEDULE OF MIXED USE PARKING - BLDGS. 1-7					
Weekday		Weekend		Night	
Daytime	Evening	Daytime	Evening	Midnight	
6A-6P	6P-Mid	6A-6P	6P-Mid	6A	
Office	191	20	20	10	10
Retail	46	82	91	64	5
Restaurant	84	168	168	168	17
Hotel	94	134	94	134	94
Totals	415	404	373	376	126

*465 (447 on-site + 18 on-street parking spaces)

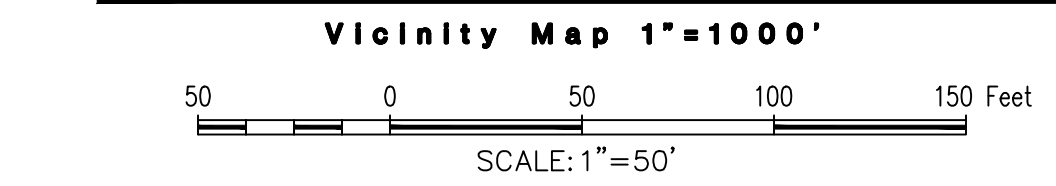
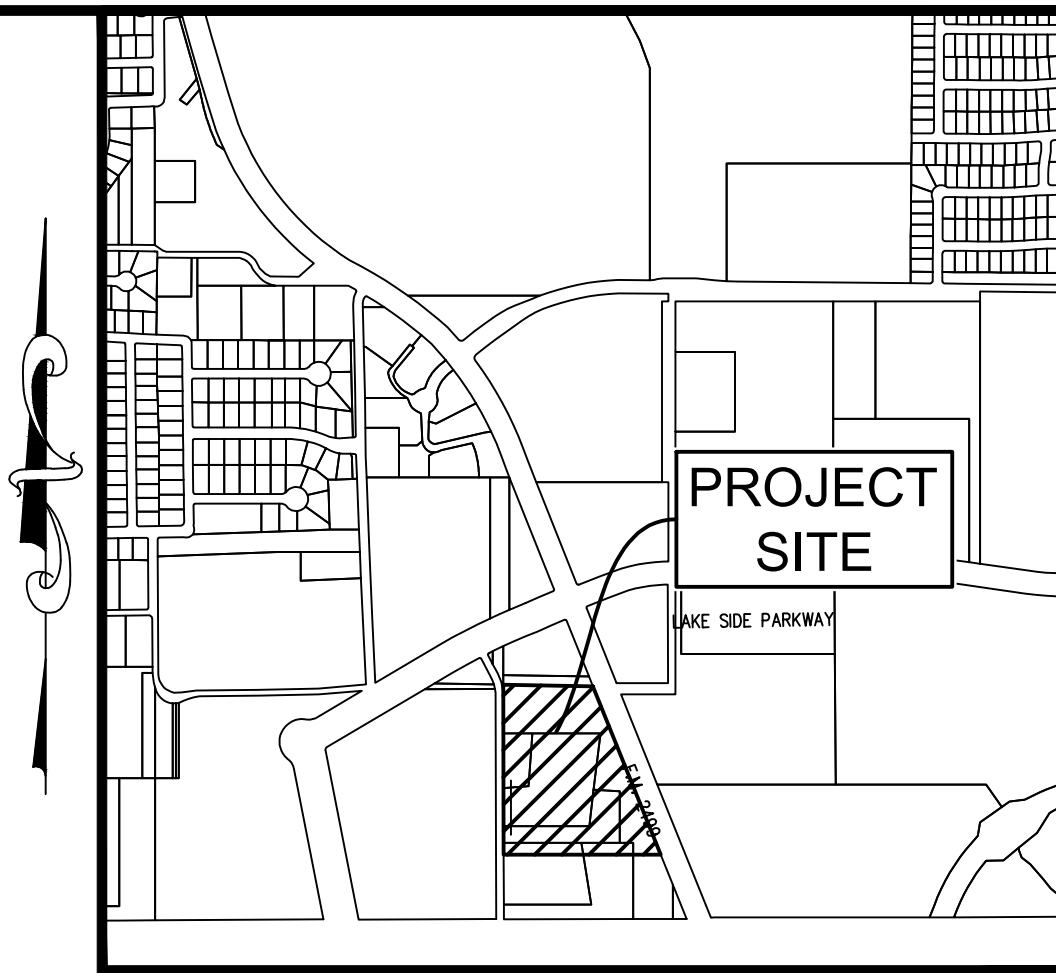
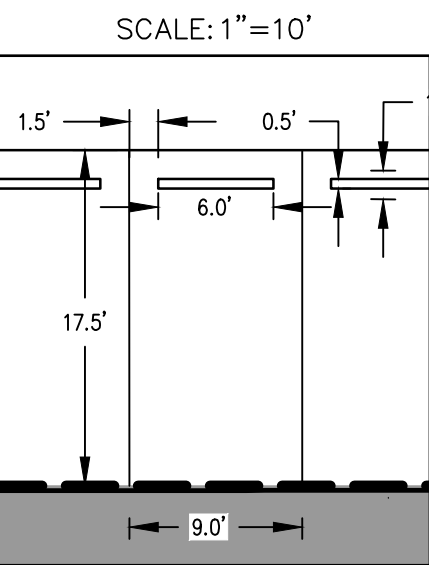
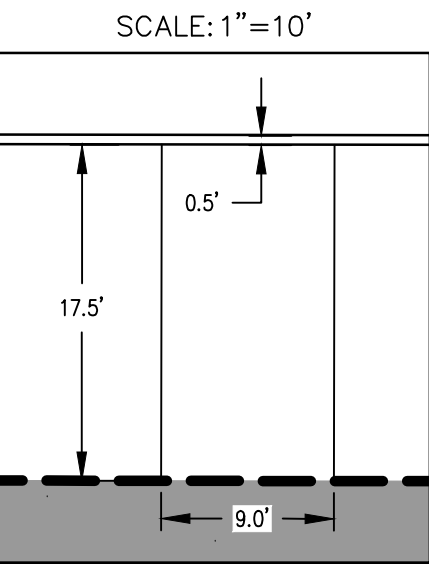
SCHEDULE OF MIXED USE PARKING - PERCENTAGES					
Weekday		Weekend		Night	
Daytime	Evening	Daytime	Evening	Midnight	
6A-6P	6P-Mid	6A-6P	6P-Mid	6A	
Office	100%	10%	10%	5%	5%
Retail	50%	90%	100%	70%	5%
Restaurant	50%	100%	100%	100%	10%
Hotel	70%	100%	70%	100%	70%

FUTURE PARKING TABLE - LAKESIDE CROSSING	
Physical Address	TBD
Gross Site Area	12,000 A; 522,720 SF
Net Site Area	12,000 A; 522,720 SF

Parking Summary	
Required	Provided

Surface Parking	
Retail - 1 space per 250 Square Feet	
Office - 1 space per 300 Square Feet	
Hotel - 1 per lodging room	
Hotel Conference Area - 1 space per 150 SF	
Restaurant - 1 space per 75 SF	

LAKESIDE CROSSING	
Phase I Parking	169
Phase I Parking - Northwood	0
Total Parking - all uses @ Buildout	426



BOX CUT ON TOP OF THE WESTERN CURB OF NORTHWOOD DRIVE, NEAR A STREET LIGHT APPROXIMATELY 130' SOUTH OF THE NORTHWEST CORNER OF SUBJECT PROPERTY ELEV.=590.87

BOX CUT ON THE NORTHEAST CORNER OF A CURB INLET LOCATED ALONG THE WESTERN CURB OF NORTHWOOD DRIVE APPROXIMATELY 58' NORTH OF THE SOUTHWEST CORNER OF THE PROPERTY ELEV.=577.78

NOTES:

- CONTRACTOR IS TO CONTACT THE TOWN'S TREE ARBORIST PRIOR TO THE START OF CONSTRUCTION TO OBTAIN TREE PRESERVATION REQUIREMENTS DURING CONSTRUCTION.
- ALL PAVEMENT DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS OTHERWISE NOTED.
- ALL SIDEWALK DIMENSIONS SHOWN ARE TO THE EDGE OF PAVEMENT UNLESS OTHERWISE SHOWN.
- ALL RADII ARE 3.0 FEET UNLESS OTHERWISE NOTED.
- ALL PARKING SPOTS ARE 9.0' WIDE UNLESS OTHERWISE NOTED.
- THE LOCATION OF THE EXISTING UTILITIES SHOWN IS APPROXIMATE, THE CONTRACTOR IS TO FIELD VERIFY LOCATION AND DEPTH PRIOR TO CONDUCTING ANY WORK.
- ALL RETAINING WALLS ARE TO BE CLAD IN A MATERIAL THAT MATCHES THE PROPOSED BUILDINGS.
- THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.
- ALL BUILDING MOUNTED UTILITY OR EQUIPMENT BOXES SHALL BE SCREENED FROM A STREET VIEW BY A MINIMUM SIX FOOT HIGH SCREENING DEVICE WHETHER SHOWN IN THESE PLANS OR NOT. SUCH SCREENING DEVICE SHALL CONSIST EITHER OF PLANT MATERIAL OR A SCREENING WALL CONSTRUCTED OF OR FINISHED WITH A MATERIAL TO MATCH THE BUILDING, PROVIDED HOWEVER THAT WOOD FENCING OR SCREENING SHALL BE PROHIBITED. THIS RELATES TO ONLY THE NORTHERN, SOUTHERN AND WESTERN BUILDING FACADES, SINCE THESE ARE THE ONLY FACADES ADJUTING A STREET.
- SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SITE PLAN OR ELEVATIONS ARE NOT APPROVED AS PART OF THIS REVIEW AND MUST COMPLY WITH THE TOWN OF FLOWER MOUND REGULATIONS.
- THE DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
- A TxDOT PERMIT WILL BE REQUIRED BEFORE ANY WORK CAN OCCUR WITHIN THE TxDOT RIGHT-OF-WAY.
- REFER TO THE PAVING PLAN FOR ADDITIONAL INFORMATION REGARDING THE PROPOSED TURN LANES.
- 3' CONCRETE TEMPORARY SIDEWALK TO BE CONSTRUCTED FROM THE PEDESTRIAN BRIDGE TO BUILDINGS 4&5.

LAKESIDE CROSSING

Lot 1-7 & 8X, Block A
LAKESIDE CROSSING
10.910 Acres
in the

J.N. TANNER HILL SURVEY ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

CONCEPT SITE PLAN

PRELIMINARY PLANS

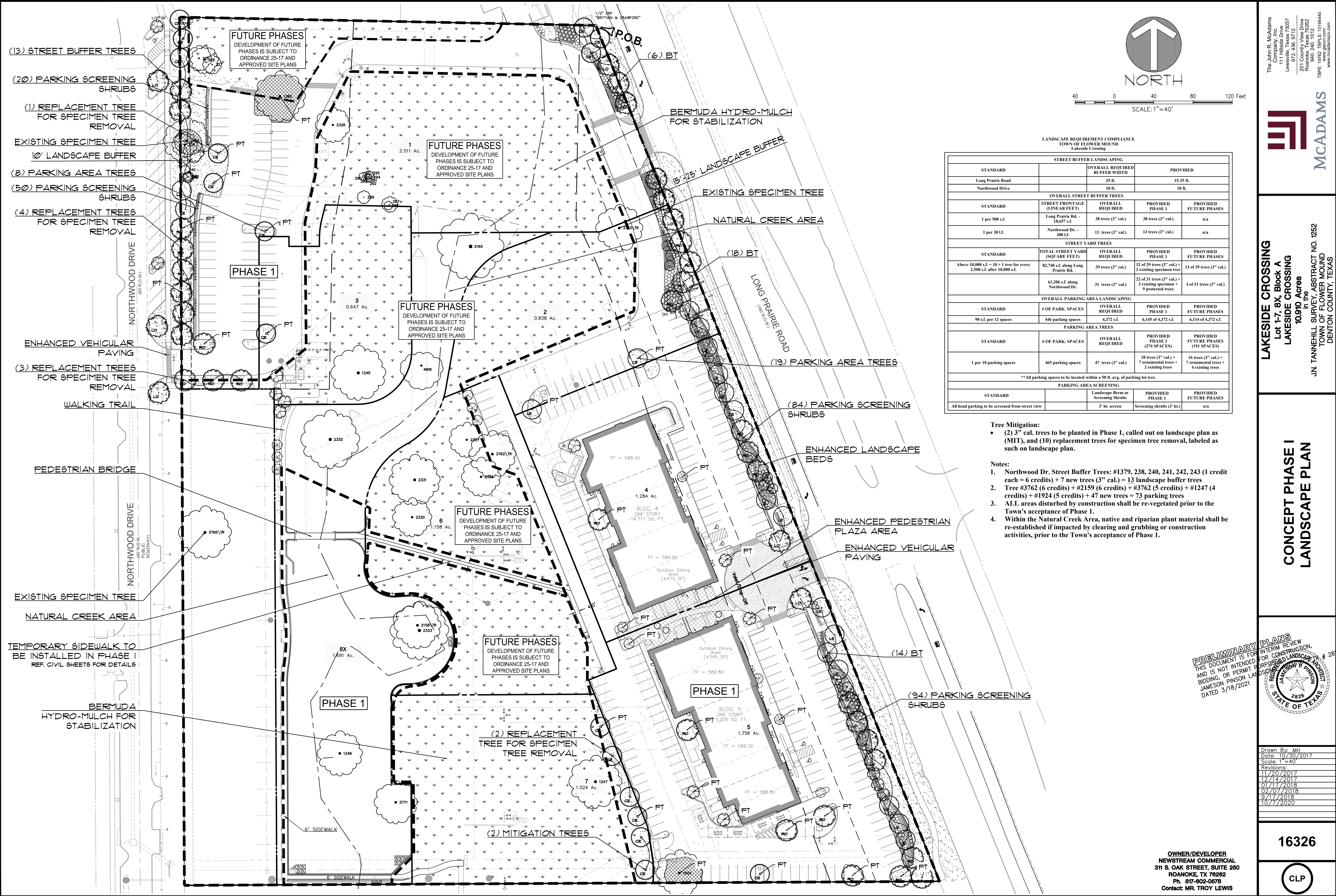
THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES. THE JOHN R. MCADAMS COMPANY, INC. TPBE: 19762 ROBERT JOHN DOLLAK, JR., P.E. #86898 DATE 3/18/2021

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Date: 10/30/2017
Scale: 1"=50'
Revisions:
10/07/2020
01/26/2021
03/18/2021

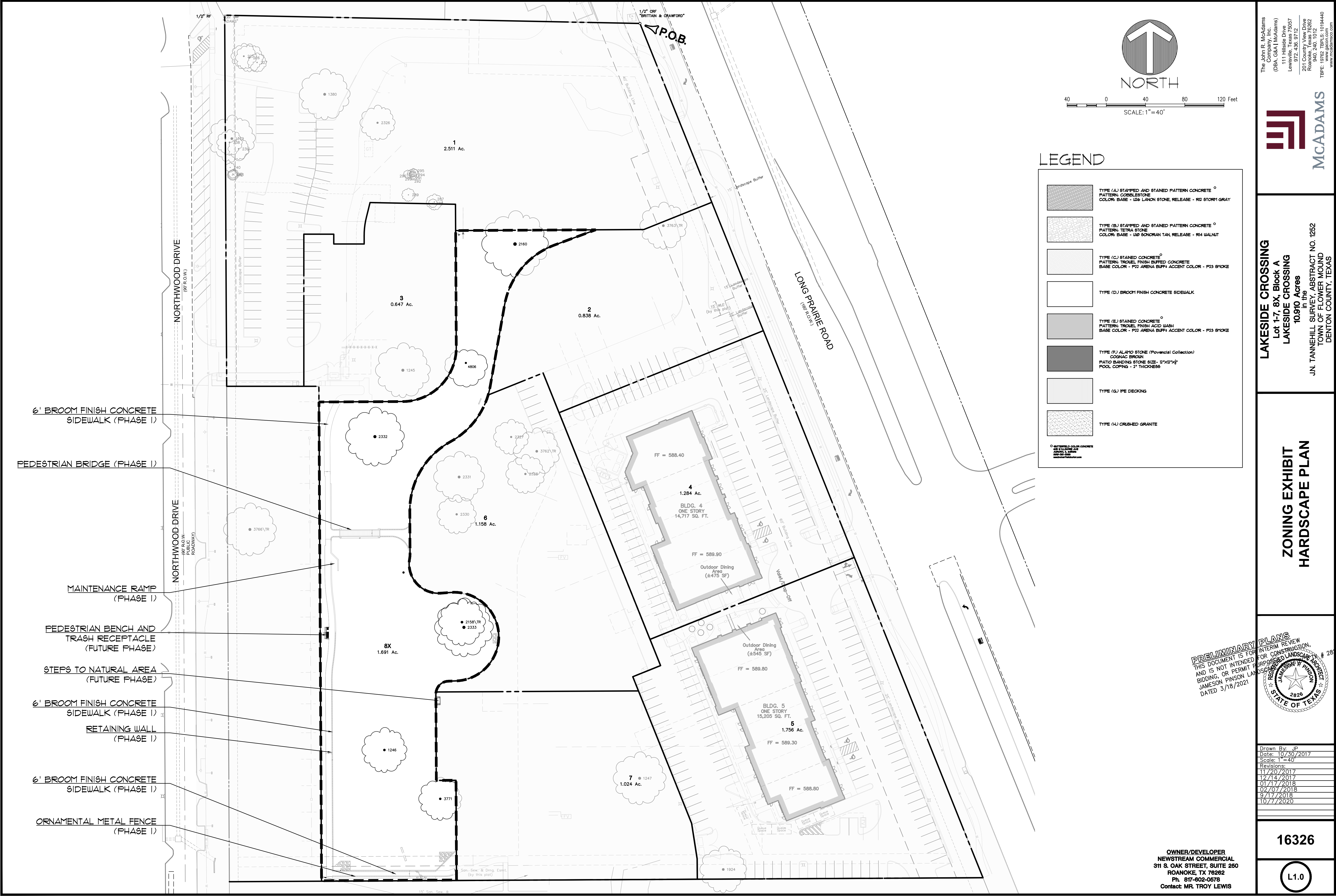
16326

OWNER/DEVELOPER
NEWSTREAM COMMERCIAL
311 S. OAK STREET, SUITE 260
ROANOK, TX 76262
Ph. 817-602-0678
Contact MR. TROY LEWIS

C3.2



FILE: J:\2016\VAZCO\Drawings\KANSAS\ZONING EXHIBITS\VEEDS\HS PLAN
Plotted: 3/19/2021 2:28 AM, by: Matthew Morgan, Sheet: 3/15/2021 4:24 PM, by: mtdulador



The John B. McAdams Company, Inc.
(DBA, G&A McAdams)
111 Hildebrand Drive
Lewisville, Texas 75057
972.336.9712
201 Country View Drive
Round Rock, Texas 78662
TBP# 18762 TBP# S - 1019440
www.mcadamsco.com

McADAMS

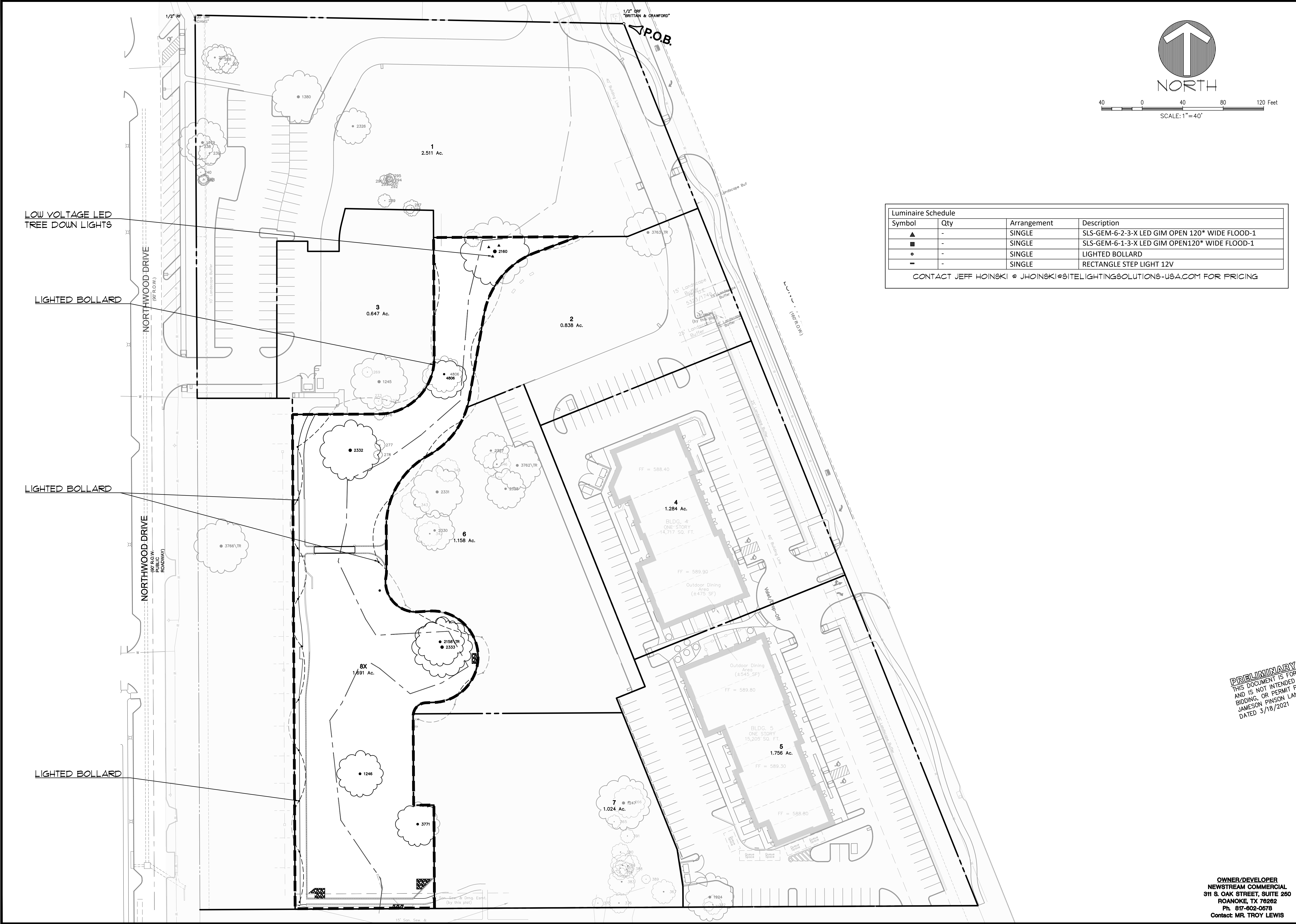
LAKESIDE CROSSING
Lot 1-7, 8X, Block A
LAKESIDE CROSSING
in the
10.910 Acres
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

ZONING EXHIBIT
HARDSCAPE PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION.
NO FIELD CHANGES, REVISIONS, OR PERMIT FIDELITY
GIDDING, OR PERMIT FIDELITY
JAMESON PINSON LANDSCAPE ARCHITECTS
DATED 3/18/2021

2826
STATE OF TEXAS

Drawn By: JLP
Date: 10/30/2017
Scale: 1"=40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
09/17/2018
10/7/2020



Luminaire Schedule			
Symbol	Qty	Arrangement	Description
▲	-	SINGLE	SLS-GEM-6-2-3-X LED GIM OPEN 120" WIDE FLOOD-1
■	-	SINGLE	SLS-GEM-6-1-3-X LED GIM OPEN120" WIDE FLOOD-1
●	-	SINGLE	LIGHTED BOLLARD
—	-	SINGLE	RECTANGLE STEP LIGHT 12V
CONTACT JEFF HOINSKI @ JHOINSKI@SITELIGHTINGSOLUTIONS-USA.COM FOR PRICING			

The John R. McAdams Company, Inc.
111 Hillside Drive
Lewisville, Texas 75057
972-465-1111
201 Custer Parkway
Roanoke, Texas 76262
940-240-1012
TBE: 19762 TBEPLS:10194440
www.mcadamsco.com



MCADAMS

LAKESIDE CROSSING
Lot 1-7, 8X, Block A
LAKESIDE CROSSING
in the
10.910 Acres
J.N. TANNEHILL SURVEY, ABSTRACT NO. 1252
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

ZONING EXHIBIT
LIGHTING PLAN

PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW
AND IS NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.
JAMESON PINSON LANDSCAPE ARCHITECTS
DATED 3/18/2021

Drawn By: JLP
Date: 10/30/2017
Scale: 1" = 40'
Revisions:
11/20/2017
12/14/2017
01/17/2018
02/07/2018
09/22/2020

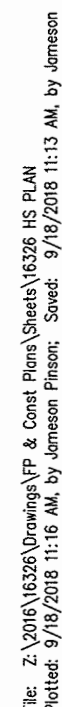
OWNER/DEVELOPER
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Ph. 817-802-0678
Contact: MR. TROY LEWIS

16326

L4.0

File: Z:\2016\KAZRO\Drawings\KAZRO\ME-ZONING EXHIBITS\EXHIBIT LIGHTING PLAN
Plotted: 3/18/2021 2:35 AM, by: Matthew, Megan, Sheet: 3/5/2021 2:11 PM, by: mholzer





OWNER/DEVELOPER
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TOWN COUNCIL AGENDA ITEM NO. 17

REGULAR ITEM

DATE: April 5, 2021

FROM: John Chapman, Long Range Planner

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0007 – Regulated Uses Updates) by amending Chapter 82 entitled “Development Standards,” and Chapter 98 entitled “Zoning,” of the Town’s Code of Ordinances to amend and propose new regulated uses, definitions, and parking standards for the purpose of clarifying and updating certain sections to reflect current planning practices and uses. *(The Planning and Zoning Commission recommended approval by a vote of 5 to 1 at their February 22, 2021, meeting. The Town Council moved to postpone this item by a vote of 6 to 0 at its March 1, 2021, meeting.)***

SUMMARY DATA:

- This is a Town-initiated effort to update the Town’s Land Development Regulations governing permitted uses within the existing zoning districts.
- During the June 19, 2020, Strategic Planning Session (SPS), Town Council identified permitted uses as a topic for future discussion ([Video](#), topic starts at 3:37:21).
- Based on this guidance, staff initiated a work session on November 19, 2020, so that Council could provide additional input and direction on this ordinance amendment ([Video](#).)

BACKGROUND INFORMATION: Attached is the Planning and Zoning Commission (P&Z) report and draft ordinance for this item. During Commissioner deliberation, the question was asked if there were any legal limitations on the Town’s ability to restrict smoking-related uses, and the answer was not known at the time of the meeting. In addition, there was discussion on the differences between the existing Farmer’s market definition and the newly proposed Boutique vendor market definition, as well as the appropriateness of the Nursing and congregate care use in the Agricultural zoning district. As such, P&Z recommended the following amendments to the draft ordinance:

1. Increase the minimum required distance between any school and a “Smoking related business” (formerly presented as “Non-traditional smoking related business”) to either 1,000 feet or the maximum amount allowed by law, whichever is less.
2. Strike the phrase “and customers” from Section 98-980 – Farmer’s Market to ensure there is no implied requirement to provide permanent shelter/structures for customers of a Farmer’s market.
3. Remove “Nursing or congregate care facility” as a use that is allowed with an SUP in the Agricultural District.

To ensure there was adequate time for both staff and legal to research the request by P&Z and incorporate any necessary changes to the final ordinance, staff asked on March 1, 2021, that this item be tabled until the next Town Council meeting on April 5, 2021. In the interim, legal advised Town staff that there were no state limitations on the distance the Town could require between schools and smoking-related businesses, so the 1,000 foot number could be used. In addition, legal suggested creating a separate use for “Alcoholic beverage establishment with production area greater than 6,000 square feet” in order to better categorize the use as industrial in nature.

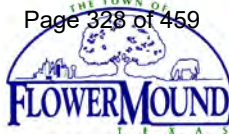
Staff incorporated these changes into the ordinance and also removed “Nursing or congregate care facility,” as a used allowed by SUP within the Agricultural District, as well as the requested phrase from Section 98-980 – Farmer’s Market.

ATTACHMENTS:

1. Planning and Zoning Commission Staff Report
2. Draft Ordinance

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

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



PLANNING AND ZONING COMMISSION

AGENDA ITEM NO: 2

REGULAR ITEM

DATE: February 22, 2021

FROM: John Chapman, Long Range Planner

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR20-0007 – Regulated Uses Updates) by amending Chapter 82 entitled “Development Standards,” and Chapter 98 entitled “Zoning,” of the Town’s Code of Ordinances to amend and propose new regulated uses, definitions, and parking standards for the purpose of clarifying and updating certain sections to reflect current planning practices and uses.**

I. ITEM SUMMARY

This Town-initiated item proposes to amend the Town’s Land Development Regulations by updating and introducing language related to regulated uses and parking standards. The proposed amendment focuses on the following:

1. New and Updated Off-Street Parking Requirements
2. New and Updated Definitions
3. Undefined and Unlisted Uses
4. Updates to the Schedule of Use Regulations
5. New and Updated Special Use Conditions
6. Minor update to Accessory Building standards

This item will require final action by the Town Council, which is scheduled for March 1, 2021.

II. APPLICATION ANALYSIS

1. New and Updated Off-Street Parking Requirements

Over time, Town staff has received several comments regarding off-street parking requirements for office, restaurant, and religious assembly/institution uses from P&Z, Council, and applicants. Because of this, staff is proposing the following adjustments to address concerns:

- Amending Section 82-73 – Computing Parking and Loading Requirements, by introducing a new deviation for “Religious Assembly/Institution or Rectory,” allowing maximum parking to be in excess of 30 percent, rather than 20 percent, while maintaining mitigation requirements.

- Amending Section 82-73 – Computing Parking and Loading Requirements, by introducing a new definition for “square feet,” which clarifies the areas the Town uses to calculate off-street parking requirements.
- Amending Section 82-74 – Off-Street Parking and Loading Requirements, by creating a parking standard for assembly hall and alcoholic beverage establishments (a new use), and increasing required parking for offices.
- Amending Section 82-75 – Off-Site Parking, by updating existing regulations related to ownership by requiring an off-site shared parking irrevocable consent agreement form in all instances, regardless of ownership, in order to ensure required parking will continuously be met.

2. New and Updated Definitions

Proposals to Sec. 98-2 – Definitions, include a variety of new definitions and amendments based on feedback from P&Z, Council, and staff. The amendments include:

- Updating certain definitions in existence to include modern more current examples.
- Consolidating certain definitions without modifying regulatory requirements.
- Establishing new definitions for certain regulated uses as requested by P&Z, Council, applicants, and Town staff.

The following chart summarizes the proposed amendments.

Regulated Use	Proposal Summary	Regulated Use	Proposal Summary
<i>Accessory Retail and service uses</i>	Minor update to definition	<i>Office, medical and dental extended hours</i>	New proposed regulated use and definition
<i>Alcoholic beverage establishment</i>	New proposed regulated use and definition	<i>Pawn shop</i>	New supplemental definition. See also “Alternative financial establishment”
<i>Alternative financial establishment</i>	New proposed regulated use and definition	<i>Private shop, yard or building</i>	Update to regulated use and creating definition
<i>Amusement and recreation (indoors)</i>	Minor update to establishment examples	<i>Recycling drop-off</i>	Minor update to definition
<i>Animal exhibition</i>	Include “aviary,” as an establishment example	<i>Religious assembly/institution or rectory</i>	Renamed regulated use. See also “Church or rectory”
<i>Birthing center</i>	New supplemental definition. See also “Office, medical and dental extended care”	<i>Restaurant, drive-in</i>	Remove regulated use and definition. See also “Restaurant, fast food”
<i>Boutique vendor market</i>	New proposed regulated use and definition	<i>Restaurant, fast food</i>	Minor update to include “Restaurant, drive-in”

<i>Building materials sales or storage (outdoors)</i>	Minor update to definition	<i>Restaurant, general</i>	Update to definition to be inclusive of all food establishments not including those with drive-throughs
<i>Church or rectory</i>	Rename regulated use to "Religious assembly/institution or rectory"	<i>Retail, general (indoor)</i>	Update to definition to include square footage maximum and include supermarkets as an example
<i>Custom personal service</i>	Minor update to include microblading/makeup tattoo salon	<i>Retail, large tenant</i>	Updates to definition to simplify meaning and examples
<i>Electrical energy generating plant</i>	Minor update to definition to include renewable and nonrenewable energy	<i>Riding arena</i>	New supplementary definition to Home Occupation and accessory structures
<i>Farmers' market</i>	Correction to regulated use's name and update to % food required	<i>Rodeo grounds</i>	New supplementary definition
<i>Food truck court, accessory</i>	New proposed regulated use and definition	<i>Secondhand store</i>	Minor updates to definition
<i>Mailing and shipping service</i>	New proposed regulated use and definition	<i>Supermarket</i>	Remove definition and use. See also "Retail, general (indoor)," and "Retail, large tenant"
<i>Non-traditional smoking related business</i>	New proposed regulated use and definition	<i>Wine and/or beer retail establishment</i>	Minor update to regulated use name and definition to include, "and/or beer"
<i>Office, medical and dental</i>	Minor update to definition to include hours of operation		

3. Undefined and Unlisted Uses

Staff is proposing new language that would codify current practices as to how undefined and unlisted uses are resolved administratively. Staff would follow a four-step process to determine if the use may already be regulated or not. If a use is determined to not be regulated by Chapter 98, a Planned Development application defining and listing the use would be required.

4. Updates to the Schedule of Use Regulations

Staff is proposing amendments to the Schedule of Use Regulations including modifications to existing regulated uses, removing and/or consolidating certain regulated uses, and proposing new regulated uses.

In addition, all identified uses within the Schedule of Use Regulations would now be allowed within a Planned Development district. As Town Council has historically preferred planned developments over straight rezonings, staff wanted to ensure that option was available for any future projects. Similarly, staff is proposing amendments to the Recreational zoning district where certain regulated uses, identified by Council, P&Z, and/or staff, were found to be affiliated with the purpose of the Recreational zoning district.

5. New and Updated Special Use Conditions

The proposed amendments to certain Specific Use Conditions include the following:

- Sec. 98-990 – Recycling drop-off center. The proposed update clarifies how this use may be considered, as well as defines the maximum square footage for the required name and phone number signage.
- Sec. 98-991- Refreshment Stand and Food Truck Court, Accessory. The proposed update includes adding “Food truck court, accessory” to these conditions due to their shared operational functions and necessities.

In addition to these proposed updates, special conditions are being proposed for the following regulated uses:

- Boutique Vendor Market
- Alternative Financial Establishment
- Non-Traditional Smoking Related Business
- Alcoholic Beverage Establishment
- Retail, Large Tenant

6. Minor update to Accessory Building standards

The proposed amendments to Sec. 98-1032 – Accessory Buildings, includes adding “riding arenas” as a type of structure permitted within the SF-E, Single-Family Estate, and A, Agricultural, zoning districts. In addition, staff is proposing to remove certain language pertaining to a Specific Use Permit for riding or rodeo arenas due to this regulation no longer being needed.

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 inquiries about this item.

IV. ATTACHMENTS

1. Draft Redline Ordinance

ARTICLE III. - OFF-STREET PARKING AND LOADING^[2]

Sec. 82-73. - Computing parking and loading requirements.

The number of parking spaces required for a specific development proposal shall be based on the requirements listed in section 82-74, Off-street parking and loading space requirements, and the following provisions:

- (1) *Deviation of required spaces.* The amount of parking can be reduced or increased by 20 percent. Deviations ~~for all uses, excluding "Religious Assembly/Institution or Rectory,"~~ in excess of 20 percent must be accompanied by a parking study and approved by the town council. ~~Deviations for "Religious Assembly/Institution or Rectory" increasing required spaces in excess of 30 percent, or reducing required spaces in excess of 20 percent, must be accompanied by a parking study and approved by the town council.~~ Any approved parking in excess of 20 percent must be mitigated. Mitigation can be achieved by the use of pervious paving, increased landscaping, increased stormwater treatment, or other method to reduce the impact of the increased parking.
- (9) *Square Feet.* For the purposes of Sec. 82-74, square feet includes all interior square footage not expressly intended for other purposes and all exterior square footage considered programmable open space. For the purpose of this provision, programmable open space shall mean areas that may be reconfigured for the occupation and/or use of patrons and/or employees, such as patio seating.

Sec. 82-74. - Off-street parking and loading space requirements.

The following are the off-street parking and loading space requirements:

SCHEDULE OF PARKING AND LOADING REQUIREMENTS

Use Type	Parking
<i>Educational, institutional, and special-civic uses</i>	
Church or rectory Religious Assembly/Institution or Rectory	1 space per 3 seats in main sanctuary
Medical office Office, Medical and Dental	1 space per 250 200 square feet
<i>Retail uses</i>	
Alcoholic Beverage Establishments	5 spaces plus 1 space per 1,000 square feet of production area, and 1 space per 75 square feet of remaining square feet
Restaurant	1 space per 75 square feet (if providing seating)
<i>Personal service uses</i>	
Assembly Hall	1 space per 3 seats

Office, general business and professional	1 space per 300 250 square feet
---	--

Sec. 82-75. - Off-site parking.

Required off-street parking spaces shall be on the same lot as the principal use, provided that all or a portion of the required parking spaces may be located on a separate lot from the lot on which the principal use is located, based on the following provisions:

- (2) ~~Ownership~~*Irrevocable Consent Agreement Form*. For any proposed off-site parking, ~~If a proposed off-site parking area is not under the same ownership as the principal use to which it is accessory, all necessary legal instruments shall~~ an “off-site shared parking irrevocable consent form” provided by the Town, shall be executed and delivered to the Town of Flower Mound to ensure ~~that all the~~ required ~~number of off-street~~ parking spaces shall remain available throughout the life of the principal use(s).

Chapter 98 - ZONING^[1]

ARTICLE I. - IN GENERAL

Sec. 98-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory retail and service uses means retail or service uses, such as pharmacy, newsstand, dining room, barber or beauty shop, located within an office, ~~high-rise~~ apartment or similar building where such retail ~~and/or~~ service use is ~~incidental to the primary use and~~ designed and arranged to serve the ~~customers of the~~ primary use.

Alcoholic beverage establishment means any establishment primarily engaged in the selling and/or processing and production of alcoholic beverages, as defined within the Texas Alcoholic Beverage Code, as amended, to the general public. Such establishments are limited to the functions allowed by their Texas Alcoholic Beverage Commission permit, and the Town's local option status. Examples of uses include brewery, distillery, winery, and wine and/or beer retail establishments.

Alternative financial establishment means an establishment, other than a “Bank or savings and loan,” engaged in loaning money in exchange for personal checks and/or collateral to consumers. Typical uses include, but are not limited to, credit access businesses, check cashing business, payday advance or loan business, money transfer business, pawn shop, or car title loan business.

Amusement and recreation (indoors) means an enterprise wholly enclosed in a building offering entertainment or games of skill to the general public for a fee or charge or to members and guests of a private association. Typical uses include, but are not limited to, dancehalls, theatrical productions, bowling alleys, billiard and pool establishments, ~~boxing gyms~~, electronic video game arcades, skating rinks, ~~and~~ teen clubs, ~~escape rooms~~, ~~laser tag arenas~~, and ~~inflatable bounce house parks~~.

Animal exhibition means a collection of animals for display to the public, ~~including an aviary~~. An animal exhibition shall not include the sale, breeding or butchering of animals. Any animals classified as wild animals, defined in this section, shall be subject to all federal, state and local licensing requirements.

Birthing Center means a facility or place where a woman is scheduled to give birth following a normal, uncomplicated (low-risk) pregnancy. This term does not include hospital, ambulatory surgical

center, a nursing home, or the residence of a woman giving birth. Source: Birth Center Licensing Division, Texas Department of Health.

Boutique Vendor Market means an establishment providing facilities for more than one vendor, primarily for the distribution and sale of food and unique nonfood articles, including custom, high quality merchandise, which may be upcycled or repurposed, directly to consumers. Such establishments shall not be deemed to include a secondhand store, or pawn shop.

Building materials sales or storage (outdoors) means an establishment engaged in the retail or wholesale sale of materials used in the construction of buildings or other structures, as well as the storage of construction equipment or materials on lots other than construction sites, wherein any sales, display or storage activity occurs outside of a fully enclosed building. Typical uses include, but are not limited to, lumberyards, brick and masonry supply yards, and swimming pool and spa sales, and construction and trade contractors' storage yards.

~~*Church or rectory* means a use customarily associated with a building where persons regularly assemble for religious worship and which building, together with its accessory building and uses, including the on-site housing of ministers, rabbis, priests, nuns and similar staff personnel, is maintained and controlled by a religious body organized to sustain public worship.~~

Custom personal service means barber shop, beauty shop, tailor, dressmaker, shoe shop, micro-blading/makeup tattoo salon, or similar shop offering custom service.

Electrical energy generating plant means an electrical power generating plant belonging to a privately owned utility company franchised to serve the town or its portion, where energy is generated by either renewable and/or nonrenewable resources.

~~*Farmer's market*~~*Farmers' market* means a designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers.

Food truck court, accessory, means onsite accommodations for one (1) Mobile Food Establishment providing food and beverage sales designed and arranged to serve the customers of the primary use.

Mailing and shipping service means an establishment that conducts the retail sale of stationary products, as well as providing packaging, photocopying, printing, and mail services (both U.S. Postal and private postal services). Such establishments do not include freight transportation service, or warehousing and wholesale.

Non-traditional smoking related business means any establishment whose principal business is the offering of a service relating to, or the selling of, or renting of products or devices commonly related with "Smoke, Smokes, Smoking," as defined in Section 18-530 of the Town's Code of Ordinances.

Office, medical ~~or~~ and dental, means an office or group of offices for one or more physicians, surgeons, dentists or other health care professionals to treat sick or injured patients who do not remain overnight and are open between the hours of 7:00 AM and 10 PM.

Office, medical and dental extended care, means a facility or place where inpatient care is provided to individuals without the need for intensive care units or surgeons, and are open between the hours of 10:00 PM and 7:00 AM. This term includes, but is not limited to, birthing centers, urgent care, and dialysis centers.

Pawn shop means an establishment where money is loaned on the security of personal property pledged in the keeping of the persons engaged in the business (pawnbroker), and goods may be purchased by the pawnbroker on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period (Per Texas Finance Code), and that have been licensed to transact business by the Consumer Credit Consumer under Chapter 371, Finance Code (per Texas Local Government Code). Such establishments may also engage in the retail sale of primarily used merchandise.

Private shop, yard or building means facilities that include offices, maintenance yards, and/or storage needed for development of private construction. Such establishments are not engaged in the direct sale

of materials to consumers and may include, but are not limited to, construction and trade contractors' storage yards and offices.

Recycling drop-off center means a small collection facility where presorted, nonbiodegradable and nonhazardous recyclable materials are ~~purchased or~~ accepted from the public. Typical uses include, but are not limited to, neighborhood recycling stations and thrift or charitable store collection trucks.

Religious assembly/institution or rectory means a use customarily associated with a building where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, including the on-site housing of ministers, rabbis, priests, nuns and similar staff personnel, is maintained and controlled by a religious body organized to sustain public worship.

~~*Restaurant, drive-in*, means an establishment where the principal business is the sale of food and beverages in a ready-to-consume state and that provides service exclusively to customers in motor vehicles.~~

Restaurant, fast food, means an establishment with a drive-through window and/or drive-in service, where the principal business is the sale of food and beverages in a ready-to-consume state. ~~including a drive-through and/or drive-in facility and where the design or method of operation includes any service to a customer in a motor vehicle, other than an establishment classified as a drive-in restaurant. In no scenario shall this definition determine how impact fees are assessed and applied.~~

Restaurant, general, means an establishment where the principal business is the sale of food and beverages in a ready-to-consume state, and where a drive-through window and/or drive-in service is not provided. In no scenario shall this definition determine how impact fees are assessed and applied. ~~and where the design or principal method of operation includes one or more of the following:~~

~~(1) — A sit-down restaurant where customers, normally provided with an individual menu, are generally served in nondisposable containers by a restaurant employee at the same table or counter at which such items are consumed.~~

~~(2) — A cafeteria or cafeteria type operation where foods and beverages generally are served in nondisposable containers and consumed within the restaurant building.~~

~~(3) — A small specialty restaurant having floor area exclusively within a shopping center, sharing common parking facilities with other businesses within the center, and having access to a common interior pedestrian accessway within the center.~~

~~This use may include takeout service, but includes any service to a customer in a motor vehicle.~~

Retail, general (indoors), means a retail establishment occupying less than 25,000 square feet of floor area that does not fit the definition of any other land use classification and that does not entail any outdoors sales, service, display, storage or other activity. Typical uses include, but are not limited to, supermarkets, apparel and accessory stores, camera and photographic supply stores, clothing rental stores, consumer electronics stores, gift, novelty and souvenir shops, luggage and leather goods stores, jewelry stores, music stores, and ~~video tape~~ rental stores.

~~*Retail, single tenant*~~*Retail, large tenant*, means an establishment primarily occupied by a single tenant retail use that may include secondary accessory uses enclosed in a single building. Primary retail uses may include, but are not limited to, supermarkets, department stores, home improvement centers, discount centers and automotive sales and service. Secondary accessory uses may include, but are not limited to, banks, video rental, restaurant, fast food, garden centers and automotive service uses. means a retail establishment, not otherwise defined, occupying 25,000 square feet or more of floor area in an enclosed building, which may also include accessory retail/service uses. Typical large tenant retail uses include, but are not limited to, supermarkets, department stores, home improvement centers, and discount centers.

Riding arena means an accessory structure located on a residentially-zoned property containing an arena or track designed and used exclusively for the riding, exercising, or training of livestock, as defined by Section 6-1 of the Town of Flower Mound Code of Ordinances. Riding arenas used for business purposes shall be subject to comply with Section 98-984 – Home Occupation, and shall not be used for events open to the general public.

Rodeo grounds means a commercial structure, open to the public, containing an arena or track designed and used for the riding, training, or showing of livestock, as defined by Section 6-1 of the Town of Flower Mound Code of Ordinances.

Secondhand store means an establishment primarily engaged in the retail sale of previously owned merchandise. Any outdoor collection shall be considered a "Recycling drop-off Center," and shall comply with all applicable standards. ~~Typical uses include, but are not limited to, consignment shops and pawnshops.~~

~~*Supermarket* means a retail establishment with 6,000 square feet of floor area or more primarily offering for sale meats, fruits, vegetables, bakery products, dairy products, personal care items, cleaning products and similar household items for off-premise consumption.~~

Wine and/or beer retail establishment means any establishment which derives the majority of its gross revenue from the sale of wine ~~and/or beer~~ to the general public for off-premises personal or household consumption and rendering services incidental to the sale of such goods.

Cross reference— Definitions generally, § 1-2.

Secs. 98-3. — Undefined and Unlisted Uses

Undefined and unlisted uses. The definition of any word or phrase not listed in this code that is in question shall be defined by the development review committee from one of the following sources. Priority shall be given to sources based on their numeric order. If the undefined term is a proposed use, it shall only be permitted through approval of a Planned Development district that specifically defines and allows the proposed use in the designated location.

- (1) Any Town resolution, ordinance, code or regulation;
- (2) Any statute or regulation of the state of Texas;
- (3) Legal definitions from Texas common law or a law dictionary;
- (4) A common dictionary.

Sec. 98-4 – 98-30. - Reserved.

DIVISION 3. - A, AGRICULTURAL DISTRICT, CONSERVATION DISTRICT, AND RURAL DEVELOPMENT³¹

Sec. 98-272. - Permitted uses.

The following uses shall be permitted in the A agricultural district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Carnival or circus, temporary, subject to section 98-976~~

~~Church or rectory~~

Field office, temporary

Food truck court, accessory, subject to section 98-991

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Sales trailer, temporary, subject to section 98-993

Solar Panel Systems, subject to section 98-1002

Sec. 98-273. - Specific uses.

The following uses shall be permitted in the A agricultural district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186 of this Code, specific use permits:

~~Aviary~~

~~Boutique Vendor Market, Outdoor, subject to section 98-1006~~

~~Kennel (in enclosed building only)~~

~~Kennel (with outside runs or pens)~~

~~Mortuary or funeral home~~

~~Private utility shop, yard or building~~ Private shop, yard or building

~~Veterinary hospital (inside pens)~~

Sec. 98-274. - Temporary uses.

The following uses shall be permitted in the A agricultural district only upon approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of this Code, temporary use permits:

~~Asphalt/concrete batch plant, temporary, subject to section 98-976~~

~~Carnival or circus, temporary, subject to section 98-976~~

~~Field office, temporary~~

~~Government office/classroom, temporary, subject to section 98-1005~~

~~Sales, temporary or seasonal, subject to section 98-992~~

~~Sales trailer, temporary, subject to section 98-993~~

~~Temporary special event, subject to section 98-976~~

Sec. 98-275. - Maximum dimensions.

- (a) *Maximum lot coverage.* The maximum lot coverage in the A agricultural district shall be 25 percent for all uses, subject to section 98-1029.
- (b) *Maximum floor area ratio.* There shall be no maximum floor area requirement in the A agricultural district.
- (c) *Maximum height.* The maximum height of the buildings and the structures in the A agricultural district shall be three stories or 35 feet for all uses, subject to section 98-1031.

~~Sec. 98-275. - Temporary uses.~~

~~The following uses shall be permitted in the A agricultural district only upon approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of this Code, temporary use permits:~~

~~Asphalt/concrete batch plant, temporary, subject to section 98-976~~

~~Carnival or circus, temporary, subject to section 98-976~~

~~Field office, temporary~~

~~Government office/classroom, temporary~~

~~Sales, temporary or seasonal, subject to section 98-992~~

~~Sales trailer, temporary, subject to section 98-993~~

~~Temporary special event, subject to section 98-976~~

~~(Code 1989, ch. 12, § 3.08(a); Ord. No. 11-00, § 2, 2-17-2000; Ord. No. 76-03, § 3, 11-3-2003; Ord. No. 08-20, § 5, 4-20-2020)~~

Secs. 98-279—98-300. - Reserved.

DIVISION 4. - SF-E, SINGLE-FAMILY ESTATE DISTRICT AND CONSERVATION DEVELOPMENT

Sec. 98-302. - Permitted uses.

The following uses shall be permitted in the SF-E, single-family estate district, subject to compliance with any applicable conditions and all other provisions of this chapter.

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, subject to section 98-1002

Sec. 98-303. - Specific uses.

The following uses shall be permitted in the SF-E, single-family estate district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits.

~~Nursing or congregate care facility~~

Sec. 98-304. - Temporary uses.

The following uses shall be permitted in the SF-E, Single-family Estate District only upon approval of a temporary use permit in accordance with the procedures and standards of Section 6.14, Temporary use permits.

Government office/classroom, temporary, subject to section 98-1005

DIVISION 5. - SF-30 SINGLE-FAMILY DISTRICT-30

Sec. 98-332. - Permitted uses.

The following uses shall be permitted in the SF-30 single-family district-30, subject to compliance with any applicable conditions and all other provisions of this chapter.

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, subject to section 98-1002

Sec. 98-334. - Temporary uses.

The following uses shall be permitted in the SF-30 single-family district-30 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 6. - SF-15 SINGLE-FAMILY DISTRICT-15

Sec. 98-362. - Permitted uses.

The following uses shall be permitted in the SF-15 single-family district-15, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, subject to section 98-1002

Sec. 98-364. - Temporary uses.

The following uses shall be permitted in the SF-15 single-family district-15 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 7. - SF-10 SINGLE-FAMILY DISTRICT-10

Sec. 98-392. - Permitted uses.

The following uses shall be permitted in the SF-10 single-family district-10, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, subject to section 98-1002

Sec. 98-394. - Temporary uses.

The following uses shall be permitted in the SF-10 single-family district-10 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 8. - SF-A SINGLE-FAMILY ATTACHED DISTRICT

Sec. 98-422. - Permitted uses.

The following uses shall be permitted in the SF-A single-family attached district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, subject to section 98-1002

Sec. 98-424. - Temporary uses.

The following uses shall be permitted in the SF-A single-family attached district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, **subject to section 98-1005**

DIVISION 8A. - SF-5 SINGLE FAMILY RESIDENTIAL DISTRICT

Sec. 98-432. - Permitted uses.

The following uses shall be permitted in the SF-5 single family residential district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, **subject to section 98-1002**

Sec. 98-433. - Specific uses.

The following uses shall be permitted in the SF-5 single family residential district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Hospital~~

DIVISION 9. - 2F DUPLEX DISTRICT

Sec. 98-452. - Permitted uses.

The following uses shall be permitted in the 2F duplex district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Sec. 98-454. - Temporary uses.

The following uses shall be permitted in the 2F duplex district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, **subject to section 98-1005**

DIVISION 10. - MF MULTIFAMILY DISTRICT

Sec. 98-482. - Permitted uses.

The following uses shall be permitted in the MF multifamily district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Sec. 98-484. - Temporary uses.

The following uses shall be permitted in the MF multifamily district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, ~~subject to section 98-1005~~

DIVISION 11. - MH MOBILE HOME DISTRICT

Sec. 98-512. - Permitted uses.

The following uses shall be permitted in the MH mobile home district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Sec. 98-514. - Temporary uses.

The following uses shall be permitted in the MH mobile home district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, ~~subject to section 98-1005~~

DIVISION 12. - O OFFICE DISTRICT¹⁴¹

Sec. 98-542. - Permitted uses.

The following uses shall be permitted in the O office district, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Church or rectory~~

~~Off-street parking, accessory~~

Mailing and shipping service

Religious Assembly/Institution or Rectory

Sec. 98-543. - Specific uses.

The following uses shall be permitted in the O office district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Cleaning shop or laundry pickup station~~

Extended stay hotel, ~~subject to section 98-1004~~

Hotel or motel, ~~subject to section 98-1003~~

~~Lithographic or print shop~~

Office, medical and dental extended care

~~Recreation Center~~

Veterinary hospital (inside pens), ~~subject to section 98-998~~

Sec. 98-544. - Temporary uses.

The following uses shall be permitted in the O office district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, ~~subject to section 98-1005~~

DIVISION 13. - R-1 RETAIL DISTRICT-1^[6]

Sec. 98-572. - Permitted uses.

The following uses shall be permitted in the R-1 retail district-1, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Alcoholic beverage establishment, subject to section 98-1009~~

~~Boutique vendor market, indoor, subject to section 98-1006~~

~~Church or rectory~~

~~Cleaning shop or laundry pickup station~~

~~Off street parking, accessory~~

Mailing and shipping service

Religious Assembly/Institution or Rectory

Retail, general (indoors)

~~Retail, single tenant (less than 25,000 square feet)~~

~~Retail, large tenant (at least between 25,000 and 49,999 square feet), subject to section 98-1010~~

Sec. 98-573. - Specific uses.

The following uses shall be permitted in the R-1 retail district-1 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Alcoholic beverage establishment, subject to section 98-1009~~

~~Amusement and recreation (indoors), subject to section 98-973~~

~~Boutique vendor market, outdoor, subject to section 98-1006~~

~~Food truck court, accessory, subject to section 98-991~~

~~Hospital~~

~~Laboratory, medical or dental~~

Office, medical and dental

Office, medical and dental extended care

~~Recreation Center~~

~~Retail general (indoors)~~

Restaurant, fast food

~~Retail, single tenant~~ ~~Retail, large tenant (at least between 25,000 square feet but less than and 50,000 49,999 square feet), subject to section 98-1010~~

Secondhand store

Veterinary hospital (inside pens), subject to section 98-998

Sec. 98-574. - Temporary uses.

The following uses shall be permitted in the R-1 retail district-1 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, ~~subject to section 98-1005~~

DIVISION 14. - R-2 RETAIL DISTRICT-2^[6]

Sec. 98-602. - Permitted uses.

The following uses shall be permitted in the R-2 retail district-2, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Alcoholic beverage establishment, subject to section 98-1009~~

~~Church or rectory~~

~~Cleaning shop or laundry pickup station~~

Food truck court, accessory, subject to section 98-991

Mailing and shipping service

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

~~Retail, single tenant (less than 25,000 square feet)~~

Retail, large tenant (between ~~at least~~ 25,000 and 49,999 square feet), subject to section 98-1010

Retail, large tenant (~~at least~~ between 50,000 and 74,999 square feet), subject to section 98-1010

Secondhand store

~~Supermarket~~

Sec. 98-603. - Specific uses.

The following uses shall be permitted in the R-2 retail district-2 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Alcoholic beverage establishment, subject to section 98-1009~~

Boutique vendor market, outdoor, subject to section 98-1006

~~Kenel, subject to 98-986~~

~~Lithographic or print shop~~

Office, medical and dental extended care

~~Recreation Center~~

~~Retail, single tenant~~ Retail, large tenant (~~at least~~ between 25,000 square feet but less than and 50,000 49,999 square feet), subject to section 98-1010

~~Retail, single tenant~~ Retail, large tenant (~~at least~~ between 50,000 square feet but less than and 75,000 74,999 square feet), subject to section 98-1010

~~Veterinary hospital (inside pens)~~

Sec. 98-604. - Temporary uses.

The following uses shall be permitted in the R-2 retail district-2 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, ~~subject to section 98-1005~~

DIVISION 15. - C-1 COMMERCIAL DISTRICT-1¹⁷

Sec. 98-632. - Permitted uses.

The following uses shall be permitted in the C-1 commercial district-1, subject to compliance with any applicable conditions and all other provisions of this chapter:

~~Alcoholic beverage establishment, subject to section 98-100~~

~~Auto leasing or rental~~

~~Boutique vendor market, indoor, subject to section 98-1006~~

~~Church or rectory~~

~~Kennel (in enclosed building only), subject to section 98-986~~

~~Kennel (in enclosed building only)~~

~~Mailing and shipping service~~

~~Off-street parking, accessory~~

~~Office, medical and dental extended care~~

~~Religious Assembly/Institution or Rectory~~

~~Retail, single tenant (less than 25,000 square feet)~~

~~Retail, single tenant~~ Retail, large tenant (between ~~at least 25,000~~ square feet but less than and 50,000 49,999 square feet), subject to section 98-1010

~~Retail, single tenant~~ Retail, large tenant (~~at least between 50,000~~ square feet but less than and 75,000 49,999 square feet), subject to section 98-1010

~~Retail, large tenant (at least between 75,000 and 99,999 square feet), subject to section 98-1010~~

~~Secondhand store~~

~~Supermarket~~

~~Veterinary hospital (inside pens)~~

Sec. 98-633. - Specific uses.

The following uses shall be permitted in the C-1 commercial district-1 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Alcoholic beverage establishments, subject to section 98-1009~~

~~Auto leasing or rental~~

~~Boutique vendor market, outdoor, subject to section 98-1006~~

~~Non-traditional smoking related business, subject to section 98-1008~~

~~Recycling drop-off~~ Recycling drop-off center, subject to section 98-990

~~Restaurant, drive-in~~

~~Retail, single tenant~~Retail, large tenant (betweenat least 75,0000 square feet but less than and 100,00099,999 square feet), subject to section 98-1010

Sec. 98-634. - Temporary uses.

The following uses shall be permitted in the C-1 commercial district-1 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 16. - C-2 COMMERCIAL DISTRICT-2^(B)

Sec. 98-662. - Permitted uses.

The following uses shall be permitted in the C-2 commercial district-2, subject to compliance with any applicable conditions and all other provisions of this chapter:

Alcoholic beverage establishment, subject to section 98-1009

Boutique vendor market, indoor, subject to section 98-1006

Boutique vendor market, out-door, subject to section 98-1006

~~Church or rectory~~

~~Cleaning shop or laundry pickup station~~

Food truck court, accessory, subject to section 98-991

Hotel or motel, subject to section 98-1003

~~Kennel, subject to section 98-986~~

Kennel (in enclosed building only), subject to section 98-986

Mailing and shipping service

~~Off-street parking, accessory~~

Office, medical and dental extended care

~~Parking lot or structure, commercial~~

Religious Assembly/Institution or Rectory

~~Retail, single tenant (less than 25,000 square feet)~~

~~Retail, single tenant~~Retail, large tenant (at leastbetween 25,0000 square feet but less than and 50,00049,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at leastbetween 50,000 square feet but less than and 75,0004,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at leastbetween 75,000 square feet but less than and 10099,000-999 square feet), subject to section 98-1010

Retail, large tenant (100,000 square feet or more), subject to section 98-1010

Supermarket

~~Veterinary hospital (inside pens)~~

Sec. 98-663. - Specific uses.

The following uses shall be permitted in the C-2 commercial district-2 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009
~~Animal control facility~~
~~Caretaker or guard residence (mobile home), subject to section 98-975~~
 Extended stay hotel, subject to section 98-1004
 Non-traditional smoking related business, subject to section 98-1008
~~Recycling drop-off~~ Recycling drop-off center, subject to section 98-990
~~Restaurant drive-in~~
~~Retail, single tenant~~ Retail, large tenant (1000,000 square feet or more), subject to section 98-1010

Sec. 98-664. - Temporary uses.

The following uses shall be permitted in the C-2 commercial district-2 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 17. - I-1 INDUSTRIAL DISTRICT-1¹⁹¹

Sec. 98-692. - Permitted uses.

The following uses shall be permitted in the I-1 industrial district-1, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses
 Alternative financial establishment, subject to section 98-1007
 Auto parts and accessory sales (outdoor display)
~~Auto parts and sales (outdoor display)~~
~~Church or rectory~~
 Hotel or motel, subject to section 98-1003
 Kennel (in enclosed building only), subject to section 98-986
~~Kennel, subject to section 98-986~~
 Kennel (with outside runs or pens), subject to section 98-986
 Mailing and shipping service
~~Off street parking, accessory~~
~~Parking lot or structure, commercial~~
 Religious Assembly/Institution or Rectory
~~Restaurant, drive-in~~
~~Retail, single tenant (less than 25,000 square feet)~~
 Retail, single tenant Retail, large tenant (at least between 25,000 square feet but less than and 50,000 49,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at least between 50,000 square feet but less than and 75,000 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at least between 75,000 square feet but less than and 100,000 square feet), subject to section 98-1010

Retail, large tenant (100,000 square feet or more), subject to section 98-1010

~~Supermarket~~

Veterinary hospital (inside pens), subject to section 98-998

Sec. 98-693. - Specific uses.

The following uses shall be permitted in the I-1 industrial district-1 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009

Boutique vendor market, indoor, subject to section 98-1006

~~Caretaker or guard residence (mobile home), subject to section 98-975~~

Extended stay hotel, subject to section 98-1004

Food truck court, accessory, subject to section 98-991

~~Private utility shop, yard or building~~Private shop, yard or building

~~Recycling dropoff~~Recycling drop-off center, subject to section 98-990

~~Retail, single tenant~~Retail, large tenant (100,000 square feet or more), subject to section 98-1010

Sec. 98-694. - Temporary uses.

The following uses shall be permitted in the I-1 industrial district-1 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 18. - I-2 INDUSTRIAL DISTRICT-2^[10]

Sec. 98-722. - Permitted uses.

The following uses shall be permitted in the I-2 industrial district-2, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses

~~Church or rectory~~

Hotel or motel, subject to section 98-1003

Kennel (in enclosed building only), subject to section 98-986

~~Kennel, subject to section 98-986~~

Kennel (with outside runs or pens), subject to section 98-986

Mailing and shipping service

~~Off-street parking, accessory~~

~~Parking lot or structure, commercial~~

~~Private utility shop, yard or building~~Private shop, yard or building

Religious Assembly/Institution or Rectory

~~Retail, single tenant (less than 25,000 square feet)~~

~~Retail, single tenant~~Retail, large tenant (at least between 25,000 square feet but less than and 50,000 49,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (between at least 50,000 square feet but less than and 75,000 4,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at least between 75,000 square feet but less than and 100,000 99,999 square feet), subject to section 98-1010

Retail, large tenant (100,000 square feet or more), subject to section 98-1010

~~Restaurant, general~~

~~Supermarket~~

Veterinary hospital (inside pens), subject to section 98-998

Sec. 98-723. - Specific uses.

The following uses shall be permitted in the I-2 industrial district-2 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009

Boutique vendor market, indoor, subject to section 98-1006

~~Caretaker or guard residence (mobile home), subject to section 98-975~~

Extended stay hotel, subject to section 98-1004

Food truck court, accessory subject to section 98-991

~~Recycling drop-off~~Recycling drop-off center, subject to section 98-990

Retail, general (outdoors)

~~Retail, single tenant~~Retail, large tenant (100,000 square feet or more), subject to section 98-1010

Sec. 98-724. - Temporary uses.

The following uses shall be permitted in the I-2 industrial district-2 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 19. - WR WATER RECREATION DISTRICT^[11]

Sec. 98-752. - Permitted uses.

The following uses shall be permitted in the WR water recreation district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Amusement and recreation (indoors), subject to section 98-973

Amusement and recreation (outdoors)

~~Church or rectory~~

Hotel or motel, subject to section 98-1003

~~Off-street parking, accessory~~

Religious Assembly/Institution or Rectory

Solar panel systems, subject to section 98-1002

Sec. 98-753. - Specific uses.

The following uses shall be permitted in the WR water recreation district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Amusement and recreation (indoors), subject to section 98-973~~

Extended stay hotel, subject to section 98-1004

~~Supermarket~~

Sec. 98-754. - Temporary uses.

The following uses shall be permitted in the WR water recreation district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 20. - REC RECREATIONAL DISTRICT^[12]

Sec. 98-782. - Permitted uses.

The following uses shall be permitted in the REC recreational district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Amusement and recreation (indoors), subject to section 98-973

Amusement and recreation (outdoors)

Boutique vendor market, indoor, subject to section 98-1006

Boutique vendor market, outdoor, subject to section 98-1006

Day camp for children

Dude ranch

Farmers' market, subject to section 98-980

Fire station

Food truck court, accessory, subject to section 98-991

~~Off-street parking, accessory~~

~~Private utility shop, yard or building~~

Railroad track

Swimming pool, commercial

Telephone equipment station

Sec. 98-783. - Specific uses.

The following uses shall be permitted in the REC recreational district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

~~Amusement and recreation (indoors), subject to section 98-973~~

~~Amusement and recreation (outdoors)~~

~~Dude ranch~~

Extended stay hotel, subject to section 98-1004

Hotel or motel, subject to section 98-1003

Private franchise utility (not listed)

~~Recreation Center~~

Sec. 98-784. - Temporary uses.

The following uses shall be permitted in the REC recreational district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 22. - CC CAMPUS COMMERCIAL DISTRICT^[14]

Sec. 98-842. - Permitted uses.

The following uses shall be permitted in the CC campus commercial district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Alcoholic beverage establishment, subject to section 98-1009

Food truck court, accessory, subject to section 98-991

Hotel or motel, subject to section 98-1003

Mailing and shipping service

~~Off-street parking, accessory~~

Office, medical and dental extended care

~~Retail, single tenant (less than 25,000 square feet)~~

Retail, large tenant (at least between 25,000 and 49,999 square feet), subject to section 98-1010

Retail, large tenant (at least between 50,000 and 74,999 square feet), subject to section 98-1010

Retail, large tenant (at least between 75,000 and 99,999 square feet), subject to section 98-1010

Retail, large tenant (100,000 square feet or more), subject to section 98-1010

Sec. 98-843. - Specific uses.

The following uses shall be permitted in the CC campus commercial district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009

Boutique vendor market, indoor, subject to section 98-1006

Boutique vendor market, outdoor, subject to section 98-1006

Extended stay hotel, subject to section 98-1004

~~Recycling drop-off~~ Recycling drop-off center, subject to section 98-990

Restaurant, fast food

~~Retail, single tenant~~ Retail, large tenant (at least between 25,000 square feet, but less than and 50,000 49,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at least between 50,000 square feet, but less than and 75,000 4,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at least between 75,000 square feet, but less than and 100,000 99,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (100,000 square feet or more), subject to section 98-1010

Secondhand store

Sec. 98-844. - Temporary uses.

The following uses shall be permitted in the CC campus commercial district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 23. - CI CAMPUS INDUSTRIAL DISTRICT^[15]

Sec. 98-872. - Permitted uses.

The following uses shall be permitted in the CI campus industrial district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses

Hotel or motel, subject to section 98-100

Mailing and shipping service

~~Off-street parking, accessory~~

Office, medical and dental extended care

~~Recreation Center~~

~~Retail, single tenant (less than 25,000 square feet)~~

~~Retail, single tenant~~Retail, large tenant (at least between 25,000 square feet but less than and 50,000 49,999 square feet), subject to section 98-1010

~~Retail, single tenant~~Retail, large tenant (at least between 50,000 square feet but less than and 75,000 4,999 square feet), subject to section 98-1010

Retail, large tenant (at least between 75,000 and 99,999 square feet), subject to section 98-1010

Retail, large tenant (100,000 square feet or more), subject to section 98-1010

Sec. 98-873. - Specific uses.

The following uses shall be permitted in the CI campus industrial district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009

Boutique vendor market, indoor, subject to section 98-1006

Extended stay hotel, subject to section 98-1004

Private ~~utility~~ shop, yard or building

Recycling drop-off center, subject to section 98-990

~~Retail, single tenant~~Retail, large tenant (at least between 75,000 square feet, but less than and 100,000 99,999 square feet), subject to section 98-1010

~~Retail, single tenant~~ Retail, large tenant (over 100,000 square feet or more), subject to section 98-1010

Sec. 98-874. - Temporary uses.

The following uses shall be permitted in the CI campus industrial district only upon approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of this Code, temporary use permits:

Government office/classroom, temporary, subject to section 98-1005

DIVISION 2. - USES

Subdivision II. - Regulations

Sec. 98-952. - Use classification.

- (c) *Schedule of use regulations.* The following use regulations schedule summarizes the use regulations of the districts. In the event of any conflict between the use regulations schedule and the text of the zoning district regulations, the text shall control. Uses that were established prior to the adoption of this chapter or its predecessors, but that are now inconsistent with the requirements of this chapter, shall be permitted if such uses meet the requirements of article V, chapter 78 of this Code, nonconformities, for a valid nonconforming use. The use regulations schedule shall be interpreted as follows:

- (6) *Circumstantial Specific Uses.* Uses identified in a particular district column with a "P/S" shall require a Specific Use Permit in accordance with the procedures and standards of the relevant section from Subdivision III. – Special Use Conditions.

SCHEDULE OF USE REGULATIONS

Use Type/Section	98-271	98-301	98-431	98-331	98-361	98-391	98-421	98-451	98-481	98-511	98-541	98-571	98-601	98-631	98-661	98-841	98-871	98-691	98-721	98-751	98-781	98-811	98-890
Residential Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Dwelling, mobile home (98-987)										P												P	*
Mobile home park (98-987)										P												P	*
Small wind energy system (lots 5 acres or more) (98-1001)	P																					P	*
Small wind energy System (lots less than 5 acres) (98-1001)	S																					S	*
Solar panel systems (98-1002)	P	P	P	P	P	P	P													P		P	*

Accessory and Temporary Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Accessory retail/service uses											P	P	P	P	P	P	P	P	P			P	*
Animal exhibition	S																					S	*
Aviary	S																						*
Building material yard and construction office											T	T	T	T	T	T	T	T	T			T	*
Caretaker or guard residence (mobile home) (98-975)															S			S	S				*
Food truck court, accessory (98-991)	P										S	S	P	P	P	P	S	S	S		P	P	*
Government office/classroom, temporary (98-1005)	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	*
Off-street parking, accessory	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*
Recreation Center											S	S	S				P				P	P	*
Educational, Institutional and Civic Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Animal control facility	S												S	P	P			P				P	*
Church or rectory	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	P	P		P	*
College university	P	S	PS	S	S	S	S	S	S	S	P			P	P	P	P	P	P			P	*
Fire station	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*
Hospital	S	S		S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	P	*
Nursing or congregate care facility	S	S							S		S			S	S			S		P		P	*
Office, medical and dental											P	P	P	P	P	P						P	*
Office, medical and dental extended care											S	S	S	P	P	P	P					P	*

Religious assembly/institution or rectory	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			P	P	P		P	*
Utility and Public Services Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Private franchise utility (not listed)	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	*
Private utility shop, yard or building Private shop, yard or building	S																S	S	P		P	P	*
Telephone equipment station	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*
Transportation-Related Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	*
Railroad Track	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*
Retail Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	*
Alcoholic beverage establishment (98-1009)												P/ S	P/ S	P/ S	P/ S	P/ S	S	S	S			P/ S	*
Boutique vendor market, indoor (98-1006)												P	P	P	P	S	S	S	S		P	P	*
Boutique vendor market, outdoor (98-1006)	S											S	S	S	P	S					P	P	*
Convenience store with beer/wine sales																							*
Farmer's market Farmers' market (98-980)	S																				P	P	*
Fruit and vegetable stand (98-981)	P																					P	*
Non-traditional smoking related business (98-1008)														S	S							P	*
Private club (98-989)																							*
Restaurant, drive-in														S	S			P					*

[illegible]

Extended stay hotel (98-1004)											S					S	S	S	S	S	S	S	P	*
Hotel or motel (98-1003)											S					P	P	P	P	P	P	S	P	*
Mailing and shipping service											P	P	P	P	P	P	P	P	P				P	*
Office, medical and dental											P	P	P	P	P	P							P	*
Sexually oriented business (98-994)																		S	S				S	*
Studio, television or radio											S			S	S	P	P	S	S				S	*
Veterinary hospital (inside pens) (98-998)	S										S	S	S	P	P			P	P				P	*
Veterinary hospital (outside pens) (98-999)	S																	P	P				P	*
Wine retail establishment																							S	*
Recreational and Entertainment Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D	
Amusement and recreation (indoors) (98-973)	S										S	S	S	S	P	P	P	P		SP	SP	P	*	
Amusement and recreation (outdoors)	S													S	P	S	P	P		P	PS	P	*	
Day camp for children	P	S												S	S			S	S	P	P	P	*	
Drag strip or commercial racing																			S				S	*
Dude ranch	S																				SP	P	*	
Rodeo grounds	S																	S	S		S	S	*	
Shooting range, commercial																			S		S	S	*	
Swimming pool, commercial	S										P			P	P	P	P	P		S	P	P	*	

Theater, drive-in																		S	P		S	S	*
Automobile and Related Service Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Auto leasing or rental														PS	P			P				P	*
Auto painting or body shop																		P	P			P	*
Auto parts and accessory sales (outdoor display)																		P				P	*
Auto storage or auction																		P	P			P	*
Tire retreading or capping																		S	P			P	*
Wrecking or salvage yard																			S			S	*
Heavy Commercial Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Building material sales or storage (outdoors)																		S	P			S	*
Laboratory, manufacturing																		S	S			S	*
Miniwarehouse														S	S			S	P			P	*
Repair services, general																	S	S	P			S	*
Industrial Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Asphalt/concrete batching plant (permanent)																			S			S	*
Manufacturing, hazardous/objection able																			S			S	*
Agriculture and Extractive Uses	A	SF E	SF -5	SF3 0	SF1 5	SF1 0	SF A	2F	MF	M H	O	R1	R2	C1	C2	CC	CI	I1	I2	W R	RE C	PD	CB D
Livestock auction or feed lot	S																		S			S	*

Mining and quarrying	S																	S			S	*
Petroleum storage/collection facilities	S																	S		S	S	*

Sec. 98-980. - ~~Farmer's market~~ Farmers' market.

- (a) All ~~farmer's market~~ Farmers' markets shall be located in covered spaces providing shelter for vendors and customers and shall provide for adequate off-street parking. No more than ~~4920~~ percent of the display area shall be devoted to the sale of nonfood articles. All vendors shall abide by the provisions of applicable town ordinances and regulations and applicable state laws and regulations related to ~~farmer's market~~ Farmers' markets, including Texas Administrative Code, Title 25, Chapter 229, Subchapter FF.
- (b) A ~~farmer's market~~ Farmers' market may be permitted by the town to operate on any property owned by the town notwithstanding the district regulations applicable to said property.

Cross reference— Businesses, ch. 18.

Sec. 98-990. - Recycling drop-off center.

A recycling drop-off center ~~may~~ shall be permitted as an accessory use, ~~as allowed by Sec. 98-952(c) in shopping center parking lots or other appropriate places~~, subject to section 82-272 outdoor storage areas and the following conditions:

- (1) The use shall not occupy more than 500 square feet and shall not occupy any parking area required for the primary use.
- (2) The use shall employ no mechanical sorting or processing equipment.
- (3) The use shall be maintained free of litter, debris and residue on a daily basis.
- (4) Containers shall be durable and covered.
- (5) The name and phone number of a responsible party shall be clearly posted ~~on the collection bin on a sign no greater than 10 square feet in size~~.

Sec. 98-991. - Refreshment stand ~~or Food Truck Court, Accessory~~.

(a) *Generally.*

- (1) It shall be the responsibility of the applicant to comply with all provisions of this section.
- (2) All other applicable permits must be obtained.
- (3) Additional parking may be required as determined by the development review committee.
- (4) A refreshment stand or food truck court, accessory, and all appurtenances thereto, shall comply with all applicable requirements of the district in which it is located. Such facility shall not be required, however, to meet the landscaping, exterior masonry or underground utility requirements of the applicable zoning district.
- (5) A refreshment stand or food truck court, accessory, may be located on parking spaces, provided that such spaces are not necessary to meet the minimum parking requirements of the other uses on the lot or parcel.
- (6) A refreshment stand or food truck court, accessory, shall not be located within, nor encroach upon, a fire lane, maneuvering aisle, vehicle stacking space or required landscaping areas of the lot or

parcel upon which the facility is placed. The location of such facility shall comply with all visibility obstruction regulations of the town.

- (7) A site plan shall be submitted providing a well delineated "safety" area to keep vehicles from entry into the stand and table area; such site plan shall be reviewed and approved by the building official and the fire marshal.
- (8) A refreshment stand or food truck court, accessory, shall be located on an approved surface of either asphalt or concrete.
- (9) A refreshment stand or food truck court, accessory, shall meet all health requirements promulgated by the state department of health and set forth in article III of chapter 18 of this Code.

(b) *Refreshment stand.*

- (1) A temporary use permit for a refreshment stand may be issued by the building official, subject to compliance with ~~the following~~ conditions related to refreshment stands.
- (2) A portable building may be used on a temporary basis as a refreshment stand for a period not to exceed six months on the same lot or parcel within any consecutive 12-month period, measured from the date of the issuance of the temporary permit.
- (3) A deposit in a sum listed in appendix A of this Code shall be required at the time the temporary permit for the refreshment stand is obtained to ensure the removal of the stand if the use is discontinued and the stand is not removed from the site within ten days of the expiration or abandonment of the permit. Such deposit will be refunded once the stand has been removed, and all other requirements have been met.

~~(1)–~~

- ~~(1) A portable building may be used on a temporary basis as a refreshment stand for a period not to exceed six months on the same lot or parcel within any consecutive 12-month period, measured from the date of the issuance of the temporary permit.~~

~~(1) It shall be the responsibility of the applicant to comply with all provisions of this section.~~

- ~~(2) A deposit in a sum listed in appendix A of this Code shall be required at the time the temporary permit for the refreshment stand is obtained to ensure the removal of the stand if the use is discontinued and the stand is not removed from the site within ten days of the expiration or abandonment of the permit. Such deposit will be refunded once the stand has been removed, and all other requirements have been met.~~

~~(3) All other applicable permits must be obtained.~~

- ~~(4) A refreshment stand and all appurtenances thereto, shall comply with all applicable requirements of the district in which it is located. Such facility shall not be required, however, to meet the landscaping, exterior masonry or underground utility requirements of the applicable zoning district.~~

~~(5) A refreshment stand may be located on parking spaces, provided that such spaces are not necessary to meet the minimum parking requirements of the other uses on the lot or parcel.~~

- ~~(6) A refreshment stand in a portable building shall not be located within, nor encroach upon, a fire lane, maneuvering aisle, vehicle stacking space or required landscaping areas of the lot or parcel upon which the facility is placed. The location of such facility shall comply with all visibility obstruction regulations of the town.~~

~~(7) A site plan shall be submitted providing a well delineated "safety" area to keep vehicles from entry into the stand and table area; such site plan shall be reviewed and approved by the building official and the fire marshal.~~

~~(8) AThe refreshment stand shall be located on an approved surface of either asphalt or concrete.~~

~~(9) AThe refreshment stand shall meet all health requirements promulgated by the state department of health and set forth in article III of chapter 18 of this Code.~~

Sec. 98-1006. – Boutique Vendor Market

- (1) It shall be the responsibility of the applicant to comply with all provisions of this section.
- (2) Land uses not permitted within the base zoning district or planned development may not operate as a vendor within the market.
- (3) All outdoor boutique vendor markets shall provide a permanent covered structure for seventy (70) percent of the maximum number of vendors to be expected.
- (4) All other applicable permits must be obtained.

Sec. 98-1007. – Alternative Financial Establishment

- (1) Alternative Financial Establishments meeting the definition of a “Credit Access Business,” as defined by the V.T.C.A., Finance Code § 393.601, shall be required to meet Chapter 18, Article XI – Credit Access Business of the Town of Flower Mound Code of Ordinances, as amended.

98-1008. – Non-Traditional Smoking Related Business

The sale of devices commonly related with “Smoke, Smokes, Smoking,” as defined in Section 18-530 of the Town’s Code of Ordinances, within 300 feet of a public school is hereby prohibited. The measurement of distance between the place of business where such devices are sold and the public school shall be:

- (1) In a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections; or
- (2) If the place of business is located on or above the fifth story of a multistory building, in a direct line from the property line of the public school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which such devices are sold from.

98-1009. - Alcoholic Beverage Establishment

- (1) If such establishment includes a production area occupying more than 6,000 square feet for the processing and production of beverages, including canning, bottling and packaging for sale and/or distribution to retailers, drinking establishments, restaurants, or wholesalers, a Specific Use Permit shall be required as noted in Sec. 98-952(c).

98-1010. - Retail, Large Tenant

- (1) A Specific Use Permit shall be required, as noted in Sec. 98-952(c), for new construction.
- (2) A Specific Use Permit shall be required, as noted in Sec. 98-952(c), for remodeling and/or expanding a tenant space where the total square footage established would require a Specific Use Permit as new construction.-

Secs. 98-1011~~106~~—98-1020. - Reserved.

Sec. 98-1032. - Accessory buildings.

(a) *Generally.* Attached accessory buildings shall conform to the regulations applicable to the main building to which they are attached.

- (1) *Number; area.* Except in A agricultural zoning districts, no more than two accessory buildings may be placed on any residential lot. The combined floor area of all accessory buildings shall not exceed 750 square feet or 25 percent of the floor area of the primary structure, whichever is less, except for SF-E single-family estate zoning districts, in which the combined floor area of all accessory buildings shall not exceed 1,500 square feet. In no case shall the combined area of the primary structure and accessory buildings exceed the maximum percentage of lot coverage allowed for the zoning district in which the structures are located. Accessory dwellings are not subject to these regulations and shall be governed by other provisions of this chapter.
- (2) *Barns ~~and~~, stables, and riding arenas.* In SF-E single-family estate and A agricultural zoning districts, barns and/or stables directly associated with the support of a bona fide agricultural use of the property, ~~and/or riding arenas~~, shall be limited in area to that allowed by the building code for their use and construction type, but in no case shall the combined floor area of the primary use and all accessory buildings exceed the maximum percentage of lot coverage allowed for in an A or SF-E zoning district. In SF-E and A zoning districts, barns, ~~and/or~~ stables, ~~and/or riding arenas~~ shall be limited to a height of not more than twenty feet to the top of the roof. Such barns, ~~and/or~~ stables, ~~and/or riding arenas~~ shall not be located within 50 feet of any property line. ~~Riding or rodeo arenas, whether enclosed, partially enclosed, or open air, shall require a specific use permit as provided in subsection 98-952(c), schedule of use regulations.~~
- (3) *Location.* Accessory buildings must be located at least five feet from any other building or structure on the property.
- (4) *Walls abutting property line.* When accessory buildings are constructed less than five feet from any property line, no windows, doors or other penetrations of the exterior wall shall be allowed in the wall abutting that property line.

TOWN OF FLOWER MOUND, TEXAS
ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 82, "DEVELOPMENT STANDARDS," AND CHAPTER 98, "ZONING," OF THE TOWN'S CODE OF ORDINANCES, TO AMEND REGULATED USES AND ASSOCIATED DEVELOPMENT STANDARDS; 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 82, "Development Standards," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended, establishing appropriate standards for the development of land within the Town; and,

WHEREAS, the Town Council of the Town of Flower Mound previously adopted Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended, establishing zoning districts and uses allowed within said districts within the Town; and,

WHEREAS, the Town Council finds and determines the Town's regulated uses and associated development standards should be updated to reflect current planning practices and uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on February 22, 2021, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on April 5, 2021, 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 82 and 98 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;

ORDINANCE NO. _____

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

SECTION 1

Section 82-73, "Computing parking and loading requirements," of Article III, "Off-Street Parking and Loading," of Chapter 82, "Development Standards," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by revising subsection (1) and adding a new subsection (9) to read as follows:

- (1) *Deviation of required spaces.* The amount of parking can be reduced or increased by 20 percent. Deviations for all uses, excluding "Religious Assembly/Institution or Rectory," in excess of 20 percent must be accompanied by a parking study and approved by the town council. Deviations for "Religious Assembly/Institution or Rectory" increasing required spaces in excess of 30 percent, or reducing required spaces in excess of 20 percent, must be accompanied by a parking study and approved by the town council. Any approved parking in excess of 20 percent must be mitigated. Mitigation can be achieved by the use of pervious paving, increased landscaping, increased stormwater treatment, or other method to reduce the impact of the increased parking.

- (9) *Square feet.* For the purposes of Sec. 82-74, square feet includes all interior square footage not expressly intended for other purposes and all exterior square footage considered programmable open space. For the purpose of this provision, programmable open space shall mean areas that may be reconfigured for the occupation and/or use of patrons and/or employees, such as patio seating."

SECTION 2

Section 82-74, "Off-street parking and loading space requirements," of Article III, "Off-Street Parking and Loading," of Chapter 82, "Development Standards," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to rename "Educational, institutional and special uses" to "Educational, institutional, and civic uses," "Church or rectory" to "Religious assembly/institution or rectory," "Miniwarehouse" to "Mini-warehouse," and "Medical office" to "Office, medical and dental;" to update parking for the following use types: "Office, medical and dental" and "Restaurant;" and to establish new use types and parking for "Alcoholic beverage establishment" and "Assembly hall," to be inserted alphabetically to read as follows:

ORDINANCE NO. _____

“Sec. 82-74. - Off-street parking and loading space requirements.

The following are the off-street parking and loading space requirements:

SCHEDULE OF PARKING AND LOADING REQUIREMENTS

Use Type	Parking

<i>Educational, institutional, and civic uses</i>	
Religious assembly/institution or rectory	1 space per 3 seats in main sanctuary

Office, medical and dental	1 space per 200 square feet

<i>Retail uses</i>	
Alcoholic beverage establishment	5 spaces plus 1 space per 1,000 square feet of production area, and 1 space per 75 square feet of remaining square feet (if providing seating)
Restaurant	1 space per 75 square feet (if providing seating)

<i>Personal service uses</i>	
Assembly hall	1 space per 3 seats

Office, general business and professional	1 space per 250 square feet

Mini-warehouse	1 space per 75 storage bays with minimum of 3 spaces

***”

SECTION 3

Section 82-75, “Off-site parking,” of Article III, “Off-Street Parking and Loading,” of Chapter 82, “Development Standards,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by revising subsection (2) to read as follows:

- (2) *Irrevocable Consent Agreement Form.* For any proposed off-site parking, an “off-site shared parking irrevocable consent form” provided by the Town, shall be executed and delivered to the Town of Flower Mound to ensure all required off-street parking spaces shall remain available throughout the life of the principal use(s).”

SECTION 4

Section 98-2, “Definitions,” of Article I, “In General,” of Chapter 98, “Zoning,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to create the following new definitions to be inserted alphabetically to read as follows:

Alcoholic beverage establishment means any establishment primarily engaged in the selling and/or processing and production of alcoholic beverages, as defined within the Texas Alcoholic Beverage Code, as amended, to the general public. Such establishments are limited to the functions allowed by their Texas Alcoholic Beverage Commission permit and the Town’s local option status. Examples of uses include brewery, distillery, winery, and wine and/or beer retail establishments.

Alternative financial establishment means an establishment, other than a “Bank or savings and loan,” engaged in loaning money in exchange for personal checks and/or collateral to consumers. Typical uses include, but are not limited to, credit access businesses, check cashing business, payday advance or loan business, money transfer business, pawn shop, or car title loan business.

Birthing center means a facility or place where a woman is scheduled to give birth following a normal, uncomplicated (low-risk) pregnancy. This term does not include hospital, ambulatory surgical center, a nursing home, or the residence of a woman giving birth. Source: Birth Center Licensing Division, Texas Department of Health.

Boutique vendor market means an establishment providing facilities for more than one vendor, primarily for the distribution and sale of food and unique nonfood articles, including custom, high quality merchandise, which may be upcycled or repurposed, directly to consumers. Such establishments shall not be deemed to include a secondhand store or pawn shop.

Food truck court, accessory, means onsite accommodations for one (1) Mobile Food Establishment providing food and beverage sales designed and arranged to serve the customers of the primary use.

Mailing and shipping service means an establishment that conducts the retail sale of stationary products, as well as providing packaging, photocopying, printing, and mail services (both U.S. Postal and private postal services). Such establishments do not include freight transportation service or warehousing and wholesale.

Office, medical and dental extended care, means a facility or place where inpatient care is provided to individuals without the need for intensive care units or surgeons, and may be open between the hours of 10:00 PM and 7:00 AM, including operations open 24 hours. This term includes, but is not limited to, birthing centers, urgent cares, and dialysis centers.

Pawn shop means an establishment where money is loaned on the security of personal property pledged in the keeping of the persons engaged in the business (pawnbroker), and goods may be purchased by the pawnbroker on condition that the goods may be redeemed or repurchased by the seller for a fixed price within a fixed period (Per Texas Finance Code), and that have been licensed to transact business by the Consumer Credit Consumer under Chapter 371, Texas Finance Code (per Texas Local Government Code). Such establishments may also engage in the retail sale of primarily used merchandise.

Private shop, yard or building, means facilities that include offices, maintenance yards, and/or storage needed for development of private construction. Such establishments are not engaged in the direct sale of materials to consumers and may include, but are not limited to, construction and trade contractors' storage yards and offices.

Religious assembly/institution or rectory means a use customarily associated with a building where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, including the on-site housing of ministers, rabbis, priests, nuns, and similar staff personnel, is maintained and controlled by a religious body organized to sustain public worship.

Riding arena means an accessory structure located on a residentially-zoned property containing an arena or track designed and used exclusively for the riding, exercising, or training of livestock, as defined by Section 6-1 of Chapter 6, "Animals," of the Town of Flower Mound Code of Ordinances. Riding arenas used for business purposes shall be subject to comply with Section 98-984 – Home Occupation of the Town of Flower Mound Code of Ordinances, and shall not be used for events open to the general public.

Rodeo grounds means a commercial structure that is open to the public and contains an arena or track designed and used for the riding, training, or showing of livestock, as defined by Section 6-1 of the Town of Flower Mound Code of Ordinances.

Smoking related business means any establishment whose principal business is the offering of a service relating to, or the selling of, or renting of products or devices defined within Section 18-530 of Article X, "Regulation of smoking in public places," of the Town of Flower Mound Code of Ordinances.

***"

SECTION 5

Section 98-2, "Definitions," of Article I, "In General," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to rename "Building materials sales or storage (outdoors)" to "Building materials sales and storage (outdoors)," "Farmer's market" to "Farmers' market," "Miniwarehouse" to "Mini-warehouse," "Office, medical or dental" to "Office, medical and dental," "Retail, single tenant" to "Retail, large tenant," and "Wine retail establishment" to "Wine and/or beer retail establishment," and to update the following definitions to read as follows:

Accessory retail and service uses means retail or service uses, such as pharmacy, newsstand, dining room, and barber or beauty shop, located within an office, apartment, or similar building where such retail and/or service use is designed and arranged to serve the customers of the primary use.

Amusement and recreation (indoors) means an enterprise wholly enclosed in a building offering entertainment or games of skill to the general public for a fee or charge or to members and guests of a private association. Typical uses include, but are not limited to, dancehalls, theatrical productions, bowling alleys, billiard and pool establishments, electronic video game arcades, skating rinks, teen clubs, escape rooms, laser tag arenas, and inflatable bounce house parks.

Animal exhibition means a collection of animals for display to the public, including an aviary. An animal exhibition shall not include the sale, breeding, or butchering of animals. Any animals classified as wild animals, defined in this section, shall be subject to all federal, state, and local licensing requirements.

Building materials sales and storage (outdoors) means an establishment engaged in the retail or wholesale sale of materials used in the construction of buildings or other structures, as well as the storage of construction equipment or materials on lots other than construction sites, wherein any sales, display, or storage activity occurs outside of a fully enclosed building. Typical uses include, but are not limited to, lumberyards, brick and masonry supply yards, and swimming pool and spa sales.

Custom personal service means barber shop, beauty shop, tailor, dressmaker, shoe shop, micro-blading/makeup tattoo salon, or similar shop offering custom service.

Electrical energy generating plant means an electrical power generating plant belonging to a privately owned utility company franchised to serve the town or its portion, where energy is generated by either renewable and/or nonrenewable resources.

Farmers' market means a designated location used primarily for the distribution and sale directly to consumers of food by farmers and other producers.

Mini-warehouse means an enclosed storage facility of a commercial nature containing independent, fully enclosed bays that are leased to persons exclusively for dead storage of their household goods or personal property.

Office, medical and dental, means an office or group of offices for one or more physicians, surgeons, dentists, or other health care professionals to treat sick or injured patients who do not remain overnight and is open between the hours of 7:00 AM and 10:00 PM.

Recycling drop-off center means a small collection facility where presorted, nonbiodegradable and nonhazardous recyclable materials are accepted from the public. Typical uses include, but are not limited to, neighborhood recycling stations and thrift or charitable store collection trucks.

Restaurant, fast food, means an establishment with a drive-through window and/or drive-in service, where the principal business is the sale of food and beverages in a ready-to-consume state. In no scenario shall this definition determine how impact fees are assessed and applied.

Restaurant, general, means an establishment where the principal business is the sale of food and beverages in a ready-to-consume state, and where a drive-through window and/or drive-in service is not provided. In no scenario shall this definition determine how impact fees are assessed and applied.

Retail, general (indoors), means a retail establishment occupying less than 25,000 square feet of floor area that does not fit the definition of any other land use classification and that does not entail any outdoors sales, service, display, storage, or other activity. Typical uses include, but are not limited to, supermarkets, apparel and accessory stores, camera and photographic supply stores, clothing rental stores, consumer electronics stores, gift, novelty and souvenir shops, luggage and leather goods stores, jewelry stores, music stores, and rental stores.

Retail, large tenant, means a retail establishment, not otherwise defined, occupying 25,000 square feet or more of floor area in an enclosed building, which may also include accessory retail/service uses. Typical large tenant retail uses include, but are not limited to, supermarkets, department stores, home improvement centers, and discount centers.

Secondhand store means an establishment primarily engaged in the retail sale of previously owned merchandise. Any outdoor collection shall be considered a "Recycling drop-off center," and shall comply with all applicable standards.

Wine and/or beer retail establishment means any establishment which derives the majority of its gross revenue from the sale of wine and/or beer to the general public for off-premises personal or household consumption and rendering services incidental to the sale of such goods."

ORDINANCE NO. _____

SECTION 6

Section 98-2, "Definitions," of Article I, "In General," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to remove the following definitions, "Church or rectory," "Restaurant, drive-in," and "Supermarket."

SECTION 7

Article I, "In General," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by creating Section 98-3, "Undefined and unlisted uses," to read as follows:

"Sec. 98-3. – Undefined and unlisted uses.

Undefined and unlisted uses. The definition of any word or phrase not listed in this code that is in question shall be interpreted by the development review committee from one of the following sources for the purpose of determining if the use is regulated by this code or not. The priority shall be given to sources based on their numeric order below. If the use is determined to not be permitted by this code, it shall only be permitted through the approval of a Planned Development district that specifically defines and allows the proposed use at the designated location.

- (1) Any Town resolution, ordinance, code, or regulation;
- (2) Any statute or regulation of the state of Texas;
- (3) Legal definitions from Texas common law or a law dictionary;
- (4) A common dictionary.

Secs. 98-4 – 98-30. - Reserved."**SECTION 8**

Portions of Article III, "District regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended by replacing certain sections within Article III to read as follows:

"Sec. 98-272. – Permitted uses.

The following uses shall be permitted in the A agricultural district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
College or university
Community center, public

ORDINANCE NO. _____

Convent or monastery
Country club, private, subject to section 98-978
Crop agriculture
Day camp for children
Day care home
Dwelling, single-family detached
Fire station
Food truck court, accessory, subject to section 98-991
Fruit and vegetable stand, subject to section 98-981
Garage sale, subject to section 98-982
Golf course, public
Greenhouse, wholesale
Home occupation, subject to section 98-984
Keeping of livestock or poultry, subject to section 98-985
Local utility line
Model home, subject to section 98-1000
Park or playground, public
Public building, shop or yard
Railroad track
Recreation center, public
Religious assembly/institution or rectory
School, elementary or secondary
Sewage pump station
Small wind energy system (lots 5 acres or more), subject to section 98-1001
Solar panel systems, subject to section 98-1002
Stadium or playfield, public
Swimming pool, private, subject to section 98-996
Swimming pool, public
Telephone equipment station
Water well, storage or pump station

Sec. 98-273. – Specific uses.

The following uses shall be permitted in the A agricultural district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186 of this Code, specific use permits:

Accessory dwelling, subject to section 98-983
Airport or landing field
Amusement and recreation (indoors), subject to section 98-973
Amusement and recreation (outdoors)
Animal control facility
Animal exhibition
Boat storage and service
Boutique vendor market, outdoor, subject to section 98-1006

ORDINANCE NO. _____

Caretaker or guard residence, subject to section 98-975
 Cemetery or mausoleum
 Communication tower, commercial, subject to section 98-977
 Day care center
 Dude ranch
 Dump or sanitary landfill area
 Electrical energy generating plant
 Electrical line/substation, high voltage, subject to section 98-979
 Exhibition area or fairgrounds
 Farmers' market, subject to section 98-980
 Fraternal club or lodge
 Golf course, private
 Heliport
 Helistop
 Hospital
 Institution, drug or psychiatric treatment
 Kennel (In enclosed building only), subject to section 98-986
 Kennel (with outside runs or pens), subject to section 98-986
 Livestock auction or feed lot
 Marina
 Mining and quarrying
 Museum, library or art gallery, public
 Petroleum storage/collection facilities
 Private franchise utility (not listed)
 Private shop, yard or building
 Railroad team track
 Rodeo grounds
 School, commercial trade
 Sewage treatment plant
 Small wind energy System (lots less than 5 acres), subject to section 98-1001
 Stable, commercial boarding or rental, subject to section 98-995
 Swimming pool, commercial (outdoors)
 Transmission pipeline, subject to section 98-997
 Veterinary hospital (inside pens), subject to section 98-998
 Veterinary hospital (outside pens), subject to section 98-999

Sec. 98-274. – Temporary uses.

The following uses shall be permitted in the A agricultural district only upon approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Carnival or circus, temporary, subject to section 98-976
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005

ORDINANCE NO. _____

Sales trailer, temporary, subject to section 98-993
 Sales, temporary or seasonal, subject to section 98-992
 Temporary special event, subject to section 98-976

Sec. 98-275. – Maximum dimensions.

- (a) *Maximum lot coverage.* The maximum lot coverage in the A agricultural district shall be 25 percent for all uses, subject to section 98-1029.
- (b) *Maximum floor area ratio.* There shall be no maximum floor area requirement in the A agricultural district.
- (c) *Maximum height.* The maximum height of the buildings and the structures in the A agricultural district shall be three stories or 35 feet for all uses, subject to section 98-1031.

Sec. 98-302. – Permitted uses.

The following uses shall be permitted in the SF-E, single-family estate district, subject to compliance with any applicable conditions and all other provisions of this chapter.

Accessory use, general, subject to section 98-972
 Community center, public
 Convent or monastery
 Country club, private, subject to section 98-978
 Crop agriculture
 Day care home
 Dwelling, single-family detached
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Home occupation, subject to section 98-984
 Keeping of livestock or poultry, subject to section 98-985
 Local utility line
 Model home, subject to section 98-1000
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Solar panel systems, subject to section 98-1002
 Swimming pool, private, subject to section 98-996

ORDINANCE NO. _____

Swimming pool, public
Telephone equipment station
Water well, storage or pump station

Sec. 98-303. – Specific uses.

The following uses shall be permitted in the SF-E, single-family estate district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits.

Accessory dwelling, subject to section 98-983
Cemetery or mausoleum
College or university
Communication tower, commercial, subject to section 98-977
Day camp for children
Day care center
Electrical line/substation, high voltage, subject to section 98-979
Hospital
Museum, library or art gallery, public
Private franchise utility (not listed)
Stadium or playfield, public
Transmission pipeline, subject to section 98-997

Sec. 98-304. - Temporary uses.

The following uses shall be permitted in the SF-E, Single-family Estate District only upon approval of a temporary use permit in accordance with the procedures and standards of Section 6.14, Temporary use permits.

Asphalt/concrete batch plant, temporary, subject to section 98-974
Field office, temporary
Government office/classroom, temporary, subject to section 98-1005
Sales trailer, temporary, subject to section 98-993
Temporary special event, subject to section 98-976

Sec. 98-332. - Permitted uses.

The following uses shall be permitted in the SF-30 single-family district-30, subject to compliance with any applicable conditions and all other provisions of this chapter.

Accessory use, general, subject to section 98-972
Community center, public
Day care home
Dwelling, single-family detached
Fire station
Garage sale, subject to section 98-982

ORDINANCE NO. _____

Golf course, public
 Home occupation, subject to section 98-984
 Local utility line
 Model home, subject to section 98-1000
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Solar panel systems, subject to section 98-1002
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station
 Water well, storage or pump station

Sec. 98-334. - Temporary uses.

The following uses shall be permitted in the SF-30 single-family district-30 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-362. - Permitted uses.

The following uses shall be permitted in the SF-15 single-family district-15, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Community center, public
 Day care home
 Dwelling, single-family detached
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Home occupation, subject to section 98-984
 Local utility line
 Model home, subject to section 98-1000

ORDINANCE NO. _____

Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Solar panel systems, subject to section 98-1002
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station
 Water well, storage or pump station

Sec. 98-364. - Temporary uses.

The following uses shall be permitted in the SF-15 single-family district-15 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-392. - Permitted uses.

The following uses shall be permitted in the SF-10 single-family district-10, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Community center, public
 Day care home
 Dwelling, single-family detached
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Home occupation, subject to section 98-984
 Local utility line
 Model home, subject to section 98-1000
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public

ORDINANCE NO. _____

Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Solar panel systems, subject to section 98-1002
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station
 Water well, storage or pump station

Sec. 98-394. - Temporary uses.

The following uses shall be permitted in the SF-10 single-family district-10 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-422. - Permitted uses.

The following uses shall be permitted in the SF-A single-family attached district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Community center, public
 Convent or monastery
 Day care home
 Dwelling, single-family attached
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Local utility line
 Model home, subject to section 98-1000
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station

ORDINANCE NO. _____

Solar panel systems, subject to section 98-1002
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station
 Water well, storage or pump station

Sec. 98-424. - Temporary uses.

The following uses shall be permitted in the SF-A single-family attached district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-432. - Permitted uses.

The following uses shall be permitted in the SF-5 single family district-5, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Community center, public
 Day care home
 Dwelling, single-family detached
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Home occupation, subject to section 98-984
 Local utility line
 Model home, subject to section 98-1000
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Solar panel systems, subject to section 98-1002
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station

ORDINANCE NO. _____

Water well, storage or pump station

Sec. 98-433. - Specific uses.

The following uses shall be permitted in the SF-5 single family district-5 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

- Cemetery or mausoleum
- College or university
- Communication tower, commercial, subject to section 98-977
- Convent or monastery
- Country club, private, subject to section 98-978
- Day care center
- Electrical line/substation, high voltage, subject to section 98-979
- Museum, library or art gallery, public
- Private franchise utility (not listed)
- Stadium or playfield, public
- Transmission pipeline, subject to section 98-997

Sec. 98-434. - Temporary uses.

The following uses shall be permitted in the SF-5 single family district-5 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

- Asphalt/concrete batch plant, temporary, subject to section 98-974
- Field office, temporary
- Government office/classroom, temporary, subject to section 98-1005
- Sales trailer, temporary, subject to section 98-993
- Temporary special event, subject to section 98-976

Sec. 98-452. - Permitted uses.

The following uses shall be permitted in the 2F duplex district, subject to compliance with any applicable conditions and all other provisions of this chapter:

- Accessory use, general, subject to section 98-972
- Community center, public
- Convent or monastery
- Day care home
- Dwelling, duplex
- Fire station
- Garage sale, subject to section 98-982
- Golf course, public

ORDINANCE NO. _____

Local utility line
 Model home, subject to section 98-1000
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station
 Water well, storage or pump station

Sec. 98-454. – Temporary uses.

The following uses shall be permitted in the 2F duplex district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-482. - Permitted uses.

The following uses shall be permitted in the MF multifamily district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Boardinghouse or rooming house
 Community center, public
 Convent or monastery
 Day care home
 Dwelling, multifamily
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Local utility line
 Park or playground, public
 Public building, shop or yard
 Railroad track

ORDINANCE NO. _____

Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Swimming pool, private, subject to section 98-996
 Swimming pool, public
 Telephone equipment station
 Water well, storage or pump station

Sec. 98-484. - Temporary uses.

The following uses shall be permitted in the MF multifamily district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-512. - Permitted uses.

The following uses shall be permitted in the MH mobile home district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Community center, public
 Convent or monastery
 Day care home
 Dwelling, mobile home, subject to section 98-987
 Fire station
 Garage sale, subject to section 98-982
 Golf course, public
 Local utility line
 Mobile home park, subject to section 98-987
 Park or playground, public
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Religious assembly/institution or rectory
 School, elementary or secondary
 Sewage pump station
 Swimming pool, private, subject to section 98-996

ORDINANCE NO. _____

Swimming pool, public
Telephone equipment station
Water well, storage or pump station

Sec. 98-514. - Temporary uses.

The following uses shall be permitted in the MH mobile home district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
Field office, temporary
Government office/classroom, temporary, subject to section 98-1005
Sales trailer, temporary, subject to section 98-993
Temporary special event, subject to section 98-976

Sec. 98-542. - Permitted uses.

The following uses shall be permitted in the O office district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses
Accessory use, general, subject to section 98-972
Art supply store
Bank or savings and loan
Book or stationary store or newsstand
Cleaning/laundry pickup station only
College or university
Community center, public
Custom personal service
Fire station
Florist
Golf course, public
Local utility line
Mailing and shipping service
Office, general business and professional
Office, medical and dental
Optical sales
Park or playground, public
Parking lot, commercial
Personal improvement services
Public building, shop or yard
Railroad track
Religious assembly/institution or rectory

ORDINANCE NO. _____

Restaurant, general
School, business
School, elementary or secondary
Sewage pump station
Swimming pool, public
Telephone equipment station
Travel bureau or consultant

Sec. 98-543. - Specific uses.

The following uses shall be permitted in the O office district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Amusement and recreation (indoors), subject to section 98-973
Bus station or terminal
Cemetery or mausoleum
Cleaning/laundry shop with pickup station
Communication tower, commercial, subject to section 98-977
Dancing, drama, or music school or studio
Day care center
Drugstore or pharmacy
Electrical line/substation, high voltage, subject to section 98-979
Extended stay hotel, subject to section 98-1004
Food truck court, accessory, subject to section 98-991
Fraternal club or lodge
Health club or athletic club
Helistop
Hospital
Hotel or motel, subject to section 98-1003
Institution, drug or psychiatric treatment
Laboratory, medical and dental
Laboratory, scientific and research
Mortuary or funeral home
Museum, library or art gallery, public
Nursing or congregate care facility
Office, medical and dental extended care
Parking structure, commercial
Private franchise utility (not listed)
Studio, television or radio
Theater
Transmission pipeline (98-997)
Veterinary hospital (inside pens), subject to section 98-998
Water well, storage or pump station

ORDINANCE NO. _____

Sec. 98-544. - Temporary uses.

The following uses shall be permitted in the O office district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

- Asphalt/concrete batch plant, temporary, subject to section 98-974
- Building material yard and construction office
- Field office, temporary
- Government office/classroom, temporary, subject to section 98-1005
- Sales, temporary or seasonal, subject to section 98-992
- Temporary special event, subject to section 98-976

Sec. 98-572. - Permitted uses.

The following uses shall be permitted in the R-1 retail district-1, subject to compliance with any applicable conditions and all other provisions of this chapter:

- Accessory retail/service uses
- Accessory use, general, subject to section 98-972
- Alcoholic beverage establishment, subject to section 98-1009
- Antique shop
- Art gallery or handicraft sales
- Art supply store
- Bakery or confectionery shop, retail
- Bank or savings and loan
- Book or stationary store or newsstand
- Boutique vendor market, indoor, subject to section 98-1006
- Cleaning/laundry pickup station only
- Cleaning/laundry shop with pickup station
- Community center, public
- Custom personal service
- Dancing, drama, or music school or studio
- Drugstore or pharmacy
- Fire station
- Florist
- Laboratory, medical and dental
- Laundry, self-service
- Local utility line
- Mailing and shipping service
- Office, general business and professional
- Office, medical and dental
- Optical sales
- Park or playground, public
- Parking lot, commercial

ORDINANCE NO. _____

Personal improvement services
Public building, shop or yard
Railroad track
Religious assembly/institution or rectory
Restaurant, general
Retail general (indoors)
Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Sewage pump station
Swimming pool, public
Telephone equipment station
Travel bureau or consultant

Sec. 98-573. - Specific uses.

The following uses shall be permitted in the R-1 retail district-1 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
Amusement and recreation (indoors), subject to section 98-973
Assembly hall
Boutique vendor market, outdoor, subject to section 98-1006
Cemetery or mausoleum
Cleaning/laundry shop with onsite plant
Communication tower, commercial, subject to section 98-977
Day care center
Electrical line/substation, high voltage, subject to section 98-979
Food truck court, accessory, subject to section 98-991
Health club or athletic club
Hospital
Laboratory, scientific and research
Mortuary or funeral home
Museum, library or art gallery, public
Office, medical and dental extended care
Parking structure, commercial
Private franchise utility (not listed)
Restaurant, fast food
Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Secondhand store
Transmission pipeline, subject to section 98-997
Veterinary hospital (inside pens), subject to section 98-998
Water well, storage or pump station

ORDINANCE NO. _____

Sec. 98-574. - Temporary uses.

The following uses shall be permitted in the R-1 retail district-1 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

- Asphalt/concrete batch plant, temporary, subject to section 98-974
- Building material yard and construction office
- Carnival or circus, temporary, subject to section 98-976
- Field office, temporary
- Government office/classroom, temporary, subject to section 98-1005
- Refreshment stand, subject to section 98-991
- Sales, temporary or seasonal, subject to section 98-992
- Temporary special event, subject to section 98-976

Sec. 98-602. - Permitted uses.

The following uses shall be permitted in the R-2 retail district-2, subject to compliance with any applicable conditions and all other provisions of this chapter:

- Accessory retail/service uses
- Accessory use, general, subject to section 98-972
- Alcoholic beverage establishment, subject to section 98-1009
- Antique shop
- Art gallery or handicraft sales
- Art supply store
- Auto parts and accessory sales (indoors)
- Bait and sporting goods sales
- Bakery or confectionery shop, retail
- Bank or savings and loan
- Book or stationary store or newsstand
- Boutique vendor market, indoor, subject to section 98-1006
- Cleaning/laundry pickup station only
- Cleaning/laundry shop with pickup station
- Community center, public
- Convenience store
- Custom personal service
- Dancing, drama, or music school or studio
- Drugstore or pharmacy
- Fire station
- Florist
- Food truck court, accessory, subject to section 98-991
- Fraternal club or lodge
- Hardware store
- Health club or athletic club

ORDINANCE NO. _____

Laboratory, medical and dental
 Laboratory, scientific and research
 Laundry, self-service
 Local utility line
 Mailing and shipping service
 Mortuary or funeral home
 Office, general business and professional
 Office, medical and dental
 Optical sales
 Park or playground, public
 Parking lot, commercial
 Personal improvement services
 Pet store, subject to section 98-988
 Plant nursery or garden shop
 Public building, shop or yard
 Railroad track
 Religious assembly/institution or rectory
 Repair services, limited
 Restaurant, fast food
 Restaurant, general
 Retail general (indoors)
 Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
 Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
 Secondhand store
 Sewage pump station
 Telephone equipment station
 Theater
 Travel bureau or consultant

Sec. 98-603. - Specific uses.

The following uses shall be permitted in the R-2 retail district-2 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
 Amusement and recreation (indoors), subject to section 98-973
 Animal control facility
 Assembly hall
 Auto repair garage
 Boutique vendor market, outdoor, subject to section 98-1006
 Car wash, automatic
 Car wash, full service
 Car wash, self-service

ORDINANCE NO. _____

Cemetery or mausoleum
 Cleaning/laundry shop with onsite plant
 Communication tower, commercial, subject to section 98-977
 Convenience store with gasoline sales
 Day care center
 Electrical line/substation, high voltage, subject to section 98-979
 Hospital
 Kennel (In enclosed building only), subject to section 98-986
 Motor vehicle fuel service station
 Museum, library or art gallery, public
 Office, medical and dental extended care
 Parking structure, commercial
 Private franchise utility (not listed)
 Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
 Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
 Swimming pool, public
 Transmission pipeline, subject to section 98-997
 Veterinary hospital (inside pens), subject to section 98-998
 Water well, storage or pump station

Sec. 98-604. - Temporary uses.

The following uses shall be permitted in the R-2 retail district-2 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Building material yard and construction office
 Carnival or circus, temporary, subject to section 98-976
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Refreshment stand, subject to section 98-991
 Sales, temporary or seasonal, subject to section 98-992
 Temporary special event, subject to section 98-976

Sec. 98-632. - Permitted uses.

The following uses shall be permitted in the C-1 commercial district-1, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses
 Accessory use, general, subject to section 98-972
 Alcoholic beverage establishment, subject to section 98-1009

ORDINANCE NO. _____

Animal control facility
Antique shop
Art gallery or handicraft sales
Art supply store
Auto parts and accessory sales (indoors)
Bait and sporting goods sales
Bakery or confectionery shop, retail
Bank or savings and loan
Book or stationary store or newsstand
Boutique vendor market, indoor, subject to section 98-1006
Cabinet and upholstery shop
Cleaning/laundry pickup station only
Cleaning/laundry shop with onsite plant
Cleaning/laundry shop with pickup station
College or university
Community center, public
Convenience store
Custom personal service
Dancing, drama, or music school or studio
Drugstore or pharmacy
Fire station
Florist
Food truck court, accessory, subject to section 98-991
Fraternal club or lodge
Golf course, public
Hardware store
Health club or athletic club
Kennel (In enclosed building only), subject to section 98-986
Laboratory, medical and dental
Laboratory, scientific and research
Laundry, self-service
Lithographic or print shop
Local utility line
Mailing and shipping service
Mortuary or funeral home
Museum, library or art gallery, public
Office, general business and professional
Office, medical and dental
Office, medical and dental extended care
Optical sales
Park or playground, public
Parking lot, commercial
Parking structure, commercial
Personal improvement services
Pet store, subject to section 98-988
Plant nursery or garden shop

ORDINANCE NO. _____

Public building, shop or yard
Railroad track
Recreation center, public
Religious assembly/institution or rectory
Repair services, limited
Restaurant, fast food
Restaurant, general
Retail general (indoors)
Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
School, business
School, elementary or secondary
Secondhand store
Sewage pump station
Swimming pool, commercial (outdoors)
Swimming pool, public
Telephone equipment station
Theater
Travel bureau or consultant
Veterinary hospital (inside pens), subject to section 98-998

Sec. 98-633. - Specific uses.

The following uses shall be permitted in the C-1 commercial district-1 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
Amusement and recreation (indoors), subject to section 98-973
Amusement and recreation (outdoors)
Assembly hall
Auto leasing or rental
Auto repair garage
Boutique vendor market, outdoor, subject to section 98-1006
Car wash, automatic
Car wash, full service
Car wash, self-service
Cemetery or mausoleum
Communication tower, commercial, subject to section 98-977
Convenience store with gasoline sales
Day camp for children

ORDINANCE NO. _____

Day care center
Electrical energy generating plant
Electrical line/substation, high voltage, subject to section 98-979
Exhibition area or fairgrounds
Feed store
Hospital
Institution, drug or psychiatric treatment
Mini-warehouse
Motor vehicle fuel service station
Nursing or congregate care facility
Private franchise utility (not listed)
Recycling drop-off center, subject to section 98-990
Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
School, commercial trade
Smoking related business, subject to section 98-1008
Stadium or playfield, public
Studio, television or radio
Transmission pipeline, subject to section 98-997
Water well, storage or pump station

Sec. 98-634. - Temporary uses.

The following uses shall be permitted in the C-1 commercial district-1 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
Building material yard and construction office
Carnival or circus, temporary, subject to section 98-976
Field office, temporary
Government office/classroom, temporary, subject to section 98-1005
Refreshment stand, subject to section 98-991
Sales, temporary or seasonal, subject to section 98-992
Temporary special event, subject to section 98-976

Sec. 98-662. - Permitted uses.

The following uses shall be permitted in the C-2 commercial district-2, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses
Accessory use, general, subject to section 98-972
Alcoholic beverage establishment, subject to section 98-1009
Amusement and recreation (indoors), subject to section 98-973

ORDINANCE NO. _____

Amusement and recreation (outdoors)
Animal control facility
Antique shop
Art gallery or handicraft sales
Art supply store
Auto leasing or rental
Auto parts and accessory sales (indoors)
Auto repair garage
Bait and sporting goods sales
Bakery or confectionery shop, retail
Bakery or confectionery, wholesale
Bank or savings and loan
Book or stationary store or newsstand
Boutique vendor market, indoor, subject to section 98-1006
Boutique vendor market, outdoor, subject to section 98-1006
Building material sales or storage (indoors)
Bus station or terminal
Cabinet and upholstery shop
Car sales, new or used
Car wash, automatic
Car wash, full service
Cleaning, dyeing or laundry plant
Cleaning/laundry pickup station only
Cleaning/laundry shop with onsite plant
Cleaning/laundry shop with pickup station
College or university
Community center, public
Convenience store
Convent or monastery
Custom personal service
Dance hall
Dancing, drama, or music school or studio
Drugstore or pharmacy
Feed store
Fire station
Florist
Food processing
Food truck court, accessory, subject to section 98-991
Fraternal club or lodge
Golf course, public
Greenhouse, wholesale
Hardware store
Health club or athletic club
Hotel or motel, subject to section 98-1003
Kennel (In enclosed building only), subject to section 98-986
Laboratory, medical and dental

ORDINANCE NO. _____

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Laboratory, scientific and research
Laundry, self-service
Lithographic or print shop
Local utility line
Mailing and shipping service
Maintenance service
Mortuary or funeral home
Motor vehicle fuel service station
Museum, library or art gallery, public
Office, general business and professional
Office, medical and dental
Office, medical and dental extended care
Optical sales
Park or playground, public
Parking lot, commercial
Parking structure, commercial
Personal improvement services
Pet store, subject to section 98-988
Plant nursery or garden shop
Public building, shop or yard
Railroad track
Recreation center, public
Religious assembly/institution or rectory
Repair services, limited
Restaurant, fast food
Restaurant, general
Retail general (indoors)
Retail, large tenant (100,000 square feet or more), subject to section 98-1010
Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
School, business
School, elementary or secondary
Secondhand store
Sewage pump station
Swimming pool, commercial (outdoors)
Swimming pool, public
Telephone equipment station
Theater
Tool rental (domestic equipment)
Travel bureau or consultant
Vehicle and equipment sales or rental

ORDINANCE NO. _____

Veterinary hospital (inside pens), subject to section 98-998

Sec. 98-663. – Specific uses.

The following uses shall be permitted in the C-2 commercial district-2 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

- Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
- Assembly hall
- Car wash, self-service
- Caretaker or guard residence, subject to section 98-975
- Cemetery or mausoleum
- Communication tower, commercial, subject to section 98-977
- Convenience store with gasoline sales
- Day camp for children
- Day care center
- Electrical energy generating plant
- Electrical line/substation, high voltage, subject to section 98-979
- Exhibition area or fairgrounds
- Extended stay hotel, subject to section 98-1004
- Helistop
- Hospital
- Institution, drug or psychiatric treatment
- Mini-warehouse
- Nursing or congregate care facility
- Office—showroom/warehouse
- Private franchise utility (not listed)
- Recycling drop-off center, subject to section 98-990
- Retail, general (outdoors)
- Retail, large tenant (100,000 square feet or more), subject to section 98-1010
- School, commercial trade
- Smoking related business, subject to section 98-1008
- Stadium or playfield, public
- Studio, television or radio
- Transmission pipeline, subject to section 98-997
- Water well, storage or pump station

Sec. 98-664. – Temporary uses.

The following uses shall be permitted in the C-2 commercial district-2 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

ORDINANCE NO. _____

Asphalt/concrete batch plant, temporary, subject to section 98-974
Building material yard and construction office
Carnival or circus, temporary, subject to section 98-976
Field office, temporary
Government office/classroom, temporary, subject to section 98-1005
Refreshment stand, subject to section 98-991
Sales, temporary or seasonal, subject to section 98-992
Temporary special event, subject to section 98-976

Sec. 98-692. - Permitted uses.

The following uses shall be permitted in the I-1 industrial district-1, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses
Accessory use, general, subject to section 98-972
Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
Alternative financial establishment, subject to section 98-1007
Amusement and recreation (indoors), subject to section 98-973
Amusement and recreation (outdoors)
Animal control facility
Auto leasing or rental
Auto painting or body shop
Auto parts and accessory sales (indoors)
Auto parts and accessory sales (outdoor display)
Auto repair garage
Auto storage or auction
Bait and sporting goods sales
Bakery or confectionery, wholesale
Bank or savings and loan
Boat storage and service
Bottling works
Building material sales or storage (indoors)
Bus station or terminal
Cabinet and upholstery shop
Car sales, new or used
Car wash, automatic
Car wash, full service
Cleaning, dyeing or laundry plant
Cleaning/laundry pickup station only
Cleaning/laundry shop with onsite plant
College or university
Community center, public
Convent or monastery

Country club, private, subject to section 98-978
Dance hall
Feed store
Fire station
Florist
Food processing
Fraternal club or lodge
Golf course, public
Greenhouse, wholesale
Hardware store
Hospital
Hotel or motel, subject to section 98-1003
Kennel (In enclosed building only), subject to section 98-986
Kennel (with outside runs or pens), subject to section 98-986
Laboratory, medical and dental
Laboratory, scientific and research
Lithographic or print shop
Local utility line
Mailing and shipping service
Maintenance service
Manufacturing, light
Motor vehicle fuel service station
Museum, library or art gallery, public
Office, general business and professional
Office—showroom/warehouse
Park or playground, public
Parking lot, commercial
Parking structure, commercial
Personal improvement services
Plant nursery or garden shop
Public building, shop or yard
Railroad freight or passenger station
Railroad team track
Railroad track
Recreation center, public
Religious assembly/institution or rectory
Repair services, limited
Restaurant, fast food
Restaurant, general
Retail, large tenant (100,000 square feet or more), subject to section 98-1010
Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
Retail, large tenant (between 75,000 and 99,999 square feet), subject to

ORDINANCE NO. _____

section 98-1010
 School, business
 School, elementary or secondary
 Sewage pump station
 Swimming pool, commercial (outdoors)
 Swimming pool, public
 Telephone equipment station
 Theater
 Tool rental (domestic equipment)
 Vehicle and equipment sales or rental
 Veterinary hospital (inside pens), subject to section 98-998
 Veterinary hospital (outside pens), subject to section 98-999
 Warehousing and wholesale, general

Sec. 98-693. - Specific uses.

The following uses shall be permitted in the I-1 industrial district-1 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009
 Boutique vendor market, indoor, subject to section 98-1006
 Building material sales or storage (outdoors)
 Car wash, self-service
 Caretaker or guard residence, subject to section 98-975
 Cemetery or mausoleum
 Communication tower, commercial, subject to section 98-977
 Day camp for children
 Day care center
 Electrical energy generating plant
 Electrical line/substation, high voltage, subject to section 98-979
 Exhibition area or fairgrounds
 Extended stay hotel, subject to section 98-1004
 Food truck court, accessory, subject to section 98-991
 Golf course, private
 Heliport
 Helistop
 Institution, drug or psychiatric treatment
 Laboratory, manufacturing
 Marina
 Mini-warehouse
 Nursing or congregate care facility
 Parking lot, trucks or trailers (transport)
 Private franchise utility (not listed)
 Private shop, yard or building
 Recycling drop-off center, subject to section 98-990

ORDINANCE NO. _____

Repair services, general
 Retail, general (outdoors)
 Retail, large tenant (100,000 square feet or more), subject to section 98-1010
 Rodeo grounds
 School, commercial trade
 Sewage treatment plant
 Sexually oriented business, subject to section 98-994
 Stadium or playfield, public
 Studio, television or radio
 Theater, drive-in
 Tire retreading or capping
 Transmission pipeline, subject to section 98-997
 Water well, storage or pump station

Sec. 98-694. - Temporary uses.

The following uses shall be permitted in the I-1 industrial district-1 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Building material yard and construction office
 Carnival or circus, temporary, subject to section 98-976
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales, temporary or seasonal, subject to section 98-992
 Temporary special event, subject to section 98-976

Sec. 98-722. - Permitted uses.

The following uses shall be permitted in the I-2 industrial district-2, subject to compliance with any applicable conditions and all other provisions of this chapter:

Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
 Accessory retail/service uses
 Accessory use, general, subject to section 98-972
 Airport or landing field
 Animal control facility
 Auto painting or body shop
 Auto repair garage
 Auto storage or auction
 Bakery or confectionery, wholesale
 Boat storage and service
 Bottling works

ORDINANCE NO. _____

Building material sales or storage (indoors)
Building material sales or storage (outdoors)
Bus station or terminal
Cabinet and upholstery shop
Car wash, automatic
Car wash, full service
Cleaning/laundry pickup station only
Cleaning/laundry shop with onsite plant
College or university
Convent or monastery
Country club, private, subject to section 98-978
Exhibition area or fairgrounds
Feed store
Fire station
Florist
Food processing
Fraternal club or lodge
Golf course, public
Greenhouse, wholesale
Hospital
Hotel or motel, subject to section 98-1003
Kennel (In enclosed building only), subject to section 98-986
Kennel (with outside runs or pens), subject to section 98-986
Laboratory, medical and dental
Laboratory, scientific and research
Lithographic or print shop
Local utility line
Mailing and shipping service
Maintenance service
Manufacturing, general
Manufacturing, light
Mini-warehouse
Motor vehicle fuel service station
Office, general business and professional
Office—showroom/warehouse
Park or playground, public
Parking lot, commercial
Parking lot, trucks or trailers (transport)
Parking structure, commercial
Personal improvement services
Private shop, yard or building
Public building, shop or yard
Railroad freight or passenger station
Railroad team track
Railroad track
Religious assembly/institution or rectory

ORDINANCE NO. _____

Repair services, general
Restaurant, general
Retail, large tenant (100,000 square feet or more), subject to section 98-1010
Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
School, commercial trade
Sewage pump station
Sewage treatment plant
Stadium or playfield, public
Swimming pool, public
Telephone equipment station
Theater, drive-in
Tire retreading or capping
Vehicle and equipment sales or rental
Veterinary hospital (inside pens), subject to section 98-998
Veterinary hospital (outside pens), subject to section 98-999
Warehousing and wholesale, general
Welding or machine shop

Sec. 98-723. - Specific uses.

The following uses shall be permitted in the I-2 industrial district-2 only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009
Asphalt/concrete batching plant (permanent)
Boutique vendor market, indoor, subject to section 98-1006
Car wash, self-service
Caretaker or guard residence, subject to section 98-975
Cemetery or mausoleum
Communication tower, commercial, subject to section 98-977
Day camp for children
Day care center
Drag strip or commercial racing
Dump or sanitary landfill area
Electrical energy generating plant
Electrical line/substation, high voltage, subject to section 98-979
Extended stay hotel, subject to section 98-1004
Food truck court, accessory, subject to section 98-991
Golf course, private

ORDINANCE NO. _____

Heliport
 Helistop
 Laboratory, manufacturing
 Livestock auction or feed lot
 Manufacturing, hazardous/objectionable
 Marina
 Mining and quarrying
 Museum, library or art gallery, public
 Petroleum storage/collection facilities
 Private franchise utility (not listed)
 Recycling drop-off center, subject to section 98-990
 Retail, general (outdoors)
 Retail, large tenant (100,000 square feet or more), subject to section 98-1010
 Rodeo grounds
 Sexually oriented business, subject to section 98-994
 Shooting range, commercial
 Studio, television or radio
 Transmission pipeline, subject to section 98-997
 Water well, storage or pump station
 Wrecking or salvage yard

Sec. 98-724. - Temporary uses.

The following uses shall be permitted in the I-2 industrial district-2 only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Building material yard and construction office
 Carnival or circus, temporary, subject to section 98-976
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Sales, temporary or seasonal, subject to section 98-992
 Temporary special event, subject to section 98-976

Sec. 98-752. - Permitted uses.

The following uses shall be permitted in the WR water recreation district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Alcoholic beverage establishment, subject to section 98-1009
 Amusement and recreation (indoors), subject to section 98-973
 Amusement and recreation (outdoors)
 Bait and sporting goods sales

ORDINANCE NO. _____

Boat storage and service
Book or stationary store or newsstand
Bus station or terminal
Car wash, automatic
Car wash, full service
Community center, public
Convenience store
Country club, private, subject to section 98-978
Crop agriculture
Custom personal service
Day camp for children
Day care home
Drugstore or pharmacy
Dwelling, single-family detached
Fire station
Garage sale, subject to section 98-982
Golf course, public
Home occupation, subject to section 98-984
Hospital
Hotel or motel, subject to section 98-1003
Local utility line
Marina
Motor vehicle fuel service station
Museum, library or art gallery, public
Nursing or congregate care facility
Park or playground, public
Personal improvement services
Public building, shop or yard
Railroad track
Recreation center, public
Religious assembly/institution or rectory
Restaurant, general
Sewage pump station
Solar panel systems, subject to section 98-1002
Swimming pool, private, subject to section 98-996
Swimming pool, public
Telephone equipment station
Theater
Travel bureau or consultant
Water well, storage or pump station

Sec. 98-753. - Specific uses.

The following uses shall be permitted in the WR water recreation district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

ORDINANCE NO. _____

Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
 Car wash, self-service
 Caretaker or guard residence, subject to section 98-975
 Cemetery or mausoleum
 Communication tower, commercial, subject to section 98-977
 Convenience store with gasoline sales
 Electrical line/substation, high voltage, subject to section 98-979
 Exhibition area or fairgrounds
 Extended stay hotel, subject to section 98-1004
 Fraternal club or lodge
 Golf course, private
 Helistop
 Private franchise utility (not listed)
 Sewage treatment plant
 Stadium or playfield, public
 Swimming pool, commercial (outdoors)
 Transmission pipeline, subject to section 98-997

Sec. 98-754. - Temporary uses.

The following uses shall be permitted in the WR water recreation district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Refreshment stand, subject to section 98-991
 Sales, temporary or seasonal, subject to section 98-992
 Sales trailer, temporary, subject to section 98-993
 Temporary special event, subject to section 98-976

Sec. 98-782. - Permitted uses.

The following uses shall be permitted in the REC recreational district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory use, general, subject to section 98-972
 Airport or landing field
 Alcoholic beverage establishment, subject to section 98-1009
 Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
 Amusement and recreation (indoors), subject to section 98-973
 Amusement and recreation (outdoors)

ORDINANCE NO. _____

Boutique vendor market, indoor, subject to section 98-1006
Boutique vendor market, outdoor, subject to section 98-1006
Day camp for children
Dude ranch
Farmers' market, subject to section 98-980
Fire station
Food truck court, accessory, subject to section 98-991
Hospital
Local utility line
Public building, shop or yard
Railroad track
Restaurant, general
Sewage pump station
Sewage treatment plant
Swimming pool, commercial (outdoors)
Swimming pool, public
Telephone equipment station
Water well, storage or pump station

Sec. 98-783. - Specific uses.

The following uses shall be permitted in the REC recreational district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Bait and sporting goods sales
Boat storage and service
Caretaker or guard residence, subject to section 98-975
Cemetery or mausoleum
Communication tower, commercial, subject to section 98-977
Country club, private, subject to section 98-978
Electrical energy generating plant
Electrical line/substation, high voltage, subject to section 98-979
Exhibition area or fairgrounds
Extended stay hotel, subject to section 98-1004
Golf course, public
Heliport
Hotel or motel, subject to section 98-1003
Marina
Museum, library or art gallery, public
Personal improvement services
Petroleum storage/collection facilities
Private franchise utility (not listed)
Railroad team track
Rodeo grounds
Shooting range, commercial
Stable, commercial boarding or rental, subject to section 98-995

ORDINANCE NO. _____

Theater
Theater, drive-in
Transmission pipeline, subject to section 98-997

Sec. 98-784. - Temporary uses.

The following uses shall be permitted in the REC recreational district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
Field office, temporary
Government office/classroom, temporary, subject to section 98-1005
Refreshment stand, subject to section 98-991
Sales, temporary or seasonal, subject to section 98-992
Temporary special event, subject to section 98-976

Sec. 98-842. - Permitted uses.

The following uses shall be permitted in the CC campus commercial district, subject to compliance with any applicable conditions and all other provisions of this chapter:

Accessory retail/service uses
Accessory use, general, subject to section 98-972
Alcoholic beverage establishment, subject to section 98-1009
Amusement and recreation (indoors), subject to section 98-973
Art gallery or handicraft sales
Art supply store
Bakery or confectionery shop, retail
Bank or savings and loan
Book or stationary store or newsstand
Cleaning/laundry pickup station only
Cleaning/laundry shop with pickup station
College or university
Community center, public
Custom personal service
Dancing, drama, or music school or studio
Fire station
Florist
Food truck court, accessory, subject to section 98-991
Heliport
Helistop
Hotel or motel, subject to section 98-1003
Laboratory, medical and dental

ORDINANCE NO. _____

Laboratory, scientific and research
 Lithographic or print shop
 Local utility line
 Mailing and shipping service
 Museum, library or art gallery, public
 Office, general business and professional
 Office, medical and dental
 Office, medical and dental extended care
 Optical sales
 Park or playground, public
 Parking lot, commercial
 Parking structure, commercial
 Personal improvement services
 Public building, shop or yard
 Railroad track
 Recreation center, public
 Restaurant, general
 Retail general (indoors)
 Retail, large tenant (100,000 square feet or more), subject to section 98-1010
 Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
 Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
 Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
 School, business
 Sewage pump station
 Studio, television or radio
 Swimming pool, commercial (outdoors)
 Telephone equipment station
 Theater
 Travel bureau or consultant

Sec. 98-843. - Specific uses.

The following uses shall be permitted in the CC campus commercial district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
 Amusement and recreation (outdoors)
 Boutique vendor market, indoor, subject to section 98-1006
 Boutique vendor market, outdoor, subject to section 98-1006
 Car wash, automatic

ORDINANCE NO. _____

Car wash, full service
 Communication tower, commercial, subject to section 98-977
 Convenience store
 Convenience store with gasoline sales
 Day care center
 Drugstore or pharmacy
 Electrical energy generating plant
 Electrical line/substation, high voltage, subject to section 98-979
 Extended stay hotel, subject to section 98-1004
 Health club or athletic club
 Hospital
 Institution, drug or psychiatric treatment
 Office—showroom/warehouse
 Private franchise utility (not listed)
 Recycling drop-off center, subject to section 98-990
 Restaurant, fast food
 Retail, large tenant (100,000 square feet or more), subject to section 98-1010
 Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
 Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
 Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
 School, commercial trade
 Secondhand store
 Transmission pipeline, subject to section 98-997
 Water well, storage or pump station

Sec. 98-844. - Temporary uses.

The following uses shall be permitted in the CC campus commercial district only upon approval of a temporary use permit in accordance with the procedures and standards of 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Building material yard and construction office
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Temporary special event, subject to section 98-976

Sec. 98-872. - Permitted uses.

The following uses shall be permitted in the CI campus industrial district, subject to compliance with any applicable conditions and all other provisions of this chapter:

ORDINANCE NO. _____

Accessory retail/service uses
Accessory use, general, subject to section 98-972
Alcoholic beverage establishment with production area greater than 6,000 square feet, subject to section 98-1009
Amusement and recreation (indoors), subject to section 98-973
Amusement and recreation (outdoors)
Bakery or confectionery, wholesale
Bank or savings and loan
Bottling works
Building material sales or storage (indoors)
Bus station or terminal
Cabinet and upholstery shop
Cleaning, dyeing or laundry plant
Cleaning/laundry pickup station only
College or university
Community center, public
Fire station
Florist
Food processing
Heliport
Helistop
Hospital
Hotel or motel, subject to section 98-1003
Laboratory, medical and dental
Laboratory, scientific and research
Lithographic or print shop
Local utility line
Mailing and shipping service
Maintenance service
Manufacturing, light
Museum, library or art gallery, public
Office, general business and professional
Office, medical and dental extended care
Office—showroom/warehouse
Park or playground, public
Parking lot, commercial
Parking structure, commercial
Personal improvement services
Public building, shop or yard
Railroad freight or passenger station
Railroad team track
Railroad track
Restaurant, general
Retail, large tenant (100,000 square feet or more), subject to section 98-1010

ORDINANCE NO. _____

Retail, large tenant (between 25,000 and 49,999 square feet), subject to section 98-1010
Retail, large tenant (between 50,000 and 74,999 square feet), subject to section 98-1010
Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
School, business
School, commercial trade
Sewage pump station
Studio, television or radio
Swimming pool, commercial (outdoors)
Telephone equipment station
Theater
Tool rental (domestic equipment)
Warehousing and wholesale, general

Sec. 98-873. - Specific uses.

The following uses shall be permitted in the CI campus industrial district only upon approval of a specific use permit by the town council in accordance with the procedures and standards of section 90-186, specific use permits:

Alcoholic beverage establishment, subject to section 98-1009
Boutique vendor market, indoor, subject to section 98-1006
Car wash, automatic
Communication tower, commercial, subject to section 98-977
Day care center
Electrical energy generating plant
Electrical line/substation, high voltage, subject to section 98-979
Extended stay hotel, subject to section 98-1004
Food truck court, accessory, subject to section 98-991
Health club or athletic club
Institution, drug or psychiatric treatment
Parking lot, trucks or trailers (transport)
Private franchise utility (not listed)
Private shop, yard or building
Recycling drop-off center, subject to section 98-990
Repair services, general
Restaurant, fast food
Retail, large tenant (100,000 square feet or more), subject to section 98-1010
Retail, large tenant (between 75,000 and 99,999 square feet), subject to section 98-1010
Sewage treatment plant
Transmission pipeline, subject to section 98-997
Water well, storage or pump station

ORDINANCE NO. _____

Sec. 98-874. - Temporary uses.

The following uses shall be permitted in the CI campus industrial district only upon approval of a temporary use permit in accordance with the procedures and standards of section 78-87 of this Code, temporary use permits:

Asphalt/concrete batch plant, temporary, subject to section 98-974
 Building material yard and construction office
 Field office, temporary
 Government office/classroom, temporary, subject to section 98-1005
 Temporary special event, subject to section 98-976

SECTION 9

Subsection (c), "Schedule of Use Regulations," of Section 98-952, "Use Classification," of Subdivision II, "Regulations," of Division 2, "Uses," of Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

- (c) *Schedule of use regulations.* The following use regulations schedule summarizes the use regulations of the districts. In the event of any conflict between the use regulations schedule and the text of the zoning district regulations, the text shall control. Uses that were established prior to the adoption of this chapter or its predecessors, but that are now inconsistent with the requirements of this chapter, shall be permitted if such uses meet the requirements of article V, chapter 78 of this Code, nonconformities, for a valid nonconforming use. The use regulations schedule shall be interpreted as follows:

- (6) *Circumstantial Specific Uses.* Uses identified in a particular district column with a "P/S" shall require a Specific Use Permit in accordance with the procedures and standards of the relevant section from Subdivision III. – Special Use Conditions of this division."

SECTION 10

Subsection (c), "Schedule of Use Regulations," of Section 98-952, "Use Classification," of Subdivision II, "Regulations," of Division 2, "Uses," of Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas,

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“Sec. 98-952 – Schedule of Use Regulations Chart

[illegible]

[illegible]

[illegible]

ORDINANCE NO. _____

Private franchise utility (not listed)	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	*	

Telephone equipment station	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*	

Transportation-Related Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	*		

Railroad Track	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*	
Retail Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	*		
Alcoholic beverage establishment (98-1009)												P	P	P	P	P	S	S	S	P	P	P	*		
Alcoholic beverage establishment with production area greater than 6,000 square feet (98-1009)												S	S	S	S	S	P	P	P	S	P	P	*		

Boutique vendor market, indoor (98-1006)												P	P	P	P	S	S	S	S			P	P	*	
Boutique vendor	S											S	S	S	P	S						P	P	*	

ORDINANCE NO. _____

market, outdoor (98- 1006)																				

Farmers' market (98- 980)	S																	P	P	*

Fruit and vegetable stand (98- 981)	P																		P	*

Restaurant, fast food										S	P	P	P	S	S	P			P	*
Restaurant, general									P	P	P	P	P	P	P	P	P	P	P	*
Retail general (indoors)										P	P	P	P	P					P	*
Retail, general (outdoors)												S			S	S			P	*
Retail, large tenant (between 25,000 and 49,999 square feet) (98-1010)										P / S	P / S	P	P	P / S	P	P	P		P	*
Retail, large tenant (between 50,000 and 74,999 square feet) (98-1010)										P / S	P	P	P / S	P	P	P			P	*
Retail, large tenant (between 75,000 and											P / S	P	P / S	P / S	P	P			P	*

[illegible]

Mailing and shipping service											P	P	P	P	P	P	P	P				P	*

Sexually oriented business (98-994)																	S	S				S	*
Studio, television or radio										S			S	S	P	P	S	S				S	*

Veterinary hospital (inside pens) (98-998)	S									S	S	S	P	P			P	P				P	*
Veterinary hospital (outside pens) (98-999)	S																P	P				P	*
Recreational and Entertainment Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	C B D
Amusement and recreation (indoors) (98-973)	S										S	S	S	S	P	P	P	P		P	P	P	*
Amusement and recreation (outdoors)	S													S	P	S	P	P		P	P	P	*

Swimming pool, commercial (outdoors)	S													P	P	P	P	P		S	P	P	*

ORDINANCE NO. _____

Day camp for children	P	S											S	S				S	S	P	P	P	*
Drag strip or commercial racing																			S			S	*
Dude ranch	S																				P	P	*

Rodeo grounds	S																	S	S		S	S	*
Shooting range, commercial																			S		S	S	*

Theater, drive-in																		S	P		S	S	*
Automobile and Related Service Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	C B D
Auto leasing or rental														S	P			P				P	*
Auto painting or body shop																		P	P			P	*

Auto parts and accessory sales (outdoor display)																		P				P	*

Auto storage or auction																		P	P			P	*

Tire retreading or capping																		S	P			P	*
Wrecking or salvage yard																			S			S	*

Heavy Commercial Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	C B D
Building material sales and storage (outdoors)																		S	P			S	*

Laboratory, manufacturing																		S	S			S	*

Mini-warehouse														S	S			S	P			P	*

Private shop, yard or building	S																S	S	P			P	*
Repair services, general																	S	S	P			S	*

Industrial Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	C B D
Asphalt/concrete batching plant (permanent)																			S			S	*

Bottling works																	P	P	P			P	*

Manufacturing hazardous/objectectionable																			S			S	*

ORDINANCE NO. _____

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Agriculture and Extractive Uses	A	S F E	S F -5	SF 30	SF 15	SF 10	S F A	2 F	M F	M H	O	R 1	R 2	C 1	C 2	C C	C I	I1	I2	W R	R E C	P D	C B D

Livestock auction or feed lot	S																		S			S	*
Mining and quarrying	S																		S			S	*
Petroleum storage/collection facilities	S																		S		S	S	*

***"

SECTION 11

Subsection (c), "Schedule of Use Regulations," of Section 98-952, "Use Classification," of Subdivision II, "Regulations," of Division 2, "Uses," of Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to remove the following use types in the Schedule of Use Regulations chart, "Aviary," "Caretaker or guard residence (mobile home) (98-975)," "Off-street parking, accessory," "Recreation Center," "Church or rectory," "Private utility shop, yard or building," "Convenience store with beer/wine sales," "Private club (98-989)," "Restaurant, drive-in," "Retail, single tenant (less than 25,000 sq. ft.)," "Supermarket," "Supermarket with beer/wine sales," and "Wine retail establishment."

SECTION 12

Section 98-980, "Farmer's market," of Subdivision III, "Special Use Conditions," of Division 2, "Uses," of Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended and renamed to read as follows:

"Sec. 98-980. - Farmers' market."

- (a) All Farmers' markets shall be located in covered spaces providing shelter for vendors and shall provide for adequate off-street parking. No more than 49 percent of the display area shall be devoted to the sale of nonfood articles. All vendors shall abide by the provisions of applicable town ordinances and regulations and applicable state laws and regulations related to Farmers' markets, including Texas Administrative Code, Title 25,

ORDINANCE NO. _____

Chapter 229, Subchapter FF.

- (b) A Farmers' market may be permitted by the town to operate on any property owned by the town notwithstanding the district regulations applicable to said property."

SECTION 13

Section 98-990, "Recycling dropoff center," of Subdivision III, "Special Use Conditions," of Division 2, "Uses," of Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended and renamed to read as follows:

"Sec. 98-990. - Recycling drop-off center.

A recycling drop-off center may be permitted as an accessory use, as allowed by Sec. 98-952(c), subject to section 82-272 outdoor storage areas and the following conditions:

- (1) The use shall not occupy more than 500 square feet and shall not occupy any parking area required for the primary use.
- (2) The use shall employ no mechanical sorting or processing equipment.
- (3) The use shall be maintained free of litter, debris, and residue on a daily basis.
- (4) Containers shall be durable and covered.
- (5) The name and phone number of a responsible party shall be clearly posted on the collection bin on a sign no greater than 10 square feet in size."

SECTION 14

Section 98-991, "Refreshment stand," of Subdivision III, "Special Use Conditions," of Division 2, "Uses," of Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended and renamed to read as follows:

"Sec. 98-991. - Refreshment stand or food truck court, accessory.

- (a) *Generally.*

- (1) It shall be the responsibility of the applicant to comply with all provisions of this section.

ORDINANCE NO. _____

- (2) All other applicable permits must be obtained.
 - (3) Additional parking may be required as determined by the development review committee.
 - (4) A refreshment stand or food truck court, accessory, and all appurtenances thereto, shall comply with all applicable requirements of the district in which it is located. Such facility shall not be required, however, to meet the landscaping, exterior masonry, or underground utility requirements of the applicable zoning district.
 - (5) A refreshment stand or food truck court, accessory, may be located on parking spaces, provided that such spaces are not necessary to meet the minimum parking requirements of the other uses on the lot or parcel.
 - (6) A refreshment stand or food truck court, accessory, shall not be located within, nor encroach upon, a fire lane, maneuvering aisle, vehicle stacking space, or required landscaping areas of the lot or parcel upon which the facility is placed. The location of such facility shall comply with all visibility obstruction regulations of the town.
 - (7) A site plan shall be submitted providing a well delineated "safety" area to keep vehicles from entry into the stand and table area; such site plan shall be reviewed and approved by the building official and the fire marshal.
 - (8) A refreshment stand or food truck court, accessory, shall be located on an approved surface of either asphalt or concrete.
 - (9) A refreshment stand or food truck court, accessory, shall meet all health requirements promulgated by the state department of health and set forth in article III of chapter 18 of this Code.
- (b) *Refreshment stand.*
- (1) A temporary use permit for a refreshment stand may be issued by the building official, subject to compliance with conditions related to refreshment stands.
 - (2) A portable building may be used on a temporary basis as a refreshment stand for a period not to exceed six months on the same lot or parcel within any consecutive 12-month period, measured from the date of the issuance of the temporary permit.

ORDINANCE NO. _____

- (3) A deposit in a sum listed in appendix A of this Code shall be required at the time the temporary permit for the refreshment stand is obtained to ensure the removal of the stand if the use is discontinued and the stand is not removed from the site within ten days of the expiration or abandonment of the permit. Such deposit will be refunded once the stand has been removed, and all other requirements have been met."

SECTION 15

Subdivision III, "Special Use Conditions," of Division 2, "Uses," Article IV, "Supplementary District Regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to create new Sections 98-100, "Boutique vendor market," 98-1007, "Alternative financial establishment," 98-1008, "Smoking related business," 98-1009, "Alcoholic beverage establishment," and 98-1010, "Retail, large tenant," to read as follows:

"Sec. 98-1006. – Boutique vendor market.

It shall be the responsibility of the applicant to comply with all provisions of this section.

- (1) Land uses not permitted within the base zoning district or planned development may not operate as a vendor within the market.
- (2) All outdoor boutique vendor markets shall provide a permanent covered structure for seventy (70) percent of the maximum number of vendors to be expected.
- (3) All other applicable permits must be obtained.

Sec. 98-1007. – Alternative financial establishment.

Alternative financial establishments meeting the definition of a "Credit Access Business," as defined by the V.T.C.A., Finance Code § 393.601, shall be required to meet Chapter 18, Article XI – Credit Access Business of the Town of Flower Mound Code of Ordinances, as amended.

98-1008. –Smoking related business.

The sale of devices defined within Section 18-530 of Article X, "Regulation of smoking in public places," of the Town's Code of Ordinances, within 1,000 feet of any school is hereby prohibited. The measurement of distance between the place of business where such devices are sold and the school shall be:

- (1) In a direct line from the property line of the school to the property line of the place of business, and in a direct line across intersections; or

ORDINANCE NO. _____

- (2) If the place of business is located on or above the fifth story of a multistory building, in a direct line from the property line of the school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which such devices are sold from.

98-1009. - Alcoholic beverage establishment.

Alcoholic beverage establishments shall meet the requirements of Chapter 18, Article IX – Alcoholic beverages; generally, of the Town of Flower Mound Code of Ordinances, as amended.

98-1010. - Retail, large tenant.

- (1) A Specific Use Permit shall be required, as noted in Sec. 98-952(c), for new construction.
- (2) A Specific Use Permit shall be required, as noted in Sec. 98-952(c), for remodeling and/or expanding a tenant space where the total square footage established would require a Specific Use Permit as new construction.

Secs. 98-1011—98-1020. - Reserved.”

SECTION 16

Section 98-1032, “Accessory Buildings,” of Division 3, “Dimensional Regulations,” of Article IV, “Supplementary District Regulations,” of Chapter 98, “Zoning,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by revising subsection (a)(2) to read as follows:

- (2) “*Barns, stables, and riding arenas.* In SF-E single-family estate and A agricultural zoning districts, barns and/or stables directly associated with the support of a bona fide agricultural use of the property and/or riding arenas, shall be limited in area to that allowed by the building code for their use and construction type, but in no case shall the combined floor area of the primary use and all accessory buildings exceed the maximum percentage of lot coverage allowed for in an A or SF-E zoning district. In SF-E and A zoning districts, barns, stables, and/or riding arenas shall be limited to a height of not more than twenty feet to the top of the roof. Such barns, stables, and/or riding arenas shall not be located within 50 feet of any property line.”

ORDINANCE NO. _____

SECTION 17

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 18

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 19

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 20

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 21

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.

ORDINANCE NO. _____

SECTION 22

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 5TH DAY OF APRIL, 2021.

APPROVED:

Steve Dixon, **MAYOR****ATTEST:**

Theresa Scott, **TOWN SECRETARY**



TOWN COUNCIL AGENDA ITEM NO. 18

REGULAR ITEM

DATE: April 5, 2021

FROM: James Hoefert, Environmental Review Analyst

ITEM: **Public Hearing to consider an application for a tree removal permit (TRP21-0002) for one (1) specimen tree on Lot 16, Block B of the Townlake PH 2 subdivision. The property is located at 3900 Dashiell Dr. (The Environmental Conservation Commission recommended approval by a vote of 6 to 0 at its March 2, 2021, meeting).**

BACKGROUND INFORMATION: Lot 16, Block B of the Townlake PH 2 subdivision is located at 3900 Dashiell Dr. The lot is approximately 0.55 acres in size. The lot is currently zoned for Planned Development District No. 138 (PD-138) for a cluster development and is master planned for the Cross Timbers Conservation Development District. The applicant is requesting to remove one (1) of two (2) specimen trees from the residential lot because of the tree's proximity to the building pad and driveway access. The specimen tree proposed for removal (Tree #1997 – 26" post oak) is in good condition and is located within the buildable area of the lot.

The Town's tree ordinance requires that specimen trees removed from the site be replaced at a rate of two times their caliper inches. Based on its size, 52" of replacement trees, equaling eighteen (18) three-inch caliper trees will be required for the one (1) specimen tree being requested for removal on this site. Mitigation may also be accomplished by paying fees in lieu of planting replacement trees or a combination of planting replacement trees and paying the required fees.

BOARD REVIEW/CITIZEN FEEDBACK: This application was considered by the Environmental Conservation Commission (ECC) at its March 2, 2021, meeting. The ECC recommended approval of the requested permit to remove the specimen tree. A link to the ECC meetings can be found at: <https://tx-flowermound.civicplus.com/index.aspx?NID=969>

As of March 24, 2021, staff has not received feedback related to this item.

ALTERNATIVES/OPTIONS: The Town Council may approve or deny the requested tree removal permit, or may choose to approve the permit with conditions or changes.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter from the applicant indicating the reason(s) for the tree removal permit request
2. Specimen tree removal permit application
3. Photograph of the specimen tree proposed for removal
4. Plot Plan
5. Approved Tree Survey for PH 2 of subdivision

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

Toll Brothers

AMERICA'S LUXURY HOME BUILDER®

February 9, 2021

RE: Tree Removal Request for
3900 Dashiell in Town Lake

To Whom It May Concern,

The intent of this letter is to receive approval to remove the pecan tree that is located on the above referenced address for the building of a residence on this lot. Due to the topography the driveway can only be on the left side of the lot. With the side yard setback, the additional protected trees in the back left of the lot, and the available plans offered in this community there is not a plan that can be built on this lot without the removal of this tree. I am the Area Protection Manager for Toll Brothers tasked with building the home sold on this lot. In working with James Hoefert we cannot see another way to build not only this, but any home on this lot without the removal of this tree. I am not sure how/why this tree was not removed in the development of Phase 2 of Town Lake as there is no way to install a driveway on this lot without the removal of this tree.

We have consulted with Bartlett's Tree Experts, ISA Certified Arborists, in this venture also and their recommendation is that only the tree removal will allow this home to be built while keeping/protecting the other two trees on this lot.

Please contact me with any questions/concerns at 817-825-1739.

Thank you,



Michael G. Todd



Town of Flower Mound Environmental Services
 Mailing Address: 2121 Cross Timbers Road, Flower Mound, TX 75028
 Telephone: 972-874-6340 Website: www.flower-mound.com

TREE REMOVAL PERMIT

(Effective for Developments submitted 10/6/08 - present)

Check one: ☐ Protected Tree ☐ Specimen Tree ☐ Historic Tree

This application is required to be submitted 30 days prior to the next available EGC hearing.

1. Applicant- Note: Must be an ISA certified arborist, certified forester, or a registered landscape architect.

Name:

Greg Massengale

Address:

11376 Kline Dr.

Dallas, TX 75229

Phone:

214-335-8606

Applicant's Legal Interest in the Property:

Consulting Arborist

2. Property Owner(s)

Name(s): Toll Brothers, Inc.

Address: 2555 SW GRAPEVINE Pkwy, Ste 100
GRAPEVINE, TX 76051

3. Location and Legal Description of Property:

3900 Dashiell
Lot 16, Block B
TOWN LAKE PHASE TWO

Page 2 of 3.

4. Owner's Authorization of Representation

I, Robert G Paul, the owner of the above described real property, do hereby authorize Greg Massengale to represent my interests and to file an Application for Tree Removal Permit for said real property, pursuant to the terms and provisions of Chapter 94 (Trees), of the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances.

[Signature]
Signature of Owner



Given Under My Hand and Seal of Office
This the 25 Day of January, 2021
Meghan Lee Metcalf
Notary Public
In and For Tarrant County, Texas.

5. Applicants Affidavit- Note: Applicant must be an ISA certified arborist, certified forester, or a registered landscape architect.

Subject to criminal penalties contained in Subpart B, the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances, I Greg Massengale, do hereby swear or affirm that all of the Information contained herein and submitted herein is, to the best of my knowledge, true, correct and complete and that no false, misleading or incomplete information has been intentionally provided or submitted with this Application for a Tree Removal Permit.



[Signature]
Signature of Applicant

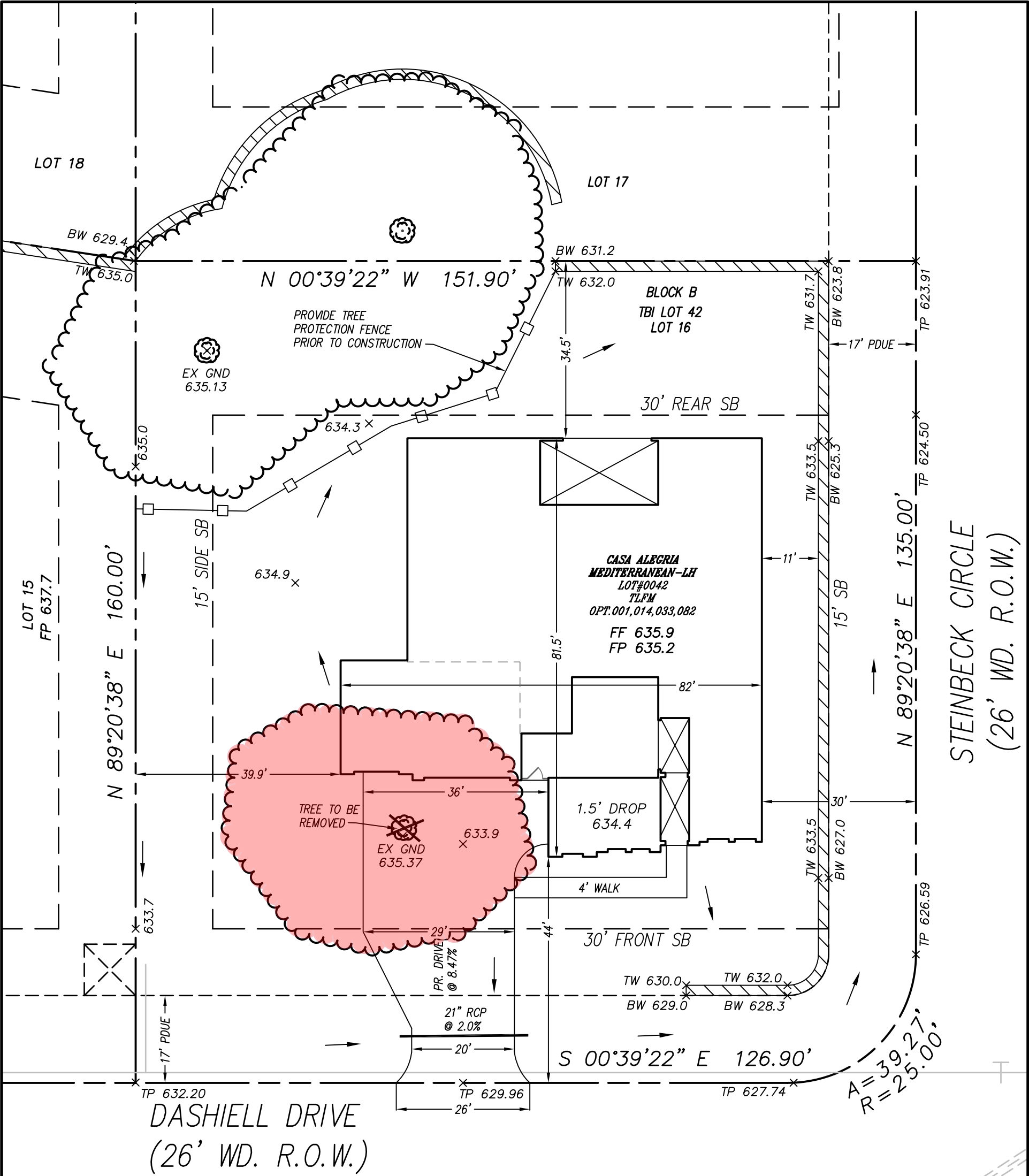
Landscape Architect License No. _____
State of Licensure _____
Or ISA Certified Arborist No. TX-39534
Or Certified Forester No. _____

Given Under My Hand and Seal of Office
This the 13 Day of January, 2021
Bethany Carla
Notary Public
In and For Dallas County, Texas

6. Received by Town of Flower Mound on (Date) 1/25/2021 by
(initials) JRH.

Townlake PH 2, Lot 16, Block B -
Specimen tree proposed for removal



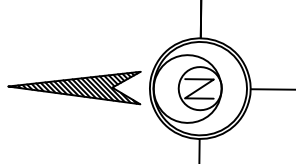


SLAB AREA	=	5,434 S.F.
WALK AREA	=	159 S.F.
PARKWAY AREA	=	1,673 S.F.
SOD AREA	=	16,904 S.F.

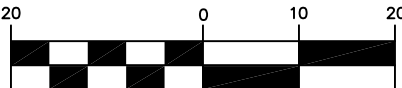
LOT AREA	=	24,170 S.F.
SLAB AREA	=	5,434 S.F.
SLAB COVERAGE	=	22.5%
FRONT YARD AREA	=	7,987 S.F.
CONCRETE AREA	=	1,832 S.F.
CONCRETE COVERAGE	=	22.9%



Know what's below.
Call before you dig.



GRAPHIC SCALE



(IN FEET)
1 inch = 20 ft.

- FIRE HYDRANT
- LIGHT POLE
- WATER VALVE
- WATER METER
- GAS METER
- GAS VALVE
- RISER
- IRRIGATION CONTROL/VALVE
- CONCRETE
- IRON FENCE
- WOOD FENCE
- DRAIN
- TELEPHONE PEDESTAL
- CLEANOUT
- MAILBOX
- ELECTRIC BOX
- STORM MANHOLE
- SANITARY MANHOLE
- TRANSFORMER PAD
- STONE RETAINING WALL

REV. 12-11-2020 -SRB- PER CITY COMMENTS

PLOT PLAN
3900 DASHIELL DRIVE

LOT 16, BLOCK B, TOWNLAKE, PHASE TWO, AN ADDITION TO THE TOWN OF FLOWER MOUND, DENTON COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT NUMBER 2019-308, PLAT RECORDS, DENTON COUNTY, TEXAS.

TB LOT No. 042

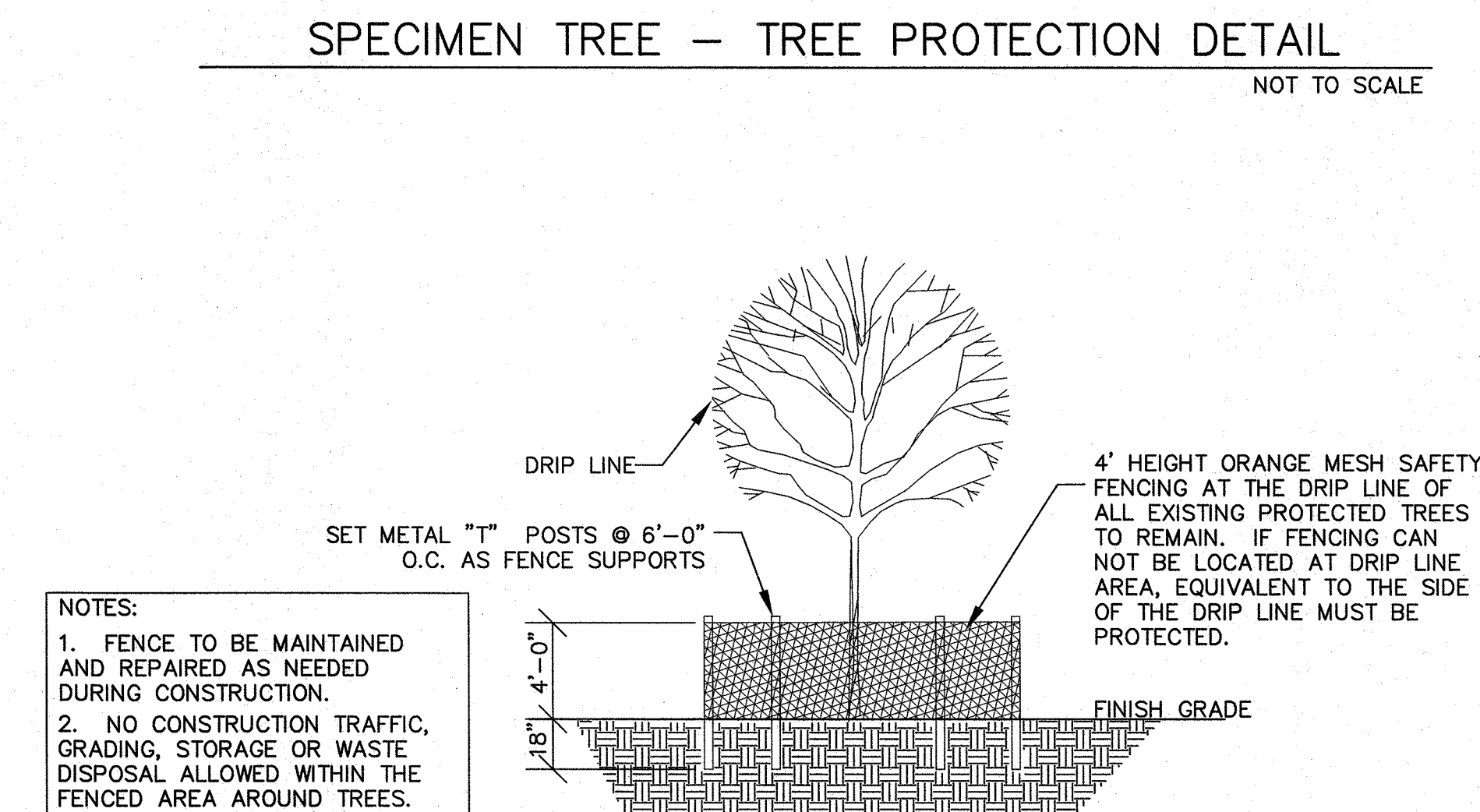
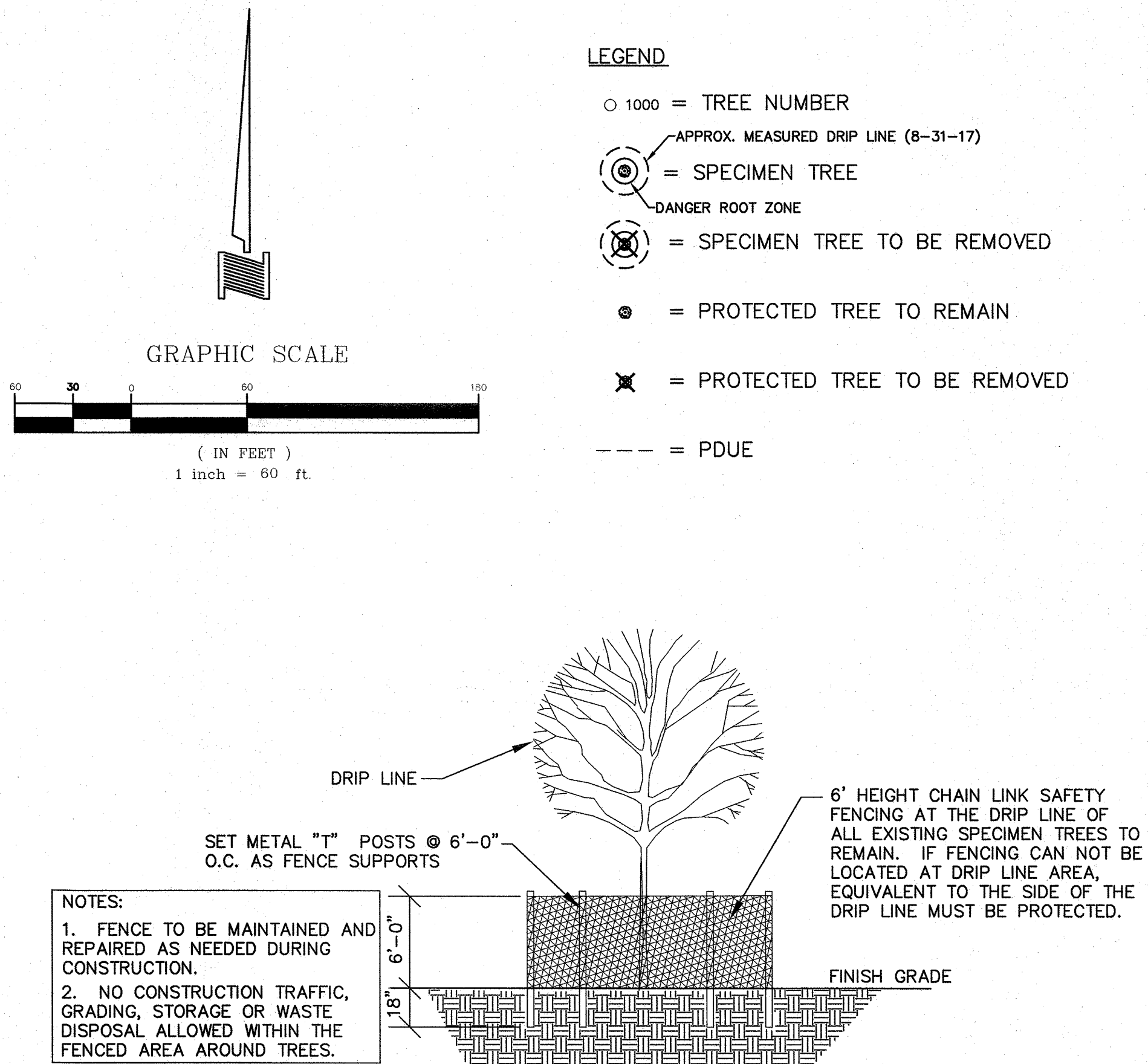
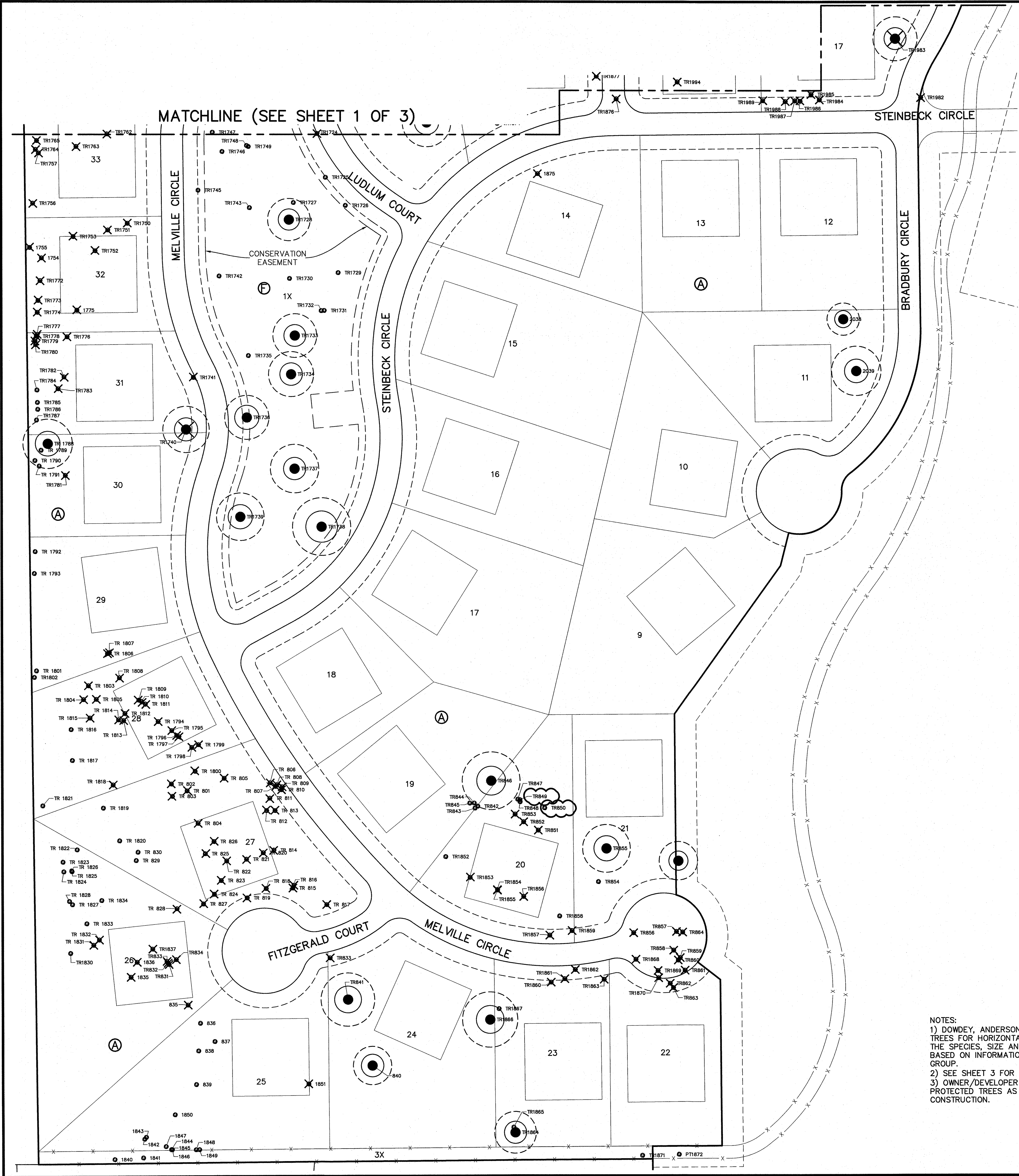
Land Planning
Engineering
Land Surveying

2557 SW GRAPEVINE PKWY
Suite 100
GRAPEVINE, TX 76051
TEL: (817) 329-8770 ext. 2280
TBPLS Firm No. 10194237

CIVIL ENGINEERS - LAND SURVEYORS - LANDSCAPE ARCHITECTS - LAND PLANNERS

DESIGNED:	DRAWN: SRB	CHECKED: MAT
SCALE: 1" = 20'	DATE: 27 OCT 2020	DWG.: 3375-LOT 042-PP





NOTES:

1. FENCE TO BE MAINTAINED AND REPAIRED AS NEEDED DURING CONSTRUCTION.

2. NO CONSTRUCTION TRAFFIC, GRADING, STORAGE OR WASTE DISPOSAL ALLOWED WITHIN THE FENCED AREA AROUND TREES.

These plans (substantially) meet the Tree Ordinance requirements of the Town of Flower Mound. Overights and errors in plans DO NOT relieve the contractor or builder of the responsibility of complying with all codes and laws.

In effect at the time of issuance.

Approved by: *[Signature]*

Date: 11/10/2017

NOTES:

1) DOWDEY, ANDERSON & ASSOCIATES, INC. SURVEYED TREES FOR HORIZONTAL AND VERTICAL LOCATION. THE SPECIES, SIZE AND CONDITION OF THE TREE IS BASED ON INFORMATION PROVIDED BY ENVIRONS GROUP.

2) SEE SHEET 3 FOR TREE INFORMATION.

3) OWNER/DEVELOPER SHALL PRESERVE AS MANY PROTECTED TREES AS POSSIBLE DURING CONSTRUCTION.

NOTE:

1. THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY, WHETHER INDICATED ON THESE PLANS OR NOT.

NO.	DATE	BY	REVISION
1	11/06/17	TDM	REVISED TREE LOCATION AND/OR STATUS

TREE SURVEY						
TOWNLAKE PHASE 2						
TOWN OF FLOWER MOUND						
DENTON COUNTY, TEXAS						
DOWDEY, ANDERSON & ASSOCIATES, INC.						
5225 Village Creek Drive, Suite 200 Plano, Texas 75093 972-931-0694						
STATE REGISTRATION NUMBER: F-399						
SURVEY FIRM REGISTRATION NUMBER: 10077800						
DESIGN	DRAWN	CHECKED	DATE	SCALE	JOB	SHEET
TDM	CLL	JLM	11/06/17	1"=60'	12004W	2



TOWN COUNCIL AGENDA ITEM NO. 19

REGULAR ITEM

DATE: April 5, 2021

FROM: James Hoefert, Environmental Review Analyst

ITEM: **Public Hearing to consider an application for a tree removal permit (TRP21-0003) for one (1) specimen tree on Lot 15, Block B of the Oakbridge at Flower Mound PH 2 subdivision. The property is located at 1624 Quimby Ln. (The Environmental Conservation Commission recommended approval by a vote of 4 to 2 at its March 2, 2021, meeting).**

BACKGROUND INFORMATION: Lot 15, Block B of the Oakbridge at Flower Mound PH 2 subdivision is located at 1624 Quimby Ln. The lot is approximately 0.34 acres in size. The lot is currently zoned for Planned Development District No. 129 (PD-129) with Single-Family District-10 (SF-10) uses and is master planned for Medium Density Residential uses. The applicant is requesting to remove one (1) of two (2) specimen trees from the residential lot because of the tree's proximity to the 5' sidewalk and 5' utility easement along the street ROW, and the 4' walk leading to the front entry of the house. The specimen tree proposed for removal (Tree #1916 – 31" pecan) is in good condition and is located within the buildable area of the lot.

The Town's tree ordinance requires that specimen trees removed from the site be replaced at a rate of two times their caliper inches. Based on its size, 62" of replacement trees, equaling twenty-one (21) three-inch caliper trees, will be required for the one (1) specimen tree being requested for removal on this site. Mitigation may also be accomplished by paying fees in lieu of planting replacement trees or a combination of planting replacement trees and paying the required fees.

BOARD REVIEW/CITIZEN FEEDBACK: This application was considered by the Environmental Conservation Commission (ECC) at its March 2, 2021, meeting. The ECC recommended approval of the requested permit to remove the specimen tree. A link to the ECC meetings can be found at: <https://tx-flowermound.civicplus.com/index.aspx?NID=969>

As of March 24, 2021, staff has not received feedback related to this item.

ALTERNATIVES/OPTIONS: The Town Council may approve or deny the requested tree removal permit, or may choose to approve the permit with conditions or changes.

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Letter from the applicant indicating the reason(s) for the tree removal permit request
2. Specimen tree removal permit application
3. Photograph of the specimen tree proposed for removal
4. Plot Plan
5. Approved Tree Survey for PH 2 of subdivision

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

Toll Brothers

AMERICA'S LUXURY HOME BUILDER®

February 9, 2021

RE: Tree Removal Request for
1624 Quimby in Oakbridge

To Whom It May Concern,

The intent of this letter is to receive approval to remove the pecan tree that is located on the above referenced address for the building of a residence on this lot. The tree is located in such a way that installing both the sewer main line and public sidewalk cannot occur. I am the Area Production Manager for Toll Brothers tasked with building the home sold on this lot. In working with James Hoefert we cannot see another way to build not only this, but any home on this lot without the removal of this tree. I am not sure how/why this tree was not removed in the development of Phase 2 of Oakbridge as there is no way to install the required public sidewalk without encroaching into the critical root zone of this tree.

We have consulted with Bartlett's Tree Experts, ISA Certified Arborists, in this venture also and their recommendation is that only the tree removal will allow this home to be built while keeping/protecting the other two trees on this lot.

Please contact me with any questions/concerns at 817-825-1739.

Thank you,



Michael G. Todd



Town of Flower Mound Environmental Services
 Mailing Address: 2121 Cross Timbers Road, Flower Mound, TX 75028
 Telephone: 972-874-6340 Website: www.flower-mound.com

TREE REMOVAL PERMIT

(Effective for Developments submitted 10/6/08 - present)

Check one: ☐ Protected Tree ☐ Specimen Tree ☐ Historic Tree

This application is required to be submitted 30 days prior to the next available ECC hearing.

1. Applicant- Note: Must be an ISA certified arborist, certified forester, or a registered landscape architect.

Name:

Greg Massengale

Address:

11376 Kline Dr.

Dallas, TX 75229

Phone:

214-335-8606

Applicant's Legal Interest in the Property:

Consulting Arborist

2. Property Owner(s)

Name(s):

Toll Brothers, Inc.

Address:

2555 SW GRAPEVINE PLWY, SUITE 100
GRAPEVINE, TX 76051

3. Location and Legal Description of Property:

1624 Quimby Lane

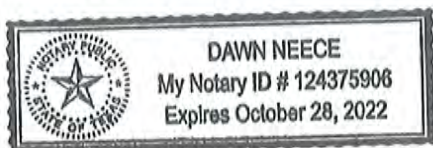
LOT 15, BLOCK B, OAKBRIDE AT
FLOWER MOUND PHASE TWO

Page 2 of 3.

4. Owner's Authorization of Representation

I, Robert C. Paul, the owner of the above described real property, do hereby authorize _____ to represent my interests and to file an Application for Tree Removal Permit for said real property, pursuant to the terms and provisions of Chapter 94 (Trees), of the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances.

[Signature]
Signature of Owner



Given Under My Hand and Seal of Office
This the 8 Day of February, 2021

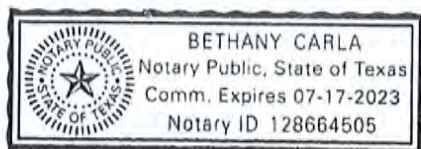
Dawn Neece
Notary Public
In and For Tarrant County, Texas.

5. Applicants Affidavit- Note: Applicant must be an ISA certified arborist, certified forester, or a registered landscape architect.

Subject to criminal penalties contained in Subpart B, the Land Development Regulations of the Town of Flower Mound, Texas Code of Ordinances, I Gree Massengale, do hereby swear or affirm that all of the Information contained herein and submitted herein is, to the best of my knowledge, true, correct and complete and that no false, misleading or incomplete information has been intentionally provided or submitted with this Application for a Tree Removal Permit.

[Signature]
Signature of Applicant

Landscape Architect License No. _____
State of Licensure _____
Or ISA Certified Arborist No. TX-39534
Or Certified Forester No. _____

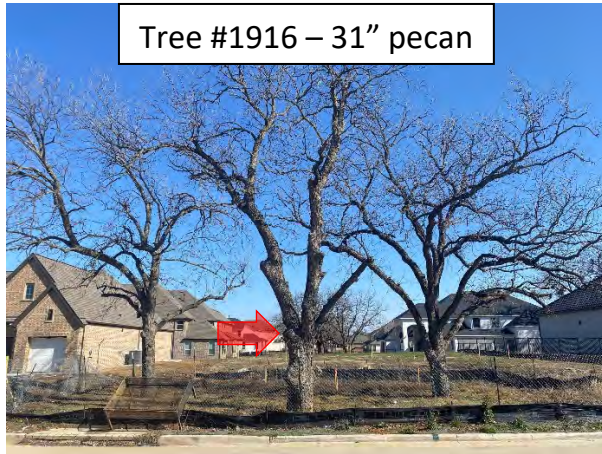


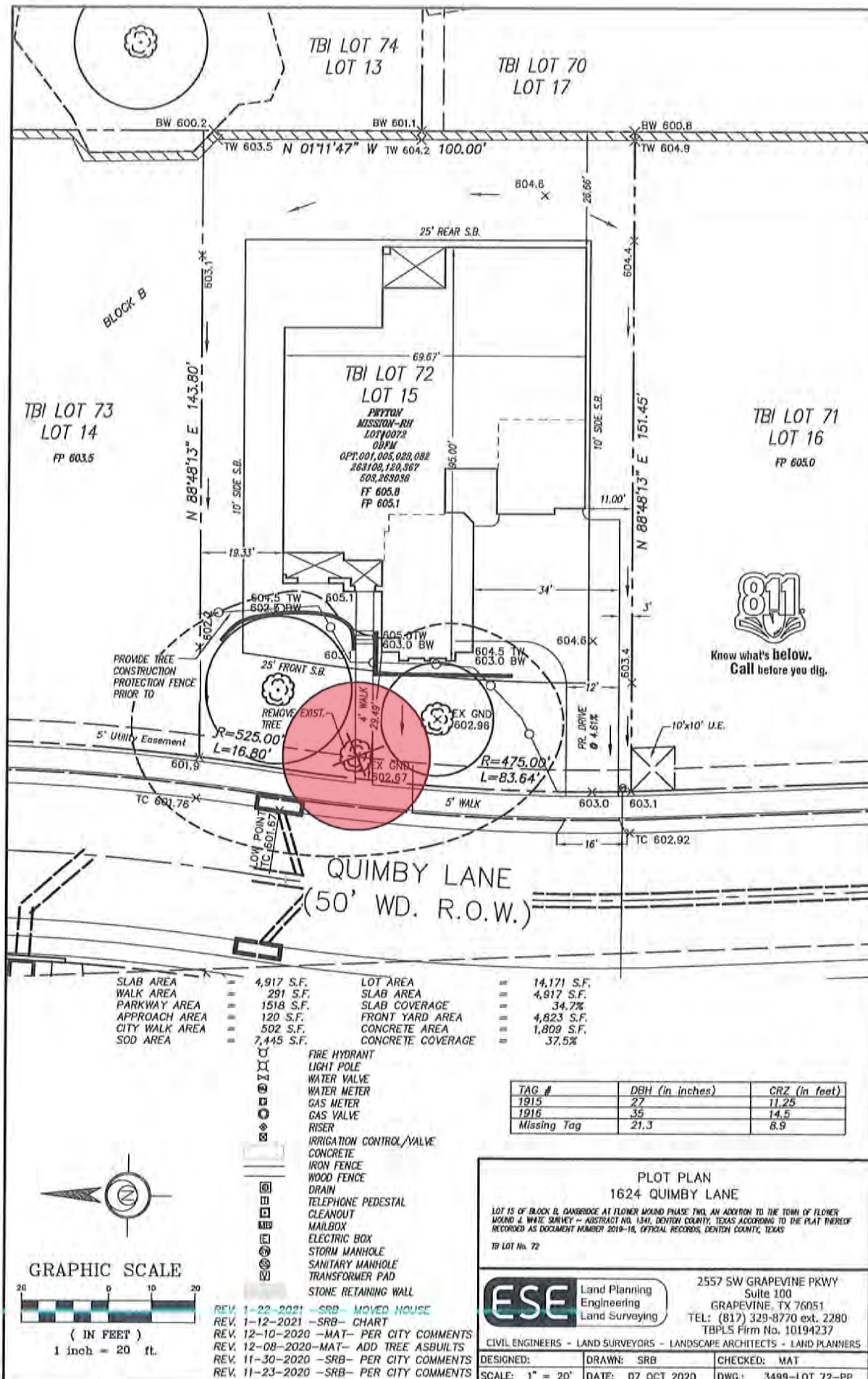
Given Under My Hand and Seal of Office
This the 26th Day of January, 2021

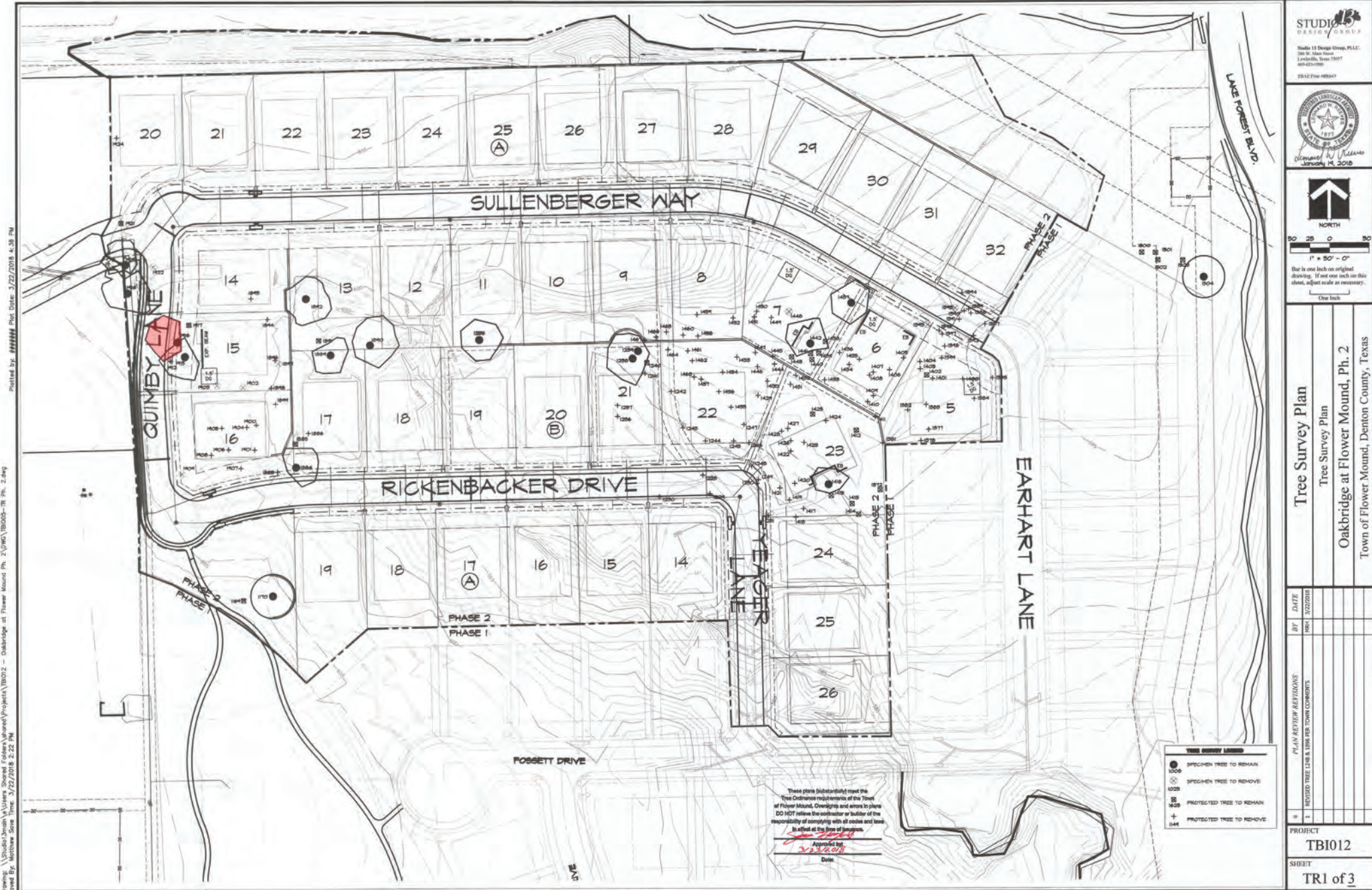
Bethany Carla
Notary Public
In and For Dallas County, Texas

6. Received by Town of Flower Mound on (Date) 1/27/2021 by
(initials) JRH.

Oakbridge at Flower Mound PH 2, Lot 15, Block B -
Specimen tree proposed for removal







SAFETY OF ALL TREES TO REMAIN SHALL NOT BE COMPROMISED BY THE PROPOSED PROJECT.

DRIP LINE

SET METAL "T" POSTS @ 8'-10' O.C. AS FENCE SUPPORTS

6' HEIGHT CHAIN LINK SAFETY FENCING AT THE DRIP LINE OF ALL EXISTING SPECIMEN TREES TO REMAIN. IF FENCING CAN NOT BE LOCATED AT DRIP LINE AREA, EQUIVALENT TO THE SIDE OF THE DRIP LINE MUST BE PROTECTED.

FINISH GRADE

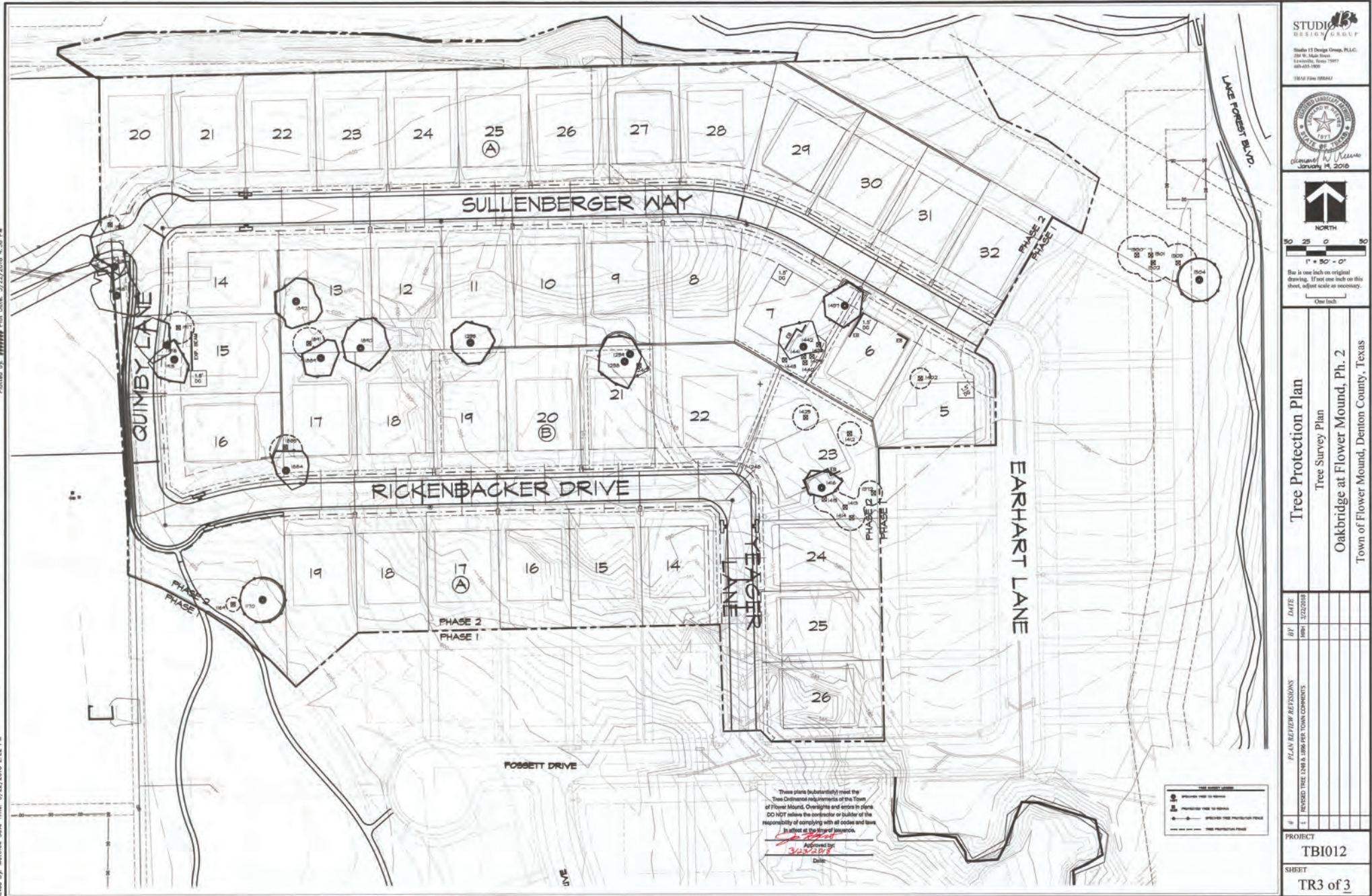
NOTES:

- FENCE TO BE MAINTAINED AND REPAIRED AS NEEDED DURING CONSTRUCTION.
- NO CONSTRUCTION TRAFFIC, BRACING, STORAGE OR MATERIAL DISPOSAL ALLOWED WITHIN THE FENCED AREA AROUND TREES.

2 SPECIMEN TREE - TREE PROTECTION DETAIL

Printed by: ***** Print Date: 3/22/2018 4:38 PM

Drawing: \\studio\smith\Users\Shared\Folders\Projects\TB012 - Oakbridge at Flower Mound Ph. 2\DWG\TB005-TR Ph. 2.dwg
Saved By: Matthew Dove Time: 3/22/2018 2:22 PM





TOWN COUNCIL AGENDA ITEM NO. 20

REGULAR ITEM

DATE: April 5, 2021

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

ITEM: Consider approval of a Construction Agreement with Quality Excavation, LLC., for the Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Street) project, in the amount of \$1,432,054.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On March 2, 2021, bids were received and opened (Bid # 2021-31-B) for the Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Street) project. Quality Excavation, LLC., submitted the lowest qualified bid of the eleven (11) responding bidders at a base bid of \$1,432,054.00. The Colonial Drive Reconstruction Phase II (Whitney Lane to Homestead Street) project consists of the complete reconstruction of Colonial Drive paving between Whitney Lane and Homestead Street. Substandard storm sewer and sanitary sewer systems along the reconstruction will also be replaced. Sidewalk and pedestrian ramp improvements are included in the project to be rebuilt to conform with current ADA requirements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the construction agreement would leave this section of Colonial Drive in the current condition. Currently various sections of Colonial Drive paving have failed and do not have the proper ability to drain along the gutter. Along with the paving deficiencies various components related to the storm sewer, sanitary sewer, and pedestrian routes/ramps would remain in the current failing or non-compliant conditions until the Town of Flower Mound would be able to proceed with the reconstruction.

FISCAL IMPACT: \$1,432,054.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$1,002,054.00	316-560-78101 Street Reconstruction
\$265,000.00	610-590-78101 Stormwater
\$165,000.00	630-970-78101 Wastewater

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

Total project cost is \$2,495,000. Funding sources are:

- Dedicated Sales Tax \$1,880,000
- Wastewater Other \$ 165,000
- Stormwater Other \$ 450,000

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



Town of Flower Mound
Bid Tabulation

Bid No: 2021-31-B - Colonial Drive Reconstruction Phase II (Whitney Lane To Homestead Street)

Bid Opening: 3/2/2021 at 11:00 AM

Company	Base Bid
Quality Excavation, LLC	\$ 1,432,054.00
DDM Construction Corporation	\$ 1,516,484.50
Jeske Construction Company	\$ 1,639,133.00
Reliable Paving Inc	\$ 1,689,253.00
XIT Paving and Construction Inc	\$ 1,747,475.00
Tiseo Paving Company	\$ 1,764,735.35
HQS Construction LLC	\$ 1,839,343.00
Muniz Construction Inc	\$ 1,867,156.00
Ed Bell Construction Company	\$ 1,919,047.00
Urban Infraconstruction LLC	\$ 1,964,907.50
MSB Constructors, Inc	\$ 2,043,655.00

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

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

Date: March 2, 2021

TOWN OF FLOWER MOUND
COLONIAL DRIVE RECONSTRUCTION PHASE II
(WHITNEY LANE TO HOMESTEAD STREET)

BID # 2021-31-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 5th day of April, 2021, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Quality Excavation, 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:

COLONIAL DRIVE RECONSTRUCTION PHASE II
(WHITNEY LANE TO HOMESTEAD STREET),
BID # 2021-31-B

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

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

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

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

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

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

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Four Hundred Thirty-Two Thousand Fifty-Four Dollars and Zero cents (\$1,432,054.00)** 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 twenty (120) calendar days, and final completion of one hundred fifty (150) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In

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

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

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

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

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified by the Town within thirty (30) calendar days after it receives written demand from the Town.

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

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

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

Retainage shall be withheld and may be paid to:

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

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

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

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled

to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

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

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

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

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

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

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

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for

labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the maintenance bond surety, or both.

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

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

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

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

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

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

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

1. the Contractor timely delivers to the Town all bonds and insurance documents; and

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

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

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

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

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

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Steve Dixon, MAYOR

_____ (Signature)
_____ (Printed Name)
_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____ (Signature)
_____ (Position)

Town Council Future Agenda Items



SCHEDULED	4/19/2021	Consent	Consider approval of the purchase of a Road Rescue, Type 1 Ambulance for the Fire and Emergency Services department from Siddons- Martin Emergency group, through Buy Board Contract #570-18, in the total amount of \$459,222.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Award of a professional services contract to conduct a Tennis Center Feasibility Study
		Consent	Colonial Drive Reconstruction Phase II - Testing Award
		Consent	Consider approval of an Independent Contractor Agreement between the Town of Flower Mound and Thomas Radam to provide swim programs at the Community Activity Center.
		Regular	Consider approval of a resolution approving and authorizing publication of notice of intention to issue Certificates of Obligation, Series 2021, in the principal amount not to exceed \$10,250,000, for the purpose of paying for waterworks and sewer system improvements.
		Regular	Public Hearing to consider an ordinance granting Specific Use Permit No. 468 (SUP21-0002- 4408 Glen Oaks Drive Accessory Dwelling) to permit an accessory dwelling. The property is generally located north of Cross Timbers Road and east of Glen Oaks Drive.
	5/12/2021	Regular	Special Meeting - Placeholder: Election canvass item only
	5/17/2021	Consent	Power Engineering - ring - Utility Asset Management
		Consent	Water System Annual PureTec Contract
		Consent	FM 1171 at FM 2499 Westbound RTL - Construction Award
		Consent	Wastewater Treatment Plant Master Plan Update
		Consent	Placeholder: order runoff election as applicable (must be done within 5 days after canvass)
		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.
	6/7/2021	Consent	Sentinel Oaks Water Line Replacement - Construction Award

SCHEDULED	6/7/2021	Consent	FM1171 at FM2499 Westbound RTL - Testing Award
		Consent	Stonecrest Pump Station Auxiliary Power Phase I - Construction Award
		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.
	6/21/2021	Consent	Pink Evening Primrose Trail Connection (Bridge & Trail) - Construction Award
		Consent	Stonecrest Pump Station Auxiliary Power Phase I - Testing Award
	7/19/2021	Consent	Pink Evening Primrose Trail Connection (Bridge & Trail) - Testing Award
	8/2/2021	Presentation	Placeholder: KFMB annual update