

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

3/7/2022

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. PRESENTATIONS

1. Proclamation for Winning the Fight BetteRx Safe Than Sorry Program
2. Texas Municipal Library Directors Association (TMLDA) "Achievement of Library Excellence" Award
3. Environmental Conservation Commission update

E. 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.

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
3. Operational updates

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H. FUTURE AGENDA ITEMS

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

I. COORDINATION OF CALENDARS

1. A regular meeting is scheduled for Monday, March 21.

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 council member by making such request prior to a motion and vote.

1. Minutes 2/21- Consider approval of the minutes from a regular meeting of the Town Council held on February 21, 2022.
2. Library Fee Amendments- Consider approval of an ordinance amending Appendix A "Fee Schedule" to update Library fees. (The Cultural Arts Commission recommended approval by a vote of 4 to 0 at its July 22, 2021, meeting.)
3. Police Services - Lake Grapevine- Consider approval of the 2022 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.
4. Hillside Water Line Construction Award- Consider approval of a Construction Agreement with Four Star Excavating for the Hillside Water Line Connection project, in the amount of \$197,687.50; and authorization for the Mayor to execute same on behalf of the Town.
5. Chinn Chapel Soccer Drainage Design- Consider approval of a Professional Services Agreement with Parkhill, for the design phase services associated with the Chinn Chapel Soccer Complex Drainage Improvements project, in the amount of \$53,700.00; and authorization for the Mayor to execute same on behalf of the Town.
6. Timber Creek WL Design Amend 1- Consider approval of a First Amendment to the Professional Services Agreement with Pacheco Koch Consulting Engineers, LLC (successor in interest to Pacheco Koch Consulting Engineers, Inc.), for the design phase services associated with the Timber Creek Water Line Replacement Phase 1 project, to increase the design fee by \$75,085.00; and authorization for the Mayor to execute same on behalf of the Town .
7. Timber Creek Water & Sewer Services- Consider approval of a Professional Services Agreement with The Rios Group, for subsurface utility engineering services associated with the Timber Creek Water and Sewer Replacements project, in the amount of \$24,300.00; and authorization for the Mayor to execute same on behalf of the Town.
8. 2499@407 Intersection Design Award- Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., for the design phase services associated with the FM2499 at FM407 Intersection Improvements project, in the amount of \$298,350.00; and authorization for the Mayor to execute same on behalf of the Town.
9. Grand Park Construction Award- Consider approval of a Construction Agreement with Quick Set Concrete for the Grand Park (2020-21 Playground Replacements) project, in the amount of \$94,912.20; and authorization for the Mayor to execute same on behalf of the Town.

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10. Emergency Repair Safety Ventilations Sys- Consider approval of an emergency expenditure with Archer Western Construction LLC for the emergency repair of the Employee Safety Ventilation System at the Wastewater Treatment Plant, in the amount of \$144,410.57.
11. Opioid Settlement- Consider approval of a resolution authorizing the Town Manager to execute global opioid settlement documents relating to the Teva pharmaceutical companies and the Endo pharmaceutical companies.

K. REGULAR ITEMS

12. SP21-0009 - Doctor's Urgent Care- Consider a Site Plan (SP21-0009 – Doctor's Urgent Care) to develop a medical office, with a request for a deviation to computing parking and loading requirements pursuant to Section 82-73 of the Code of Ordinances and a waiver to Architectural Standards in the Town's Urban Design Plan for roof pitch. The property is generally located east of Long Prairie Road and north of Forest Vista Drive. (P&Z recommended approval/denial by a vote of 6 to 0 at its February 28, 2022, meeting.)
13. ZPD21-0012 - Windhaven Assisted Living- Public Hearing to consider an ordinance amending the zoning (ZPD21-0012 - Windhaven Assisted Living PD Amendment) to amend Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility, with certain waivers, exceptions and modifications to the Code of Ordinances. The property is generally located south of Cross Timbers Road and west of Auburn Drive. (P&Z recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)
14. Z22-0001 - FM Woods Blk D, Lots 3R & 4R- Public Hearing to consider an ordinance amending the zoning (Z22-0001 – Flower Mound Woods Block D, Lots 3R & 4R) from Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility to Single Family District-15 (SF-15) uses. The property is generally located north and west of Nan Lane and Alberta Lane. (P&Z recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)
15. Z21-0009 - FM Ranch Prairie Vista- Public Hearing to consider an ordinance amending the zoning (Z21-0009- Flower Mound Ranch Prairie Vista) from Interim Holding (IH) uses to Single Family-Estate (SF-E) uses. The property is generally located north of Cross Timbers Road and east of U.S. Hwy. 377. (P&Z recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)
16. MU21-0003 - Lakeside Village- Public Hearing to consider an ordinance for rezoning (MU21-0003 – Lakeside Village) to amend Mixed Use District-1 (MU-1) to amend certain development standards related to Character Zone Standards, Open Space Standards, Parking Standards, Architectural and Building Standards, and Signage Standards in the Lakeside Village Development Code subject to the terms and conditions in the attached Development Agreement and authorization for the Mayor to execute same on behalf of the Town after approval of the terms by the Town Attorney. The property is generally located west of Long Prairie Road along both sides of Lakeside Parkway. (P&Z recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)

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

Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: All Together Flower Mound Commission, Animal Services Board, Cultural Arts Commission, Denton County Transportation Authority, Environmental Conservation Commission, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number One (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

M. CLOSED MEETING

The Town Council to convene into closed meeting pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with Town Attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, as follows:

- a. Consultation with Town Attorney.
 1. Open Government Rules
 2. 2006 Rule 11 agreement and dismissal, Cause No. 2005-20153-158 and Flower Mound Ranch Development Applications
- b. Discuss and consider purchase, exchange, lease or value of real property for parks, public rights-of-way, and/or other municipal purposes and all matters incident and related thereto.
- c. Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Board of Adjustment/Oil & Gas Board of Appeals, Community Development Corporation, and Planning and Zoning Commission.
- d. Discuss and consider economic development incentives, including retail centers, corporate relocation/expansion/retention, hospitality projects, and performance related to certain incentive agreements.
- e. Deliberate the appointment, employment, evaluation, reassignment, duties and responsibilities, of the Presiding and Alternate Municipal Court Judge.

The Town Council may convene in executive session to conduct a private consultation with its attorney on any legally posted agenda item, when the Town Council seeks the advice of its attorney about pending or contemplated litigation, a settlement offer, or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the provisions of Chapter 551, including the above referenced items.

N. 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.

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O. 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: March 4, 2022, at 9:00 a.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: March 7, 2022

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a regular meeting of the Town Council held on February 21, 2022.

BACKGROUND INFORMATION: The Town Council held a regular meeting on February 21, 2022.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes 2/21

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

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THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 21ST DAY OF FEBRUARY 2022, IN THE FLOWER MOUND TOWN HALL, LOCATED AT 2121 CROSS TIMBERS ROAD IN THE TOWN OF FLOWER MOUND, COUNTY OF DENTON, TEXAS AT 6:00 P.M.

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

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

Derek France	Mayor
Ben Bumgarner	Mayor Pro Tem
Sandeep Sharma	Deputy Mayor Pro Tem
Adam Schiestel	Councilmember Place 1
Jim Engel	Councilmember Place 4
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
James W. Childers	Town Manager
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Assistant Town Manager/Town Engineer
Lexin Murphy	Director of Planning Services
Jimmy Hoefert	Environmental Review Analysis
John Chapman	Planner

A. CALL MEETING TO ORDER

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

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

Chaplain Bradly Vinson gave the invocation and Mayor France led the pledges.

D. PRESENTATIONS

1. Proclamation and presentation of Hometown Hero-Duke Carrillo

Mayor France recited and presented a Proclamation to the Carrillo family for his military service.

2. Salvation Army to present a thank you to Town of Flower Mound

Captain Ben Godwin with the Salvation Army presented a Certificate of Appreciation to the Town for participation in the 2021 Annual Mayors' Red Kettle Challenge.

E. 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.

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	Speaker names and address	Subject (as written on the form)
1.	Paul Stone, 1868 Meyerwood Ln	Various – Code enforcement, email, master plan
2.	Doug Oppenheimer, 3801 Rodney Cir	Public Works Dept.
3.	Gary McMullin, 4500 Kyle Ln With donated time from: Debbie McMullin, 4500 Kyle Ln	25 MPH speed limit
4.	Jonathon Simmons, 4608 Sandera Ln	Modification to leash ordinance
5.	Bryan Webb, 4112 High Rd	Sampling bias
6.	Andrew Doll, 4501 Kyle	Speed on West Windsor (Bridlewood)
7.	Brit Stock, 4005 Rothschild	Transparency

F. ANNOUNCEMENTS

Councilmember Engel announced that early voting is underway at the county, state, and federal levels and encouraged everyone to vote.

Mayor France recognized Flower Mound Citizens Academy participants who were in the audience. He also announced there will be a mayoral tri cities chili cook off event at the end of March.

G. TOWN MANAGER'S REPORT

1. Capital improvement projects

No discussion

2. Economic Development projects

No discussion

3. Operational updates

Mr. Childers recognized Ronnie Bates, Assistant Director of Public Works, for his appointment to the Executive Board of the Texas Emergency Management Advisory Council. He also pointed out that the Town is well equipped to respond to natural disasters.

Mr. Childers provided background information on a new Data Hub tool for Development Services. Mr. Chapman gave a presentation outlining the various types of dashboards, including a detailed explanation of each.

H. FUTURE AGENDA ITEMS

1. Councilmember Martin indicated interest in discussing whether there is a trend with residents not being aware of what is planned for adjacent or neighboring lots. She would also like to understand what methods are currently available for potential buyers for this purpose.

There was Council consensus to have the discussion.

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I. COORDINATION OF CALENDARS

1. The next Town Council regular meeting is scheduled for Monday, March 7

Mayor France announced the above referenced meeting and confirmed that all members of Council plan to attend.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council held on February 7, 2022.
2. Consider approval to replace the audio video hardware and software for the Municipal Court in the amount of \$92,893.08.
3. Consider approval of an ordinance amending the Town of Flower Mound's Annual Budget for the fiscal year beginning October 1, 2021, and ending on September 30, 2022, as adopted by Ordinance No. 38-21 and amended by Ordinance No. 50-21 for adjustments to the General Fund.

ORDINANCE NO. 05-22

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, 2021, AND ENDING ON SEPTEMBER 30, 2022, AS ADOPTED BY ORDINANCE NO. 38-21 AND AMENDED BY ORDINANCE NO. 50-21, BY PROVIDING FOR ADJUSTMENTS TO THE GENERAL 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.

4. Consider approval of a resolution authorizing the submission of a grant application with the Office of the Governor for the 2023 Victim Assistance, First Responder Mental Health Program; authorizing the Town Manager to act on behalf of the Town of Flower Mound in all matters related to the application; authorizing acceptance of funds if awarded; and pledging that if funding for this project is received, the Town will comply with all project requirements of the Office of the Governor.

RESOLUTION NO. 03-22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE OFFICE OF THE GOVERNOR FOR THE VICTIM ASSISTANCE, FIRST RESPONDER MENTAL HEALTH PROGRAM FOR THE BENEFIT OF THE EMPLOYEES OF THE TOWN'S POLICE DEPARTMENT FOR FISCAL YEAR 2023; ACCEPTING GRANT FUNDS IF AWARDED; AUTHORIZING THE TOWN MANAGER TO ACT ON BEHALF OF FLOWER MOUND AS THE GRANTEE'S OFFICIAL; AND PLEDGING THAT IF FUNDING IS AWARDED, THE TOWN WILL COMPLY WITH ALL GRANT REQUIREMENTS INCLUDING THE RETURN OF ALL FUNDING RECEIVED IN THE EVENT OF LOSS OR MISUSE OF THE FUNDS.

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5. Consider approval of an agreement with DataProse LLC for utility bill printing and mailing services, in the estimated annual amount of \$126,700 through an existing interlocal agreement between the Town of Flower Mound and the City of Plano, and authorization for the Mayor to execute same on behalf of the Town.
6. Consider Approval of the purchase of traffic signal detection systems, signal cabinets, and traffic related parts, in the estimated annual amount of \$250,000.00, from Mobotrex, through the BuyBoard Cooperative Purchasing contract.
7. Consider approval of a Professional Services Agreement with Pacheco Koch Consulting Engineers, LLC, for the design phase services associated with the Royal Oaks Water Line Replacement Phase I project, in the amount of \$71,399.00; and authorization for the Mayor to execute same on behalf of the Town.

Deputy Mayor Pro Tem Sharma moved to approve by consent Items 1 – 7, as presented in the agenda caption. Mayor Pro Tem Bumgarner seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

AYES: ENGEL, MARTIN, BUMGARNER, SHARMA, SCHIESTEL

NAYS: NONE

Motion passed

K. REGULAR ITEMS

Mayor France opened items 8 and 9 at the same time.

8. Public Hearing to consider an ordinance amending the zoning (ZPD18-0014 – Silveron Park) from Planned Development District No. 31 (PD-31) with Campus Commercial District (CC) uses to Planned Development District No.171 (PD-171) with Campus Commercial District (CC) and multifamily uses, and with certain waivers, exceptions and modifications to the Code of Ordinances. The property is generally located south of International Parkway and east of Lakeside Village Boulevard. (On January 10, 2022, P&Z moved to table this item to its January 24, 2022, meeting by a vote of 6 to 0.) (On January 19, 2022 the Applicant formally requested to reschedule the public hearing for the February 14, 2022 P&Z meeting, and the February 21, 2022 Town Council meeting.) (P&Z recommended approval by a vote of 6 to 0 at its February 14, 2022, meeting.)
9. Public Hearing to consider an application for a tree removal permit (TRP19-0020) for eight (8) specimen trees on property proposed for development as Silveron Park. The property is generally located south of Long Prairie Road and east of Lakeside Village Boulevard. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its October 1, 2019, meeting).

Staff Presentation (items 8 and 9)

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Conceptual site plan, landscape plan
- Waivers and modifications request
- Site photos

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- Elevations
- Renderings
- Open space and trail plan
- Phasing plan
- Tree survey

and she responded to questions or comments from Council regarding:

- Use of a detention or retention pond
- How many apartments are currently being proposed for Lakeside, and the Town overall
- Clarification regarding entitlements
- What protections beyond a Master Plan Amendment could be presented to keep an applicant from converting office to residential in the future

Applicant Presentation

Randi Rivera, McAdams and Taylor Field, Thompson Realty Capital

Ms. Rivera gave a presentation identifying or noting:

- Team introductions
- Thompson Realty Capital overview
- Location
- Existing conditions
- Project history
- Concept plan
- Renderings
- Open space plan
- Phasing plan
- Elevations
- Site elements

and she, Mr. Thompson, Ms. Murphy, or Mr. Meredith responded to questions or comments from Council regarding:

- Clarification regarding:
 - o parking accommodations, landscape buffering, detention area
 - o office space and the number of employees anticipated for the development
- Use of detention area as a dog park and how managed during rain events
- Multifamily use breakdowns (e.g. one, two, or three bedrooms)
- Parking ratios
- Phasing and interest in office being a priority with a gradual introduction of apartments
- Phasing triggers
- What is the breakdown of condos versus apartments
- Options for protection that would increase the probability that this project gets built as presented and not modified down the road

Mayor France opened the Public Hearing for items 8 and 9 at 8:25 p.m.

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

Support: Comments/Questions	Opposition: Comments/Questions	Question(s)/Comments Only
Joe Graham, 4229 Livingston Ave, Dallas	None	None
Paul Stone, 1868 Meyerwood		

Mayor France closed the Public Hearing for items 8 and 9 at 8:28 p.m.

Council Discussion

There was Council discussion regarding:

- The long history of the project
- How the applicant listened and presented a plan that works for Flower Mound
- No issues with the phasing given the market needs
- Architecture blends well with neighboring development and offers a consistent feel
- How the apartments aren't the focal point of the development, it's the office
- How the community benefits from the open space
- Apartments not needed to sustain the office component
- How the Master Plan gives the Town protection against buildings being converted to residential
- Concerns about future changes down the road where an applicant comes forward asking for more apartments

Item 8 motion:

Mayor Pro Tem Bumgarner moved to approve ZPD18-0014 as presented; however, with the condition that non-residential square footage cannot be converted to residential. Councilmember Engel seconded the motion.

ORDINANCE NO. 06-22

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE FLOWER MOUND CODE BY CHANGING THE ZONING ON APPROXIMATELY 49.759 ACRES OF LAND SITUATED IN THE JOSEPH KNIGHT SURVEY, ABSTRACT NO. 692, FROM PLANNED DEVELOPMENT DISTRICT-31 (PD-31) WITH CAMPUS COMMERCIAL DISTRICT (CC) USES TO PLANNED DEVELOPMENT DISTRICT-171 (PD-171) WITH CERTAIN CAMPUS COMMERCIAL DISTRICT (CC) USES AND MULTIFAMILY USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF IN ACCORDANCE WITH SECTION 1-13 OF THE FLOWER MOUND CODE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

VOTE ON MOTION:

AYES: SCHIESTEL, BUMGARNER, ENGEL, MARTIN

NAYS: SHARMA

Motion passed

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Item 9 motion:

Mayor Pro Tem Bumgarner moved to approve TRP19-0020 as presented. Councilmember Engel seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: MARTIN, ENGEL, BUMGARNER, SCHIESTEL

NAYS: SHARMA

10. Public Hearing to consider an application for a tree removal permit (TRP21-0040) for two (2) specimen trees on Lot 19, Block E of the Montalcino Estates PH 2 subdivision. The property is located at 5012 Castellano Ct. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its February 1, 2022, meeting).

Staff Presentation

Mr. Hoefert gave a presentation identifying or noting:

- Project information
- Tree survey

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

- What is the condition of the trees
- Clarification regarding upland habitat element

Applicant Presentation

Verity Burk, McAdams

Ms. Burk gave a presentation identifying or noting:

- Background information
- Letter of intent
- Record plat
- Tree removal permit sign
- Photos of the trees
- Tree survey
- Tree canopy impact

and she responded to questions or comments from Council regarding:

- Whether the lot can be developed without the removal of the tree
- What happens to the wood when the trees are removed

Mayor France opened the Public Hearing at 9:03 p.m. No one spoke. Mayor France closed the Public Hearing at 9:04 p.m.

Mayor Pro Tem Bumgarner moved to approve TRP21-0040 as presented. Deputy Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: SCHIESTEL, SHARMA, BUMGARNER, ENGEL, MARTIN

NAYS: NONE

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11. Discuss the process for Town Council agenda items, including timing.

Staff Presentation

Ms. Scott or Mr. Dalton gave a presentation identifying or noting:

- Background information
- Agenda item process
- Double notice procedure

and she, Mr. Dalton, or Mr. Childers responded to questions from Council regarding:

- Is there something like software that could expedite the process
- What is the impact on staff for the turnaround time when changes are presented at P & Z

Council Discussion:

- What is the real driver of the discussion
- How staff and legal needs time to review applications when changes are made by P & Z
- Interest in not wanting to set an applicant back by two or three weeks in the interest of customer service
- How the timing works when there are no changes needed at the P & Z level
- How there is the ability to postpone an item when it comes to Council should an item not be ready in time
- How if it's a large project there will be work sessions in advance of the Council meeting
- Having additional time to review the packet is a good thing for Council and residents

There was general Council consensus for staff to make every effort to produce the Council agenda packet on the Thursday prior to the regular Monday meeting.

L. BOARDS/COMMISSIONS

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

Councilmember Engel expressed concern about poor judgement used in a statement by a Transportation Commission member who communicated inaccurate information regarding a Traffic Impact Analysis report during a community Zoom meeting.

Mr. Meredith provided legal advice as it relates to disclosing information discussed in closed session as well as clarification regarding personal liability. He also pointed out that personnel matters regarding advisory members cannot be discussed in closed session.

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Council discussion

There was Council discussion regarding:

- Past action regarding removal of a P & Z member for similar action, including timing
- How the circumstances that resulted in the removal of a board member at that time are not the same as what's currently being discussed
- Past action in discussing the removal of a member who is also a candidate
- Interest in fair treatment to all board members

and Mr. Dalton responded to questions from Council regarding:

- If staff is aware of the content associated with the community meeting
- Whether the meeting where the discussion took place was recorded

After deliberation on the item a consensus was not reached regarding any action to be taken or next steps.

Councilmember Engel noted, and per an email from the Town Secretary, that three board members haven't taken the Town-sponsored training as required within 90 days.

There was Council consensus to initiate a letter to each of the individuals, along with a request for completion of the training within 30 days, followed by a status update to Council at that time or sooner, as applicable.

M./N. CLOSED/OPEN MEETING

The Town Council convened into a closed meeting at 9:49 p.m. on February 21, 2022, pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087 for consultation with attorney, and to discuss matters relating to real property, personnel, and economic development negotiations, and reconvened into an open meeting at 9:59 p.m. on February 21, 2022, to take action on the items as follows:

a. Consultation with Attorney.

1. Cause No. 18-9622-431; EagleRidge Operating, LLC v Town of Flower Mound, Texas, et al

Councilmember Engel moved to approve the settlement agreement as discussed in closed session. Deputy Mayor Pro Tem Sharma seconded the motion.

VOTE ON MOTION:

Motion passed

AYES: MARTIN, ENGEL, SHARMA, SCHIESTEL

NAYS: NONE

ABSENT: BUMGARNER

2. 2006 Rule 11 agreement and dismissal, Cause No. 2005-20153-158 and Flower Mound Ranch Development Applications

No action taken

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

No action taken

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

No action taken

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

No action taken

O. ADJOURN REGULAR MEETING

Mayor France adjourned the meeting at 10:00 p.m. on Monday, February 21, 2022, and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 2

CONSENT ITEM

DATE: March 7, 2022

FROM: Sue Ridnour, Director of Library Services

ITEM: Consider approval of an ordinance amending Appendix A "Fee Schedule" to update Library fees. (The Cultural Arts Commission recommended approval by a vote of 4 to 0 at its July 22, 2021, meeting.)

BACKGROUND INFORMATION: The Library's fee schedule lists fees for lost and damaged Library materials. It was last updated in 2008. The proposed changes add fees for items that have been added to the collection since 2008 and deletes references to items the Library no longer circulates. All fees were updated to align with current replacement costs. A section was added to clarify that the Library cannot accept replacements provided for lost/damaged items in lieu of payment, and to cover how special exceptions will be handled. The impact on revenue collected will be negligible.

BOARD REVIEW/CITIZEN FEEDBACK: The Cultural Arts Commission approved the proposed changes at their meeting on July 22, 2021.

ALTERNATIVES/OPTIONS: Council could choose to leave the fee schedule as is or could suggest alternative amounts.

FISCAL IMPACT: N/A

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

ATTACHMENTS:

1. Ordinance Amending Appendix A – Library Fees

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 46-1 OF CHAPTER 46 "LIBRARY" OF APPENDIX A "FEE SCHEDULE," OF SUBPART B OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, TO AMEND THE FEES FOR LIBRARY SERVICES; 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 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 has previously adopted a Fee Schedule as Appendix A to the Town's Code of Ordinances; and

WHEREAS, the Town Council last amended Section 46-1, setting fees and late charges for Library services, on July 21, 2008; and

WHEREAS, the Town Council wishes to amend the Fee Schedule to amend the fees to be charged by the Library for various services and replacement of materials, to reflect changing costs over time.

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

SECTION 1

That Appendix A "Fee Schedule" of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by amending Chapter 46 "Library," Section 46-1 regarding library fines, in its entirety to read as follows:

Chapter 46. Library

“

Code Section Number	Description
46-1	Library fee schedule.

- A. No fines will be charged for late returns.
- B. A \$1.00 fee will be charged for replacing a lost library card.
- C. A \$20.00 fee will be charged for adult and teen books which are lost or damaged beyond repair.
- D. A \$10.00 fee will be charged for children's books which are lost or damaged beyond repair.

ORDINANCE NO. _____

- E. An \$7.00 fee will be charged for mass market paperback books and board books which are lost or damaged beyond repair.
- F. A \$10 fee will be charged for lost or damaged media items containing 1-4 disks. A \$20 fee will be charged for lost or damaged media items containing 5-8 disks. A \$30 fee will be charged for lost or damaged media items containing more than 8 disks. All types of kits will be charged a fee in the amount of the full replacement cost if the entire kit is lost or damaged. If an individual component is lost or damaged and can be replaced, a fee in the amount of the replacement cost for that item will be charged.
- G. A \$3.00 fee per part will be charged for lost or damaged media cases and other packaging parts.
- H. The amounts listed in C-G above are based on the average replacement cost for categories of items, with available discounts applied. Processing costs are included. The Library may elect to replace the lost/damaged item with a different title from the same category, based on current needs, so replacement copies cannot be accepted in lieu of payment.
- I. For items not listed above, or when replacement cost actually incurred by the Library will be more than twenty percent (20%) below or above the fees set forth in items C-F, a reasonable fee reflecting actual cost incurred by the library will be determined by the Director of Library Services."

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 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 4

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

ORDINANCE NO. _____

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF
FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____, ON THIS THE _____
DAY OF MARCH, 2022.**

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: March 7, 2022

FROM: Andy Kancel, Chief of Police *AK*

ITEM: Consider approval of the 2022 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.

BACKGROUND INFORMATION: After discussion between representatives of the USACE and Town staff, a Cooperative Agreement for this year was reached. The Cooperative Agreement will allow off- duty Police Officers to provide police services for Murrell Park and Knob Hill Trail Head at Lake Grapevine on Fridays, Saturdays, Sundays, and holidays. The additional patrol of the parks provides citizens using the park a safer environment. A 2019 legal opinion determined this agreement does not require annual review based on the Town Charter given the only changes are compensation, times and dates of service.

The USACE Cooperative Agreement this year includes:

Period Covered	Weekend Hours	Holidays	Total Hours
Friday, May 20, 2022 through Sunday, September 11, 2022	• 8 hours on Fridays (1500-2330) • 10 hours on Saturdays (1300-2330) • 8 hours on Sundays (1500-2330)	• Memorial Day • July 4th • Labor Day	472

The USACE will reimburse the Flower Mound Police Department a total contract price of \$41,932.48. which is \$88.84 per hour.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Not sign the solicitation for contract in which case the USACE would not reimburse the Town for expense of police officer response to any incident on USACE property.

FISCAL IMPACT: \$0 due to revenue offsetting expenditures

Proposed Expenditure/(Revenue):	Account Number(s):
\$ (41,932.48)	100-4605
\$ 41,932.48	100- various expense accounts

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

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

ATTACHMENTS:

1. Cover Letter and Solicitation for Contract

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



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT
P.O. BOX 17300
FORT WORTH, TX 76102-0300

01 February 2022

Captain Kendall Leonard
Flower Mound P.D.
4150 Kirkpatrick Lane
Flower Mound, Texas 75028
kendall.leonard@flower-mound.com
margaret.mulcahy@flower-mound.com

Dear Captain Leonard,

Attached is Solicitation No. W9126G22Q0012 for the requirement of police services for the project, FY22 Contract for Increased Law Enforcement for parts of Grapevine Lake Reservoir lying within the Town of Flower Mound, Texas. Request you submit a price quote for performing the work and services outlined in the Performance Work Statement (PWS). Your quote shall be filled in on the Bid Sheet found in the Solicitation. The quote must be received on or before 10:00 A.M. CST, on Tuesday, 01 March 2022. Please submit your quote via email to Daisy Ciarlariello, Daisy.Ciarlariello@usace.army.mil

You are advised this letter shall NOT be construed as authority to proceed with any work or to incur any obligations chargeable to the Government in response to this solicitation. If you have any questions regarding this request, please contact Daisy Ciarlariello, Contract Specialist at 817-886-6592.

The quote will be used for contract award if determined to be fair and reasonable. By submitting a quote, you agree that the proposed price is final and will accept contract award unilaterally, provided that the contract is for the exact amount of the quote.

Only a warranted Contracting Officer or Administrative Contracting Officer, acting within their delegated limits, has the authority to issue modifications or otherwise change the terms and conditions of this contract. If an individual other than the Contracting Officer or ACO attempts to make changes to the terms and conditions of this contract you shall not proceed with the change and shall immediately notify the Contracting Officer.

Sincerely,

Matthew S. Dickson

Matthew S. Dickson
Contracting Officer

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS				1. REQUISITION NUMBER		PAGE 1 OF 50	
<i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>							
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE		4. ORDER NUMBER		5. SOLICITATION NUMBER W9126G22Q0012	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME DAISY CARLARELLO		b. TELEPHONE NUMBER (No Collect Calls) 817-886-6592		6. SOLICITATION ISSUED DATE 01-Feb-2022	
9. ISSUED BY US ARMY CORPS OF ENGINEERS FORT WORTH 819 TAYLOR ST, CT OFC RM 2A17 FORT WORTH TX 76102-0300 TEL: FAX: (817) 886-6403		CODE W9126G		10. THIS ACQUISITION IS ☐ SMALL BUSINESS ☐ HUBZONE SMALL BUSINESS ☐ SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS ☒ UNRESTRICTED OR ☐ SET ASIDE: _____ % FOR: ☐ WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM ☐ EDWOSB ☐ 8(A) NAICS: 922120 SIZE STANDARD:			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED ☐ SEE SCHEDULE		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) ☐		13b. RATING	
15. DELIVER TO GRAPEVINE PROJECT OFFICE JOHN MATHNEY 110 FAIRWAY DR GRAPEVINE TX 76051 TEL: 817-876-2600 FAX:		CODE 967426		16. ADMINISTERED BY CODE			
17a. CONTRACTOR/ OFFEROR TELEPHONE NO.		CODE FACILITY CODE		18a. PAYMENT WILL BE MADE BY CODE			
☐ 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED ☐ SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
SEE SCHEDULE							
25. ACCOUNTING AND APPROPRIATION DATA						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
☐ 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3, 52.212-5 ARE ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED							
☐ 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA ☐ ARE ☐ ARE NOT ATTACHED							
☒ 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED.				☐ 29. AWARD OF CONTRACT: REF. OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Derek France, Mayor		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) TEL: EMAIL:		31c. DATE SIGNED	

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS (CONTINUED)				PAGE 2 OF 50	
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/ SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
SEE SCHEDULE					
32a. QUANTITY IN COLUMN 21 HAS BEEN ☐ RECEIVED ☐ INSPECTED ☐ ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____					
32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE			32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
			32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE		
33. SHIP NUMBER		34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT	
☐ PARTIAL ☐ FINAL				☐ COMPLETE ☐ PARTIAL ☐ FINAL	
37. CHECK NUMBER					
38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	40. PAID BY		
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT		42a. RECEIVED BY (Print)			
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		42b. RECEIVED AT (Location)			
		41c. DATE		42c. DATE REC'D (YY/MM/DD)	
				42d. TOTAL CONTAINERS	

Section SF 1449 - CONTINUATION SHEET

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	Government	N/A	Government

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	DODAAC / CAGE
0001	POP 27-APR-2022 TO 12-SEP-2022	N/A	LEWISVILLE PROJECT OFC ROB JORDAN 1801 N MILL STREET LEWISVILLE TX 75057-3153 (469)645-9107 FOB: Destination	967431

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	FY22 Increased Law Enforcement FFP The Contractor shall provide all personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and non-personal services necessary to perform increased law enforcement services as defined in this Performance Work Statement except for those items specified as government furnished property and services. The Contractor shall perform to the standards in this contract. FOB: Destination PSC CD: R499				

NET AMT

**CONTRACT FOR INCREASED LAW ENFORCEMENT SERVICES,
GRAPEVINE LAKE, 2022
FLOWER MOUND POLICE DEPARTMENT**

COST PROPOSAL

LABOR COST:

Salary Analysis for 2022 lake patrol based on average overtime rates of all patrol officers, sergeants and lieutenants projected to perform work on this contract, 472 hours

Average Overtime Rate			Per Hour
Salary:	\$63.71	avg. hourly	\$63.71
FICA:	7.65%		\$4.87
Retirement:	11.31%		\$7.21
Health Ins. Avg. Cost:	\$ 16,262.75		\$7.82
Worker's Comp:	1.17%		\$0.75
Supp. Death:	\$ 0.025	per \$1,000	\$0.00
LTD:	\$ 0.16	per \$100	\$0.10
Total Labor Cost per Overtime Hour			<u>\$ 84.46</u>

Total Number of Contract Hours: 472

TOTAL Labor Cost for Contract \$ 39,865.12

VEHICLE COST:

Leasing Cost: \$ ____/mo x ____ veh-months	\$	-
Sched. Service Costs: \$ ____/mo x ____ veh-months	\$	-
Insurance Cost: \$ ____/mo x ____ veh-months	\$	-
Fuel Cost:		
4-Yr avg of contract mileage:	3693 miles	
2022 COE rate	\$ 0.560 per mile	\$ 2,068.08
TOTAL Vehicle Cost for Contract		<u><u>\$ 2,068.08</u></u>

MISCELLANEOUS COST:

Administration/Overhead per hour	\$	-
Equip. maintenance per officer	\$	-
Training expense per officer	\$	-
TOTAL Miscellaneous Cost for Contract		<u><u>\$ -</u></u>

CONTRACT SUMMARY:

Labor Cost	\$ 30,071.12	\$ 63.71
Benefit Cost	\$ 9,794.00	\$ 20.75
Vehicle Cost	\$ 2,068.08	\$ 4.38
Miscellaneous Cost	\$ -	
		*

updated 2/14/2022

\$ 41,933.20 \$ 88.84 per hr. rate

* When adding the total contract costs including labor, benefits, and a vehicle per hourly rate, the total is \$41,933.20. When multiplying the contract cost totals using the hourly rate of \$88.84 by 472 hours, the total is \$41,932.48. The \$0.72 difference has to do with the benefit cost and vehicle cost not dividing equally into 472 hours.

PERFORMANCE WORK STATEMENT (PWS)

Increased Law Enforcement Services, Town of Flower Mound Grapevine Lake 2022

Revised 02Feb2022 – Revisions in Red

1. **GENERAL:** This is a non-personal services contract to provide increased law enforcement services. The Government shall not exercise any supervision or control over the contract service providers performing the services herein. Such contract service providers shall be accountable solely to the Contractor who, in turn is responsible to the Government.

1.1 Description of Services/Introduction: The Contractor shall provide all personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items and non-personal services necessary to perform increased law enforcement services as defined in this Performance Work Statement except for those items specified as government furnished property and services. The Contractor shall perform to the standards in this contract.

1.2. Scope: Town of Flower Mound Police Department (Contractor) agrees to provide a specific level of increased law enforcement services for parts of Grapevine Lake Reservoir lying within the Town of Flower Mound for the purpose of enforcement of State and local criminal and civil laws. Services include vehicular patrol by the contractor of the interior roads of Murrell Park, Knob Hills Trailhead Access and other Federal properties operated and maintained by the Corps of Engineers (Corps) within Town of Flower Mound limits. The contractor shall accomplish enforcement of state and local laws, monitoring of visitor use to increase public safety, and assisting Corps of Engineers rangers with their visitor assistance duties if requested. This contract does not include or reimburse for services and patrol activities in Twin Coves Park, Cross Timbers Trailhead Access or any other areas on Corps property currently administered, operated, or maintained by the Town of Flower Mound.

1.3 Period of Performance: Contractor shall provide described services on certain days of the week from 20 May through 11 September, 2022, for a total of 472 patrol hours, further specified in Appendices A,B, and C to this PWS. Effective start date is 20 May 2022 **or after the contractor has been notified by the Contracting Officer, Fort Worth District, that the contract has been executed; whichever is later.** Patrols will be conducted on Fridays, Saturdays, and Sundays as well as on a Federally recognized holidays (see Appendices A, B, and C).

1.4 General Information

1.4.1 Quality Control (Not applicable)

1.4.2 Quality Assurance: The Contractor will prepare a Daily Enforcement Action Summary in accordance with the attached format (Example, Appendix D). The contractor will prepare a Daily Law Enforcement Log originated and provided by the contractor. The Daily Law Enforcement Log will be completed daily and submitted weekly at the close of each weekend shift, to the Corps of Engineers representative listed in Technical Exhibit 2 of this plan. ***Any drowning or serious incidents in these areas will be reported to the Corps of Engineers immediately, through the Lake Office, or directly to Park Rangers on duty.*** The Corps will provide an after-hours telephone contact sheet to the Town's dispatch office to facilitate such notification. The Government shall evaluate the contractor's performance under this contract in accordance with the Quality Assurance Surveillance Plan. This plan is primarily focused on what the Government must do to ensure that the contractor has performed in accordance with the performance standards. It defines how the performance standards will be applied.

1.4.3 Government Holidays: Contractor will be required to perform services on those Federal holidays falling during the contract period, namely, Memorial Day, Independence Day and Labor Day (see Appendices A,B and C).

1.4.4 Hours of Operation: [Not applicable]

1.4.5 Place of Performance: The work to be performed under this contract will be performed at Corps administered lands in Denton County specified in Para. 1.2. State and local law enforcement agencies generally have the same authority and responsibilities on Corps administered lands as they do elsewhere in their respective jurisdictions. Because of this, requests by the Lake Manager or his authorized representatives for emergency or unanticipated law enforcement assistance will be considered non-reimbursable.

1.4.6 Type of Contract: The government will award a firm fixed price contract

1.4.7 Security Requirements: This contract does not require Contractor personnel to have access to or enter secured government facilities such as dam outlet structures, powerhouses, etc. Contractor personnel shall follow locally-established security policies and procedures such as key control and security of lock combinations.

1.4.7.1 AT Level 1 Training. All contractor employees, to include subcontractor employees, requiring access to Army installations, facilities, controlled access areas, or require network access, shall complete AT Level 1 awareness training within 30 calendar days after contract start date or effective date of incorporation of this requirement into the contract, whichever is applicable. Upon request, the contractor shall submit certificates of completion for each affected employee and subcontractor employee, to the COR or to the contracting officers (if a COR is not assigned), within 5 calendar days after completion of training by all employees and subcontractor personnel. AT Level 1 awareness training is available at the following website: <http://jko.jten.mil/courses/at1/launch.html>; or it can be provided by the RA ATO in presentation form which will be documented via memorandum.

1.4.7.2 General Protection/Security Policy and Procedures:

1.4.7.2.1 All contractor and all associated sub-contractors employees shall comply with applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative). The contractor shall also provide all information required for background checks to meet installation/facility access requirements to be accomplished by installation Provost Marshal Office, Director of Emergency Services or Security Office. Contractor workforce must comply with all personal identity verification requirements (FAR clause 52.204-9, Personal Identity Verification of Contractor Personnel) as directed by DOD, HQDA and/or local policy. In addition to the changes otherwise authorized by the changes clause of this contract, should the Force Protection Condition (FPCON) at any installation or facility change, the Government may require changes in contractor security matters or processes.

1.4.7.2.2 Contractor and all associated sub-contractors employees shall comply with adjudication standards and procedures using the National Crime Information Center Interstate Identification Index (NCIC-III) and Terrorist Screening Database (TSDB) (Army Directive 2014-05 / AR 190-13), applicable installation, facility and area commander installation/facility access and local security policies and procedures (provided by government representative, as NCIC and TSDB are available), or, at OCONUS locations, in accordance with status of forces agreements and other theater regulations.

1.4.7.3 Key Control: Government keys provided to the contractor will be issued and controlled in accordance with IAW AR 190-51. The Contractor shall establish and implement methods of making sure

all keys issued to the Contractor by the Government are not lost or misplaced and are not used by unauthorized persons. Keys issued to the Contractor by the Government shall NOT be duplicated. The Contractor shall develop procedures covering key control that shall be provided in writing to the Lake Security Officer. Such procedures shall include turn-in of any issued keys by personnel who no longer require access to locked areas. The Contractor shall immediately report any occurrences of lost or duplicate keys to the Contracting Officer.

- (a) The Contractor shall prohibit the use of Government issued keys by any persons other than the Contractor and team member. The Contractor shall prohibit the opening of locked areas by persons other than the Contractor and team member.

1.4.8 Special Qualifications: All Contractor personnel shall be certified and licensed Texas Peace Officers. The Contractor will provide, in advance, the Corps representative designated in paragraph 1.4.11 the name of each Deputy who will be performing scheduled work under this contract.

1.4.9 Post Award Conference/Periodic Progress Meetings: The Contractor agrees to attend any post award conference convened by the contracting activity or contract administration office in accordance with Federal Acquisition Regulation Subpart 42.5. The Contracting Officer, Quality Assurance (QA) Point of Contact(POC), and other Government personnel, as appropriate, may meet periodically with the contractor to review the contractor's performance. At these meetings the Contracting Officer will apprise the contractor of how the Government views the contractor's performance and the contractor will apprise the Government of problems, if any, being experienced. Appropriate action shall be taken to resolve outstanding issues. These meetings shall be at no additional cost to the Government.

1.4.10 Contracting Officer Representative (COR): A COR will not be appointed for this contract. Quality Assurance duties will be performed by the QA POC designated in Paragraph 1.4.11

1.4.11 Contractor Key Personnel: The following personnel are considered key personnel by the Government, and will serve as the Corps QA POC: Phil Ledbetter, Lead Park Ranger, Grapevine Lake; Alternate: Ami Watkins, Park Ranger, Grapevine Lake. The contractor shall provide a contract manager who shall be responsible for the performance of the work. The name of this person and an alternate who shall act for the contractor when the manager is absent shall be designated in writing to the Contracting Officer. The contract manager or alternate shall have full authority to act for the contractor on all contract matters relating to daily operation of this contract.

1.4.12 Identification of Contractor Employees: All officers performing services under this contract shall wear standard uniforms normally worn by the law enforcement agency. All patrol vehicles shall have standard insignia and markings normally used by the law enforcement agency.

1.4.13 Invoicing: Invoice for contract services performed; includes billing start/end dates, hours worked, total charges. Weekly recap of Police activity. Invoices shall be submitted to the Corps QA POC and Finance and Accounting on or before the 5th of every month for services rendered the previous month. Invoices can be sent via Mail, Fax, or Email.

1.4.14 Data Rights (Not applicable)

1.4.15 Organizational Conflict of Interest: (Not applicable)

1.5. GOVERNMENT FURNISHED ITEMS AND SERVICES: (Not applicable)

1.6 CONTRACTOR FURNISHED ITEMS AND RESPONSIBILITIES:

1.6.1 General : The Contractor shall furnish all manpower, vehicles, supplies, equipment, facilities and services required to perform work under this contract.

1.6.2 Equipment: The Contractor shall provide all patrol vehicles and equipment required to perform services under this contract. All such vehicles shall have standard insignia and markings normally used by the law enforcement agency. Patrol vehicles shall also be equipped with standard law enforcement type lights, radios, and any other standard equipment necessary to perform the required services. The Contractor shall be responsible for all vehicle costs, including insurance, fuel, service and maintenance, and any other costs associated with the operation of each vehicle.

1.6.3. Materials (Not applicable).

1.7 CONTRACTOR MANAGEMENT REPORTING (CMR) (Not applicable)

1.8 APPLICABLE PUBLICATIONS (CURRENT EDITIONS) (Not applicable)

1.9.1 Attachment 1/Technical Exhibit 1 – Performance Requirements Summary

1.9.2 Attachment 2/Technical Exhibit 2 – Deliverables Schedule

2.0 MISCELLANEOUS PROVISIONS:

2.1 Orientation: An appropriate orientation for all participating contract personnel will be conducted by the Corps of Engineers staff to familiarize the Contractor with the policies and procedures of the Corps, and to familiarize Corps personnel with the functions and duties of the contracted law enforcement agency.

TECHNICAL EXHIBIT 1

Performance Requirements Summary

The contractor service requirements are summarized into performance objectives that relate directly to mission essential items. The performance threshold briefly describes the minimum acceptable levels of service required for each requirement. These thresholds are critical to mission success.

Performance Objective	Standard	Performance Threshold	Method of Surveillance
The contractor shall provide additional patrolling presence and discretionary law enforcement actions in specified areas to help keep the peace and increase public safety in parks and other designated Corps areas. (Paragraph 1.1)	The contractor provided visible presence and actions in the designated areas at the specified days and times.	All required shifts were covered and the specified contract services were performed. Contractor coordinated in advance with Corps key personnel in the event of an unforeseen event which prevented an officer from serving all or part of a shift, which would not be billable to the Government.	Contractor's Daily Enforcement Action Summaries and Daily Law Enforcement Logs turned in by Contractor will be examined by QA POC to ensure accuracy prior to authorizing payment.

TECHNICAL EXHIBIT 2
DELIVERABLES SCHEDULE

<u>Deliverable</u>	<u>Frequency</u>	<u># of Copies</u>	<u>Medium/Format</u>	<u>Submit To</u>
Invoice for contract services performed; includes billing start/end dates, hours worked, total charges. Weekly recap of Police activity. (Paragraph 1.4.13)	Submitted to Corps by the 5 th of every month, listing contract services performed during the previous calendar month.	Two copies of invoice submitted to Corps QA POC, one submitted to USACE Finance Center	Hard Copy or FAX or Email	1. US Army Corps of Engineers Grapevine Lake 110 Fairway Drive Grapevine Texas ATTN: Phil Ledbetter Phillip.m.ledbetter@usace.army.mil 2. USACE Finance Center Attn: CEFC-AO-P 5722 Integrity Drive Millington, TN 38054-5005 FAX: 901/874-8533
Daily Enforcement Action Summaries (Paragraph 1.4.2)	To Corps with monthly invoice		Same as above	USACE Grapevine Lake Attn: Phil Ledbetter Phillip.m.ledbetter@usace.army.mil
Daily Law Enforcement Log (Paragraph 1.4.2)	To Corps weekly following each weekend shift		Same as above	USACE Grapevine Lake Attn: Phil Ledbetter Phillip.m.ledbetter@usace.army.mil

PERFORMANCE WORK STATEMENT

APPENDIX A

PATROL SCHEDULE 2022

DAY OF WEEK	TIME	HOURS	VEHICLES	OFFICERS
FRIDAY	1500-2330	8	1	1
SATURDAY	1300-2330	10	1	1
SUNDAY	1500-2330	8	1	1
Holidays:				
MAY 30 th	1130-2200	10	1	1
Memorial Day				
JULY 4 th	1330-2400	10	1	1
Independence Day				
SEPTEMBER 5 th	1130-2200	10	1	1
Labor Day				

NOTE: Deviations from the above schedules may be required to allow for unforeseen situations that may arise during the Contract period. **Any deviations shall be mutually agreed upon in advance by both the Corps and the Contractor and in no event will the total man-hours specified in the Contract be exceeded.**

Contract begins on **20 May 2022**, or after the contractor has been notified by the Contracting Officer, Fort Worth District, that the contract has been executed; whichever is later, with patrols made on consecutive weekends, (Fridays, Saturdays and Sundays) through **11 September 2022** to complete the agreement. Only holidays within this contract will be included in this agreement.

PERFORMANCE WORK STATEMENT

APPENDIX B

HOURS BY MONTH 2022

Hours: Fridays & Sundays 8 hours each
 Saturdays 10 hours each
 Holidays 10 hours each

Shift Day	Hours	Days	Total
Fridays	8	17	136
Saturdays	10	17	170
Sundays	8	17	136
Memorial Day 30 May	10	1	10
Independence Day 4 July	10	1	10
Labor Day 5 Sept	10	1	10
		Grand Total	472

Month	Friday Hours	Saturday Hours	Sunday Hours	Holiday Hours	Total
Base	8	10	8	10	
May	16	20	16	10	62
June	32	40	32	0	104
July	40	50	40	10	140
August	32	40	32	0	104
September	16	20	16	10	62
				Total Hours	472

PERFORMANCE WORK STATEMENT**APPENDIX C****2022****SCHEDULE OF DAYS WORKED BY MONTH**

54 Days total

MAY: 20-22, 27-30 (Includes Memorial Holiday) = **7 days****JUNE:** 3-5, 10-12, 17-19, 24-26= **12 days****JULY:** 1-4 (Includes Independence Day), 8-10, 15-17, 22-24, 29- 31 = **16 days****AUGUST:** 5-6, 12-14, 19-21, 26-28, = **12days****SEPTEMBER:** 2-5 (includes Labor Day, 9-11 = **7 days**

Appendix D

DAILY ENFORCEMENT ACTION SUMMARY

OPERATING AGENCY: Flower Mound Police Department

PROJECT: Grapevine Lake

OFFICERS NAME: _____ DATE: _____

TIME STARTED: _____ TIME ENDED: _____ TOTAL HOURS: _____

ABBREVIATIONS: A = Arrest C = Citation W = Written Warning V = Verbal Warning

OFFENCE TITLE	Murrell Park				NOTES
Vehicles	A	C	W	V	
Parking					
Speeding					
Reckless					
State Req.					
DWI					
Other					
TOTALS					
Conduct					
Loud/Unruly					
Public Intox					
Cont Subst.					
Minor Poss.					
Theft					
Vandal					
Litter					
Weapons					
Assault					
Other					
TOTALS					

*** For all arrests and evictions include details on back ***

Officer Number: _____ Date: _____ Signature: _____

Map Created: 20 Nov 2019 By: John Mathney

The U.S. Army Corps of Engineers has provided these spatial data as a representation of the various geographic information gathered from multiple sources. These data should be viewed only as a representation of the provided information and should not be used for any other purpose. No guarantee is made by the U.S. Army Corps of Engineers regarding the accuracy or completeness of the data or their suitability for a particular use.



**US Army Corps
of Engineers®**
Fort Worth District

Increased Law Enforcement Patrol Map Grapevine Lake - Knob Hills Trail Head



520 260 0 520 Feet

Legend

Fee Boundary

Map Created: 20 Nov 2019 By: John Mathney

The U.S. Army Corps of Engineers has provided these spatial data as a representation of the various geographic information gathered from multiple sources. These data should be viewed only as a representation of the provided information and should not be used for any other purpose. No guarantee is made by the U.S. Army Corps of Engineers regarding the accuracy or completeness of the data or their suitability for a particular use.



**US Army Corps
of Engineers**
Fort Worth District

CLAUSES INCORPORATED BY REFERENCE

52.204-7	System for Award Management	OCT 2018
52.204-13	System for Award Management Maintenance	OCT 2018
52.204-16	Commercial and Government Entity Code Reporting	AUG 2020
52.204-18	Commercial and Government Entity Code Maintenance	AUG 2020
52.204-21	Basic Safeguarding of Covered Contractor Information Systems	DEC 2021
52.209-2	Prohibition on Contracting with Inverted Domestic Corporations--Representation	NOV 2015
52.212-1	Instructions to Offerors--Commercial Products and Commercial Services	DEC 2021
52.222-50	Combating Trafficking in Persons	DEC 2021
52.222-55	Minimum Wages Under Executive Order 13658	NOV 2020
52.222-62	Paid Sick Leave Under Executive Order 13706	JAN 2017
52.223-18	Encouraging Contractor Policies To Ban Text Messaging While Driving	JUN 2020
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	DEC 2021
52.242-15	Stop-Work Order	AUG 1989
52.242-17	Government Delay Of Work	APR 1984
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	SEP 2011
252.203-7005	Representation Relating to Compensation of Former DoD Officials	NOV 2011
252.204-7003	Control Of Government Personnel Work Product	APR 1992
252.204-7004	Antiterrorism Awareness Training for Contractors.	FEB 2019
252.204-7008	Compliance With Safeguarding Covered Defense Information Controls	OCT 2016
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information	OCT 2016
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting	DEC 2019
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support	MAY 2016
252.204-7016	Covered Defense Telecommunications Equipment or Services -- Representation	DEC 2019
252.204-7017	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services -- Representation	MAY 2021
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services	JAN 2021
252.204-7019	Notice of NIST SP 800-171 DoD Assessment Requirements	NOV 2020
252.204-7020	NIST SP 800-171 DoD Assessment Requirements	NOV 2020
252.223-7008	Prohibition of Hexavalent Chromium	JUN 2013
252.225-7974 (Dev)	Representation Regarding Business Operations with the Maduro Regime (DEVIATION 2020-O0005)	FEB 2020
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	DEC 2018
252.232-7010	Levies on Contract Payments	DEC 2006
252.237-7010	Prohibition on Interrogation of Detainees by Contractor Personnel	JUN 2013
252.247-7023	Transportation of Supplies by Sea	FEB 2019

CLAUSES INCORPORATED BY FULL TEXT

52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (NOV 2021)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 922120.

(2) The small business size standard is .

(3) The small business size standard for a concern that submits an offer, other than on a construction or service acquisition, but proposes to furnish an end item that it did not itself manufacture, process, or produce is 500 employees if the acquisition--

(i) Is set aside for small business and has a value above the simplified acquisition threshold;

(ii) Uses the HUBZone price evaluation preference regardless of dollar value, unless the offeror waives the price evaluation preference; or

(iii) Is an 8(a), HUBZone, service-disabled veteran-owned, economically disadvantaged women-owned, or women-owned small business set-aside or sole-source award regardless of dollar value.

(b)(1) If the provision at 52.204-7, System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at 52.204-7, System for Award Management, is not included in this solicitation, and the Offeror has an active registration in the System for Award Management (SAM), the Offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:

() Paragraph (d) applies.

() Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c) (1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) 52.203-2, Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) 52.203-18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements--Representation. This provision applies to all solicitations.

(iv) 52.204-3, Taxpayer Identification. This provision applies to solicitations that do not include the provision at 52.204-7, System for Award Management.

(v) 52.204-5, Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold; and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(vi) 52.204-26, Covered Telecommunications Equipment or Services--Representation. This provision applies to all solicitations.

(vii) 52.209-2, Prohibition on Contracting with Inverted Domestic Corporations--Representation.

(viii) 52.209-5, Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(ix) 52.209-11, Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This provision applies to all solicitations.

(x) 52.214-14, Place of Performance--Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(xi) 52.215-6, Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(xii) 52.219-1, Small Business Program Representations (Basic, Alternates I, and II). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(C) The provision with its Alternate II applies to solicitations that will result in a multiple-award contract with more than one NAICS code assigned.

(xiii) 52.219-2, Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xiv) 52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.

(xv) 52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.

(xvi) 52.222-38, Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial products or commercial services.

(xvii) 52.223-1, Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA-designated items; or include the clause at 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xviii) 52.223-4, Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA- designated items.

(xix) 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals--Representation. This provision applies to solicitations that include the clause at 52.204-7.)

(xx) 52.225-2, Buy American Certificate. This provision applies to solicitations containing the clause at 52.225-1.

(xxi) 52.225-4, Buy American--Free Trade Agreements--Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at 52.225- 3.

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$83,099, the provision with its Alternate II applies.

(D) If the acquisition value is \$83,099 or more but is less than \$100,000, the provision with its Alternate III applies.

(xxii) 52.225-6, Trade Agreements Certificate. This provision applies to solicitations containing the clause at 52.225-5.

(xxiii) 52.225-20, Prohibition on Conducting Restricted Business Operations in Sudan--Certification. This provision applies to all solicitations.

(xxiv) 52.225-25, Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certification. This provision applies to all solicitations.

(xxv) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following representations or certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

(i) 52.204-17, Ownership or Control of Offeror.

(ii) 52.204-20, Predecessor of Offeror.

(iii) 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products.

(iv) 52.222-48, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Certification.

(v) 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification.

(vi) 52.223-9, with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

(vii) 52.227-6, Royalty Information.

(A) Basic.

(B) Alternate I.

(viii) 52.227-15, Representation of Limited Rights Data and Restricted Computer Software.

(d) The Offeror has completed the annual representations and certifications electronically in SAM accessed through <https://www.sam.gov>. After reviewing the SAM information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change
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Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on SAM.

(End of provision)

52.204-24 REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it "does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument" in paragraph (c)(1) in the provision at 52.204-26, Covered Telecommunications Equipment or Services--Representation, or in paragraph (v)(2)(i) of the provision at 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services. The Offeror shall not complete the representation in paragraph (d)(2) of this provision if the Offeror has represented that it "does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services" in paragraph (c)(2) of the provision at 52.204-26, or in paragraph (v)(2)(ii) of the provision at 52.212-3.

(a) Definitions. As used in this provision-

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to--

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to--

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services."

(d) Representations. The Offeror represents that--

(1) It ☐ will, ☐ will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds "will" in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that--

It ☐ does, ☐ does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds "does" in paragraph (d)(2) of this section.

(e) Disclosures.

(1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded "will" in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment--

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services--

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded "does" in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment--

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services--

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (NOV 2021)

(a) Definitions. As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means--

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means--

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled--
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing--

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

(End of clause)

52.204-26 COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES--REPRESENTATION (OCT 2020)

(a) Definitions. As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) Representations.

(1) The Offeror represents that it [____] does, [____] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it [____] does, [____] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of provision)

52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS--COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021)

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically in the System for Award Management (SAM) accessed through <https://www.sam.gov>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (v) of this provision.

(a) Definitions. As used in this provision --

“Covered telecommunications equipment or services” has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

“Economically disadvantaged women-owned small business (EDWOSB) Concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

"Forced or indentured child labor" means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

“Inverted domestic corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

“Manufactured end product” means any end product in product and service codes (PSCs) 1000-9999, except--

(1) PSC 5510, Lumber and Related Basic Wood Materials;

(2) Product or Service Group (PSG) 87, Agricultural Supplies;

(3) PSG 88, Live Animals;

(4) PSG 89, Subsistence;

(5) PSC 9410, Crude Grades of Plant Materials;

(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Predecessor” means an entity that is replaced by a successor and includes any predecessors of the predecessor.

“Reasonable inquiry” has the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate--

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

“Sensitive technology”--

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically--
 - (i) To restrict the free flow of unbiased information in Iran; or
 - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

“Service-disabled veteran-owned small business concern”--

- (1) Means a small business concern--
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern"--

(1) Means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

(2) Affiliates, as used in this definition, means business concerns, one of whom directly or indirectly controls or has the power to control the others, or a third party or parties control or have the power to control the others. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships. SBA determines affiliation based on the factors set forth at 13 CFR 121.103.

"Small disadvantaged business concern", consistent with 13 CFR 124.1002, means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

"Subsidiary" means an entity in which more than 50 percent of the entity is owned--

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

"Successor" means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term

"successor" does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned business concern" means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

"Women-owned small business concern" means a small business concern--

(1) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; or

(2) Whose management and daily business operations are controlled by one or more women.

“Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127)”, means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b) (1) Annual Representations and Certifications. Any changes provided by the Offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications in SAM.

(2) The offeror has completed the annual representations and certifications electronically in SAM accessed through <http://www.sam.gov>. After reviewing SAM information, the Offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications--Commercial Products and Commercial Services, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard(s) applicable to the NAICS code(s) referenced for this solicitation), at the time this offer is submitted and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs ____.

[Offeror to identify the applicable paragraphs at (c) through (v) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) Small business concern. The offeror represents as part of its offer that it (____) is, (____) is not a small business concern.

(2) Veteran-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents as part of its offer that it (____) is, (____) is not a veteran-owned small business concern.

(3) Service-disabled veteran-owned small business concern. (Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.) The offeror represents as part of its offer that it (____) is, (____) is not a service-disabled veteran-owned small business concern.

(4) Small disadvantaged business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it (____) is, (____) is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) Women-owned small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it (____) is, (____) is not a women-owned small business concern.

(6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that--

(i) It [____] is, [____] is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [____] is, [____] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: ____ .] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that--

(i) It [____] is, [____] is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It [____] is, [____] is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: ____ -.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

Note: Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

(8) Women-owned business concern (other than small business concern). (Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents that it (____) is, a women-owned business concern.

(9) Tie bid priority for labor surplus area concerns. If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(10) HUBZone small business concern. (Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.) The offeror represents, as part of its offer, that--

(i) It [____] is, [____] is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It [____] is, [____] is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: ____ .] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Certifications and representations required to implement provisions of Executive Order 11246--

(1) Previous Contracts and Compliance. The offeror represents that--

(i) It (____) has, (____) has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the and

(ii) It (____) has, (____) has not, filed all required compliance reports.

(2) Affirmative Action Compliance. The offeror represents that--

(i) It (____) has developed and has on file, (____) has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It (____) has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) Buy American Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American --Supplies, is included in this solicitation.)

(1) (i) The Offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(iii) The terms "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Supplies."

(2) Foreign End Products:

Line item No.	Country of origin
____	____
____	____
____	____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) Buy American--Free Trade Agreements--Israeli Trade Act Certificate. (Applies only if the clause at FAR 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act, is included in this solicitation.)

(i) (A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product.

(B) The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American--Free Trade Agreements--Israeli Trade Act."

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American--Free Trade Agreements--Israeli Trade Act."

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line item No.	Country of origin
—	—
—	—
—	—

[List as necessary]

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled "Buy American--Free Trade Agreements--Israeli Trade Act." The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line item No.	Country of origin
—	—
—	—
—	—

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American Act-Free Trade Agreements-Israeli Trade Act Certificate, Alternate I (Jan 2004)*. If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled "Buy American -Free Trade Agreements-Israeli Trade Act":

Canadian End Products:

Line item No.

[List as necessary]

(3) Buy American-Free Trade Agreements-Israeli Trade Act Certificate, Alternate II (Jan 2004). If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act":

Canadian or Israeli End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) Buy American--Free Trade Agreements--Israeli Trade Act Certificate, Alternate III. If Alternate III to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American --Free Trade Agreements--Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line item No.	Country of origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(5) Trade Agreements Certificate. (Applies only if the clause at FAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled "Trade Agreements".

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

Line item No.	Country of origin
—	—
—	—
—	—

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689)*. (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--

(1) [____] Are, [____] are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) [____] Have, [____] have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(3) [____] Are, [____] are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4) [____] Have, [____] have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds the threshold at 9.104-5(a)(2) for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples.

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals Contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for *Listed End Products (Executive Order 13126)*. [*The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at [22.1503\(b\)](#).*]

(1) *Listed end products.*

Listed end product	Listed countries of origin
—	—
—	—
—	—

(2) *Certification.* [*If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.*]

[☐] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[☐] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) (☐) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) (☐) Outside the United States.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly--

(1) (☐) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) (☐) Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Labor Standards. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.)

[*The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.*]

[☐] (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror (☐) does (☐) does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

[☐] (2) Certain services as described in FAR 22.1003-4(d)(1). The offeror (☐) does (☐) does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to SAM to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

(☐) TIN: -----.

(☐) TIN has been applied for.

(☐) TIN is not required because:

(☐) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

(☐) Offeror is an agency or instrumentality of a foreign government;

(☐) Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

(☐) Sole proprietorship;

(☐) Partnership;

(☐) Corporate entity (not tax-exempt);

(☐) Corporate entity (tax-exempt);

(____) Government entity (Federal, State, or local);

(____) Foreign government;

(____) International organization per 26 CFR 1.6049-4;

(____) Other -----.

(5) Common parent.

(____) Offeror is not owned or controlled by a common parent;

(____) Name and TIN of common parent:

Name - ____ .

TIN - ____ .

(m) Restricted business operations in Sudan. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) Prohibition on Contracting with Inverted Domestic Corporations—

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(2) Representation. By submission of its offer, the offeror represents that--

(i) It is not an inverted domestic corporation; and

(ii) It is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

(2) *Representation and Certifications*. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds the threshold at FAR 25.703-2(a)(2) with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (*e.g.*, [52.212-3](#)(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) *Ownership or Control of Offeror.* (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation.

(1) The Offeror represents that it [☐] has or [☐] does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates “has” in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code:

Immediate owner legal name:

(Do not use a “doing business as” name)

Is the immediate owner owned or controlled by another entity:

[☐] Yes or [☐] No.

(3) If the Offeror indicates “yes” in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest level owner CAGE code:

Highest level owner legal name:

(Do not use a “doing business as” name)

(q) *Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.*

(1) As required by section 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless and agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that--

(i) It is [____] is not [____] a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is [____] is not [____] a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

(r) Predecessor of Offeror. (Applies in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.)

(1) The Offeror represents that it [____] is or [____] is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated "is" in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code: ____ (or mark "Unknown").

Predecessor legal name: ____ .

(Do not use a "doing business as" name).

(t) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals. Applies in all solicitations that require offerors to register in SAM (12.301(d)(1)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)]. (i) The Offeror (itself or through its immediate owner or highest-level owner) [____] does, [____] does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible Web site the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner) [____] does, [____] does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible Web site includes the Offeror's own Web site or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible Web site(s) where greenhouse gas emissions and/or reduction goals are reported:
____ .

(u)(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or

otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(v) Covered Telecommunications Equipment or Services--Representation. Section 889(a)(1)(A) and section 889(a)(1)(B) of Public Law 115-232.

(1) The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(2) The Offeror represents that--

(i) It [____] does, [____] does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(ii) After conducting a reasonable inquiry for purposes of this representation, that it [____] does, [____] does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of provision)

52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021)

(a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights-

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) Assignment. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at Federal Acquisition Regulation (FAR) 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation

provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer--Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.--

(1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) Prompt payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall--

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the--

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) Interest.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if--

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on--

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in FAR 32.608-2 in effect on the date of this contract.

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) Taxes. The contract price includes all applicable Federal, State, and local taxes and duties.

(l) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The

Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) Title. Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) Warranty. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) Limitation of liability. Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) Other compliances. The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) Reserved.

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an "I agree" click box or other comparable mechanism (e.g., "click-wrap" or "browse-wrap" agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

(End of clause)

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS--COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (NOV 2021)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services:

(1) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(3) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(5) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(6) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services: [Contracting Officer check as appropriate.]

____ (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUN 2020), with Alternate I (NOV 2021) (41 U.S.C. 4704 and 10 U.S.C. 2402).

____ (2) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

____ (3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

____ (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUN 2020) (Pub. L. 109-282) (31 U.S.C. 6101 note).

____ (5) [Reserved]

____ (6) 52.204-14, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

____ (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

____ (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (NOV 2021) (31 U.S.C. 6101 note).

____ (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (OCT 2018) (41 U.S.C. 2313).

____ (10) [Reserved]

____ (11) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (SEP 2021) (15 U.S.C. 657a).

____ (12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (SEP 2021) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

____ (13) [Reserved]

____ (14)(i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).

____ (ii) Alternate I (MAR 2020) of 52.219-6.

____ (15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (NOV 2020) (15 U.S.C. 644).

____ (ii) Alternate I (MAR 2020) of 52.219-7.

____ (16) 52.219-8, Utilization of Small Business Concerns (OCT 2018) (15 U.S.C. 637(d)(2) and (3)).

____ (17)(i) 52.219-9, Small Business Subcontracting Plan (NOV 2021) (15 U.S.C. 637(d)(4)).

____ (ii) Alternate I (NOV 2016) of 52.219-9.

____ (iii) Alternate II (NOV 2016) of 52.219-9.

____ (iv) Alternate III (JUN 2020) of 52.219-9.

____ (v) Alternate IV (SEP 2021) of 52.219-9.

____ (18) (i) 52.219-13, Notice of Set-Aside of Orders (MAR 2020) (15 U.S.C. 644(r)).

- ____ (ii) Alternate I (MAR 2020) of 52.219-13.
- ____ (19) 52.219-14, Limitations on Subcontracting (SEP 2021) (15 U.S.C. 657s).
- ____ (20) 52.219-16, Liquidated Damages—Subcontracting Plan (SEP 2021) (15 U.S.C. 637(d)(4)(F)(i)).
- ____ (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (SEP 2021) (15 U.S.C. 657f).
- ____ (22) (i) 52.219-28, Post-Award Small Business Program Rerepresentation (SEP 2021) (15 U.S.C. 632(a)(2)).
- ____ (ii) Alternate I (MAR 2020) of 52.219-28.
- ____ (23) 52.219-29, Notice of Set-Aside for, or Sole-Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (SEP 2021) (15 U.S.C. 637(m)).
- ____ (24) 52.219-30, Notice of Set-Aside for, or Sole-Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (SEP 2021) (15 U.S.C. 637(m)).
- ____ (25) 52.219-32, Orders Issued Directly Under Small Business Reserves (MAR 2020) (15 U.S.C. 644(r)).
- ____ (26) 52.219-33, Nonmanufacturer Rule (SEP 2021) (15 U.S.C. 657s).
- ____ (27) 52.222-3, Convict Labor (JUN 2003) (E.O. 11755).
- ____ (28) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JAN 2020) (E.O. 13126).
- ____ (29) 52.222-21, Prohibition of Segregated Facilities (APR 2015).
- ____ (30)(i) 52.222-26, Equal Opportunity (SEPT 2016) (E.O. 11246).
- ____ (ii) Alternate I (FEB 1999) of 52.222-26.
- ____ (31)(i) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).
- ____ (ii) Alternate I (JUL 2014) of 52.222-35.
- ____ (32)(i) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- ____ (ii) Alternate I (JUL 2014) of 52.222-36.
- ____ (33) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- ____ (34) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
- ____ (35)(i) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).
- ____ (ii) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- ____ (36) 52.222-54, Employment Eligibility Verification (NOV 2021). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial products or commercial services as prescribed in FAR 22.1803.)

____ (37)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA–Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

____ (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

____ (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

____ (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

____ (40) (i) 52.223-13, Acquisition of EPEAT® Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

____ (ii) Alternate I (OCT 2015) of 52.223-13.

____ (41)(i) 52.223-14, Acquisition of EPEAT® Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

____ (ii) Alternate I (JUN 2014) of 52.223-14.

____ (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (MAY 2020) (42 U.S.C. 8259b).

____ (43)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

____ (ii) Alternate I (JUN 2014) of 52.223-16.

____ (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (JUN 2020) (E.O. 13513).

____ (45) 52.223-20, Aerosols (JUN 2016) (E.O. 13693).

____ (46) 52.223-21, Foams (JUN 2016) (E.O. 13693).

____ (47)(i) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).

____ (ii) Alternate I (JAN 2017) of 52.224-3.

____ (48) 52.225-1, Buy American--Supplies (NOV 2021) (41 U.S.C. chapter 83).

____ (49) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (NOV 2021) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

____ (ii) Alternate I (JAN 2021) of 52.225-3.

____ (iii) Alternate II (JAN 2021) of 52.225-3.

____ (iv) Alternate III (JAN 2021) of 52.225-3.

____ (50) 52.225-5, Trade Agreements (OCT 2019) 19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).

____ (51) 52.225-13, Restrictions on Certain Foreign Purchases (FEB 2021) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

____ (52) 52.225-26, Contractors Performing Private Security Functions Outside the United States (OCT 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

____ (53) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (NOV 2007) (42 U.S.C. 5150

____ (54) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) (42 U.S.C. 5150).

____ (55) 52.229-12, Tax on Certain Foreign Procurements (FEB 2021).

____ (56) 52.232-29, Terms for Financing of Purchases of Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

____ (57) 52.232-30, Installment Payments for Commercial Products and Commercial Services (NOV 2021) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).

____ (58) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (OCT 2018) (31 U.S.C. 3332).

____ (59) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) (31 U.S.C. 3332).

____ (60) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).

____ (61) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).

____ (62) 52.242-5, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(13)).

____ (63)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631).

____ (ii) Alternate I (APR 2003) of 52.247-64.

____ (iii) Alternate II (NOV 2021) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial products and commercial services: [Contracting Officer check as appropriate.]

____ (1) 52.222-41, Service Contract Labor Standards (AUG 2018) (41 U.S.C. chapter 67).

____ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

____ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (Multiple Year and Option Contracts) (AUG 2018) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

____ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

_____ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (MAY 2014) (41 U.S.C. chapter 67).

_____ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (MAY 2014) (41 U.S.C. chapter 67).

_____ (7) 52.222-55, Minimum Wages Under Executive Order 13658 (NOV 2020) (E.O. 13658).

_____ (8) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

_____ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (JUN 2020) (42 U.S.C. 1792).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, as defined in FAR 2.101, on the date of award of this contract, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial products or commercial services. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.203-13, Contractor Code of Business Ethics and Conduct (NOV 2021) (41 U.S.C. 3509).

(ii) 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) 52.204-23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (NOV 2021) (Section 1634 of Pub. L. 115-91).

(iv) 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (NOV 2021) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) 52.219-8, Utilization of Small Business Concerns (Oct 2018) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

- (vi) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (vii) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).
- (viii) 52.222-35, Equal Opportunity for Veterans (JUN 2020) (38 U.S.C. 4212).
- (ix) 52.222-36, Equal Opportunity for Workers with Disabilities (JUN 2020) (29 U.S.C. 793).
- (x) 52.222-37, Employment Reports on Veterans (JUN 2020) (38 U.S.C. 4212).
- (xi) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (xii) 52.222-41, Service Contract Labor Standards (Aug 2018), (41 U.S.C. chapter 67).
- (xiii) _____ (A) 52.222-50, Combating Trafficking in Persons (NOV 2021) (22 U.S.C. chapter 78 and E.O. 13627).
_____(B) Alternate I (March 2, 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
- (xiv) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)
- (xv) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)
- (xvi) 52.222-54, Employment Eligibility Verification (NOV 2021) (E. O. 12989).
- (xvii) 52.222-55, Minimum Wages Under Executive Order 13658 (NOV 2020) (E.O. 13658).
- (xviii) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (Jan 2017) (E.O. 13706).
- (xix) (A) [52.224-3](#), Privacy Training (Jan 2017) ([5 U.S.C. 552a](#)).
(B) Alternate I (Jan 2017) of [52.224-3](#).
- (xx) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (xxi) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (JUN 2020) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xxii) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (NOV 2021) (46 U.S.C. 55305 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Contractor may include in its subcontracts for commercial products and commercial services a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/content/regulations>

(End of provision)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/content/regulations>

(End of clause)

52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (NOV 2020)

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.

(b) The use in this solicitation of any [DFARS](#) (48 CFR Chapter 2) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)

52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (NOV 2020)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any [DFARS](#) (48 CFR 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2019)

(a) Definitions. As used in this clause--

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Covered contractor information system means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is--

(1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or

(2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapidly report means within 72 hours of discovery of any cyber incident.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data--Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) Adequate security. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in

paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) Cyber incident reporting requirement.

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall--

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.

(2) Cyber incident report. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://dibnet.dod.mil>.

(3) Medium assurance certificate requirement. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.mil/eca/>.

(d) Malicious software. When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) Media preservation and protection. When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) Access to additional information or equipment necessary for forensic analysis. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) Cyber incident damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) DoD safeguarding and use of contractor attributional/proprietary information. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the

Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) Use and release of contractor attributional/proprietary information not created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD--

(1) To entities with missions that may be affected by such information;

(2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;

(3) To Government entities that conduct counterintelligence or law enforcement investigations;

(4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) Use and release of contractor attributional/proprietary information created by or for DoD. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) Other safeguarding or reporting requirements. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) Subcontracts. The Contractor shall--

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to--

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

252.204-7016 COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES --
REPRESENTATION (DEC 2019)

(a) Definitions. As used in this provision, covered defense telecommunications equipment or services has the meaning provided in the clause 252.204-7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

(b) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for “covered defense telecommunications equipment or services”.

(c) Representation. The Offeror represents that it [] does, [] does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

252.204-7017 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS
EQUIPMENT OR SERVICES--REPRESENTATION (MAY 2021)

The Offeror is not required to complete the representation in this provision if the Offeror has represented in the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services--Representation, that it “does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.”

(a) Definitions. Covered defense telecommunications equipment or services, covered mission, critical technology, and substantial or essential component, as used in this provision, have the meanings given in the 252.204-7018 clause, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, of this solicitation.

(b) Prohibition. Section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) Representation. If in its annual representations and certifications in SAM the Offeror has represented in paragraph (c) of the provision at 252.204-7016, Covered Defense Telecommunications Equipment or Services--Representation, that it “does” provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument, then the Offeror shall complete the following additional representation:

The Offeror represents that it [] will [] will not provide covered defense telecommunications equipment or services as a part of its offered products or services to DoD in the performance of any award resulting from this solicitation.

(e) Disclosures. If the Offeror has represented in paragraph (d) of this provision that it “will provide covered defense telecommunications equipment or services,” the Offeror shall provide the following information as part of the offer:

- (1) A description of all covered defense telecommunications equipment and services offered (include brand or manufacturer; product, such as model number, original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable).
- (2) An explanation of the proposed use of covered defense telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition referenced in paragraph (b) of this provision.
- (3) For services, the entity providing the covered defense telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known).
- (4) For equipment, the entity that produced or provided the covered defense telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

252.204-7018 PROHIBITION ON THE ACQUISITION OF COVERED DEFENSE TELECOMMUNICATIONS EQUIPMENT OR SERVICES (JAN 2021)

(a) Definitions. As used in this clause--

Covered defense telecommunications equipment or services means--

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;
- (2) Telecommunications services provided by such entities or using such equipment; or
- (3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Covered foreign country means--

- (1) The People's Republic of China; or
- (2) The Russian Federation.

Covered missions means--

- (1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or
- (2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

Critical technology means--

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled--

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibition. In accordance with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), the contractor shall not provide to the Government any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless the covered defense telecommunication equipment or services are covered by a waiver described in Defense Federal Acquisition Regulation Supplement 204.2104.

(c) Procedures. The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at <https://www.sam.gov> for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) Reporting.

(1) In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, the Contractor shall report at <https://dibnet.dod.mil> the information in paragraph (d)(2) of this clause.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within 3 business days from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 30 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available

information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered defense telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

252.225-7974 REPRESENTATION REGARDING BUSINESS OPERATIONS WITH THE MADURO REGIME
(DEVIATION 2020-O0005) (FEB 2020)

(a) Definitions. As used in this provision -

Agency or instrumentality of the government of Venezuela means an agency or instrumentality of a foreign state as defined in section 28 U.S.C. 1603(b), with each reference in such section to "a foreign state" deemed to be a reference to "Venezuela".

Business operations means engaging in commerce in any form, including acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Government of Venezuela means the government of any political subdivision of Venezuela, and any agency or instrumentality of the government of Venezuela.

Person means -

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;

(2) Any governmental entity or instrumentality of a government, including a multilateral development institution (as defined in section 1701(c)(3) of the International Financial Institutions Act (22 U.S.C. 262r(c)(3)); and

(3) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraphs (1) or (2) of this definition.

(b) Prohibition. In accordance with section 890 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92), contracting officers are prohibited from entering into a contract for the procurement of products or services with any person that has business operations with an authority of the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government, unless the person has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(c) Representation. By submission of its offer, the Offeror represents that the Offeror -

(1) Does not have any business operations with an authority of the Maduro regime or the government of Venezuela that is not recognized as the legitimate government of Venezuela by the United States Government; or

(2) Has a valid license to operate in Venezuela issued by the Office of Foreign Assets Control of the Department of the Treasury.

(End of provision)

"REGISTER OF WAGE DETERMINATIONS UNDER THE SERVICE CONTRACT ACT By direction of the Secretary of Labor		U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION WASHINGTON D.C. 20210
		Wage Determination No.: 2015-5227
Daniel W. Simms	Division of	Revision No.: 16
Director	Wage Determinations	Date Of Last Revision: 12/27/2021

Note: Contracts subject to the Service Contract Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658.

If the contract is entered into on or after January 30 2022 or the contract is renewed or extended (e.g. an option is exercised) on or after January 30 2022 Executive Order 14026 generally applies to the contract. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on that contract in 2022.

If the contract was awarded on or between January 1 2015 and January 29 2022 and the contract is not renewed or extended on or after January 30 2022 Executive Order 13658 generally applies to the contract. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on that contract in 2022.

The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the Executive Orders is available at www.dol.gov/whd/govcontracts.

State: Texas

Area: Texas Counties of Collin Dallas Denton Ellis Hunt Kaufman Rockwall

****Fringe Benefits Required Follow the Occupational Listing****

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		16.60
01012 - Accounting Clerk II		18.64
01013 - Accounting Clerk III		20.84
01020 - Administrative Assistant		29.11
01035 - Court Reporter		22.59
01041 - Customer Service Representative I		14.51
01042 - Customer Service Representative II		15.84
01043 - Customer Service Representative III		17.79
01051 - Data Entry Operator I		15.34
01052 - Data Entry Operator II		16.74
01060 - Dispatcher Motor Vehicle		21.36
01070 - Document Preparation Clerk		17.28
01090 - Duplicating Machine Operator		17.28
01111 - General Clerk I		14.03
01112 - General Clerk II		15.31
01113 - General Clerk III		17.20
01120 - Housing Referral Assistant		22.46
01141 - Messenger Courier		14.29
01191 - Order Clerk I		16.47
01192 - Order Clerk II		17.96
01261 - Personnel Assistant (Employment) I		17.63

01262 - Personnel Assistant (Employment) II	19.71
01263 - Personnel Assistant (Employment) III	21.97
01270 - Production Control Clerk	24.46
01290 - Rental Clerk	15.30
01300 - Scheduler Maintenance	18.01
01311 - Secretary I	18.01
01312 - Secretary II	20.14
01313 - Secretary III	22.46
01320 - Service Order Dispatcher	17.47
01410 - Supply Technician	29.11
01420 - Survey Worker	17.29
01460 - Switchboard Operator/Receptionist	15.15
01531 - Travel Clerk I	15.62
01532 - Travel Clerk II	16.79
01533 - Travel Clerk III	18.02
01611 - Word Processor I	16.67
01612 - Word Processor II	18.71
01613 - Word Processor III	20.92
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer Fiberglass	22.70
05010 - Automotive Electrician	23.04
05040 - Automotive Glass Installer	20.93
05070 - Automotive Worker	22.02
05110 - Mobile Equipment Servicer	18.52
05130 - Motor Equipment Metal Mechanic	22.88
05160 - Motor Equipment Metal Worker	20.93
05190 - Motor Vehicle Mechanic	22.99
05220 - Motor Vehicle Mechanic Helper	17.27
05250 - Motor Vehicle Upholstery Worker	19.82
05280 - Motor Vehicle Wrecker	20.93
05310 - Painter Automotive	24.22
05340 - Radiator Repair Specialist	20.93
05370 - Tire Repairer	14.12
05400 - Transmission Repair Specialist	22.88
07000 - Food Preparation And Service Occupations	
07010 - Baker	12.15
07041 - Cook I	13.08
07042 - Cook II	15.03
07070 - Dishwasher	10.52
07130 - Food Service Worker	11.72
07210 - Meat Cutter	13.34
07260 - Waiter/Waitress	10.03
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	19.02
09040 - Furniture Handler	10.24
09080 - Furniture Refinisher	15.32
09090 - Furniture Refinisher Helper	12.02
09110 - Furniture Repairer Minor	13.78
09130 - Upholsterer	16.57
11000 - General Services And Support Occupations	
11030 - Cleaner Vehicles	11.77
11060 - Elevator Operator	12.95
11090 - Gardener	21.03
11122 - Housekeeping Aide	13.28
11150 - Janitor	13.28
11210 - Laborer Grounds Maintenance	15.66
11240 - Maid or Houseman	11.53
11260 - Pruner	13.84
11270 - Tractor Operator	19.24
11330 - Trail Maintenance Worker	15.66
11360 - Window Cleaner	15.03
12000 - Health Occupations	
12010 - Ambulance Driver	20.65

12011 - Breath Alcohol Technician	21.68
12012 - Certified Occupational Therapist Assistant	35.61
12015 - Certified Physical Therapist Assistant	35.12
12020 - Dental Assistant	20.87
12025 - Dental Hygienist	40.23
12030 - EKG Technician	30.40
12035 - Electroneurodiagnostic Technologist	30.40
12040 - Emergency Medical Technician	20.65
12071 - Licensed Practical Nurse I	19.39
12072 - Licensed Practical Nurse II	21.68
12073 - Licensed Practical Nurse III	24.17
12100 - Medical Assistant	16.98
12130 - Medical Laboratory Technician	26.50
12160 - Medical Record Clerk	18.67
12190 - Medical Record Technician	20.88
12195 - Medical Transcriptionist	19.66
12210 - Nuclear Medicine Technologist	39.84
12221 - Nursing Assistant I	12.89
12222 - Nursing Assistant II	14.48
12223 - Nursing Assistant III	15.80
12224 - Nursing Assistant IV	17.75
12235 - Optical Dispenser	19.50
12236 - Optical Technician	16.72
12250 - Pharmacy Technician	17.74
12280 - Phlebotomist	17.56
12305 - Radiologic Technologist	29.53
12311 - Registered Nurse I	25.82
12312 - Registered Nurse II	31.58
12313 - Registered Nurse II Specialist	31.58
12314 - Registered Nurse III	38.19
12315 - Registered Nurse III Anesthetist	38.19
12316 - Registered Nurse IV	45.78
12317 - Scheduler (Drug and Alcohol Testing)	26.86
12320 - Substance Abuse Treatment Counselor	23.56
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	20.65
13012 - Exhibits Specialist II	25.58
13013 - Exhibits Specialist III	31.28
13041 - Illustrator I	24.95
13042 - Illustrator II	30.91
13043 - Illustrator III	36.18
13047 - Librarian	31.56
13050 - Library Aide/Clerk	14.33
13054 - Library Information Technology Systems Administrator	27.42
13058 - Library Technician	16.29
13061 - Media Specialist I	19.78
13062 - Media Specialist II	22.13
13063 - Media Specialist III	24.67
13071 - Photographer I	19.31
13072 - Photographer II	21.60
13073 - Photographer III	26.75
13074 - Photographer IV	32.73
13075 - Photographer V	39.61
13090 - Technical Order Library Clerk	17.84
13110 - Video Teleconference Technician	21.59
14000 - Information Technology Occupations	
14041 - Computer Operator I	20.17
14042 - Computer Operator II	22.55
14043 - Computer Operator III	25.16
14044 - Computer Operator IV	29.85
14045 - Computer Operator V	33.04
14071 - Computer Programmer I	

(see 1)

14072 - Computer Programmer II	(see 1)	
14073 - Computer Programmer III	(see 1)	
14074 - Computer Programmer IV	(see 1)	
14101 - Computer Systems Analyst I	(see 1)	
14102 - Computer Systems Analyst II	(see 1)	
14103 - Computer Systems Analyst III	(see 1)	
14150 - Peripheral Equipment Operator		20.17
14160 - Personal Computer Support Technician		29.85
14170 - System Support Specialist		42.82
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		35.04
15020 - Aircrew Training Devices Instructor (Rated)		41.90
15030 - Air Crew Training Devices Instructor (Pilot)		47.60
15050 - Computer Based Training Specialist / Instructor		35.04
15060 - Educational Technologist		34.30
15070 - Flight Instructor (Pilot)		47.60
15080 - Graphic Artist		25.79
15085 - Maintenance Test Pilot Fixed Jet/Prop		47.60
15086 - Maintenance Test Pilot Rotary Wing		47.60
15088 - Non-Maintenance Test/Co-Pilot		47.60
15090 - Technical Instructor		27.43
15095 - Technical Instructor/Course Developer		33.55
15110 - Test Proctor		22.14
15120 - Tutor		22.14
16000 - Laundry Dry-Cleaning Pressing And Related Occupations		
16010 - Assembler		10.94
16030 - Counter Attendant		10.94
16040 - Dry Cleaner		14.05
16070 - Finisher Flatwork Machine		10.94
16090 - Presser Hand		10.94
16110 - Presser Machine Drycleaning		10.94
16130 - Presser Machine Shirts		10.94
16160 - Presser Machine Wearing Apparel Laundry		10.94
16190 - Sewing Machine Operator		14.90
16220 - Tailor		16.02
16250 - Washer Machine		12.02
19000 - Machine Tool Operation And Repair Occupations		
19010 - Machine-Tool Operator (Tool Room)		21.10
19040 - Tool And Die Maker		25.34
21000 - Materials Handling And Packing Occupations		
21020 - Forklift Operator		17.32
21030 - Material Coordinator		24.46
21040 - Material Expediter		24.46
21050 - Material Handling Laborer		14.93
21071 - Order Filler		14.57
21080 - Production Line Worker (Food Processing)		17.32
21110 - Shipping Packer		16.39
21130 - Shipping/Receiving Clerk		16.39
21140 - Store Worker I		12.67
21150 - Stock Clerk		18.37
21210 - Tools And Parts Attendant		17.32
21410 - Warehouse Specialist		17.32
23000 - Mechanics And Maintenance And Repair Occupations		
23010 - Aerospace Structural Welder		39.14
23019 - Aircraft Logs and Records Technician		31.80
23021 - Aircraft Mechanic I		37.33
23022 - Aircraft Mechanic II		39.14
23023 - Aircraft Mechanic III		40.96
23040 - Aircraft Mechanic Helper		26.78
23050 - Aircraft Painter		35.44
23060 - Aircraft Servicer		31.80
23070 - Aircraft Survival Flight Equipment Technician		35.44
23080 - Aircraft Worker		33.63

23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	33.63
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	37.33
23110 - Appliance Mechanic	19.55
23120 - Bicycle Repairer	19.15
23125 - Cable Splicer	27.55
23130 - Carpenter Maintenance	19.37
23140 - Carpet Layer	19.04
23160 - Electrician Maintenance	23.75
23181 - Electronics Technician Maintenance I	26.71
23182 - Electronics Technician Maintenance II	28.15
23183 - Electronics Technician Maintenance III	29.65
23260 - Fabric Worker	26.87
23290 - Fire Alarm System Mechanic	23.76
23310 - Fire Extinguisher Repairer	19.15
23311 - Fuel Distribution System Mechanic	21.32
23312 - Fuel Distribution System Operator	16.71
23370 - General Maintenance Worker	19.91
23380 - Ground Support Equipment Mechanic	37.33
23381 - Ground Support Equipment Servicer	31.80
23382 - Ground Support Equipment Worker	33.63
23391 - Gunsmith I	19.15
23392 - Gunsmith II	22.00
23393 - Gunsmith III	24.42
23410 - Heating Ventilation And Air-Conditioning Mechanic	23.09
23411 - Heating Ventilation And Air Contidioning Mechanic (Research Facility)	24.21
23430 - Heavy Equipment Mechanic	26.05
23440 - Heavy Equipment Operator	20.97
23460 - Instrument Mechanic	27.95
23465 - Laboratory/Shelter Mechanic	23.19
23470 - Laborer	14.93
23510 - Locksmith	23.89
23530 - Machinery Maintenance Mechanic	25.75
23550 - Machinist Maintenance	21.29
23580 - Maintenance Trades Helper	16.50
23591 - Metrology Technician I	27.95
23592 - Metrology Technician II	29.30
23593 - Metrology Technician III	30.67
23640 - Millwright	25.87
23710 - Office Appliance Repairer	18.66
23760 - Painter Maintenance	17.81
23790 - Pipefitter Maintenance	26.55
23810 - Plumber Maintenance	25.20
23820 - Pneudraulic Systems Mechanic	24.42
23850 - Rigger	26.09
23870 - Scale Mechanic	22.00
23890 - Sheet-Metal Worker Maintenance	22.12
23910 - Small Engine Mechanic	19.51
23931 - Telecommunications Mechanic I	29.53
23932 - Telecommunications Mechanic II	30.96
23950 - Telephone Lineman	23.54
23960 - Welder Combination Maintenance	20.38
23965 - Well Driller	21.63
23970 - Woodcraft Worker	24.42
23980 - Woodworker	19.15
24000 - Personal Needs Occupations	
24550 - Case Manager	18.06
24570 - Child Care Attendant	11.76
24580 - Child Care Center Clerk	14.66
24610 - Chore Aide	10.04

24620 - Family Readiness And Support Services Coordinator	18.06
24630 - Homemaker	18.06
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	27.73
25040 - Sewage Plant Operator	21.18
25070 - Stationary Engineer	27.73
25190 - Ventilation Equipment Tender	19.37
25210 - Water Treatment Plant Operator	21.18
27000 - Protective Service Occupations	
27004 - Alarm Monitor	20.64
27007 - Baggage Inspector	14.10
27008 - Corrections Officer	24.04
27010 - Court Security Officer	26.82
27030 - Detection Dog Handler	16.92
27040 - Detention Officer	24.04
27070 - Firefighter	29.61
27101 - Guard I	14.10
27102 - Guard II	16.92
27131 - Police Officer I	31.39
27132 - Police Officer II	34.89
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	14.42
28042 - Carnival Equipment Repairer	15.76
28043 - Carnival Worker	10.37
28210 - Gate Attendant/Gate Tender	14.18
28310 - Lifeguard	11.19
28350 - Park Attendant (Aide)	15.86
28510 - Recreation Aide/Health Facility Attendant	11.57
28515 - Recreation Specialist	19.34
28630 - Sports Official	12.63
28690 - Swimming Pool Operator	21.99
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	28.45
29020 - Hatch Tender	28.45
29030 - Line Handler	28.45
29041 - Stevedore I	26.91
29042 - Stevedore II	29.99
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist Center (HFO) (see 2)	43.42
30011 - Air Traffic Control Specialist Station (HFO) (see 2)	29.95
30012 - Air Traffic Control Specialist Terminal (HFO) (see 2)	32.97
30021 - Archeological Technician I	20.07
30022 - Archeological Technician II	22.40
30023 - Archeological Technician III	27.75
30030 - Cartographic Technician	27.75
30040 - Civil Engineering Technician	24.42
30051 - Cryogenic Technician I	26.83
30052 - Cryogenic Technician II	29.63
30061 - Drafter/CAD Operator I	20.07
30062 - Drafter/CAD Operator II	22.40
30063 - Drafter/CAD Operator III	24.97
30064 - Drafter/CAD Operator IV	30.73
30081 - Engineering Technician I	17.56
30082 - Engineering Technician II	19.70
30083 - Engineering Technician III	22.03
30084 - Engineering Technician IV	27.30
30085 - Engineering Technician V	33.40
30086 - Engineering Technician VI	40.41
30090 - Environmental Technician	25.52
30095 - Evidence Control Specialist	24.23
30210 - Laboratory Technician	25.44
30221 - Latent Fingerprint Technician I	26.76

30222 - Latent Fingerprint Technician II	29.57
30240 - Mathematical Technician	33.58
30361 - Paralegal/Legal Assistant I	19.49
30362 - Paralegal/Legal Assistant II	24.15
30363 - Paralegal/Legal Assistant III	29.54
30364 - Paralegal/Legal Assistant IV	35.74
30375 - Petroleum Supply Specialist	29.63
30390 - Photo-Optics Technician	27.75
30395 - Radiation Control Technician	29.63
30461 - Technical Writer I	25.69
30462 - Technical Writer II	31.42
30463 - Technical Writer III	38.01
30491 - Unexploded Ordnance (UXO) Technician I	27.60
30492 - Unexploded Ordnance (UXO) Technician II	33.39
30493 - Unexploded Ordnance (UXO) Technician III	40.02
30494 - Unexploded (UXO) Safety Escort	27.60
30495 - Unexploded (UXO) Sweep Personnel	27.60
30501 - Weather Forecaster I	26.83
30502 - Weather Forecaster II	32.63
30620 - Weather Observer Combined Upper Air Or (see 2)	24.97
Surface Programs	
30621 - Weather Observer Senior (see 2)	25.23
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	33.39
31020 - Bus Aide	14.95
31030 - Bus Driver	21.81
31043 - Driver Courier	17.15
31260 - Parking and Lot Attendant	10.91
31290 - Shuttle Bus Driver	18.53
31310 - Taxi Driver	13.24
31361 - Truckdriver Light	18.75
31362 - Truckdriver Medium	20.37
31363 - Truckdriver Heavy	23.34
31364 - Truckdriver Tractor-Trailer	23.34
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	16.28
99030 - Cashier	11.14
99050 - Desk Clerk	11.72
99095 - Embalmer	24.05
99130 - Flight Follower	27.60
99251 - Laboratory Animal Caretaker I	13.18
99252 - Laboratory Animal Caretaker II	14.42
99260 - Marketing Analyst	37.40
99310 - Mortician	26.46
99410 - Pest Controller	23.68
99510 - Photofinishing Worker	14.89
99710 - Recycling Laborer	20.02
99711 - Recycling Specialist	24.59
99730 - Refuse Collector	17.69
99810 - Sales Clerk	13.65
99820 - School Crossing Guard	11.54
99830 - Survey Party Chief	27.65
99831 - Surveying Aide	16.57
99832 - Surveying Technician	21.23
99840 - Vending Machine Attendant	15.50
99841 - Vending Machine Repairer	19.03
99842 - Vending Machine Repairer Helper	15.46

Note: Executive Order (EO) 13706 Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1

2017. If this contract is covered by the EO the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness injury or other health-related needs including preventive care; to assist a family member (or person who is like family to the employee) who is ill injured or has other health-related needs including preventive care; or for reasons resulting from or to assist a family member (or person who is like family to the employee) who is the victim of domestic violence sexual assault or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.60 per hour up to 40 hours per week or \$184.00 per week or \$797.33 per month

HEALTH & WELFARE EO 13706: \$4.23 per hour up to 40 hours per week or \$169.20 per week or \$733.20 per month*

*This rate is to be used only when compensating employees for performance on an SCA-covered contract also covered by EO 13706 Establishing Paid Sick Leave for Federal Contractors. A contractor may not receive credit toward its SCA obligations for any paid sick leave provided pursuant to EO 13706.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor 3 weeks after 5 years and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor wherever employed and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of eleven paid holidays per year: New Year's Day Martin Luther King Jr.'s Birthday Washington's Birthday Memorial Day Juneteenth National Independence Day Independence Day Labor Day Columbus Day Veterans' Day Thanksgiving Day and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b) this wage determination does not apply to any employee who individually qualifies as a bona fide executive administrative or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally because job titles vary widely and change quickly in the computer industry job titles are not determinative of the application of the computer professional exemption. Therefore the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures including consulting with users to determine hardware software or system functional specifications;

(2) The design development documentation analysis creation testing or modification of computer systems or programs including prototypes based on and related to user or system design specifications;

(3) The design documentation testing creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

** HAZARDOUS PAY DIFFERENTIAL **

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance explosives and incendiary materials. This includes work such as screening blending dying mixing and pressing of sensitive ordnance explosives and pyrotechnic compositions such as lead azide black powder and photoflash powder.

All dry-house activities involving propellants or explosives. Demilitarization modification renovation demolition and maintenance operations on sensitive ordnance explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with or in close proximity to ordnance (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands face or arms of the employee engaged in the operation irritation of the skin minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving unloading storage and hauling of ordnance explosive and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance explosives and incendiary material differential pay.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract by the employer by the state or local law etc.) the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition where uniform cleaning and maintenance is made the responsibility of the employee all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount or the furnishing of contrary affirmative proof as to the actual cost) reimburse all employees for such cleaning

and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However in those instances where the uniforms furnished are made of "wash and wear" materials may be routinely washed and dried with other personal garments and do not require any special treatment such as dry cleaning daily washing or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract by the contractor by law or by the nature of the work there is no requirement that employees be reimbursed for uniform maintenance costs.

**** SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS ****

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations" Fifth Edition (Revision 1) dated September 2015 unless otherwise indicated.

**** REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE Standard Form 1444 (SF-1444) ****

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e. the work to be performed is not performed by any classification listed in the wage determination) be classified by the contractor so as to provide a reasonable relationship (i.e. appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification wage rate and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award the contractor prepares a written report listing in order the proposed classification title(s) a Federal grade equivalency (FGE) for each proposed classification(s) job description(s) and rationale for proposed wage rate(s) including information regarding the agreement or disagreement of the authorized representative of the employees involved or where there is no authorized representative the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action together with the agency's recommendations and pertinent information including the position of the contractor and the employees to the U.S. Department of Labor Wage and Hour Division for review (See 29 CFR 4.6(b)(2)(ii)).
- 4) Within 30 days of receipt the Wage and Hour Division approves modifies or disapproves the action via transmittal to the agency contracting officer or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour Division's decision to the contractor.

6) Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request the "Service Contract Act Directory of Occupations" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember it is not the job title but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split combine or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1))."



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: March 7, 2022

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

ITEM: Consider approval of a Construction Agreement with Four Star Excavating for the Hillside Water Line Connection project, in the amount of \$197,687.50; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 1, 2022, bids were received and opened (Bid # 2022-13-B) for the Hillside Water Line Connection project. Four Star Excavating submitted the lowest qualified bid of the four (4) responding bidders at a base bid of \$197,687.50. The Hillside Water Line Connection project consists of the extension of roughly 700 feet of 8-inch water main along Oakview Drive and Ridgecrest Drive from the Hillside development to loop the water main system and eliminate dead ends. Residential water services for affected homes will be transitioned to the new water main improvements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the Construction Agreement would leave the existing dead water mains along Oakview Drive and Ridgecrest Drive in the current configurations. This will add responsibility to the Town of Flower Mound's Public Works department to implement/maintain a flushing schedule/log for the entire service life of the water mains to ensure water quality is maintained for the immediate surrounding residents.

FISCAL IMPACT: \$197,687.50

Proposed Expenditure/(Revenue):	Account Number(s):
\$197,687.50	630-960-96005-6170

Total project cost is \$340,000. Funding sources are:

- Utility Debt

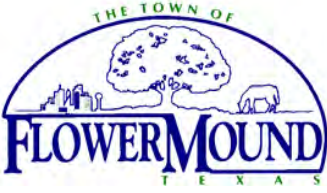
Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

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: 2022-13-B - Hillside Water Line Connection

Bid Opening: 02/01/2022 at 11:00 AM

Company	Base Bid
Four Star Excavating	\$ 197,687.50
Tex-Pro Construction, LLC	\$ 199,717.00
Canary Construction, Inc	\$ 273,886.00
Saber Development Corporation	\$ 363,745.10

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

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

Date: February 1, 2022

TOWN OF FLOWER MOUND
HILLSIDE WATER LINE CONNECTION

Bid # 2022-13-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the “Agreement”), made and entered into this 7th day of March, 2022, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the “Town,” and Four Star Excavating, a Corporation, hereinafter referred to as the “Contractor.” For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

HILLSIDE WATER LINE CONNECTION,
Bid # 2022-13-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 Hundred Ninety-Seven Thousand Six Hundred Eighty-Seven Dollars and Fifty cents (\$197,687.50)** 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 ninety (90) calendar days, and final completion of one hundred and twenty (120) 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 and 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 and 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

Derek France, MAYOR

_____ (Signature)

_____ (Printed Name)

_____ (Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: _____
Theresa Scott, TOWN SECRETARY

ATTEST: _____ (Signature)

_____ (Position)



TOWN COUNCIL AGENDA ITEM NO. CONSENT ITEM

DATE: March 7, 2022

FROM: Dale Crown, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with Parkhill, for the design phase services associated with the Chinn Chapel Soccer Complex Drainage Improvements project, in the amount of \$53,700.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The project includes design services associated with drainage improvements, screening of an onsite maintenance yard and addressing ADA issues within the soccer complex. The drainage improvements will consist of earthwork to improve surface drainage across Fields #3 and #4 and the installation of new storm drain. The estimated cost for the improvements is \$430,000, which is scheduled for construction in Fiscal Year 2022-2023.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The drainage improvements will address the ongoing issue of lack of drainage within soccer fields and along the northern perimeter of the soccer complex. A decision to not approve the Professional Services Agreement (PSA) would result in continued drainage issues that currently limit the use of Field #4. Also, a decision to not approve the PSA would limit the Town's ability to correct a number of ADA issues within the soccer complex.

FISCAL IMPACT: \$53,700.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$53,700.00	317-110-90830-6070

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

- Dedicated Sales Tax \$ 650,000

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL

This contract is entered into on this 7th day of March, 2022, 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 **Parkhill**, (“hereinafter referred to as “CONSULTANT”) whose address is 255 North Center Street, Suite 100, Arlington, TX 76011.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the Chinn Chapel Soccer Complex Drainage Improvements 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 Chinn Chapel Soccer Complex Drainage Improvements project specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment “A” hereto entitled “Scope of Work” (hereafter referred to as the “Project”). Attachment “A” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment “A” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Fifty Three Thousand Seven Hundred and No/100 Dollars (\$53,700.00). 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 an hourly basis for certain services provided combined with a flat fee for specific tasks performed in accordance with Attachment “B”; provided however that this Contract shall control in the event of any conflict between the language in Attachment “B” and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

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

the Project, the total of the current invoice amount and a running total balance for the Project to date.

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.
Contract Termination Provision

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

VII.
Ownership of Documents

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

VIII.
Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

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

Dale Crown, P.E.,
 Senior Project Engineer
 Town of Flower Mound
 2121 Cross Timbers Road
 Flower Mound, Texas 75028
 972-874-6302 Telephone

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

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

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

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and

3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

IX. Right to Inspect Records

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

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

contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X. Successors and Assigns

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

XI. CONSULTANT's Liability

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

XII. Indemnification

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; AND, CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, §271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, §130.002(B)

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:

Dale Crown, P.E.,
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

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

Clint Wofford, RLA
Landscape Architect/Associate
Parkhill
255 North Center Street, Ste. 100
Arlington, Texas 76011
817-633-0444 Telephone
CWofford@Parkhill.com, Email

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

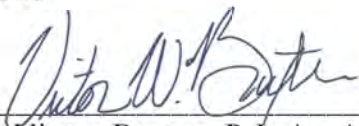
By: _____
The Honorable Derek France
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Parkhill

By:  Victor W. Baxter 
Name: Victor Baxter, R.L.A., ASLA.
Title: Director of Business Development for
Landscape Architecture

Date Signed: 2/10/2022

02/14/2022
11:22 AM CST

State of Texas §
 §
County of Midland §

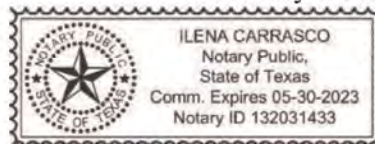
This instrument was acknowledged before me on the 14th day of February,
2022, by Victor W. Baxter in his capacity as Principal of
Parkhill, a Texas Corporation, known to me to be the person
whose name is subscribed to the foregoing instrument, and acknowledged that he
executed the same on behalf of and as the act of Principal of Parkhill.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 14th
DAY OF February, 2022.

Ilena Carrasco 

Notary Public, State of Texas

My Commission Expires:
May 30, 2023



Online Notary Public. This notarial act involved the
use of online audio/video communication technology.

January 27, 2022

Mr. Dale Crown, P.E.
Senior Project Engineer - Capital Improvements
2121 Cross Timbers Road
Flower Mound, 75028

Re: Professional Services Proposal for
Town of Flower Mound - Chinn Chapel Soccer Complex Drainage Improvements

Dear Mr. Crown:

Thank you for the opportunity to submit a proposal for Parkhill, Inc. (A/E) and to work with Town of Flower Mound (Owner) on Town of Flower Mound - Chinn Chapel Soccer Complex Drainage Project. The following description outlines our understanding of the Project and Scope of Services we propose to provide for your Project.

PROJECT DESCRIPTION

An onsite kickoff meeting was conducted with Owner's CIP staff and Parks staff to review the Project site and potential issues that need to be addressed.

Initial review of Project noted the following issues:

Drainage

- | Drainage from residential neighborhood from the north enters the site and often stays soggy/wet along fence line from the center of the complex to the east edge of the site.
- | The area north of the main shed appears to have a low area that pitches drainage back to the north (residential area).
- | There is existing drainage from the ROW (northeast of the site) that enters the Project site/east soccer field area.
- | Northeast field has a perceived low area in the center of the field that holds water or drains slowly. (This field dimension is currently reduced in size to avoid the slow drainage. One intent for this Project is to extend this field to a full-size soccer field).
- | There is an existing Y-inlet that receives a majority of the drainage for the soccer complex. There is the possibility that this inlet could be adjusted to improve the drainage across the fields.
- | A possible option to correct drainage issues is to place inlets between the fields along the east edge of the central sidewalks, south of the maintenance shed.

Accessibility

- | In addition to the drainage issues, an accessibility assessment, performed by others, indicates a variety of possible improvements for accessibility.

Screening

- | The current maintenance shed has an 8-foot fence surrounding the storage yard. It is the Owner's desire to have this area screened.

PROJECT SCOPE

Scope of Work is to include landscape architecture and civil engineering services for the drainage assessment and recommendations to improve ongoing drainage issues at the soccer complex.

Noting the issues above, the Project shall include, but not be limited to, the following program elements:

- Grading.
- Turf establishment.
- Concrete replacement for accessibility issues throughout the pedestrian areas.
- Fence screening at storage yard, and possible storm drainage improvements including, but not limited to:
 - Additional catch basin (inlets) located north of the existing maintenance barn.
 - Lowering apron along the edge of existing Y-inlet.
 - Possibly removing Y-inlet and dropping inlet opening elevation in order to regrade portions of the site to reduce needed catch basins in poor draining areas.

There are multiple options to improve drainage throughout the site. A solution cannot be determined until a topographic survey is produced, so the anticipated construction costs are based on a possible viable solution as discussed onsite.

A rough Opinion of Probable Construction Cost (OPCC) with a possible solution indicated construction cost could range from \$400,000 - \$500,000. The program elements may be limited or omitted in order to meet proposed noted construction budget.

SCOPE OF SERVICES

A/E will provide the following Basic Services:

Predesign Phase

Topographic Survey: A/E will provide a Topographic Survey for preparation of Construction Documents. The Survey will provide a minimum contour interval of one foot, show the existing facilities, nearby utilities, adjacent parking/drive aisles and adjacent streets (as needed), and other miscellaneous items. Area surveyed will only be in the Project limits as defined by the Scope. This Survey will comply with Owner's standard requirements. The survey area is approximately 5 acres.

Deliverables: Digital Files (AutoCAD & PDF) of the Topographic Survey.

Report: Owner will provide Geotechnical Reports from previous phases of the Soccer Complex or adjacent projects. In the event these Reports are not available, Parkhill will use Owner's Standards to determine paving depths as needed.

Construction Document Phase

Based on initial assessments A/E will further develop the Plans, coordinate the various elements and systems, develop construction details, and prepare material/technical Specifications setting forth in detail requirements for construction of Project. A/E will meet applicable Owner's design and construction standards, coordinate Plans with Town Departments, meet all state regulations, and submit Construction Documents to Owner for development review.

Deliverables: Fifty (50%) percent CD Design Review Submittal, ninety-five (95%) CD Design Review Submittal, Issue for Bid Construction Documents, Project Manual (front end documents and Technical Specifications), updated OPCC, and Meetings with Owner's Staff (as necessary).

Bidding and Negotiation Phase

A/E will provide/perform the following services during Bidding and Negotiation Phase:

- | Issue Bid Package to Owner for distribution.
- | Review Contractor(s) substitution requests and questions and issue addenda to Owner for distribution.

Construction Administration Phase

A/E will provide/perform the following services during Construction Administration Phase: Review Shop Drawings and other submittal information for the purpose of ascertaining conformance with design intent and Construction Documents, provide responses to Requests for Information (RFI) or clarifications, and assist Owner in conducting substantial completion observations.

Owner will conduct end-of-month onsite meetings to review pay applications as the Project's construction progress.

A/E will not be responsible for Contractor's means, methods, techniques, sequences/procedures of construction, or safety precautions and programs incident hereto. A/E will not be responsible for Contractor's failure to perform or furnish Work in accordance with Construction Documents. A/E will not be responsible for any delays in execution of Work caused by Contractor.

Record Drawings

A/E will transfer information provided by Contractor on his mark-ups/As-Built Drawings after construction is complete to digital files (AutoCAD/REVIT and PDF), and provide to Owner for their records.

Exclusions

The intent of this Scope of Services is to include only the services specifically listed herein for this Project. Services specifically excluded from this Scope of Services include, but are not necessarily limited to, the following:

- | Site meetings outside of Substantial Completion walk-through.
- | Irrigation design.
- | Fees for permits and advertising.
- | Storm Water Pollution Prevention Plan (SWPPP).
- | Preparation of Plats or Boundary Survey documents.
- | Traffic Engineering Reports or Studies.
- | Hydraulics and hydrology, flood studies or floodplain reclamation plans.
- | Full-time or otherwise frequent and detailed inspection of Contractor's Works in Progress.

ITEMS AND SERVICES TO BE PROVIDED BY OWNER

Owner will provide the following services to A/E in the performance of the Project upon request:

- | Existing data Owner has on file concerning the Project, if available, including but not limited to, Geotechnical Reports.
- | As-Built Plans for existing facilities and/or utilities, if available.
- | Assist A/E in obtaining required data and information from local utility companies, as necessary.
- | Give prompt written notice to A/E whenever Owner observes, or otherwise becomes aware of, any development that affects the Scope or timing of A/E's services.
- | Advertisement of all public meetings and provision of meeting facilities.

FEE PROPOSAL**BASIC SERVICES**

Compensation for Basic Services rendered by A/E shall be a lump sum of Fifty-Three Thousand Seven Hundred Dollars (\$53,700.00) as summarized below:

Project will be invoiced monthly based on percent of Work completed. Monthly progress payments for Architectural Services will be distributed by phases as follows:

Predesign Phase

Topographic Survey	\$ 9,200.00
Subtotal	\$ 9,200.00

Design/Construction Phases

Construction Documents Phase	\$ 33,500.00
Bidding or Negotiations Phase	2,500.00
Construction Administration Phase	5,000.00
Record Drawings	2,500.00
Subtotal	\$ 43,500.00

Reimbursable (Not to Exceed)	\$ 1,000.00
Subtotal	\$ 1,000.00

TOTAL	\$ 53,700.00
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REIMBURSABLE EXPENSES

Reimbursable expenses will be billed at invoice cost plus a fifteen percent markup for handling costs. Reimbursable expenses include, but are not limited to, travel, postage/shipping, reproductions/copies, color plots/prints, accessibility review and inspection fees, and reproduction of Contract Documents and Reports. Reimbursable expenses shall be invoiced to a Not-To-Exceed Allowance of \$1,000.00. This amount shall not be exceeded without prior written approval of Director of Parks and Recreation, Assistant Town Manager, or Town Manager.

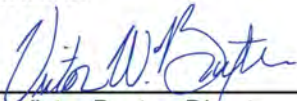
Parkhill is pleased to have this opportunity to continue to be of service to you as you strive to build community in Flower Mound. We look forward to being a part of the exciting days ahead!

Please do not hesitate to call me at 817.797.6154 if you have any questions.

Sincerely,

PARKHILL

By



Victor Baxter, Director of Business
Development for Landscape Architecture

Date January 27, 2022

VWB/sw



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: March 7, 2022

FROM: Dale Crown, P.E., Senior Project Engineer

ITEM: Consider approval of a First Amendment to the Professional Services Agreement with Pacheco Koch Consulting Engineers, LLC (successor in interest to Pacheco Koch Consulting Engineers, Inc.), for the design phase services associated with the Timber Creek Water Line Replacement Phase 1 project, to increase the design fee by \$75,085.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 3, 2020, the Professional Services Agreement (PSA) for the Timber Creek Water Line Replacement Phase 1 project was approved, in the amount of \$25,905.00, to Pacheco Koch Consulting Engineers, Inc. The attached First Amendment to the Professional Services Agreement (PSA) provides for one additional service task item. The additional task item will allow for the engineering design associated with replacement of water mains within the Timber Creek Garden Homes subdivision along Rollo, John, and Gayle Court.

The Timber Creek Water Line Replacement Phase 1 project includes water line replacements along Stapleton Street and inside the Timber Creek Garden Homes development.

- The Stapleton Street water main replacement was designed as part of the original PSA. The water main installation along Stapleton Street is complete and a Final Acceptance letter for construction was issued August 4, 2021.
- Water line replacements along Rollo, John, and Gayle Court were put on hold until issues with lot configuration and utility easements, discovered during initial scoping, could be researched and resolved. The information obtained during that research allows for scoping of the water main replacement along Rollo, John, and Gayle Court.

If approved, the amendment will increase the contract amount by \$75,085.00 to \$100,990.00.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The existing water mains have frequent maintenance issues. A decision to not approve the proposed Professional Services Agreement for design would result in continued maintenance issues with the existing water mains along Rollo Court, John Court, and Gayle Court.

FISCAL IMPACT: \$75,085.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$75,085.00	630-960-98772-6170

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

- Utility debt \$ 1,000,000

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services *tw*

LEGAL REVIEW: The Town's standard Professional Services Agreement Amendment 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. First Amendment to Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH
PACHECO KOCH CONSULTING ENGINEERS, LLC**

This First Amendment to Professional Services Agreement (“First Amendment”) is entered into on this 7th day of March, 2022, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “Town”), acting by and through its Mayor, and **PACHECO KOCH CONSULTING ENGINEERS, LLC (successor in interest to Pacheco Koch Consulting Engineers, Inc.)**, (“hereinafter referred to as “Consultant”) regarding the following project:

TIMBER CREEK WATER LINE REPLACEMENT PHASE 1

I. RECITALS

WHEREAS, Town entered into a professional engineering design and related construction services from Consultant for the Timber Creek Water Line Replacement Phase 1 project (“Services”) on or about the 3rd day of February, 2020 (the “Contract”); and

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

II. TERMS OF AMENDMENT

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

A.

Recitals Incorporated

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

B.

Amendment of Paragraph No. II

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

“CONSULTANT shall perform such professional engineering services, not necessarily limited to, the tasks

enumerated more fully in Exhibit “A-1” entitled “Scope of Services”, as are necessary to complete the Timber Creek Water Line Replacement Phase 1 (hereafter referred to collectively as the “Project”). Exhibit “A-1” is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Exhibit “A-1” and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.”

C.

Amendment of Paragraph No. III

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

“Total payment for services described herein for the Services for the Project shall be a sum not to exceed One Hundred Thousand Nine Hundred Ninety and No/100 Dollars (\$100,990.00) as specified in Exhibit “B-1”.”

D.

Revisions of the Scope of Services

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

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

E.

Contract Controls

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

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

THE TOWN OF FLOWER MOUND, TEXAS

By: _____
The Honorable Derek France
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

PACHECO KOCH CONSULTING ENGINEERS, LLC

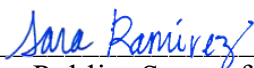
By: 
 Name: **Brian D. O'Neill, P.E., CFM**
 Title: **Principal**

Date Signed: **February 14, 2022**

State of Texas §
 §
 County of Denton §

This instrument was acknowledged before me on the **14th** day of **February**, 20**22**, by **Brian D. O'Neill, P.E., CFM**., in his capacity as **Principal** of **Pacheco Koch Consulting Engineers, LLC**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of **Pacheco Koch Consulting Engineers, LLC**.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE **14th**
 DAY OF **February**, 20**22**.


 Notary Public, State of Texas

My Commission Expires:

08/29/2025

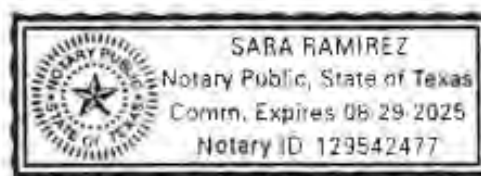


EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

EXHIBIT 'A-1' – SCOPE OF SERVICES

TIMBER CREEK WATER LINE REPLACEMENT PHASE 1

PROJECT DESCRIPTION:

The project consists of the installation of approximately 3,000 LF of 8" Fusible PVC by pipe bursting along Stapleton Lane from Kirkpatrick Lane to the end of Stapleton Lane. It is the CONSULTANT's understanding that the project will be designed without performing a topographic survey. The design will utilize Town of Flower Mound GIS maps, available aerial imagery, and site visits by the CONSULTANT. The project is proposed to be amended to include water main replacement within the Timber Creek Garden Homes and relocate existing meters to within the existing ROW. (PROJECT)

BASIC SERVICES:

A. Project Management, Coordination & Permitting

1. Manage the Team:

- Lead, manage and direct design team activities
- Ensure quality control is practiced in performance of the work
- Communicate internally among team members
- Allocate team resources

2. Communications and Reporting:

- Attend a pre-design project kickoff meeting with OWNER staff to confirm and clarify scope, understand OWNER objectives, and ensure economical and functional designs that meet OWNER requirements.
- Conduct review meetings with the OWNER at the end of each design phase.
- Prepare and submit monthly invoices in the format acceptable to the OWNER.
- Prepare and submit monthly progress reports.
- Prepare and submit baseline Project Schedule initially and Project Schedule updates.

3. Utility Clearance:

- The CONSULTANT will consult with the OWNER, public utilities, private utilities and government agencies to determine the approximate location of above and underground utilities, and other facilities (current and future) that have an impact or influence on the project. CONSULTANT will design OWNER facilities to avoid or minimize conflicts with existing utilities, and consider known

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
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Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

potential future utilities in designs. CONSULTANT will provide plans to and coordinate with utility owner(s) related to the relocation efforts of franchise utilities that remain in conflict with the proposed construction.

B. Preliminary Design (65% Submittal)

1. Prepare preliminary construction plans that will include the following sheets at the engineering scale indicated:

- Cover Sheet
- General Notes Sheet
- Quantity Sheet
- Project Layout Sheet
- 8" Water Line Plan Sheets
 - o Scale not to exceed 1" = 100' Horizontal
- Water Detail sheets

Information required can be combined on sheets if the information can be clearly shown and is approved by OWNER's project manager.

Construction plan sheets identified above may require additional sheets, which would be mutually agreed upon prior to addition.

2. Assemble OWNER's standard construction contract documents and modify special technical specifications, if needed, for the project (if any).
3. Prepare an estimate of construction quantities and develop the preliminary opinion of probable construction costs with a 15% contingency.
4. Submit three (3) half sized 11"x17" of preliminary plans, one (1) set of preliminary construction contract documents, PDF of plans/contract documents, special conditions (if any) and preliminary opinion of probable construction costs to the OWNER for review.

C. Final Design (100% Submittal)

1. Revise preliminary plans incorporating comments from the OWNER.
2. Finalize construction contract documents including OWNER standard specifications, special technical specifications and special conditions (if any).
3. Estimate of final construction quantities and final opinions of construction cost with a 10% contingency.
4. Submit two (2) sealed (100%) half size 11"x17" sets of final plans and construction documents for OWNER use and five (5) half size 11"x17"

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

sets of final plans and construction contract documents for bidding along with sealed PDF copy of plans & contract documents.

5. Submit DWG and any word documents (if requested) to the OWNER on a CD-ROM disk or flash drive.

D. Project Completion

1. Prepare construction "Record Drawings" based upon mark-ups and information provided by the construction contractor(s) and OWNER's project representative. Submit one (1) set of the record drawings (with "record drawing stamp" bearing the signature of the Engineer and the date) to the OWNER on a CD-ROM disk or flash drive containing scanned half size 11"x17" black and white PDF images, TIFF images and AutoCAD files.

E. Direct Expenses

1. Included in this item are usual and customary expenses normally incurred during performance of the services described. These expenses could include courier delivery charges, copies of existing engineering plans and/or maps, printing and reproduction (either in-house or by reproduction company) and mileage.

SPECIAL SERVICES:

F. Bid Phase Services

CONSULTANT will support the bid phase of the project as follows.

1. Bidder Assistance:
 - The CONSULTANT will develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders' questions and requests, and the response thereto. The CONSULTANT will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of addenda.
2. Conformed Construction Documents:
 - Upon award of a contract by the OWNER, the CONSULTANT shall assist with the execution, assembly and distribution of the construction contract documents for the Project.

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

G. Construction Phase Services

1. Preconstruction Conference:
 - The CONSULTANT shall attend the preconstruction conference.
2. Public Meeting:
 - After the pre-construction conference, the CONSULTANT shall provide project exhibits and attend a public meeting, if any, to help explain the proposed project to interested parties. The OWNER shall select a suitable location and extend the invitation to the affected parties and the public as deemed appropriate.
3. Instructions to Contractor
 - The Engineer shall provide necessary interpretations and clarifications of contract documents, review change orders and make recommendations as to the acceptability of the work, at the request of the OWNER.

TIMBER CREEK GARDEN HOMES WATER MAIN REPLACEMENT

H. Preliminary Design (65% Submittal) – Timber Creek Garden Homes

1. Prepare preliminary construction plans that will include the following sheets at the engineering scale indicated:
 - Cover Sheet
 - General Notes Sheet
 - Quantity Sheet
 - Project Layout & Control Sheet
 - 8" Water Main Plan Sheets
 - o Scale not to exceed 1" = 20' Horizontal
 - Water service relocation schematic
 - Pavement Repair Sheets
 - Erosion Control Plans
 - Water Detail sheets

Information required can be combined on sheets if the information can be clearly shown and is approved by OWNER's project manager.

Construction plan sheets identified above may require additional sheets, which would be mutually agreed upon prior to addition.

2. Assemble OWNER's standard construction contract documents and modify special technical specifications, if needed, for the project (if any).

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

3. Prepare an estimate of construction quantities and develop the preliminary opinion of probable construction costs with a 15% contingency.
 4. Submit three (3) half sized 11"x17" of preliminary plans, one (1) set of preliminary construction contract documents, PDF of plans/contract documents, special conditions (if any) and preliminary opinion of probable construction costs to the OWNER for review.
- I. Final Design (100% Submittal) – Timber Creek Garden Homes
1. Revise preliminary plans incorporating comments from the OWNER.
 2. Finalize construction contract documents including OWNER standard specifications, special technical specifications and special conditions (if any).
 3. Estimate of final construction quantities and final opinions of construction cost with a 10% contingency.
 4. Submit two (2) sealed (100%) half size 11"x17" sets of final plans and construction documents for OWNER use and five (5) half size 11"x17" sets of final plans and construction contract documents for bidding along with sealed PDF copy of plans & contract documents.
 5. Submit DWG and any word documents (if requested) to the OWNER on a CD-ROM disk or flash drive.
- J. Bid Phase Services – Timber Creek Garden Homes
CONSULTANT will support the bid phase of the project as follows.
1. Bidder Assistance:
 - The CONSULTANT will develop and implement procedures for receiving and answering bidders' questions and requests for additional information. The procedures shall include a log of all significant bidders' questions and requests, and the response thereto. The CONSULTANT will provide technical interpretation of the contract bid documents and will prepare proposed responses to all bidders' questions and requests, in the form of addenda.
 2. Conformed Construction Documents:
 - Upon award of a contract by the OWNER, the CONSULTANT shall assist with the execution, assembly and distribution of the construction contract documents for the Project.

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

K. Field Survey – Timber Creek Garden Homes

1. Establish Survey Control

Establish survey control along each street or intersecting streets as necessary. These control points will be established based on and tied to established Town horizontal and vertical control points. The horizontal control for each street in the PROJECT will be established on the State Plane Coordinate System (NAD'83 Surface Coordinates) from OWNER monumentation. Control points will be established using 5/8" iron rods, 18" long. These control points will be established using GPS and conventional surveying methods.

2. Benchmark Loop

A benchmark circuit will be established, based on the vertical control points provided. These benchmarks will be located outside of the construction limits and put in such a place so that they may be easily found for future use. Benchmarks will be located at about 1,000' intervals and will be referenced. Benchmarks shall be looped in accordance with good surveying practice prior to field surveys. All control leveling work will be performed using appropriate modified second order procedures with closed loops into the PROJECT vertical control.

3. Existing Streets, Driveways and Right-of-Way

Existing streets, driveways and right-of-way will be profiled and cross-sectioned at 50' intervals and to points at least 20' outside of the Right-of-Way line. Low points, high points and other unique features will be tied. Pavement surfacing type(s) will be determined by visual inspection only. Intersecting streets and extensions beyond the limits of the roadway being designed will be profiled and cross-sectioned to a point at least 150' beyond the roadway being designed.

4. Existing Drainage Channels and Drainage Area Verification

Existing drainage channels and swales will be profiled and cross sectioned within the immediate vicinity of the PROJECT, 100' upstream and downstream. Low points, high points and any other unique features will be tied. Additional surveying may be necessary to verify the limits of drainage areas and channel transitions.

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

5. Existing Underground and/or Overhead Utilities

Utility owner's will be contacted, on an as-needed basis, and requested to assist in locating existing utilities identified for the PROJECT. Above ground features of existing utilities within the proposed Right-of-Way and 20' adjacent thereto for the limits of the PROJECT will be field located, including elevations of sanitary and storm sewer manhole flowlines and water/gas valve stems. Manholes upstream and downstream of the PROJECT limits will be tied when needed to determine pipeline locations and elevations within the PROJECT. The location of utilities between above ground features will be determined from visual inspection, utility records, and/or from locations determined by the respective utility companies. The utilities will be tied to the PROJECT control points and depths determined in sufficient detail to identify potential conflicts with proposed construction. The excavation and other costs required to expose or probe the underground utilities will be the responsibility of others.

6. Right-of-Way

Right-of-Way lines along the PROJECT will be located. This information will be included on the PROJECT's plan sheets.

7. Existing Storm Sewers and Culverts

The size of existing culverts will be measured and tied along with existing headwalls, channels and aprons. The size, length, and flowline elevation of existing storm sewers will be surveyed. Drainage areas contributing to the PROJECT or conveying water from the PROJECT will be determined through field investigations and available GIS topographic mapping.

8. Temporary Signs, Traffic Control, Flags, Safety Equipment, Etc.

The Surveyor will exercise care in completing this surveying assignment by using traffic control devices, flags and safety equipment when necessary.

L. Easement Document Preparation – Timber Creek Garden Homes

1. The CONSULTANT shall prepare an easement document for the existing water main that connect the water main between John Court and Stapleton Street. One document is assumed for property address 4227 John Court.

EXHIBIT A-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
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Consulting Engineers, Inc.,
(CONSULTANT) for Consulting
Services

M. Project Completion – Timber Creek Garden Homes

1. Prepare construction “Record Drawings” based upon mark-ups and information provided by the construction contractor(s) and OWNER’s project representative. Submit one (1) set of the record drawings (with “record drawing stamp” bearing the signature of the Engineer and the date) to the OWNER on a CD-ROM disk or flash drive containing scanned half size 11”x17” black and white PDF images, TIFF images and AutoCAD files.

N. Direct Expenses – Timber Creek Garden Homes

1. Included in this item are usual and customary expenses normally incurred during performance of the services described. These expenses could include courier delivery charges, copies of existing engineering plans and/or maps, printing and reproduction (either in-house or by reproduction company) and mileage.

Services not included in this contract:

- *Construction observation or inspection services*
- *Subsurface Utility Exploration/Engineering*
- *As-built surveys of constructed improvements*
- *Public hearings or Town Council/Commission meetings*
- *Geotechnical engineering*
- *Utility coordination meeting(s) to start relocation process with affected franchise utilities.*
- *Reset property corner monumentation disturbed or removed during or after construction*
- *LOMR Preparation*
- *Traffic Signal Design*
- *Illumination Design*
- *Required application and permitting fees (LOMR) or special insurance premiums are not included*
- *Phase II Environmental Site Assessments*
- *Storm Water Pollution Prevention Permit (SWPPP) – Erosion Control Plans are included.*
- *Tree mitigation plan or calculations of protected tree inches requiring mitigation.*

END OF EXHIBIT ‘A-1’

EXHIBIT B-1 to First Amendment to
Professional Services Agreement
between the Town of Flower Mound,
Texas (OWNER) and Pacheco Koch
Consulting Engineers, Inc.
(CONSULTANT) for Consulting
Services

EXHIBIT 'B-1' – COMPENSATION AND METHOD OF PAYMENT

TIMBER CREEK WATER LINE REPLACEMENT PHASE 1

COMPENSATION:

For all professional services included in EXHIBIT 'A-1', Scope of Services, the CONSULTANT shall be compensated a lump sum fee of \$ 100,990.00 as summarized below. The total lump sum fee shall be considered full compensation for the services described in EXHIBIT A, including all labor materials, supplies, and equipment necessary to deliver the services.

Basic Services

A.	Project Management, Coordination & Permitting	\$ 3,730.00
B.	Preliminary Design (65% Submittal)	11,080.00
C.	Final Design (100% Submittal)	4,530.00
D.	Project Completion	475.00
E.	Direct Expense (Not to Exceed)	590.00
		<u>\$ 20,405.00</u>

Special Services

F.	Bid Phase Services	\$ 1,500.00
G.	Construction Phase Services	4,000.00
		<u>\$ 5,500.00</u>

Timber Creek Garden Homes

H.	Preliminary Design (65% Submittal)	\$ 24,115.00
I.	Final Design (100% Submittal)	18,030.00
J.	Bid Phase Services	1,500.00
K.	Field Survey	27,000.00
L.	Easement Document Preparation	2,500.00
M.	Project Completion	1,280.00
N.	Direct Expense (Not to Exceed)	638.00
		<u>\$ 75,085.00</u>

TOTAL

\$ 100,990.00

METHOD OF PAYMENT:

The CONSULTANT shall be paid monthly payments as described in the AGREEMENT. The cumulative sum of such monthly partial fee payments shall not exceed the total current project budget including all approved Amendments. Each invoice shall be verified as to its accuracy and compliance with the terms of this Agreement by an officer of the CONSULTANT.

Monthly statements for reimbursable services performed by sub consultants will be based upon the actual cost to the CONSULTANT plus ten percent (10%). Direct expenses for services such as printing, express mail, fees, mileage and other direct expenses that are incurred during the progress of the project will be billed at 1.1 times the CONSULTANT'S cost.

END OF EXHIBIT 'B-1'



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: March 7, 2022

FROM: Dale Crown, P.E., Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with The Rios Group, for subsurface utility engineering services associated with the Timber Creek Water and Sewer Replacements project, in the amount of \$24,300.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The project includes subsurface utility engineering services to aid in design and identify potential utility conflicts within the limits of the Timber Creek Water and Sewer Replacements project. The Timber Creek Water and Sewer Replacements project is a pipe bursting project combining two CIP projects, Spring Meadow Lane Sewer Replacement and Timber Creek Water Line Replacement Phase II. The Timber Creek Water and Sewer Replacements projects includes approximately 3900 linear feet of water line replacement and approximately 4800 linear feet of sewer line replacement. The estimated cost for the improvements is \$2,600,000, which is scheduled for construction in Fiscal Year 2021-2022.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the Professional Services Agreement would result in a lack of information concerning potential utility conflicts within the limits of the project.

FISCAL IMPACT: \$24,300.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$12,150.00	630-960-98775-6070 (Timber Creek WL PH II)
\$12,150.00	630-970-98703-6070 (Spring Meadow Ln WW)

Total project cost for Timber Creek WL Ph II is \$1,080,000. Total project cost for Spring Meadow Ln Sewer Line Replacement is \$1,540,000. Funding sources are:

- Utility Debt

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services *tw*

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

ATTACHMENTS:

1. Professional Services Agreement

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

PROFESSIONAL SERVICES AGREEMENT WITH THE RIOS GROUP

This contract is entered into on this 7th day of March, 2022, 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 **THE RIOS GROUP**, (“hereinafter referred to as “CONSULTANT”) whose address is 7400 Sand Street, Fort Worth, Texas 76118

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to subsurface utility engineering and locating services for the Timber Creek Water and Sewer Replacements project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

CONSULTANT shall perform such services as are necessary to provide the Timber Creek Water and Sewer Replacements subsurface utility engineering and locating services 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 Four Thousand Three Hundred and No/100 Dollars (\$24,300.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

CONSULTANT will bill TOWN on an hourly basis for certain services provided combined with a flat fee for specific tests performed in accordance with Table 1; provided however that this Contract shall control in the event of any conflict between the language in Table 1 and the language in this Contract. If additional services, trips or expenses are requested, CONSULTANT will not provide such additional services until authorized by TOWN in writing to proceed. The scope of services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the amount identified in the preceding paragraph unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

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

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

Nothing contained in this Contract shall require TOWN to pay for any work that TOWN has determined has not been successfully completed or is unsatisfactory as

determined by TOWN, or which is not otherwise submitted in compliance with the terms of this Contract, nor shall failure to withhold payment pursuant to the provisions of this section constitute a waiver of any right, at law or in equity, which TOWN may have if CONSULTANT is in default, including the right to bring legal action for damages or for specific performance of this Contract. Waiver of any default under this Contract shall not be deemed a waiver of any subsequent default.

IV. Revisions of the Scope of Services

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

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

V. Term

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

VI. Contract Termination Provision

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

VII. Ownership of Documents

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN

without restriction on future use. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract.

VIII. Insurance

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

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

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

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractor's and Contractual Liability, including but not limited to coverage for all of the indemnification obligations of CONSULTANT under this Contract, and fully insuring CONSULTANT's liability for injury to or death of employees of TOWN and of third parties, extended to include personal injury liability coverage and for damage to property of third parties, with minimum combined single limits of \$1,000,000 per occurrence, \$1,000,000 Products/Completed Operations

Aggregate and \$1,000,000 general aggregate per occurrence. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis;

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

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

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

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

Dale Crown, P.E.,
Senior Project Engineer
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and

4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

IX.

Right to Inspect Records

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

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

X.

Successors and Assigns

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

XI.

CONSULTANT's Liability

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working

drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants. In this regard, CONSULTANT acknowledges that TOWN is retaining CONSULTANT to provide the services described herein, in reliance upon CONSULTANT's specialized expertise and experience, and in reliance thereon.

XII.

Indemnification

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

XIII.

Independent Contractor

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed hereunder, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and

engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

XIV. Default

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

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

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages in an amount not to exceed:
 - (1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained by CONSULTANT in excess or in addition to the coverage required under this Contract; plus
 - (2) The total dollar amount of this Contract.

XV. Provisions Surviving Termination

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

XVI. Changes

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

XVII. Conflicts of Interest

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

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

XVIII. Confidential Information

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

CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

XIX.
Notice Information

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

Dale Crown, P.E.,
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6302 Telephone

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

Eric Webb, P.E.
The Rios Group
7400 Sand Street
Fort Worth, Texas 76118
817-345-7500 Telephone
817-345-7505 Facsimile
EWebb@rios-group.com, Email Address

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

XXV.
Remedies

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

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[The remainder of this page left blank intentionally]

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

THE TOWN OF FLOWER MOUND, TEXAS

By: _____
The Honorable Derek France
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

**CONSULTANT:
THE RIOS GROUP**

By: *Rosa Navejar*
 Name: Rosa Navejar
 Title: President
 Date Signed: 02/10/2022

State of Texas §
 §
 County of Tarrant §

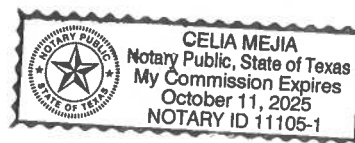
This instrument was acknowledged before me on the 10th day of February, 2022, by Rosa Navejar in his capacity as President of The Rios Group, INC, a S Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of The Rios Group, INC

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 10th DAY OF February, 2022.

Celia Mejia
 Notary Public, State of Texas

My Commission Expires:

10-11-2025





7400 Sand Street | Fort Worth, Texas 76118
817.345.7500 p | 817.345.7505 f

February 1, 2022

Dale Crown, P.E.
Town of Flower Mound
201 Spinks Rd.
Flower Mound, TX 75028

**RE: Subsurface Utility Engineering
Timber Creek Water and Sewer Replacements– UTL22-017**

Dear Mr. Crown:

The Rios Group, Inc. (TRG) is pleased to submit a cost proposal for Subsurface Utility Engineering (SUE) required for the above referenced project. This proposal is based on information contained in your email dated January 26, 2021.

Introduction

TRG will perform the SUE work required for this project in general accordance with the recommended practices and procedures described in ASCE Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). As described in the mentioned ASCE publication, four levels have been established to describe the quality of utility location and attribute information used on plans. The four quality levels are as follows:

- Quality Level D (QL"D") – Information derived from existing utility records;
- Quality Level C (QL"C") - QL"D" information supplemented with information obtained by surveying visible above-ground utility features such as valves, hydrants, meters, manhole covers, etc.
- Quality Level B (QL"B") – Two-dimensional (x,y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "**designating**" this quality level provides the horizontal position of subsurface utilities within approximately one foot.
- Quality Level A (QL"A") – Three dimensional (x,y,z) utility information obtained utilizing non-destructive vacuum excavation equipment to expose utilities at critical points which are then tied down by surveying. Also known as "**locating**", this quality level provides precise horizontal and vertical positioning of utilities within approximately 0.05 feet.

It is the responsibility of the SUE provider to perform due-diligence with regard to records research (QL "D") and acquisition of available utility records. The due-diligence provided for this project will consist of visually inspecting the work area for evidence of utilities and reviewing the available utility record information. Utilities that are not identified through these efforts will be here forth referred to as "unknown" utilities. TRG personnel will scan the defined work area using electronic prospecting equipment to search for "unknown" utilities. However, TRG is not responsible for designating and locating these "unknown" utilities.

Scope of Work

Based on information provided by Town of Flower Mound, TRG has developed a preliminary scope for the SUE work required for this project. The scope of work may be modified, with Town of Flower Mound's concurrence, during the performance of the SUE fieldwork if warranted by actual field findings.

The scope of this proposal includes Quality Level "D" SUE. Utilities to be investigated include gas, telecommunications, electric, traffic signals, storm, water and sanitary sewer. Designating will be performed within the following limits:

- Spring Meadow Ln.: perform Level D SUE record investigation beginning at the intersection of Timber Creek Rd. and Spring Meadow Ln. traveling along Spring Meadow Ln. for approximately 6000' as show in Exhibit A.
- Pepperwood Dr.: perform Level "D" SUE starting at the Cull-Da-Sac of Sweetgum Ct. traveling north crossing Buckeye Dr. to pepperwood Dr. Follow Pepperwood Dr. to the north and curve east the south crossing Buckeye Dr. again and ending in White Oak Ct. Cull-Da-Sac with a total length of approximately 2000' as shown in Exhibit B.

Any necessary Right-of-Entry (ROE) permits, including railroad ROE, will be provided by Town of Flower Mound prior to the start of TRG field work.

Designating Procedures

Prior to beginning field designating activities, TRG's field manager will review the project scope of work and available utility records. Once these initial reviews are complete, the field manager and technicians will begin designating the approximate horizontal position of known subsurface utilities within the specified project limits. A suite of geophysical equipment (electromagnetic induction, magnetic) will be used to designate metallic/conductive utilities (e.g. steel pipe, electrical cable, telephone cable). TRG will establish routine/ordinary traffic control (cones and free standing signage, etc.) whenever required as part of our standard pricing. If non-routine traffic control measures are required (barricades, flag person, changeable message board, etc.), these services will be considered extra.

Accurate collection and recording of designated utilities is a critical component of the SUE process. TRG utilizes a proven method of collecting and recording survey information once the utilities have been designated in the field. TRG's field manager will produce detailed sketches depicting each utility as well as relevant surface features such as roadways, buildings, manholes, fire hydrants, utility pedestals, valves, meters, etc. Each utility will be labeled with a unique ID code. For example, if two different water lines exist on the project, one will be labeled W1 and the other W2. Paint and pin flags will be used to designate the utilities in the field. A labeled pin flag or paint mark will be used to mark each location where a survey shot is required. The locations will be numbered sequentially for each individual utility line. For example, if there are 10 shots required on water line W1, the points will be numbered W1-1 through W1-10.

Mr. Crown
 Timber Creek Water and Sewer Replacements
 February 1, 2022
 Page 3 of 3

Locating Procedures

TRG will utilize non-destructive vacuum excavation equipment to excavate test holes at the required locations. **Due to the risk of damage, TRG will not attempt to probe or excavate test holes on any AC water lines unless approval is obtained from the owner in advance.** Once each utility is located, TRG will record the utility type, size, material, depth to top, and general direction. Each test hole will be assigned a unique ID number and will be marked with a nail/disk. The test-hole ID number and other pertinent utility information will be painted at each test-hole location.

We have assumed that all test holes will be in non-paved areas and are accessible to truck-mounted equipment, and that routine traffic control (cones and free standing signage, etc.) will be required during the performance of the QL "A" SUE work.

Deliverables

TRG will produce a utility file, in AutoCAD format, depicting the type and horizontal location of the designated utilities. The size of each utility will be presented in the utility file if this information is indicated on available record drawings. If available Town of Flower Mound will provide TRG with base map/topographic files for use in preparing the utility file. TRG to produce a PDF exhibits (or plans).

Schedule

Field work can commence within approximately 2 weeks after receipt of NTP. TRG estimates that the work can be completed in approximately 8 weeks, broken down as follows:

- QL "D" SUE Record Research – 6 weeks for all records to arrive.
- Deliverable Preparation – 10 days

Proposed Fees

TRG proposes to provide the services as described above for a cost of **Twenty-Four Thousand Three Hundred Dollars & 00/100 (\$24,300.00)**. A breakdown of cost is included as "Table 1" for this proposal.

Please note that this estimate is based on an assumption of quantities. TRG will only invoice for quantities actually performed. This is a not-to-exceed amount. If it appears that quantities will be exceeded, TRG will notify Town of Flower Mound and request authorization to submit a supplemental agreement to increase the fee prior to proceeding with additional work.

We look forward to working with you on this project. If you have any questions or require additional information, please contact me.

Sincerely,
The Rios Group, Inc.



Eric Webb, P.E.
 Dallas Branch Manager


THE RIOS GROUP

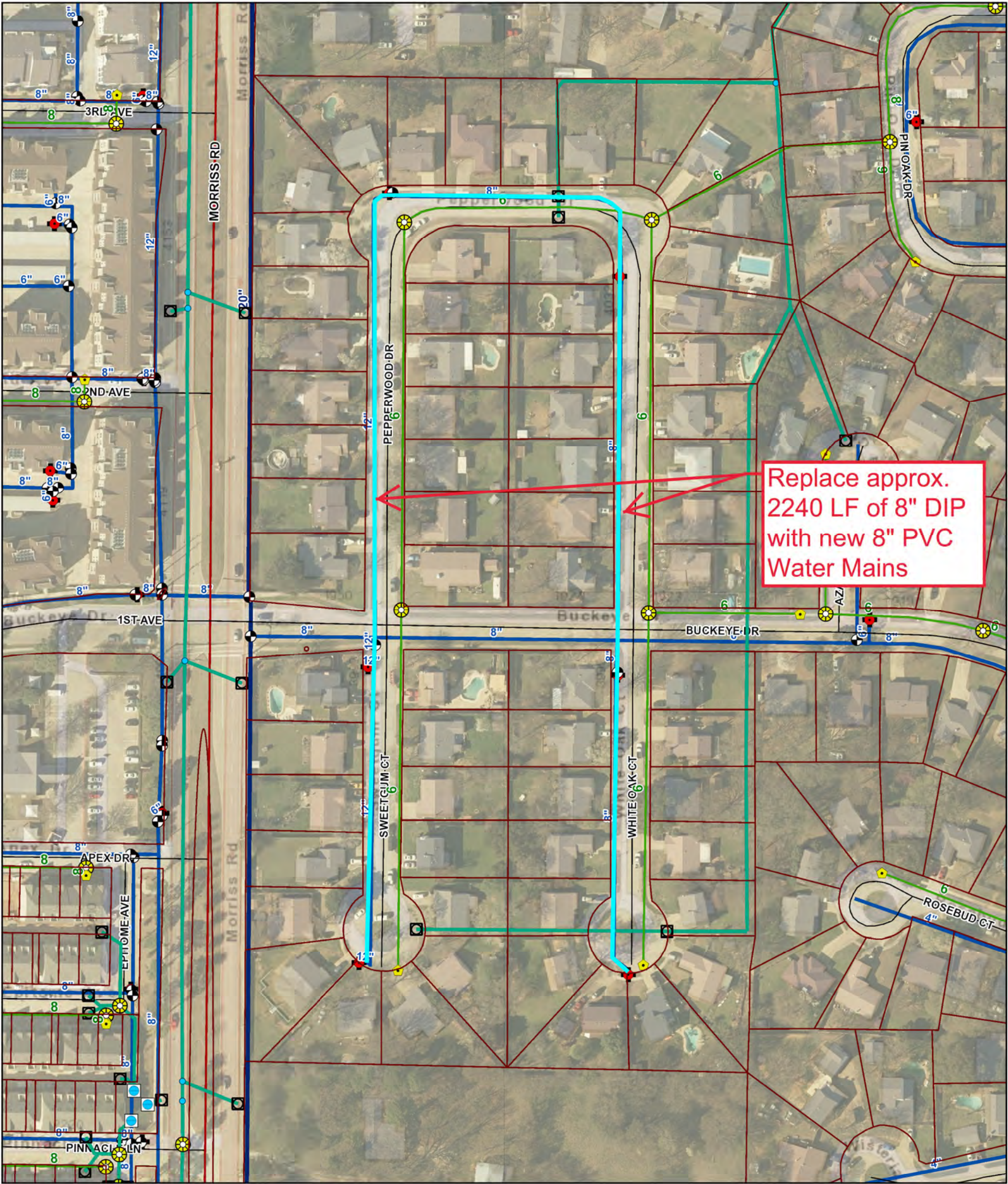
Estimate for Subsurface Utility Engineering Timber Creek Water and Sewer Replacements

Table 1

Direct Expenses	Rate	Units	Unit Description	Sub-Total	Notes
Admin./Permit	\$ 500.00	0	LS	\$ -	
Traffic Control	\$ 1,500.00	0	DAY	\$ -	
Survey	\$ 1,850.00	0	DAY	\$ -	
Sub-Total				\$ -	
QL "B","C&D"	Rate	Units	Unit Description	Sub-total	
QL "B" by LF	\$ 1.50	0	LF	\$ -	
QL "C&D"	\$ 0.45	54,000	LF	\$ 24,300.00	
Sub-Total				\$ 24,300.00	
SUE QL "A" (Test Holes)					
Depth	Rate	Assumed Quantity	Unit Description	Sub-total	
0-4 ft.	\$ 950.00	0	EA	\$ -	
4-8 ft.	\$ 1,250.00	0	EA	\$ -	
8-12 ft.	\$ 1,550.00	0	EA	\$ -	
12-18 ft.	\$ 2,300.00	0	EA	\$ -	
Pavement Coring	\$ 200.00	0	EA	\$ -	
QL "A" Sub-Total		0		\$ -	
				Total Estimated Cost = \$	24,300.00

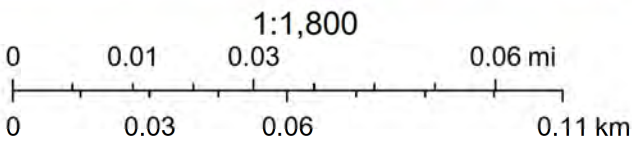
Notes:

Web AppBuilder for ArcGIS

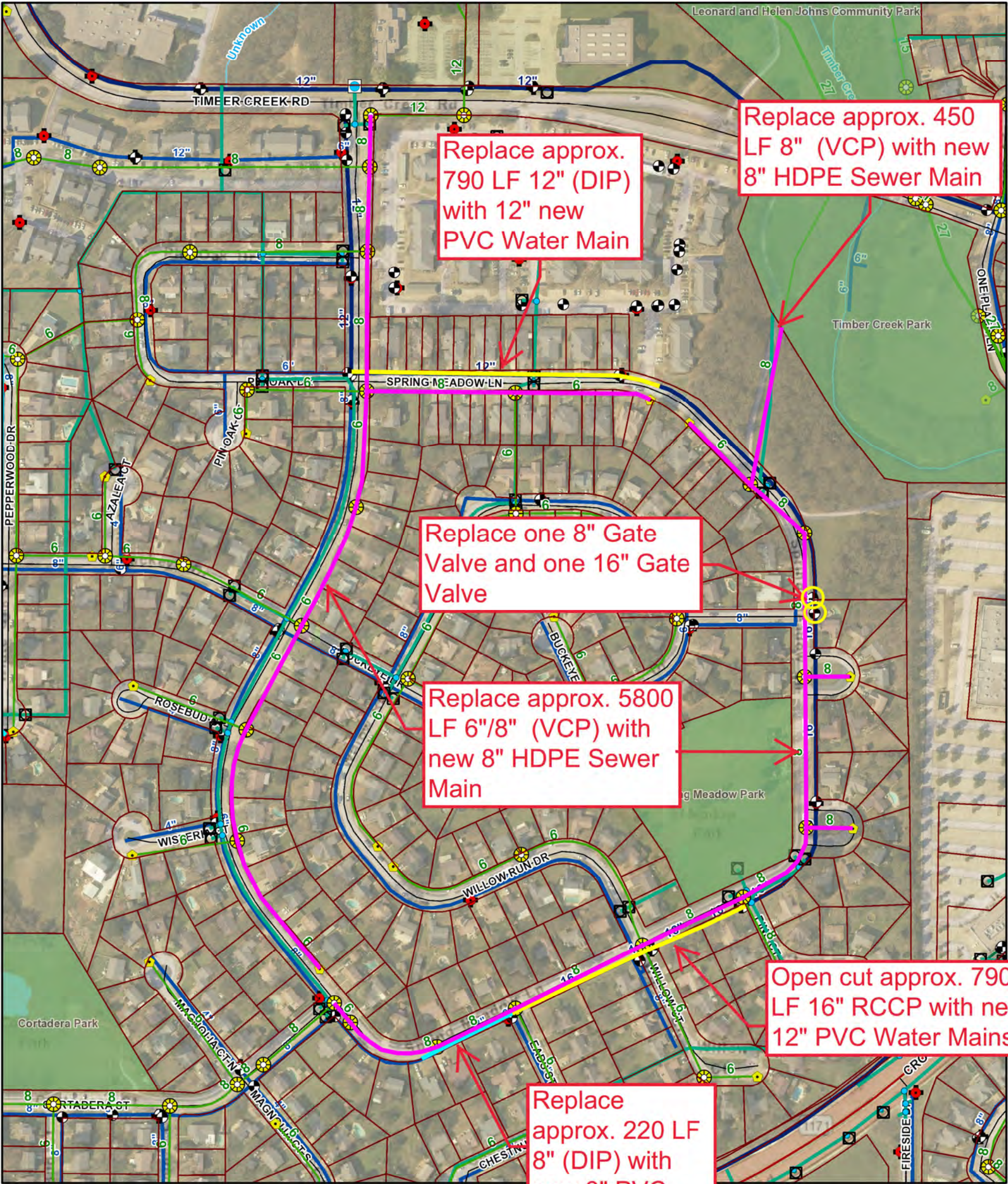


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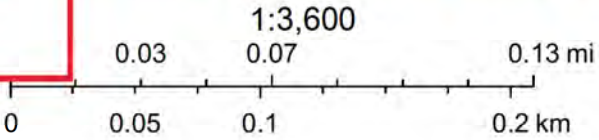
Attachement A



Web AppBuilder for ArcGIS



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- New 8" Sewer
- New 12" Water
- New 8" Water

Attachement B



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: March 7, 2022

FROM: Blake Hummel, Senior Project Engineer

ITEM: Consider approval of a Professional Services Agreement with Kimley-Horn and Associates, Inc., for the design phase services associated with the FM2499 at FM407 Intersection Improvements project, in the amount of \$298,350.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The FM2499 at FM407 Intersection Improvements project includes improvements to the intersection of FM 2499 (Long Prairie Road) and FM 407 (Justin Road). Improvements will include reconfiguration of the intersection to provide dual left turn lanes, three thru lanes, and a dedicated right turn lane for northbound and southbound travel. The dedicated right turn lane for northbound travel will also be extended to provide more storage capacity. The eastbound and westbound sections will be reconfigured to provide dual left turn lanes, two thru lanes, and a dedicated right turn lane. The dedicated right turn lane for eastbound travel will also be extended to provide more storage capacity. Traffic signals on the north side of the intersection will be adjusted accordingly along with pedestrian ramp improvements throughout the intersection to accommodate the proposed additional infrastructure.

The scope of the Professional Services Agreement includes the preparation of design survey, design plans, contract specifications and record drawings. Currently, the project is scheduled on the North Central Texas Council of Governments (NCTCOG) Transportation Improvement Program utilizing federal American Rescue Plan Act funds for right-of-way (ROW) acquisition in 2023 and construction in 2025. The total funding recommended thru the NCTCOG American Rescue Plan Act is \$1,664,000, with a local match of \$416,000. Due to the specific requirements of utilizing the NCTCOG federal funding, the implementing agency was changed to TxDOT so they can adequately provide all necessary reporting with the requirement the Town of Flower Mound fund and implement the project design. Funding for the design is from the Town's American Rescue Plan Act funding. Following the design completion, TxDOT will fund and complete the purchase of ROW and construction.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: A decision to not approve the proposed Professional Services Agreement for design would postpone the design of the FM2499 & FM407 intersection and not fulfill the requirements for a local match of the federal funding described above.

FISCAL IMPACT: \$298,350.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$298,350.00	378-588-70631-6070

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services *tw*

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 with Kimley-Horn and Associates, Inc.

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 7th day of February, 2022, 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 2201 W. Royal Lane, Suite 275, Irving, TX 75063.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to surveying, design and providing construction documents for the FM2499 at FM407 Intersection Improvements 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 FM2499 at FM407 Intersection Improvements 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 Ninety-Eight Thousand Three Hundred Fifty and No/100 Dollars (\$298,350.00). 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 or hourly/reimbursable 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:

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

IX.

Right to Inspect Records

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

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

compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

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

XIII. Independent Contractor

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

XIV. Default

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

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

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

XV. Provisions Surviving Termination

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

XVI. Changes

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

XVII. Conflicts of Interest

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

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

XVIII. Confidential Information

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

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

XIX. **Notice Information**

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

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

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

Ryan Delmotte, P.E., CFM
Project Manager
Kimley-Horn and Associates, Inc.
2201 W. Royal Lane, Suite 275
Irving, Texas 75063
214-420-5624 Telephone
Ryan.delmotte@kimley-horn.com

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 Derek France
Mayor, Town of Flower Mound

Date Signed: _____

Attest:

Town Secretary

CONSULTANT:
Kimley-Horn and Associates, Inc.

By: L. Nathan Ante
 Name: L. Nathan Ante
 Title: Senior Vice President

Date Signed: 2/23/2022

State of Texas §
 §
 County of Dallas §

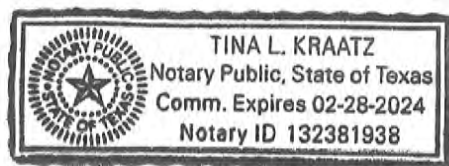
This instrument was acknowledged before me on the 23rd day of February, 2022, by L. Nathan Ante in his capacity as Sr. Vice President of Kimley-Horn and Associates, a Private Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Kimley-Horn and Associates.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 23rd DAY OF February, 2022.

Tina L. Kraatz
 Notary Public, State of Texas

My Commission Expires:

2/28/2024



Attachment A **Scope of Work**

Project Understanding

The following Scope of Professional Services includes Data Collection and Survey, Intersection Improvements, and Record Drawings associated with the intersection of FM 2499 & FM 407, ROW/Easement Instruments of Conveyance, Franchise Utility Coordination, SUE (Level B), and SUE (LEVEL A) may also be performed, if necessary.

Scope of Services

Task 1 – Data Collection and Survey

The ENGINEER will perform boundary and topographic survey for the project, generally within the limits of the red hatch shown in Attachment C to identify and locate existing topographic elements including, but not limited to, the following:

- Property pins
- Existing pavement, curbs, sidewalks, and barrier free ramps
- Pavement Markings
- Existing storm sewer inlets, manholes, and junction boxes
- Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
- Engineer will coordinate with Texas 811 to locate and mark existing known franchise and public utilities prior to performing field survey
- Traffic signal poles, cabinets, and other signal equipment
- Signs (excluding temporary signs)
- Retaining walls
- Fence limits and material types
- Landscaping
- Other applicable physical features that may impact design

Review the final topographic drawing in digital format (including one-foot contours and breaklines) showing the features located in the field as well as right-of-way and easement information.

Prepare a base map utilizing the survey information and record drawings.

Task 2 – Intersection Improvement Design

The ENGINEER will perform the following as part of this task:

- Conduct a joint kick-off meeting with TxDOT and the TOWN
- Prepare 30% design identifying limits of proposed improvements including, typical sections, pavement markings, sidewalk, grading limits, impacts to existing utilities, impacts to adjacent property, impacts to existing traffic signal, and right-of-way and easement needs.
- The Design will consider reconfiguring the FM 2499 (Long Prairie Road) at FM 407 (Justin Road) intersection to accommodate the following vehicular movements:
 - Northbound
 - Dual Left Turn Lane
 - Three (3) Thru Lanes

- One (1) Right Turn Lane
- Eastbound
 - Dual Left Turn Lanes
 - Two (2) Thru Lanes
 - One (1) Right Turn Lane
- Southbound
 - Dual Left Turn Lanes
 - Three (3) Thru Lanes
 - One (1) Right Turn Lane
- Westbound
 - Dual Left Turn Lanes
 - Two (2) Thru Lanes
 - One (1) Right Turn Lane
- The configuration above will result in the design of a Northbound Thru Lane, Northbound Right Turn Lane Extension, Eastbound Left Turn Lane, Eastbound Right Turn Lane Extension, Southbound Left Turn Lane, Southbound Right Turn Lane, Westbound Right Turn lane onto FM 2499 and a Westbound Right Turn Lane into the Whole Foods parking lot.
- Traffic signal poles on Northeast, Northwest and Southeast quadrants will be replaced to allow for roadway widening. Related pedestrian signals, ramps & crosswalks will be upgraded.
- Existing traffic signal controller and electrical service will be replaced.
- The ENGINEER will submit one (1) PDF of the conceptual layout to the TOWN and TxDOT
- The ENGINEER will respond to one (1) joint round of comments from the TOWN and TxDOT
- Upon TOWN and TxDOT approval of the conceptual design layout, the ENGINEER will prepare plan sheets of the proposed improvements. Plan sheets will consist of 22"x34" sheets at a scale of 1"=40' horizontal. The plan set is anticipated to include the following plan sheets:
 - Title Sheet
 - Index
 - General Notes
 - Project Layout Plan
 - Project Control (Horizontal Control Data)
 - Typical Sections (4 Existing and 4 Proposed)
 - Removal Plan
 - Roadway Plan
 - Existing Drainage Area Map
 - Proposed Drainage Area Map (if existing drainage patterns are changed)
 - Storm Drain Plan & Profile
 - Drainage Calculations
 - Pavement Marking & Signing
 - Traffic Control Plan
 - Traffic Signal Plan
 - Erosion Control Plan
 - Summary of Small Signs
 - Vegetation Establishment Plan
 - EPIC Sheet
 - TXDOT Standard Construction Details
 - Quantity Summary Sheets
- The ENGINEER will submit 60% Construction Plans and Opinion of Probable Construction Cost (OPCC) in .PDF format to the TOWN and TXDOT for review and comment in .PDF format.

- 60% Construction Plan comments will be addressed during preparation of the 90% Construction Plans.
- The ENGINEER will submit 90% Design Plans and Opinion of Probable Construction Cost (OPCC) in .PDF format to the TOWN and TXDOT for review and comment in .PDF format.
- The ENGINEER will respond to one (1) round of 90% Construction Plan comments and will address 90% Construction Plan comments upon preparing Final Construction Plans.
- The ENGINEER will submit the Final Construction Plans and Opinion of Probable Construction Cost (OPCC) in .PDF format to the TOWN and TXDOT. Up to four (4) copies of the Final Construction Plans (two (2) full size (22"X34"), two (2) half scale (11"X17")) may be produced and delivered to the TOWN if requested.

Task 3 – Record Drawings

The ENGINEER will perform the following as part of this task:

- Prepare record drawings from contractor's marks showing changes made during construction. Transfer contractor's marks to digital format. The ENGINEER will be provided the contractor's revisions and shall not be responsible for verifying their completeness or accuracy.
- ENGINEER will provide one (1) thumb drive containing record drawings in digital format (PDF, TIFF, CAD) to the TOWN and TxDOT

Task 4 – ROW/Easement Instruments of Conveyance (Hourly/Reimbursable)

The ENGINEER will perform the following as part of this task:

- ROW and Easement needs will be identified at the 30% design milestone. If required and authorized by the TOWN, preparation of the ROW and Easement Instruments of Conveyance will be performed under this Task, at \$2,500 each.
- Individual parcel exhibits shall be on 8 ½"x11"

Task 5 – Franchise Utility Coordination (Hourly/Reimbursable)

The ENGINEER's involvement during the franchise utility coordination phase of the project will only be provided upon the TOWN's request. Our scope of services could include any of the tasks below. However, budgeted fee identified allows for approximately 20 hours of ENGINEER's labor anticipated expenses.

- Assist the TOWN and TxDOT in the franchise utility coordination efforts during the design phase
- TOWN and TxDOT to provide a list of franchise utility contacts
- Request utility maps and records from franchises located within the project limits
- Prepare and maintain a listing of potential franchise utility conflicts
- Prepare for and attend franchise utility coordination meetings

Task 6 – Level B Subsurface Utility Engineering (SUE) – (Hourly/Reimbursable)

The ENGINEER, through a subconsultant, will perform Level B SUE (Subsurface Utility Engineering) services within the same limits of the topographic survey.

Task 7 – Level A Subsurface Utility Engineering (SUE) – (Hourly/Reimbursable)

The ENGINEER, through a subconsultant, will perform up to four (4) Level A SUE (Subsurface Utility Engineering) pothole at the below rates:

- Two (2) – 0'-4' potholes @ \$1100/each (\$2200)
- Two (2) – 4'-8' potholes @ \$1400/each (\$2800)
- Pavement Coring @ \$200 (4) (\$800)
- Total Budgeted Fee - \$5,800

Additional Services

Any services not specifically identified in the Scope of Services shall be considered Additional Services. These may be performed on an individual basis upon written authorization by the TOWN at our then current hourly rates under the existing Agreement if budget allows.

Additional Services include, but are not limited to, the following:

- Additional meetings;
- Public involvement;
- Environmental
- Bidding phase services
- Construction phase services
- Formal TxDOT schematic
- Traffic data collection;
- Future conditions analysis and recommendations, including traffic forecasting or travel demand modeling;
- Traffic signal timing plans (intersections or corridors);
- Master Thoroughfare Plan (MTP) updates;
- VISSIM simulation analysis;
- Any item not specifically mentioned in our Scope of Services.

Schedule

The ENGINEER will provide its services as expeditiously as practical to meet a mutually agreed upon schedule.

Due to the everchanging circumstances surrounding the COVID-19 Virus, situations may arise during the performance of this Agreement that affect availability of resources and staff of ENGINEER, TOWN, other consultants, and public agencies. There could be changes in anticipated delivery times, jurisdictional approvals, and project costs. ENGINEER will exercise reasonable efforts to overcome the challenges presented by current circumstances, but ENGINEER will not be liable to TOWN for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 Virus.

Attachment B
Payment Terms

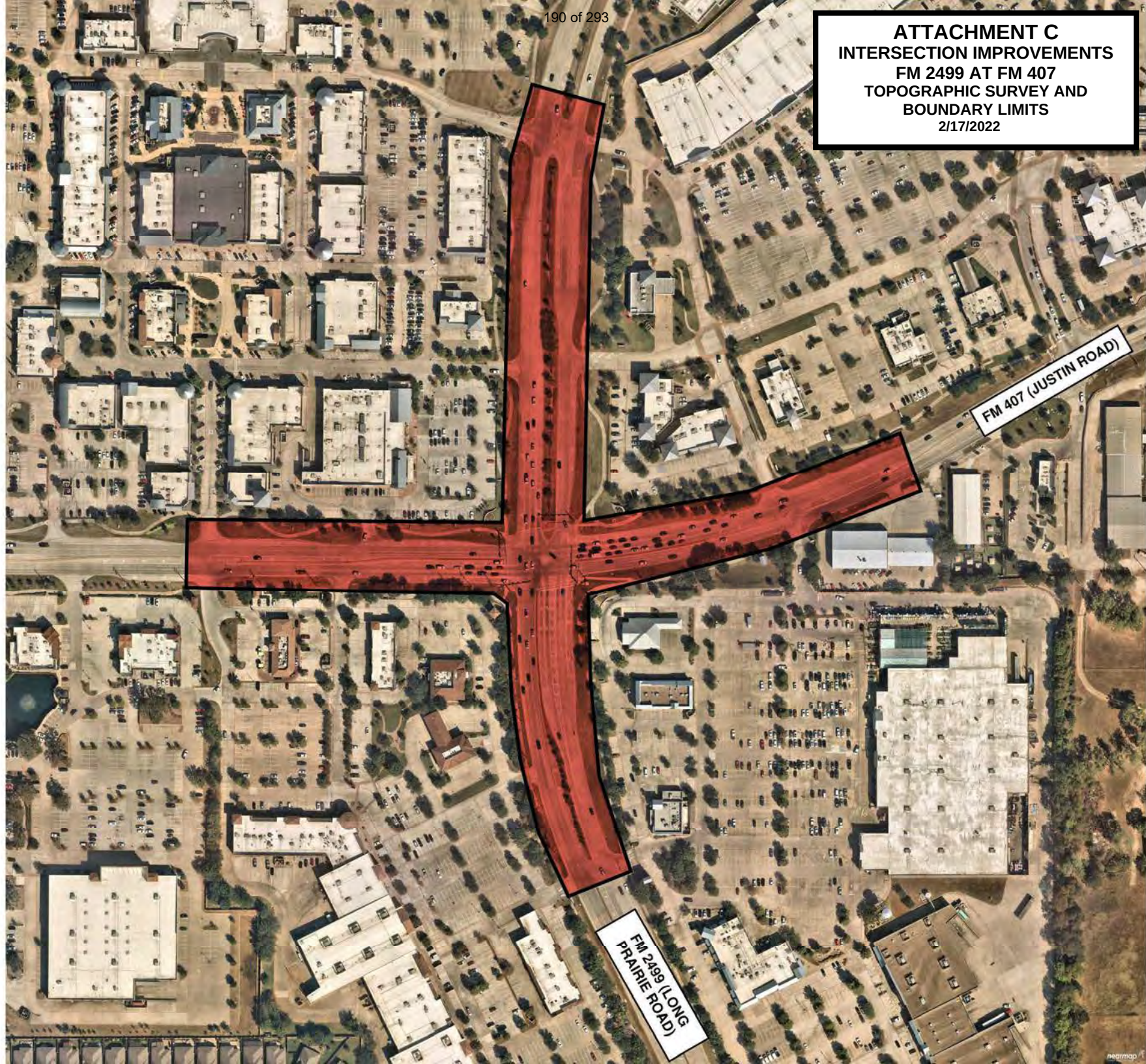
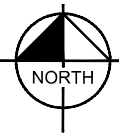
Fee and Billing

The ENGINEER will perform the services identified in the Scope of Services on an Amount Not to Exceed basis in accordance with the following tasks:

<u>Lump Sum:</u>	<u>Task Fee:</u>
Task 1 – Data Collection and Survey	\$18,600
Task 2 – Intersection Improvement Design	\$227,000
Task 3 – Record Drawings	\$2,100
Total Lump Sum:	\$247,700
 <u>Hourly/Reimbursable:</u>	 <u>Task Fee:</u>
Task 4 – ROW/Easement Instruments of Conveyance	\$5,000
Task 5 – Franchise Coordination	\$4,750
Task 6 – Level B SUE	\$35,100
Task 7 – Level A SUE	\$5,800
Total Hourly/Reimbursable:	\$50,650
 Total Sum:	 \$298,350

The ENGINEER will perform the **Lump Sum Tasks** identified in the Scope of Services for a lump sum fee of \$247,700. The ENGINEER, if authorized by the TOWN, will perform **Hourly/Reimbursable Tasks** identified in the Scope of Services for a fee NOT TO EXCEED of \$50,650 unless a separate contract between the ENGINEER and TOWN is agreed upon. ENGINEER reserves the right to reallocate the fees among tasks as necessary. All permitting, application, and similar project fees will be paid directly by the TOWN. Lump Sum fees will be invoiced monthly based upon percentage of services performed as of the invoice date. Payment will be due within thirty (30) days of your receipt of the invoice.

ATTACHMENT C
INTERSECTION IMPROVEMENTS
FM 2499 AT FM 407
TOPOGRAPHIC SURVEY AND
BOUNDARY LIMITS
2/17/2022





TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: March 7, 2022

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

ITEM: Consider approval of a Construction Agreement with Quick Set Concrete for the Grand Park (2020-21 Playground Replacements) project, in the amount of \$94,912.20; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On February 2, 2022, bids were received and opened (Bid No: 2022-15-B) for the Grand Park (2020-21 Playground Replacements) project. Quick Set Concrete submitted the lowest qualified bid of the five (5) responding bidders at a base bid of \$94,912.20. The Grand Park (2020-21 Playground Replacements) project consists of the replacement of the existing play equipment and the new installation of a pavilion, picnic tables, grill, trash receptacles, and a grass volleyball court with irrigation. Project funding will utilize funds from 2020-21 Playground Replacements and Parks and Trails Amenities. Due to manufacturing lead times on the play equipment and the picnic pavilion, two agenda items were approved by Town Council in June 2021.

- On June 7, 2021, Town Council approved the purchase and installation of play equipment from Webuildfun, Inc., in the amount of \$250,124.27.
- On June 19, 2021, Town Council approved the purchase and installation of a picnic pavilion from Site Source, Inc., in the amount of \$35,756.00.

The play equipment and the picnic pavilion have been manufactured and are ready for installation. Quick Set Concrete will be responsible for the remainder of the park improvements and coordination for installation of the previously ordered items.

BOARD REVIEW/CITIZEN FEEDBACK: The Community Development Corporation and Town Council approved Playground Replacements (Grand Park with pavilion, 2 picnic tables, grill, trash receptacle, grass volleyball with irrigation) in the Fiscal Year 2020-2021 after recommendation from the Parks Board for Park and Recreation needs for the Capital Improvement Program projects.

ALTERNATIVES/OPTIONS: A decision to not approve this construction agreement will cause the project not to move forward and the previously ordered play equipment and pavilions not to be installed.

FISCAL IMPACT: \$97,912.20

Proposed Expenditure/(Revenue):	Account Number(s):
\$49,150.03	317-110-90821-6210
\$45,762.17	317-110-90770-6210

Grand Park project cost is \$350,000 and Parks and Trails Amenities has a remaining budget balance of \$60,201. Funding sources for both projects is Dedicated Sales Tax.

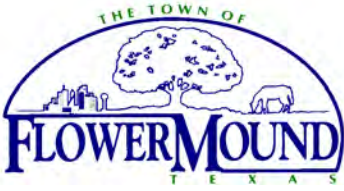
Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services/CFO *tw*

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: 2022-15-B – Grand Park (2020-21 Playground Replacements)

Bid Opening: 02/02/2021 at 11:00 AM

Company	Base Bid
Quick Set Concrete	\$ 94,912.20
North Rock Construction	\$ 117,711.40
Northstar Construction, LLC	\$ 119,374.00
L.J. Design & Construction, LLC	\$ 122,299.44
AUI Partners LLC	\$ 130,367.99

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

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

Date: February 2, 2022

TOWN OF FLOWER MOUND

GRAND PARK (2020-21 PLAYGROUND REPLACEMENTS)

Bid # 2022-15-B

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement"), made and entered into this ____ day of _____, 20____, by and between the Town of Flower Mound, County of Denton, Texas, hereinafter referred to as the "Town," and Quick Set Concrete, a corporation, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

GRAND PARK (2020-21 PLAYGROUND REPLACEMENTS),
Bid # 2022-15-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 **Ninety-four Thousand Nine Hundred Twelve Dollars and twenty cents (\$94,912.20)** 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 thirty (30) calendar days, and final completion of forty-five (45) 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 Dollars 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 Dollars 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

Derek France, MAYOR

(Signature)

(Printed Name)

(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____
(Signature)

(Position)



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: March 7, 2022

FROM: Ronnie Bates, Assistant Director of Public Works

ITEM: **Consider approval of an emergency expenditure with Archer Western Construction LLC for the emergency repair of the Employee Safety Ventilation System at the Wastewater Treatment Plant, in the amount of \$144,410.57.**

BACKGROUND INFORMATION: During a routine inspection of the Wastewater Treatment Plant it was found that the confined space Headworks/SBR employee safety ventilation system was not operating properly. Town staff proceeded to issue an emergency purchase order to perform the repairs. The purchase order was negotiated and issued to Archer Western Construction, who is currently the low bid contractor working on the Phase 5 plant improvements capital project. The emergency purchase order was necessary as the system protects employees/authorized personnel from lethal gases produced by the untreated wastewater by providing safe ventilated air, monitoring for hazardous gas, and alarming the occupants in the area if hazardous gasses are present for immediate evacuation.

Local government code 252.022(A)(3) provides that procurements necessary because of unforeseen damage to public machinery, equipment, or other property are exempt from competitive bid laws. This emergency purchase order meets those requirements.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$144,410.57

Proposed Expenditure:	Account Number(s):
\$144,410.57 estimated	200-690-92420-4308

Finance Review by: Tammy Wilson, Executive Director of Fiscal and Administrative Services *tw*

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Archer Western Estimate

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

Town of Flower Mound-WWTP**Headworks & SBR Ventilation_Gas Monitoring Repairs**

Project Name:

Ventilation System Repair

PO:

21521

Project Owner:

Town of Flower Mound

Initiated By:

- ☒ Owner
☐ Engineer
☐ Contractor

Contractor:
Attention

Archer Western Construction, LLC

Date:

9/30/2021

The following change in the contract on this project is proposed

- Work shall not commence until authorized by the OWNER.

Description of the Proposed Change:

_Walkers Scope: 1) As SBR, fix ventilation control system. Maintenance on existing fans excluded. 2) At Headworks, replace (2) damaged disconnects and modify existing MCC to run the new fans to be installed.

_Suburban H&AC's Scope: 1) Replace existing fans and ductwork at Headworks. This includes SF-1, SF-2, PRV-1, PRV-2, X-aluminum duct traps 8-10' for fans PRV-1 & 2 to be suspended from fan curb (not mounted on wall). X-aluminum duct for drop, plenum box and grilles for SF-1 and SF-2.

_Prime Contol's Scope: For the Headworks gas monitoring system, replace (4) channel controller, relays, sensors. Install new aluminum shunshield, 1/2" SS tubing and required fittings, start/calibrate and connect back to SCADA.

BY

Joshua Stombaugh

All work shall be in accordance with the terms, stipulations, & conditions of the original Contract Documents. If the work herein provided for is Approved by Change Order, the time of completion will be:

☐ Increased ☐ Decreased ☒ Unchanged

Additional days requested:

This change will: ☒ Add ☐ Deduct ☐ Not Change

Amount of change: \$144,410.57

Owner's Action:

☐ Accepted ☐ Rejected

GENERAL CONTRACTOR

BY (Owner)

9/30/2021

DATE

Date

Headworks & SBR Ventilation_Gas Monitoring Repairs

Town of Flower Mound
WWTP Rehabilitation Phase V - Solids Facility Improvements

OWNER: TOWN OF FLOWER MOUND

ENGINEER: ALAN PLUMMER ASSOCIATES, INC.

CONTRACTOR: ARCHER WESTERN CONSTRUCTION, LLC.
1411 GREENWAY DRIVE
IRVING, TX 75038

WORK DESCRIPTION:

Walkers Scope: 1) As SBR, fix ventilation control system. Maintenance on existing fans excluded. 2) At Headworks, replace (2) damaged disconnects and modify existing MCC to run the new fans to be installed.
Suburban H&AC's Scope: 1) Replace existing fans and ductwork at Headworks. This includes SF-1, SF-2, PRV-1, PRV-2, X-aluminum duct traps 8-10' for fans PRV-1 & 2 to be suspended from fan curb (not mounted on wall). X-aluminum duct for drop, plenum box and grilles for SF-1 and SF-2.
Prime Contol's Scope: For the Headworks gas monitoring system, replace (4) channel controller, relays, sensors. Install new aluminum shunshield, 1/2" SS tubing and required fittings, start/calibrate and connect back to SCADA.

Bid Item	Description	Qty	Unit	Unit/Price	Labor	Material	Equipment	Subcontractor	Totals
LABOR									
	AW - Field Supervision	120.00	MH	\$65.00	\$7,800.00				\$7,800.00
	AW - Project Manager	20.00	MH	\$100.00	\$2,000.00				\$2,000.00
	AW - Preparing/Maintaining/Monitoring confined space	80.00	MH	\$35.00	\$2,800.00				\$2,800.00
MATERIAL									
						\$0.00			\$0.00
EQUIPMENT									
	Temporary supply and exhaust fans	2.00	WK	\$1,500.00			\$3,000.00		\$3,000.00
	Forklift	1.00	WK	\$1,800.00			\$1,800.00		\$1,800.00
	Man Lift	1.00	DAY	\$342.40			\$342.40		\$342.40
SUBCONTRACT									
	Suburban H&AC	1.00	LS	\$47,642.00				\$47,642.00	\$47,642.00
	Prime Controls	1.00	LS	\$22,430.02				\$22,430.02	\$22,430.02
	Walker Industrial	1.00	LS	\$19,800.00				\$19,800.00	\$19,800.00
								\$0.00	\$0.00
MISCELLANEOUS ITEMS									
									\$0.00
TOTALS:					\$12,600.00	\$0.00	\$5,142.40	\$89,872.02	\$107,614.42
Labor Burden @ 60% of Labor					\$7,560.00				\$7,560.00
Small Tools @ 15% of Labor					\$1,890.00				\$1,890.00
Safety Supplies @ 7.5% of Labor					\$945.00				\$945.00
TOTAL DIRECT COSTS:									\$118,009.42
OH&P @ 15%									\$4,220.61
Subcontractor @ 20%									\$17,974.40
Insurance and Bond 3%									\$4,206.13
Subtotal:									\$144,410.57
TOTAL AMOUNT THIS COST PROPOSAL SUMMARY.....									\$144,410.57

Clarifications:

Engineering desgins or seal excluded.

This change notice includes all labor, material and supervision to complete the scope of work. We reserve the right to correct this change order for errors or omissions. This price is good for acceptance within 10 days from the date of receipt.



Heating & Air Conditioning, Co.

3918 Peachtree Street • Dallas, Texas 75227

214.381.1127 • Answered 24 Hours

214.381.1184 • Fax

suburbanheatandair.com



Service • Sales • Installation • Heat Pumps • Geothermal

09.02.2021

Archer Western Construction

Attn: Josh Stombaugh

RE: Request to replace fans (4) and existing duct work at Headwork Building

Suburban Heating & Air Conditioning Co. proposes to provide and install the following:

1. Fan to replace existing fan (SF-1)
2. Fan to replace existing fan (SF-2)
3. Fan to replace existing fan (PRV-1)
4. Fan to replace existing fan (PRV-2)
5. X-Aluminum duct traps (8-10') for fans PRV-1 & PRV-2. To be suspended from fan curb (not to be mounted on wall).
6. X-Aluminum duct for drop, plenum box and grilles for SF-1 and SF-2.

Work/Cost by Others:

1. Tax
2. Line voltage wiring
3. Controls or control wiring
4. Conduit
5. Flow sensors or wiring to SCATA
6. Engineering design or seal
7. Test and balance
- 8.

Price:

\$ 46642⁰⁰

Add \$1,000.00 for NEBB Test and Balance of new fans

We look forward to working with you on this job and serving you in the future. If you should have any questions, please call our office.

Respectfully,

Bill Duncan
Sales Engineer



CHANGE ORDER REQUEST

1725 Lakepointe Dr.
 Lewisville, TX 75057
 Phone: 972.221.4849 | Fax: 972.420.4842
www.prime-controls.com

C.O.:	1
Date:	9/29/2021
Customer:	Archer Western
Contract No.:	
Address:	
Engineer:	
Attn:	Josh Stombaugh
Initiated By:	Contractor

PROJECT NAME

Flower Mound Headworks Gas Monitoring Service

Josh,

Prime Controls is pleased to offer our cost proposal for the additional scope of work described in this change order. Our Pricing includes but is not limited to the following items outlined in the Scope of Work.

ADDITION(S) SUBTOTAL COST BREAKDOWN

Materials	\$	12,098.90
Labor	\$	7,405.47
Markup (15%)	\$	2,925.65
TOTAL	\$	22,430.02

CHANGE ORDER COST BREAKDOWN

ADDITION SUBTOTAL COST	\$	22,430.02
TOTAL	\$	22,430.02



CHANGE ORDER REQUEST

SCOPE OF WORK

1.	Field investigation to Flower Mound Headworks Gas Monitoring System as requested by Josh Stombaugh 9/7/21.
2.	Remove & replace four (4) channel controller, relays, sensors,
3.	Install new aluminum sunshield, 1/2" SS tubing & required fitting.
4.	Startup / Calibrate & test.
5.	

CLARIFICATIONS

1.	Prior to commencement of work, Prime Controls requests an executed copy of this change order request. We expect this change will be accepted in a timely manner. Prime Controls is not liable for schedule delays associated with this change in the scope of work.
2.	Our Proposal is valid for 15 days from the date of this letter. Pricing is subject to change based on approval date.
3.	
4.	
5.	

SCHEDULE

Additional calendar days requested from the date of notice to proceed. 0

ATTACHMENTS

1.	
2.	
3.	
4.	
5.	

PROPOSAL APPROVAL

APPROVED BY: _____ DATE: _____

Should you have any questions regarding this change order request please feel free to contact us.

Sincerely,

Project Manager



Prime Controls, LP

CHANGE ORDER REQUEST



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: March 7, 2022

FROM: Bryn Meredith, Town Attorney

ITEM: Consider approval of a resolution authorizing the Town Manager to execute global opioid settlement documents relating to the Teva pharmaceutical companies and the Endo pharmaceutical companies.

BACKGROUND INFORMATION: The Town has obtained information indicating that certain drug companies and their corporate affiliates, parents, subsidiaries, and such other defendants as may be added to the litigation (collectively, "Defendants") have engaged in fraudulent and/or reckless marketing and/or distribution of opioids that have resulted in addictions and overdoses; and

On May 13, 2020, the State of Texas, through the Office of the Attorney General, and a negotiation group for Texas political subdivisions entered into an Agreement entitled Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet (hereafter, the Texas Term Sheet) approving the allocation of any and all opioid settlement funds within the State of Texas. The Town adopted the Term Sheet by Resolution Number 27-21, on November 1, 2021.

The purpose of this Texas Term Sheet is to permit collaboration between the State of Texas and Political Subdivisions to explore and potentially effectuate resolution of the Opioid Litigation against Pharmaceutical Supply Chain Participants as defined therein. The Town Council also understand that an additional purpose is to create an effective means of distributing any potential settlement funds obtained under this Texas Term Sheet between the State of Texas and Political Subdivisions in a manner and means that would promote an effective and meaningful use of the funds in abating the opioid epidemic in this County and throughout Texas.

The State of Texas has entered into two additional settlement agreements, with opioid manufacturers Endo Pharmaceuticals and Teva Pharmaceuticals, and their respective companies. These settlements are governed by the Texas Term Sheet. In order to participate, the Town would need to authorize execution of the Endo pharmaceuticals participation agreement (Exhibit A in the Resolution), and Teva pharmaceuticals participation agreement (Exhibit B in the Resolution), but need not re-adopt the term sheet.

There is no cost to the Town to enter into this agreement.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: Do not participate in the settlement.

FISCAL IMPACT: N/A

LEGAL REVIEW: Bryn Meredith of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has written and reviewed the resolution as to form and legality.

ATTACHMENTS:

1. Draft Resolution

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

RESOLUTION NO. __**A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE GLOBAL OPIOID SETTLEMENT DOCUMENTS RELATING TO THE TEVA PHARMACEUTICAL COMPANIES AND THE ENDO PHARMACEUTICAL COMPANIES.**

WHEREAS, the Town of Flower Mound ("Town") 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 has obtained information indicating that certain drug companies and their corporate affiliates, parents, subsidiaries, and such other defendants as may be added to the litigation (collectively, "Defendants") have engaged in fraudulent and/or reckless marketing and/or distribution of opioids that have resulted in addictions and overdoses; and

WHEREAS, the actions, conduct, and misconduct of these Defendants have resulted in significant financial cost to the Town; and

WHEREAS, on May 13, 2020, the State of Texas, through the Office of the Attorney General, and a negotiation group for Texas political subdivisions entered into an Agreement entitled Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet (hereafter, the Texas Term Sheet) approving the allocation of any and all opioid settlement funds within the State of Texas; and

WHEREAS, the Town previously resolved to adopt the Texas Term Sheet, and to participate in settlement agreements related thereto; and

WHEREAS, the State of Texas has negotiated a settlement agreement with Endo Health Solutions Inc., Endo Pharmaceuticals Inc., Endo International plc, Par Pharmaceutical, Inc., and Par Pharmaceutical Companies, Inc. (collectively "Endo"), resolving litigation and potential litigation between Endo and the state and its subdivisions; and

WHEREAS, the State of Texas has negotiated a settlement agreement with Teva Pharmaceutical Industries Ltd.; Teva Pharmaceuticals USA, Inc.; Cupric Holding Co., Inc.; Teva Pharmaceutical Holdings Cooperative U.A.; Teva Pharmaceuticals Europe B.V.; Cephalon, Inc.; Watson Laboratories, Inc.; Actavis LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Warner Chilcott Co., LLC; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc. f/k/a Watson Laboratories Inc.-Salt Lake Town; Actavis Laboratories FL, Inc. f/k/a Watson Laboratories, Inc.-Florida; and Andia, Inc. (collectively "Teva"), resolving litigation and potential litigation between Teva and the state and its subdivisions;

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

SECTION 1.

Per the terms of the previously-adopted Texas Term Sheet, the Town Council hereby authorizes the Town Manager to execute in the Town's behalf the Subdivision Settlement Participation Forms and settlement agreement between Endo and the State of Texas and the subdivisions therein. Said agreement is attached hereto as Exhibit A.

In addition, and also per the terms of the previously-adopted Texas Term Sheet, the Town Council hereby authorizes the Town Manager to execute in the Town's behalf the Subdivision Settlement Participation Forms and settlement agreement between Teva and the State of Texas and the subdivisions therein. Said agreement is attached hereto as Exhibit B.

SECTION 2.

Upon execution of the Subdivision Settlement Participation Form, the Town Manager is authorized to send executed copies, with any required additional documentation, to the Office of the Attorney General, as required for participation in this settlement.

SECTION 3.

This resolution shall be in full force and effect after its passage and publication as required by law, and it is so resolved.

PASSED AND APPROVED THIS 7TH DAY OF MARCH, 2022.

APPROVED:

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY

Exhibit A

**TEXAS SUBDIVISION AND SPECIAL DISTRICT
ELECTION AND RELEASE FORM**

This Election and Release Form for Texas Participating Subdivisions¹ resolves opioid-related Claims against Endo/Par under the terms and conditions set forth in the Endo/Par Texas State-Wide Opioid Settlement Agreement between Endo/Par, the State of Texas, and the Counties of Dallas, Bexar, Harris and Tarrant (the “Agreement”), the provisions of which are here incorporated by reference in their entirety. Upon executing this Election and Release Form, a Participating Subdivision agrees that, in exchange for the consideration described in the Agreement, the Participating Subdivision is bound by all the terms and conditions of the Agreement, including but not limited to the Release found in Section VII of the Agreement and the provisions concerning participation by Subdivisions or Special Districts in Section VIII, and the Participating Subdivision and its signatories expressly represent and warrant on behalf of themselves that they have, or will have obtained on or before the Effective Date or on or before the execution of this Election and Release Form if executed after the Effective Date, the authority to settle and release, to the maximum extent of the Subdivision’s and Special District’s power, all Released Claims related to Covered Conduct. If this Election and Release Form is executed on or before the Initial Participation Date, the Participating Subdivision shall dismiss Endo/Par and all other Released Entities with prejudice from all pending cases in which the Participating Subdivision has asserted Covered Claims against Endo/Par or a Released Entity no later than the Initial Participation Date. If this Election and Release Form is executed after the Initial Participation Date, the Participating Subdivision shall dismiss Endo/Par and all other Released

¹ The Agreement defines a “Participating Subdivision” as a Subdivision or Special District that signs this Election and Release Form and meets the requirements for becoming a Participating Subdivision under subsection VIII.A. of the Agreement.

Entities with prejudice from all pending cases in which the Participating Subdivision has asserted Covered Claims against Endo/Par or a Released Entity concurrently with the execution of this form. By executing this Election and Release Form, the Participating Subdivision submits to the jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation*, MDL No. 18-0358, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas.

Dated: _____

Texas Subdivision Name: Town of Flower Mound

By: _____

James W. Childers

Town Manager

2121 Cross Timbers Rd, Flower Mound, TX 75028

972.874.6089

James.Childers@flower-mound.com

Exhibit B**TEXAS SUBDIVISION AND SPECIAL DISTRICT
ELECTION AND RELEASE FORM**

This Election and Release Form for Texas Participating Subdivisions¹ resolves opioid-related Claims against Teva under the terms and conditions set forth in the Teva Texas State-Wide Opioid Settlement Agreement between Teva, the State of Texas, and the Counties of Dallas, Bexar, Harris and Tarrant (the “Agreement”), the provisions of which are here incorporated by reference in their entirety. Upon executing this Election and Release Form, a Participating Subdivision agrees that, in exchange for the consideration described in the Agreement, the Participating Subdivision is bound by all the terms and conditions of the Agreement, including but not limited to the Release found in Section VII of the Agreement and the provisions concerning participation by Subdivisions or Special Districts in Section VIII, and the Participating Subdivision and its signatories expressly represent and warrant on behalf of themselves that they have, or will have obtained on or before the Effective Date or on or before the execution of this Election and Release Form if executed after the Effective Date, the authority to settle and release, to the maximum extent of the Subdivision’s and Special District’s power, all Released Claims related to Covered Conduct. If this Election and Release Form is executed on or before the Initial Participation Date, the Participating Subdivision shall dismiss the Released Claims with prejudice and sever Teva and all other Released Entities from all pending cases in which the Participating Subdivision has asserted Covered Claims against Teva or a Released Entity no later than the Initial Participation Date. If this Election and Release Form is executed after the Initial Participation Date, the Participating Subdivision shall dismiss the

¹ The Agreement defines a “Participating Subdivision” as a Subdivision or Special District that signs this Election and Release Form and meets the requirements for becoming a Participating Subdivision under subsection VIII.A. of the Agreement.

Released Claims with prejudice and sever Teva and all other Released Entities from all pending cases in which the Participating Subdivision has asserted Covered Claims against Teva or a Released Entity concurrently with the execution of this form. By executing this Election and Release Form, the Participating Subdivision submits to the jurisdiction of the Honorable Robert Schaffer, *In Re: Texas Opioid Litigation*, MDL No. 18-0358, Master File No. 2018-63587, in the 152nd Judicial District Court, Harris County, Texas.

Dated: _____

Texas Subdivision Name: Town of Flower Mound

By: _____

James W. Childers

Town Manager

2121 Cross Timbers Rd, Flower Mound, TX 75028

972.874.6089

James.Childers@flower-mound.com



TOWN COUNCIL AGENDA ITEM NO. 12

REGULAR ITEM

DATE: March 7, 2022

FROM: Poornima Kashyap, Principal Planner

ITEM: Consider a Site Plan (SP21-0009 – Doctor's Urgent Care) to develop a medical office, with a request for a deviation to computing parking and loading requirements pursuant to Section 82-73 of the Code of Ordinances and a waiver to Architectural Standards in the Town's Urban Design Plan for roof pitch. The property is generally located east of Long Prairie Road and north of Forest Vista Drive. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)*



SUMMARY DATA:

- Lot Size – 1.841 acres
- Building square feet – 3,575 sf
- SMARTGrowth – Passed
- Traffic Analysis – Passed, based on the TA, traffic generated is not anticipated to exceed the 5% threshold.
- Exceptions – Deviation to Parking Standards to exceed the allowable 20 percent and roof pitch waiver.
- Incentives – None requested

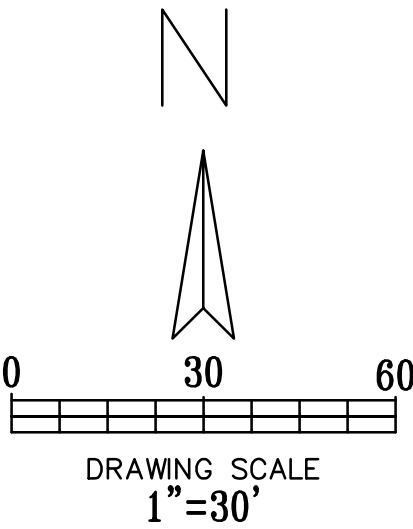
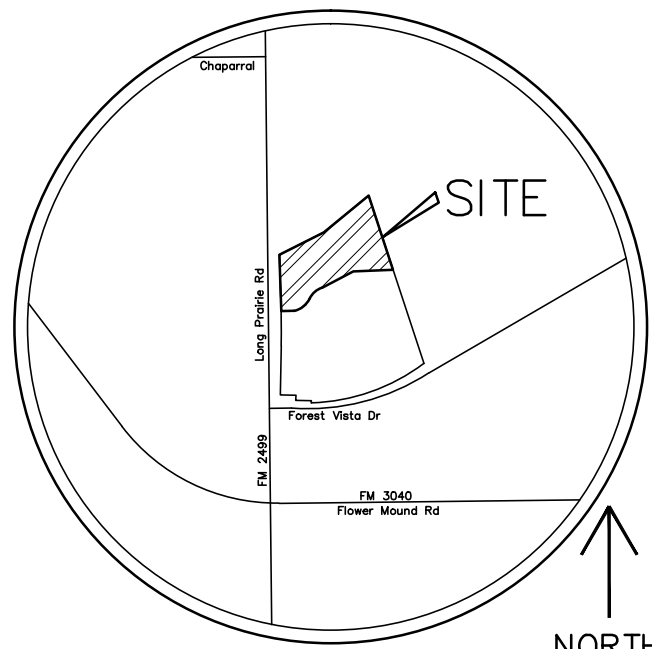
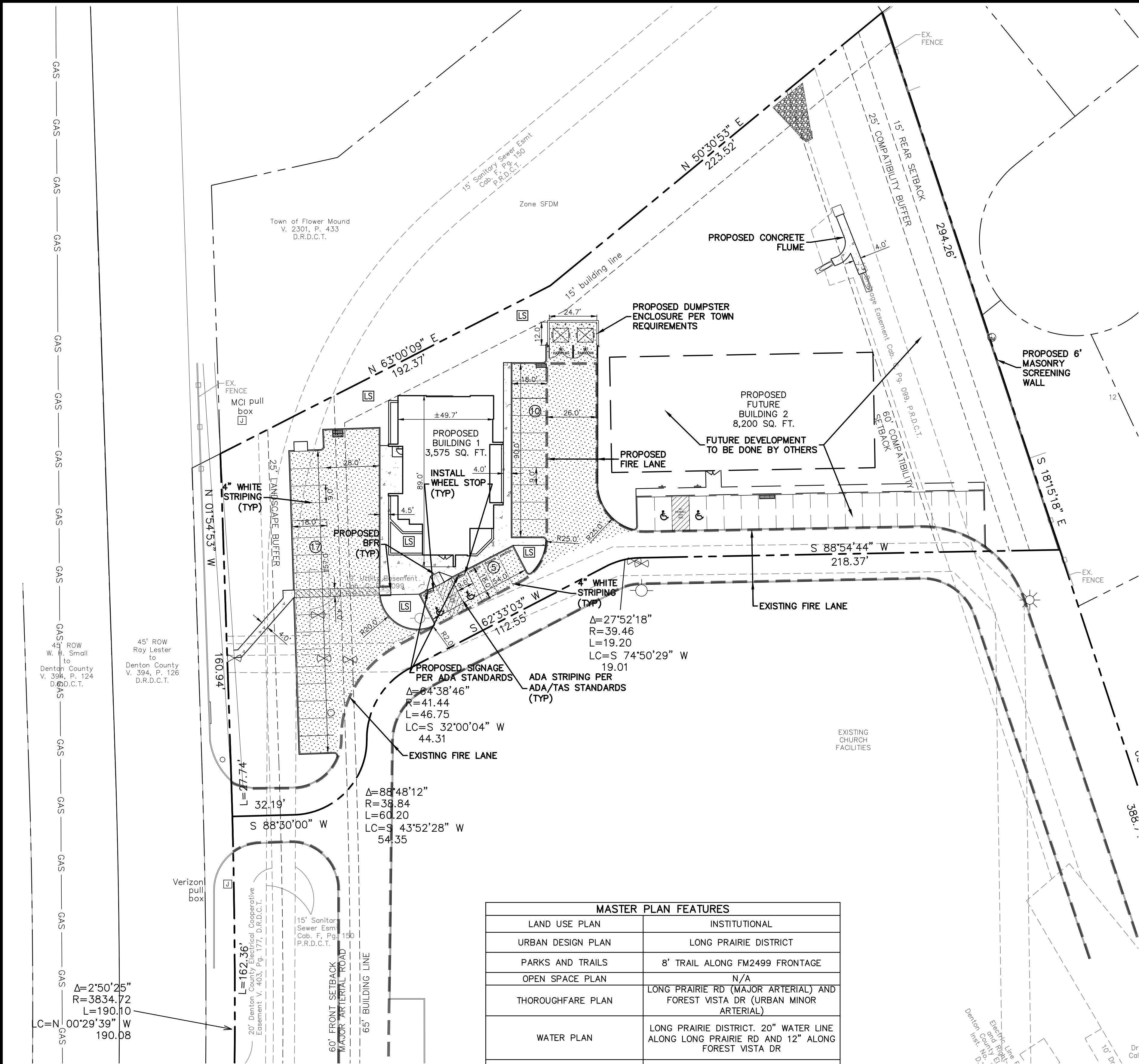
BACKGROUND INFORMATION: Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item. During Commission deliberation, there was discussion regarding the need for excess parking and concerns regarding the request for a partial exception to the compatibility buffer requirement to not install the required six-foot masonry wall along the common property line adjacent to the residential neighborhood to the east. At the meeting, the applicant agreed to install the wall and retract their compatibility buffer exception request. Updated plans noting the location of the wall are included.

ATTACHMENTS:

1. Updated Site Plan and Landscape Plan (indicating the required 6-foot compatibility wall)
2. [Planning and Zoning Commission Staff Report Link](#)

LEGAL REVIEW: N/A

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



- LEGEND**
- EXISTING CURB
 - PROPOSED CURB
 - PARKING SPACES IN A ROW
 - PROPOSED LANDSCAPING
 - REINFORCED CONCRETE SIDEWALK/FLUME
 - REINFORCED CONCRETE PAVEMENT

SITE DATA TABLE		
PHYSICAL ADDRESS	2660 FOREST VISTA DR	
GROSS SITE AREA	1.84 ACRES (80,200 SQ. FT.)	
NET SITE AREA	1.84 ACRES (80,200 SQ. FT.)	
ZONING	"O" (OFFICE) WITHIN PD-13	
PROPOSED USES	MEDICAL OFFICE/OFFICE	
LOT COVERAGE DATA	PHASE 1	
BUILDING COVERAGE	3,575/80,200 SQ. FT. =4.5%	
IMPERVIOUS AREA	24,462 SQ. FT.	
PERVIOUS AREA	55,738 SQ. FT.	
PARKING SUMMARY	REQUIRED	PROVIDED
SURFACE PARKING		
MEDICAL OFFICE (1 SPACE PER 200 SF)	18	32
EXCESS PARKING MITIGATION		
SPACES OVER REQUIRED AMOUNT	14 (77%)	
ALLOWED EXCESS PARKING	4 (20%)	
EXCESS PARKING SPACES	10 (56%)	
BUILDING DATA		
STORY	1 STORY	
PEAK HEIGHT	24'-0"	
MEAN HEIGHT	20'-0"	
TOTAL SQUARE FOOTAGE	3,575 SQ. FT.	

- SITE NOTES:**
- ALL SIDEWALKS SHALL MAINTAIN A 2% MAXIMUM CROSS SLOPE AND A 5% MAXIMUM IN THE DIRECTION OF PEDESTRIAN TRAVEL. ALL ADA SIDEWALKS SHALL INCLUDE ALL LANDINGS, MARKINGS, ETC AS REQUIRED BY CODE.
 - THE SITE IS CURRENTLY VACANT AND THE PROPOSED LAND USE IS URGENT CARE.
 - THE DEVELOPMENT WILL TAKE PLACE IN TWO PHASES. PHASE 1 WILL INCLUDE BUILDING 1 (MEDICAL OFFICE) AND PHASE 2 WILL INCLUDE BUILDING 2 (GENERAL OFFICE).
 - APPLICATION WILL CONFORM TO THE TOWN'S OUTDOOR LIGHTING REQUIREMENTS.
 - PREMISE IDENTIFICATION SHALL BE PER THE FIRE DEPARTMENT REQUIREMENTS
 - ALL DIMENSIONS ARE FROM FACE OF CURB TO EDGE OF CONCRETE OR FACE OF BUILDING UNLESS OTHERWISE NOTED.
 - SITE SIGNAGE SHALL BE BY SEPARATE PERMIT.
 - ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING. OR 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.
 - 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.
 - ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
 - DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
 - DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
 - 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.
 - FLAG POLES MUST COMPLY WITH THE REGULATIONS IN SECTION 86-4.-PROHIBITED SIGNS.

NOTE:
COMPATIBILITY BUFFER (REQUIRED LANDSCAPING) WILL BE INSTALLED AS A PART OF PHASE 1 CONSTRUCTION.

BENCHMARK
TOWN OF FLOWER MOUND BENCHMARK NO. 50, DOMED ALUMINUM CAP ON CENTER OF INLET.
ORTHOMETRIC ELEV=605.33'

NORTHEAST CORNER OF EXISTING WATER VAULT NEAR THE SW CORNER OF LOT 2.
TBM ELEV=609.33'

CONTRACTOR SHALL COORDINATE WITH SURVEYOR FOR BENCHMARKS, ELEVATIONS AND DATUMS PRIOR TO CONSTRUCTION. ENGINEER IS NOT RESPONSIBLE FOR PROVIDING BENCHMARKS AND BEARINGS.

MASTER PLAN FEATURES	
LAND USE PLAN	INSTITUTIONAL
URBAN DESIGN PLAN	LONG PRAIRIE DISTRICT
PARKS AND TRAILS	8' TRAIL ALONG FM2499 FRONTAGE
OPEN SPACE PLAN	N/A
THOROUGHFARE PLAN	LONG PRAIRIE RD (MAJOR ARTERIAL) AND FOREST VISTA DR (URBAN MINOR ARTERIAL)
WATER PLAN	LONG PRAIRIE DISTRICT. 20" WATER LINE ALONG LONG PRAIRIE RD AND 12" ALONG FOREST VISTA DR
WASTEWATER PLAN	LONG PRAIRIE DISTRICT. 15" WASTEWATER LINE ALONG LONG PRAIRIE RD
ECONOMIC IMPACT	INCREASE IN PROPERTY TAXES

SURVEYOR:
HERBERT S. BEASLEY
LAND SURVEYORS, L.P.
P.O. BOX 8873
FORT WORTH, TX 76124
PH: (817) 429-0194
EMAIL: HSBEASLEY@MSN.COM

DEVELOPER:
BAS PROPERTY, LLC
1540 KELLER PARKWAY
STE 108-153
KELLER, TEXAS 76248
PH: 912-655-7968
CONTACT: JOSHUA STORMENT

ENGINEER:
CUMULUS DESIGN, INC.
FIRM NUMBER: 14810
2080 NORTH HIGHWAY 360, SUITE 240
GRAND PRAIRIE, TEXAS 75050
PH: (214) 235-0367
CONTACT: PAUL CRAGUN
EMAIL: PAUL@CUMULUSDESIGN.NET

!!! CAUTION !!!
UNDERGROUND UTILITIES
EXISTING UTILITIES AND UNDERGROUND FACILITIES INDICATED ON THESE PLANS HAVE BEEN LOCATED FROM REFERENCE INFORMATION SUPPLIED BY VARIOUS PARTIES. THE ENGINEER DOES NOT ASSUME THE RESPONSIBILITY FOR THE UTILITY LOCATIONS SHOWN. IT SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR(S) TO VERIFY THE HORIZONTALLY AND VERTICALLY LOCATION OF ALL UTILITIES AND UNDERGROUND FACILITIES PRIOR TO CONSTRUCTION, TO TAKE PRECAUTIONS IN ORDER TO PROTECT ALL FACILITIES ENCOUNTERED AND NOTIFY THE ENGINEER OF ALL CONFLICTS OF THE WORK WITH EXISTING FACILITIES. THE CONTRACTOR SHALL PROTECT AND MAINTAIN ALL UTILITIES FROM DAMAGE DURING CONSTRUCTION. ANY DAMAGE BY THE CONTRACTOR TO UTILITIES SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT THEIR OWN EXPENSE.
CALL: TEXAS ONE CALL @ 1-800-245-4545 AT LEAST 48 HRS PRIOR TO CONSTRUCTION.

CUMULUS DESIGN
Cumulus Design
Firm #14810
2080 N. Highway 360, Suite 240
Grand Prairie, Texas 75050
Tel. 214.235.0367

FOR REVIEW, NOT FOR CONSTRUCTION.
THIS DOCUMENT IS FOR SITE INFORMATION ONLY. IT IS RELEASED UNDER THE AUTHORITY OF PAUL CRAGUN, P.E. NO. 112767 ON 03/01/22.

SITE PLAN
URGENT CARE FACILITY – 2660 FOREST VISTA DR.
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LOT 2, BLOCK 1
RESTORATION
ADDITION

PLOT DATE

03/01/22

DRAWING SCALE

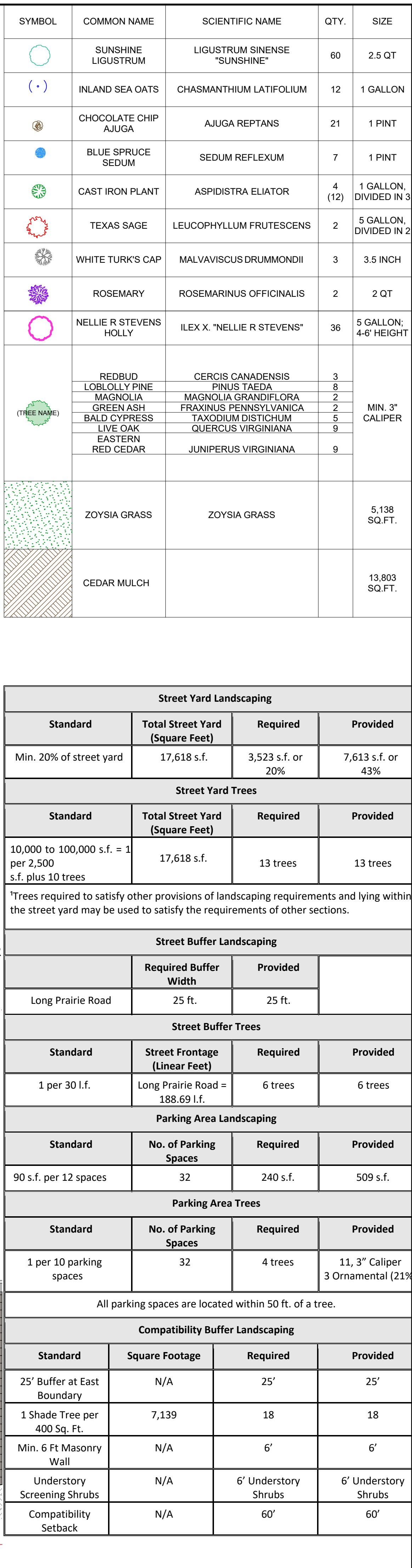
1" = 30'

PROJECT NUMBER

CD21007

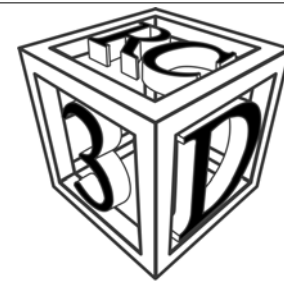
SHEET NUMBER

SP



Street Yard Landscaping			
Standard	Total Street Yard (Square Feet)	Required	Provided
Min. 20% of street yard	17,618 s.f.	3,523 s.f. or 20%	7,613 s.f. or 43%
Street Yard Trees			
Standard	Total Street Yard (Square Feet)	Required	Provided
10,000 to 100,000 s.f. = 1 per 2,500 s.f. plus 10 trees	17,618 s.f.	13 trees	13 trees
*Trees required to satisfy other provisions of landscaping requirements and lying within the street yard may be used to satisfy the requirements of other sections.			
Street Buffer Landscaping			
	Required Buffer Width	Provided	
Long Prairie Road	25 ft.	25 ft.	
Street Buffer Trees			
Standard	Street Frontage (Linear Feet)	Required	Provided
1 per 30 l.f.	Long Prairie Road = 188.69 l.f.	6 trees	6 trees
Parking Area Landscaping			
Standard	No. of Parking Spaces	Required	Provided
90 s.f. per 12 spaces	32	240 s.f.	509 s.f.
Parking Area Trees			
Standard	No. of Parking Spaces	Required	Provided
1 per 10 parking spaces	32	4 trees	11, 3" Caliper 3 Ornamental (21%)
All parking spaces are located within 50 ft. of a tree.			
Compatibility Buffer Landscaping			
Standard	Square Footage	Required	Provided
25' Buffer at East Boundary	N/A	25'	25'
1 Shade Tree per 400 Sq. Ft.	7,139	18	18
Min. 6 Ft Masonry Wall	N/A	6'	6'
Understory Screening Shrubs	N/A	6' Understory Shrubs	6' Understory Shrubs
Compatibility Setback	N/A	60'	60'

REVISIONS



rc3D
Visualization Design
COPYRIGHT © 2021 RC3D VISUALIZATION DESIGN
DALLAS, TX
NO PART OF THESE DRAWINGS AND DESIGN MAY BE
REPRODUCED OR TRANSMITTED IN ANY FORM, BY ANY
MEANS (ELECTRONIC, PHOTO-COPYING, RECORDING
OR OTHERWISE) WITHOUT PRIOR WRITTEN
PERMISSION OF RC3D VISUALIZATION DESIGN.

TEL: (972) 754-1472
EMAIL: AI@rc3d.com
URL: www.rc3d.com

DOCTORS URGENT CARE
2660 FOREST VISTA DRIVE FLOWER MOUND,
DENTON COUNTY, TX, 75028

SITE LANDSCAPE PLAN

DATE 10/21/2021

SCALE **REF. DRAWING**

DRAWN	SD	DD	CD
	AW	AW	XY

JOB 21-011

SHEET #

A0.04

LANDSCAPING NOTES

GENERAL

A. QUALIFICATIONS OF LANDSCAPE CONTRACTOR

1. ALL LANDSCAPE WORK SHOWN ON THESE PLANS SHALL BE PERFORMED BY A SINGLE FIRM SPECIALIZING IN LANDSCAPE PLANTING.
2. A LIST OF SUCCESSFULLY COMPLETED PROJECTS OF THIS TYPE, SIZE AND NATURE MAY BE REQUESTED BY THEOWNER FOR FURTHER QUALIFICATION MEASURES.
3. THE LANDSCAPE CONTRACTOR SHALL HOLD A VALID NURSERY AND FLORAL CERTIFICATE ISSUED BY THE TEXAS DEPARTMENT OF AGRICULTURE, AS WELL AS AN ORDER FOR A COMMERCIAL PESTICIDE APPLICATOR LICENSE ISSUED BY EITHER THE TEXAS DEPARTMENT OF AGRICULTURE OR THE TEXAS STRUCTURAL PEST CONTROL BOARD.

B. SCOPE OF WORK

4. WORK COVERED BY THESE SECTIONS INCLUDES THE FURNISHING AND PAYMENT OF ALL MATERIALS, LABOR, SERVICES, EQUIPMENT, LICENSES, TAXES AND ANY OTHER ITEMS THAT ARE NECESSARY FOR THE EXECUTION, INSTALLATION AND COMPLETION OF ALL WORK SPECIFIED HEREIN AND /OR SHOWN ON THE LANDSCAPE PLANS, NOTES, AND DETAILS.
5. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH ALL APPLICABLE LAWS, CODES AND REGULATIONS REQUIRED BY AUTHORITIES HAVING JURISDICTION OVER SUCH WORK, INCLUDING ALL INSPECTIONS AND PERMITS REQUIRED BY FEDERAL, STATE AND LOCAL AUTHORITIES IN SUPPLY, TRANSPORTATION AND INSTALLATION OF MATERIALS.
6. THE LANDSCAPE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UNDERGROUND UTILITY LINES (WATER, SEWER, ELECTRICAL, TELEPHONE, GAS, CABLE, TELEVISION, ETC.) PRIOR TO THE START OF ANY WORK.

PRODUCTS

- A. ALL MANUFACTURED PRODUCTS SHALL BE NEW.
- B. CONTAINER AND BALLED-AND-BURLAPPED PLANTS:

FURNISH NURSERY-GROWN PLANTS COMPLYING WITH ANSI Z60.1-2004. PROVIDE WELL-SHAPED, FULLY BRANCHED, HEALTHY, VIGOROUS STOCK FREE OF DISEASE, INSECTS, EGGS, LARVAE, AND DEFECTS SUCH AS KNOTS, SUN SCALD, INJURIES, ABRASIONS, AND DISFIGUREMENT. ALL PLANTS WITHIN A SPECIES SHALL HAVE SIMILAR SIZE, AND SHALL BE OF A FORM TYPICAL FOR THE SPECIES. ALL TREES SHALL BE OBTAINED FROM SOURCES WITHIN 200 MILES OF THE PROJECT SITE, AND WITH SIMILAR CLIMATIC CONDITIONS.

ROOT SYSTEMS SHALL BE HEALTHY, DENSELY BRANCHED ROOT SYSTEMS, NON-POT-BOUND, FREE FROM CIRCLING AND/OR GIRDLING ROOTS, AND FREE FROM ANY OTHER ROOT DEFECTS (SUCH AS J-SHAPED ROOTS).

ANY PLANT DEEMED UNACCEPTABLE BY THE LANDSCAPE ARCHITECT OR OWNER SHALL BE IMMEDIATELY REMOVED FROM THE SITE AND SHALL BE REPLACED WITH AN ACCEPTABLE PLANT OF LIKE TYPE AND SIZE AT THE CONTRACTOR'S OWN EXPENSE. ANY PLANTS APPEARING TO BE UNHEALTHY, EVEN IF DETERMINED TO STILL BE ALIVE, SHALL NOT BE ACCEPTED. THE LANDSCAPE ARCHITECT AND OWNER SHALL BE THE SOLE JUDGES AS TO THE ACCEPTABILITY OF PLANT MATERIAL.

ALL TREES SHALL BE STANDARD IN FORM, UNLESS OTHERWISE SPECIFIED. TREES WITH CENTRAL LEADERS WILL NOT BE ACCEPTED IF LEADER IS DAMAGED OR REMOVED. PRUNE ALL DAMAGED TWIGS AFTER PLANTING.

CALIPER MEASUREMENTS FOR STANDARD (SINGLE TRUNK) TREES SHALL BE AS FOLLOWS: SIX INCHES ABOVE THE ROOT FLARE FOR TREES UP TO AND INCLUDING FOUR INCHES IN CALIPER, AND TWELVE INCHES ABOVE THE ROOT FLARE FOR TREES EXCEEDING FOUR INCHES IN CALIPER. 6. MULTI-TRUNK TREES SHALL BE MEASURED BY THEIR OVERALL HEIGHT, MEASURED FROM THE TOP OF THE ROOT BALL.

ANY TREE OR SHRUB SHOWN TO HAVE EXCESS SOIL PLACED ON TOP OF THE ROOT BALL, SO THAT THE ROOT FLARE HAS BEEN COMPLETELY COVERED, SHALL BE REJECTED.

C. SOD:

PROVIDE WELL-ROOTED SOD OF THE VARIETY NOTED ON THE PLANS. SOD SHALL BE CUT FROM HEALTHY, MATURE TURF WITH SOIL THICKNESS OF 3/4" TO 1". EACH PALLET OF SOD SHALL BE ACCOMPANIED BY A CERTIFICATE FROM SUPPLIER STATING THE COMPOSITION OF THE SOD.

D. SEED:

PROVIDE BLEND OF SPECIES AND VARIETIES AS NOTED ON THE PLANS, WITH MAXIMUM PERCENTAGES OF PURITY, GERMINATION, AND MINIMUM PERCENTAGE OF WEED SEED AS INDICATED ON PLANS. EACH BAG OF SEED SHALL BE ACCOMPANIED BY A TAG FROM THE SUPPLIER INDICATING THE COMPOSITION OF THE SEED.

E. TOPSOIL:

SANDY TO CLAY LOAM TOPSOIL, FREE OF STONES LARGER THAN 3/4" INCH, FOREIGN MATTER, PLANTS, ROOTS, AND SEEDS.

F. COMPOST:

WELL-COMPOSTED, STABLE, AND WEED-FREE ORGANIC MATTER, pH RANGE OF 5.5 TO 8; MOISTURE CONTENT 35 TO 55 PERCENT BY WEIGHT; 100 PERCENT PASSING THROUGH 3/4-INCH SIEVE; SOLUBLE SALT CONTENT OF 5 TO 10 DECISEMENS/M, NOT EXCEEDING 0.5 PERCENT INERT CONTAMINANTS AND FREE OF SUBSTANCES TOXIC TO PLANTINGS. NO MANURE OR ANIMAL-BASED PRODUCTS SHALL BE USED.

G. FERTILIZER:

GRANULAR FERTILIZER CONSISTING OF NITROGEN, PHOSPHORUS, POTASSIUM, AND OTHER NUTRIENTS IN PROPORTIONS, AMOUNTS, AND RELEASE RATES RECOMMENDED IN A SOIL REPORT FROM A QUALIFIED SOIL-TESTING AGENCY (SEE BELOW).

H. MULCH:

SIZE AND TYPE AS INDICATED ON PLANS, FREE FROM DELETERIOUS MATERIALS AND SUITABLE AS A TOP DRESSING OF TREES AND SHRUBS.

I. WEED FABRIC:

5 OUNCE, WOVEN, NEEDLE-PUNCHED FABRIC, SUCH AS DEWITT PRO'S LANDSCAPE FABRIC (OR APPROVED EQUAL).

J. TREE STAKING AND GUYING

1. STAKES:
6" LONG GREEN METAL T-POSTS.
2. GUY AND THE WIRE:
ASTM A 641, CLASS 1, GALVANIZED-STEEL WIRE, 2-STRAND, TWISTED, 0.106 INCH DIAMETER.
3. STRAP CHAINING GUARD:
REINFORCED NYLON OR CANNASAT AT LEAST 1-1/2 INCH WIDE, WITH GROMMETS TO PROTECT TREE TRUNKS FROM DAMAGE.

K. STEEL EDGING:

PROFESSIONAL STEEL EDGING, 14 GAUGE THICK X 4 INCHES WIDE, UNPAINTED. ACCEPTABLE MANUFACTURERS INCLUDE COL-MET OR APPROVED EQUAL.

L. PRE-EMERGENT HERBICIDES:

ANY GRANULAR, NON-STAINING PRE-EMERGENT HERBICIDE THAT IS LABELED FOR THE SPECIFIC ORNAMENTALS OR TURF ON WHICH IT WILL BE UTILIZED. PRE-EMERGENT HERBICIDES SHALL BE APPLIED PER THE MANUFACTURER'S LABELED RATES.

METHODS

A. SOIL PREPARATION

BEFORE STARTING WORK, THE LANDSCAPE CONTRACTOR SHALL VERIFY THAT THE GRADE OF ALL LANDSCAPE AREAS ARE WITHIN +/-0.1" OF FINISH GRADE. THE CONTRACTOR SHALL NOTIFY THE OWNER IMMEDIATELY SHOULD ANY DISCREPANCIES EXIST.

2. SOIL TESTING:

AFTER FINISH GRADES HAVE BEEN ESTABLISHED, CONTRACTOR SHALL HAVE SOIL SAMPLES TESTED BY AN ESTABLISHED SOIL TESTING LABORATORY FOR THE FOLLOWING: SOIL TEXTURAL CLASS, GENERAL SOIL FERTILITY, pH, ORGANIC MATTER CONTENT, SALT (CEC), LIME, SODIUM ADSORPTION RATIO (SAR) AND BORON CONTENT. EACH SAMPLE SUBMITTED SHALL CONTAIN NO LESS THAN ONE QUART OF SOIL.

CONTRACTOR SHALL ALSO SUBMIT THE PROJECT'S PLANT LIST TO THE LABORATORY ALONG WITH THE SOIL SAMPLES.

THE SOIL REPORT PRODUCED BY THE LABORATORY SHALL CONTAIN RECOMMENDATIONS FOR THE FOLLOWING (AS APPROPRIATE): GENERAL SOIL PREPARATION AND BACKFILL MIXES, PRE-PLANT FERTILIZER APPLICATIONS, AND ANY OTHER SOIL RELATED ISSUES. THE REPORT SHALL ALSO PROVIDE A FERTILIZER PROGRAM FOR THE ESTABLISHMENT PERIOD AND FOR LONG-TERM MAINTENANCE.

THE CONTRACTOR SHALL INSTALL SOIL AMENDMENTS AND FERTILIZERS FOR THE SOILS REPORT RECOMMENDATIONS. ANY CHANGE IN COST DUE TO THE SOIL REPORT RECOMMENDATIONS, EITHER INCREASE OR DECREASE, SHALL BE SUBMITTED TO THE OWNER WITH THE REPORT.

FOR BIDDING PURPOSES ONLY, THE SOIL PREPARATION SHALL CONSIST OF THE FOLLOWING:

TURF: INCORPORATE THE FOLLOWING AMENDMENTS INTO THE TOP 8" OF SOIL BY MEANS OF ROTOTILLING AFTER CROSS-RIPPING:

- i. NITROGEN STABILIZED ORGANIC AMENDMENT - 4 CU. YDS. PER 1,000 S.F.
- ii. AMMONIUM PHOSPHATE 16-20-0 - 15 LBS PER 1,000 S.F.
- iii. AGRICULTURAL GYPSUM - 100 LBS PER 1,000 S.F.
- iv. 12-12-12 FERTILIZER - 10 LBS. PER CU. YD.
- v. AGRICULTURAL GYPSUM - 10 LBS. PER CU. YD.
- vi. IRON SULPHATE - 2 LBS. PER CU. YD.

CONTRACTOR SHALL ENSURE THAT THE GRADE IN SOD AREAS SHALL BE 1" BELOW FINISH GRADE BEFORE INSTALLING SOIL AMENDMENTS, AND 2" BELOW FINISH GRADE IN SHRUB AREAS BEFORE INSTALLING SOIL AMENDMENTS. MULCH COVER WITHIN 6" OF CONCRETE WALKS AND CURBS SHALL NOT PROTRUDE ABOVE THE FINISH SURFACE OF THE WALKS AND CURBS. MULCH COVER WITHIN 12" OF WALLS SHALL BE AT LEAST 3" LOWER THAN THE TOP OF WALL.

ONCE SOIL PREPARATION IS COMPLETE, THE LANDSCAPE CONTRACTOR SHALL ENSURE THAT THERE ARE NO DEBRIS, TRASH, OR STONES LARGER THAN 1" REMAINING IN THE TOP 6" OF SOIL.

B. GENERAL PLANTING

1. REMOVE ALL NURSERY TAGS AND STAKES FROM PLANTS.
2. EXCEPT IN AREAS TO BE PLANTED WITH ORNAMENTAL GRASSES, APPLY PRE-EMERGENT HERBICIDES AT THE MANUFACTURER'S RECOMMENDED RATE.
3. TRENCING NEAR EXISTING TREES:

CONTRACTOR SHALL NOT DISTURB ROOTS 1-1/2" AND LARGER IN DIAMETER WITHIN THE CRITICAL ROOT ZONE (CRZ) OF EXISTING TREES, AND SHALL EXERCISE ALL POSSIBLE CARE AND PRECAUTIONS TO AVOID INJURY TO TREE ROOTS, TRUNKS, AND BRANCHES. THE CRZ IS DEFINED AS A CIRCULAR AREA EXTENDING OUTWARD FROM THE TREE TRUNK, WITH A RADIUS EQUAL TO 1" FOR EVERY 1" OF TRUNK DIAMETER-AT-BREAST-HEIGHT (4.5' ABOVE THE AVERAGE GRADE AT THE TRUNK).

ALL EXCAVATION WITHIN THE CRZ SHALL BE PERFORMED USING HAND TOOLS, NO MACHINE EXCAVATION OR TRENCING OF ANY KIND SHALL BE ALLOWED WITHIN THE CRZ.

ALTER ALIGNMENT OF PIPE TO AVOID TREE ROOTS 1-1/2" AND LARGER IN DIAMETER. WHERE TREE ROOTS 1-1/2" AND LARGER IN DIAMETER ARE ENCOUNTERED IN THE FIELD, TUNNEL UNDER SUCH ROOTS, WRAP EXPOSED ROOTS WITH SEVERAL LAYERS OF BURLAP AND KEEP MOIST. CLOSE ALL TRENCHES WITHIN THE CANOPY DRIP LINES WITHIN 24 HOURS.

ALL SEVERED ROOTS SHALL BE HAND PRUNED WITH SHARP TOOLS AND ALLOWED TO AIR-DRY. DO NOT USE ANY SORT OF SEALERS OR WOUND PAINTS.

C. TREE PLANTING

1. TREE PLANTING HOLES SHALL BE EXCAVATED TO MINIMUM WIDTH OF TWO TIMES THE WIDTH OF THE ROOTBALL, AND TO A DEPTH EQUAL TO THE DEPTH OF THE ROOTBALL LESS TWO INCHES.

2. SCARIFY THE SIDES AND BOTTOM OF THE PLANTING HOLE PRIOR TO THE PLACEMENT OF THE TREE. REMOVE ANY GLAZING THAT MAY HAVE BEEN CAUSED DURING THE EXCAVATION OF THE HOLE.

3. FOR CONTAINER TREES, TO REMOVE ANY POTENTIALLY GIRDLING ROOTS AND OTHER ROOT DEFECTS, THE CONTRACTOR SHALL SHAVE A 1" LAYER OFF OF THE SIDES AND BOTTOM OF THE ROOTBALL OF ALL TREES JUST BEFORE PLACING INTO THE PLANTING PIT. DO NOT "TEASE" ROOTS OUT FROM THE ROOTBALL.

4. INSTALL THE TREE ON UNDISTURBED SUBGRADE SO THAT THE TOP OF THE ROOTBALL IS TWO TO THREE INCHES ABOVE THE SURROUNDING GRADE.

5. BACKFILL THE TREE HOLE UTILIZING THE EXISTING TOPSOIL FROM ON-SITE. ROCKS LARGER THAN 1" DIA. AND ALL OTHER DEBRIS SHALL BE REMOVED FROM THE SOIL PRIOR TO THE BACKFILL. SHOULD ADDITIONAL SOIL BE REQUIRED TO ACCOMPLISH THIS TASK, IMPORT ADDITIONAL TOPSOIL FROM OFF-SITE AT NO ADDITIONAL COST TO THE OWNER.

6. THE TOTAL NUMBER OF TREE STAKES (BEYOND THE MINIMUMS LISTED BELOW) WILL BE LEFT TO THE LANDSCAPE CONTRACTOR'S DISCRETION. SHOULD ANY TREES FALL OR LEAN, THE LANDSCAPE CONTRACTOR SHALL STRAIGHTEN THE TREE, OR REPLACE IT SHOULD IT BECOME DAMAGED. TREE STAKING SHALL ADHERE TO THE FOLLOWING GUIDELINES:

- a. 15 - 30 GAL TREES TWO STAKES PER TREE
- b. 45 - 100 GAL TREES THREE STAKES PER TREE

7. MULTI-TRUNK TREES THREE STAKES PER TREE MINIMUM, POSITIONED AS NEEDED TO STABILIZE THE TREE.

8. UPON COMPLETION OF PLANTING, CONSTRUCT AN EARTH WATERING BASIN AROUND THE TREE. COVER THE INTERIOR OF THE TREE RING WITH THE WEED BARRIER CLOTH AND TOPDRESS WITH MULCH (TYPE AND DEPTH PER PLANS).

D. SHRUB, PERENNIAL AND GROUND COVER PLANTING

1. DIG THE PLANTING HOLES TWICE AS WIDE AND 2" LESS DEEP THAN EACH PLANT'S ROOTBALL. INSTALL THE PLANT IN THE HOLE. BACKFILL AROUND THE PLANT WITH SOIL AMENDED PER SOIL TEST RECOMMENDATIONS.

2. INSTALL THE WEED BARRIER CLOTH, OVERLAPPING IT AT THE ENDS, UTILIZE STEEL STAPLES TO KEEP THE WEED BARRIER CLOTH IN PLACE.

3. WHEN PLANTING IS COMPLETE, INSTALL MULCH (TYPE AND DEPTH PER PLANS) OVER ALL PLANTING BEDS, COVERING THE ENTIRE PLANTING AREA.

E. SODDING

1. SOD VARIETY TO BE AS SPECIFIED ON THE LANDSCAPE PLAN.

2. LAY SOD WITHIN 24 HOURS FROM THE TIME OF STRIPPING. DO NOT LAY IF THE GROUND IS FROZEN.

3. LAY THE SOD TO FORM A SOLID MASS WITH TIGHTLY FITTED JOINTS. BUTT ENDS AND SIDES OF SOD STRIPS - DO NOT OVERLAP. STAGGER STRIPS TO OFFSET JOINTS IN ADJACENT COURSES.

4. ROLL THE SOD TO ENSURE GOOD CONTACT OF THE SOD'S ROOT SYSTEM WITH THE SOIL UNDERNEATH.

5. WATER THE SOD THOROUGHLY WITH A FINE SPRAY IMMEDIATELY AFTER PLANTING TO OBTAIN AT LEAST SIX INCHES OF PENETRATION INTO THE SOIL BELOW THE SOD.

F. HYDROMULCHING

1. THE HYDROMULCH MIX (PER 1,000 SF) SHALL BE AS FOLLOWS:

- a. WINTER MIX (OCTOBER 1 - MARCH 31)
50# CELLULOSE FIBER MULCH
2# UNHILLED BERMUDA SEED
2# ANNUAL RYE SEED
15# 15-15-15 WATER-SOLUBLE FERTILIZER
- b. SUMMER MIX (APRIL 1 - SEPTEMBER 30)
50# CELLULOSE FIBER MULCH
2# HILLED BERMUDA SEED
15# 15-15-15 WATER-SOLUBLE FERTILIZER

G. CLEAN UP

1. DURING LANDSCAPE PREPARATION AND PLANTING, KEEP ALL PAVEMENT CLEAN AND ALL WORK AREAS IN A NEAT, ORDERLY CONDITION.

2. DISPOSED LEGALLY OF ALL EXCAVATED MATERIALS OFF THE PROJECT SITE.

H. INSPECTION AND ACCEPTANCE

1. UPON COMPLETION OF THE WORK, THE LANDSCAPE CONTRACTOR SHALL PROVIDE THE SITE CLEAN, FREE OF DEBRIS AND TRASH, AND SUITABLE FOR USE AS INTENDED. THE LANDSCAPE CONTRACTOR SHALL THEN REQUEST AN INSPECTION BY THE OWNER TO DETERMINE FINAL ACCEPTABILITY.

2. WHEN THE INSPECTED PLANTING WORK DOES NOT COMPLY WITH THE CONTRACT DOCUMENTS, THE LANDSCAPE CONTRACTOR SHALL REPLACE AND/OR REPAIR THE REJECTED WORK TO THE OWNER'S SATISFACTION WITHIN 24 HOURS.

3. THE LANDSCAPE MAINTENANCE PERIOD WILL NOT COMMENCE UNTIL THE LANDSCAPE WORK HAS BEEN RE-INSPECTED BY THE OWNER AND FOUND TO BE ACCEPTABLE. AT THAT TIME, A WRITTEN NOTICE OF FINAL ACCEPTANCE WILL BE ISSUED BY THE OWNER, AND THE MAINTENANCE AND GUARANTEE PERIODS WILL COMMENCE.

I. LANDSCAPE MAINTENANCE

1. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL WORK SHOWN ON THESE PLANS FOR 90 DAYS BEYOND FINAL ACCEPTANCE OF ALL LANDSCAPE WORK BY THE OWNER. LANDSCAPE MAINTENANCE SHALL INCLUDE WEEKLY SITE VISITS FOR THE FOLLOWING ACTIONS (AS APPROPRIATE): PROPER PRUNING, RESTAKING OF TREES, RESETTling OF PLANTS THAT HAVE SETTLED, MOWING AND AERATION OF LAWNS, WEEDING, RESEEDING AREAS WHICH HAVE NOT GERMINATED WELL, TREATING FOR INSECTS AND DISEASES, REPLACEMENT OF MULCH, REMOVAL OF LITTER, REPAIRS TO THE IRRIGATION SYSTEM DUE TO FAULTY PARTS AND/OR WORKMANSHIP, AND THE APPROPRIATE WATERING OF ALL PLANTINGS. THE LANDSCAPE CONTRACTOR SHALL MAINTAIN THE IRRIGATION SYSTEM IN PROPER WORKING ORDER, WITH SCHEDULING ADJUSTMENTS BY SEASON TO MAXIMIZE WATER CONSERVATION.

2. SHOULD SEEDING AND/OR SODDED AREAS NOT BE COVERED BY AN AUTOMATIC IRRIGATION SYSTEM, THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR WATERING THESE AREAS AND OBTAINING A FULL, HEALTHY STAND OF GRASS AT NO ADDITIONAL COST TO THE OWNER.

3. TO ACHIEVE FINAL ACCEPTANCE AT THE END OF THE MAINTENANCE PERIOD, ALL OF THE FOLLOWING CONDITIONS MUST OCCUR:

4. THE LANDSCAPE SHALL SHOW ACTIVE, HEALTHY GROWTH (WITH EXCEPTIONS MADE FOR SEASONAL DORMANCY). ALL PLANTS NOT MEETING THIS CONDITION SHALL BE REJECTED AND REPLACED BY HEALTHY PLANT MATERIAL PRIOR TO FINAL ACCEPTANCE.

5. ALL HARDSCAPE SHALL BE CLEANED PRIOR TO FINAL ACCEPTANCE.

6. SODDED AREAS MUST BE ACTIVELY GROWING AND MUST REACH A MINIMUM HEIGHT OF 1 1/2 INCHES BEFORE FIRST MOWING. HYDROMULCHED AREAS SHALL SHOW ACTIVE, HEALTHY GROWTH. BARE AREAS LARGER THAN TWELVE SQUARE INCHES MUST BE RESEEDDED OR RESEEDDED (AS APPROPRIATE) PRIOR TO FINAL ACCEPTANCE. ALL SODDED TURF SHALL BE NEATLY MOWED.

J. WARRANTY PERIOD, PLANT GUARANTEE AND REPLACEMENTS

1. THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL TREES, SHRUBS, PERENNIALS, SOD, SEEDDED HYDROMULCHED AREAS, AND IRRIGATION SYSTEMS FOR A PERIOD OF ONE YEAR FROM THE DATE OF THE OWNER'S FINAL ACCEPTANCE (90 DAYS FOR ANNUAL PLANTS). THE CONTRACTOR SHALL REPLACE, AT HIS OWN EXPENSE AND TO THE SATISFACTION OF THE OWNER, ANY PLANTS WHICH DIE IN THAT TIME, OR REPAIR ANY PORTIONS OF THE IRRIGATION SYSTEM WHICH OPERATE IMPROPERLY.

2. AFTER THE INITIAL MAINTENANCE PERIOD AND DURING THE GUARANTEE PERIOD, THE LANDSCAPE CONTRACTOR SHALL ONLY BE RESPONSIBLE FOR REPLACEMENT OF PLANTS WHEN PLANT DEATH CANNOT BE ATTRIBUTED DIRECTLY TO OVERWATERING OR OTHER DAMAGE BY HUMAN ACTIONS.

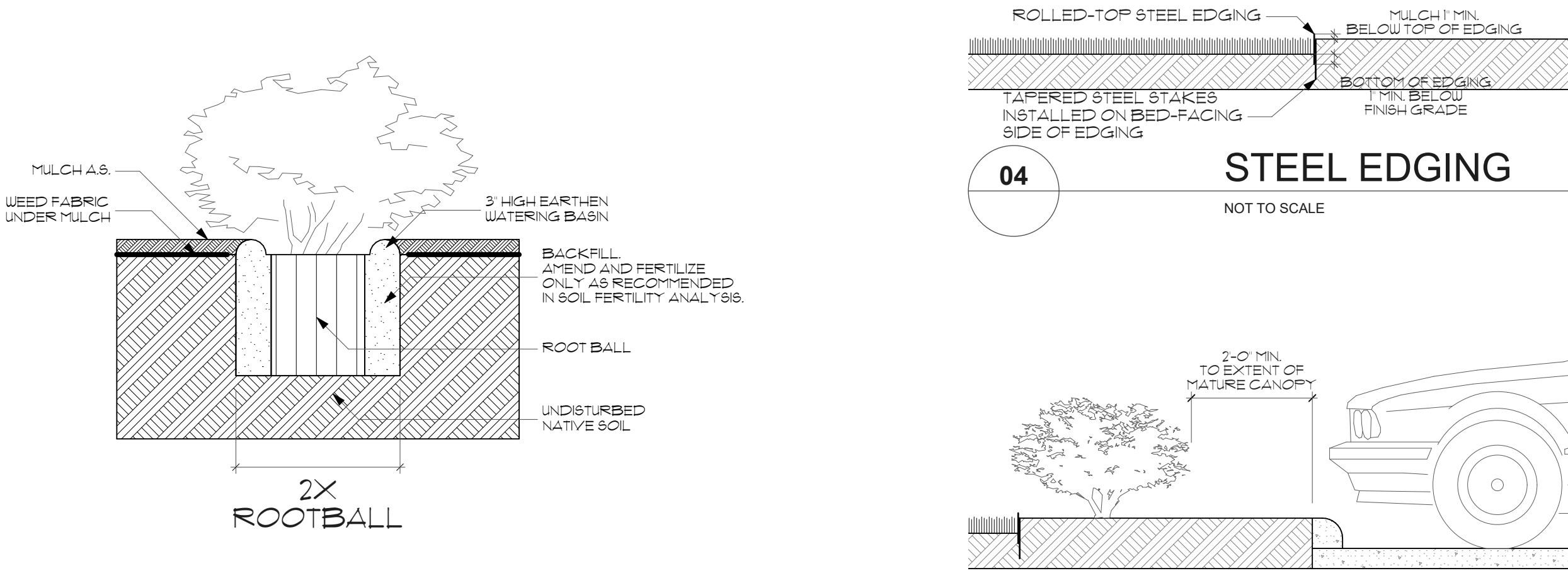
K. RECORD DRAWINGS

1. THE LANDSCAPE CONTRACTOR SHALL PROVIDE A MINIMUM OF (2) COPIES OF RECORD DRAWINGS TO THE OWNER UPON COMPLETION OF WORK. A RECORD DRAWING IS A RECORD OF ALL CHANGES THAT OCCURRED IN THE FIELD AND THAT ARE DOCUMENTED THROUGH CHANGE ORDERS, ADDENDA, OR CONTRACTOR/CONSULTANT DRAWING MARKUPS.

01

SHRUB PLANTING

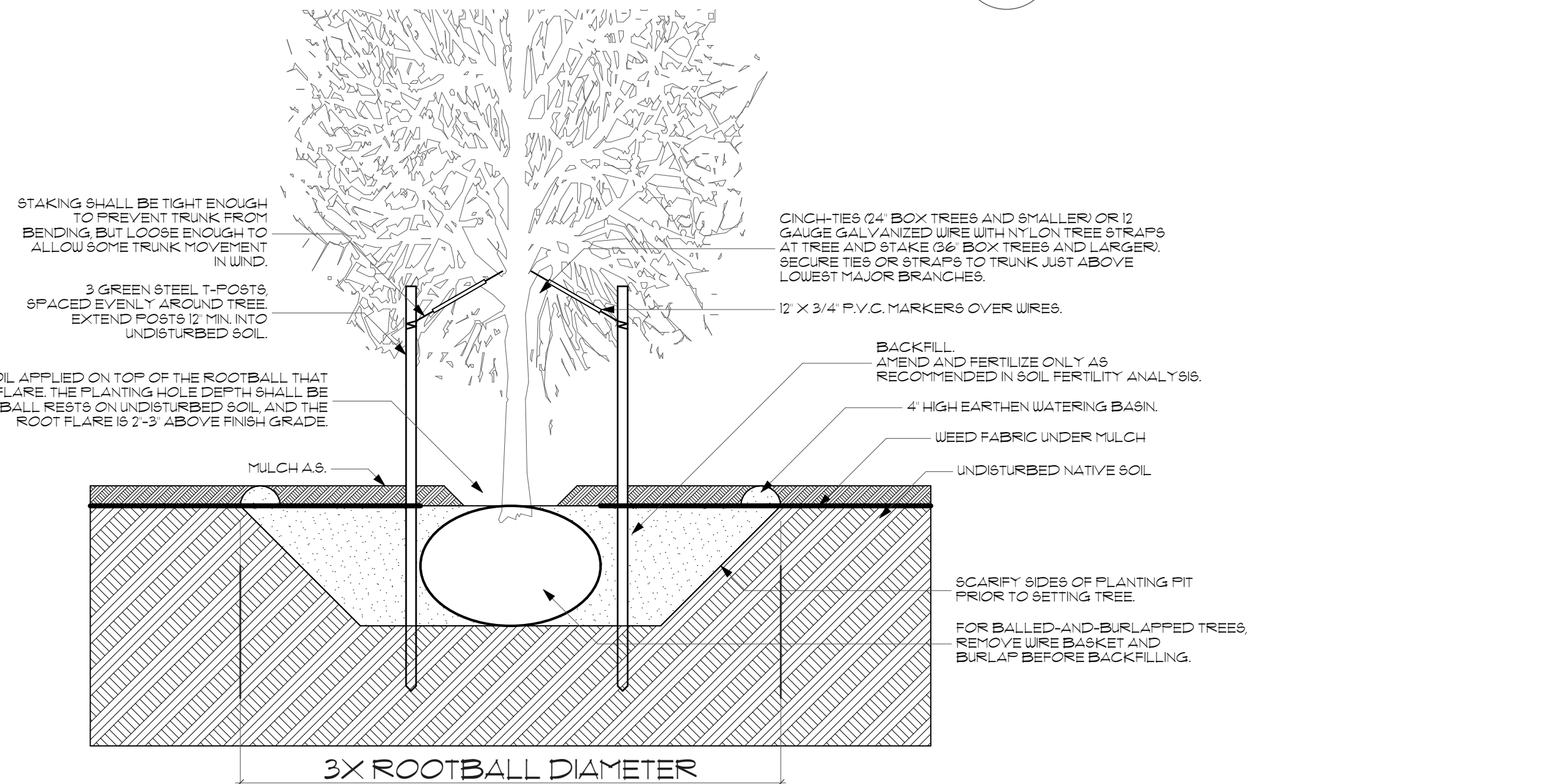
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02

TREE PLANTING - NON-CONIFEROUS

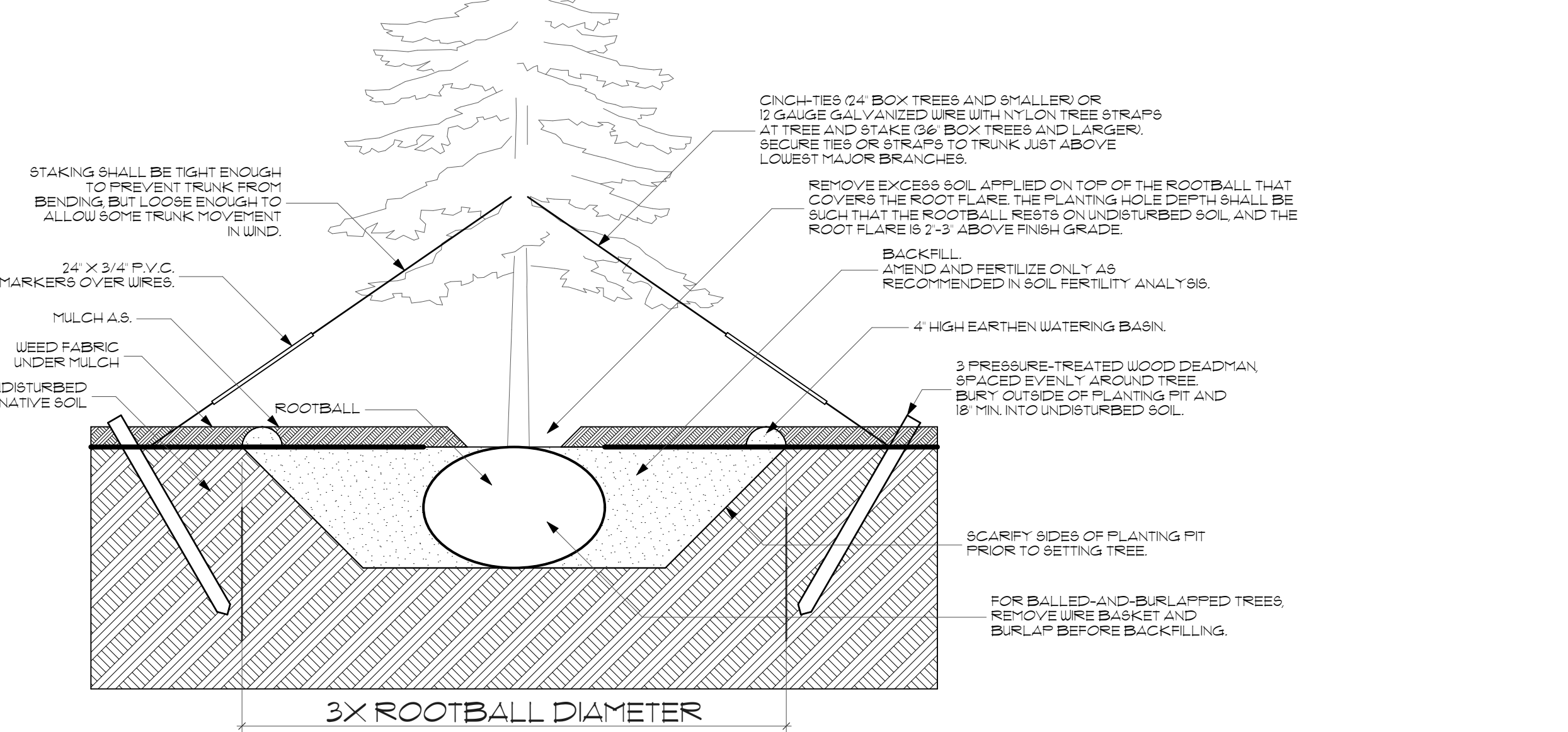
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03

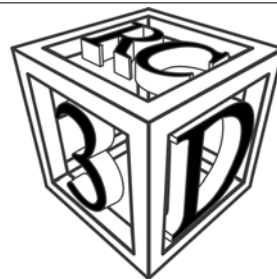
TREE PLANTING - CONIFEROUS

NOT TO SCALE



REVISIONS

NO.	DATE	DESCRIPTION



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Visualization Design
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DOCTORS URGENT CARE
2660 FOREST VISTA DRIVE FLOWER MOUND,
DENTON COUNTY, TX, 75028

**SITE
LANDSCAPE
DETAILS**

DATE 10/21/2021

SCALE REF. DRAWING

DRAWN SD DD CD
AW AW XX

JOB 21-011

SHEET #

A0.05

STRUCTURAL GENERAL NOTES

GENERAL REQUIREMENTS:

1. STRUCTURAL DRAWINGS SHALL BE USED IN CONJUNCTION WITH THE SPECIFICATIONS AND OTHER PROJECT DRAWINGS BY OTHER DISCIPLINES. ALL WORK SHALL CONFORM TO THE REQUIREMENTS OF THE CODES LISTED BELOW.
2. CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND ELEVATIONS RELATING TO EXISTING CONDITIONS BY MAKING FIELD SURVEYS AND MEASUREMENTS PRIOR TO COMMENCING FABRICATION OR CONSTRUCTION.
3. THE GENERAL CONTRACTOR SHALL COMPARE AND COORDINATE THE DRAWINGS OF ALL DISCIPLINES AND REPORT ANY DISCREPANCIES BETWEEN THE DRAWINGS TO THE ARCHITECT AND ENGINEER.
4. DETAILS LABELED "TYPICAL" SHALL APPLY TO ALL SITUATIONS THAT ARE THE SAME OR SIMILAR TO THOSE SPECIFICALLY DETAILED. SEE DETAIL TITLES FOR APPLICABILITY OF A PARTICULAR DETAIL. TYPICAL DETAILS SHALL APPLY WHETHER OR NOT THEY ARE SPECIFICALLY KEYED AT EACH LOCATION. THE ENGINEER SHALL HAVE FINAL AUTHORITY TO DETERMINE APPLICABILITY OF TYPICAL DETAILS.
5. WHERE CONFLICTS EXIST BETWEEN STRUCTURAL DOCUMENTS THE STRICTEST REQUIREMENTS, AS INDICATED BY THE STRUCTURAL ENGINEER SHALL GOVERN.
6. THE GENERAL CONTRACTOR SHALL REVIEW AND DETERMINE THAT DIMENSIONS ARE COORDINATED BETWEEN ARCHITECTURAL AND STRUCTURAL DRAWINGS PRIOR TO FABRICATION OR START OF CONSTRUCTION.
7. THE GENERAL CONTRACTOR SHALL COORDINATE ARCHITECTURAL, MECHANICAL, ELECTRICAL AND PLUMBING DRAWINGS FOR ANCHORED, EMBEDDED OR SUPPORTED ITEMS. NOTIFY THE ARCHITECT / ENGINEER OF ANY DISCREPANCIES.

SPECIAL INSPECTIONS:

1. NO SPECIAL INSPECTION IS REQUIRED.

CONSTRUCTION RESPONSIBILITY:

1. THE CONTRACT STRUCTURAL DRAWINGS AND SPECIFICATIONS REPRESENT THE COMPLETED STRUCTURE, AND ARE NOT INTENDED TO INDICATE THE METHOD OR MEANS OF CONSTRUCTION. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR ALL CONSTRUCTION MEANS, METHODS, PROCEDURES, TECHNIQUES, SEQUENCES, AND FOR JOB SAFETY.
2. THE ENGINEER DOES NOT HAVE CONTROL OR CHARGE OF, AND SHALL NOT BE RESPONSIBLE FOR, CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES, OR PROCEDURES, FOR SAFETY PRECAUTIONS AND PROGRAMS IN CONNECTION WITH THE WORK, FOR THE ACTS OR OMISSIONS OF THE CONTRACTOR, SUBCONTRACTOR, OR ANY OTHER PERSONS PERFORMING ANY OF THE WORK, OR FOR THE FAILURE OF ANY OF THEM TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.

PRIMARY CODES AND SPECIFICATIONS:

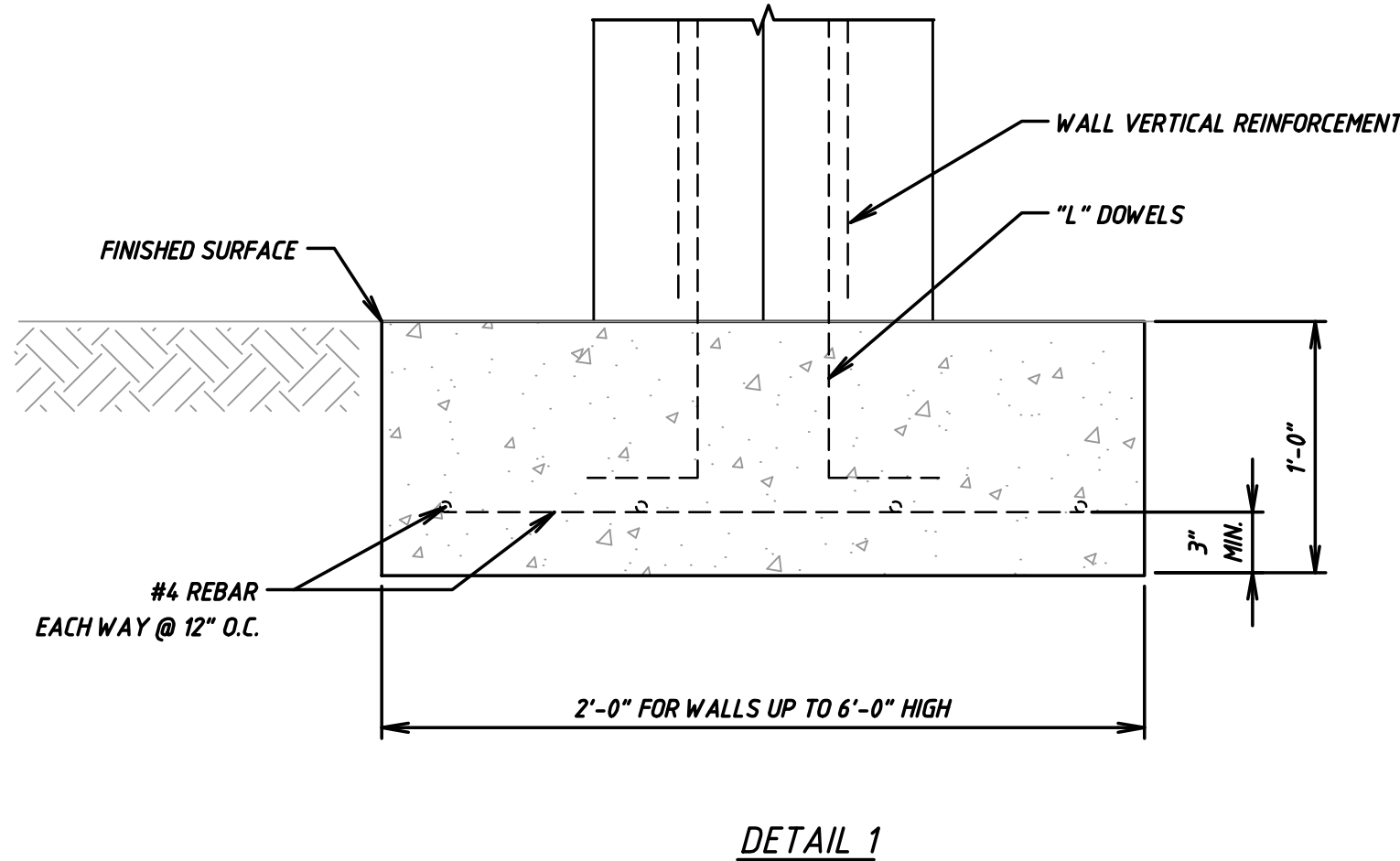
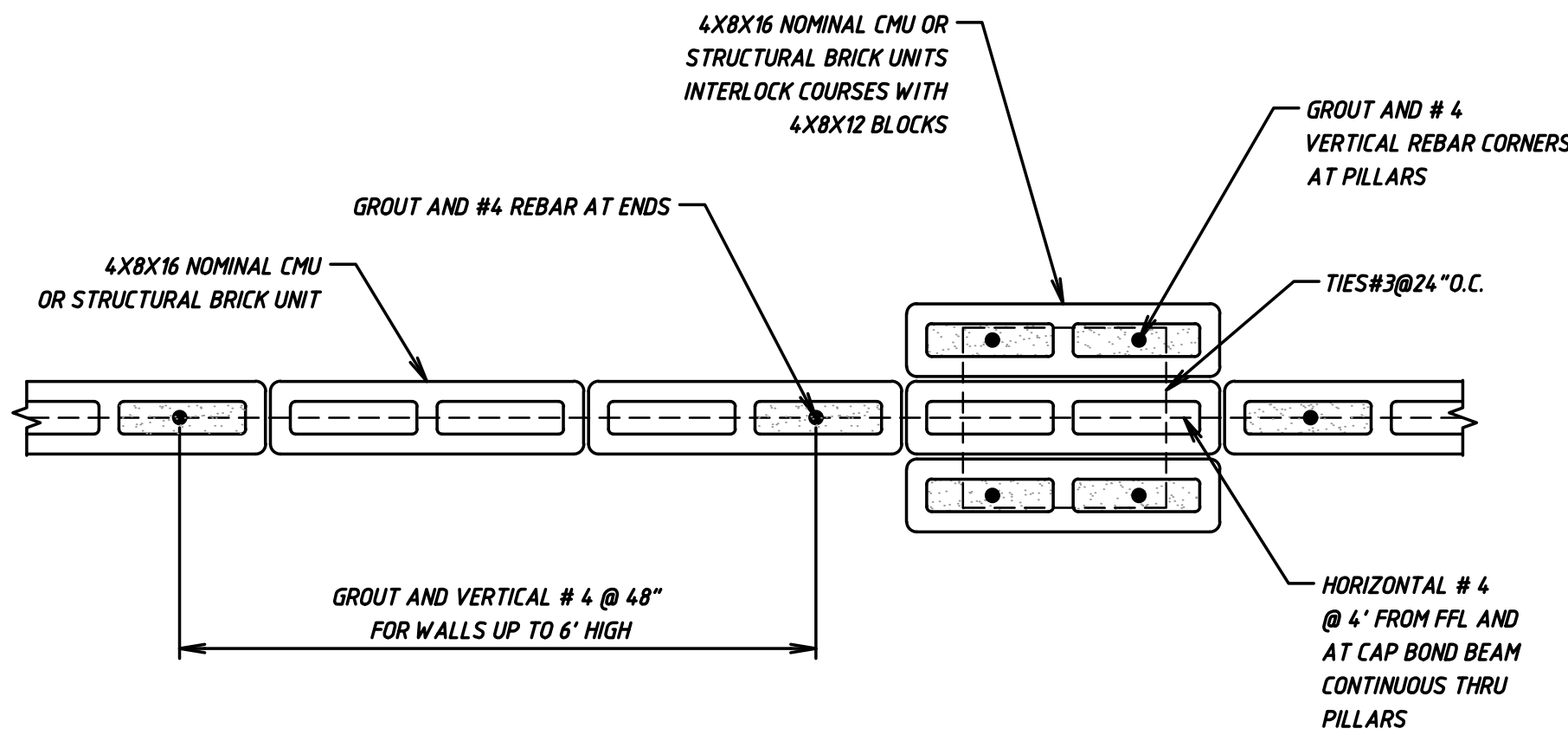
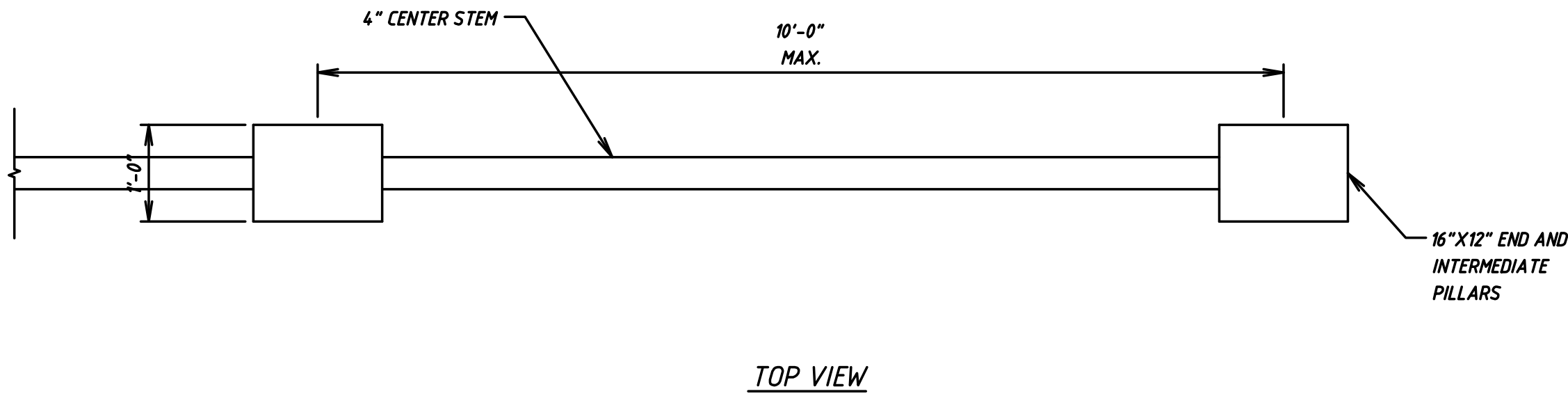
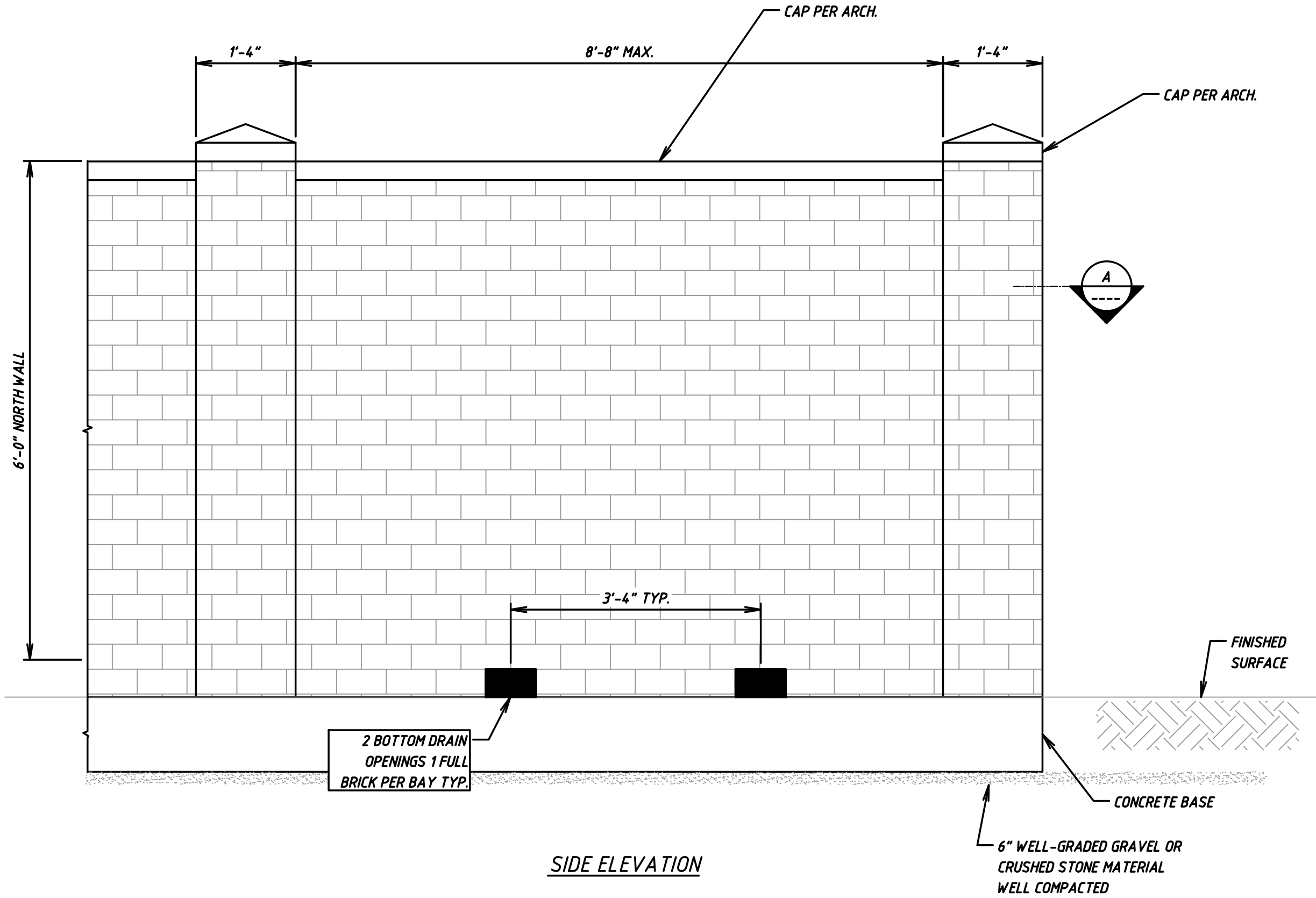
1. GENERAL BUILDING CODE:
 - A. INTERNATIONAL BUILDING CODE, 2018
 2. CONCRETE CODES:
 - A. BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE (ACI 318-14).
 - B. SPECIFICATIONS FOR STRUCTURAL CONCRETE FOR BUILDINGS (ACI 301).
 - C. LATEST EDITION OF THE CRSI MANUAL OF STANDARD PRACTICE WITH ALL SUPPLEMENTS.
 3. STRUCTURAL STEEL CODES:
 - A. SPECIFICATION FOR STRUCTURAL STEEL BUILDINGS, (AISC 360-16).
 6. MASONRY CONSTRUCTION:
 - A. BUILDING CODE FOR MASONRY STRUCTURES (TMS 402-2016).
 - B. SPECIFICATIONS FOR MASONRY STRUCTURES (TMS 602-2016).

DESIGN LOADS:

1. WIND LOADS:
 - A. LOADS BASED ON ASCE 7-16 WIND LOAD CRITERIA.
BASIC WIND SPEED, 3 SECOND GUST (ULTIMATE)..... 115 MPH
BUILDING CLASSIFICATION CATEGORY..... I
WIND EXPOSURE CATEGORY..... B
WIND TOPOGRAPHIC FACTOR, K_zT..... 1.0

CONCRETE NOTES:

1. COMPRESSIVE STRENGTH: ALL CONCRETE SHALL HAVE A MINIMUM 28-DAY COMPRESSIVE STRENGTH OF 3000 PSI
2. AGGREGATE SIZE: MAXIMUM AGGREGATE SIZE SHALL BE 1 1/2".
3. CONCRETE PLACEMENT: ALL MIXING, TRANSPORTATION, PLACING, AND CURING OF CONCRETE SHALL COMPLY WITH ACI-318, CURRENT EDITION.
4. CONCRETE TEMPERATURE: IN NO CASE WILL THE PLACEMENT OF CONCRETE HAVING A TEMPERATURE IN EXCESS OF NINETY DEGREES FAHRENHEIT (90°F) BE PERMITTED.
5. CONTINUOUS POUR: CONCRETE SHALL BE PLACED IN A CONTINUOUS POUR, UNLESS OTHERWISE APPROVED BY ENGINEER IN WRITING. IN NO CASE SHALL ADJACENT CONCRETE BE PLACED MORE THAN 30 MINUTES APART IN ORDER TO PREVENT THE FORMATION OF A COLD JOINT. IF AN UNPLANNED DELAY AND POSSIBLE COLD JOINT OCCURS FOR ANY REASON, VIBRATE THE FRESH CONCRETE AND CONTACT THE ENGINEER PROMPTLY FOR INSTRUCTIONS ON HOW TO PROCEED.
6. ADDING WATER: MAXIMUM WATER ADDED TO CONCRETE AT THE JOBSITE, WITHOUT WRITTEN PERMISSION FROM THE CONCRETE SUPPLIER, IS 1 1/2 GALLONS PER CUBIC YARD OF CONCRETE. CONCRETE TICKETS SHOWING TIME OF MIX, TIME OF DELIVERY, YARDS DELIVERED AND TOTAL WATER ADDED SHALL BE COLLECTED FROM EACH DRIVER AND RETAINED BY CONTRACTOR.
7. GRADE: #3 REBAR AND SMALLER SHALL CONFORM TO ASTM A615 GRADE 40 OR HIGHER, AND #4 REBAR AND LARGER SHALL CONFORM TO ASTM A615 GRADE 60 OR HIGHER AND SHALL BE DETAILED AND INSTALLED PER ACI-318 LATEST EDITION.
8. SOIL PARAMETERS ASSUMES A BEARING CAPACITY OF 1500 PSF
9. FINISH OF WALL SHALL SEE ARCHITECTURAL DRAWINGS

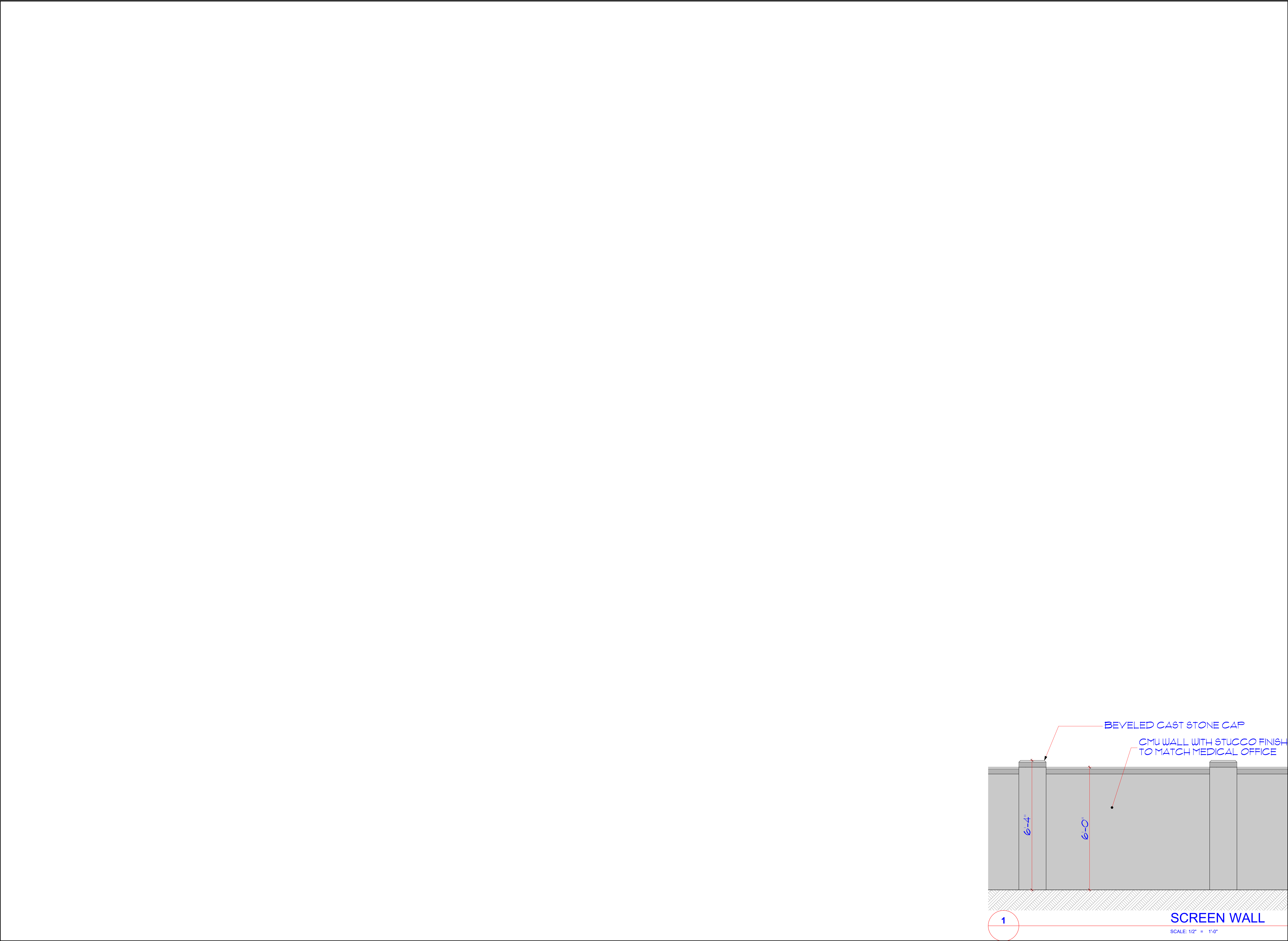


CONCRETE OR STRUCTURAL BRICK MASONRY:

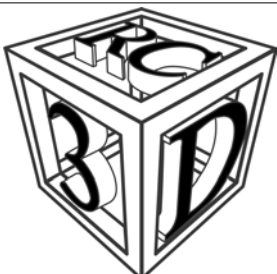
1. SEE NOTES ON PRIMARY CODES AND SPECIFICATIONS.
2. CONCRETE MASONRY UNITS SHALL BE LOAD BEARING TYPE CONFORMING TO ASTM C-90 HAVING A MINIMUM COMPRESSIVE STRENGTH OF 1900 PSI (NET AREA).
3. MORTAR SHALL CONFORM TO ASTM C-270 TYPE S.
4. PLAIN END TWO CELLED UNITS SHALL BE USED FOR BLOCKS THAT ARE TO HAVE CELLS REINFORCED AND FILLED. WEB SHELLS ADJACENT TO CELLS THAT ARE TO BE FILLED ARE TO BE BEDDED IN MORTAR.
5. FILL CELLS AS NOTED ON DRAWINGS WITH 3000 PSI GROUT, OR GROUT CONFORMING TO ASTM C-476, SPECIFICALLY DESIGNED FOR FILLING OF CELLS.
6. IN SPLICING VERTICAL BARS, LAP ENDS, PLACE IN CONTACT AND WIRE-TIE TOGETHER OR USE BAR POSITIONERS. LAP BARS SIDE BY SIDE IN THE PLANE OF THE WALL TO MAINTAIN PROPER COVER.
7. SEE PRIMARY CODES, SPECIFICATIONS AND DRAWINGS FOR GROUTING PROCEDURES.
8. PROVIDE GALVANIZED WIRE TYPE HORIZONTAL JOINT REINFORCING AT 16" O.C. (MAX) AND AS INDICATED ON ARCHITECTURAL DRAWINGS. PROVIDE HOT DIP GALVANIZED HJR ON ALL EXTERIOR WALLS. IN ADDITION TO SCHEDULED OR DETAILED LINTEL AND SILL REINFORCING, PROVIDE TWO LAYERS OF HJR AT 8 INCHES ON CENTER ABOVE AND BELOW ALL LINTELS AND SILLS WHICH SPAN MORE THAN 12 INCHES. EXTEND ADDED HJR 24 INCHES BEYOND THE OPENING JAMBS EXCEPT AT W.C.I.
10. MASONRY BOND BEAMS AND CONCRETE TIE BEAMS CAST ON MASONRY WALLS SHALL BE CONSTRUCTED SO AS TO KEY AND BOND INTO BLOCK CELLS. THE USE OF BUILDING PAPER OR SHEET PLASTIC TO CLOSE VOIDS BELOW BEAMS IS NOT ALLOWED DUE TO BREAKAGE OF MORTAR BOND.
11. SEE ARCHITECT'S DRAWINGS FOR THE EXTENT AND EXACT LOCATION OF MASONRY WALLS.
12. WALL CONTROL JOINTS (W.C.I.):
 - A. WALL CONTROL JOINTS SHALL BE PROVIDED IN ALL CONCRETE MASONRY CONSTRUCTION AT LOCATIONS INDICATED ON THE STRUCTURAL OR ARCHITECTURAL DRAWINGS BUT UNLESS NOTED OTHERWISE AT A SPACING NOT GREATER THAN 24' O.C.



REV	DATE	REVISION	DRW	CHK	APP
CLIENT					
RC3D					
VISUALIZATION DESIGN					
 ROCKY SUMMIT ENGINEERING CONSULTING, LLC.					
TBPE FIRM #: 14437					
PROJECT					
2660 FOREST VISTA DR.					
SCREEN WALL					
LOCATION					
FLOWER MOUND,					
TX					
DRAWING TITLE:					
MASONRY SCREEN WALL					
PLAN AND DETAILS					
Drawn	Date	Check.	Date	App.	Date
MEX	06/14/21	FPRE	06/14/21	FPRE	06/14/21
Project Number		SCALE		Dwg Sheet Size	
1372		AS NOTED		D	
Drawing No.				REV	
FRV-W-1					



REVISIONS



rc3d
Visualization Design
DALLAS, TX

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TEL: (972) 754-1472
EMAIL: AI@rc3d.com
URL: www.rc3d.com

DOCTORS URGENT CARE

**2660 FOREST VISTA DRIVE FLOWER MOUND,
DENTON COUNTY, TX, 75028**

SITE

MASONRY WALL

FINISH

DATE	10/21/2021
SCALE	REF. DRAWING
DRAWN	SD DD CD AW AW XX
JOB	21-011
SHEET #	A0.07

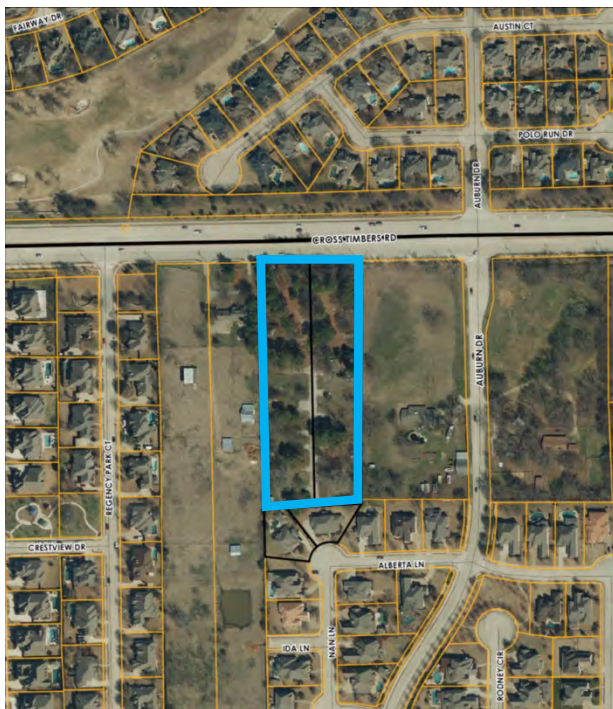


TOWN COUNCIL AGENDA ITEM NO. 13 REGULAR ITEM

DATE: March 7, 2022

FROM: Chuck Russell, Principal Planner

ITEM: **Public Hearing to consider an ordinance amending the zoning (ZPD21-0012 - Windhaven Assisted Living PD Amendment) to amend Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility, with certain waivers, exceptions and modifications to the Code of Ordinances. The property is generally located south of Cross Timbers Road and west of Auburn Drive. (On February 28, 2022, the Planning and Zoning Commission recommended approval by a vote of 6 to 0.)**



SUMMARY DATA:

- Lot Size – 4.364 acres
- Proposed Zoning – Amending existing PD, no change in use proposed.
- Proposed Buildings – No new buildings proposed, four one-story buildings designed to accommodate 64 assisted living units and a 1,050 square foot office building were previously approved.
- SMARTGrowth – Passed
- Traffic Analysis – N/A
- Exceptions – Compatibility Buffer, Compatibility Setback and Retention Pond. Revisions to compatibility buffer and setback are proposed to address residents' request.
- Incentives– None

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

ATTACHMENTS:

1. Draft Ordinance
2. [Planning and Zoning Commission Staff Report Link](#)

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.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 21-19, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 173 (PD-173) WITH AGRICULTURAL DISTRICT (A) USES AND A NURSING OR CONGREGATE CARE FACILITY ON CERTAIN PROPERTY DESCRIBED AS APPROXIMATELY 4.364 ACRES OF LAND SITUATED IN THE PERRY MALONE SURVEY, ABSTRACT NO. 836 BY MODIFYING DEVELOPMENT STANDARDS RELATED TO COMPATABILITY BUFFERS, COMPATIBILITY SETBACKS, AND DETENTION PONDS; BY REDUCING THE AREA OF PD-173 BY APPROXIMATELY 3,537 SQUARE FEET; 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 4.364 acres of land situated in the Perry Malone Survey, Abstract No. 836, Denton County, Texas, applied for a Zoning Planned Development amendment to amend Ordinance No. 21-19 for Planned Development District No. 173 (PD-173); and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas held a public hearing on February 28, 2022, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 7, 2022, 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:

- A. Approximately 4.364 acres of land situated in the Perry Malone Survey, Abstract No. 836, Denton County, Texas, is reduced in area by approximately 3,537 square feet as described in Exhibit "A."
- B. Sub-section F, "Exceptions," of Exhibit "B," "Development Standards." Planned Development District No. 173 (PD-173) Windhaven Assisted Living," of Ordinance No. 21-19 is hereby amended as follows:

"F. EXCEPTIONS. The following exceptions to the Town's Ordinances shall apply to this Planned Development.

- 1. Driveway Spacing. An exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances.
- 2. Compatibility Buffer-Section 82-302.
 - a. Except as provided in this section, the compatibility buffer applies to this Planned Development.
 - b. Nursing or congregate care facility.
 - i. Except as provided in this subparagraph, a 25-foot-wide compatibility buffer along the northernmost 320 feet (approximate) of the western property line shall be provided as designated on Exhibit "D."
 - AA. A 25-foot-wide compatibility buffer, consisting of eight-foot-wide and 17-foot-wide sections along the southernmost 360 feet (approximate) of the western property line shall be provided as designated on Exhibit "D."

ORDINANCE NO. _____

Page 3

- BB. A minimum 12-foot-wide compatibility buffer shall be provided along the southern property line as designated in Exhibits “C” and “D.”
 - ii. A minimum of 38 native shade trees, each a minimum three-inch caliper, shall be provided within the compatibility buffer along the western property line.
 - iii. A minimum of 11 native shade trees, each a minimum three-inch caliper, shall be provided within the compatibility buffer along the southern property line.
 - iv. A minimum eight-foot-tall wood fence, board-on-board construction, along the southern property line shall be provided as designated on Exhibit “C.”
3. Compatibility Setback-Section 82-303.
- a. Except as provided in this section, the compatibility buffer applies to this Planned Development.
 - b. Nursing or congregate care facility.
 - i. A minimum setback of 37 feet from the southern property line shall be provided.
4. Design Standards.
- a. The overall design of buildings as well as the various fence and wall sections shown on the conceptual site plan shall be in compliance with Exhibit “E.”
5. Retention Ponds
- a. An exception is granted to Section IV.C.5. of the Town’s Engineering Design Criteria requirement to provide wet retention ponds. Dry detention areas are permitted as shown on Exhibit “D.”
- B. Ordinance No. 21-19, is hereby amended to add a revised Concept Site Plan attached hereto as Exhibit “B” and incorporated herein.
- C. Ordinance No. 21-19, is hereby amended to add a revised Concept Landscape Plan attached hereto as Exhibit “C” and incorporated herein.

ORDINANCE NO. _____**Page 4**

- D. Ordinance No. 21-19, is hereby amended to add a revised Concept Elevation Plan attached hereto as Exhibit "D" and incorporated herein.

SECTION 2

The use of the property described above shall be subject to all restrictions, terms, and conditions contained herein, as well as the applicable regulations contained in Ordinance No. 21-19 for Planned Development District No. 173 (PD-173), 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

ORDINANCE NO. _____**Page 5**

affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7

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

SECTION 8

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 7TH DAY OF MARCH, 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

Exhibit A

Being a 4.363 acre tract of land situated in the Perry Malone Survey, Abstract No. 836, Town of Flower Mound, Denton County, Texas, and being all of the called 4.367 acre tract of land described in the deed to Montgomery Capital Partners II, LP

recorded in Document No. 2021-36733 of the Official Records of Denton County, Texas, said 4.363 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 3.5 inch aluminum Texas Department of Transportation right-of-way monument found for the common northwest corner of said 4.363 acre tract of land, southwest corner of a called 0.0607 acre tract of land described in the deed to

Denton County recorded in Document No. 2006-103588 of said Official Records of Denton County, Texas, southeast corner of a called 0.0932 acre tract of land described in the deed to Denton County recorded in Document No. 2006-103589 of said

Official Records of Denton County, Texas, and northeast corner of a called 4.952 acre tract of land described in the deed to Rembert Enterprises, Inc. recorded in Document No. 2020-199723 of said Official Records of Denton County, Texas, said 3.5

inch aluminum Texas Department of Transportation right-of-way monument also being in the south right-of-way line of FM 1171 (Cross Timbers Road) (a variable width right-of-way);

THENCE North 88 degrees 54 minutes 55 seconds East, with the common north line of said 4.363 acre tract of land, south line of said 0.0607 acre tract of land, and south right-of-way line of said FM 1171 (Cross Timbers Road), passing at a distance

of 144.31 feet, a 3.5 inch aluminum Texas Department of Transportation right-of-way monument found for the common southeast corner of said 0.0607 acre tract of land and southwest corner of a called 0.0761 acre tract of land described in the deed

to Denton County, recorded in Document No. 2006-103587 of said Official Records of Denton County, Texas, in all, a distance of 229.55 feet to a 3.5 inch aluminum Texas Department of Transportation right-of-way monument found for and angle

point in the common north line of said 4.363 acre tract of land, south line of said 0.0761 acre tract of land, and south right-of-way line of said FM 1171 (Cross Timbers Road);

THENCE North 84 degrees 30 minutes 00 seconds East, with the common north line of said 4.363 acre tract of land, south line of said 0.0761 acre tract of land, and south right-of-way line of said FM 1171 (Cross Timbers Road), a distance of 56.95

feet to a 3.5 inch aluminum Texas Department of Transportation right-of-way monument found for the common northeast corner of said 4.363 acre tract of land, southeast corner of said 0.0761 acre tract of land, and southwest corner of a called 0.1468

acre tract of land described in the deed to Denton County, recorded in Document No. 2011-101915 of said Official Records of Denton County, Texas, said 3.5 inch aluminum Texas Department of Transportation right-of-way monument also being in

Exhibit A

the west line of a called 5.2185 acre tract of land described in the deed to Gary Johnson recorded in Document No. 99-R012887 of said Official Records of Denton County, Texas;

THENCE South 00 degrees 03 minutes 02 seconds East, with the common east line of said 4.363 acre tract of land and west line of said 5.2185 acre tract of land, a distance of 667.71 feet to a 3/8 inch iron rod found for the northwest corner of Lot 5,

Block D of Flower Mound Woods, an addition to the City of Flower Mound, Denton County, Texas recorded in Document No. 2009-228 of said Plat Records of Denton County, Texas, from which a 1/2 inch iron rod found for the common southeast

corner of said 4.363 acre tract of land and northeast corner of Lot 4R, Block D of Lots 1R Through 4R, Block D and Lots 1R Through 3R, Block E, Flower Mound Woods, an addition to the City of Flower Mound, Denton County, Texas recorded in

Document No. 2010-94 of the Plat Records of Denton County, Texas bears South 01 degree 53 minutes 57 seconds East, a distance of 12.92 feet;

THENCE South 87 degrees 49 minutes 33 seconds West, over and across said 4.363 acre tract of land, a distance of 273.68 feet to a 1/2 inch iron rod with cap stamped "1519 SURVEYING" set for corner in the common west line of said 4.363 acre

tract of land and east line of a called 4.952 acre tract of land described in the deed to Rembert Enterprises, Inc. recorded in Document No. 2020-199723 of said Official Records of Denton County, Texas, from which a 1/2 inch iron rod with cap

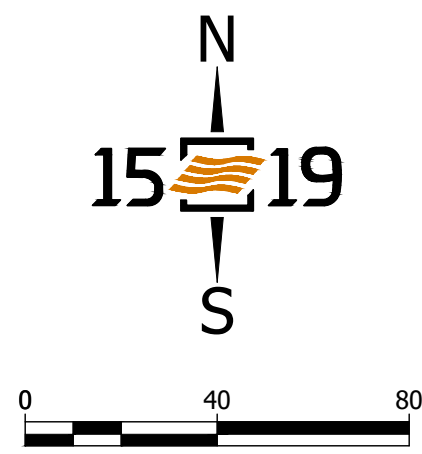
stamped "Arthur Surveying" found for the common southwest corner of said 4.363 acre tract of land and northwest corner of Lot 3R, Block D of said Lots 1R Through 4R, Block D and Lots 1R Through 3R, Block E, Flower Mound Woods bears

South 01 degree 08 minutes 22 seconds East, a distance of 12.92 feet;

THENCE North 01 degree 08 minutes 22 seconds West, with the common west line of said 4.363 acre tract of land and east line of said 4.952 acre tract of land, a distance of 681.34 feet to the POINT OF BEGINNING, and containing 190,036

square feet or 4.363 acres of land, more or less.

Bearings are based on the Texas State Plane Coordinate System, North American Datum of 1983 (NAD 83), North Central Zone (4202).



SITE DATA:

PHYSICAL ADDRESS 3801 CROSS TIMBERS RD
GROSS SITE AREA 4.28 ACRES 186,499 S.F.

ZONING: AGRICULTURAL
CURRENT USE: MOBILE HOMES
PROPOSED USE: NURSING OR CONGREGATE CARE FACILITY LOT
COVERAGE DATA:

PROPOSED TOTAL BUILDING COVERAGE: 46,562 S.F.
PROPOSED IMPERVIOUS AREA (INCL. BUILDINGS): 125,177 S.F.
PROPOSED PERVIOUS AREA: 57,429 S.F.

PARKING SUMMARY:

OFFICE REQUIRED: 05, PROVIDED: 06

NURSING OR CONGREGATE CARE FACILITY REQUIRED: 43, PROVIDED: 42

TOTAL PARKING: REQUIRED: 48, PROVIDED: 48

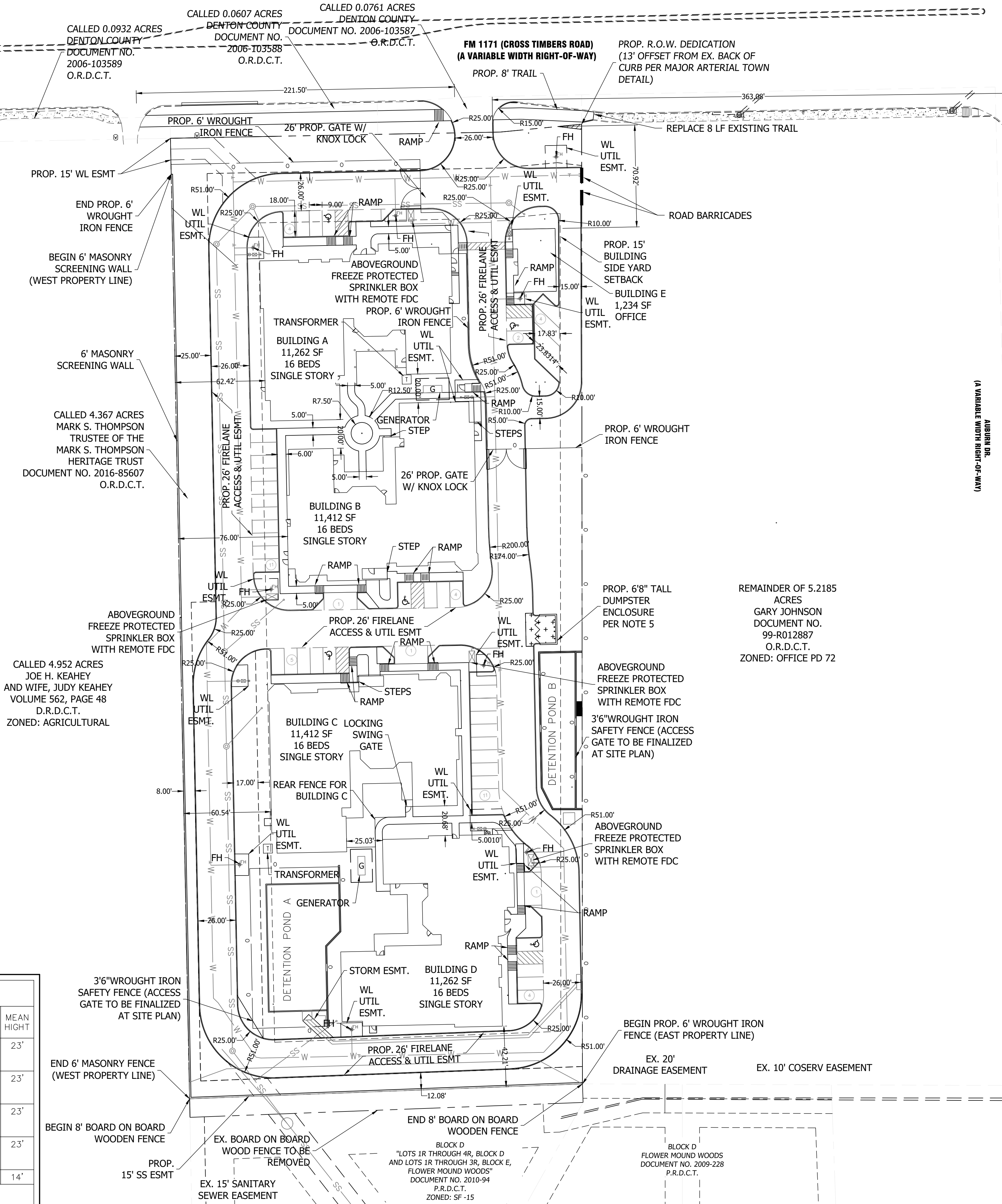
HANDICAP PARKING IS PROVIDED IN ACCORDANCE WITH ADA STANDARDS.

NOTES:

- THIS PROPERTY IS LOCATED WITHIN A FEMA ZONE "X", PER FEMA MAP PANEL 48121C0540G, DATED 04/18/2011.
- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO COMPLIMENT THE MATERIALS AND COLORS WITHIN THIS DEVELOPMENT
- ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR A MASONRY ENCLOSURE. ANY MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING
- ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
- DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
- DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
- SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SITE PLAN OR ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.
- THE FDC WILL BE LOCATED REMOTELY, NOT ON THE BUILDING. THESE MUST BE WITHIN FIFTY FEET OF A HYDRANT LOCATED ON THE SAME SIDE OF THE FIRE LANE. THESE MAY BE LOCATED IN THE ABOVEGROUND FREEZE PROTECTED ENCLOSURES IF THE SPACING REQUIREMENTS ARE MET.
- ANY GATE THAT CROSSES THE FIRE LANE WILL BE EQUIPPED WITH AN APPROVED 3M BRAND OPTI-COM OPENING DEVICE. KNOX LOCKS WILL BE PROVIDED FOR USE IN THE EVENT OF A POWER FAILURE

BUILDING DATA

BUILDING		RESIDENTIAL UNITS	OFFICE UNITS	TOTAL UNITS	TOTAL FLOOR AREA (SF)	STORIES	PEAK HEIGHT	MEAN HEIGHT
A	NURSING /CONGREGATE CARE	16	NONE	16	11,262	1	34'	23'
B	NURSING /CONGREGATE CARE	16	NONE	16	11,412	1	34'	23'
C	NURSING /CONGREGATE CARE	16	NONE	16	11,412	1	34'	23'
D	NURSING /CONGREGATE CARE	16	NONE	16	11,262	1	34'	23'
E	OFFICE	NONE	1	1	1,234	1	19'	14'
TOTALS:		64	1	65	46,582			



LEGEND

- ABOVEGROUND FREEZE-PROTECTED SPRINKLER VALVE ENCLOSURES WITH REMOTE FDC
- SANITARY SEWER MANHOLE
- FIRE HYDRANT
- WATER METER
- PROP. TRANSFORMER LOCATION
- PROP. GENERATOR LOCATION

PAVEMENT LEGEND

- DRIVEWAY/FIRELANE PAVEMENT**
PROP 6\"/>
- DUMPSTER HEAVY USE PAVEMENT**
PROP 7\"/>
- LIGHT DUTY PAVEMENT (PARKING)**
PROP 5\"/>
- SIDEWALK PAVEMENT**
PROP 4\"/>

NOTES

- PAVEMENT BASE SHALL BE 6\"/>
- THE SUBGRADE SHALL BE PER GEOTECH REPORT.
- THE CONTRACTOR SHALL PROVIDE A 1/2\"/>

PRELIMINARY

TEXAS REGISTERED
ENGINEERING FIRM F - 17299
THIS DOCUMENT IS PROVISIONAL
AND FOR REVIEW ONLY. IT IS NOT INTENDED FOR
CONSTRUCTION, BIDDING OR PERMIT PURPOSES.

CLINT LANNEN, P.E.
TEXAS P.E. 107845

RELEASED ON: December 13, 2021

NEW CAMPUS
FOR
WINDHAVEN SENIOR LIVING

FLOWER MOUND

JOB: NMA19003

COPYRIGHT 2019 BY
NELSON + MORGAN, ARCHITECTS, INC.

Date: 7/1/2019
Revision:

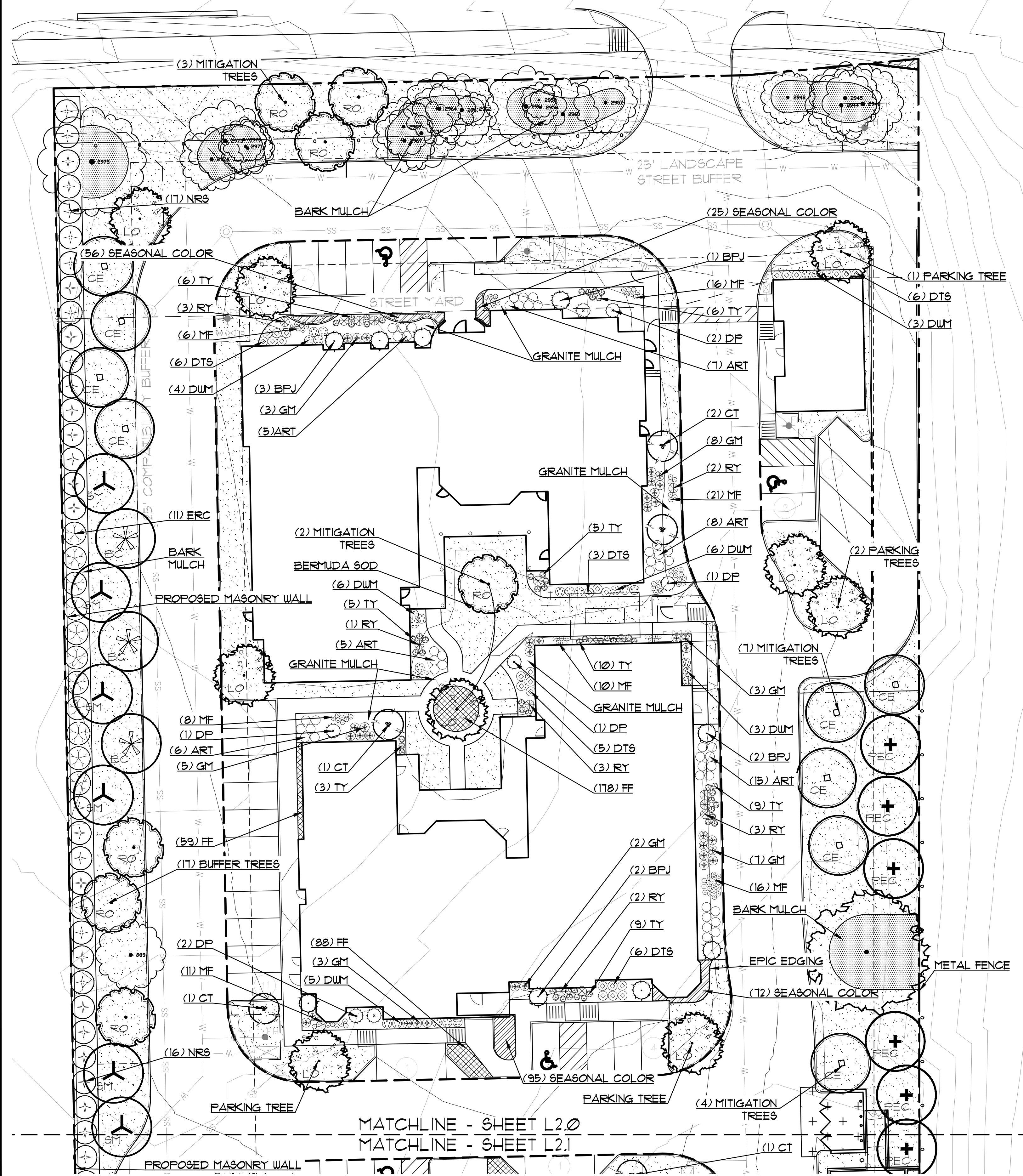
Issued for: Date:
Review -
Pricing -
Bidding -
Construction -

CONCEPTUAL
SITE PLAN

SHEET

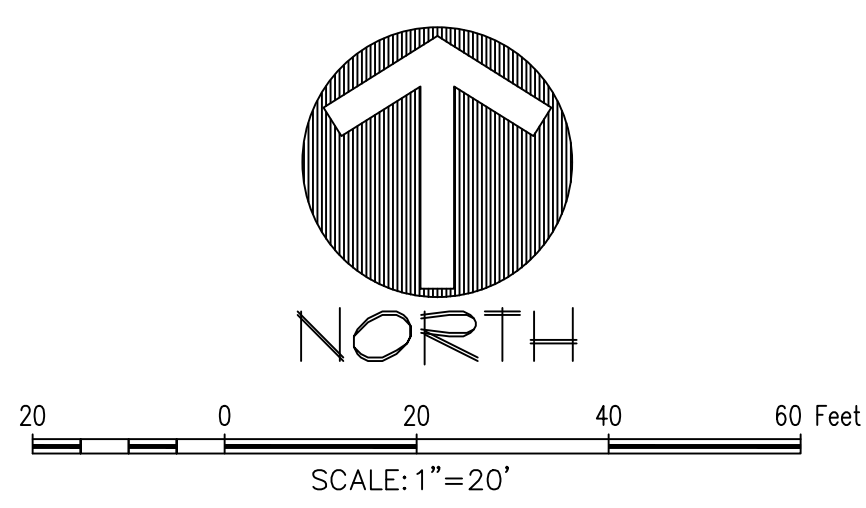
C-02

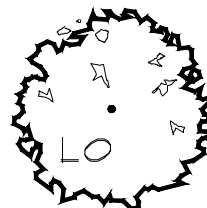
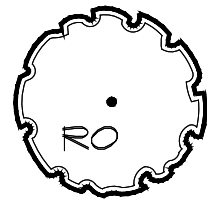
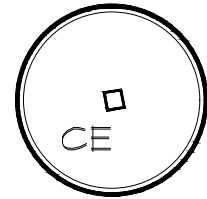
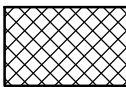
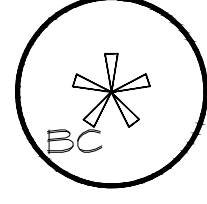
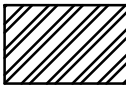
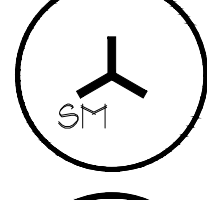
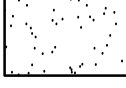
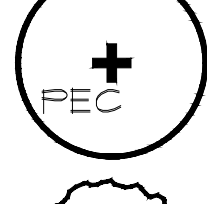
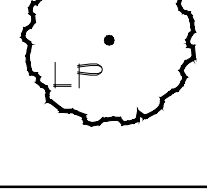
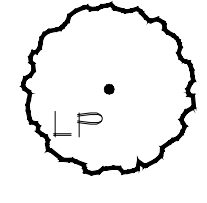
CROSS TIMBER ROAD (F.M. 1171)



STREET BUFFER LANDSCAPING			
STANDARD		REQUIRED BUFFER WIDTH	PROVIDED
Cross Timbers Rd		25 ft.	25 ft.
STREET BUFFER TREES			
STANDARD	STREET FRONTAGE (LINEAR FEET)	REQUIRED	PROVIDED
1 per 30 L.F.	Cross Timbers - 287 L.F.	10 trees (3" cal.)	20 existing trees
STREET YARD TREES			
STANDARD	TOTAL STREET YARD (SQUARE FEET)	REQUIRED	PROVIDED
Between 10,000 and 110,000 s.f.=10 + 1 tree for every 2,500 s.f. after 10,000 s.f.	21,874 s.f. of street yard	15 trees (3" cal.)	20 existing trees and 6 new trees (3" cal.)
COMPATIBILITY BUFFER TREES			
STANDARD (SOUTH PROPERTY)	TOTAL AREA	REQUIRED	PROVIDED
1 per 400 s.f. Width = 12 ft	3,328 s.f.	9 trees (3" cal.)	11 new trees (3" cal.)
STANDARD (EAST PROPERTY)	TOTAL AREA	REQUIRED	PROVIDED
1 per 400 s.f.	325 s.f.	1 tree (3" cal.)	1 tree (3" cal.)
STANDARD (WEST PROPERTY)	TOTAL AREA	REQUIRED	PROVIDED
1 per 400 s.f. Width varies = 8 to 25 ft	10,492 s.f.	27 trees (3" cal.)	1 existing tree and 30 new trees (3" cal.)
PARKING AREA LANDSCAPING			
STANDARD	# OF PARK. SPACES	REQUIRED	PROVIDED
90 s.f. per 12 spaces	47 parking spaces	3,52.5 s.f.	3,207 s.f.
PARKING AREA TREES			
STANDARD	# OF PARK. SPACES	REQUIRED	PROVIDED
1 per 10 parking spaces	47 parking spaces	5 trees (3" cal.)	10 trees (3" cal.)

**All parking spaces to be located within 50 ft. of parking lot tree.



PLANT LEGEND					
	(LO) LIVE OAK <i>Quercus virginiana</i>		(CT) CHASTE TREE <i>Vitex agnus-castus</i>		(TY) TWIST LEAF YUCCA <i>Yucca rupicola</i>
	(RO) RED OAK <i>Quercus shumardii</i>		(NRS) NELLIE R. STEVENS <i>Ilex x 'Nellie R. Stevens'</i>		(MF) MEXICAN FEATHER GRASS <i>Nassella tenuissima</i>
	(CE) CEDAR ELM <i>Ulmus crassifolia</i>		(ERC) EASTERN RED CEDAR <i>Juniperus virginiana</i>		(FF) FROG FRUIT <i>Phyla nodiflora</i>
	(BPJ) BLUE POINT JUNIPER <i>Juniperus chinensis 'Blue Point'</i>		(DP) DWARF PALMETTO <i>Sabal minor</i>		SEASONAL COLOR
	(BC) BALD CYPRESS <i>Taxodium distichum</i>		(BH) BURFORD HOLLY <i>Ilex cornuta 'Burfordii'</i>		BERMUDA SOD
	(SM) SOUTHERN MAGNOLIA <i>Magnolia grandiflora</i>		(DWM) DWARF WAX MYRTLE <i>Myrica pusilla</i>		BARK MULCH
	(PEC) PECAN <i>Carya illinoensis</i>		(GM) GULF MUHLY <i>Muhlenbergia capillaris</i>	NOTE: ALL LANDSCAPE BEDS WILL CONTAIN DECOMPOSED GRANITE.	
	(LP) LOBLOLLY PINE <i>Pinus taeda</i>		(DTS) DWARF TEXAS SAGE <i>Leucophyllum frutescens 'Bartstar Dwarf'</i>		
			(ART) ARTEMISIA <i>Artemisia schmidtiana 'Silver Mound'</i>		
			(RY) RED YUCCA <i>Hesperaloe parviflora</i>		

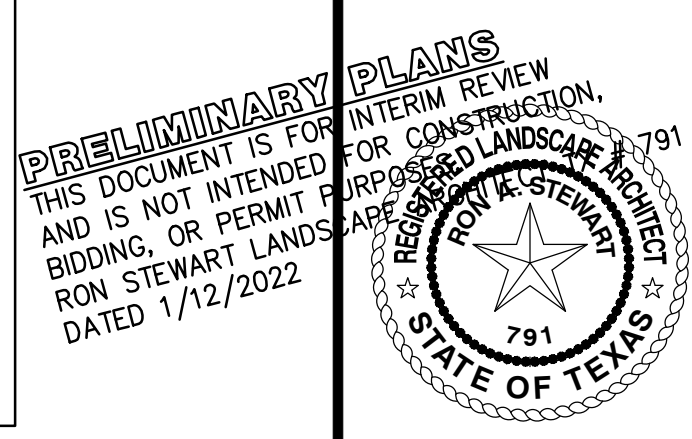
NOTE: ALL BUILDING FOUNDATION LANDSCAPE BEDS WILL CONTAIN GRANITE MULCH.

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(DBA: G&A McAdams)
111 Hillside Drive
Levelland, TX 79337
972.436.9712
201 County View Drive
Reno, NV 89502
940.240.1012
TPE: 1992 TPELA 10194440
www.mcadamsco.com



WINDHAVEN
4.36 Acres
3801 CROSS TIMBERS ROAD
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

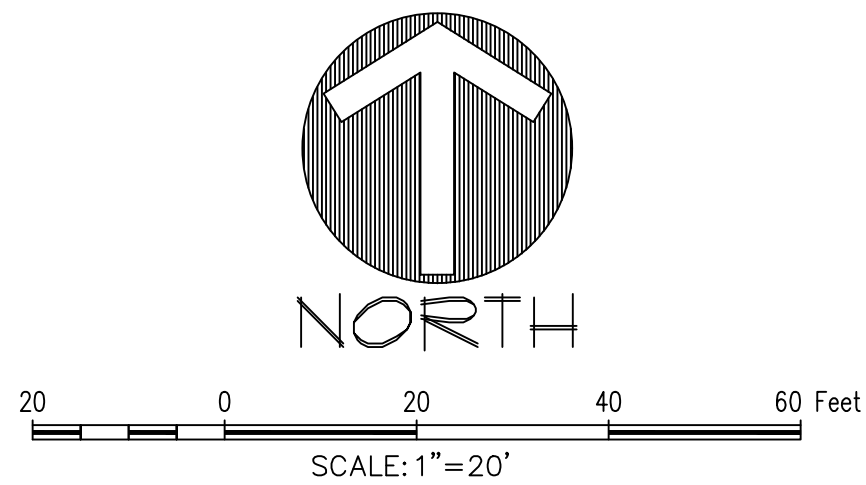
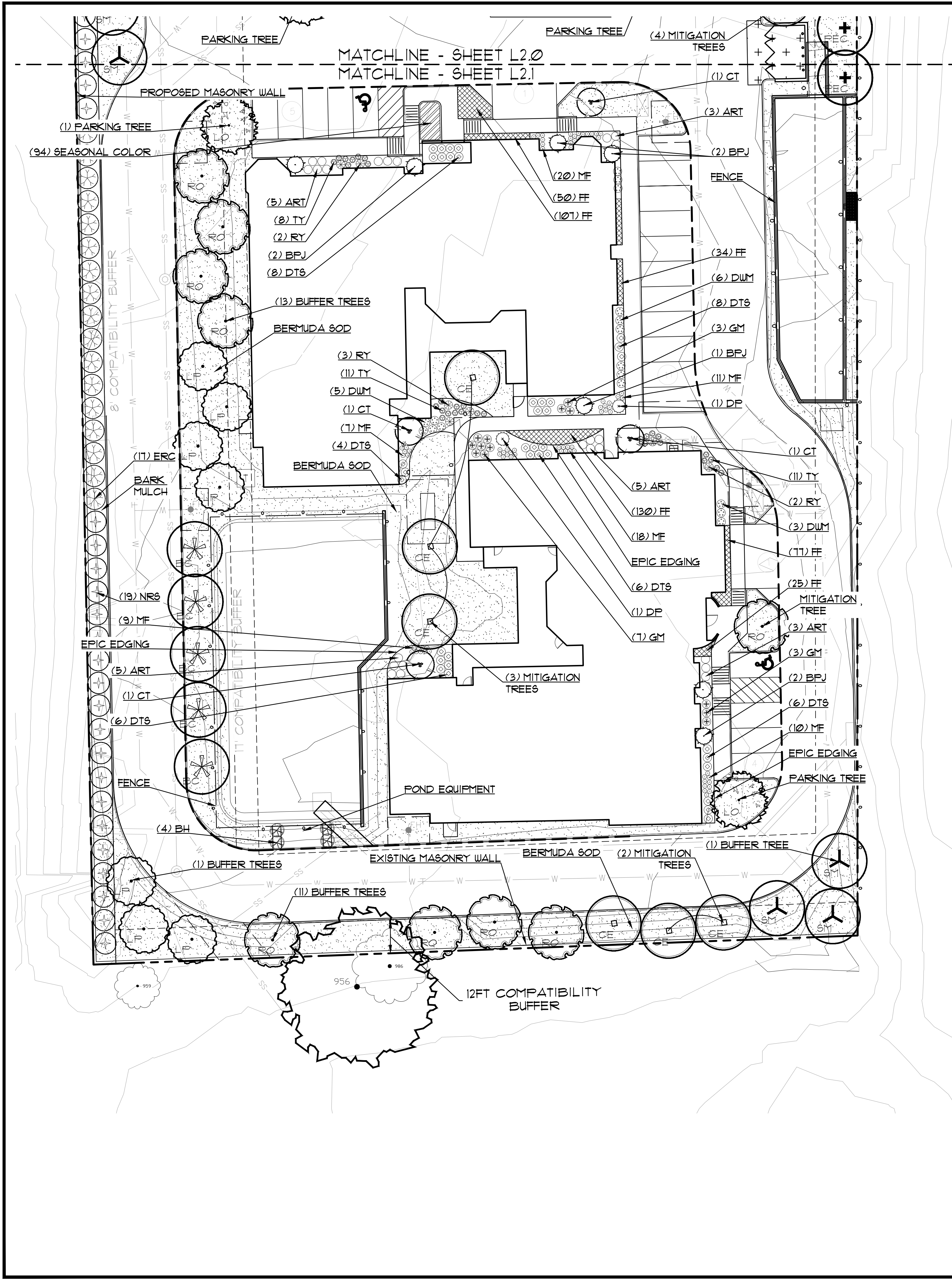
LANDSCAPE PLAN



Drawn By: MR
Date: 06/21/2021
Scale: 1"=20'
Revisions:
08/06/2021
01/12/2021

18261

L2.0



PLANT LEGEND					
	(LO) LIVE OAK <i>Quercus virginiana</i>		(CT) CHASTE TREE <i>Vitex agnus-castus</i>		(TY) TWIST LEAF YUCCA <i>Yucca rupicola</i>
	(RO) RED OAK <i>Quercus shumardii</i>		(NRS) NELLIE R. STEVENS <i>Ilex x 'Nellie R. Stevens'</i>		(MF) MEXICAN FEATHER GRASS <i>Nassella tenuissima</i>
	(CE) CEDAR ELM <i>Ulmus crassifolia</i>		(ERC) EASTERN RED CEDAR <i>Juniperus virginiana</i>		(FF) FROG FRUIT <i>Phyla nodiflora</i>
	(BC) BALD CYPRRESS <i>Taxodium distichum</i>		(BPJ) BLUE POINT JUNIPER <i>Juniperus chinensis 'Blue Point'</i>		SEASONAL COLOR
	(DP) DWARF PALMETTO <i>Sabal minor</i>		(BH) BURFORD HOLLY <i>Ilex cornuta 'Burfordii'</i>		BERMUDA SOD
	(SM) SOUTHERN MAGNOLIA <i>Magnolia grandiflora</i>		(DWM) DWARF WAX MYRTLE <i>Myrica pauciflora</i>		BARK MULCH
	(PEC) PECAN <i>Carya illinoensis</i>		(GM) GULF MUHLY <i>Muhlenbergia capillaris</i>	NOTE: ALL LANDSCAPE BEDS WILL CONTAIN DECOMPOSED GRANITE.	
	(DTS) DWARF TEXAS SAGE <i>Leucophyllum frutescens 'Bartlett Dwarf'</i>		(ART) ARTEMISIA <i>Artemisia schmidtiana 'Silver Mound'</i>		
	(LP) LOBLOLLY PINE <i>Pinus taeda</i>		(RY) RED YUCCA <i>Hesperaloe parviflora</i>		

NOTE: ALL BUILDING FOUNDATION LANDSCAPE BEDS WILL CONTAIN GRANITE MULCH.

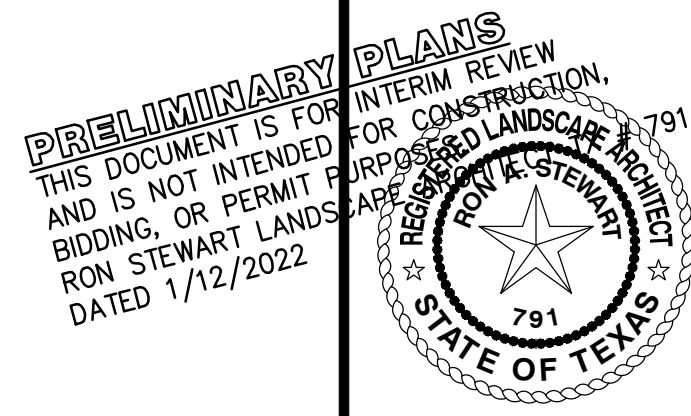
PLANT LIST								
	QTY.	COMMON NAME	BOTANICAL NAME	SIZE	MIN. HT.	SPACE	REMARKS	
14%	11	CATHEDRAL LIVE OAK	Quercus virginiana 'Cathedral Oak'	3"	10'-12'	Per Plan	Single Trunk	
13%	15	RED OAK	Quercus shumardii	3"	10'-12'	Per Plan	Single Trunk	
13%	15	CEDAR ELM	Ulmus crassifolia	3"	10'-12'	Per Plan	Single Trunk	
11%	9	BALD CYPRRESS	Taxodium distichum	3"	10'-12'	Per Plan	Single Trunk	
12%	10	SOUTHERN MAGNOLIA	Magnolia grandiflora	3"	10'-12'	Per Plan	Single Trunk	
7%	6	PECAN	Carya illinoensis	3"	10'-12'	Per Plan	Single Trunk	
9%	7	LOBLOLLY PINE	Pinus taeda	3"	10'-12'	Per Plan	Single Trunk	
10%	8	CHASTE TREE	Vitex agnus-castus	20gal.	3'-4'	Per Plan	Multi Trunk	
	52	NELLIE R. STEVENS	Ilex x 'Nellie R. Stevens'	20gal.	5'-6'	Per Plan	Full	
	28	EASTERN RED CEDAR	Juniperus virginiana	20gal.	5'-6'	Per Plan	Full	
	13	BLUE POINT JUNIPER	Juniperus chinensis 'Blue Point'	20gal.	7'-8'	Per Plan	Multi Trunk	
	10	DWARF PALMETTO	Sabal texana	15gal.	3'-4'	Per Plan	Full	
	4	BURFORD HOLLY	Ilex cornuta 'Burfordii'	5gal.	30"	4'-0"	Full	
	41	DWARF WAX MYRTLE	Myrica pusilla	5gal.	24"	4'-0"	Full	
	62	PINK MUHLY	Muhlenbergia capillaris	3gal.	18"	3'-0"	Xeri	
	63	DWARF TEXAS SAGE	Leucophyllum frutescens 'Bertstar'	3gal.	18"	3'-0"	Xeri	
	67	ARTEMISIA	Artemisia schmidtiana 'Silver Mound'	3gal.	18"	3'-0"	Xeri	
	22	RED YUCCA	Hesperaloe parviflora	3gal.	12"	3'-0"	Xeri	
	83	TWIST LEAF YUCCA	Yucca rupicola	3gal.	18"	2'-0"	Xeri	
	163	MEXICAN FEATHER GRASS	Nassella tenuissima	3gal.	12"	2'-0"	Xeri	
	552	FROG FRUIT	Phyla nodiflora	4"pot		12" o.c.	Full	
	342	SEASONAL COLOR		4"pot		12" o.c.	Full	
	42,185	BERMUDA SOD						

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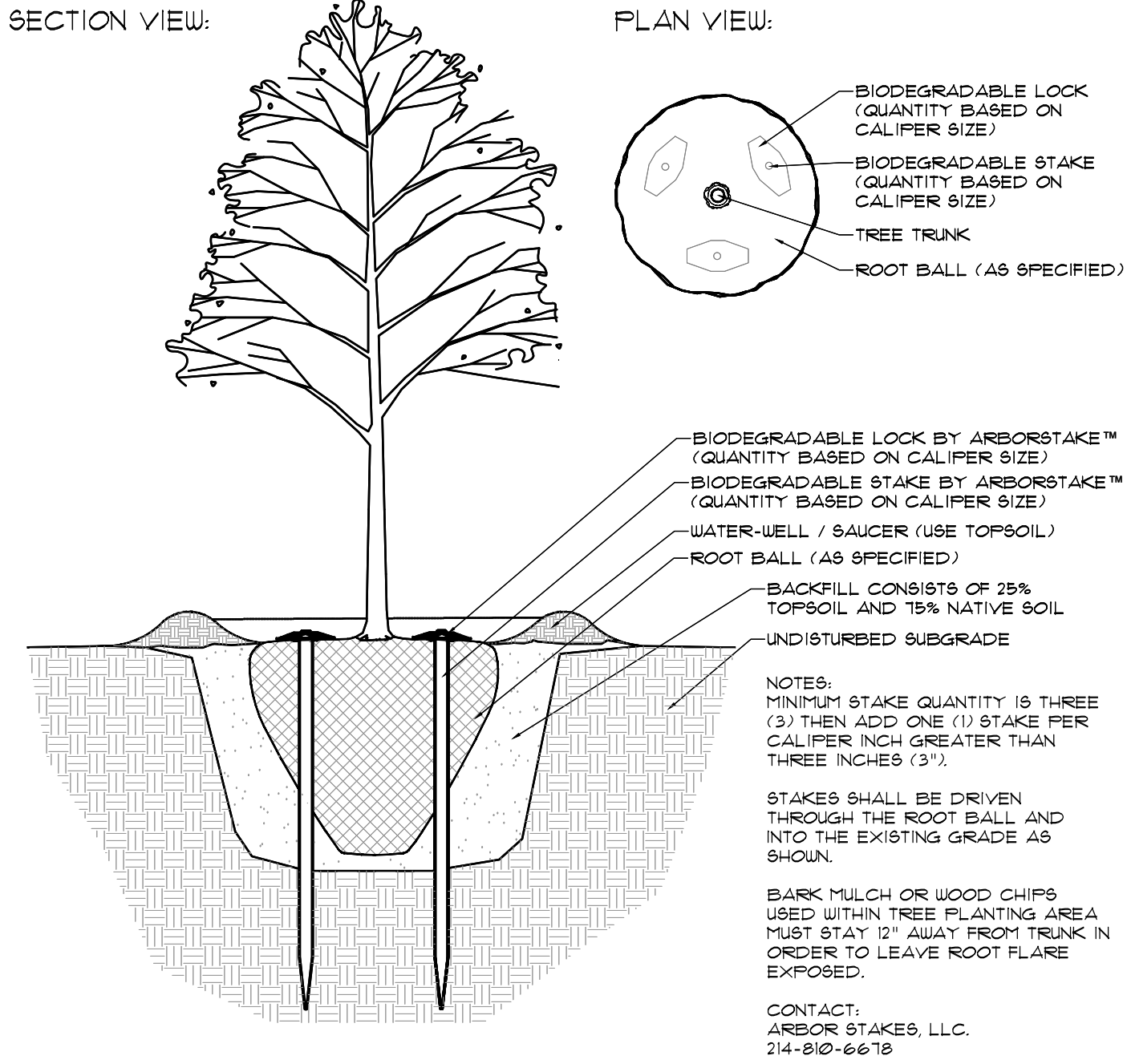


WINDHAVEN
4.36 Acres
3801 CROSS TIMBERS ROAD
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

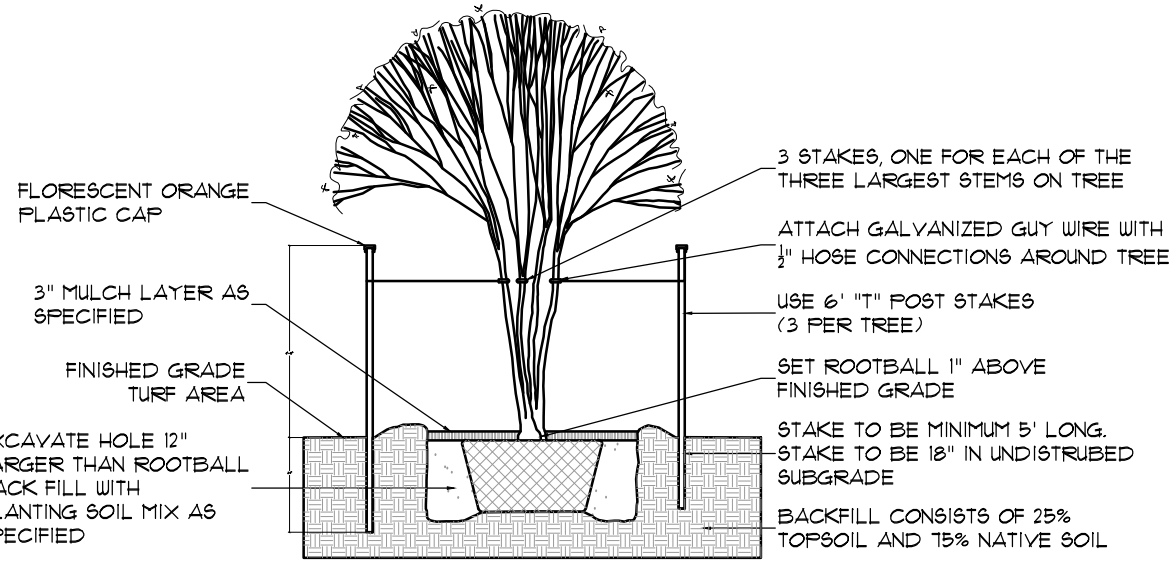
LANDSCAPE PLAN



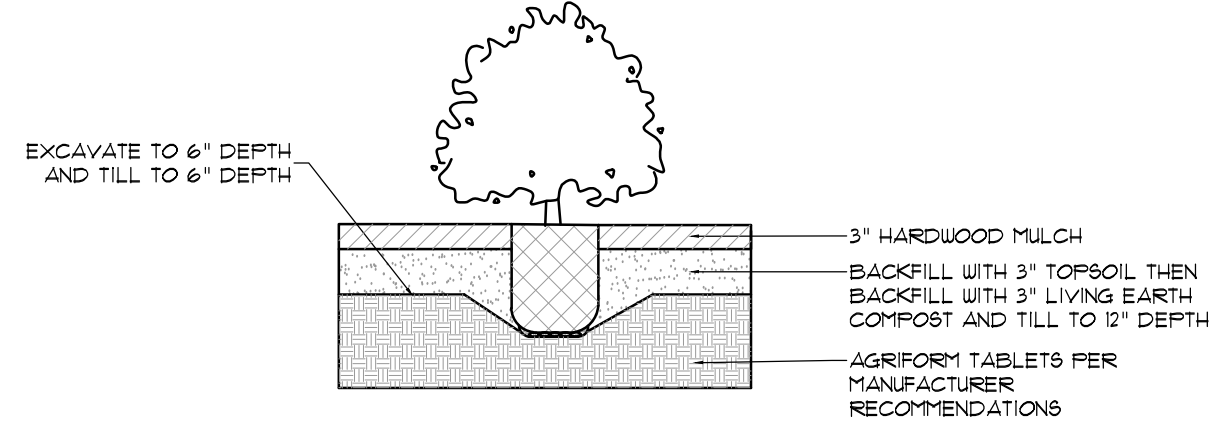
Drawn By: MR
Date: 06/21/2021
Scale: 1"=20'
Revisions:
08/06/2021
01/12/2022



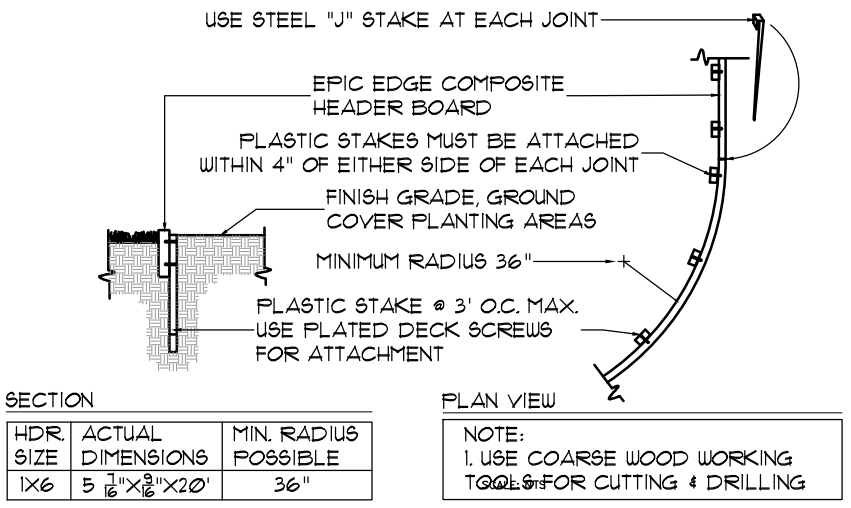
1. BELOWGROUND TREE STAKING DETAIL
1/4"=1'



2. MULTI TRUNK TREE STAKING
1/4"=1'

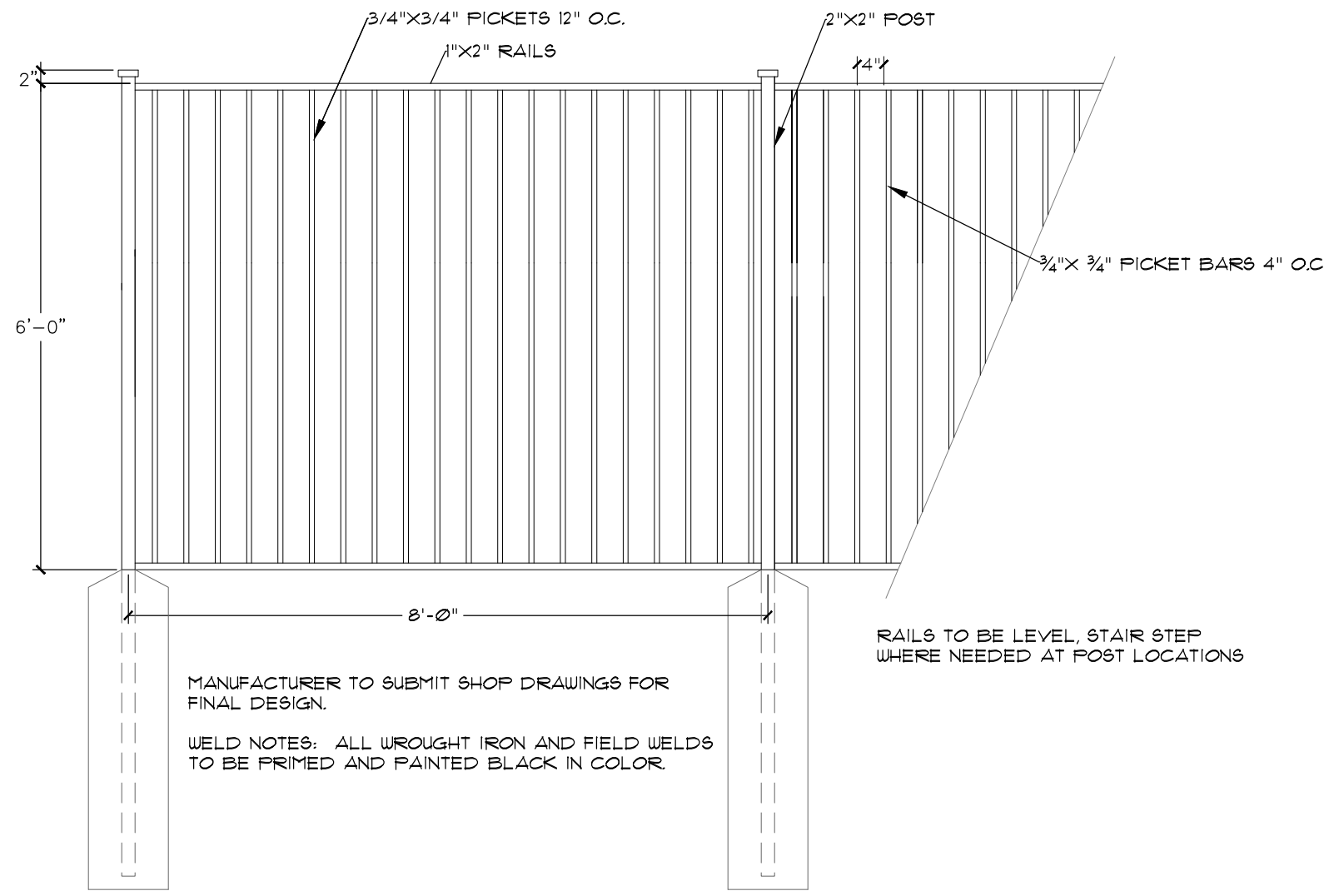


3. SHRUB PLANTING DETAIL
1/2"=1'

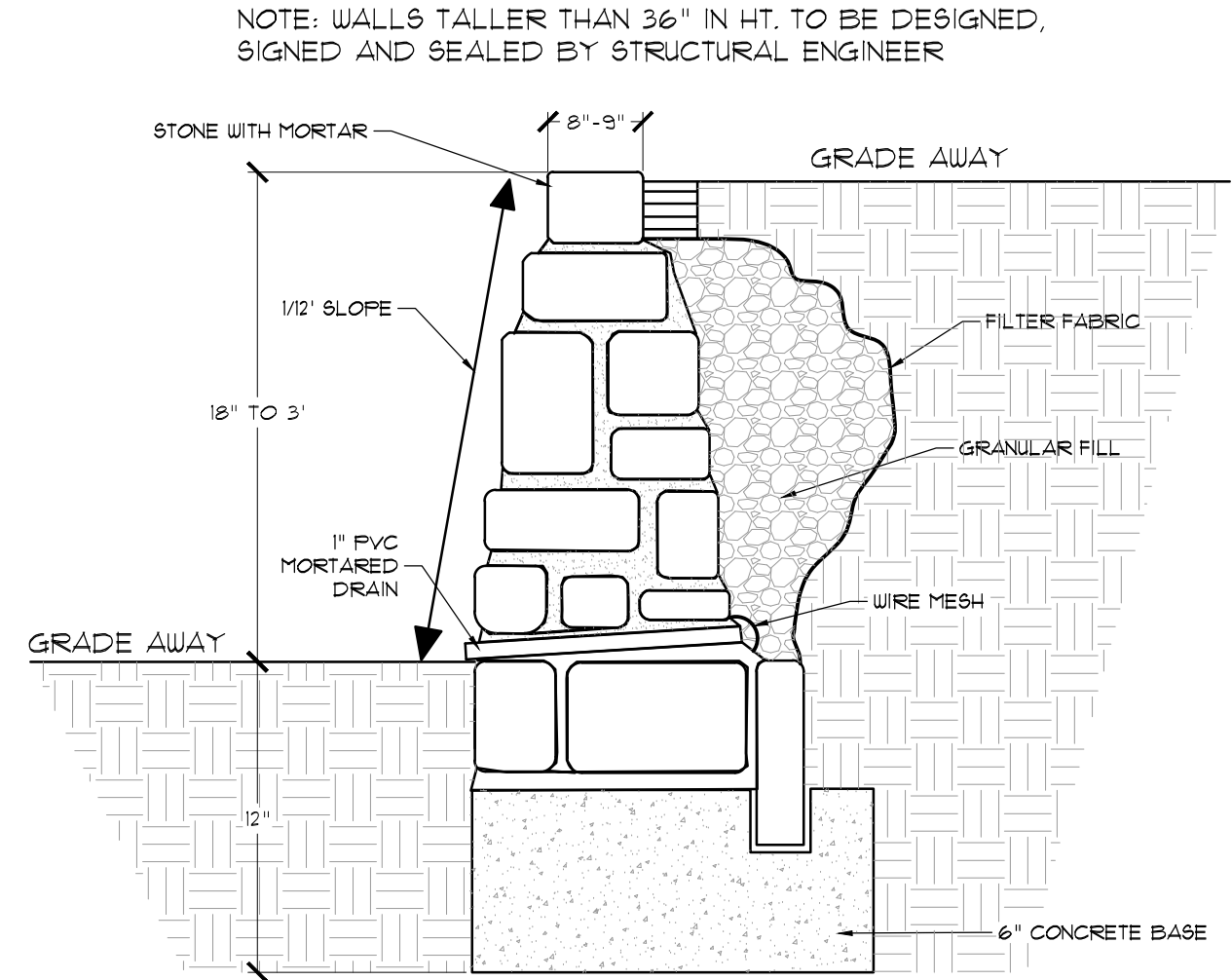


EPIC EDGE CHART
COLOR OPTIONS: CARAMEL BROWN
MANUFACTURED BY: EPIC PLASTICS, 104 E. TURER RD., LODI, CA 95240
URL ADDRESS: WWW.EPICPLASTICS.COM

4. EPIC EDGE COMPOSITE HEADER BOARD
NTS



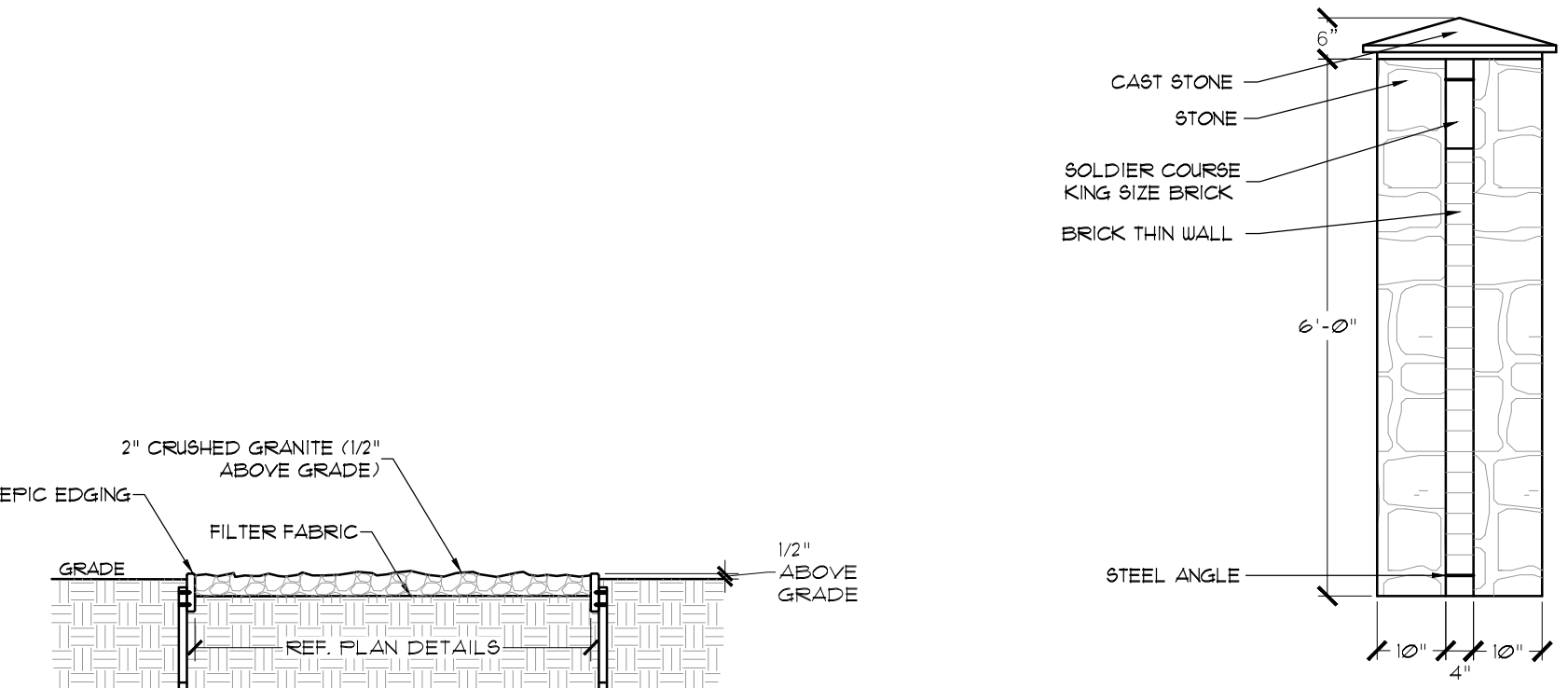
5. 6FT ORNAMENTAL METAL FENCE
1/2"=1'



6. STONE RETAINING WALL
1/2"=1'

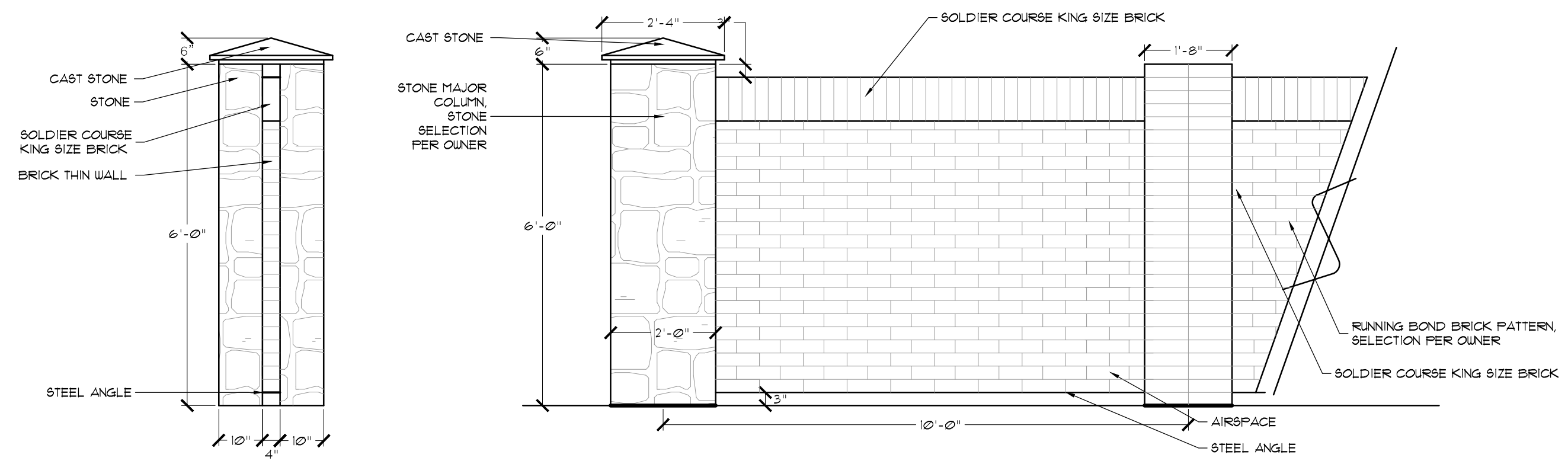
LANDSCAPE NOTES:
Town of Flower Mound

- Plant material shall be measured and sized according to the latest edition of the Texas Nursery and Landscape Association (TNLA) grades and standards.
- All plant beds shall be top-dressed with a minimum of 3 inches of hardwood or other mulch.
- Trees shall be planted at least 4 feet from utility line, curb, walk, fire connection, and outside all utility easements.
- Trees overhanging walks and parking shall have a minimum clear trunk height of 7 ft.
- A visibility triangle must be provided at all intersections. Shrubs are not to exceed 30 inches in height at trees shall have a minimum clear trunk height of 9 feet.
- 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.
- 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.
- Before construction, landscape contractor and general contractor shall verify and locate all existing utilities in areas of excavation.
- Please refer to all landscape and irrigation specifications.
- All landscape beds and turf areas to be separated with edging.
- All landscape beds to be 6" below finished floor.
- 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.
- 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.
- 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.
- 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.



** TYPICAL SCHEMATIC DETAIL, FINAL FOOTING, AND WALL DESIGN MUST BE SIGNED AND SEALED BY STRUCTURAL ENGINEER

7. GRANITE MULCH DETAIL
3/4"=1'



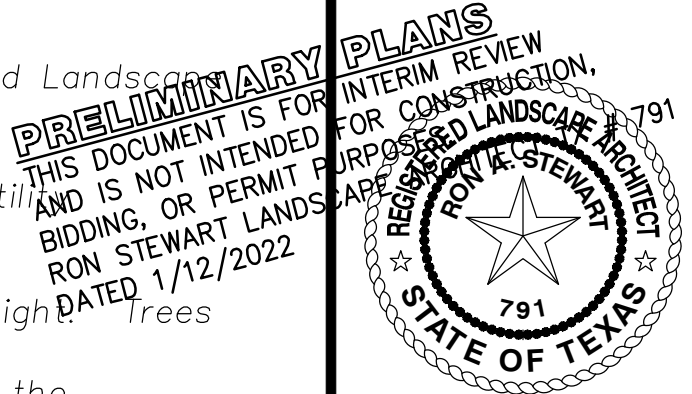
8. TYPICAL THIN WALL
1/2"=1'

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WINDHAVEN
436 Acres
3801 CROSS TIMBERS ROAD
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

LANDSCAPE DETAILS



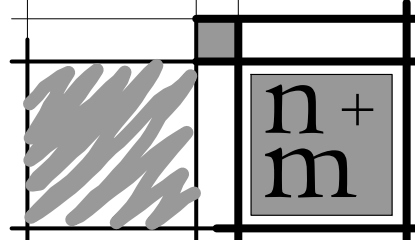
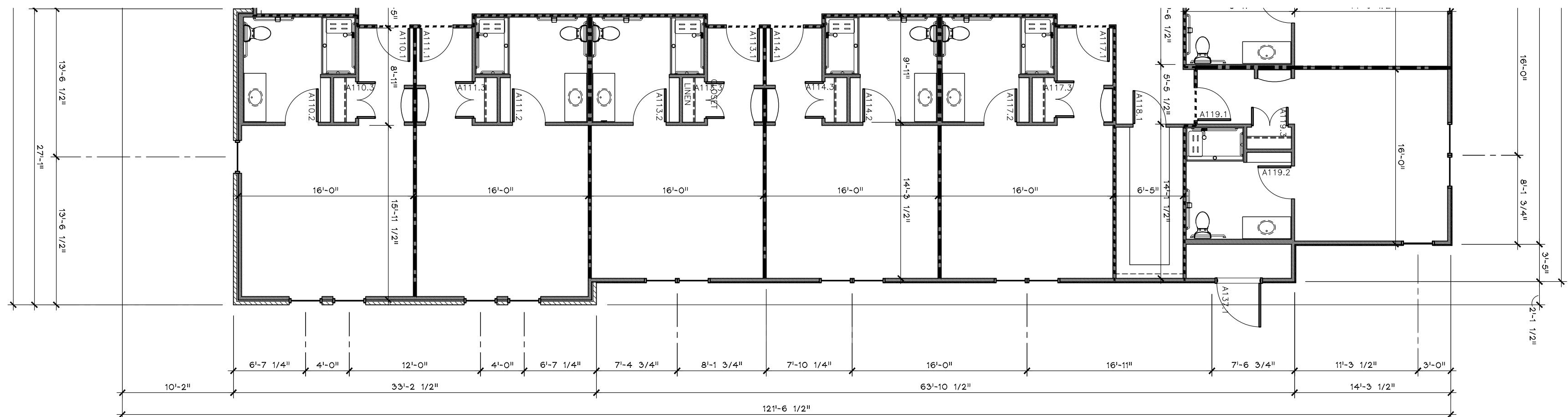
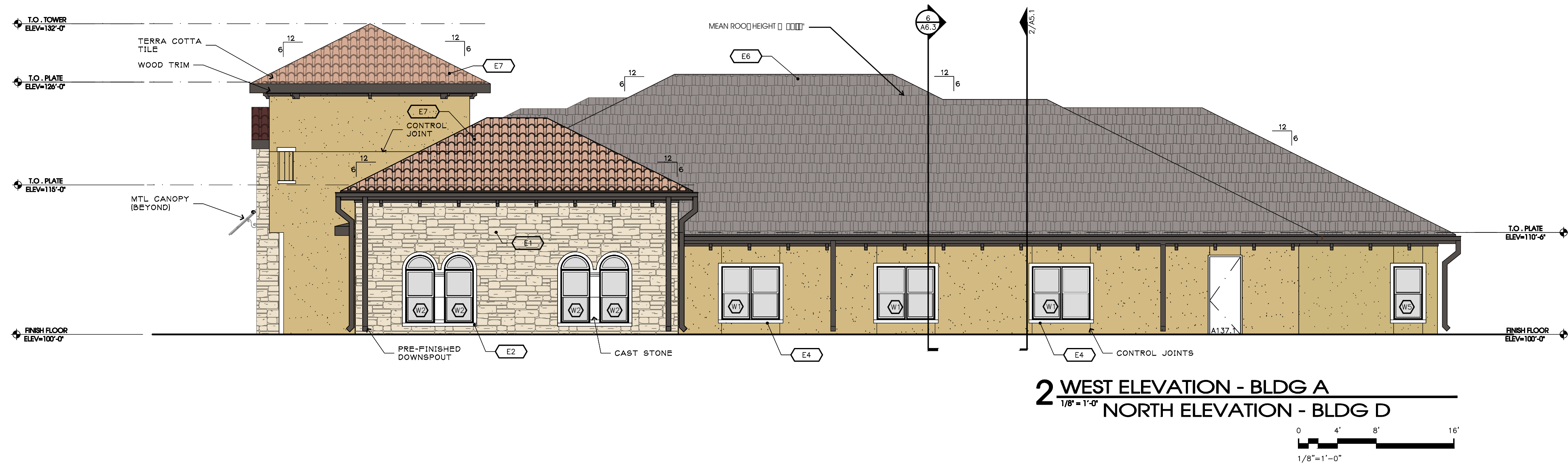
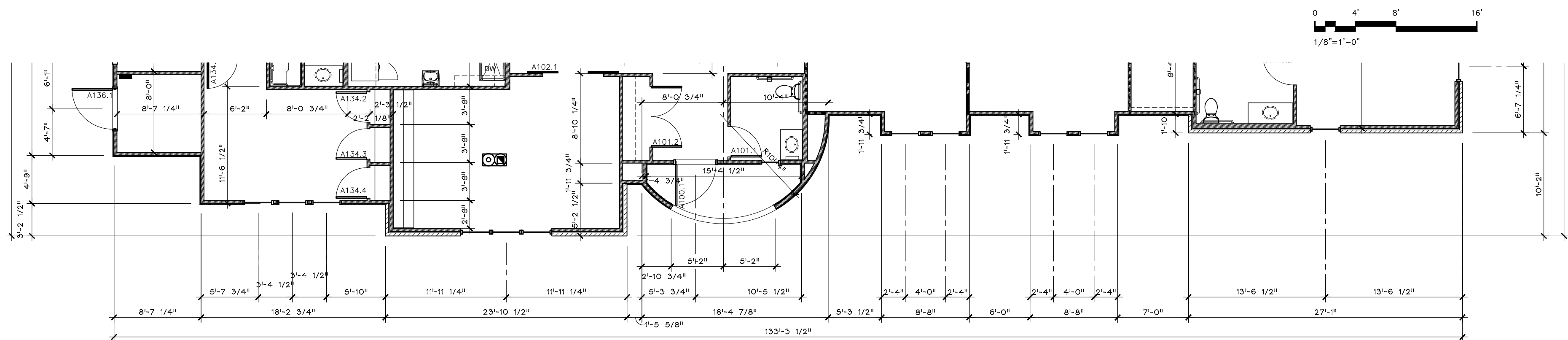
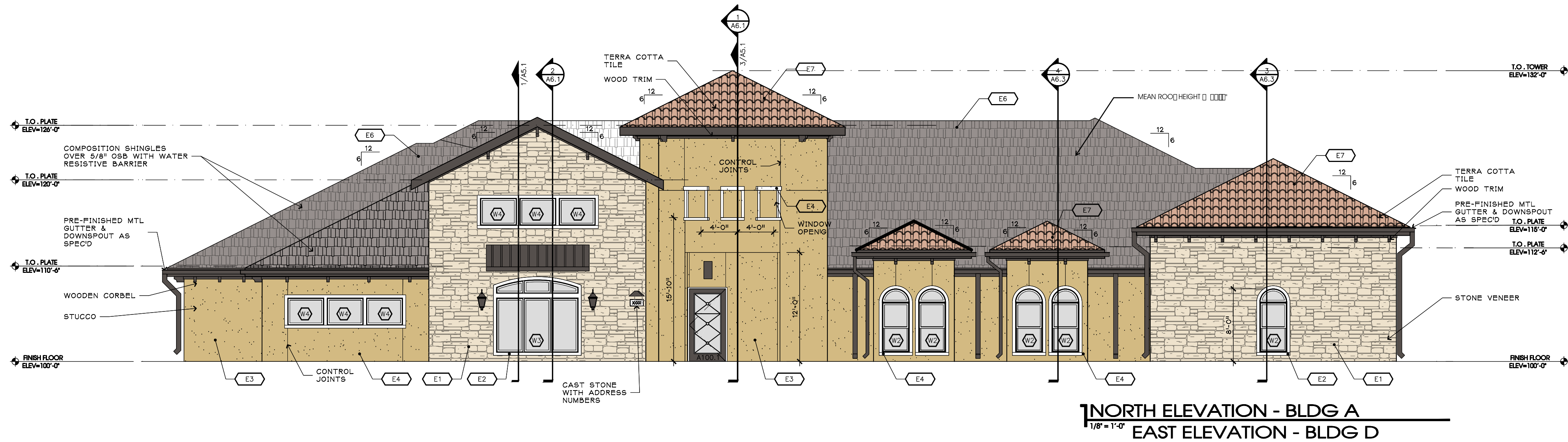
Drawn By: --
Date: 06/21/2021
Scale: #####
Revisions:
08/06/2021
01/12/2021

18261

L2.2

EXTERIOR MATERIAL LEGEND				
ITEM	MATERIAL	MANUFACTURER	COLOR/SIZE	NUMBER
E1	STONE	SALADO QUARRY	SONOMA CAVE	-
E2	CAST STONE	STONE LEGENDS	WHITE	-
E3	STUCCO	-	SHERWIN WILLIAMS GOLDEN FLEECE	SW6388
E4	STUCCO TRIM	-	BENJAMIN MOORE MUSLIN	1037
E5	WOOD TRIM	-	SHERWIN WILLIAMS BLACK BEAN	SW6006
E6	SHINGLE ROOF	CERTAIN TEED	CLASSIC WEATHERED WOOD	-
E7	TERRA COTTA ROOF	BORAL ROOFING	TEJAS ESPANA	-

BUILDINGS A&D	North	South	East	West
1. Total Façade S.F.	2,188 s.f.	1,550 s.f.	1,347 s.f.	1,611 s.f.
2. Façade S.F. (exclusive of doors and windows)	1,919 s.f.	1,188 s.f.	1,135 s.f.	1,392 s.f.
3. Doors and Windows S.F.	269 s.f.	362 s.f.	212 s.f.	219 s.f.
4. Primary Masonry totals (Min. 80%)	1,771 s.f. and 92.3% of 2	977 s.f. and 82.2% of 2	1,006 s.f. and 88.6% of 2	1,258 s.f. and 90.4% of 2
• Stone s.f.	759 s.f. and 39.6% of 2	31 s.f. and 2.5% of 2	109 s.f. and 9.6% of 2	344 s.f. and 24.7% of 2
• *Stucco s.f.	978 s.f. and 51% of 2	946 s.f. and 79.6% of 2	897 s.f. and 79% of 2	884 s.f. and 63.5% of 2
• Cast Stone s.f.	34 s.f. and 1.8% of 2	-	-	30 s.f. and 2.2% of 2
5. Secondary Masonry totals (Max. 20%)	-	-	-	-
Other Materials				
Wood Trim	148 s.f.	211 s.f.	129 s.f.	134 s.f.



NELSON + MORGAN
ARCHITECTS, INC.

Architects
Planners
Interior Design

2717 Wind River Lane, Suite 230
Denton, Texas 76210
Telephone 940.566.0266
Fax 940.566.0223
info@nelsonmorgan.com

TEXAS



NEW CAMPUS FOR

FLOWER MOUND

JOB: NMA19003
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Date: 6/11/2021
Revision:

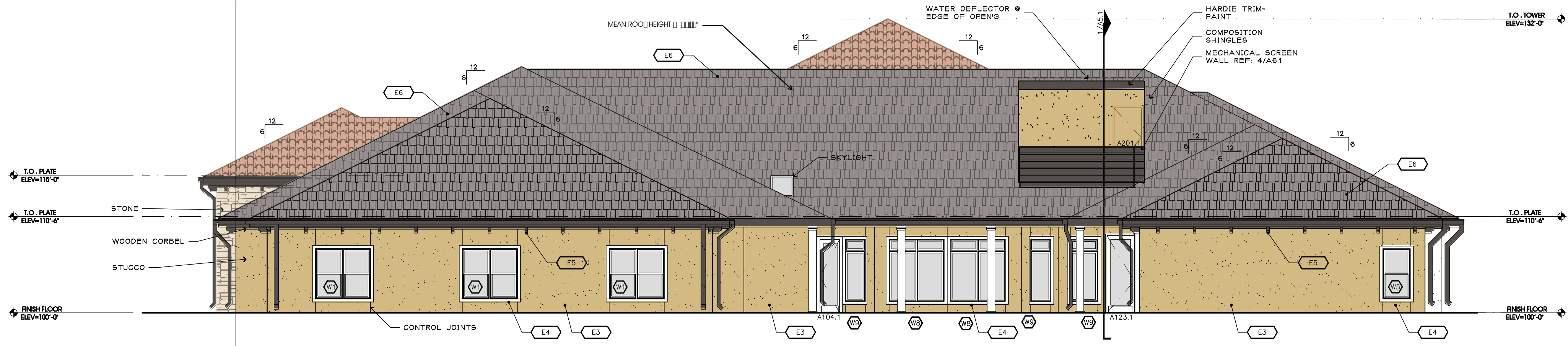
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Review:
Pricing:
Bidding:
Construction:

EXTERIOR ELEV
- BUILDING A&D

SHEET

A3.1

EXTERIOR MATERIAL LEGEND				
ITEM	MATERIAL	MANUFACTURER	COLOR/SIZE	NUMBER
E1	STONE	SALADO QUARRY	SONOMA CAVE	-
E2	CAST STONE	STONE LEGENDS	WHITE	-
E3	STUCCO	-	SHERWIN WILLIAMS GOLDEN FLEECE	SW6388
E4	STUCCO TRIM	-	BENJAMIN MOORE MUSLIN	1037
E5	WOOD TRIM	-	SHERWIN WILLIAMS BLACK BEAN	SW6006
E6	SHINGLE ROOF	CERTAIN TEED	CLASSIC WEATHERED WOOD	-
E7	TERRA COTTA ROOF	BORAL ROOFING	TEJAS ESPANA	-



3 SOUTH ELEVATION - BLDG A
WEST ELEVATION - BLDG D

BUILDINGS A&D		North	South	East	West
1.	Total Façade S.F.	2,188 s.f.	1,550 s.f.	1,347 s.f.	1,611 s.f.
2.	Façade S.F. (exclusive of doors and windows)	1,919 s.f.	1,188 s.f.	1,135 s.f.	1,392 s.f.
3.	Doors and Windows S.F.	269 s.f.	362 s.f.	212 s.f.	219 s.f.
4.	Primary Masonry totals (Min. 80%)	1,771 s.f. and 92.3% of 2	977 s.f. and 82.2% of 2	1,006 s.f. and 88.6% of 2	1,258 s.f. and 90.4% of 2
	• Stone s.f.	759 s.f. and 39.6% of 2	31 s.f. and 2.5% of 2	109 s.f. and 9.6% of 2	344 s.f. and 24.7% of 2
	• *Stucco s.f.	978 s.f. and 51% of 2	946 s.f. and 79.6% of 2	897 s.f. and 79% of 2	884 s.f. and 63.5% of 2
	• Cast Stone s.f.	34 s.f. and 1.8% of 2	-	-	30 s.f. and 2.2% of 2
5.	Secondary Masonry totals (Max. 20%)	-	-	-	-
	Other Materials				
	Wood Trim	148 s.f.	211 s.f.	129 s.f.	134 s.f.



NEW CAMPUS FOR

FLOWER MOUND

JOB: NMA19003
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Date: 6/11/2021
Revisions:

Issued for: _____ Date: _____
Review - _____
Pricing - _____
Bidding - _____
Construction - _____

EXTERIOR ELEV
- BUILDING A&D

SHEET

A3.2

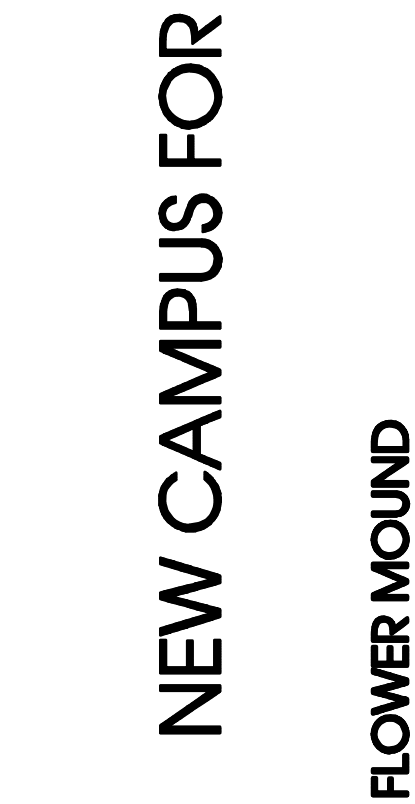
Architectural elevation drawing of a house. The drawing shows the roof, exterior walls, windows, and doors. Key features and labels include:

- Roof:** Composition shingles over 5/8" OSB with water resistive barrier. Mean roof height is indicated. Roof pitch is shown as 12/6.
- Exterior Walls:** Wooden corbel and stucco. Control joints are marked.
- Windows:** Four multi-paned windows, each labeled with a window type (W1, W2, W3, W4).
- Doors:** Two doors, labeled A108.1 and A128.1.
- Other Features:** A chimney on the right side, labeled with a chimney type (C1). A small square window is labeled with a window type (W5).
- Elevation Markers:** TO PLATE ELEV=110'-0" and FINISH FLOOR ELEV=100'-0".

This architectural floor plan depicts a complex building layout with various rooms and corridors. Key features include:

- Rooms and Spaces:** The plan shows a variety of rooms, including classrooms or lecture halls (e.g., A121.1, A121.2, A122.1, A122.2), a library (A123.1), a therapy room (A123.2), a music room (A123.3), a plan room (A123.4), a storage room (A123.5), a rest room (A123.6), a janitor's closet (A123.7), a storage room (A123.8), a storage room (A123.9), a storage room (A123.10), a storage room (A123.11), a storage room (A123.12), a storage room (A123.13), a storage room (A123.14), a storage room (A123.15), a storage room (A123.16), a storage room (A123.17), a storage room (A123.18), a storage room (A123.19), a storage room (A123.20), a storage room (A123.21), a storage room (A123.22), a storage room (A123.23), a storage room (A123.24), a storage room (A123.25), a storage room (A123.26), a storage room (A123.27), a storage room (A123.28), a storage room (A123.29), a storage room (A123.30), a storage room (A123.31), a storage room (A123.32), a storage room (A123.33), a storage room (A123.34), a storage room (A123.35), a storage room (A123.36), a storage room (A123.37), a storage room (A123.38), a storage room (A123.39), a storage room (A123.40), a storage room (A123.41), a storage room (A123.42), a storage room (A123.43), a storage room (A123.44), a storage room (A123.45), a storage room (A123.46), a storage room (A123.47), a storage room (A123.48), a storage room (A123.49), a storage room (A123.50), a storage room (A123.51), a storage room (A123.52), a storage room (A123.53), a storage room (A123.54), a storage room (A123.55), a storage room (A123.56), a storage room (A123.57), a storage room (A123.58), a storage room (A123.59), a storage room (A123.60), a storage room (A123.61), a storage room (A123.62), a storage room (A123.63), a storage room (A123.64), a storage room (A123.65), a storage room (A123.66), a storage room (A123.67), a storage room (A123.68), a storage room (A123.69), a storage room (A123.70), a storage room (A123.71), a storage room (A123.72), a storage room (A123.73), a storage room (A123.74), a storage room (A123.75), a storage room (A123.76), a storage room (A123.77), a storage room (A123.78), a storage room (A123.79), a storage room (A123.80), a storage room (A123.81), a storage room (A123.82), a storage room (A123.83), a storage room (A123.84), a storage room (A123.85), a storage room (A123.86), a storage room (A123.87), a storage room (A123.88), a storage room (A123.89), a storage room (A123.90), a storage room (A123.91), a storage room (A123.92), a storage room (A123.93), a storage room (A123.94), a storage room (A123.95), a storage room (A123.96), a storage room (A123.97), a storage room (A123.98), a storage room (A123.99), a storage room (A123.100).
- Corridors and Entrances:** The plan shows a network of corridors and entrances, including a main entrance (A121.1) and a side entrance (A121.2).
- Structural Details:** The plan includes numerous dimensions and annotations, such as "13'-0\"/>

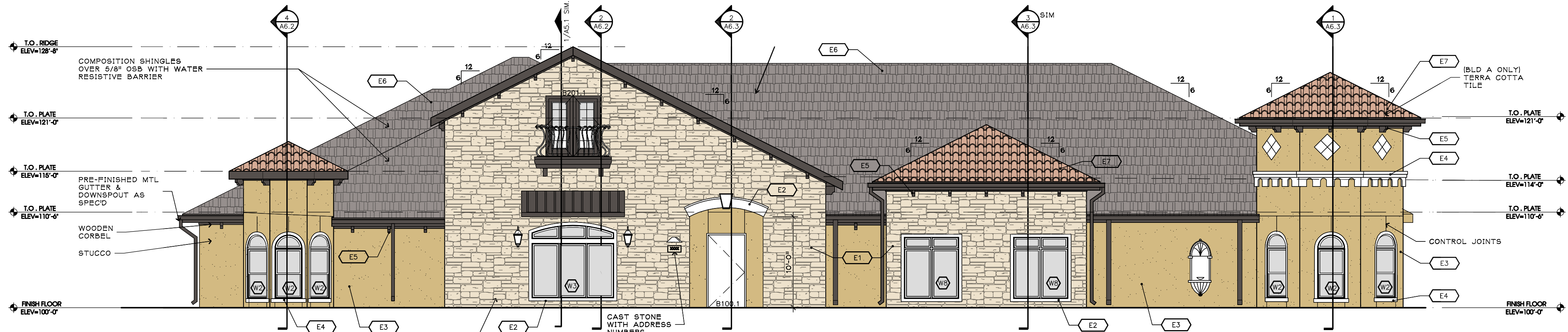
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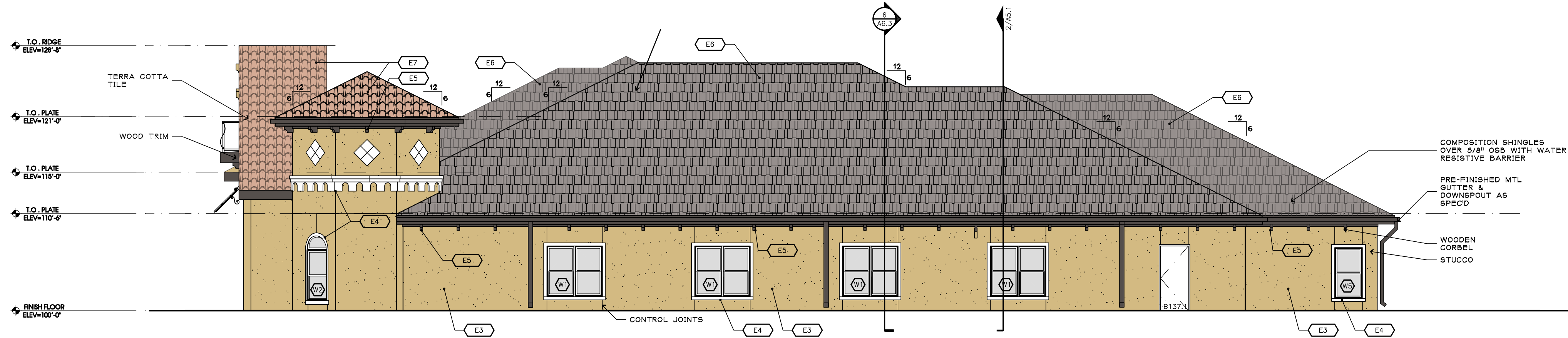
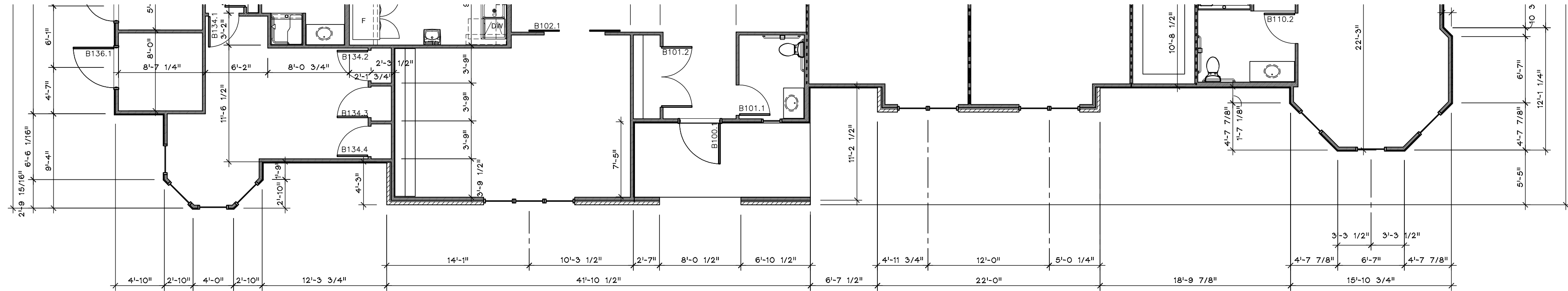
SHEET
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EXTERIOR MATERIAL LEGEND				
ITEM	MATERIAL	MANUFACTURER	COLOR/SIZE	NUMBER
E1	STONE	SALADO QUARRY	SONOMA CAVE	-
E2	CAST STONE	STONE LEGENDS	WHITE	-
E3	STUCCO	-	SHERWIN WILLIAMS GOLDEN FLEECE	SW6388
E4	STUCCO TRIM	-	BENJAMIN MOORE MUSLIN	1037
E5	WOOD TRIM	-	SHERWIN WILLIAMS BLACK BEAN	SW6006
E6	SHINGLE ROOF	CERTAIN TEED	CLASSIC WEATHERED WOOD	-
E7	TERRA COTTA ROOF	BORAL ROOFING	TEJAS ESPANA	-

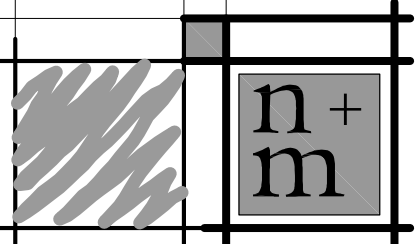
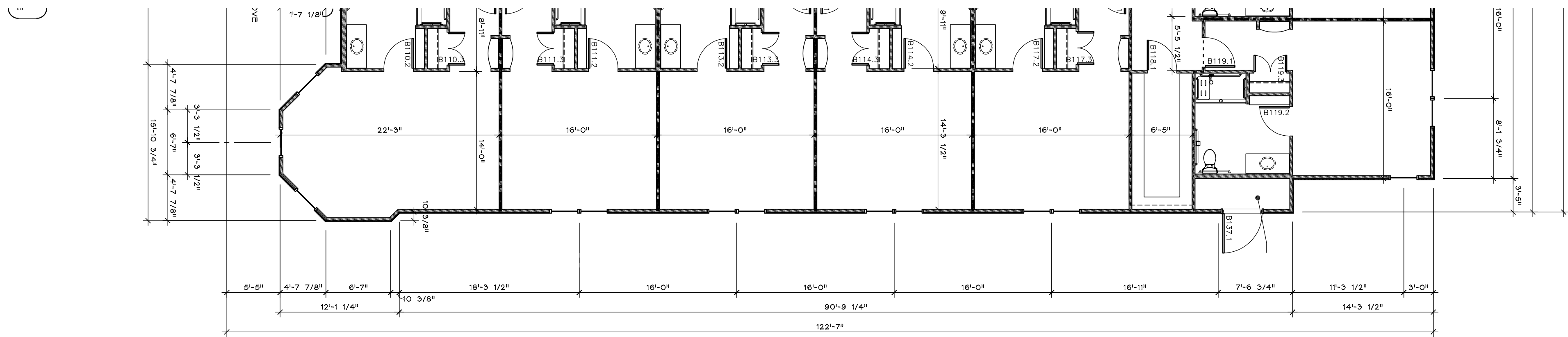
BUILDINGS B&C	North	South	East	West
1. Total Façade S.F.	1,602 s.f.	2,192 s.f.	1,447 s.f.	1,318 s.f.
2. Façade S.F. (exclusive of doors and windows)	1,283 s.f.	1,887 s.f.	1,255 s.f.	1,063 s.f.
3. Doors and Windows S.F.	319 s.f.	305 s.f.	192 s.f.	255 s.f.
4. Primary Masonry totals (Min. 80%)	1,066 s.f. and 83% of 2	1,751 s.f. and 92.8% of 2	1,124 s.f. and 89.6% of 2	941 s.f. and 88.5% of 2
• Stone s.f.	-	686 s.f. and 36.4% of 2	-	-
• Stucco s.f.	1,066 s.f. and 83% of 2	1,038 s.f. and 55% of 2	1,124 s.f. and 89.6% of 2	941 s.f. and 88.5% of 2
• Cast Stone s.f.	-	27 s.f. and 1.4% of 2	-	-
5. Secondary Masonry totals (Max. 20%)	-	-	-	-
Other Materials				
Wood Trim	217 s.f.	136 s.f.	131 s.f.	122 s.f.



1 SOUTH ELEVATION - BLDG B
1/8" = 1'-0"
NORTH ELEVATION - BLDG C



3 EAST ELEVATION - BLDG B-TYPE B
1/8" = 1'-0"
WEST ELEVATION - BLDG C



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NEW CAMPUS FOR

FLOWER MOUND

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Date: 6/11/2021
Revision:

Issued for: Date:
Review -
Pricing -
Bidding -
Construction -

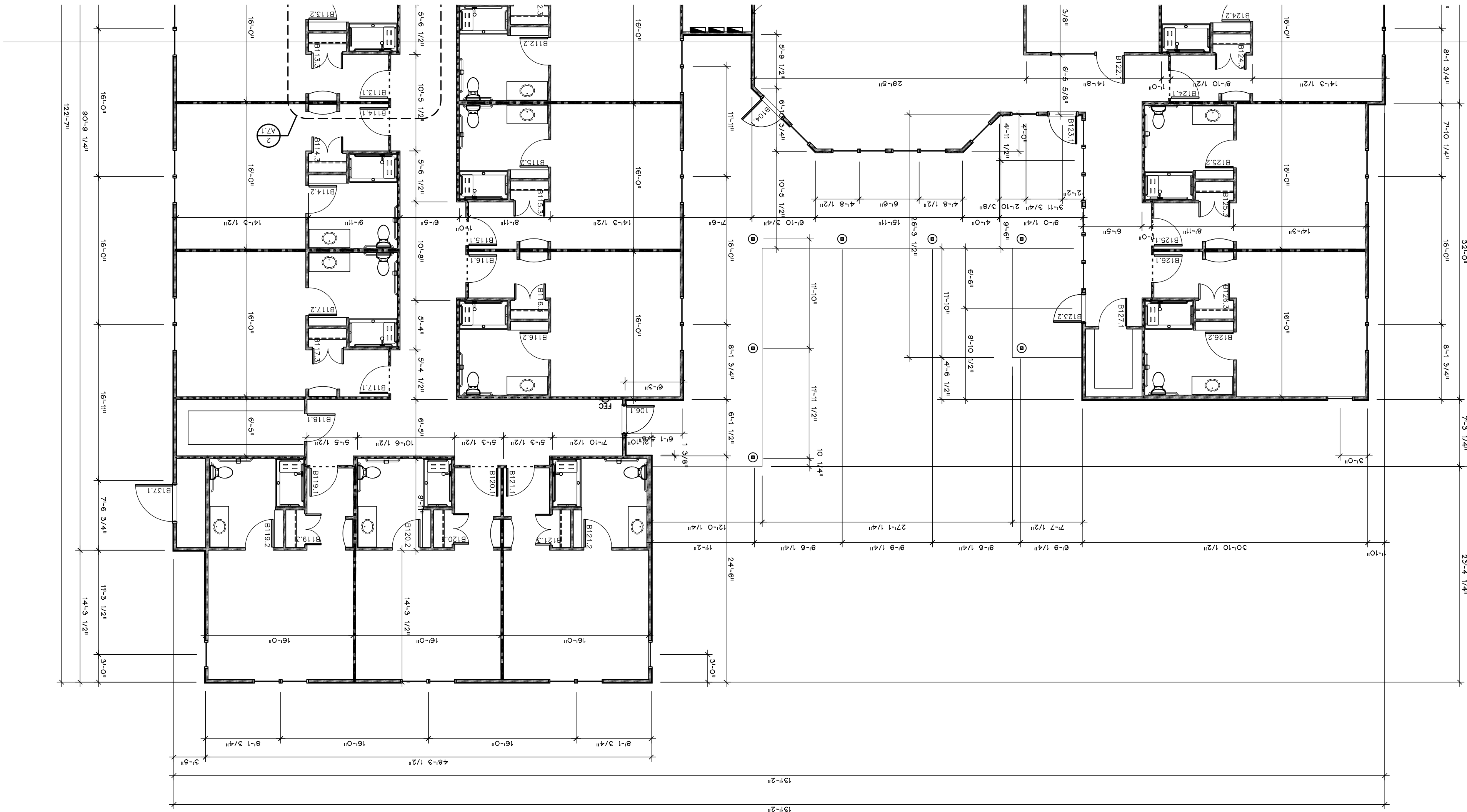
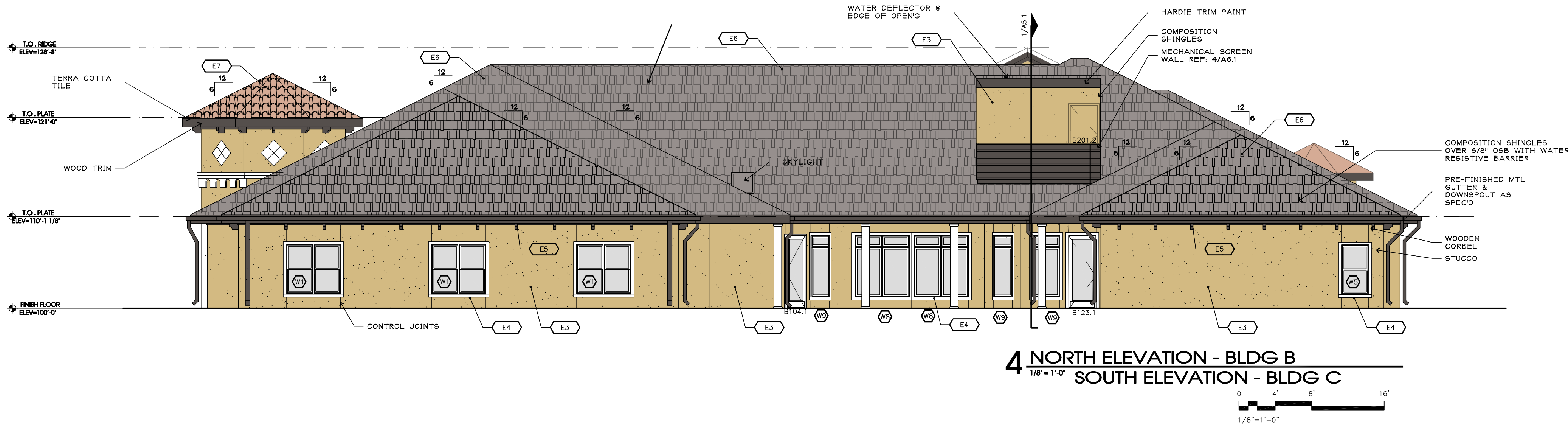
EXTERIOR ELEVATIONS
- BUILDING B&C

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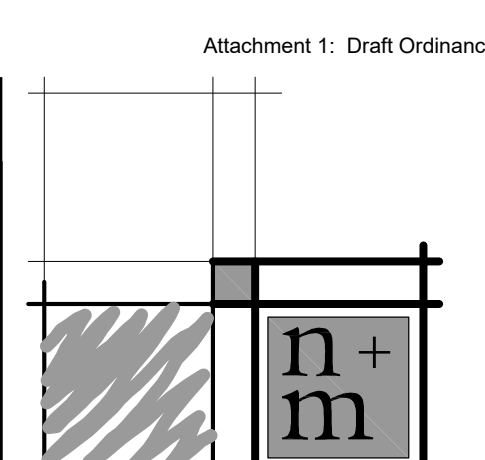
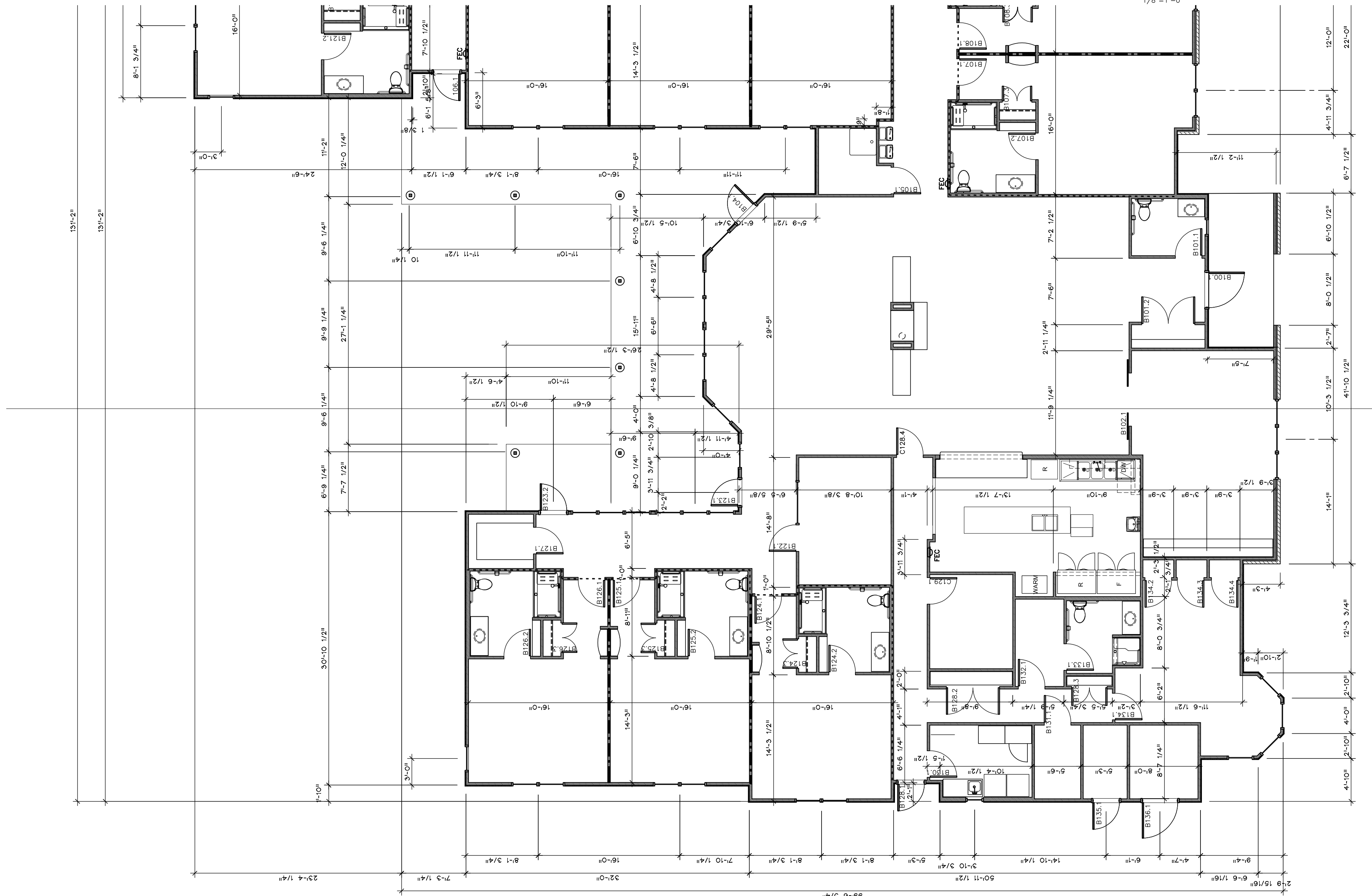
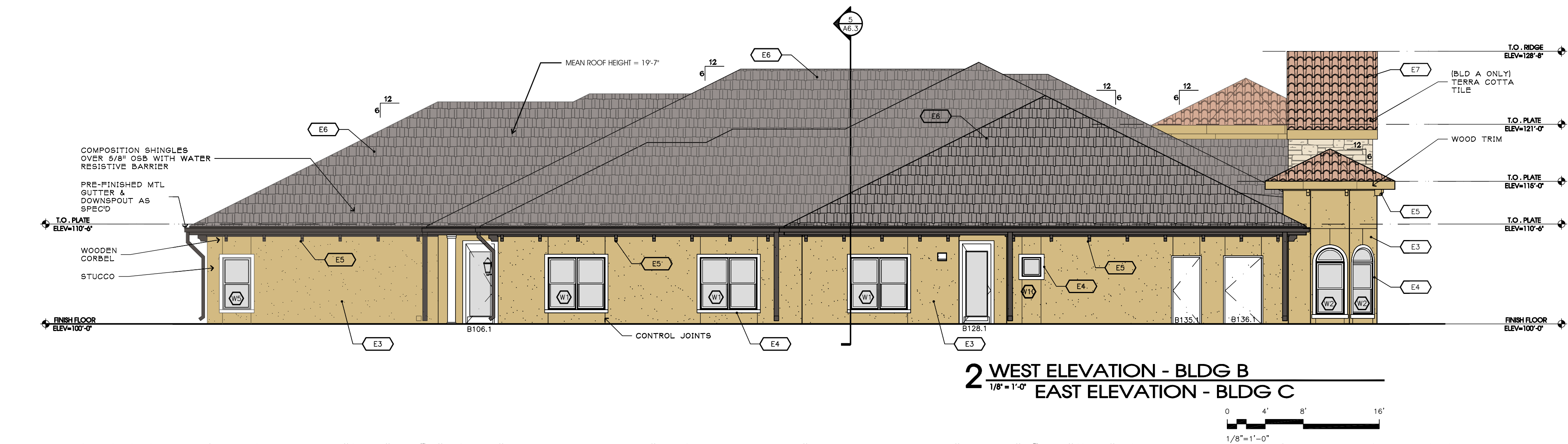
EXTERIOR MATERIAL LEGEND				
ITEM	MATERIAL	MANUFACTURER	COLOR/SIZE	NUMBER
E1	STONE	SALADO QUARRY	SONOMA CAVE	-
E2	CAST STONE	STONE LEGENDS	WHITE	-
E3	STUCCO	-	SHERWIN WILLIAMS GOLDEN FLEECE	SW6388
E4	STUCCO TRIM	-	BENJAMIN MOORE MUSLIN	1037
E5	WOOD TRIM	-	SHERWIN WILLIAMS BLACK BEAN	SW6006
E6	SHINGLE ROOF	CERTAIN TEED	CLASSIC WEATHERED WOOD	-
E7	TERRA COTTA ROOF	BORAL ROOFING	TEJAS ESPANA	-

BUILDINGS B&C	North	South	East	West
1. Total Façade S.F.	1,602 s.f.	2,192 s.f.	1,447 s.f.	1,318 s.f.
2. Façade S.F. (exclusive of doors and windows)	1,283 s.f.	1,887 s.f.	1,255 s.f.	1,063 s.f.
3. Doors and Windows S.F.	319 s.f.	305 s.f.	192 s.f.	255 s.f.
4. Primary Masonry totals (Min. 80%)	1,066 s.f. and 83% of 2	1,751 s.f. and 92.8% of 2	1,124 s.f. and 89.6% of 2	941 s.f. and 88.5% of 2
• Stone s.f.	-	686 s.f. and 36.4% of 2	-	-
• *Stucco s.f.	1,066 s.f. and 83% of 2	1,038 s.f. and 55% of 2	1,124 s.f. and 89.6% of 2	941 s.f. and 88.5% of 2
• Cast Stone s.f.	-	27 s.f. and 1.4% of 2	-	-
5. Secondary Masonry totals (Max. 20%)	-	-	-	-
Other Materials				
Wood Trim	217 s.f.	136 s.f.	131 s.f.	122 s.f.



EXTERIOR MATERIAL LEGEND				
ITEM	MATERIAL	MANUFACTURER	COLOR/SIZE	NUMBER
E1	STONE	SALADO QUARRY	SONOMA CAVE	-
E2	CAST STONE	STONE LEGENDS	WHITE	-
E3	STUCCO	-	SHERWIN WILLIAMS GOLDEN FLEECE	SW6388
E4	STUCCO TRIM	-	BENJAMIN MOORE MUSLIN	1037
E5	WOOD TRIM	-	SHERWIN WILLIAMS BLACK BEAN	SW6006
E6	SHINGLE ROOF	CERTAIN TEED	CLASSIC WEATHERED WOOD	-
E7	TERRA COTTA ROOF	BORAL ROOFING	TEJAS ESPANA	-

BUILDINGS B&C		North	South	East	West
1.	Total Façade S.F.	1,602 s.f.	2,192 s.f.	1,447 s.f.	1,318 s.f.
2.	Façade S.F. (exclusive of doors and windows)	1,283 s.f.	1,887 s.f.	1,255 s.f.	1,063 s.f.
3.	Doors and Windows S.F.	319 s.f.	305 s.f.	192 s.f.	255 s.f.
4.	Primary Masonry totals (Min. 80%)	1,066 s.f. and 83% of 2	1,751 s.f. and 92.8% of 2	1,124 s.f. and 89.6% of 2	941 s.f. and 88.5% of 2
	• Stone s.f.	-	686 s.f. and 36.4% of 2	-	-
	• *Stucco s.f.	1,066 s.f. and 83% of 2	1,038 s.f. and 55% of 2	1,124 s.f. and 89.6% of 2	941 s.f. and 88.5% of 2
	• Cast Stone s.f.	-	27 s.f. and 1.4% of 2	-	-
5.	Secondary Masonry totals (Max. 20%)	-	-	-	-
	Other Materials				
	Wood Trim	217 s.f.	136 s.f.	131 s.f.	122 s.f.



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MAGNOLIA
Assisted Living

NEW CAMPUS FOR
FLOWER MOUND

JOB: NMA19003

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Date: 6/11/2021
Revision:

Issued for: Review -
Review -
Bidding -
Construction -

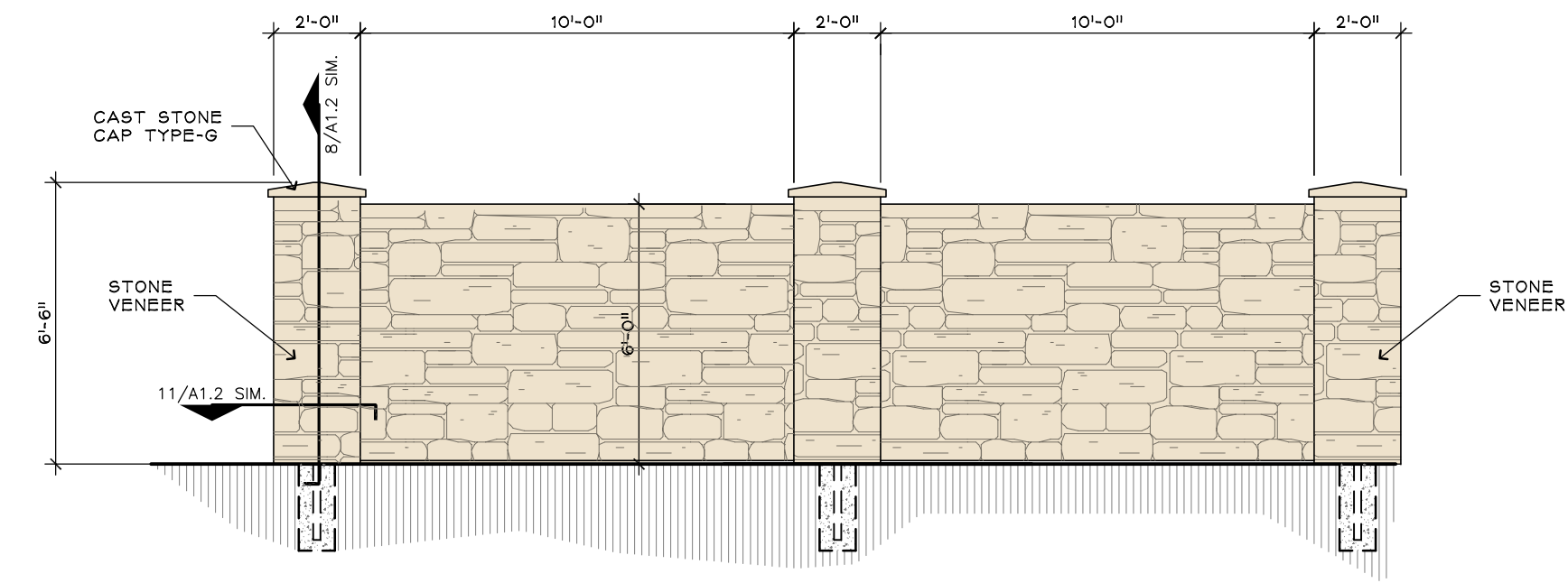
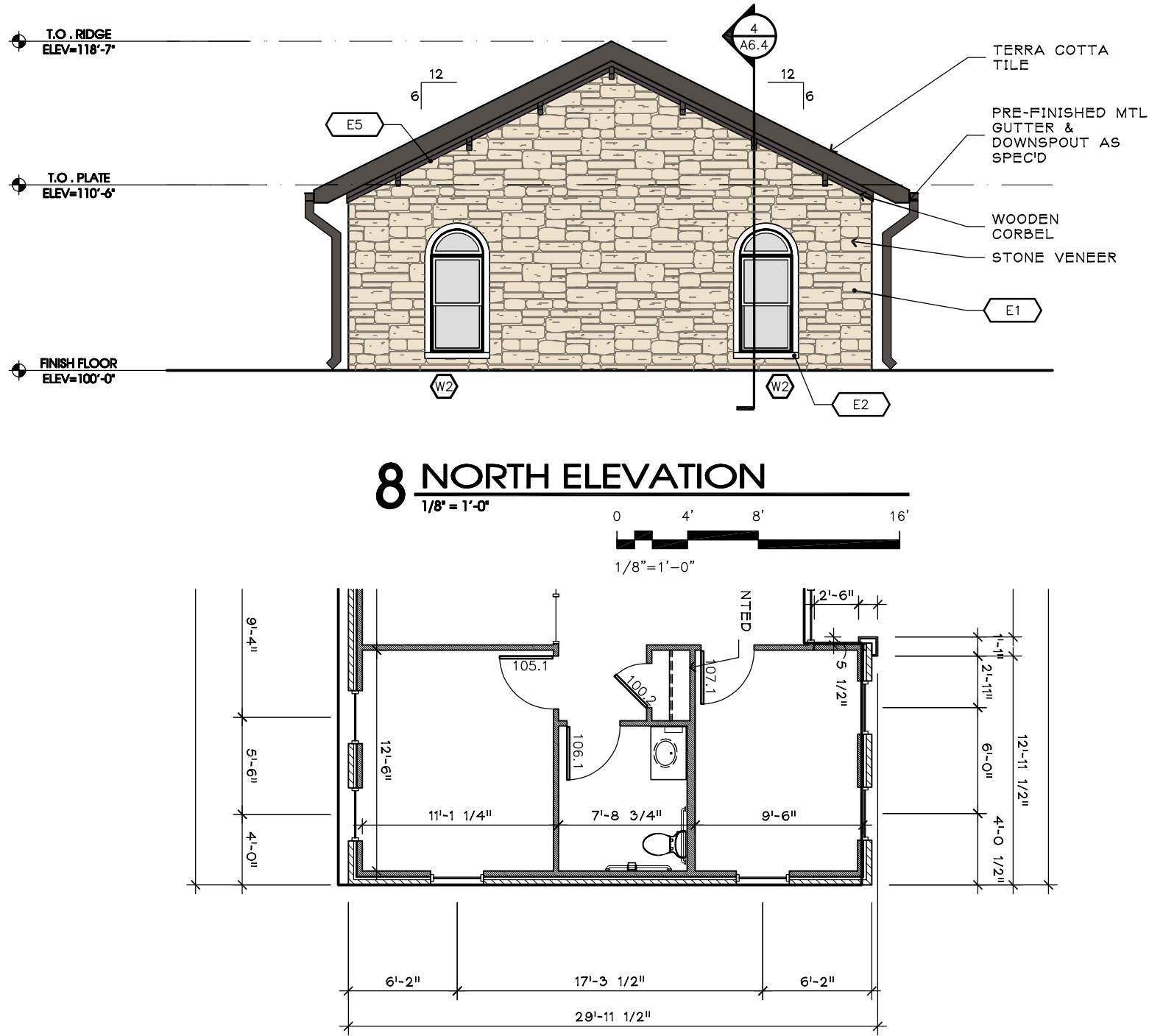
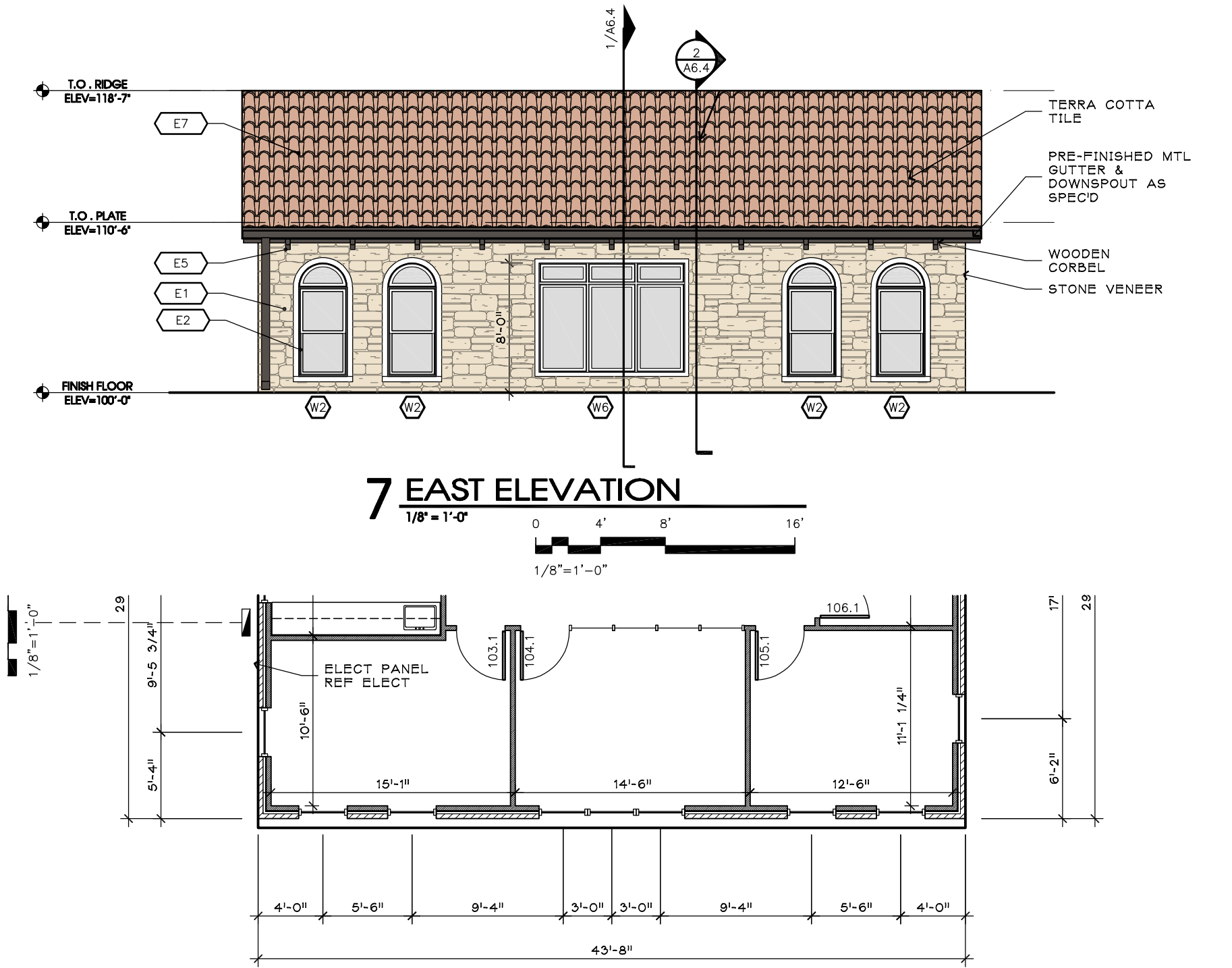
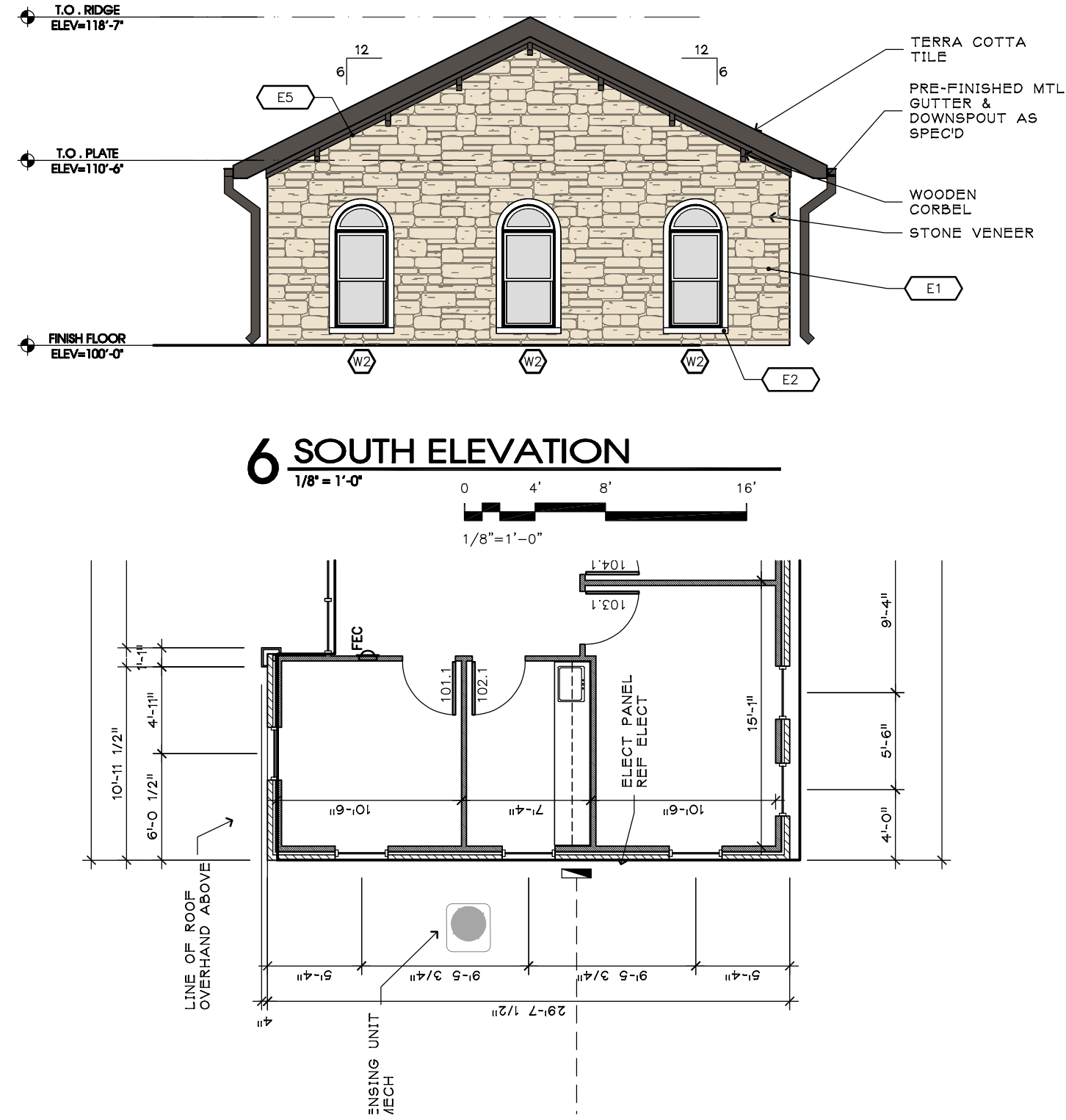
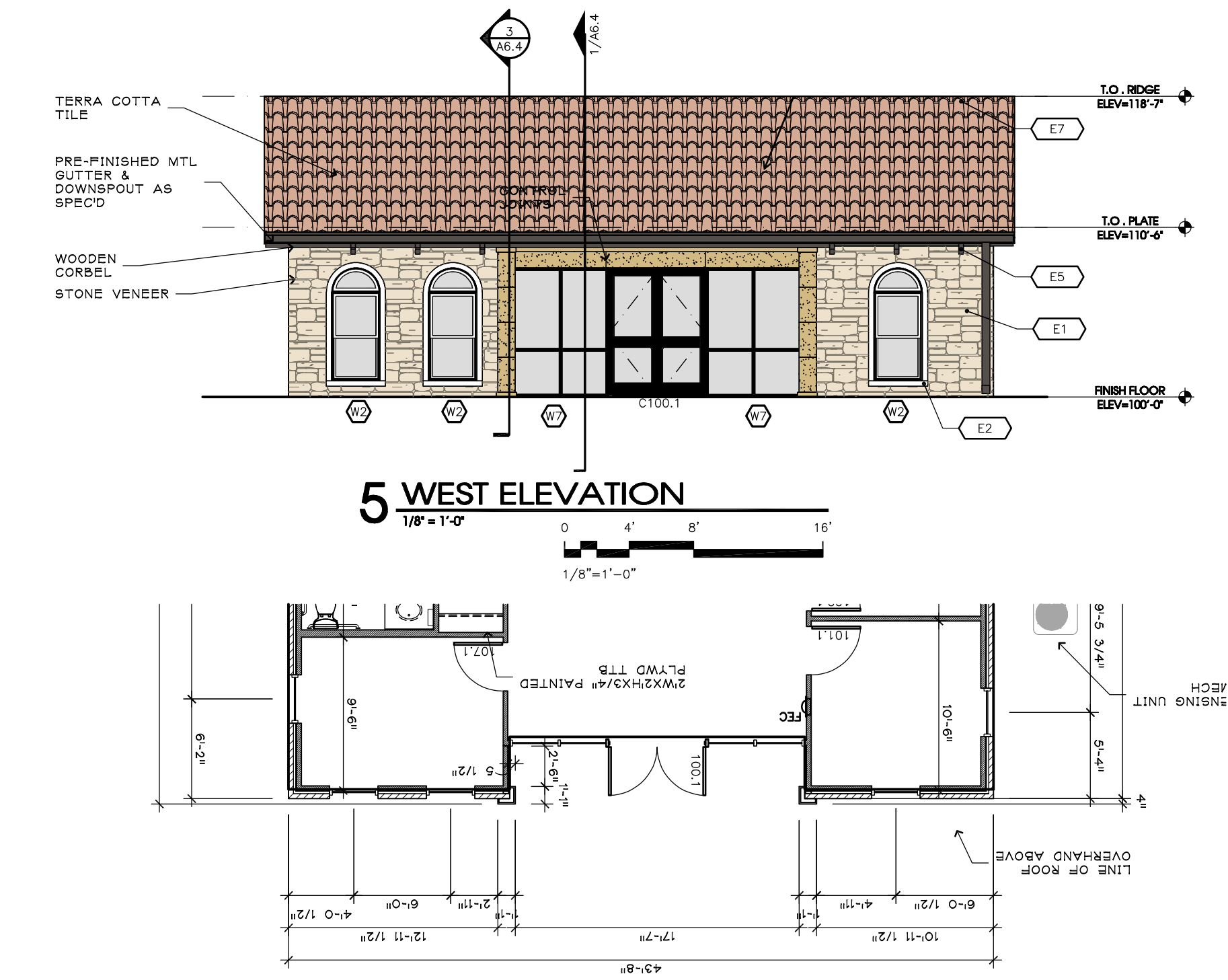
Date:

EXTERIOR ELEVATIONS
- BUILDING B&C

SHEET

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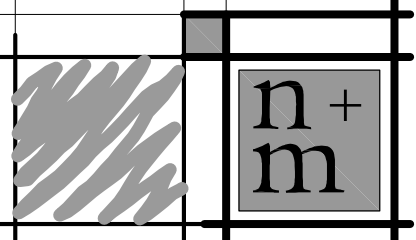
EXTERIOR MATERIAL LEGEND				
ITEM	MATERIAL	MANUFACTURER	COLOR/SIZE	NUMBER
E1	STONE	SALADO QUARRY	SONOMA CAVE	-
E2	CAST STONE	STONE LEGENDS	WHITE	-
E5	WOOD TRIM	-	SHERWIN WILLIAMS BLACK BEAN	SW6006
E7	TERRA COTTA ROOF	BORAL ROOFING	TEJAS ESPANA	-



3 PERIMETER FENCE ELEVATION
1/4" = 1'-0" TYPE-A

	OFFICE	North	South	East	West
1.	Total Façade S.F.	447 s.f.	447 s.f.	447 s.f.	447 s.f.
2.	Façade S.F. (exclusive of doors and windows)	407 s.f.	387 s.f.	306 s.f.	241 s.f.
3.	Doors and Windows S.F.	40 s.f.	60 s.f.	141 s.f.	206 s.f.
4.	Primary Masonry totals (Min. 80%)	353 s.f. and 86.7% of 2	333 s.f. and 86% of 2	262 s.f. and 85.6% of 2	197 s.f. and 81.7% of 2
	• Stone s.f.	339 s.f. and 83.3% of 2	312 s.f. and 80.6% of 2	226 s.f. and 73.9% of 2	141 s.f. and 58.5% of 2
	• *Stucco s.f.	-	-	-	35 s.f. and 14.5% of 2
	• Cast Stone s.f.	14 s.f. and 3.4% of 2	21 s.f. and 5.4% of 2	36 s.f. and 11.8% of 2	21 s.f. and 8.7% of 2
5.	Secondary Masonry totals (Max. 20%)	-	-	-	-
	Other Materials	-	-	-	-
	Wood Trim	54 s.f.	54 s.f.	44 s.f.	44 s.f.

1. All retaining/detaining walls, turn down curbs, tree retaining walls shall be clad in a material to match the material of the building.
2. 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.
3. All electrical panels and associated components shall be painted/textured to match the color of the building.
4. Dumpster screening wall requires a separate building permit
5. Signs require a separate building permit. Any signs depicted on the subject site plan / elevations are not approved as part of this review and must comply with all applicable town regulations
6. The conceptual Site Plan provides for four residential buildings. The architecture, design, colors, and construction of all subsequent buildings will substantially conform to the elevations depicted on this plan.



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NEW CAMPUS FOR
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Date: 6/11/2021
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EXTERIOR ELEVATIONS
- OFFICE

SHEET
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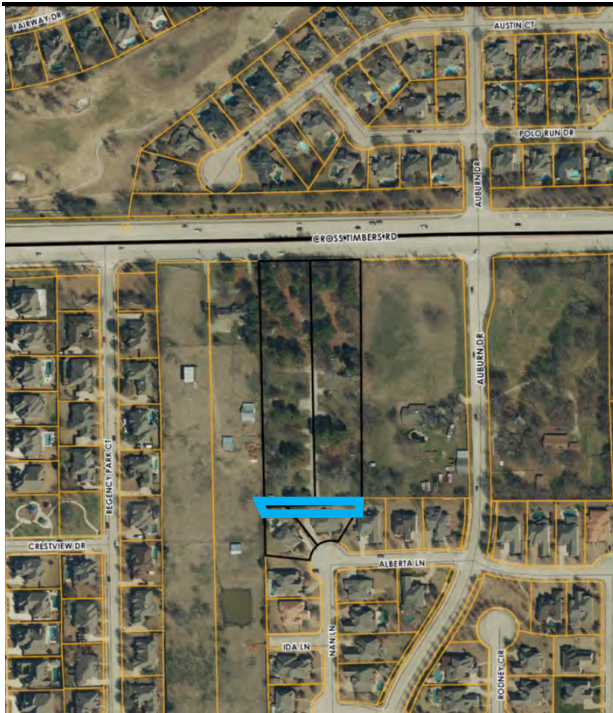
TOWN COUNCIL AGENDA ITEM NO. 14

REGULAR ITEM

DATE: March 7, 2022

FROM: Chuck Russell, Principal Planner

ITEM: Public Hearing to consider an ordinance amending the zoning (Z22-0001 – Flower Mound Woods Block D, Lots 3R & 4R) from Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility to Single Family District-15 (SF-15) uses. The property is generally located north and west of Nan Lane and Alberta Lane. *(On February 28, 2022, the Planning and Zoning Commission recommended approval by a vote of 6 to 0.)*



SUMMARY DATA:

- Lot Size – 3,537 square feet
- Proposed Zoning – Single Family District-15 (SF-15) uses
- Proposed Buildings – No new buildings, land is being added to two existing single-family lots.
- SMARTGrowth – Passed
- Traffic Analysis – N/A
- Exceptions – N/A
- Incentives – N/A

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

ATTACHMENTS:

1. Draft Ordinance
2. [Planning and Zoning Commission Staff Report Link](#)

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.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE FLOWER MOUND CODE BY CHANGING THE ZONING ON APPROXIMATELY 3,537 SQUARE FEET OF LAND SITUATED IN THE PERRY MALONE SURVEY, ABSTRACT NO. 836, FROM PLANNED DEVELOPMENT DISTRICT NO. 173 (PD-173) WITH AGRICULTURAL DISTRICT (A) USES AND A NURSING OR CONGREGATE CARE FACILITY TO SINGLE FAMILY-15 (SF-15) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as approximately 3,537 square feet of land situated in the Perry Malone Survey, Abstract No. 836, Denton County, Texas, have filed an application to change the zoning from Planned Development District-173 (PD-173) with Agricultural District (A) uses and a nursing or congregate care facility to Single Family District-15 (SF-15) uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on February 28, 2022, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 7, 2022, with respect to the proposed rezoning as described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a rezoning on the property; and,

WHEREAS, the Town Council finds that amendment of the Zoning Map as outlined herein is in the best interest of the Town of Flower Mound and will promote the health,

ORDINANCE NO. _____**Page 2**

safety, and general welfare of the citizens of the Town of Flower Mound and the general public;

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

SECTION 1

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:

Approximately 3,537 square feet of land situated in the Perry Malone Survey, Abstract No. 836, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Single Family-15 (SF-15) uses as depicted in the zoning exhibit attached as Exhibit "B" hereto.

SECTION 2

The official map of the Town of Flower Mound is amended and the Executive Director of Development Services is directed to revise the official Zoning Map to reflect the approved zoning, as set forth above.

SECTION 3

This Ordinance shall be cumulative of all provisions of ordinances and of the Flower Mound Code 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

ORDINANCE NO. _____**Page 3**

Section 1-13 of the Flower Mound Code. 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.

SECTION 7

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

SECTION 8

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 7TH DAY OF MARCH, 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

Being a 0.0812 acre tract of land situated in the Perry Malone Survey, Abstract No. 836, Town of Flower Mound, Denton County, Texas, and being a portion of a called 4.367 acre tract of land described in the deed to Montgomery Capital Partners II, LP recorded in Document No. 2021-36733 of the Official Records of Denton County, Texas, 0.0812 acre tract of land being more particularly described by metes and bounds as follows:

BEGINNING at a 3/8 inch iron rod found for the common southwest corner of a called 5.2185 acre tract of land described in the deed to Gary Johnson recorded in Document No. 99-R012887 of said Official Records of Denton County, Texas and northwest corner of Lot 5, Block D of Flower Mound Woods, an addition to the Town of Flower Mound, Denton County, Texas recorded in Document No. 2009-228 of the Plat Records of Denton County, Texas, said 3/8 inch iron rod also being in the east line of said 4.367 acre tract of land;

THENCE South 01 degree 53 minutes 57 seconds East, with the common east line of said 4.367 acre tract of land and west line of said Lot 5, a distance of 12.92 feet to a 1/2 inch iron rod found for the common southeast corner of said 4.367 acre tract of land and northeast corner of Lot 4R, Block D of Lots 1R Through 4R, Block D and Lots 1R Through 3R, Block E, Flower Mound Woods, an addition to the Town of Flower Mound, Denton County, Texas recorded in Document No. 2010-94 of said Plat Records of Denton County, Texas;

THENCE South 87 degrees 49 minutes 33 seconds West, with the common south line of said 4.367 acre tract of land and north line of said Lot 4, passing at a distance of 219.29 feet, a 1/2 inch iron rod with cap stamped "Arthur Surveying" found for the common northwest corner of said Lot 4R and northeast corner of Lot 3R, Block D of said Flower Mound Woods, in all, a distance of 273.85 feet to a 1/2 inch iron rod with cap stamped "Arthur Surveying" found for the common southwest corner of said 4.367 acre tract of land and northwest corner of said Lot 3R, said 1/2 inch iron rod with cap stamped "Arthur Surveying" also being in the east line of a called 4.952 acre tract of land described in the deed to Rembert Enterprises, Inc. recorded in Document No. 2020-199723 of said Official Records of Denton County, Texas;

THENCE North 01 degree 07 minutes 11 seconds West, with the common west line of said 4.367 acre tract of land and east line of said 4.952 acre tract of land, a distance of 12.92 feet to a 1/2 inch iron rod with cap stamped "1519 Surveying" set for corner;

THENCE North 87 degrees 49 minutes 33 seconds East, a distance of 273.68 feet to the **POINT OF BEGINNING** and containing 3,537 square feet or 0.0812 acres of land.



TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: March 7, 2022

FROM: Poornima Kashyap, Principal Planner

ITEM: **Public Hearing** to consider an ordinance amending the zoning (Z21-0009- Flower Mound Ranch Prairie Vista) from Interim Holding (IH) uses to Single Family-Estate (SF-E) uses. The property is generally located north of Cross Timbers Road and east of U.S. Hwy. 377. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)*



SUMMARY DATA:

- Size – 543.861 acres
- Proposed Zoning – SF-E (Single-Family Estate)
- Proposed Density – Estate Residential, as designated in the Master Plan
- SMARTGrowth – Passed
- Traffic Analysis – To be completed at the time of Development Plan application
- Exceptions – None requested
- Incentives – N/A

BACKGROUND INFORMATION: Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item.

ATTACHMENTS:

1. Draft Ordinance
2. [Planning and Zoning Commission Staff Report Link](#)

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.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE FLOWER MOUND CODE BY CHANGING THE ZONING ON APPROXIMATELY 543.816 ACRES OF LAND SITUATED IN THE B.B.B. & C. RAILWAY CO. SURVEY, ABSTRACT NO. 154, THE .B.B. & C. RAILWAY CO. SURVEY, ABSTRACT NO. 187, J.N. DENSON SURVEY, ABSTRACT NO. 359, AND THOMAS BURRESS SURVEY, ABSTRACT NO. 33, FROM INTERIM HOLDING (IH) USES TO SINGLE FAMILY-ESTATE (SF-E) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

WHEREAS, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as 543.816 acres of land situated in the B.B.B. & C. Railway Co. Survey, Abstract No. 154, the .B.B. & C. Railway Co. Survey, Abstract No. 187, J.N. Denson Survey, Abstract No. 359, and the Thomas Burress Survey, Abstract No. 33, Town of Flower Mound, Denton County, Texas, have filed an application to change the zoning from Interim Holding (IH) to Single Family-Estate (SF-E) uses; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on February 28, 2022, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 7, 2022, with respect to the proposed rezoning as described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a rezoning on the property; and,

ORDINANCE NO. _____

Page 2

WHEREAS, the Town Council finds that amendment of the Zoning Map as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public;

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

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:

543.816 acres of land situated in the B.B.B. & C. Railway Co. Survey, Abstract No. 154, the .B.B. & C. Railway Co. Survey, Abstract No. 187, the J.N. Denson Survey, Abstract No. 359, and the Thomas Burrell Survey, Abstract No. 33, Town of Flower Mound, Denton County, Texas, and more fully described in Exhibit "A" hereto.

Single Family-Estate (SF-E) uses as depicted in the zoning exhibit attached as Exhibit "B" hereto.

SECTION 2

The official map of the Town of Flower Mound is amended and the Executive Director of Development Services is directed to revise the official Zoning Map to reflect the approved zoning, as set forth above.

SECTION 3

This Ordinance shall be cumulative of all provisions of ordinances and of the Flower Mound Code 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

ORDINANCE NO. _____

Page 3

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 Flower Mound Code. 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.

SECTION 7

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

SECTION 8

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 7TH DAY OF MARCH, 2022.

APPROVED:

Derek France, MAYOR

ORDINANCE NO. _____

Page 4

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT "A" - LEGAL DESCRIPTION

LEGAL DESCRIPTION

134.453 Acres

Being all that certain lot, tract, or parcel of land situated in the Thomas Burress Survey, Abstract Number 33, Town of Flower Mound, Denton County, Texas, and being part of that certain called 1129.061 acre tract of land described as Tract A in deed in favor of Old W.R. Ranch I, LP, recorded in Volume 4583, Page 569 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2" rebar found at the most northerly northeast corner of said 1129.061 acre tract, and being the southeast corner of that certain called 37.245 acre tract of land described in deed in favor of John D. Furst recorded in Volume 4348, Page 3294 of the Real Property Records of Denton County, Texas, and being on the west line of that certain called 131.307 acre tract of land described in deed in favor of John D. Furst recorded in Volume 4348, Page 3306 of the Real Property Records of Denton County, Texas;

THENCE S 00°28'10" E, with the common line between said 1129.061 acre tract and said 131.307 acre tract, passing at 706.45 feet a 1/2" rebar found at the base of a cross tie fence corner at the southwest corner of said 131.307 acre tract, being the westerly northwest corner of that certain called 72.7 acre tract of land described in deed in favor of Emory Norman Hacker and Delbert Marshall Hacker recorded in Volume 398, Page 337 of the Deed Records of Denton County, Texas, continuing with the west line thereof passing at 1600.45 feet the westerly southwest corner of said 72.7 acre tract, being a salient corner in the north line of said 1129.061 acre tract, continuing a total distance of 3257.44 feet to the north line of that certain called 251.99 acre tract of land described as Tract II in deed in favor of Old WR Ranch I, LP, recorded in Volume 4576, Page 1847 of the Real Property Records of Denton County, Texas;

THENCE N 89°18'15" W, 793.69 feet with the north line of said 251.99 acre tract to a 1/2" rebar found at the most northerly northwest corner thereof, being the northeast corner of that certain called 59.352 acre tract of land described in deed in favor of Orric Freeman and Carole Freeman, Trustees of the Freeman Living Trust, recorded in Document Number 2010-52504 of the Real Property Records of Denton County, Texas;

THENCE S 89°44'45" W, 1320.52 feet with the north line of said 59.352 acre tract to the east line of U. S. Highway 377, being the northeast corner of that certain called 6.74 acre tract of land described in deed in favor of the State of Texas, recorded in Volume 279, Page 277 of the deed records of Denton County, Texas, and the southeast corner of that certain called 0.63 acre tract of land described as Parcel (b) in deed in favor of the State of Texas, recorded in Volume 279, Page 246 of the Deed Records of Denton County, Texas;

THENCE N 44°39'00" W, 216.32 feet with the east line of said U. S. Highway 377 and the east line of said 0.63 acre tract and the west line of said 1129.061 acre tract to the remnants of a broken concrete TXDOT monument found;

THENCE continuing with the east line of said U. S. Highway 377 and the east line of said 0.63 acre tract

and the west line of said 1129.061 acre tract, with a curve to the right having a radius of 2804.80 feet, a central angle of 18°04'03" and an arc length of 884.46 feet, whose chord bears N 12°18'19" E, 880.80 feet to the north corner of said 0.63 acre tract, and being on the east line of that certain called 8.39 acre tract of land described as First Tract in deed in favor of the State of Texas, recorded in Volume 260, Page 487 of the Deed Records of Denton County, Texas;

THENCE N 21°20'20" E, 2410.29 feet continuing with the east line of said U. S. Highway 377 and the east line of said 8.39 acre tract and the west line of said 1129.061 acre tract to the northwest corner of said 1129.061 acre tract, and being the southwest corner of said 37.245 acre tract;

THENCE S 89°42'35" E, 1174.70 feet with the north line of said 1129.061 acre tract and the south line 131.307 acre tract and the south line of said Glenview Estates to the point of beginning and containing approximately 134.453 acres of land.

LEGAL DESCRIPTION

409.363 Acres

Being all that certain lot, tract, or parcel of land situated in the B. B. B. & C. Railway Co. Survey, Abstract Number 154, the B. B. B. & C. Railway Co. Survey, Abstract Number 187 and the J. N. Denson Survey, Abstract Number 359, Town of Flower Mound, Denton County, Texas, being part of that certain called 251.99 acre tract of land described as Tract II in deed in favor of Old WR Ranch I, LP, recorded in Volume 4576, Page 1847 of the Real Property Records of Denton County, Texas, and being part of that certain called 1129.061 acre tract of land described as Tract A in deed in favor of Old W.R. Ranch I, LP, recorded in Volume 4583, Page 569 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8" capped rebar found (RPLS 1640) at a salient corner in the easterly line of said 1129.061 acre tract, being the northwest corner of Lot 34 X, Block G of Montalcino Estates, Phase I, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded Document Number 2013-37 of the Plat Records of Denton County, Texas, and being the southwest corner of Lot 33X, Block G of Montalcino Estates, Phase 2, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2018-355 of the Plat Records of Denton County, Texas, and being the southeast corner of Lot 38X, Block G of said Montalcino Estates, Phase 2;

THENCE S 00°11'20" E, 469.70 feet with the east line of said 1129.061 acre tract and the west line of said Lot 34 X of said Montalcino Estates, Phase I to a 1/2" capped rebar set (MCADAMS);

THENCE S 44°46'15" W, 167.96 feet to a 1/2" capped rebar set (MCADAMS);

THENCE S 23°29'10" W, 391.43 feet to a 1/2" capped rebar set (MCADAMS);

THENCE S 05°38'20" E, 596.52 feet to a 1/2" capped rebar set (MCADAMS);

THENCE S 54°03'00" W, 685.51 feet to a United States Army Corps. of Engineers (USACE) concrete monument with disk stamped E-158 found on the south line of that certain called 96.2 acre tract of land described as Parcel No. 1 in quitclaim deed in favor of R. L. Thornton and wife, Mary Metta Thornton, recorded in Volume 468, Page 288 of the Deed Records of Denton County, Texas;

THENCE with the south line of said 96.2 acre tract the follow courses and distances:

N 27°31'00" W, 259.00 feet to a USACE concrete monument with disk stamped E-157;

S 43°41'00" W, 468.70 feet to a USACE concrete monument with disk stamped E-156;

S 23°05'00" W, 252.15 feet to a USACE concrete monument with disk stamped E-155;

S 34°56'00" W, 431.40 feet to a USACE concrete monument with disk stamped E-154;

S 48°59'00" W, 243.30 feet to a USACE concrete monument with disk stamped E-153;

S 22°54'00" E, 129.65 feet to a USACE concrete monument with disk stamped E-152;

S 35°02'00" W, 511.58 feet to a USACE concrete monument with disk stamped E-151;

S 17°22'00" W, 491.65 feet to a USACE concrete monument with disk stamped E-150;

N 62°47'00" W, 430.45 feet to a USACE concrete monument with disk stamped E-149;

S 69°03'00" W, 549.50 feet to a USACE concrete monument with disk stamped E-148;

N 18°24'00" W, 304.20 feet to a USACE concrete monument with disk stamped E-147;

N 28°21'00" W, 359.50 feet to a USACE concrete monument with disk stamped E-146;

N 04°34'00" W, 333.40 feet to a USACE concrete monument with disk stamped E-145;

N 85°01'00" W, 83.70 feet to a USACE concrete monument with disk stamped E-144;

THENCE N 04°54'40" E, 768.98 feet;

THENCE N 50°00'00" W, 1400.00 feet;

THENCE North, 700.00 feet;

THENCE N 25°00'00" W, 500.00 feet;

THENCE N 40°00'00" E, 250.00 feet;

THENCE N 45°00'00" W, 800.00 feet;

THENCE N 25°00'00" W, 500.00 feet;

THENCE N 50°00'00" W, 800.00 feet to the north line of said 251.99 acre tract;

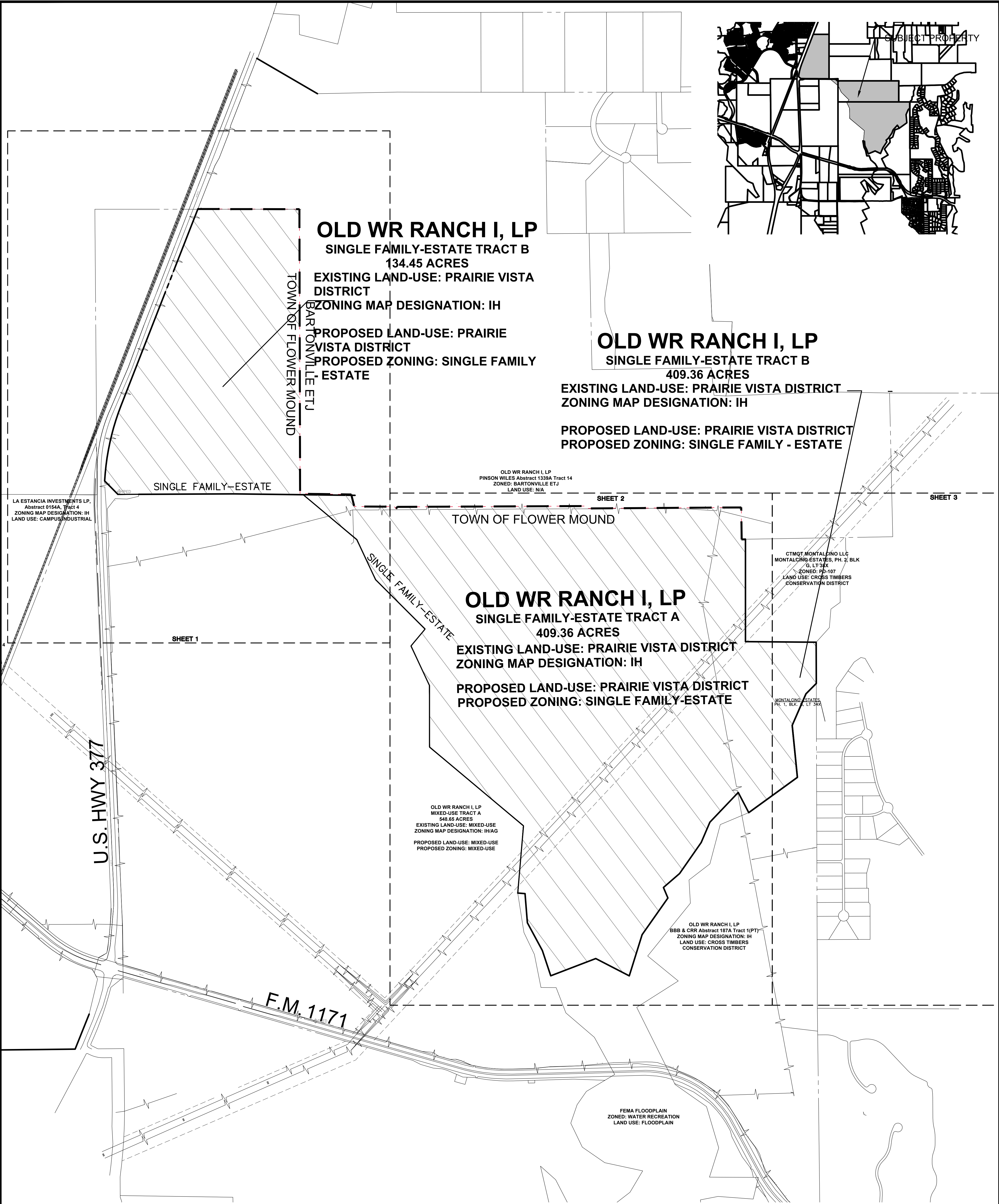
THENCE S 89°18'15" E, 590.30 feet with the north line of said 251.99 acre tract to the northeast corner thereof, being a re-entrant corner in the westerly line of said 1129.061 acre tract;

THENCE S 89°37'00" E, 4454.49 feet;

THENCE S 00°00'45" E, passing at 470.56 feet a 5/8" capped rebar found (RPLS 1640) at the northwest corner of the aforementioned Lot 38X, Block G of said Montalcino Estates, Phase 2, being a re-entrant

corner in the easterly line of said 1129.061 acre tract, continuing with the easterly line of said 1129.061 acre tract and the west line of said Montalcino Estates, Phase 2 a total distance of 1638.72 feet to a 5/8" rebar found at the southwest corner of said Lot 38X, being a re-entrant corner in the easterly line of said 1129.061 acre tract;

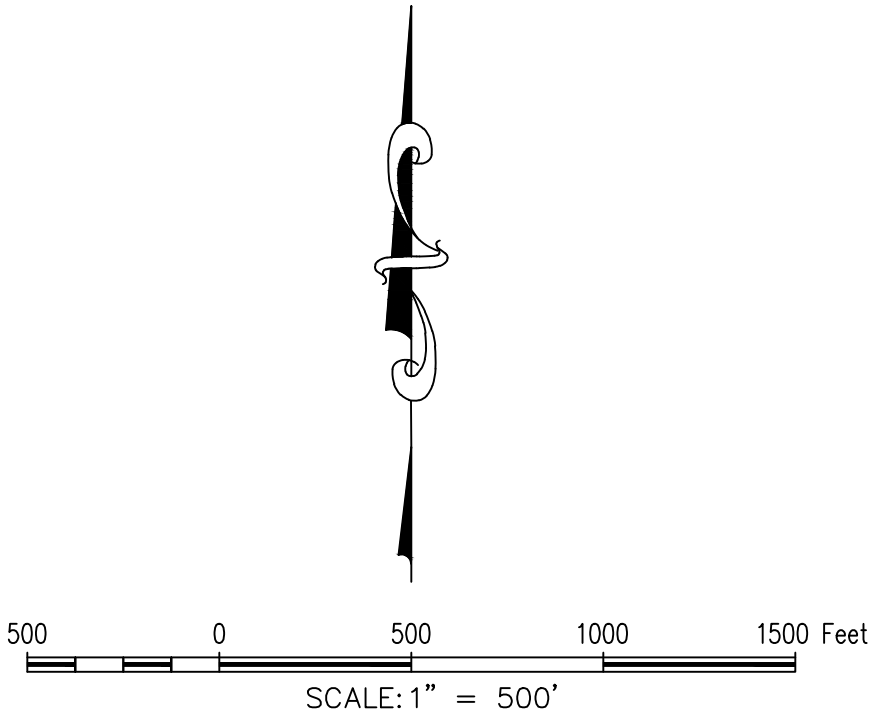
THENCE S 89°30'05" E, 806.62 feet continuing with the east line of said 1129.061 acre tract and the south line of said Lot 38X, Block G of said Montalcino Estates, Phase 2 to the POINT OF BEGINNING and containing approximately 409.363 acres of land.



Zoning Standards	Zoning Map Designation: Interim Holding (Agricultural)	Single Family Estate 543.8 Acres
Minimum Lot Area	87,120 sf	43,560 sf or 15,000 sf w/ Conservation Development Option
Minimum Lot Width	200 ft	150 ft
Minimum Front Yard	40 ft	40 ft
Minimum Side Yard	25 ft	20 ft
Minimum Rear Yard	20 ft	20 ft
Maximum Lot Coverage	25%	25%
Max Height (stories/ft.)	3 stories/35'	3 stories/35'
Maximum Floor: Area Ratio	N/A	N/A

Master Plan Features	
Land Use Plan	Prairie Vista District
Urban Design Plan	N/A
Parks and Trail	Proposed Multi-Use Trails
Thoroughfare Plan	US HWY 377 - Major Arterial & FM 1171 - Major Arterial
Water Plan	Existing 30" W/L along US HWY 377 & Existing 20" W/L along FM 1171
Wastewater Plan	Existing 18" wastewater line along a portion of US HWY 377
* Proposed zoning is consistent with the Rule 11 Agreement, dated November 29, 2006.	

THE PROPOSED ZONING IS CONSISTENT WITH THE RULE 11 AGREEMENT DATED NOVEMBER 29, 2006.



ZE

18329

Drawn By:AM
Date: AUGUST 26, 2021
Scale: 1"=500'
Revisions:
December 22, 2021

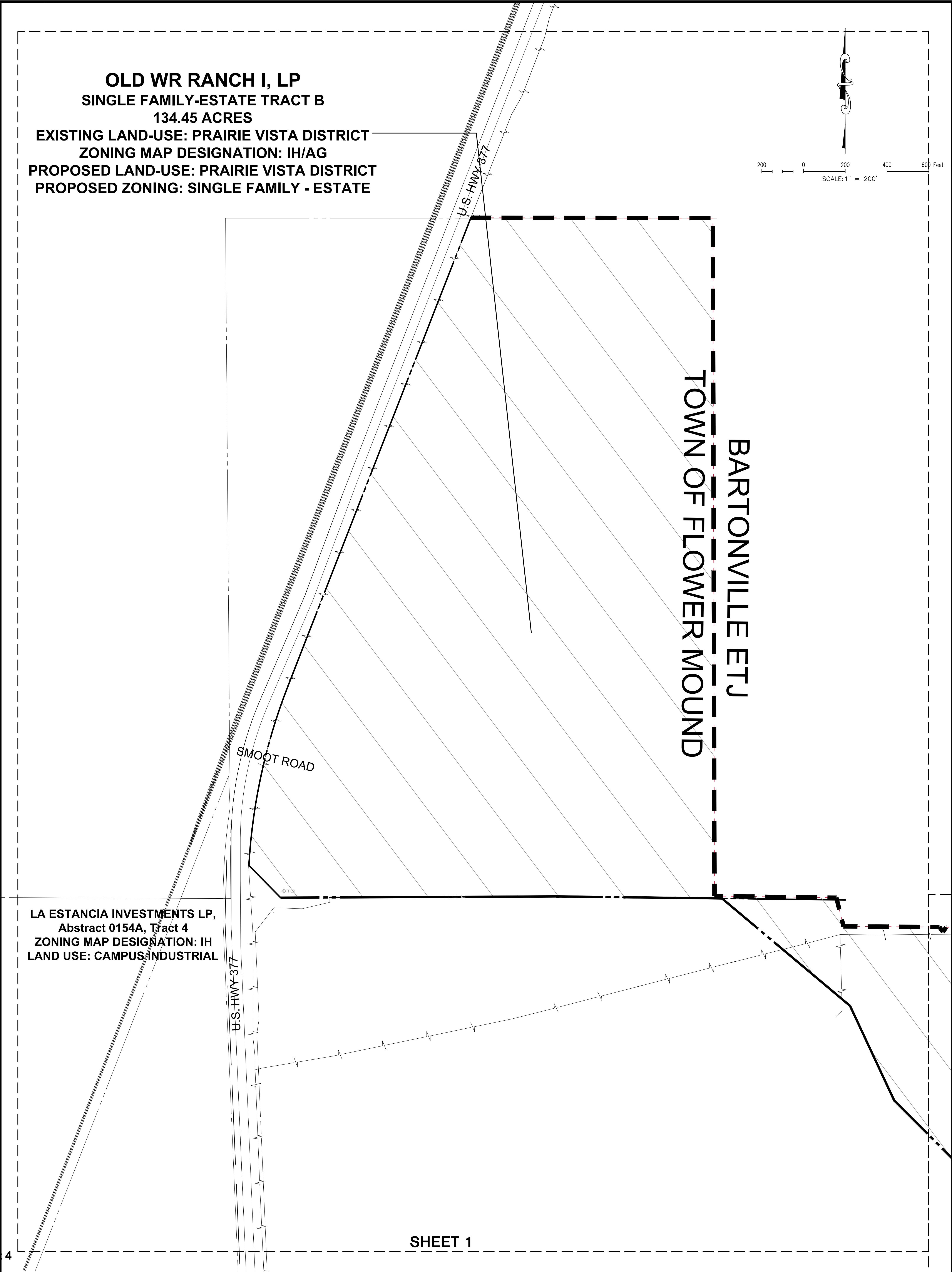
PRELIMINARY PLANS
THIS DOCUMENT IS FOR INTERIM REVIEW AND IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES. THE JOHN R. MCADAMS COMPANY, INC.
TBPE: 19762
ROBERT JOHN DOLLAH, JR., P.E. #86898
DATE 12/22/2021

OWNER/DEVELOPER
JACK FURST
Old WR Ranch I, LP,
2591 Lakeside Pkwy, Ste 100, Flower Mound TX 75022
Phone: 972-982-8250

ZONING EXHIBIT

Flower Mound Ranch
543.80 Acres
in the
A.B. DANKS SURVEY, ABST. 368A
BURRESS SURVEY, ABST. 38A
BBB & CRR SURVEY, ABSTRACT NO. 154A & 187A
BRUCE WHEELER SURVEY, ABST. 1805A
CASPARY SURVEY, ABST. 277A
RUTH ALLEN SURVEY, ABST. 15A
TOWN OF FLOWER MOUND
DENTON COUNTY, TEXAS

The John R. McAdams Company, Inc.
111 Hillside Drive
Lewisville, Texas 75057
972.436.9712
201 Country View Drive
Roanoke, Texas 75262
940.240.1012
TBPE: 19762 TBPLS: 10194440
www.gacon.com
www.mcadamsco.com



File: F:\2021\8329\Zoning\Zoning\20\Zoning CAD Files\Zoning Exhibit\2021.08.25 Final Revamp 2.0 - Zoning Exhibit
 Printed: 12/22/2021 8:17 AM, by Arthur Miller, Scale: 9/12/2021 1:48 PM, by drcan

ZE 18329	Drawn By:AM Date: AUGUST 26, 2021 Scale: 1"=200' Revisions:	PRELIMINARY PLANS 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 12/22/2021	OWNER/DEVELOPER JACK FURST Old WR Ranch I, LP, 2591 Lakeside Pkwy, Ste 100, Flower Mound TX 75022 Phone: 972-982-8260	ZONING EXHIBIT	Flower Mound Ranch 543.80 Acres in the A.B. DANKS SURVEY, ABST. 368A BURRESS SURVEY, ABST. 38A BBB & CRI SURVEY, ABSTRACT NO. 154A & 187A BRUCE WHEELER SURVEY, ABST. 1805A CASPARY SURVEY, ABST. 277A RUTH ALLEN SURVEY, ABST. 15A TOWN OF FLOWER MOUND DENTON COUNTY, TEXAS	The John R. McAdams Company, Inc. 111 Hillside Drive Lewisville, Texas 75057 972.436.9712 201 Country View Drive Roanoke, Texas 75262 940.240.1012 TBPE: 19762 TBPLS: 10194440 www.gacoin.com www.mcadamsco.com

Diagram illustrating the proposed road layout (PROPOSED) and existing road layout (EXISTING) within a defined area. The scale is 1" = 200'.

~~MONTALCINO ESTATES,
PH. 1, BLK. G, LT 34X~~

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File: Z:\2019\181329\3d\newplan\zoning\zoning 2.0\Zoning 240 (Final)\Zoning Exhibit\2021.08.26 Final Exhibit 2.0 - Zoning Exhibit 181329.dwg
User: jg
Date: 07/20/2021 1:38 PM
Plot by: John Brown
Scale: 8/25/2021 3:41 PM
By: jg

SINGLE FAMILY-ESTATE TRACT A
LEGAL DESCRIPTION
409.363 Acres

Being all that certain lot, tract, or parcel of land situated in the B. B. B. & C. Railway Co. Survey, Abstract Number 154, the B. B. B. & C. Railway Co. Survey, Abstract Number 187 and the J. N. Denson Survey, Abstract Number 359, Town of Flower Mound, Denton County, Texas, being part of that certain called 251.99 acre tract of land described as Tract II in deed in favor of Old WR Ranch I, LP, recorded in Volume 4576, Page 1847 of the Real Property Records of Denton County, Texas, and being part of that certain called 1129.061 acre tract of land described as Tract A in deed in favor of Old W.R. Ranch I, LP, recorded in Volume 4583, Page 569 of the Real Property Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 5/8" capped rebar found (RPLS 1640) at a salient corner in the easterly line of said 1129.061 acre tract, being the northwest corner of Lot 34 X, Block G of Montalcino Estates, Phase I, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded Document Number 2013-37 of the Plat Records of Denton County, Texas, and being the southwest corner of Lot 33X, Block G of Montalcino Estates, Phase 2, an addition to the Town of Flower Mound, Denton County, Texas, according to the plat thereof recorded in Document Number 2018-355 of the Plat Records of Denton County, Texas, and being the southeast corner of Lot 38X, Block G of said Montalcino Estates, Phase 2;

THENCE S 00°11'20" E, 469.70 feet with the east line of said 1129.061 acre tract and the west line of said Lot 34 X of said Montalcino Estates, Phase I to a 1/2" capped rebar set (MCADAMS);

THENCE S 44°46'15" W, 167.96 feet to a 1/2" capped rebar set (MCADAMS);

THENCE S 23°29'10" W, 391.43 feet to a 1/2" capped rebar set (MCADAMS);

THENCE S 05°38'20" E, 596.52 feet to a 1/2" capped rebar set (MCADAMS);

THENCE S 54°03'00" W, 685.51 feet to a United States Army Corps. of Engineers (USACE) concrete monument with disk stamped E-158 found on the south line of that certain called 96.2 acre tract of land described as Parcel No. 1 in quitclaim deed in favor of R. L. Thornton and wife, Mary Metta Thornton, recorded in Volume 468, Page 288 of the Deed Records of Denton County, Texas;

THENCE with the south line of said 96.2 acre tract the follow courses and distances:

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S 23°05'00" W, 252.15 feet to a USACE concrete monument with disk stamped E-155;

S 34°56'00" W, 431.40 feet to a USACE concrete monument with disk stamped E-154;

S 48°59'00" W, 243.30 feet to a USACE concrete monument with disk stamped E-153;

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S 35°02'00" W, 511.58 feet to a USACE concrete monument with disk stamped E-151;

S 17°22'00" W, 491.65 feet to a USACE concrete monument with disk stamped E-150;

N 62°47'00" W, 430.45 feet to a USACE concrete monument with disk stamped E-149;

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THENCE N 50°00'00" W, 1400.00 feet;

THENCE North, 700.00 feet;

THENCE N 25°00'00" W, 500.00 feet;

THENCE N 40°00'00" E, 250.00 feet;

THENCE N 45°00'00" W, 800.00 feet;

THENCE N 25°00'00" W, 500.00 feet;

THENCE N 50°00'00" W, 800.00 feet to the north line of said 251.99 acre tract;

THENCE S 89°18'15" E, 590.30 feet with the north line of said 251.99 acre tract to the northeast corner thereof, being a re-entrant corner in the westerly line of said 1129.061 acre tract;

THENCE S 89°37'00" E, 4454.49 feet;

THENCE S 00°00'45" E, passing at 470.56 feet a 5/8" capped rebar found (RPLS 1640) at the northwest corner of the aforementioned Lot 38X, Block G of said Montalcino Estates, Phase 2, being a re-entrant corner in the easterly line of said 1129.061 acre tract, continuing with the easterly line of said 1129.061 acre tract and the west line of said Montalcino Estates, Phase 2 a total distance of 1638.72 feet to a 5/8" rebar found at the southwest corner of said Lot 38X, being a re-entrant corner in the easterly line of said 1129.061 acre tract;

THENCE S 89°30'05" E, 806.62 feet continuing with the east line of said 1129.061 acre tract and the south line of said Lot 38X, Block G of said Montalcino Estates, Phase 2 to the POINT OF BEGINNING and containing approximately 409.363 acres of land.

SINGLE FAMILY-ESTATE TRACT B
LEGAL DESCRIPTION
134.453 Acres

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THENCE S 89°44'45" W, 1320.52 feet with the north line of said 59.352 acre tract to the east line of U. S. Highway 377, being the northeast corner of that certain called 6.74 acre tract of land described in deed in favor of the State of Texas, recorded in Volume 279, Page 277 of the deed records of Denton County, Texas, and the southeast corner of that certain called 0.63 acre tract of land described as Parcel (b) in deed in favor of the State of Texas, recorded in Volume 279, Page 246 of the Deed Records of Denton County, Texas;

THENCE N 44°39'00" W, 216.32 feet with the east line of said U. S. Highway 377 and the east line of said 0.63 acre tract and the west line of said 1129.061 acre tract to the remnants of a broken concrete TXDOT monument found;

THENCE continuing with the east line of said U. S. Highway 377 and the east line of said 0.63 acre tract and the west line of said 1129.061 acre tract, with a curve to the right having a radius of 2804.80 feet, a central angle of 18°04'03" and an arc length of 884.46 feet, whose chord bears N 12°18'19" E, 880.80 feet to the north corner of said 0.63 acre tract, and being on the east line of that certain called 8.39 acre tract of land described as First Tract in deed in favor of the State of Texas, recorded in Volume 260, Page 487 of the Deed Records of Denton County, Texas;

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940.240.1012
TBPE: 19762 TBPLS: 0184440
www.garcon.com
www.mcadams.com



Flower Mound Ranch
543.80 Acres

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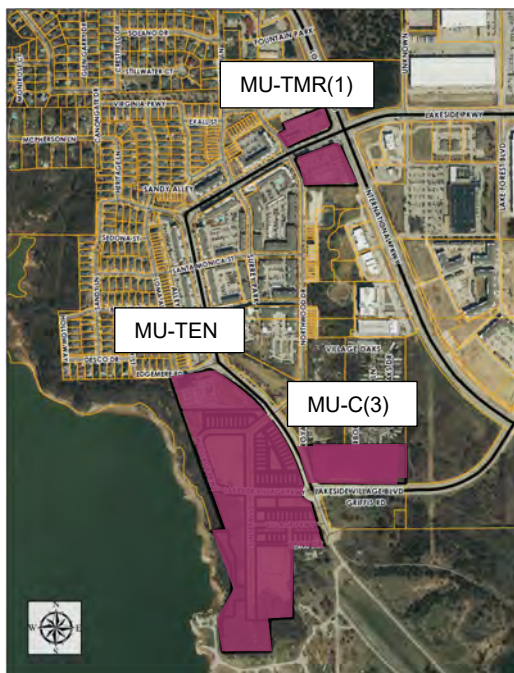
TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: March 7, 2022

FROM: Poornima Kashyap, Principal Planner

ITEM: Public Hearing to consider an ordinance for rezoning (MU21-0003 – Lakeside Village) to amend Mixed Use District-1 (MU-1) to amend certain development standards related to Character Zone Standards, Open Space Standards, Parking Standards, Architectural and Building Standards, and Signage Standards in the Lakeside Village Development Code subject to the terms and conditions in the attached Development Agreement and authorization for the Mayor to execute same on behalf of the Town after approval of the terms by the Town Attorney. The property is generally located west of Long Prairie Road along both sides of Lakeside Parkway. *(The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its February 28, 2022, meeting.)*



SUMMARY DATA:

- Subzones Impacted –MU-TEN, MU-C(3), and MU-TMR-1
- The developer is proposing modifications to the following sections within the Lakeside Village ordinance:
 - o Section 5 – Civil/Open Space and Landscape Standards
 - o Section 6 – Parking Standards
 - o Section 7 – Architectural and Building Standards
 - o Section 8 – Signage Standards

BACKGROUND INFORMATION: Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item.

ATTACHMENTS:

1. Draft Ordinance
2. 4th Amendment to Development Agreement
3. [Planning and Zoning Commission Staff Report Link](#)

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.

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

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 09-18, WHICH AMEDNED MIXED USE DISTRICT-1 (MU-1), ALSO KNOWN AS THE LAKSIDE DFW MIXED USE DEVELOPMENT; BY AMENDING EXHIBIT "B" TO MODIFY DEVELOPMENT STANDARDS RELATED TO SECTION 5, "CIVIC/OPEN SPACE AND LANDSCAPE STANDARDS," SECTION 6, "PARKING STANDARDS," SECTION 7, "ARCHITECTURAL AND BUILDING STANDARDS," AND SECTION 8, "SIGNAGE STANDARDS/APPENDIX D" AS APPLICABLE TO SUBZONES MU-TEN, MU-C(3) AND/OR MU-TMR(1); PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; 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 Subzones MU-TEN, MU-C(3), and/or MU-TMR(1) within the Lakeside DFW Mixed Use Development have filed an application for a zoning amendment for Mixed Use District-1 (MU-1); and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on February 28, 2022, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on March 7, 2022, with respect to the proposed zoning 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 amendment on the property; and

WHEREAS, the Town Council finds that amendment of Ordinance 09-18 as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public;

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

ORDINANCE NO. _____**Page 2****SECTION 1**

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area as shown below:

Exhibit "B" to Ordinance No. 19-18, entitled "Lakeside DFW Development Code" is hereby amended in part as more fully described in "Exhibit A" attached to this ordinance.

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. 09-18, the Lakeside DFW Development Code; 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 Flower Mound Code 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 Flower Mound Code. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 6

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

ORDINANCE NO. _____

Page 3

SECTION 7

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

SECTION 8

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 7TH DAY OF MARCH, 2022.

APPROVED:

Derek France, MAYOR**ATTEST:**

Theresa Scott, TOWN SECRETARY

EXHIBIT "A"



LAKE SIDE DFW
DEVELOPMENT CODE
AMENDED

ORDINANCE 09-18
MU17-0002

SUBZONE MU-TEN
LAKE SIDE VILLAGE:
REVISING MU-TEN(1) AND MU-TEN(2)
AND ADDING APPROXIMATELY 9 ACRES

Flower Mound, TX

February 16, 2022

A DEVELOPMENT BY
Realty Capital Management, LLC
909 Lake Carolyn Parkway Suite 150
Irving, TX 75039
James W. Archie, Managing Director
469.533.4131

PLANNING BY
Roaring Brook Development Co.
3058 Lakeside Parkway
Flower Mound, TX 75022
Dan Quinto
817.706.8353

**PARK AND OPEN SPACE STANDARDS:
PROPOSED PARK TYPOLOGY
OS3: SUNSET GREEN AMPHITHEATER**

ITEM	STANDARD	REQ' D
#1	Character	This is an open air venue for public or private gatherings, events or performances
#2	Minimum size	0.7 acres
#3	Maximum Size	No max
#4	Perimeter conditions	Views of the lake are to be preserved to the west. Accessible from Street I sidewalk.
#5	Plantings, pattern	Natural existing trees should be preserved where possible and incorporated into the tiered seating. The tier treads should be primarily turf, tier risers may be stone or concrete.
#6	Sidewalks/Hardscape	The seating tiers shall be hard edged, concrete or stone, with concrete or stone steps between tiers. The stage shall be concrete or TREX or TREX like material with 10 or more years of product warranty.
#7	Trail Connectivity	The Lakeside Trail System trail type T-6 shall connect to the Amphitheater. Required trail connectivity within a public use easement at least 5' east of the trail and extending to the western property boundary of the microzone MZ-3.
#8	Location requirements	Must be bounded by Lake Grapevine ACOE property to the west.
#9	Topography	Existing grade may be re-graded to achieve an optimal seating configuration.
#10	Water feature	None
#11	Structures	The overall size and capacity of the structure should be able to accommodate at least 125 people seated.
#12	Furnishings	
#13	Lighting	Ambient street lights on Street I are required, stage lighting is not required. Walkway lighting shall provide a minimum of 1.5 foot-candles of illumination. Tree lighting is permitted to satisfy these requirements.
#14	Other considerations	Sound system is not required.
	Required in Sub Zones:	MU-TEN
	Permitted in Sub Zones:	
	Prohibited in Sub Zones:	

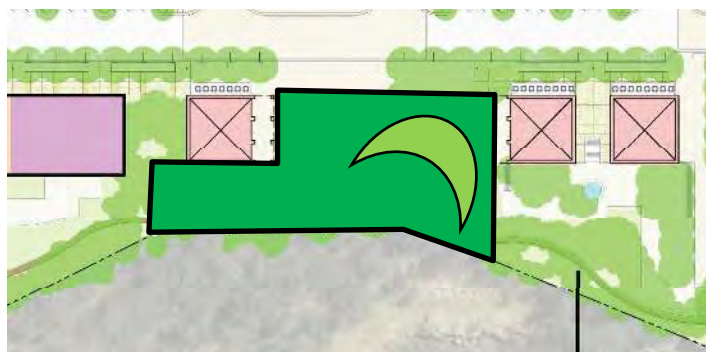


TABLE 6.1: SCHEDULE OF REQUIRED PARKING

Use Type	Parking
General Office or Retail	1 space per 250 sq ft (1/250 sq ft)
Restaurant	1 space per 100 sq ft (1/75 sq ft)
Hotel	1 space per lodging room
Multifamily	
1 bedroom/efficiency	1 space per unit
2 bedrooms	1.8 spaces per unit
3 bedrooms or more	2 spaces per unit
Residential other than multifamily	
Less than or 1600 sq ft in area	1 space
More than 1600 sq ft in area	2 spaces
Nonresidential uses other than those listed above	Sixty five percent (65%) of the number of spaces that would be required under the Code of Ordinances

- D. Parking Structures. The dimensions of parking spaces located in parking structures shall be as follows: Nine feet by eighteen feet except in automated parking structures, where each vehicle storage space, shall be counted as a parking space for purposes of these Development Standards, provided that such space accommodates a vehicle. **Parking Structures shall be permitted to exceed the limit of 20% excess parking as provided in Section 82-73 (1) of the Town ordinance.**
- E. On-Street Parking. The dimensions of parallel parking spaces located on streets shall be 8 feet by 20 feet unless otherwise indicated.
- F. Parking Access Aisles. Parking access aisles that are not also fire lanes shall have these widths:
1. two (2) lanes (two-way traffic) a minimum width of twelve feet (12') each for ninety degree (90°) parking configurations; and
 2. not less than a minimum width of twelve feet (12') for one-way or angled parking.

GROUND FLOOR COMMERCIAL STANDARDS

1. Minimum ground floor height of 14' floor to floor
2. Display windows complying with these standards; See Section 7.2.A
3. Entry doors at grade complying with these standards; See Section 7.2.C
4. One entry into the building for each 100' of frontage; See Section 7.2.C
5. Sign Band complying with these standards; See Section 7.2.C
6. Awning or canopy on all street level windows; See Section 7.2.D



Figure 7.2: Ground floor built to commercial standards

TABLE 7.1 WINDOW/DOOR AREA REQ		MU-C	MU-N	MU-TEN	MUTMR
MIXED-USE & COMMERCIAL BUILDINGS					
GROUND FLOOR FAÇADE	MIN	60%	60%	50%	60%
	MAX	75%	75%	75%	75%
UPPER FLOOR FAÇADE	MIN	30%	30%	30%	30%
	MAX	60%	60%	60%	60%
RESIDENTIAL BUILDINGS					
GROUND FLOOR FAÇADE	MIN	60%	40%	40%	40%
	MAX	75%	60%	60%	60%
UPPER FLOOR FAÇADE	MIN	30%	30%	30%	30%
	MAX	60%	60%	60%	60%

WINDOW AREA REQUIREMENTS

1. The façade area shall be measured between 3 feet and 9 feet above each finished floor. The percentage shall be the glass area divided by the total façade area.
2. Facades fronting Type 'B' Streets may reduce the glass area by 25%.
3. Facades facing alley or parking lots have no glass area requirements.

SECTION 7: REGULATIONS

The following regulations are intended to address Building and Architectural Requirements, pursuant to the requirements of the Mixed Use Zoning Code as it applies to the Lakeside Development.

Large footprint retail formats such as grocery stores and department stores are exempt from these regulations due to their economic value as anchors for shopping venues. Every attempt should be made to incorporate the large retail footprints into the urban pattern. These components of the development shall comply with Flower Mound C2 Zoning standards if they cannot comply with these standards.

7.1 BUILDING FACADES -

A. FACADES ELEMENTS

1. Facade: The quality of the facades determines the quality and character of the adjacent outdoor space. Since the public ROW requires a higher quality façade than the parking lot, the façade regulations are divided into Type A (better quality) and Type B (lesser quality). Type A facades face the public R.O.W. **Type B facades face parking lots and alley areas.**
2. Proportions: The proportions of walls, windows, and portions of walls shall be predominately vertical. Areas that are predominately horizontal shall be subdivided by pilasters, mullions, columns, trim work, or other architectural elements to achieve a balanced or vertical appearance. Vertical stripes, however, are undesirable.
3. Pilasters and Columns: Pilasters and columns are an expression of the actual or imaginary structural system on the exterior of the building. These elements divide the horizontal façade into smaller, more vertical panels. Pilasters should be placed no farther apart than they are tall and they should extend to the eave or above the parapet. .
4. Entry Conditions: The major entry is required to be placed on the public ROW façade and requires at least one entry into the building for each 100 feet of frontage on the property line.
5. Maximum Façade Length: One story buildings may be 100 feet long with a single building façade design; two or more stories are unlimited.
6. Transition A to B Facades: An A Façade must continue around a corner a minimum of 15 feet or 30% or the distance to the next building whichever is less, before transitioning to a B Façade.

B. MATERIALS

The materials employed to construct the buildings and public areas carry cultural, social, economic and architectural qualities that may or may not be appropriate to the character of the development. All material proposals are subject to the review and approval of the LCOA. The material lists are divided into materials that generally are unrestricted, materials that are desirable in small quantities, and materials that are undesirable unless used in an unusual or artistic fashion.

1. Unrestricted Materials: These materials may be used without limits for walls in 'A' or 'B' Facades: Brick, Stone, Stucco, Cast Stone, Ceramic Tile. **Exception: within Subzones MU-TEN and MU-C(3), EIFS shall be an Unrestricted Material for the 2nd floor and above**
2. Limited Façade Materials: The following materials may be used up to 20% on A facades and 80% of 'B' Facades: Concrete masonry units, EIFS, metal panel siding or hardi-plank clapboard siding. EIFS may be used on the second floor and above.
3. Prohibited Materials: The following materials may not be used for buildings subject to these guidelines unless specifically exempted by the LCOA. Aluminum siding, vinyl siding, wood or corrugated metal siding.
4. Color: Colors for stucco, cast stone, mortar, shall generally be low reflectance, neutral, or earth tone colors. The use of high intensity primary metallic, or fluorescent colors is prohibited. Painted trim colors may be selected from the range of colors available from the National Trust for Historic Preservation. Bright colors may be used on trim or decorative elements.



-style blinds either horizontal or vertical; or finished fabric drapery. Metal blinds and cellulose blinds are prohibited. Artwork located on the glass or inside the glass is permitted provided it is not serving as advertising.

D. PRIVATE OUTDOOR SPACES

1. Outdoor private space, design - if outdoor private space is provided for residential units on the ground floor, these areas may be separated from the public ROW by fencing or with ornamental railings or masonry walls and should be consistent with architectural character of the façade. Railings or walls must be at a height no greater than 48". The areas must be provided a mixture of hardscape to landscape including turf, ground cover, shrubs, plant boxes or planters.
2. Outdoor private space, storage of materials - outdoor private space may not be used for storage or parking. No bicycles, motorcycles, or toys may be stored within. Seasonal items such as chairs, tables, planters or grills may be included.

E. OTHER ITEMS

1. Signage - Signage for non-commercial ground floors shall generally be consistent with the Mixed Use Zoning District. Address numerals, unit numerals, unit nameplates may be placed on the facade wall immediately adjacent to the entry door. Wall signs announcing the name of the residential unit development may be placed at visible corners of the building in either a sign band from the top of the head of the primary floor windows to the bottom of the second floor window sills or as a blade sign.
2. Utilities - no utility service connections, meters or other appurtenances will be allowed on the building facades facing the public realm. Utility connections, meters or other appurtenances shall be located on rear facades or on "B" facades which have intervening masonry walls or on the sides or backs of the buildings.
3. Stairways - stairways shall be concealed from the street and placed within the building footprint. Entry doors shall be accessible from the public realm.

7.4 UPPER STORIES -

The regulation of the façade design for the building above the first floor allows for wide latitude to encourage dignified, beautiful, creative, and gracious design.

A. WINDOWS

1. Windows, Jambs: Trim or panning recommended. Jamb must be recessed from the primary wall plane a minimum of one inch unless trim or panning is used.
2. Windows, Heads: In unit masonry construction, a visible masonry header is required. Stucco does not require a masonry header.

B. BALCONIES

1. Balconies, Doors: Swinging doors required, sliding doors prohibited. **Exception: within MUTEN, swinging doors and sliding glass doors shall be permitted.**
2. Balconies, Door Heads: In unit masonry construction, a visible masonry header is required. Stucco does not require a masonry header.
3. Balconies, Floors: Floors must be a solid, concrete surface (lightweight concrete is acceptable provided it is structurally sound); metal grates are prohibited. Floors may project into the public ROW.



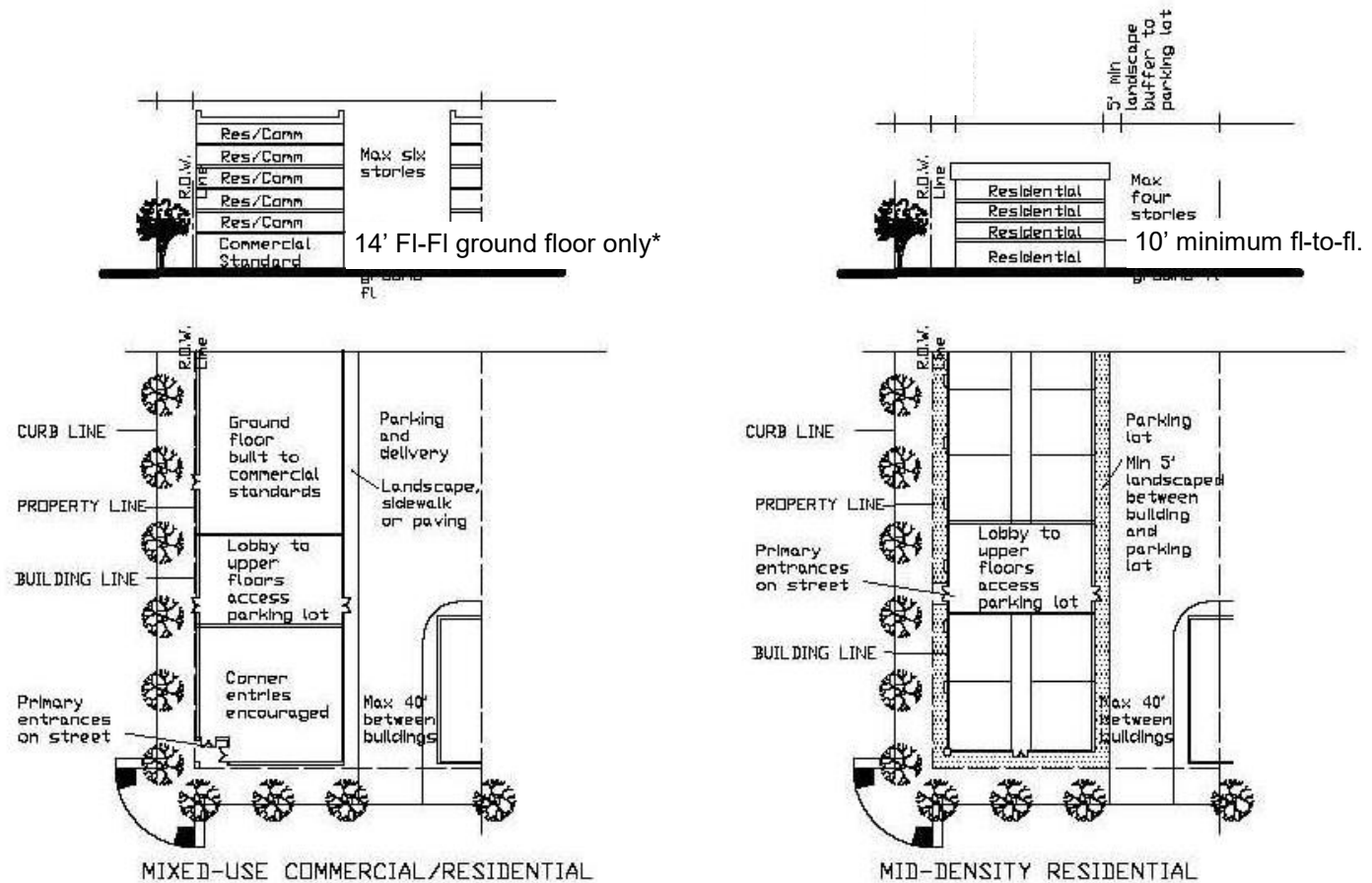
4. Balconies, Railings: Ornamental railings are required and should be consistent with architectural character of the façade. Top of railing shall be a maximum of 3 inches wide.

C. CORNICE

1. Cornice/Eave/Parapet: The design of the top of the building should be consistent with the architectural style of the façade. If the parapet is not tall enough to conceal the rooftop equipment, an added screen will be required behind the parapet to do so.

D. ROOF

FIGURE 7.6 COMMERCIAL LOT STANDARDS



* 14 feet floor-to-floor includes the floor structure such as beams and trusses.

1. MIXED USE COMMERCIAL/RESIDENTIAL

Buildings designed to accommodate retail or office occupancies on the ground floor shall comply with the Commercial Building Standards. The primary façade wall of the building shall be placed within 5' of the frontage property line unless a setback is used as a public plaza (See Parks and Open Spaces). **In Subzone MUTEN, the primary façade wall shall be placed within 8' of the frontage property line.**

2. MID-DENSITY RESIDENTIAL

Buildings designed to accommodate multifamily residential occupancies on the ground floor shall comply with the Non-Commercial Building Standards. The primary façade wall of the building shall be placed between 5' and 8' from the frontage property line unless a setback is used as a public plaza (See Parks and Open Spaces).

Realty Capital Management
Dallas, TX

LAKESIDE DFW DEVELOPMENT CODE
FLOWER MOUND, TEXAS

SECTION 8

SIGNAGE

EXHIBIT A OF ORDINANCE 14-15 AMENDING ORDINANCE 63-12 LAKESIDE DFW MIXED USE DEVELOPMENT CODE AS AMENDED SHALL BE AMENDED FOR SUBZONE MU-TMR(1) AS FOLLOWS.

Sec 86-67 Ground Signs; Item (16) shall be deleted and replaced with:

(16) There shall be no more than **two** ground signs on Lot 1, Block C, Lakeside DFW; no more than **three** ground signs on Lot 1, Block B, Lakeside DFW; no more than two ground signs on Lot 2, Block A, Moviehouse Addition; no more than one ground sign per street frontage on Lot 1, Block A Moviehouse Addition; and no more than three ground signs along the frontage of FM 2499 and no more than two ground signs along the frontage of Lakeside Parkway on Subzone MU-TMR (2); all other lots shall be limited in quantity per Chapter 86 of the Town of Flower Mound code.

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT FOR LAKESIDE DFW

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT FOR LAKESIDE DFW ("the Fourth Amendment") is made and entered into this ____ day of _____, 2022, (the "Effective Date") by and among the Town of Flower Mound, Texas (the "Town"); Sunset Legacy, LP, a Texas limited partnership ("Sunset"); and Lakeside Residences, LP, a Texas limited partnership ("Lakeside," and together with Sunset, collectively referred to as "Developer"), each individually referred to as "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Lakeside DFW Project ("Lakeside" or "Project") encompasses approximately 155.8 acres of land ("the Property") being developed by Developer along the shores of Lake Grapevine; and

WHEREAS, on November 19, 2012, the Town and Lakeside DFW Land, Ltd., predecessor to Developer, entered into a Development Agreement (the "Original Development Agreement," and as amended, the "Development Agreement") that addresses various development issues related to the Project and provides for the payment of certain fees and the dedication of certain property, among other matters; and

WHEREAS, on April 21, 2014, the parties thereto amended the Development Agreement by entering into the First Amendment to Development Agreement for Lakeside DFW (the "First Amendment") to reduce the amount of escrow payment required by Developer for Phase 2 wastewater improvements in the Project, and to provide for existing overhead utilities to be placed underground, and to provide for consideration of alternate amenities to be installed by Developer within the Project; and

WHEREAS, on July 20, 2015, the parties thereto further amended the Development Agreement by entering the Second Amendment to Development Agreement for Lakeside DFW (the "Second Amendment") to modify certain development obligations of the Developer, including the requirement to construct the "Sunset Green," the "Community Lawn," and the "Observation Plaza" (as such terms are defined in the Second Amendment); and

WHEREAS, Sunset is now the owner of that portion of the Property known as "Lakeside Village," which is legally described on Exhibit A attached hereto and is depicted on the site plan attached hereto as Exhibit C (the "Concept Plan") (the "Sunset Tract"); and

WHEREAS, Lakeside is now the owner of that portion of the Property known as the "Hines Tract," which is legally described on Exhibit B attached hereto and is depicted on the Concept Plan (the "Hines Property", and together with the Sunset Tract, collectively referred to as the "Developer Tracts"); and

WHEREAS, on April 16, 2018, the Town approved MU17-0002 and the Amended Lakeside Development Code (the "Code") for the Project, which establish rules and regulations for the development of the Project; and

WHEREAS, on April 16, 2018, the parties thereto further amended the Development Agreement by entering the Third Amendment to Development Agreement for Lakeside DFW (the “Third Amendment”) to revise the provisions of the Development Agreement to change the terms and conditions relating to the construction of the Sunset Green and Community Lawn to be located on the Developer Tracts; and

WHEREAS, the Parties now desire to further revise the provisions of the Development Agreement to change the terms and conditions relating to the construction of the Sunset Green Amphitheater, timing of Escrow Amounts, and clarify the Lakeshore Public Amenities and access thereto;

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Town and Developer covenant and agree as follows:

1. **Sunset Green Amphitheater.** Paragraph 2(ii) is hereby amended to read as follows:

“(ii) Notwithstanding anything to the contrary set forth in Section 2C of the Second Amendment, Sunset shall complete construction of the Sunset Green Amphitheater and Boardwalk extension prior to the Town issuance of a building permit for the second of either of the restaurant building adjacent to the Sunset Green Amphitheater depicted in Exhibit “B.” Alternatively, Sunset may commence construction of both restaurant buildings concurrently, and shall complete construction of the Sunset Green Amphitheater and Boardwalk extension prior to the issuance of a certificate of occupancy for either restaurant building. . “Complete construction” shall mean the development permit has been finalized by the Town.”

2. **Escrow Amounts.** Paragraph 4 is hereby amended to read as follows:

“Town acknowledges and agrees that the Observation Plaza (as defined in Section 5 of the Second Amendment and shall hereinafter be known as “Sunset Point”) has been completed and funds held by the Town in escrow for Sunset Point have been fully disbursed. Town further acknowledges that construction of the Boardwalk has been completed and Town agrees to pay to Developer all remaining funds in the Major Amenity Reimbursement Fee escrow account, which includes improvements within Lakewood Park (except for the Amphitheater Escrow, as defined below), within thirty (30) days after the Effective Date of this Fourth Amendment. Town acknowledges that Sunset has escrowed \$310,005 with Town pursuant to Section 3A of the First Amendment to guarantee the construction of the previously required Amphitheater (the “Amphitheater Escrow”). Notwithstanding anything to the contrary contained in the Development Agreement, Town shall pay to Sunset the Amphitheater Escrow upon Town’s acceptance of the Sunset Green Amphitheater.”

3. **Lakeshore Public Amenities.** Paragraph 14 is hereby amended to read as follows:

“For the purposes of this section, the lakeshore public amenities are identified in Town Ordinance No. 09-18, Sections 3.1 and 5, as Sunset Point, Sunset Green Amphitheater, Waterfront Bluff, and Community Lawn and further depicted in Exhibit “C.” Once the lakeshore public amenities have been accepted and all buildings have been issued certificates of occupancy within Microzones 1-4 by the Town, the Developer must maintain unrestricted public access to such amenities. Microzones 1-4 are identified in Town Ordinance No. 09-18, Section 3, Figure 3.3 (MU-TEN Microzone map) and attached as Exhibit “D.” If public access must be interrupted to facilitate additional construction or other activity, the Developer must provide the Town with a minimum of ten (10) business days advance written notice detailing the duration of the interrupted public access. Public access must not be interrupted for more than fourteen (14) consecutive calendar days and no more often than once every 30 calendar days. In the event this paragraph (14) is violated, the Parties agree that there is no adequate remedy at law and Town may seek equitable relief from a court of competent jurisdiction in order to enjoin any such breach.”

4. **Development Agreement.** The Town and Developer agree that, except to the extent amended herein, the provisions and terms contained in the Development Agreement, as amended by the First, Second, and Third Amendments, remain in full force and effect and shall continue to be applicable to the development of Lakeside and shall be binding on all signatories hereto. If there is a conflict between the terms of the Development Agreement and this Fourth Amendment, the terms of this Fourth Amendment shall control.

5. **Attorneys Fees.** In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Fourth Amendment, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorneys’ fees (including its reasonable costs and attorneys’ fees on any appeal). Nothing herein shall constitute a waiver of any claim or defense that could be asserted in any litigation related to this Fourth Amendment, and the Parties agree that this Fourth Amendment is not subject to Subchapter I of Chapter 271 of the Texas Local Government Code.

6. **Severability.** In the event any provision of this Fourth Amendment shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Fourth Amendment shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

7. **Filing in Denton and Tarrant County Deed Records: Covenant Running with the Land.** This Fourth Amendment, or a memorandum thereof, shall be filed in the deed records of Denton County and Tarrant County, Texas. This Fourth Amendment shall be deemed a covenant that runs with the land and is binding on all heirs, successors, assigns, grantees, vendors, trustees, representatives of Developer, and all others holding any interest now or in the future. It is the intent of this Fourth Amendment, and the Parties so acknowledge, that all phases of the development of Lakeside shall be subject to this Section of this Fourth Amendment.

8. **Binding Obligation.** Upon execution of this Fourth Amendment by all signatories hereto, the Development Agreement, as amended hereby, shall become a binding obligation on the signatories. The Town warrants and represents that the individual executing this Fourth Amendment on behalf of the Town has full authority to execute this Fourth Amendment and bind the Town to the same. Developer warrants and represents that the individuals executing this Fourth

Amendment on its behalf have full authority to execute this Fourth Amendment and bind Developer to same. Further, this Fourth Amendment is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

9. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Fourth Amendment, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

10. **Roughly Proportionate Determination under Texas Law.** Developer has been represented by legal counsel in the negotiation of this Fourth Amendment and been advised, or has had the opportunity to have legal counsel review this Fourth Amendment and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town in this Fourth Amendment, if any, are roughly proportionate to the Project's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs under this Fourth Amendment in accordance with § 212.904 of the Texas Local Government Code and acknowledges that the time line for commencing such appeal commences upon execution of this Fourth Amendment. Notwithstanding the foregoing, Developer hereby waives and releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure improvements required by this Fourth Amendment.

11. **Rough Proportionality Determination under Federal Law.** Developer hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution and Chapter 395 of the Texas Local Government Code in regard to this Fourth Amendment. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements in this Fourth Amendment, if any, mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the projected impact of the terms of this Fourth Amendment. Developer further acknowledges that the benefits of zoning and platting have been accepted with full knowledge of potential claims and causes of action which may be raised now and in the future, and Developer acknowledges the receipt of good and valuable consideration for the release and waiver of such claims.

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: _____

Name: Derek France

Title: Mayor, Town of Flower Mound

STATE OF TEXAS)

)

COUNTY OF DENTON)

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, Mayor of the Town of Flower Mound, Texas, on behalf of the Town of Flower Mound, Texas.

Notary Public, State of Texas

My Commission Expires:

DEVELOPER:

SUNSET LEGACY, LP,
a Texas Limited Partnership

By: SSL Management, LLC,
a Texas limited liability company,
Its General Partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2022,
by _____, _____ of SSL Management, LLC, a Texas limited
liability company, General Partner of Sunset Legacy, LP, a Texas limited partnership, known to
be the person whose name is subscribed to the foregoing instrument, and that he executed the same
on behalf of and as the act of said entities.

Notary Public, State of Texas

LAKESIDE RESIDENCES, LP,
a Texas Limited Partnership

By: Lakeside Residences GP, LLC,
Its General Partner

By: Lakeside Project DFW, LP,
Its sole member

By: Hines Lakeside Associates, LP,
Its General Partner

By: Hines Highrise Properties, LLC,
Its General Partner

By: Hines Interests Limited Partnership,
Its sole member

By: Hines Holdings, Inc.,
Its General Partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, _____ of Hines Holdings, Inc., general partner of Hines Interests Limited Partnership, sole member of Hines Highrise Properties, LLC, general partner of Hines Lakeside Associates, LP, general partner of Lakeside Project DFW, LP, sole member of Lakeside Residences GP, LLC, general partner of Lakeside Residences LP, a Texas limited partnership, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of said entities.

Notary Public, State of Texas

By its execution below, Plains Capital Bank, which holds a lien against a portion of the Developer Tracts, consents to the execution and recordation of this Fourth Amendment.

Plains Capital Bank

By: _____
 Name: _____
 Title: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2022, by _____, _____ of Plains Capital Bank, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of said entity.

 Notary Public, State of Texas

Exhibit "A"

Legal Description of Lakeside Village

Tract I:

BEING all that certain tract of land situated in the J. M. TANNEHILL SURVEY, ABSTRACT No. 1252, in the Town of Flower Mound, Denton County, Texas, being part of a tract of land described in deed to Peter P. Stewart as recorded in County Clerk's Instrument No. 93-R0024840, Deed Records, Denton County, Texas, also being all that property described in Quitclaim Deed to Peter P. Stewart as recorded in County Clerk's Instrument No. 2002-R0092862, Deed Records, Denton County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner on the Easterly right-of-way line of Lakeside Parkway, a 120-foot right-of-way at this point, said point being on the most Westerly corner of said Quitclaim tract;

THENCE North 89 deg 55 min 09 sec East, departing said Easterly right-of-way line of Lakeside Parkway, a distance of 899.44 feet to a 1/2-inch iron rod found for corner on the West line of a tract of land described in deed to Ray B. Baldwin III as recorded in County Clerk's Instrument No. D210075275, Real Property Records, Denton County, Texas, said point also being the Southeast corner of Village Oaks Mobile Home Community, an addition to the Town of Flower Mound, Denton County, Texas, according to the Plat thereof recorded in Cabinet D, Page 291, Plat Records, Denton County, Texas;

THENCE South 00 deg 31 min 16 sec East, along the West line of said Baldwin tract, a distance of 326.07 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for the Northeast corner of Lakeside Parkway, a 100-foot right-of-way as dedicated by Dedication Deed to the Town of Flower Mound as recorded in County Clerk's Instrument No. 2001-R0105772, Deed Records, Denton County, Texas;

THENCE along the Northerly and Easterly right-of-ways of said Lakeside Parkway, the following courses and distances:

South 89 deg 20 min 52 sec West, a distance of 742.09 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner, said point being the beginning of a non-tangent curve to the left having a radius of 100.00 feet, a central angle of 39 deg 28 min 48 sec, a chord bearing of North 50 deg 23 min 32 sec West, and a chord length of 67.55 feet;

Along said non-tangent curve to the left, an arc distance of 68.91 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner;

North 17 deg 00 min 08 sec West, a distance of 53.70 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner, said point being the beginning of a curve to the left having a radius of 1,760.00 feet, a central angle of 08 deg 21 min 11 sec, a chord bearing of North 21 deg 10 min 42 sec West, and a chord length of 256.36 feet;

THENCE continuing along the Easterly right-of-way of said Lakeside Parkway and said curve to the left, an arc distance of 256.59 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 274,800 square feet or 6.309 acres of land, more or less. Bearings shown hereon are based upon an on-the-ground survey performed in the field on the April 5, 2012, utilizing a G.P.S. bearing related to the Texas Coordinate System, North Texas Central Zone (4202), NAD 83 State Plane Coordinate grid values based on the Geo-Shack Virtual Reference Station (VRS) Network.

Tract II:

BEING all that certain tract of land situated in the the J. M. TANNEHILL SURVEY, ABSTRACT No. 1252, in the Town of Flower Mound, Denton and Tarrant County, Texas, being part of a tract of land described in deed to Peter P. Stewart as recorded in County Clerk's Instrument No. 93-R0024840, Deed Records, Denton County, Texas, also being all that property described in deed to Peter P. Stewart as recorded in Volume 11029, Page 1308, Deed Records, Tarrant County, Texas, and also being all that property described in deed to Peter P. Stewart as recorded in Volume 8180, Page 1145, Deed Records, Tarrant County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2-inch iron rod found for corner on the Westerly right-of-way line of Lakeside Parkway, a 120-foot right-of-way, said point being the Southeast corner of Lot 1, Block I, Lakeside Hotel, an addition to the Town of Flower Mound, Tarrant County, Texas, according to the Plat thereof recorded in Cabinet A, Slide 11756, Plat Records, Denton County, Texas, said point being the beginning of a curve to the right having a radius of 1,640.00 feet, a central angle of 04 deg 28 min 09 sec, a chord bearing of South 19 deg 14 min 13 sec East, and a chord length of 127.89 feet;

THENCE along said Westerly right-of-way line of Lakeside Parkway and said curve to the right, an arc distance of 127.92 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner;

THENCE South 17 deg 00 min 08 sec East, continuing along said Westerly right-of-way line of Lakeside Parkway, a distance of 53.71 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner, said point being the beginning of a non-tangent curve to the left having a radius of 100.00 feet, a central angle of 106 deg 14 min 09 sec, a chord bearing of South 16 deg 59 min 23 sec East, and a chord length of 159.97 feet;

THENCE continuing along said Westerly right-of-way line of Lakeside Parkway and said non-tangent curve to the left, an arc distance of 185.37 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner on the Westerly right-of-way line of Long Prairie Road, a variable width right-of-way;

THENCE South 17 deg 00 min 08 sec East, along the Westerly right-of-way line of said Long Prairie Road, a distance of 258.06 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner on the North line of said Peter P. Stewart tract (Volume 11029, Page 1308);

THENCE North 88 deg 37 min 18 sec East, along the North line of said Peter P. Stewart tract (Volume 11029, Page 1308), continuing along the Westerly right-of-way line of said Long Prairie Road, a distance of 24.07 feet to a brass monument found for corner, said point being the Northeast corner of said Peter P. Stewart tract (Volume 11029, Page 1308);

THENCE South 18 deg 10 min 43 sec East, continuing along said Westerly right-of-way line of said Long Prairie Road and along the Easterly line of said Peter P. Stewart tract (Volume 11029, Page 1308), a distance of 143.87 feet to 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner from which a brass monument found bears North 88 deg 50 min 33 sec East, 39.77 feet;

THENCE along the Easterly line of said Peter P. Stewart tracts (Volume 11029, Page 1308 and Volume 8180, Page 1145), the following courses and distances:

South 88 deg 50 min 33 sec West, a distance of 289.31 feet to a brass monument found for corner;

South 01 deg 05 min 02 sec East, a distance of 63821 feet to a brass monument found for corner;

South 85 deg 46 min 29 sec West, a distance of 207.02 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner on the East line of Tract 1 of said Peter P. Stewart tract (Volume 8180, Page 1145);

South 03 deg 45 min 31 sec East, a distance of 284.14 feet to a brass monument found for the Southeast corner of Tract 4 of said Peter P. Stewart tract (Volume 8180, Page 1145);

THENCE South 88 deg 48 min 29 sec West, along the South line of said Tract 4, a distance of 428.02 feet to a brass monument found for the Southwest corner of said Tract 4;

THENCE along the Westerly line of said Peter P. Stewart tract (County Clerk's Instrument No. 93-R0024840, Volume 11029, Page 1308, and Volume 8180, Page 1145), the following courses and distances;

North 06 deg 33 min 31 sec West, a distance of 261.30 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner;

North 20 deg 41 min 29 sec East, a distance of 301.80 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner;

North 02 deg 20 min 31 sec West, a distance of 230.50 feet to a 1/2-inch iron rod with a red plastic cap stamped "W.A.I." set for corner;

North 27 deg 03 min 35 sec West, a distance of 331.50 feet to a brass monument found for the Northwest corner of said Peter P. Stewart tract (Volume 11029, Page 1308);

North 89 deg 37 min 43 sec East, a distance of 87.23 feet to a brass monument found for corner on the North line of said Peter P. Stewart tract (Volume 11029, Page 1308);

North 18 deg 59 min 56 sec West, a distance of 614.28 feet to a 1/2-inch iron rod found for the Southwest corner of said Lot 1, Block 1;

THENCE North 89 deg 15 min 56 sec East, along the South line of said Lot 1, Block 1, a distance of 840.14 feet to the POINT OF BEGINNING.

CONTAINING within these metes and bounds 1,093,369 square feet or 25.100 acres of land, more or less. Bearings shown hereon are based upon an on-the-ground survey performed in the field on the April 5, 2012, utilizing a G.P.S. bearing related to the Texas Coordinate System, North Texas Central Zone (4202), NAD 83 State Plane Coordinate grid values based on the Geo-Shack Virtual Reference Station (VRS) Network.

Exhibit B

Legal Description of Hines Tract

FIELD NOTE DESCRIPTION

STATE OF TEXAS
COUNTY OF TARRANT

BEING a tract of land situated in the J. TANNEHILL SURVEY, Abstract No. 1252D Tarrant County, Texas (formerly Abstract No. 1252 Denton County, Texas), and being a portion of a tract of land conveyed to LAKESIDE DFW LAND, LTD., as recorded in Volume 4589, Page 1287 of the Deed Records of Denton County, Texas (DRDCT) and being more particularly described as follows:

BEGINNING at a ½ inch iron rod set with a red plastic cap stamped "W.A.I." at the intersection of the northerly line of Tract 1 as conveyed to Peter P. Stewart recorded in Volume 11029, Page 1308 (DRDCT) and the westerly Right-of-Way line of LAKESIDE PARKWAY (120' Right-of-Way);

THENCE departing the westerly Right-of-Way line of said LAKESIDE PARKWAY and along the northerly line of said Tract 1 North 89 deg 54 min 43 sec West a distance of 840.54 feet to a ½ inch iron rod set with a red plastic cap stamped "W.A.I." for corner, said point being set in the east line of a tract of land conveyed to the United States of America known as Tract B-112;

THENCE departing the northerly line of said Tract 1 and along the easterly line of said Tract B-112 North 18 deg 09 min 28 sec West a distance of 520.11 feet to ½ inch iron rod set with a red plastic cap stamped "W.A.I." for corner;

THENCE departing the easterly line of said Tract B-112 South 89 deg 54 min 43 sec East a distance of 707.12 feet to a ½ inch iron rod set with a red plastic cap stamped "W.A.I." for corner, said point being set in the westerly Right-of-Way line of said LAKESIDE PARKWAY and being the beginning of a non-tangent curve to the right having a radius of 1640.00 feet and having a chord bearing of South 30 deg 51 min 58 sec East and a chord length of 575.99 feet;

THENCE along the westerly Right-of-Way line of said LAKESIDE PARKWAY continuing along said non-tangent curve to the right through a central angle of 20 deg 13 min 41 sec and an arc length of 578.99 feet to the POINT OF BEGINNING;

CONTAINING within these metes and bound 9.000 acres or 392,042square feet of land more or less. Bearings contained within this field note description are based upon an on the ground survey performed in the field on the 11th day of April, 2005 utilizing the bearings as found on a ALTA/ACSM Land Title Survey prepared by Winkelmann & Associates, Inc. dated May, 2003, Project Number 02219.02(52)

Exhibit C

Concept Plan



Exhibit "C"

Exhibit D

Lakeshore Public Amenities

Realty Capital Management
Dallas, TX

LAKESIDE DFW DEVELOPMENT CODE
FLOWER MOUND, TEXAS

SECTION 5

FIGURE 5.1: PARK AND OPEN SPACE PLAN

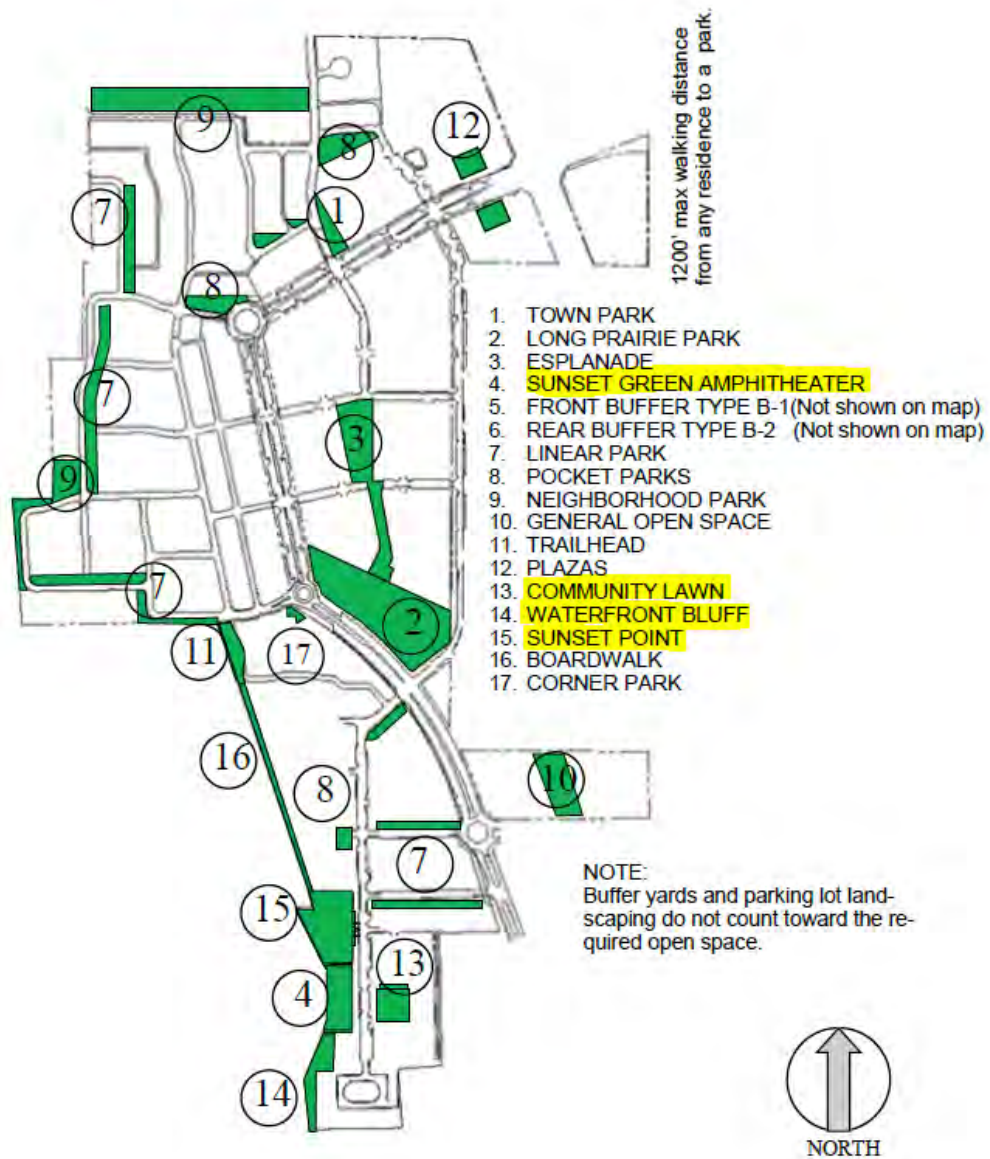


Exhibit E

MU-TEN Microzone Map



Town Council Future Agenda Items



SCHEDULED	3/21/2022	Consent	Oak Street Lift Station & Force Main - Testing Award
		Consent	City Works Migration and Implementation Services
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on March 7, 2022.
		Presentation	School Liaison Committee Update
		Presentation	Book presentation by Tarrant County Clerk (Tarrant County 2020 Coronavirus Pandemic Book).
		Presentation	Proclamation and presentation of Hometown Hero-Austin McDaniel
		Regular	Consider approval of the purchase of dual-certified Firefighter gear in the amount of \$61,625.00 from Casco Industries through BuyBoard Contract 603.20 and authorization for the Mayor to approve same on behalf of the Town.
		Regular	The second of two Public Hearings to review Chapter 50, Article III, "Offenses regarding Minors," Division 2, "Curfew."
		Regular	Public Hearing to consider an ordinance granting Specific Use Permit No. 472 (SUP21-0005 – Bosco Boat Dealership) to permit inclusion of Retail, general (outdoors) use for a boat dealership within an existing car dealership facility. The property is generally located south of Justin Road and east of Stone Hill Farms Parkway. (P&Z recommended approval with conditions by a vote of 6 to 0 at its December 13, 2021, meeting.) (At the Applicant's request, Town Council tabled this item to its March 21, 2022, meeting by a vote of 5 to 0.)
		Regular	Presentation and discussion on land development along the I-35W corridor.
		Regular	Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2021.
	4/4/2022	Consent	Consider approval of the Best Value Bid Nos. 2022-31-A (Northwest), 2022-32-A (Southeast), 2022-33-A (Southwest & Twin Coves Park) and 2022-34-A (Northeast) Landscape Maintenance Program to ????? at the unit prices bid, in the estimated annual amount of \$626,870.00; and authorize the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of the minutes from a regular meeting of the Town Council held on March 21, 2022.

SCHEDULED	4/4/2022	Regular	Public Hearing to consider an application for a tree removal permit (TRP21-0036) for forty-seven (47) specimen trees on property proposed for development as Townlake Phase Five & Six residential development. The property is generally located south of Cross Timbers Road and east of Scenic Drive. (The Environmental Conservation Commission recommended approval by a vote of 6-0-0 at its February 1, 2022, meeting).
		Regular	Public Hearing to consider an ordinance for rezoning (ZPD21-0011 – Townlake Phase Five & Six) from Agricultural District (A) to Planned Development District No. 187 (PD-187) for a cluster development with certain modifications and exceptions to the Code of Ordinances. The property is generally located south of Cross Timbers Road and east of Scenic Drive. (ECC recommended approval of the Open Space Management Plan by a vote of 6 to 0 at its February 1, 2022, meeting.) (P&Z recommended approval/denial by a vote of 0 to 0 at its March 28, 2022, meeting.)
	4/18/2022	Consent	Consider approval of the minutes from a regular meeting of the Town Council held on April 4, 2022.
		Consent	Consider approval of the minutes from a work session of the Town Council held on April 15, 2022.
		Presentation	Community Development Corporation and Parks Board Update
	5/16/2022	Presentation	Transportation Commission Update
	5/18/2022	Consent	Placeholder: Canvass May 7 election
	6/16/2022	Presentation	All Together Flower Mound Commission Update
	6/20/2022	Presentation	Veterans Liaison Board Update