

AGENDA

FLOWER MOUND TOWN COUNCIL REGULAR MEETING

10/17/2022

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

6:00 P.M.

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

Comments regarding any agenda item can be sent to the Town Council by emailing towncouncil@flower-mound.com or by calling 972.874.6005 and leaving a message.

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 Chiropractic Health Month October 2022
2. Presentation on the upcoming Shop Local Week (November 1-7)
3. Denton Central Appraisal District (DCAD) initiatives and 2023 budget planning presentation by Don Spencer, Interim Chief Appraiser
4. Denco Area 9-1-1 District (DENCO) overview of public safety activities by Exec. Director Greg Ballentine

E. PUBLIC COMMENT

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

In accordance with the Texas Open Meetings Act, the Town Council is restricted from discussing or acting on items not listed on the agenda.

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, and times may be adjusted by the mayor
- Speakers must address their comments to the Town Council
- Please state your name and address when speaking

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. Organizational updates

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 work session is scheduled for Thursday, October 20
2. A regular meeting is scheduled for Monday, November 7

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 10/3- Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on October 3, 2022.
2. NCTCOG/Nearmap Imagery Service ILA- Consider the approval of an Interlocal Agreement between the Town and North Central Texas Council of Governments/Nearmap for Town staff to have access to an aerial imagery service, and authorization for the Mayor to execute same on behalf of the Town.
3. NCTCOG Biennial Aerials ILA- Consider the approval of an Interlocal Agreement renewal between the Town and NCTCOG for Town staff to have continued access to high-resolution aerial imagery, and authorization for the Mayor to execute same on behalf of the Town.
4. Oncor Rate Case- Denial Resolution- Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by Oncor to deny Oncor Electric Delivery Company's requested rate increase.
5. Reimbursement Resolution- Consider approval of a resolution declaring expectation to reimburse water and sewer project expenditures with proceeds of future debt and authorizing the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations; and providing an effective date.

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6. 2022 Police Bulletproof Vest Grant- Consider approval of a resolution accepting grant funds from the Department of Justice's Office of Justice Programs for the purchase of bulletproof vests for the Police Department as part of the FY 2022 Bulletproof Vest Partnership.
7. Purchase of Tasers- Consider approval of a lease agreement for the acquisition of Axon electric control devices (ECD or Taser); and authorization for the Mayor to execute same on behalf of the Town.
8. Target Solutions Agreement- Consider approval of a client agreement with TargetSolutions/LMS Staffing to track required training hours and staffing for ISO and TCFP compliance in the amount of \$25,389.00; and authorization for the Mayor to execute same on behalf of the Town.
9. Outdoor Warning Sirens Maintenance- Consider approval of an Annual Maintenance Contract with Goddard Enterprises for Mass Notification Systems in the amount of \$17,400.00; and authorization for the Mayor to execute same on behalf of the Town.
10. Stryker Maintenance Proposal- Consider approval of an Annual Maintenance Contract with ProCare Services / Stryker for Emergency Services ambulance equipment in the amount of \$31,415.00; and authorization for the Mayor to execute same on behalf of the Town.
11. Annual Firefighter Physicals- Consider approval of the annual firefighter physical examinations with Front Line Mobile Health through the Professional Service Agreement in the total amount of \$64,350.00 and authorization for the Mayor to approve same on behalf of the Town.
12. Zoll Monitor Maintenance- Consider approval of an Extended Three-Year Warranty and Preventative Maintenance Contract with Zoll Medical Corporation for the Fire Department's heart monitors in the amount of \$65,981.25 due in three equal annual payments; and authorization for the Mayor to execute same on behalf of the Town.
13. EMS Medical Direction- Consider approval to continue contracted services with Dr. Sean Fleming in the amount of \$63,000.00 for EMS Medical Direction.
14. Vehicle Purchases- Consider approval of the purchase of three new Ford F450 Crew Cab Dual Rear Wheel Cab and Chassis Trucks per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's Five Star Ford in the amount of \$201,645.25.

K. REGULAR ITEMS

15. Adoption of the 2021 IBC- Public Hearing to consider approval of an Ordinance amending Chapter 14, "Buildings and Building Regulations," Article II, of the Code of Ordinances of the Town of Flower Mound, to provide for the adoption of the 2021 edition of the International Building Code and local amendments thereto.
16. Adoption of the 2021 IRC- Public Hearing to consider approval of an Ordinance amending Chapter 14, "Buildings and Building Regulations," Article XIV, of the Code of Ordinances of the Town of Flower Mound, to provide for the adoption of the International Residential Code, 2021 edition, and local amendments thereto.
17. Timber Creek Wtr & Sewer Replacement- Consider approval of a Construction Agreement with Excel 4 Construction, LLC, for the Timber Creek Water and Sewer Replacements project, in the amount of \$2,609,265.00; and authorization for the Mayor to execute same on behalf of the Town.

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18. MPA22-0001 - CTCDD Update- Public Hearing to consider an ordinance amending the Master Plan (MPA22-0001 – Cross Timbers Conservation Development District Update) by amending Section 1 “Land Use Plan,” Section 2 “Area Plan,” and Section 4 “Urban Design Plan,” for the purpose of updating conservation expectations and vision within the Cross Timbers Conservation Development District. (PZ recommended approval by a vote of 6 to 0 at its October 10, 2022, meeting.)
19. LDR22-0002 - CTCDD Update- Public Hearing to consider an ordinance amending the Land Development Regulations (LDR22-0002 – Cross Timbers Conservation Development District Update) by amending Chapter 98 “Zoning,” of the Town's Code of Ordinances to amend conservation development standards within the Cross Timbers Conservation Development District. (PZ recommended approval by a vote of 6 to 0 at its October 10, 2022, meeting.)
20. LDR22-0001 - Landscape Ordinance Update- Public Hearing to consider an ordinance amending the Development Regulations (LDR22-0001 – Landscape Ordinance Update) by amending Chapter 74 “General Provisions,” Chapter 82 “Development Standards,” Chapter 94 “Trees,” and Chapter 98 “Zoning,” of the Town's Code of Ordinances to amend and propose new landscaping standards for the purpose of clarifying and updating certain sections. (PZ recommended approval by a vote of 6 to 0 at its October 10, 2022, meeting.)

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, Historical Commission Task Force, 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. 2006 Rule 11 agreement and dismissal, Cause No. 2005-20153-158 and Flower Mound Ranch Development
 2. Housing Discrimination Complaint
 3. La Estancia Investments, L.P., v. Town of Flower Mound
 4. Concealing identity while carrying a firearm
- 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.

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- 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, performance related to certain incentive agreements, and proposed Tax Increment Reinvestment Zone (TIRZ).

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.

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: October 14, 2022, at 3:15 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting by contacting Theresa Scott, Town Secretary, at 972.874.6076. Additional time limits will be provided to members of the public that need to address the Town Council through a translator.



TOWN COUNCIL AGENDA ITEM NO. 1

CONSENT ITEM

DATE: October 17, 2022

FROM: Theresa Scott, Town Secretary

ITEM: Consider approval of the minutes from a work session of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on October 3, 2022.

BACKGROUND INFORMATION: The Town Council work session and Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting was held on October 3, 2022.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft minutes

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

THE FLOWER MOUND TOWN COUNCIL REGULAR MEETING HELD ON THE 3RD DAY OF OCTOBER 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
Sandeep Sharma	Mayor Pro Tem
Ann Martin	Deputy Mayor Pro Tem
Adam Schiestel	Councilmember Place 1
Brian Taylor	Councilmember Place 3
Jim Engel	Councilmember Place 4

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

Theresa Scott	Town Secretary
Bryn Meredith	Town Attorney
James W. Childers	Town Manager
Tommy Dalton	Assistant Town Manager
Tiffany Bruce	Assistant Town Manager/Town Engineer
Lexin Murphy	Director of Planning Services
JP Walton	Strategic Services Manager

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 Russ McNamer gave the invocation and Mayor France led the pledges.

D. PRESENTATIONS

1. Proclamation and presentation of Hometown Hero banner Justin Turner

Mayor France recited the proclamation and presented it to Justin Turner.

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.

	Speaker names and address	Subject (as written on the form)
1.	Robbie Cox, 3001 Wood Trail	Whataburger
2.	Fred Vincent, 3933 Bordeaux Cir	ECC
3.	Daniel Keough, 3012 Bramble Chase Ct, Bedford	Mayor's gun proposition
4.	Tanner Wilson, 4925 Creekwood Dr	Racist Stickers
5.	Denise Walsworth Hicks, 3917 Ashburton Way*	Not indicated

*Did not speak

F. ANNOUNCEMENTS

Deputy Mayor Pro Tem Martin announced that October 4 is National Night Out. She also announced that there will be a Fire Department Open House on October 8.

Mayor France had the following announcements:

- Diwali Festival of Lights on October 15
- The Town is accepting applications for the Town's Annual Outstanding Citizen Award
- The passing of Flower Mound Firefighter Wade Cannon (which included a moment of silence)

G. TOWN MANAGER'S REPORT

Mr. Childers provided the following report.

1. Capital improvement projects
No discussion.
2. Economic Development projects
No discussion.
3. Operational updates
He announced that October 1 is the first day of the new Town budget fiscal year.

He also asked the public to keep the firefighters and Wade's family in their prayers during this time.

H. FUTURE AGENDA ITEMS

1. No request

I. COORDINATION OF CALENDARS

1. The next Town Council regular meeting is scheduled for Monday, October 17
2. A work session is scheduled for Thursday, October 20

Mayor France asked if all members plan to attend both of those meetings. Councilmember Taylor indicated he was tentative for both.

J. CONSENT ITEMS

1. Consider approval of the minutes from a regular meeting of the Town Council; Town of Flower Mound Fire Control, Prevention, and Emergency Medical Services District Special meeting; and Crime Control and Prevention District Special meeting on September 19, 2022.
2. Consider the approval of a Professional Services Agreement renewal with Cityworks LLC, a Trimble Company, in the amount of \$65,006.17; and authorization for the Mayor to execute same on behalf of the Town.

3. Consider the approval of a Professional Services Agreement renewal with Environmental Systems Research Institute, Inc. in the amount of \$55,080.00; and authorization for the Mayor to execute same on behalf of the Town.
4. Consider approval of the purchase and installation of a shade structure, for the Heritage Park Improvements, from Whirlix Design, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$102,882.00.
5. Consider approval of a Professional Services Agreement with MHS Planning & Design, LLC., for the design phase services associated with the Tealwood Oaks Park project, in the amount of \$52,250.00; and authorization for the Mayor to execute same on behalf of the Town.

Mayor Pro Tem Sharma moved to approve by consent Items 1 – 5, as presented in the agenda caption. Councilmember Taylor seconded the motion. Each item, as approved by consent, is restated above, and if applicable, the Ordinance or Resolution caption for each, for the record.

VOTE ON MOTION:

Motion passed

AYES: TAYLOR, SCHIESTEL, ENGEL, MARTIN, SHARMA

NAYS: NONE

K. REGULAR ITEMS

Mayor Pro Tem Sharma recused himself from discussion and action on the following item.

6. Public Hearing to consider an ordinance for rezoning (MU22-0002 – Lakeside Village) to amend Mixed Use District-1 (MU-1) to amend certain development standards related to Character Zone Standards, Open Space Standards, and Signage Standards in the Lakeside Village Development Code. The property is generally located west of Long Prairie Road along both sides of Lakeside Parkway. (PZ recommended approval by a vote of 6 to 0 at its September 26, 2022, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Text amendments (parks and open space plan, proposed standards, signage)
- Site photos

and she responded to questions or comments from Council regarding:

- Signage

Applicant Presentation

Rebecca Everett, Realty Capital

Ms. Everett responded to questions or comments from Council regarding:

- Trail width
- Clarification regarding area where no sidewalks are being requested

Mayor France opened the Public Hearing at 6:31 p.m. No one spoke. Mayor France closed the Public Hearing at 6:32 p.m.

Deputy Mayor Pro Tem Martin moved to approve as presented. Councilmember Engel seconded the motion.

ORDINANCE NO. 47-22

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 09-18, WHICH AMENDED 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 3, "CHARACTER ZONE STANDARDS," SECTION 5, "CIVIC/OPEN SPACE AND LANDSCAPE STANDARDS," AND SECTION 8, "SIGNAGE STANDARDS/APPENDIX D;" 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.

VOTE ON MOTION:

AYES: MARTIN, ENGEL, SCHIESTEL, TAYLOR

NAYS: NONE

ABSENT(RECUSED): SHARMA

Motion passed

7. Public Hearing to consider an ordinance amending the zoning (MU21-0002 – Flower Mound Ranch) on approximately 1,066 acres of land from Agricultural District (A) and Interim Holding (IH) uses to Mixed Use District-2 (MU-2) uses, and with certain other waivers, exceptions and modifications to the Code of Ordinances. The property is generally located at the intersection of Cross Timbers Rd and U.S. Highway 377, expanding outwards from all four corners. (PZ recommended approval by a vote of 4 to 2 at its September 26, 2022, meeting.)

Staff Presentation

Ms. Murphy gave a presentation identifying or noting:

- General and detailed location
- Land use and zoning
- Mixed use land use language (Master Plan)
- Concept plan
- Permitted uses
- Detailed concept plan
- Site photos
- Phasing plan
- Lot type
- Buildout maximums
- Development standards
- Concept street types
- Height bonus
- Illustrative open space and trails plan

- Building design, parking, and landscape standards
- Comprehensive sign package
- Additional modifications

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

- Max number for types of multi-family
- Examples of comparable build out of four million square feet
- Clarification regarding:
 - o Definition of civic uses
 - o Open space calculations
 - o Multi-family calculations
 - o Max build-out
 - o Total number of gas stations allowed
 - o Phase I passing SMARTGrowth
- Process to change and evaluate phasing
- If the applicant could build the remaining phases, would it pass SMARTGrowth
- What checks and balances are in place to make sure the applicant is accountable, as well as the associated enforcement

Chance Sparks, Freese and Nichols, Inc. (Town consultant)

Mr. Sparks reported on the soundness of the market study report as presented by the applicant.

Applicant Presentation

Deborah Furst, 2800 Lakeside Parkway

Ms. Furst provided background information regarding the project and their long term commitment to “a quality and beneficial development”.

Randi Rivera, McAdams

Ms. Rivera gave a presentation identifying or noting:

- Aerial photo of site
- Flower Mound Ranch facts
- Guiding principles
- Land use history
- Open space in Furst Ranch
- Illustrative example – form based code
- Economic benefit
- Residential units
- Commitment to time cap and earn up
- Argyle ISD (50 acres opportunity)
- Community desires (what they’ve heard over the last 18 month period)

and she, or Mr. Furst, responded to questions or comments from Council, with some being after the public hearing, regarding:

- Open space clarification as it relates to the lake
- If the open space is calculated in the conservation cluster
- If one elementary school will be sufficient
- Expected population at build out
- Visual impact options for multi-story buildings
- Infrastructure needs and timing (making sure infrastructure was being put in as needed)
- Timing for the market study report

The following questions were presented by Council specifically to Mr. Jack Furst:

- 1) Will you flip the land
- 2) Will you allow churches
- 3) Are you agreeable to limited gas stations from 11 to 5
- 4) Will you exclude civic uses (e.g., fire station, police station, community activity center, etc.) from the calculations for the earn up
- 5) Will you agree to reduce the initial multi-family entitlement from 2,750 to 1,700 and start the earn up
- 6) Will you immediately withdraw your written protest pertaining to changes in the draft ordinance if the motion is consistent with the concessions offered and agreed upon

Mr. Furst answered yes to the six (6) above referenced questions.

Jason Claunch, Catalyst

Mr. Claunch reported on:

- Market study and findings (residential, commercial, schools)

Mayor France opened the Public Hearing at 8:25 p.m.

Mayor France recited a letter from Denton County Judge Andy Eads.

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 or Unknown on Speaker Card
1	Albert Picardi, 1525 Lindby	Beth Soderberg, 3100 Wager Rd*	Alicia Barker, 5409 San Meadow Dr*
2	Alexis Grossman 1868 Meyerwood Ln	Bill Dyess, 3424 Dowland Dr*	David Hodges, 2708 Compton Ct
3	Alison Flener, 6617 Roughleaf Ridge Rd	Bjorn Vandug, 2016 Barton Creek Ln**	Doug Carignan, 5205 Connors Dr
4	Andrew Starr, 2800 Lakeside Pkwy #504*	Cheryl Moore, 1900 Tennyson Dr*	Rena Hardeman, address not provided, Northlake
5	Angie Cox, 3209 Seaton Ct	Dee Garncarz, address not provided*	Robbie Cox, 3001 Wood Trail
6	Anita Rauhauser, 2800 Lakeside Pkwy #904*	Don Johnson, 3808 Bordeaux Ct	Todd Bayuk, 10845 Pedemales Falls Dr, Argyle
7	Bob Phillips, 4705 Skyline Dr*	Fred Vincent, 3933 Bordeaux Ct	
8	Brit Stock, 4005 Rothschild	Jacque Narrell, 4801 Lusk Ln*	

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9	Bryan Gelbke, 10843 Smoky Oak Trl*	Jennifer Howes, 7112 Canyon Pt, Argyle	
10	Bryan Webb, 4112 High Rd	Joyce M. Dyess, 3424 Dowland Dr*	
11	Caleb J. Brown, 4217 Greenthread Way, Northlake*	Judy Collins, 1537 Simmons Rd	
12	Carmen Goodson, 6108 Whiskerbrush, Argyle**		
13	Carol A. Forest, 1904 Towne View Blvd*	Julianne Soderberg, 3100 Wager Rd*	
14	Carol Kohankie, 4312 Lauren Way	Katy Collins Grote, 165 Double Oak Dr, Double Oak	
15	Charla Brown, 809 Rosemary Dr		
16	Chris Haverstick, 2000 Stevenson Ln*	Larry Narrell, 4801 Lusk Ln*	
17	Chris Tennapel, 2600 Lakeside Pkwy #400	Laverne Amsterdam, 5705 Pine Valley	
18	Claudio Forest, 1904 Towne View Blvd	Marsha Gavitt, 6501 Meadowcrest Ln	
19	Daniel Maroid, 324 Loma Alta Dr	Rick Lust, 3805 Ridgecrest Dr	
20	David Dunn, 2800 Lakeside Pkwy #902*	Scott Langley, 2300 Olympia Dr	
21	David Johnson, 3617 San Paula	Sharon Gentry, 2750 Bob White Ln	
22	David Woodard, 1917 Protea Dr*	Stacey Langley, 800 Carter Ct**	
23	David Zeller, 2800 Lakeside Pkwy #703*	Tim Whisenant, 2300 Olympia Dr #1484	
24	Don Taylor, 2800 Lakeside Pkwy #602*	Tracy Mollett, 817 Paisley Dr	
25	Donna Tarwater, 4613 Windmill Ln		
26	Dr John Baen, 201 Oregon Trl, Argyle		
27	Drew Larson, 4425 Ironwood Dr		
28	Dustin Brown, 1041 Colony St*		
29	Elizabeth Dunn, 2800 Lakeside Pkwy #902*		
30	Geoff Gabel, 6712 Elderberry Way*		
31	Greg Homer, 2800 Lakeside Pkwy #101*		
32	Gurmeet Singh, 2800 Lakeside Pkwy #804*		
33	Hemant Elhence, 2800 Lakeside Pkwy*		
34	Holly Homer, 2800 Lakeside Pkwy #101*		
35	James Naylor, 10843 Smoky Oak Tr		
36	Jeff Brown, 6709 Canyon Oak Ct*		
37	Jeremy Rauhauser D.C., 2800 Lakeside Pkwy #904*		
38	Jeri Harwell, 3936 Mohawk		
39	Jim Moll, address not provided*		
40	Jody Smith, 729 Aviator Dr, Fort Worth		
41	Joe Roach, 4993 Lusk Ln		
42	John Bruce Hildebrand, 2800 Lakeside Pkwy #702*		
43	Josette Sheeran, 2800 Lakeside Pkwy*		
44	Josh Flener, 6617 Roughleaf Ridge Rd		
45	Kajita Singh, 2800 Lakeside Pkwy #804*		
46	Ken Hodge, 2800 Lakeside Pkwy		
47	Ken Hughes, 453 Surrey Ln		
48	Kim Hunter, 116 Pecan Acres Cir, Argyle*		

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49	Kim Lewis, 2204 Sheffield Ct		
50	Leah Severson, 2800 Lakeside Pkwy #104*		
51	Lori Walker, 4913 Kingswood Dr		
52	Marie Brown, 6709 Canyon Oak Ct		
53	Marie Zeller, 2800 Lakeside Pkwy #703*		
54	Mark Glover, 140 Red Oak Ln		
55	Marty Bryan, 913 Hat Creek Ct, Bartonville		
56	Michael A. Catino M.D., 2800 Lakeside Pkwy #601*		
57	Michael Kirby, 2800 Lakeside Pkwy #805		
58	Nate Bryan, 6928 Basket Flower*		
59	Nicole Smith Woodard, 1917 Protea Dr		
60	Pat Hodge, 2800 Lakeside Pkwy		
61	Paul Stone, 1868 N Meyerwood Ln		
62	Penny Glover, 140 Red Oak Ln**		
63	Peter Stewart, 2800 Lakeside Pkwy #1003		
64	Rajita Singh, 2800 Lakeside Pkwy #804*		
65	Ramakrishna Cherrolu, 2800 Lakeside Pkwy #603*		
66	Renee Hildebrand, 4613 Morningstar Dr		
67	Rhonda Kevlin, 5916 Bluestem, Argyle*		
68	Rob Guedry, 2204 Sheffield Ct		
69	Robert Maxey, 4809 Schooner Ct		
70	Russell Webb, 4112 Marbella*		
71	Ryan Schroer, 5209 Bayberry St		
72	Sam Hanna, 2800 Lakeside Pkwy		
73	Sandra K. Taylor, 2800 Lakeside Pkwy #602*		
74	Sangeeta Elhence, 2800 Lakeside Pkwy #1203*		
75	Scott Tarwater, 4613 Windmill Ln		
76	Stacie Bambauer, 6928 Basket Flower Rd		
77	Stacy Lynn Schriever, 1800 Honey Mesquite		
78	Stacy Stoltz, 1613 Glen Hollow Ln*		
79	Stephen Shannon, 1901 Warwick Crescent Ct, Argyle		
80	Steve Dixon, 4604 Wisdom Creek Ct		
81	Steve Hildebrand, 4613 Morningstar Dr		
82	Susan Allen, 1204 College Pkwy #837, Lewisville*		
83	Suzy Gabel, 6712 Elderberry Way*		
84	Tammy Jeary, 2800 Lakeside Pkwy #1404*		
85	Tayton Morgan, 6419 Whiskerbrush*		
86	Tommy Severson, 2800 Lakeside Pkwy #104*		
87	Van Young, 9620 Smoot Ln, Argyle		
88	Victor Worley, 11612 Little Elm Creek		
89	Yvonne D. Stewart, 1404 Verbena Ln, Lantana*		

*Did not wish to speak

**Not available when called

Mayor France closed the Public Hearing at 10:17 p.m.

The Town Council convened into a closed meeting at 10:18 p.m. pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, and 551.087 for consultation with attorney, and to discuss matters relating to economic development negotiations, and reconvened into an open meeting at 11:05 p.m.

Deputy Mayor Pro Tem Martin moved to approve MU21-0002, including the following changes: On Table 3.4 (Development Standards by Character Zone)

Note 1: Prior to the issuance of a certificate of occupancy (CO) for the first multi-family residential dwelling unit within the Property (excluding age restricted units), one or more COs shall have been issued by the Town for at least 100,000 square feet of non-residential unfinished shell space or finished floor area (excluding gas stations) within the Property. During the ten-year period Following the date of the Town Council's adoption of this Ordinance, a maximum of ~~2,750~~ 1,700 multi-family dwelling units are permitted on the Property (excluding age-restricted units). Prior to the issuance of a CO for each of the ~~2,250~~ 3,300 multi-family units that are in excess of ~~2,750~~ 1,700 multi-family units (excluding age-restricted units), one or more COs shall have been issued by the Town for at least an additional 1,000 square feet of non-residential unfinished shell space or finished floor area for the following uses within the Property (e.g. 5,000 multi-family units requires ~~2,350,000~~ 3,400,000 square feet of non-residential unfinished shell space or finished floor area).

(1) All uses in the following land use categories in Table 2.1: commercial uses (office, retail and service uses); and arts, entertainment, and recreation uses; (2) Hospitals; (3) ~~Civic Uses~~ (3) Hotels

For purposes of this restriction, the term floor area shall mean the air-conditioned floor space within the interior of the building. For purposes of this restriction the term multi-family includes multi-family, live/work, and residential loft dwelling units. There is no restriction on when single-family and age-restricted multi-family units may be constructed, and incorporating staff recommendations as presented, discussed, and previously agreed to by the applicant, and establishing a maximum of five (5) gas stations on the Property. Councilmember Engel seconded the motion.

Council Discussion

There was Council discussion regarding:

- Density
- Traffic impacts
- Would have liked to have seen a request for approval of just the first phase
- Appreciate the commercial component of the project
- Concerns regarding not enough open space, and how some of it falls under high voltage power lines
- Interest in commercial development on the western edge (377 and 35W corridor) to create a commercial tax base and give residents in that area places to eat and shop

ORDINANCE NO. 48-22

AN ORDINANCE OF THE TOWN OF TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY ADOPTING ZONING ON APPROXIMATELY 1,066 ACRES IN THE RUTH ALLEN SURVEY, ABSTRACT NUMBER 15, THE B. B. B. & C.

RAILWAY CO. SURVEY, ABSTRACT NUMBER 187 AND 154, THE P. W. CASPARY SURVEY, ABSTRACT NUMBER 277, THE A. B. DANKS SURVEY, ABSTRACT NUMBER 368, THE J. C. MCGOWAN AND C. G. PITCOCK SURVEY, ABSTRACT NUMBER 959, THE BRUCE WHEELER SURVEY, ABSTRACT NUMBER 1605, THE THOMAS BURRESS SURVEY, ABSTRACT NUMBER 33, AND THE J.N. DENSON SURVEY, ABSTRACT NUMBER 359, AND BEING ALL OF THE FLOWER MOUND RANCH MIXED USE DEVELOPMENT, AS MORE FULLY DESCRIBED IN EXHIBIT "A" HERETO, FROM AGRICULTURAL DISTRICT (A) USES AND INTERIM HOLDING (IH) USES TO MIXED USE DISTRICT-2 (MU-2) USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND PURSUANT TO SPECIFIC REQUIREMENTS STATED HEREIN AND EXHIBITS ATTACHED HERETO; 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.

VOTE ON MOTION:*Motion passed***AYES: TAYLOR, ENGEL, MARTIN****NAYS: SCHIESTEL, SHARMA**

8. Consider approval of an engagement letter with P3 Works, LLC, to provide TIRZ consulting services in the amount not to exceed \$16,000, and authorization for the Mayor to execute same on behalf of the Town.

Staff Presentation

Mr. Walton gave a presentation identifying or noting:

- Engagement letter with P3 Works, LLC

and he, or Mr. Childers, responded to questions or comments from Council regarding:

- Clarification regarding the not to exceed amount, as well as the scope of work
- Timing for a report back from P3 Works

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

VOTE ON MOTION:*Motion passed***AYES: SHARMA, MARTIN, ENGEL, SCHIESTEL, TAYLOR****NAYS: NONE****L./M. CLOSED/OPEN MEETING**

The Town Council did not convene into a closed meeting. No action was taken on the following items:

a. Consultation with Attorney.

1. 2006 Rule 11 agreement and dismissal, Cause No. 2005-20153-158 and Flower Mound Ranch Development Applications
2. Housing Discrimination Complaint
3. La Estancia Investments, L.P., v. Town of Flower Mound

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

N. ADJOURN REGULAR MEETING

Mayor France adjourned the meeting at 11:28 p.m. on Monday, October 3, 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: October 17, 2022

FROM: Andrew Lupher, GIS Manager

ITEM: Consider the approval of an Interlocal Agreement between the Town and NCTCOG/Nearmap for Town staff to have access to an aerial imagery service, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: NCTCOG has recently created a partnership with Nearmap to offer a new aerial imagery service option to its participating entities. The Town currently gets high-resolution aerial imagery from NCTCOG every two years but divisions outside of GIS have brought up concerns with the imagery not being updated frequently enough. The GIS Section relies on the high-resolution for analysis so this service will provide an additional lower resolution but more frequently updated option for Town Staff. Neighboring entities utilize both odd year imagery and the more frequently updated imagery so this is not a new concept but would be new to the Town.

This ILA is to add a more frequently updated aerial imagery option for Town Staff to utilize. This is a 4-year subscription with an annual expenditure of \$2,500.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$2,500.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$2,500.00	100-655-59110-5110

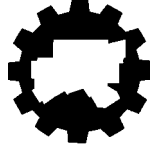
Finance Review by: Kay Wilkinson, Director of Budget Services KSW

LEGAL REVIEW: Dean Roggia of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the contract as to form and legality.

ATTACHMENTS:

1. Attachment 1 – NCTCOG_Nearmap Imagery Service ILA

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



North Central Texas Council of Governments

**INTERLOCAL AGREEMENT BETWEEN
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND
TOWN OF FLOWER MOUND**

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is a voluntary association of, by and for local governments and has an interest in providing information to its members to support planning, engineering, public safety, and municipal management activities; and,

WHEREAS, the **TOWN OF FLOWER MOUND** (Entity), wishes to have its map-based information system include the Nearmap's recurring and/or oblique imagery and has determined that the acquisition of this resource provides information for a multitude of uses throughout the Entity and thus serves a valid public purpose; and,

WHEREAS, the Entity requires this information to accomplish this purpose and has determined that NCTCOG can provide this information; and,

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code; and,

WHEREAS, NCTCOG and Entity are local governments as that term is defined in Section 791.003(4) of the Texas Government Code; and,

WHEREAS, Section 791.025 of the Texas Government Code authorizes local governments to agree with another local government to purchase goods and services; and,

WHEREAS, a local government that purchases goods and services under Section 791.025 of the Texas Government Code satisfies the requirement of the local government to seek competitive bids for the purchase of goods and services; and,

WHEREAS, NCTCOG and Entity, acting by and through their respective governing bodies, adopt the foregoing premises as findings of said governing bodies.

NOW, THEREFORE, the parties, Entity and NCTCOG, agree to the following terms and conditions regarding the purchase of Nearmap's recurring and/or oblique imagery under Master Service Agreement #2020-078.

I. LICENSE AGREEMENT

The personnel specified in Appendix A will serve as points of contact for their respective organizations. NCTCOG has contracted with Nearmap to provide their product at negotiated not-to-exceed rates to the North Texas region.

Nearmap retains all ownership of intellectual property rights in its aerial and oblique imagery and data. Entity is purchasing a data license through NCTCOG and pursuant to the subscription terms set out in Appendix B. Notwithstanding **Section 2.3 of Appendix B**, Entity is permitted to grant access to the Content under the License to its contractor(s) for the purpose of performing work for Entity, provided that the contractor(s) enter into an agreement which requires them to (a) use the Content only to the extent necessary to perform work for the Entity, and (b) immediately delete and destroy the Content in their control or possession at the completion of such work. Entity understands and agrees that it is responsible for compliance with Appendix B and its failure may result in NCTCOG disabling or revoking its data license(s) hereunder.

II. OBLIGATIONS

NCTCOG agrees to provide the Product(s) listed below for Entity's use consistent with the terms herein. Upon delivery of the Product(s), NCTCOG shall invoice Entity in the amount(s) provided and Entity agrees to pay NCTCOG within thirty (30) days.

Coverage Area: 45 square miles

Subscription Term – 4-year

Recurring Aerial Photography	Amount
1-year subscription	0
3-year subscription	0
4-year subscription	\$2500.00

Recurring Aerial Photography + Obliques	Amount
1-year subscription	0
3-year subscription	0
4-year subscription	0

Public Facing Option	Amount
1-year subscription	0
3-year subscription	0
4-year subscription	0

Annual Subscription Cost	\$2500.00
Total Subscription Cost	\$10,000.00

You have agreed to the payment terms listed above and have secured the total amount with purchase order (PO) number _____ (please enter PO number and send PO document with returned agreement).

Invoice Term (circle one): **Full Payment** **Invoice Annually (at beginning of term)**

III. TERMINATION

Provisions for terminating Nearmap's aerial and/or oblique imagery subscription can be found in Appendix B. Section 6. In the event Entity terminates this Agreement early for any reason, all funds paid to NCTCOG by Entity are non-refundable. In the event payment obligations for Entity's subscription exceed the amounts paid at the time of early termination, Entity shall be responsible for payment of all such amounts to NCTCOG subject to the non-appropriation clause contained herein.

IV. MISCELLANEOUS

Entirety of Agreement The terms and provisions of this Agreement constitute the entire agreement of the undersigned parties and in the event of a conflict between this Agreement and any attachment thereto, the terms of this Agreement shall prevail.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas and venue shall lie exclusively in Tarrant County, Texas. In performing its obligations hereunder, each party shall operate and perform in accordance with all applicable state and federal laws.

Severability. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and shall not affect the remaining provision of this Agreement, which shall remain in force and effect.

Assignment. No party to this Agreement may assign or otherwise transfer any of its interest in this Agreement without the express written consent of the other party.

Immunity. It is expressly understood and agreed that in the execution of this Agreement, that the parties, either individually or jointly, do not waive, nor shall they be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of its powers or functions.

Non-appropriation of Funds. Each party paying for the performance of governmental functions in this Agreement must make those payments from current revenues available to the paying party. In the event no funds or insufficient funds are appropriated by the Entity in any fiscal period for any payments due hereunder, Entity will notify NCTCOG of such occurrence and this

Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the Entity of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

Force Majeure. The Entity and NCTCOG shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control. (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

Certification. The undersigned are properly authorized to execute this Agreement on behalf of the parties. and each party certifies to the other that any necessary resolutions extending such authority have been fully passed and are now in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS



12/09/2021

Mike Eastland
Executive Director
616 Six Flags Drive, Suite 200
Arlington, Texas 76011

Date

TOWN OF FLOWER MOUND

Signature

Date

Name: _____

Title: _____

Street Address: _____

City, State, Zip: _____

9/23/2022

APPENDIX A

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

	MAIN CONTACT		ADDITIONAL CONTACT	
Name:	Shelley Broyles		Donna Coggeshall	
Title:	GIS Project Coordinator		Research Manager	
Department	Research and Information Services		Research and Information Services	
Organization:	NCTCOG		NCTCOG	
Street Address:	616 Six Flags Drive, Suite 200		616 Six Flags Drive, Suite 200	
City, State, Zip	Arlington, Texas 76011		Arlington, Texas 76011	
Phone/Fax:	(817) 695-9156	(817) 640-4428	(817) 695-9168	(817) 640-4428
E-mail:	sbroyles@nctcog.org		dcoggeshall@nctcog.org	

PLEASE READ THIS PRODUCTS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR EXECUTING A QUOTE, YOU AGREE TO BE BOUND BY THIS PRODUCTS AGREEMENT, THE QUOTE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT ACCESS OR USE, YOU MUST NOT ACCEPT THIS PRODUCTS AGREEMENT AND NOT USE ANY NEARMAP PRODUCTS AND SERVICES.

PRODUCTS AGREEMENT

Recitals

- A. Nearmap is a provider of aerial photography and associated products and services.
- B. Nearmap agrees to supply the Licensee with the Products described in the Quote, subject to the terms of this agreement, the Additional Terms and Conditions, Product-Specific Terms, any Schedules and the Quote which together constitute the legal agreement between the Licensee and Nearmap (the **'Agreement'**).

Definitions of capitalized words are set out in section 18 of the Agreement.

1. GRANT OF LICENSE TO USE PRODUCTS

- 1.1 **Grant** Subject to the terms of this Agreement and payment by the Licensee of the Fees, Nearmap grants to the Licensee a limited, non-exclusive, non-transferable license for the Term to use the Products for and to the extent of the Permitted Purpose (the **"License"**).
- 1.2 **Authorized Users** The Products available under this License are only to be used by the total number of Authorized Users. The Licensee shall implement reasonable controls to ensure that it does not exceed the number of Authorized Users. If the number of users exceeds the total number of Authorized Users, the Licensee will be in breach of this Agreement.
- 1.3 **Renewal** Upon the expiration of the initial Term, this Agreement subject to any amendments to this Agreement required by Nearmap, shall be renewed automatically for successive renewal terms of twelve (12) months each (each a **"Renewal Term"**) unless terminated by either party by providing at least 30 days' written notice of its intention not to renew this Agreement prior to the expiry of the initial Term or any current Renewal Term.
- 1.4 **Replacement Product** Nearmap may from time to time supply the Licensee with a replacement Product of no lesser quality than the previously supplied Product at its absolute discretion. If requested by Nearmap, the Licensee must stop using any previously supplied Product and use the replacement Product from the date of delivery from Nearmap.
- 1.5 **Acknowledge Nearmap source** The Licensee must expressly acknowledge Nearmap, in a reasonably prominent manner (by displaying the Nearmap logo or other appropriate attribution), as the source of any Product or Derivative Works that the Licensee uses, copies, modifies or distributes. Unless otherwise permitted in writing, the Licensee must not remove or cause to be removed any Nearmap logo, watermark or other Nearmap attribution in any Product or Derivative Works.
- 1.6 **Periodic Allowance** Nearmap measures data usage by the Licensee under this License. In using the Products, the Licensee's consumption of data and/or area during the Period is allowed to exceed the Periodic Allowance provided that the Licensee agrees to upgrade to the level of actual usage during the Term for the next Renewal Term. The following conditions apply to the Licensee's Periodic Allowance:
 - (a) the Periodic Allowance used by the Licensee will be calculated at the end of every Period based on the total data and/or area usage of all users who access and use the Licensee's Nearmap account during that Period;
 - (b) if the Licensee elects to download and/or export Products available to the Licensee on the Website, this will be applied to the Periodic Allowance. The Licensee may have the option to elect to download high resolution images. Downloading these images may use a higher portion of data of the Periodic Allowance than downloading a lower resolution image;
 - (c) if the Licensee does not consume its Periodic Allowance in any given Period, the balance will not be rolled over to a following Period;
 - (d) Nearmap will not charge the Licensee any additional fees if the Licensee's data and/or area consumption during the Period exceeds the Periodic Allowance.
 - (e) Nearmap will provide notice to the Licensee if it exceeds the Periodic Allowance for any Period.
- 1.7 **Unavailability** Subject to section 12, if a Product is not available for a period of 3 consecutive days, the Term will be extended by the period of such unavailability.

2. RESTRICTIONS ON RIGHT TO USE PRODUCTS

- 2.1 **Permitted Purpose** The Products must only be used for the Permitted Purpose.
- 2.2 **No right to distribute, transfer, resell, assign or sublicense** This License is granted only to the Licensee. The Licensee must not distribute, transfer, resell, assign, rent, lease or sublicense any Product or any of the Licensee's rights under this License without Nearmap's prior written consent.
- 2.3 **No third party access** Unless otherwise provided in this Agreement, the Licensee must not make any Product available in any medium or manner to any third party (including the Licensee's subsidiaries, affiliates and lower-level governments).
- 2.4 **Employees** The Licensee may make Products available to any employee of the Licensee, subject to that person complying with the terms of the Agreement as if they were a party to it and the total number of Authorized Users has not been exceeded. Such employees are deemed to be Authorized Users. The Licensee is responsible and liable for any person who uses the Licensee's account access details or uses Products made available to the Licensee in breach of this

Agreement, including, without limitation, for any additional fees that become payable if the Licensee exceeds the number of Authorized Users.

- 2.5 **No machine learning** The Licensee must not conduct machine learning work in connection with this Agreement or any Products, which includes but is not limited to any:
 - (a) machine learning models (including the model form and model parameters);
 - (b) outputs of machine learning models;
 - (c) software that processes or transforms input data for training a machine learning model or getting a prediction from a machine learning model into a format suitable for training or making such prediction; or
 - (d) software used to train a machine learning model or compute outputs of a machine learning model for a given set of input data.
- 2.6 **No caching and creation of database** Except as expressly permitted under this Agreement, the Licensee is not permitted to:
 - (a) use its access to the Products under this Agreement for the purposes of creating a database of imageries for resale, distribution, sub-license or other commercial purposes and mass downloads or bulk feeds of any imagery; and
 - (b) pre-fetch, retrieve, cache, index, or store any Content or portion of the Products.
- 2.7 **Restriction on integration methods** The Licensee is only permitted to use API integration method authorized by Nearmap, or other integration methods authorized by Nearmap in writing, including but not limited to integration with the Licensee's or other third party platforms or software for the term of this Agreement.
- 2.8 **Limits on use of Website** In the Licensee's use of the Website, the Licensee must not (without the prior written consent of Nearmap):
 - (a) provide a link to another URL;
 - (b) upload content or other information to the Website (except as necessary to use the Products);
 - (c) do anything to damage, interfere or disrupt access to the Website or do anything which might impair its functionality;
 - (d) use the Website in any way to send unsolicited email (commercial or otherwise) or any other material for marketing or publicity purposes;
 - (e) publish, post, distribute, disseminate or otherwise transmit, defamatory, offensive, infringing, obscene, indecent or other unlawful or objectionable or confidential material or information;
 - (f) make available, upload or distribute by any means any material or files that contain any viruses, bugs, corrupt data, "trojan horses", "worms" or any other harmful software;
 - (g) remove any content or information from the Website, other than that permitted under the terms of this License;
 - (h) falsify the true ownership of a Product or other material or information made available via the Website;
 - (i) obtain or attempt to obtain unauthorized access, through whatever means, to the Website;
 - (j) use the Website other than in accordance with this Agreement;
 - (k) attempt any of the above acts or engage, encourage or permit another person to do any of the above acts; or
 - (l) provide or allow access which exceeds the total number of Authorized Users in connection with use of the Product.
- 2.9 **Breach** If the Licensee breaches any of sections 2.1 to 2.8 inclusive, Nearmap reserves its rights to terminate the Agreement in accordance with section 6.2, restrict the Licensee's access to the Products, and take any other steps available to it at law.
3. **THE LICENSEE'S ACCESS TO PRODUCTS AND SERVICES**
- 3.1 **Authorized Users** Any password/ID issued by Nearmap to an Authorized User is personal and confidential to that Authorized User. If Nearmap suspects that any password/ID is being used by an unauthorized person, by a different Authorized User to the person to whom it was issued or the number of Authorized Users has been exceeded, Nearmap may:
 - (a) cancel that password/ID;
 - (b) restrict the Licensee's access to the Product to low resolution imagery, or apply any other restrictions on access that Nearmap determines in its absolute discretion;
 - (c) immediately cease the Licensee's access to the Product;
 - (d) require the Licensee to pay for any additional fees due based on the standard Nearmap Fees for the applicable Product, in respect of any such unauthorized use; and/or

- (e) exercise any other right available to Nearmap under the terms of this Agreement or at law.
- 3.2 **Downtime** Nearmap will use reasonable efforts to ensure that the Website remains available but cannot guarantee that this will be the case at all times. Nearmap agrees that, wherever possible, all planned maintenance will be done out of normal Operational Hours to ensure optimal uptime of the Website. When Nearmap becomes aware of any Fault, Nearmap will use reasonable efforts to:
- (a) allocate such resources as may be necessary to remedy the Fault; and
 - (b) otherwise take all reasonable steps to remedy the Fault so as to minimize any disruption to the Licensee's use of the Products.
- 3.3 **Expiry** The Licensee's License will expire at the end of the Term unless renewed in accordance with section 1.3 and may be suspended or terminated in accordance with section 6.2 if the Licensee is in breach of this Agreement.
- 3.4 **Unauthorized Use** Licensee shall take reasonable steps to prevent unauthorized access to the Products, including without limitation protecting its passwords and other log-in information. The Licensee shall notify Nearmap immediately of any known or suspected unauthorized use of the Products or breach of its security and shall use best efforts to stop said breach and minimize the adverse impact of said breach on Nearmap.
- 3.5 **Audit** During the Term of this Agreement and for two (2) years after termination or expiry of this Agreement, the Licensee shall maintain records regarding its use of the Products according to its record keeping policies and procedures. The Licensee shall permit Nearmap (or its auditors) access to the Licensee's records pertaining to the Licensee's use of the Products. Nearmap will give at least thirty (30) days prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended.
- 3.6 **Audit Findings** If an audit results in findings of non-compliance, Nearmap may, at its discretion (a) invoice any additional license fees due based on the standard Nearmap Fees in place at the time of the original license grant, (b) recover the reasonable cost of the audit if additional Fees exceed five (5) per cent of the Fees paid during the audit period and (c) terminate this Agreement in accordance with section 6. Licensee must pay all invoices issued under this section within thirty (30) days following the date of invoice or such other period agreed between the parties.

4. FEES

- 4.1 **Fees** The Fees payable by the Licensee are set out in the Quote.
- 4.2 **Payment** The Fees are payable by the Licensee to Nearmap in the manner and by the due date as set out in the Quote at the beginning of each Term unless otherwise agreed by Nearmap. Where the Fees are payable by credit card, the Licensee authorizes Nearmap to charge the Licensee's credit card for all purchased Products listed in the Quote for the initial Term and any Renewal Term.
- 4.3 **No cancellation** Subject to section 4.4, all Fees are non-cancellable and non-refundable except as expressly set out in the Agreement.
- 4.4 **Refund of Fees** If the Licensee is not in breach of the Agreement, and Nearmap elects to terminate the Agreement under section 6.3, Nearmap will refund the Licensee any pre-paid fees relating to the portion of Term remaining as at the date of termination.
- 4.5 **Taxes** Unless otherwise stated, Fees and Late Payment Fee do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "Taxes"). Licensee is responsible for paying all Taxes except those assessable against Nearmap based on its income.
- 4.6 **Late Payment** If a scheduled Fee payment is still overdue after thirty (30) days' notice from Nearmap to remedy the payment default, the Licensee agrees that Nearmap may charge the Licensee a Late Payment Fee and/or immediately limit or terminate access to the Products provided under this License.
- 4.7 **Amendments** Fees of the relevant Product may only be increased at the end of the Term (including any Renewal Term) subject to Nearmap and the Licensee agreeing in writing.

5. THE LICENSEE'S WARRANTIES

- 5.1 **Warranty** The Licensee warrants that:
- (a) any information the Licensee supplies to Nearmap in respect of the Agreement is complete and correct. The Licensee must keep Nearmap informed of any change to the Licensee's information provided to Nearmap, including any change to the Licensee's contact details, or the details of a credit card used for payment;
 - (b) the Licensee will immediately notify Nearmap of any usage of any Product outside the Permitted Purpose, and provide any other information reasonably requested by Nearmap;
 - (c) the Licensee has the power to enter into this Agreement and to perform the obligations under it; and
 - (d) the Licensee has and will comply with all relevant laws relating to the Licensee's use of the:
 - (i) License;
 - (ii) Products; and
 - (iii) Website.

6. TERMINATION AND EXPIRY

- 6.1 **Initial Term** This Agreement commences on the Commencement Date and continues until expiry of the Term unless terminated earlier in accordance with the terms of this Agreement or renewed under section 1.3.
- 6.2 **Termination by Either Party** Either party may terminate this Agreement with immediate effect by giving notice to the other party if:
- (a) the other party breaches any of its obligation under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so;
 - (b) the other party breaches any of its obligations under this Agreement incapable of remedy and Content; or
 - (c) the other party files for protection under bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee

over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within sixty (60) days of the filing thereof or admits in writing its inability to pay its debt generally as they become due.

- 6.3 **Termination by Nearmap** Notwithstanding anything else in the Agreement but subject to section 4.4, Nearmap has the right, in its absolute discretion and upon giving the Licensee 10 Business Days' notice, to terminate the Agreement and the License.
- 6.4 **Consequences** If the Agreement is terminated under sections 6.2 or 6.3 or expires at the end of the Term:
- (a) the License immediately terminates and the Products will no longer be available to the Licensee;
 - (b) The Licensee must immediately destroy, delete or return to Nearmap all Products; and
 - (c) subject to section 7.3, the Licensee and the Authorized Users are not permitted to use any Products for any purpose.
- 6.5 **Costs** Nearmap reserves all rights following termination of this Agreement, including any rights available to Nearmap to collect any outstanding Fees which may be owed by the Licensee.
- 6.6 **Continuing obligations** After expiry or termination of the Agreement or a License, sections 1.5, 2, 4, 6.5, 7, **Error! Reference source not found.**, 9, 10, 13, 14, 15, and 17 will still be on the Licensee in relation to Products licensed or obtained during the Term.

7. INTELLECTUAL PROPERTY

- 7.1 **Ownership** Unless otherwise indicated, the Website, the Products, the Content, and all associated Intellectual Property Rights, data, information and software are owned by Nearmap and are protected by copyright, moral rights, trademark and other laws relating to the protection of intellectual property. Nearmap reserves all of its Intellectual Property Rights. Except for the limited License granted to the Licensee in section 1.1, no ownership or Intellectual Property Rights in the Website, any Product or Content will pass or be licensed to the Licensee.
- 7.2 **Trademarks** The Nearmap trademarks and all associated Intellectual Property Rights are owned by Nearmap. Nothing in the Agreement confers upon the Licensee any rights to use or modify any of Nearmap's trademarks, except that Nearmap grants the Licensee a royalty free, limited non-exclusive, non-transferrable, non-sublicensable license to reproduce and display Nearmap trademarks only to the extent necessary to comply with the Licensee's obligations under the Agreement. Any such reproduction and display of those marks must comply with the policies and rules Nearmap makes available to the Licensee from time to time.
- 7.3 **Derivative Works** Subject to compliance with all other terms of this Agreement, the Licensee is granted a non-exclusive right to produce and use Derivative Works for a Permitted Purpose. Unless otherwise notified to the Licensee by Nearmap, the Licensee may continue using Derivative Works following termination or expiry of this Agreement. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Products and Content embedded in a Derivative Work, but all other rights in and to the Derivative Work will belong to the Licensee.

8. THIRD PARTY PROVIDERS

- 8.1 Nearmap engages Third Party Providers in order to provide the Products. The Licensee agrees to comply with all requirements and restrictions that Third Party Providers may impose on Licensee directly or indirectly by imposition on Nearmap, in relation to their respective products and/or services, at the time of, or subsequent to, the Agreement. The Licensee acknowledges that provision of the Products is subject to, and dependent upon, adequate delivery of products and services by the Third Party Providers. In accordance with section 9 of the Agreement, Nearmap's liability is reduced to the extent that loss or damage of any kind is caused or contributed to, by Third Party Providers. For the Licensee's convenience, Nearmap has set out in this section **Error! Reference source not found.** links to the terms and conditions of these Third Party Providers with which the Licensee is required to comply. The Licensee further acknowledges that by entering into the Agreement, the Licensee is deemed to accept the respective terms and conditions of Third Party Providers, which currently include the Third Party Providers set out below. Third Party Providers and their terms of supply may change from time to time during the Term of the Agreement.
- (a) **Google** Nearmap engages Google to supply navigation and geo-location data, and related content. By entering into the Agreement, the Licensee agrees to the Google Terms of Service as they apply to the Licensee. https://www.google.com/enterprise/earthmaps/legal/us/maps_purchase_agreement_apac.html
 - (b) **Amazon Web Services (AWS)** Nearmap engages Amazon Web Service, Inc. to provide services (the "AWS Services") which enables delivery of the Products. By entering into the Agreement, the Licensee agrees to comply with the AWS Customer Agreement (<http://aws.amazon.com/agreement/>) as it applies to the Licensee. Use of the Products is also subject to the Licensee's compliance with the following AWS policies:
 - (i) Privacy Policy (<http://aws.amazon.com/privacy/>)
 - (ii) Acceptable Use Policy (<http://aws.amazon.com/aup/>)
 - (iii) Terms of Use (<http://aws.amazon.com/terms/>)
 - (iv) Service Terms (<http://aws.amazon.com/serviceterms/>)
 - (v) Trademark Guidelines (<http://aws.amazon.com/trademark-guidelines/>)
 - (c) **NASA/NCAS** By entering into the Agreement, the Licensee agrees to the following NASA/NCAS terms and conditions: (<https://www.nearmap.com/us/en/legal/copyright/>)

9. WARRANTY AND LIABILITY

9.1 **Warranty** Nearmap agrees to use industry standard GPS to ensure captured imagery has accurate geographical positioning.

9.2 **DISCLAIMER OF WARRANTIES** OTHER THAN AS SET FORTH IN SECTION 9.1, THE WEBSITE AND THE PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW. NEARMAP AND ITS CONTENT PROVIDERS, AGENTS, MANDATARIES AND AFFILIATES EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COURSE OF DEALING OR PERFORMANCE.

9.3 **NO REPRESENTATIONS** WHILE NEARMAP USES REASONABLE EFFORTS TO ENSURE THE ACCURACY, CORRECTNESS AND RELIABILITY OF THE CONTENT, THE PRODUCTS AND THE WEBSITE, NEARMAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES AS TO THE ACCURACY, CORRECTNESS OR RELIABILITY OF ANY PRODUCT OR CONTENT CONTAINED ON THE WEBSITE. THE PRODUCTS AND THE WEBSITE ARE SUBJECT TO ERRORS, OMISSIONS, INACCURACIES AND DISTORTIONS AND NEARMAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR ANY CLAIMS MADE BY OR ARISING OUT OF, ANY PERSON OR ENTITY SEEKING TO RELY ON ANY OF THE PRODUCTS OR THE WEBSITE.

9.4 **LIMIT OF LIABILITY** NEARMAP'S LIABILITY FOR: (A) A BREACH OF A WARRANTY UNDER SECTION 9.1; OR (B) A BREACH OF A REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE WHICH IS IMPLIED OR IMPOSED IN RELATION TO THIS LICENSE UNDER LEGISLATION AND CANNOT BE EXCLUDED, WILL BE LIMITED TO, AT NEARMAP'S OPTION, REPLACING OR REPAIRING THE PRODUCTS OR SUPPLYING PRODUCTS EQUIVALENT TO THE RELEVANT PRODUCTS, OR PAYING THE COST OF REPLACING OR REPAIRING THE PRODUCTS.

9.5 **NO LIABILITY FOR CLAIMS** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL NEARMAP, ITS CONTENT PROVIDERS, AGENTS, MANDATARIES OR AFFILIATES BE LIABLE FOR ANY CLAIMS OF ANY KIND ARISING FROM OR CONNECTED WITH THE USE OF THE WEBSITE, THE CONTENT OR THE PRODUCTS, OR THE UNAVAILABILITY OF THE SAME, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, AND DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), EXTRACONTRACTUAL LIABILITY, OR OTHERWISE. THE LICENSEE IS RESPONSIBLE FOR THE ENTIRE COST OF ALL SERVICING, REPAIR OR CORRECTION REQUIRED DUE TO THE LICENSEE'S USE OF THIS WEBSITE, THE CONTENT OR THE PRODUCTS. THIS EXCLUSION APPLIES, WITHOUT LIMITATION, TO ANY CLAIMS CAUSED BY OR RESULTING FROM RELIANCE BY A USER ON ANY INFORMATION OBTAINED FROM NEARMAP.

9.6 **AGGREGATE LIMIT** IN NO EVENT WILL THE AGGREGATE LIABILITY OF NEARMAP, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), EXTRACONTRACTUAL LIABILITY, PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE PRODUCTS, THE CONTENT OR THE WEBSITE EXCEED THREE TIMES THE AMOUNT OF ANY COMPENSATION OR FEE THE LICENSEE HAS PAID, IF ANY, TO NEARMAP FOR ACCESS TO OR USE OF THE PRODUCTS OVER THE 12 MONTH PERIOD PRIOR TO THE ALLEGED DEFAULT, BREACH OR EVENT GIVING RISE TO THE LIABILITY.

9.7 **Third Party Providers** The Licensee acknowledges that Nearmap relies on the services of Third Party Providers in order to supply the Products and related services. Without limiting any of the above, to the fullest extent permitted by applicable law, Nearmap will not be liable for any loss, damage, or cost of any kind, which is caused, or contributed to, by a third party service provider.

9.8 **Indemnity** To the extent permitted by law, the

9.9 **Notice of Claim** Nearmap will provide the Licensee with notice of any claim or allegation under section 1.1, and Nearmap has the right to participate in the defense of any such claim at its expense.

10. COPYRIGHT COMPLAINTS

10.1 Subject to section 9, if any third party brings a Claim against the Licensee alleging that the Licensee's use of the Products in accordance with this License infringes their copyright ("Infringement Claim"), Nearmap will defend the Licensee against the Claim and pay any settlement to which Nearmap consents or final court-awarded damages for which the Licensee is liable.

10.2 The Licensee must:

- promptly notify Nearmap of any such Infringement Claim;
- not make any admissions in relation to the Infringement Claim without Nearmap's prior written consent;
- permit Nearmap to conduct the defense of the Infringement Claim including all negotiations for settlement; and
- provide Nearmap with any assistance reasonably requested to allow Nearmap to defend the Infringement Claim.

10.3 Nearmap will have no liability for any Infringement Claim:

- that arises from any:
 - use of the Product in violation of this Agreement;
 - modification of the Product by anyone other than Nearmap or a party authorized by Nearmap in writing to modify the portion of the Product applicable to the Infringement Claim; or
 - third-party products, services, hardware, software or other materials, or a combination of these with the Products, which would not be infringing without this combination; or

(b) if the Licensee fails to comply with section 10.2.

10.4 To the maximum extent permitted by law, this section 10 sets out Nearmap's sole and exclusive liability, and the Licensee's sole and exclusive remedy, for any third party Infringement Claims brought against the Licensee in relation to an infringement of Intellectual Property Rights.

11. PRIVACY POLICY

11.1 Nearmap will collect, use and disclose any personal information supplied by the Licensee as set out in Nearmap's Privacy Policy, as amended from time to time, and currently available at <https://www.nearmap.com/us/en/legal/privacy-policy>. The Licensee hereby consents to those collections, uses and disclosures.

11.2 To the maximum extent permitted by law, by entering into this Agreement, the Licensee expressly consents to receiving general emails relating to product updates, new products or anything related to the usage of the product from Nearmap but prior written consent is required to receive by email direct marketing communications from Nearmap.

11.3 By entering into this Agreement, the Licensee acknowledges that personal information provided by the Licensee in the course of accessing Products (including, without limitation, credit or debit card details provided by the Licensee for the purpose of paying Nearmap) may be disclosed to and held by one or more of Nearmap's third party suppliers and partners (including, without limitation, providers of payment processing services), and used by those third parties in connection with the supply of Products. Nearmap will have no liability whatsoever with respect to any personal information held by a third party in connection with the supply of Products.

12. FORCE MAJEURE

12.1 **Force Majeure Event** If a party is unable to perform or is delayed in performing an obligation under this Agreement (except for any obligation to pay money, including Fees) because of an act of war, terrorism, hurricane, earthquake, other act of God or of nature, r, embargo, or other cause beyond the performing party's reasonable control ("Force Majeure Event");

(a) that obligation is suspended but only so far and for so long as that party is affected by the Force Majeure Event; and

(b) the affected party will not be responsible for any loss or expense suffered or incurred by the other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations under this Agreement because of the Force Majeure Event.

12.2 **Notice of Force Majeure Event** If a Force Majeure Event occurs, the party affected by the Force Majeure Event must:

- Promptly (when reasonably possible to do so) give the other party notice of the Force Majeure Event and an estimate of the non-performance and delay;
- take all reasonable steps to overcome the effects of the Force Majeure Event; and
- resume compliance as soon as practicable after the Force Majeure Event no longer affects it.

13. CONFIDENTIALITY

13.1 The Licensee must not use any Confidential Information for any purpose not expressly permitted hereunder, unless permitted by law. The Licensee will disclose Confidential Information only to its employees who have a need to know for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Licensee's duty hereunder. The Licensee will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as it would protect its own confidential or proprietary information of similar nature and with no less than reasonable care.

14. NOTICES

14.1 All notices and consents will be in writing and will be considered delivered and effective upon receipt (or when delivery is refused) when (a) personally delivered; (b) sent by registered or certified mail (postage prepaid, return receipt requested); (c) sent by nationally recognized private courier (with signature required and all fees prepaid); or (d) sent by email with confirmation of transmission. Notices must be sent to the Licensee at the address set forth in the Quote (or if none is specified, the address to which Nearmap sends invoices) and for Nearmap to 10897 South River Front Parkway, Suite 150 South Jordan, UT 84095, USA, or at another address as a party may designate in writing.

15. TECHNOLOGY EXPORT

15.1 The Licensee shall not: (a) permit any third party to access or use the Product in violation of any U.S. or Canadian law or regulation; or (b) export any software provided by Nearmap or otherwise remove it from the United States or Canada except in compliance with all applicable U.S. and Canadian laws and regulations. Without limiting the generality of the foregoing, the Licensee shall not permit any third party to access or use the Product in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria) or a Canadian embargo.

16. NEARMAP NOW

16.1 **Survey** During the Term, the Licensee may request a survey of an area which is not covered (in its entirety or in part) by the Coverage Area ("Survey"). The Licensee must provide a detailed description of the area that is to be covered by the Survey and which is to be included in the Survey Specification. Upon receipt of such a request in writing, Nearmap may, in its absolute discretion, agree to provide the Survey to the Licensee for a Survey Fee.

16.2 **Delivery of Survey** Subject to sections 12 and 16.1, Nearmap will deliver the Survey to the Licensee by uploading the Survey to the Website within 6 months of the date on which Nearmap receives payment of the Survey Fee in full from the Licensee. Nearmap will notify the Licensee in writing once the Survey has been uploaded to the Website.

16.3 **Availability to other Nearmap customers** Nearmap may, at its absolute discretion, allow other customers of Nearmap to access the Survey on the Website.

16.4 **Refund of Survey Fee** If the Licensee is not in breach of the Agreement and Nearmap elects to terminate the Agreement under section 6.3 prior to delivery of the Survey, Nearmap will refund the Survey Fee to the Licensee.

16.5 **Other Products** This Section 16 will not be applicable to the Licensee if the Licensee has not purchased a Survey.

17. MISCELLANEOUS TERMS

17.1 **Nearmap customer** Licensee grants Nearmap the right to use Licensee's name and logo to identify as a Nearmap customer for marketing or promotional purposes in public or private communications with our existing or potential customers, subject to Licensee's standard trademark usage guidelines as provided to us from time-to-time.

17.2 **Additional Terms and Conditions** The Additional Terms and Conditions form part of, and should be read in conjunction with, this Agreement.

17.3 **Precedence of Documents** This Agreement is comprised of:

- (a) the Additional Terms and Conditions;
- (b) the Quote;
- (c) any Product-Specific Terms; and
- (d) this products agreement.

If there is any ambiguity or inconsistency between the documents comprising the Agreement, the document appearing higher in the list will have precedence.

17.4 **Independent Contractors** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that neither party's employee or contractor is an employee of the other party.

17.5 **Construction** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason for authorship.

17.6 **Waiver** Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

17.7 **Severability** If one or more of the terms of the Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining terms will not be affected.

17.8 **Amendments** Other than as expressly specified in this Agreement, this Agreement may only be varied with the written consent of Nearmap and the Licensee.

17.9 **Assignment** This Agreement shall not be assigned by either party without the prior written consent of the other party which shall not be unreasonably withheld; provided, however, that Nearmap may, upon written notice to the Licensee, assign all of its rights under this Agreement to (i) a parent, subsidiary or Affiliate of Nearmap, (ii) a purchaser of all or substantially all assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which Nearmap is participating. Any attempt to assign this Agreement in violation of this provision shall be void and of no effect. This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

17.10 **Entire Agreement** This Agreement:

- (a) comprises the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

17.11 **Counterparts** This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument. This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, Nearmap and the Licensee.

17.12 **Language** The parties have expressly agreed that this Agreement and all ancillary agreements, documents or notices relating thereto be drafted solely in the English language. Les parties aux présentes ont expressément convenu que ce accord et toute autre convention, document ou avis y afférent soient rédigés en anglais seulement.

17.13 **Governing Law** This Agreement will be governed by and construed in accordance with the laws of the State where the Licensee is carrying on business applicable to agreements made and to be entirely performed within that state, without resort to its conflict of law provisions.

18. DEFINITIONS

In this Agreement:

Additional Terms and Conditions means the additional terms and conditions (if any) set out in the Quote.

Affiliate means, with respect to Nearmap, any entity that controls or is controlled by Nearmap, or is under common control with Nearmap. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least fifty per cent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

API means application programming interface.

Authorized User means the number of persons specified in the "Seats" section of the Quote, who have been granted access to the Product by the Licensee pursuant to the term and conditions of this Agreement and who either has been assigned a unique Nearmap user login credential or whom the Licensee has assigned a user login credential that enables access to the Product.

Auto Renew means the section of the Quote titled "Auto Renew".

Business Days means any day other than a Saturday, a Sunday or a recognised public holiday in Utah, USA.

Claim means any claim, cost (including legal costs on a solicitor and client basis), damages, debt, expense, tax, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Commencement Date means (a) for New Subscription Quotes, the date as specified in the "Contract Commencement" section or the "Subscription Start Date" section of the Quote, whichever is later, or (b) for Renewal Quotes or Amendment Quotes, the date as specified in the "Subscription Start Date" section of the Quote.

Commercial Purpose means to distribute, transfer, sell, sub-license or pass possession of any Products (in whole or in part) for the purpose of direct commercial benefit or gain by the Licensee.

Confidential Information means the terms of this Agreement, the pricing, and any other information relating to the business, finances, strategy, methods, processes, products, metadata, services or other affairs of Nearmap or its representatives or related bodies corporate which is disclosed to, learnt by or accessed by the Licensee in connection with the Agreement, whether before or after the Licensee entered into the Agreement, whether orally, electronically, in writing or otherwise, but excludes information which:

- (a) is or becomes part of the public domain otherwise than as a consequence of a breach of the Agreement;
- (b) the Licensee has obtained from a source other than Nearmap which source is entitled to disclose it; or
- (c) the Licensee has developed or acquired independently before the date of the Agreement, and can provide reasonable proof.

Content means any content made available by or on behalf of Nearmap to the Licensee in connection with the License, whether or not through the Website or an API.

Coverage Area means the area specified in the "Coverage" section of the Quote for which Nearmap has available Products, which may cover part or all of that area and which may cover part (but not all) of the area covered by the Survey.

Derivative Work means any new work created by or for the Licensee that incorporates, embeds or includes all or part of a Nearmap Product or Content.

Fault means any fault, failure, error or defect which prevents the Licensee from accessing the Products, other than where access is prevented due to a planned outage, because of an unforeseeable event beyond Nearmap's reasonable control or any conduct or activity undertaken by the Licensee, the Licensee's employees or agents or mandataries.

Fees means the fees specified in the Quote payable by the Licensee for the License, or as otherwise agreed in writing between Nearmap and the Licensee.

Intellectual Property Rights includes all industrial and intellectual property rights throughout the world including copyright, moral rights, trademarks, patents, rights to protect confidential information and any other similar rights.

Late Payment Fee means a fee, as notified by Nearmap to the Licensee, corresponding to the costs incurred by Nearmap (including, without limitation, administrative and other costs) in recovering any payment not made by the Licensee on the due or scheduled date for payment. Late fees incur interest at the rate of 1.5% per month (being 18% per year).

License means the license granted in section 1.1.

Licensee means the person or entity specified in the "Customer Name" section of the Quote.

Nearmap means Nearmap US, Inc.

Operational Hours means 9am to 5pm PT.

Period means the period specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

Periodic Allowance means the data and/or area allowance specified in the "Allowance" section of the Quote unless otherwise agreed in writing between Nearmap and the Licensee.

Permitted Purpose means the use of Products by the Licensee for internal purposes in the Licensee's ordinary business, and at all times excludes any:

- (a) Commercial Purpose;
- (b) Unlawful Purpose;
- (c) Integration or attempt to integrate the Product in an internal system of the Licensee or of a third party; and
- (d) Redistribution or copying of files, images, photographs or making such files, images or photographs available in any medium or manner that is contained in the Products to any third party (except as expressly permitted under this Agreement).

Products means any Nearmap products specified in the Quote (and further described on the Website) and, if applicable, the Survey. For the avoidance of doubt, Products include Content.

Products-Specific Terms means additional terms and conditions that apply to certain Products located on our Website.

Quote the document produced after the Licensee places an initial order for the Product(s), requests any changes to its License, or renews its License, which may be titled "New Subscription Quote", "Renewal Quote" or "Amendment Quote".

Schedule means a schedule to this Agreement, where such schedule has been incorporated by reference to form part of this Agreement.

Subscription Period means the period stated in the "Subscription Period" column of the Quote.

Subscription Start Date means the date specified in the "Subscription Start Date" section of the Quote.

Survey has the meaning (if any) given to that section 16.1.

Survey Fee means the fee for the Survey as agreed in writing between Nearmap and the Licensee.

Survey Specification means the survey specification referred to in the Quote.

Term means the term specified in the "Subscription Term" section of the Quote, commencing on the Commencement Date. Where a Subscription Period is stated on the Quote, "Term" means the Subscription Period.

Third Party Providers means third party providers of products and services to Nearmap.

Unlawful Purpose means any unlawful purpose, including but not limited to stalking, harassing or intimidating any person or engaging in misleading or deceptive conduct.

Website means all pages and sub-sites available within the nearmap.com domain.



TOWN COUNCIL AGENDA ITEM NO. 3

CONSENT ITEM

DATE: October 17, 2022

FROM: Andrew Lupher, GIS Manager

ITEM: Consider the approval of an Interlocal Agreement renewal between the Town and NCTCOG for Town staff to have continued access to high-resolution aerial imagery, and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Beginning with FY2010-2011, the Town of Flower Mound has purchased high-resolution aerial imagery from NCTCOG every odd year for use by Town Staff for analysis. The GIS Section uses the high-resolution aerial imagery to update various layers such as impervious surfaces, building footprints, etc. More entities within the NCTCOG region participate during odd years thus keeping costs lower for the Town.

This ILA is to continue this arrangement for the purchase of 2023 aerial imagery.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$1,372.50

Proposed Expenditure/(Revenue):	Account Number(s):
\$1,372.50	100-655-59110-5110

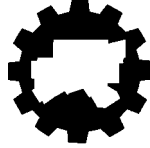
Finance Review by: Kay Wilkinson, Director of Budget Services *KSW*

LEGAL REVIEW: Bessie Bronstein of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the contract as to form and legality.

ATTACHMENTS:

1. Attachment 1 – NCTCOG Biennial Aerials ILA

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



North Central Texas Council of Governments

**INTERLOCAL AGREEMENT BETWEEN
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND**

WHEREAS, the North Central Texas Council of Governments (NCTCOG) is a voluntary association of, by and for local governments and has an interest in providing information to its members to support planning, engineering, public safety, and municipal management activities; and,

WHEREAS, the _____ (Entity), wishes to have its map-based information system include the 2023 digital orthophotography and/or LiDAR and/or derivative data and has determined that the creation of this resource provides information for a multitude of uses throughout the Entity and thus serves a valid public purpose; and,

WHEREAS, the Entity requires this information to accomplish this purpose and has determined that NCTCOG can provide this information; and,

WHEREAS, this Agreement is authorized by Chapter 791 of the Texas Government Code; and,

WHEREAS, NCTCOG and Entity are local governments as that term is defined in Section 791.003(4) of the Texas Government Code; and,

WHEREAS, Section 791.025 of the Texas Government Code authorizes local governments to agree with another local government to purchase goods and services; and,

WHEREAS, a local government that purchases goods and services under Section 791.025 of the Texas Government Code satisfies the requirement of the local government to seek competitive bids for the purchase of goods and services; and,

WHEREAS, NCTCOG and Entity, acting by and through their respective governing bodies, adopt the foregoing premises as findings of said governing bodies.

NOW, THEREFORE, the parties, Entity and NCTCOG, agree to the following terms and conditions regarding the creation of digital aerial photography.

I. LICENSE AGREEMENT

The personnel specified in Appendix A will serve as points of contact for their respective organizations. The following provisions are a license agreement between NCTCOG and the Entity with respect to data products that are identified in section II. NCTCOG is the owner of and has the right to grant a license to use the said data products free of all liens, claims, encumbrances, and other restrictions and without otherwise violating any rights of any third party, including any patent, copyright, trade secret, or other proprietary rights.

The NCTCOG data product may be distributed to the Entity on CD-ROM, DVD, or portable hard drive. The Entity will need to install and operate the NCTCOG data product on properly configured and compatible computer equipment running third party system and application software supplied by the Entity. The Entity will also need to ensure that any required data not supplied by NCTCOG is in proper format and no other software or equipment having an adverse impact on the NCTCOG product is present.

A. Licensed Operating Environment

- (1) Operating Equipment. In exchange for monetary consideration listed in section II, the Entity will be granted an exclusive operation license to install, store, load, execute, and display (collectively, "Use") the NCTCOG data product on as many local area networks and/or end-user workstations as the Entity reasonably needs in support of its own operation (the "Licensed Operating Environment"). Any software components of the NCTCOG data product are provided in machine-readable executable format only.
- (2) Authorized Users. Unless otherwise agreed in writing, the NCTCOG data product will be used by Entity officials, officers, employees, and authorized contractors only ("Authorized Users"). A contractor shall be deemed authorized to Use the data products by the Entity or NCTCOG if such Use is incidental to a larger relationship between the contractor and the Entity, and is used for purposes no greater than reasonably needed to achieve the objectives of an actual project undertaken in connection with that relationship. The contractor must agree in writing to be bound by the provisions of this Agreement.

B. Permitted Uses

- (1) Use of NCTCOG Products. The Entity's Authorized Users may Use the NCTCOG data product in the Licensed Operating Environment for any use that furthers the Entity's internal operations or in furtherance of the Entity's mission.
- (2) Use of Generated Output or Other Data. Except as stated, the Entity will own all original works of authorship it may independently create. Digital output from the Entity's Use of the NCTCOG Data Product may be resized as desired and printed on black and white, color printers, or map plotters. Such printed hardcopies may be distributed to the Entity's officers, employees, citizens, contractors, or other persons in the regular course of business for their internal use or in connection with an actual transaction. Such printed output may be further copied, photographed, or reproduced digitally on the Internet. The Entity may charge a fee for such hardcopy printouts that exceed the actual direct cost of production. Without the prior written consent of NCTCOG, the Entity may not otherwise provide copied, digitized, reproduced, transmitted or disseminated, in whole or in part, any of the original digital data product in any form.

II. OBLIGATIONS

NCTCOG agrees to provide the Product(s) listed below for Entity's use consistent with the terms herein. Upon delivery of the Product(s), NCTCOG shall invoice Entity in the amount(s) provided and Entity agrees to pay NCTCOG.

Remote Sensing Product	Amount
3" Orthophotography	
6" Orthophotography	
Oblique Photography:	
LiDAR 0.5M Single Photon Geiger-Mode	
Total	

Aerial & LiDAR Derivative Product	Amount
1' Contours (LiDAR-derived)	
2' Contours (LiDAR-derived)	
1' Contours (LiDAR-derived, engineering grade)	
2' Contours (LiDAR-derived, engineering grade)	
3D Planimetrics	
Change Detection Mapping	
Impervious Surface	
Landcover	
Landcover/Landuse	
Solar Mapping Potential	
Total	

Aerial Derivative Product - 2D Planimetrics	Amount
Discounted Bundle A – Building footprints, road edges, parking lots, bridges & sidewalk centerlines	
Discounted Bundle B – Building footprints, road edges, parking lots, bridges & sidewalk edges	
Building footprints	
Bridges	
Driveways	
Fences	
Lake edges	
Parking lots	
Pavement pads	
Paved road centerlines	
Paved road edges	
Stream centerline	
Stream edges	

Swimming pools	
Sidewalk centerlines	
Sidewalk edges	
Tree canopy	
Unpaved road edges	
Total	

SDCP 2023 Project Total	
--------------------------------	--

You have agreed to the payment terms listed below and have secured the total amount with purchase order (PO) number _____ (Please enter a PO number if blank. If you have not yet secured a PO, please enter 9999).

Invoice Date

Fiscal Year or **After Delivery**

Payment Years

If your payment is spread across two fiscal years you will be invoiced 50% of the total amount each year. Upon receipt of the first invoice, the Entity has thirty (30) days to review the products and pay said invoice or the remaining amount owed to the North Central Texas Council of Governments (NCTCOG).

III. TERMINATION

The parties agree that the Entity may terminate this Agreement by providing thirty (30) days' written notice to NCTCOG. Such notice shall be given to NCTCOG at the address set forth under its signature below. In the event of such termination, NCTCOG shall reimburse to the Entity pro-ratable portion of the contracted amount for services rendered. The Entity shall reimburse NCTCOG for staff time billed to the project up to termination at a rate of \$95.00/hour. Reimbursed amount shall not exceed the total project amount in Section II.

IV. MISCELLANEOUS

Entirety of Agreement The terms and provisions of this Agreement constitute the entire agreement of the undersigned parties and in the event of a conflict between this Agreement and any attachment thereto, the terms of this Agreement shall prevail.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas and venue shall lie exclusively in Tarrant County, Texas. In performing its obligations hereunder, each party shall operate and perform in accordance with all applicable state and federal laws.

Severability. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and shall not affect the remaining provision of this Agreement, which shall remain in force and effect.

Assignment. No party to this Agreement may assign or otherwise transfer any of its interest in this Agreement without the express written consent of the other party.

Immunity. It is expressly understood and agreed that in the execution of this Agreement, that the parties, either individually or jointly, do not waive, nor shall they be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of its powers or functions.

Non-appropriation of Funds. Each party paying for the performance of governmental functions in this Agreement must make those payments from current revenues available to the paying party. In the event no funds or insufficient funds are appropriated by the Entity in any fiscal period for any payments due hereunder, Entity will notify NCTCOG of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the Entity of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

Force Majeure. The Entity and NCTCOG shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control. (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, pandemic, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

Certification. The undersigned are properly authorized to execute this Agreement on behalf of the parties. and each party certifies to the other that any necessary resolutions extending such authority have been fully passed and are now in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS



Mike Eastland
Executive Director
616 Six Flags Drive
Arlington, Texas 76011

Date

Signature

Date

Name: _____

Title: _____

Street Address: _____

City, State, Zip: _____

APPROVED AS TO FORM:

APPENDIX A

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

	MAIN CONTACT		ADDITIONAL CONTACT	
Name:	Shelley Broyles		Donna Coggeshall	
Title:	RIS Program Manager		Research Manager	
Department	Research and Information Services		Research and Information Services	
Organization:	NCTCOG		NCTCOG	
Street Address:	616 Six Flags Drive		616 Six Flags Drive	
City, State, Zip	Arlington, Texas 76011		Arlington, Texas 76011	
Phone/Fax:	(817) 695-9156	(817) 640-4428	(817) 695-9168	(817) 640-4428
E-mail:	sbroyles@nctcog.org		dcoggeshall@nctcog.org	

TOWN OF FLOWER MOUND

	MAIN CONTACT		ADDITIONAL CONTACT	
Name:	Andrew Lupher		Nicole Dogan	
Title:	GIS Manager		Senior GIS Analyst	
Department	IT/GIS		IT/GIS	
Organization:	Town of Flower Mound		Town of Flower Mound	
Street Address:	2121 Cross Timbers Rd		2121 Cross Timbers Rd	
City, State, Zip	Flower Mound, TX 75028		Flower Mound, TX 75028	
Phone/Fax:	972-874-6057		972-874-6058	
E-mail:	andrew.lupher@flower-mound.com		nicole.dogan@flower-mound.com	



TOWN COUNCIL AGENDA ITEM NO. 4

CONSENT ITEM

DATE: October 17, 2022

FROM: Kay Wilkinson, Director of Budget Services

ITEM: Consider approval of a resolution authorizing the Town to join with the Steering Committee of Cities Served by Oncor to deny Oncor Electric Delivery Company's requested rate increase.

BACKGROUND INFORMATION: Oncor Electric Delivery Company filed an application on or about May 13, 2022, with cities retaining original jurisdiction seeking to increase system-wide transmission and distribution rates by about \$251 million or approximately 4.5% over present revenues. Oncor asks the Town to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates. The impact of this requested increase on an average residential customer using 1,300 kWh/month would be about \$6.02 per month.

In a prior Town action, Oncor's rate request was suspended from taking effect for 90 days, the fullest extent permissible under the law. This time period has permitted the Town, through its participation with the Steering Committee of Cities Served by Oncor to determine that the proposed rate increase is unreasonable. Consistent with the recommendations of the experts engaged by the Steering Committee, Oncor's request for a rate increase should be denied.

Accordingly, the purpose of the Resolution is to deny the rate change application proposed by Oncor. Once the Resolution is adopted, Oncor will have 30 days to appeal the decision to the Public Utility Commission of Texas where the appeal will be consolidated with Oncor's filing (i.e. PUC Docket No. 53601) currently pending at the Commission. All cities with original jurisdiction will need to adopt the Resolution prior to October 30, 2022.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: The town is using the Steering Committee of Cities Served by Oncor documents created by Lloyd Gosselink Rochelle & Townsend, P.C.

ATTACHMENTS:

1. Proposed Resolution

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

RESOLUTION NO. _____

RESOLUTION OF THE TOWN OF FLOWER MOUND, TEXAS FINDING THAT ONCOR ELECTRIC DELIVERY COMPANY LLC'S ("ONCOR" or "company") APPLICATION TO CHANGE RATES WITHIN THE CITY SHOULD BE DENIED; FINDING THAT THE CITY'S REASONABLE RATE CASE EXPENSES SHALL BE REIMBURSED BY THE COMPANY; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the Town of Flower Mound, Texas ("Town") is an electric utility customer of Oncor Electric Delivery Company LLC ("Oncor" or "Company"), and a regulatory authority with an interest in the rates and charges of Oncor; and

WHEREAS, the Town of Flower Mound is a member of the Steering Committee of Cities Served by Oncor ("Steering Committee"), a coalition of similarly situated cities served by Oncor that have joined together to efficiently and cost effectively review and respond to electric issues affecting rates charged in Oncor's service area; and

WHEREAS, on or about May 13, 2022, Oncor filed with the Town an application to increase system-wide transmission and distribution rates by \$251 million or approximately 4.5% over present revenues. The Company asks the Town to approve an 11.2% increase in residential rates and a 1.6% increase in street lighting rates; and

WHEREAS, the Steering Committee is coordinating its review of Oncor's application and working with the designated attorneys and consultants to resolve issues in the Company's filing; and

WHEREAS, through review of the application, the Steering Committee's consultants determined that Oncor's proposed rates are excessive; and

WHEREAS, the Steering Committee's members and attorneys recommend that members deny the Application.

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

Section 1.

That the rates proposed by Oncor to be recovered through its electric rates charged to customers located within the Town limits, are hereby found to be unreasonable and shall be denied.

Section 2.

That the Company shall continue to charge its existing rates to customers within the Town.

Section 3.

That the Town's reasonable rate case expenses shall be reimbursed in full by Oncor within 30 days of the adoption of this Resolution.

Section 4.

That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

Section 5.

A copy of this Resolution shall be sent to Oncor, Care of Howard V. Fisher, Oncor Electric Delivery Company LLC, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202 and to Thomas Brocato, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., P.O. Box 1725, Austin, Texas 78767-1725.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____ ON THIS 17TH DAY OF OCTOBER, 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 5

CONSENT ITEM

DATE: October 17, 2022

FROM: Julie Taylor, Director of Treasury Operations

ITEM: Consider approval of a resolution declaring expectation to reimburse water and sewer project expenditures with proceeds of future debt and authorizing the preparation of the documents associated with the issuance, sale, and delivery of the debt obligations; and providing an effective date.

BACKGROUND INFORMATION: The procurement process requires that 100% of funding be available before funds can be encumbered for the award of contracts. This reimbursement resolution will allow staff to satisfy the funding requirements prior to the issuance of debt under federal tax law.

The Town plans to issue debt during fiscal year 2022-23 to fund improvements to the water and sewer system within the Town and fund the costs of issuance of the debt. **This debt is not supported/included in the debt portion of the ad valorem tax rate.**

In order to begin the water and sewer projects prior to the issuance of debt, it is necessary to pass this resolution declaring intent to reimburse expenditures. The proposed reimbursement resolution provides the funding source to satisfy the procurement requirements for the water and sewer projects as included on the fiscal year 2022-23 Five-Year Capital Improvement Program ("CIP").

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$7,895,000

Proposed Expenditure:	Account Number(s):
\$7,895,000	To satisfy the funding requirements and begin the water and sewer capital projects prior to the issuance of debt under federal tax law.

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

LEGAL REVIEW: The Town's Bond Counsel, Norton Rose Fulbright US LLP, prepared the proposed resolution. This standard reimbursement resolution was approved in the past by Taylor, Olson, Adkins, Sralla, & Elam L.L.P. No alteration to the legal content of this form document was made in preparation of this document.

ATTACHMENTS:

1. Resolution

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

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. _____

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

WHEREAS, the Town of Flower Mound, Texas (the "Town"), intends to issue debt for the construction and improvement of the projects listed on Exhibit A (collectively, the "Projects"); and

WHEREAS, the Town further intends to make certain capital expenditures with respect to the Projects and currently desires and expects to reimburse the capital expenditures with proceeds of such debt; and

WHEREAS, under Treas. Reg. § 1.150-2 (the "Regulation"), to fund such reimbursement with proceeds of tax-exempt obligations, the Town must declare its expectation to make such reimbursement; and

WHEREAS, the Town desires to preserve its ability to reimburse the capital expenditures with proceeds of tax-exempt obligations.

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

SECTION 1

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

SECTION 2

The Town reasonably expects to reimburse capital expenditures with respect to the Projects with proceeds of debt hereafter to be incurred by the Town, and this Resolution shall constitute a declaration of official intent under the Regulation. The maximum principal amount of obligations expected to be issued for the Projects is \$7,895,000.

SECTION 3

Hilltop Securities Inc. is hereby authorized and directed to prepare, or cause to be prepared, any and all documents including, but not limited to, an official statement or other offering document associated with the issuance, sale and delivery of the obligations, the proceeds of which will provide financing of the Projects.

SECTION 4

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER
MOUND, TEXAS, ON THIS 17th DAY OF OCTOBER 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

EXHIBIT A

Utility Capital Projects

Water Projects:

- Cedarcrest Water Line
- Morriss Road Water Lines Phase III (Eaton to Waketon Road)
- Royal Oaks Water Line Replacement Phase I
- US 377 at FM 1171 Water Line Loop/Relocation

\$ 5,588,000

Wastewater Projects:

- Lower Timber Interceptor Rehabilitation (Paisley Drive to Rockcreek Court)

\$ 2,155,000

Total Utility

\$ 7,743,000

Estimated Financing Costs

\$ 152,000

Grand Total of Debt Issuance

\$ 7,895,000



TOWN COUNCIL AGENDA ITEM NO. 6

CONSENT ITEM

DATE: October 17, 2022

FROM: Brittini Barnett, Grants and Financial Analyst

ITEM: Consider approval of a resolution accepting grant funds from the Department of Justice's Office of Justice Programs for the purchase of bulletproof vests for the Police Department as part of the FY 2022 Bulletproof Vest Partnership.

BACKGROUND INFORMATION: The Town applied for and was awarded a grant in the amount of \$4,427.25 from the Department of Justice Office of Justice Programs for the FY 2022 Bulletproof Vest Partnership Program. The Bulletproof Vest Partnership Program reimburses municipalities up to 50% of the cost of body armor vests purchased for law enforcement officers, and the remaining 50% will come out of the General Fund Police Services budget.

If approved, this grant, along with the Town's match, will allow the Town to purchase at least 6 bulletproof vests for the Police Department.

This grant does not have a formal agreement the Mayor must sign. The Town received email notification that we were awarded a grant under the FY 2022 Bulletproof Vest Partnership solicitation. The funds are already posted to the Town's Bulletproof Vest Partnership System and are ready to spend after Council's approval.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$8,854.50

Proposed Revenue:	Account Number(s):
(\$8,854.50)	Grant Fund
Proposed Expenditure:	Account Number(s):
\$8,854.50	Grant Fund

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

LEGAL REVIEW: Autumn Keefer of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the attachments as to form and legality.

ATTACHMENTS:

1. Resolution
2. Award Notification

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

TOWN OF FLOWER MOUND, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE DEPARTMENT OF JUSTICE'S OFFICE OF JUSTICE PROGRAMS FOR THE FISCAL YEAR 2022 BULLETPROOF VEST PARTNERSHIP PROGRAM; APPROVING THE PURCHASE OF BULLETPROOF VESTS FOR THE TOWN USING AWARDED GRANT FUNDS; PLEDGING THAT THE TOWN OF FLOWER MOUND WILL COMPLY WITH ALL PROGRAM REQUIREMENTS OF THE BULLETPROOF VEST PARTNERSHIP PROGRAM.

WHEREAS, the Town of Flower Mound applied for and has been awarded a grant in the amount of \$4,427.25 from the FY 2022 Department of Justice's Office of Justice Programs for the Bulletproof Vest Partnership Program to provide funding for purchase of bulletproof vests for the Town of Flower Mound Police Department; and,

WHEREAS, the Town Council of the Town of Flower Mound finds that it is in the best interest of the health, safety, and general welfare of the citizens of the Town to accept the awarded grant funds and authorize the purchase of bulletproof vests for the Town of Flower Mound Police Department with said funds.

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

SECTION 1

That all of the above recitations are true and correct and adopted as if fully set out herein.

SECTION 2

The Town of Flower Mound approves and accepts the awarded grant amount of \$4,427.25 from the FY 2022 Department of Justice's Office of Justice Programs for the Bulletproof Vest Partnership Program.

SECTION 3

The grant funds are hereby authorized to be used to fund equipment in accordance with the grant award and will be used only for the purposes for which they are intended under the program.

SECTION 4

This Resolution shall be effective upon its adoption.

RESOLUTION NO. _____

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF _____ TO _____ ON THIS 17TH DAY OF OCTOBER, 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY

Brittni Barnett

From: Brittni Barnett
Sent: Wednesday, September 21, 2022 11:39 AM
To: Brittni Barnett
Subject: Bulletproof Vest Partnership (BVP) – FY 2022 Award Announcement

From: BVP Email Account <ojp@public.govdelivery.com>
Sent: Wednesday, September 21, 2022 11:21 AM
To: Colin Sullivan <colin.sullivan@flower-mound.com>
Subject: Bulletproof Vest Partnership (BVP) – FY 2022 Award Announcement

Dear BVP applicant,

The Bureau of Justice Assistance (BJA) is pleased to inform you that your jurisdiction will receive an award under the Fiscal Year (FY) 2022 Patrick Leahy Bulletproof Vest Partnership (BVP) solicitation. These funds have been posted to your account in the [BVP System](https://www.ojp.gov/program/bulletproof-vest-partnership/overview). A complete list of FY 2022 BVP awards is available at: <https://www.ojp.gov/program/bulletproof-vest-partnership/overview>.

Important: Jurisdictions must be registered in the SAM system (<https://www.sam.gov/SAM/>) in order to be paid for any 2022 BVP funds. Please ensure the banking information in SAM is up to date. For more information about renewing and updating your existing SAM registration, or registering in SAM as a new entity, please visit <https://sam.gov/content/status-tracker>. The SAM Helpdesk can be reached at 866-606-8220.

The FY 2022 award may be used for National Institute of Justice (NIJ) compliant armored vests which were ordered after April 1, 2022. The deadline to request payments from the FY 2022 award is August 31, 2024, or until all available funds have been requested. Awards will not be extended past that date, and any unused funds will be forfeited.

Please see the following website for a list of NIJ compliant vests: <https://cjtec.org/compliance-testing-program/compliant-product-lists/>. As a reminder, all jurisdictions that applied for FY 2022 BVP funding certified that a mandatory wear policy was in place for their jurisdiction. BJA will be conducting reviews of the mandatory wear policies as funds are requested from the BVP System. For more information on the BVP mandatory wear policy, please see the BVP Frequently Asked Questions document: https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/FAQsBVPMandatoryWearPolicy_0.pdf.

Finally, please visit the following page for checklists and guides for each step of the BVP process: <https://www.ojp.gov/program/bulletproof-vest-partnership/program-resources>.

For questions regarding the BVP Program or your award, please do not hesitate to contact the BVP Help Desk at vests@usdoj.gov or 1-877-758-3787.

In addition, please visit BJA's Officer Robert Wilson III Preventing Violence Against Law Enforcement Officers and Ensuring Officer Resilience and Survivability (VALOR) Initiative website to obtain other information regarding officer safety: [VALOR Officer Safety and Wellness Initiative | Overview | Bureau of Justice Assistance \(ojp.gov\)](#). The VALOR Initiative is a comprehensive set of programs that deliver no-cost officer safety, wellness, resilience training, resources, and technical assistance to law enforcement throughout the country. VALOR brings together the latest research and practices to address current and emerging officer safety and wellness issues/threats. Please see the VALOR Initiative Overview-Booklet for a detailed synopsis of this important initiative: [BJA VALOR INITIATIVE \(ojp.gov\)](#).

Thank you BVP Program Support Team

Bureau of Justice Assistance

This email was sent to colin.sullivan@flower-mound.com using GovDelivery Communications Cloud on behalf of: Department of Justice · Washington, DC



TOWN COUNCIL AGENDA ITEM NO. 7

CONSENT ITEM

DATE: October 17, 2022

FROM: Wendell Mitchell, Assistant Chief of Police

ITEM: Consider approval of a lease agreement for the acquisition of Axon electric control devices (ECD or Taser); and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Using ECDs, specifically, Axon Enterprise, Inc. Tasers, is a law enforcement best practice and norm for safely detaining subjects who are displaying active aggression towards others. The Flower Mound Police Department has effectively incorporated Tasers as a tool to aid in safely de-escalating encounters with actively aggressive subjects over the last ten years. Often, active-aggressive individuals will voluntarily comply following a warning of impending Taser deployment. The Flower Mound Police Department trains and recertifies annually with Tasers following departmental policy and industry guidelines. This is a five year lease agreement totaling \$33,979.20.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The Town could choose to purchase the Tasers, but there is no financial advantage to buying these items.

FISCAL IMPACT: \$6,795.80

Proposed Expenditure/(Revenue):	Account Number(s):
\$6,795.80 (\$33,979.20 over five years)	100-640-43500-5020

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

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

ATTACHMENTS:

1. Axon Taser Quote
2. Axon Master Services Agreement

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



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Attachment 1
Q-414315-44830.666MA

Issued: 09/26/2022

Quote Expiration: 10/31/2022

Estimated Contract Start Date: 12/15/2022

Account Number: 157674

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Business;Delivery;Invoice-4150 Kirkpatrick Ln 4150 Kirkpatrick Ln Flower Mound, TX 75028-1400 USA	Flower Mound Police Dept. - TX 2121 Cross Timbers Rd Flower Mound, TX 75028-2602 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Matt Appelbaum Phone: Email: mappelbaum@axon.com Fax:	Paul Boon Phone: 972-874-3304 Email: paul.boon@flower-mound.com Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	\$33,979.20
ESTIMATED TOTAL W/ TAX	\$33,979.20

Discount Summary

Average Savings Per Year	\$789.12
TOTAL SAVINGS	\$3,945.60

Payment Summary

Date	Subtotal	Tax	Total
Aug 2022	\$6,795.80	\$0.00	\$6,795.80
Aug 2023	\$6,795.85	\$0.00	\$6,795.85
Aug 2024	\$6,795.85	\$0.00	\$6,795.85
Aug 2025	\$6,795.85	\$0.00	\$6,795.85
Aug 2026	\$6,795.85	\$0.00	\$6,795.85
Total	\$33,979.20	\$0.00	\$33,979.20

Quote Unbundled Price:	\$37,924.80
Quote List Price:	\$33,979.20
Quote Subtotal:	\$33,979.20

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
T7Basic	2021 Taser 7 Basic Bundle	12	60	\$47.48	\$42.00	\$42.00	\$30,240.00	\$0.00	\$30,240.00
A la Carte Hardware									
22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48			\$38.95	\$38.95	\$1,869.60	\$0.00	\$1,869.60
22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48			\$38.95	\$38.95	\$1,869.60	\$0.00	\$1,869.60
Total							\$33,979.20	\$0.00	\$33,979.20

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Estimated Delivery Date
2021 Taser 7 Basic Bundle	20008	TASER 7 HANDLE, YLW, HIGH VISIBILITY (GREEN LASER), CLASS 3R	12	11/15/2022
2021 Taser 7 Basic Bundle	20018	TASER 7 BATTERY PACK, TACTICAL	14	11/15/2022
2021 Taser 7 Basic Bundle	20062	TASER 7 HOLSTER - BLACKHAWK, RIGHT HAND	1	11/15/2022
2021 Taser 7 Basic Bundle	20067	TASER 7 HOLSTER - BLACKHAWK, LEFT HAND	11	11/15/2022
2021 Taser 7 Basic Bundle	70033	WALL MOUNT BRACKET, ASSY, EVIDENCE.COM DOCK	1	11/15/2022
2021 Taser 7 Basic Bundle	71019	NORTH AMER POWER CORD FOR AB3 8-BAY, AB2 1-BAY / 6-BAY DOCK	1	11/15/2022
2021 Taser 7 Basic Bundle	74200	TASER 7 6-BAY DOCK AND CORE	1	11/15/2022
2021 Taser 7 Basic Bundle	80087	TASER 7 TARGET, CONDUCTIVE, PROFESSIONAL (RUGGEDIZED)	1	11/15/2022
2021 Taser 7 Basic Bundle	80090	TARGET FRAME, PROFESSIONAL, 27.5 IN. X 75 IN., TASER 7	1	11/15/2022
A la Carte	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48	11/15/2022
A la Carte	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48	11/15/2022

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
2021 Taser 7 Basic Bundle	20248	TASER 7 EVIDENCE.COM LICENSE	12	12/15/2022	12/14/2027
2021 Taser 7 Basic Bundle	20248	TASER 7 EVIDENCE.COM LICENSE	1	12/15/2022	12/14/2027

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
2021 Taser 7 Basic Bundle	80374	EXT WARRANTY, TASER 7 BATTERY PACK	14	11/15/2023	12/14/2027
2021 Taser 7 Basic Bundle	80395	EXT WARRANTY, TASER 7 HANDLE	12	11/15/2023	12/14/2027
2021 Taser 7 Basic Bundle	80396	EXT WARRANTY, TASER 7 SIX BAY DOCK	1	11/15/2023	12/14/2027

Payment Details

Aug 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 1	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 1	T7Basic	2021 Taser 7 Basic Bundle	12	\$6,047.96	\$0.00	\$6,047.96
Total				\$6,795.80	\$0.00	\$6,795.80

Aug 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 2	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 2	T7Basic	2021 Taser 7 Basic Bundle	12	\$6,048.01	\$0.00	\$6,048.01
Total				\$6,795.85	\$0.00	\$6,795.85

Aug 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 3	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 3	T7Basic	2021 Taser 7 Basic Bundle	12	\$6,048.01	\$0.00	\$6,048.01
Total				\$6,795.85	\$0.00	\$6,795.85

Aug 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 4	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 4	T7Basic	2021 Taser 7 Basic Bundle	12	\$6,048.01	\$0.00	\$6,048.01
Total				\$6,795.85	\$0.00	\$6,795.85

Aug 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	22175	TASER 7 LIVE CARTRIDGE, STANDOFF (3.5-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 5	22176	TASER 7 LIVE CARTRIDGE, CLOSE QUARTERS (12-DEGREE) NS	48	\$373.92	\$0.00	\$373.92
Year 5	T7Basic	2021 Taser 7 Basic Bundle	12	\$6,048.01	\$0.00	\$6,048.01
Total				\$6,795.85	\$0.00	\$6,795.85

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

9/26/2022





Master Services and Purchasing Agreement between Axon and Agency (Online)

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

1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the quote at the specified prices. Any terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any offer by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

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

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3. **Payment.** Axon invoices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Agency will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

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

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

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

7. **Warranty.**

- 7.1. **Limited Warranty; Disclaimer.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for 1 year from the date of Agency's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for 30 months and 90 days, respectively, from the date of Agency's receipt. **Used** conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the 1-year hardware warranty through the extended warranty term. **All software and Axon Cloud Services, are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices, software, and services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.**

Title: Master Services and Purchasing Agreement between Axon and Agency (online)

Department: Legal

Version: 3.0

Release Date: 8/31/2022



- 7.2. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon Manufactured Device or (b) 90-days from the date of repair or replacement.
- 7.2.1. If Agency exchanges a device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Agency must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.3. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.
- 7.4. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Agency resells Axon Devices.
- 7.4.1. To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement.
- 7.4.2. Axon's cumulative liability to any Party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed \$33,979.20. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.
- 7.5. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at www.axon.com/sales-terms-and-conditions.
- 7.6. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Agency and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at www.axon.com/sales-terms-and-conditions, if any.
- 7.7. **Axon Aid.** Upon mutual agreement between Axon and Agency, Axon may provide certain products and services to Agency, as a charitable donation under the Axon Aid program. In such event, Agency expressly waives and releases any and all claims, now known or hereafter known, against Axon, and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "Releasees"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of Axon or any Releasees or otherwise. Agency agrees not to make or bring any such claim against Axon or any other Releasee, and forever release and discharge Axon and all other Releasees from liability under such claims. Agency expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately upon notice to the Agency.
8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible to perform Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.



Master Services and Purchasing Agreement between Axon and Agency (Online)

10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Agency Indemnitees against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; (c) a dispute between Agency and a third-party over Agency's use of Axon Devices; (d) to ensure Axon Devices are destroyed and disposed of securely and sustainably at Agency's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
 - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides 30 days written notice of the breach to the other Party, and the breach remains uncured at the end of 30 days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
 - 16.2. **By Agency.** The Agency is obligated to pay the fees under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Agency's then current fiscal year. In the event that sufficient funds will not be appropriated or are not otherwise legally available to pay the fees required under this Agreement, this Agreement may be terminated by the Agency. The Agency agrees to deliver notice of termination under this Section at least 90 days prior to the end of the Agency's then current fiscal year, or as soon as reasonably practicable under the circumstances.
 - 16.3. **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("MSRP") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within 30 days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "Confidential Information" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for 5 years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Agency receives a public records request to disclose Axon Confidential Information, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.
18. **General.**
 - 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.



AXON

Master Services and Purchasing Agreement between Axon and Agency (Online)

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



- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, IP Indemnification, IP Rights, and Agency Responsibilities.
- 18.10. **Governing Law.** The laws of the State of Texas, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement. Exclusive venue for any conflict arising from this Agreement will be in a court of competent jurisdiction within Denton County, Texas.
- 18.11. **Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Agency shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to legal@axon.com.
- 18.12. **Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.



Axon Cloud Services Terms of Use Appendix

1. **Definitions.**

- 1.1. **"Agency Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.
- 1.2. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.
- 1.3. **"Non-Content Data"** is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.
- 1.4. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2. **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.
3. **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.
4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.
5. **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.
 - 5.1. Agency will also maintain the security of end usernames and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.
 - 5.2. To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.
6. **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.



Master Services and Purchasing Agreement for Agency

7. **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for 6 months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to 24 hours to access.
- For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement agency that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Agency is prohibited from storing data for other law enforcement agencies; and (iii) Agency may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Agency Content created by Axon Devices or Evidence.com.
9. **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
10. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services. Service Offerings will be subject to the Axon Cloud Services Service Level Agreement, a current version of which is available at <https://www.axon.com/products/axon-evidence/sla>.
12. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 bundle. During Agency's Axon Records Subscription Term, if any, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.
- 12.1. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 bundle, upon completion of the OSP 7 Term ("**Axon Records Subscription**")
- 12.2. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
- 12.3. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.
- 12.4. Users of Axon Records at the agency may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Agency exceed an average rate of 100 GB per user per year of uploaded files. Axon will not bill for overages.



Master Services and Purchasing Agreement for Agency

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





Professional Services Appendix

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

1. **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within 6 months of the Effective Date.
2. **Axon Full Service (Axon Full Service).** Axon Full Service includes advance remote project planning and configuration support and up to 4 consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than 4 consecutive on-site days, Agency must purchase additional days. Axon Full Service options include:

System set up and configuration

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories and custom roles based on Agency need
- Register cameras to Agency domain
- Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access
- One on-site session included

Dock configuration

- Work with Agency to decide the ideal location of Docks and set configurations on Dock
- Authenticate Dock with Axon Evidence using admin credentials from Agency
- On-site assistance, not to include physical mounting of docks

Best practice implementation planning session

- Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management
- Provide referrals of other agencies using the Axon camera devices and Axon Evidence
- Recommend rollout plan based on review of shift schedules

System Admin and troubleshooting training sessions

Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations

Evidence sharing training

Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies

End user go-live training and support sessions

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

Implementation document packet

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

Post go-live review

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

System set up and configuration (Remote Support)

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories & custom roles based on Agency need



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- Troubleshoot IT issues with Axon Evidence and Axon Dock (“Dock”) access

/Dock configuration

- Work with Agency to decide the ideal location of Dock setup and set configurations on Dock
- Authenticate Dock with Axon Evidence using “Administrator” credentials from Agency
- Does not include physical mounting of docks

Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations

End user go-live training and support sessions

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

Implementation document packet

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

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

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

System set up and configuration

- Configure Axon Evidence categories & custom roles based on Agency need.
- Troubleshoot IT issues with Axon Evidence.
- Register users and assign roles in Axon Evidence.
- **For the CEW Full Service Package:** On-site assistance included
- **For the CEW Starter Package:** Virtual assistance included

Dedicated Project Manager

Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout

Best practice implementation planning session to include:

- Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata and best practices for digital data management
- Provide referrals to other agencies using TASER CEWs and Axon Evidence
- **For the CEW Full Service Package:** On-site assistance included
- **For the CEW Starter Package:** Virtual assistance included

System Admin and troubleshooting training sessions

On-site sessions providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

Axon Evidence Instructor training

- Provide training on the Axon Evidence to educate instructors who can support Agency's subsequent Axon Evidence training needs.
- **For the CEW Full Service Package:** Training for up to 3 individuals at Agency
- **For the CEW Starter Package:** Training for up to 1 individual at Agency

TASER CEW inspection and device assignment

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

Post go-live review

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

For the CEW Starter Package: Virtual assistance included.

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

Archival of CEW Firing Logs

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



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Return of Old Weapons

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.
Axon will provide Agency with a Certificate of Destruction

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

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

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

8. **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
9. **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.
10. **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
11. **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("User Documentation"). User Documentation will include all required environmental specifications for the professional Services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("Installation Site") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it.
12. **Acceptance.** When Axon completes professional Services, Axon will present an acceptance form ("Acceptance Form") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional Services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within 7 calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within 7 calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional Services.
13. **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



Technology Assurance Plan Appendix

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

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



TASER 7 Appendix

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

1. **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training.** If the Quote includes a training voucher, Agency must use the voucher within 1 year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
3. **TASER Upgrade.** If Agency purchases Axon's 10-year certification program for Axon's latest version of its TASER energy weapon ("Certification Program") and has no outstanding payment obligations as of the beginning of the 6th year of the Certification Program, Agency will qualify for an upgrade to any subsequent version of the Certification Program ("CEW Upgrade"). Agency will receive the CEW Upgrade at no additional cost, only to the extent such subsequent version of the Certification Program includes the same products or features as the Certification Program purchased by Agency. If Agency wants to upgrade to a Certification Program that includes additional products or features, Agency will pay the additional cost associated with such products and features. For the avoidance of doubt, Agency is not required to upgrade to any subsequent version of the Certification Program. Axon may ship the CEW Upgrade as scheduled in the Quote without prior confirmation from agency unless the Parties agree in writing otherwise at least 90 days in advance. If necessary to maintain compatibility among Axon Devices, within 30 days of receiving the CEW Upgrade, Agency must, if requested by Axon, return all hardware and related accessories received in connection with the Certification Program to Axon. In such event, Agency must ship batteries via ground shipping or in accordance with federal regulations in place at the time of the return. Axon will pay shipping costs for the return if Agency uses Axon's RMA process.
4. **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a 5-year term, which includes the hardware manufacturer's warranty plus the 4-year extended term.
5. **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

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

6. **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 Start date.
7. **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not exceed the number of end users than the Quote specifies.
8. **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.
9. **Termination.** If payment for TASER 7 is more than 30 days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:
 - 9.1. TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.



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- 9.2. Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within 30 days of the date of termination.
- 9.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.



Axon Auto-Tagging Appendix

If Auto-Tagging is included on the Quote, this Appendix applies.

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



Axon Fleet Appendix

If Axon Fleet is included on the Quote, this Appendix applies.

1. **Agency Responsibilities.** Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "Axon Fleet") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
2. **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
3. **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
4. **Wireless Offload Server.**
 - 4.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("WOS"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
 - 4.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
 - 4.3. **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("WOS Updates") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
 - 4.4. **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
5. **Axon Vehicle Software.**
 - 5.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "Axon Vehicle Software".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
 - 5.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.
6. **Acceptance Checklist.** If Axon provides services to Agency pursuant to any statement of work in connection with Axon Fleet, within 7 days of the date on which Agency retrieves Agency's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Agency will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.



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7. **Axon Fleet Upgrade.** If Agency has no outstanding payment obligations and has purchased the “Fleet Technology Assurance Plan” (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware (“**Axon Fleet Upgrade**”) as schedule on the Quote.
- 7.1. If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.
- 7.2. Within 30 days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
8. **Axon Fleet Termination.** Axon may terminate Agency’s Fleet subscription for non-payment. Upon any termination:
- 8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.
- 8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.
- 8.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency. If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.
3. **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.
4. **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.
5. **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
 - 5.1. With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.
6. **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



Add-on Services Appendix

This Appendix applies if Axon Citizen for Communities, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term**. If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as part of OSP 7, the subscription begins on the later of the (1) start date of the OSP 7 Term, or (2) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency.
 - 1.1. If Agency purchases Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Citizen for Communities, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.
 - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Citizen Storage**. For Axon Citizen, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data**. In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.



Axon Auto-Transcribe Appendix

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Agency purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Agency. If Agency purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Agency.
 - 1.1. If Agency cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.
2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Agency a set number of minutes, Agency may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Agency will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Agency additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Agency by Axon.
3. **Axon Unlimited Transcribe.** Upon Axon granting Agency an Unlimited Transcribe subscription to Axon Auto-Transcribe, Agency may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.
4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.



Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

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



Axon Commander Software Appendix

This Appendix applies if Axon Commander is included on the Quote.

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



Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services are included on the Quote.

1. **Definitions.**

- 1.1. **"API Client"** means the software that acts as the interface between Agency's computer and the server, which is already developed or to be developed by Agency.
- 1.2. **"API Interface"** means software implemented by Agency to configure Agency's independent API Client Software to operate in conjunction with the API Service for Agency's authorized Use.
- 1.3. **"Axon Evidence Partner API, API or AXON API"** (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Agency's Axon Evidence account or integrate Agency's Axon Evidence account with other systems.
- 1.4. **"Use"** means any operation on Agency's data enabled by the supported API functionality.

2. **Purpose and License.**

- 2.1. Agency may use API Service and data made available through API Service, in connection with an API Client developed by Agency. Axon may monitor Agency's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Agency agrees to not interfere with such monitoring or obscure from Axon Agency's use of API Service. Agency will not use API Service for commercial use.
- 2.2. Axon grants Agency a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Agency's Use in connection with Agency's API Client.
- 2.3. Axon reserves the right to set limitations on Agency's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

3. **Configuration.** Agency will work independently to configure Agency's API Client with API Service for Agency's applicable Use. Agency will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Agency will inform Axon promptly of any updates. Upon Agency's registration, Axon will provide documentation outlining API Service information.

4. **Agency Responsibilities.** When using API Service, Agency and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

5. **API Content.** All content related to API Service, other than Agency Content or Agency's API Client content, is considered Axon's API Content, including:

- 5.1. the design, structure and naming of API Service fields in all responses and requests;



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- 5.2. the resources available within API Service for which Agency takes actions on, such as evidence, cases, users, or reports; and
- 5.3. the structure of and relationship of API Service resources; and
- 5.4. the design of API Service, in any part or as a whole.
- 5.5. Prohibitions on API Content. Neither Agency nor its end users will use API content returned from the API Interface to:
- 5.6. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
- 5.7. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
- 5.8. misrepresent the source or ownership; or
- 5.9. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
6. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Agency is required to implement and use the most current version of API Service and to make any applicable changes to Agency's API Client required as a result of such API Update. API Updates may adversely affect how Agency's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Agency to update API Client to the most current version of API Service. Axon will provide support for 1 year following the release of an API Update for all depreciated API Service versions.



Advanced User Management Appendix

This Appendix applies if Axon Advanced User Management is included on the Quote.

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



Axon Channel Services Appendix

This Appendix applies if Agency purchases Axon Channel Service, as set forth on the Quote.

1. Definitions.

- 1.1. **“Axon Digital Evidence Management System”** means Axon Evidence or Axon Commander, as specified in the attached Channel Services Statement of Work.
- 1.2. **“Active Channel”** means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.
- 1.3. **“Inactive Channel”** means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.

2. **Scope.** Agency currently has a third-party system or data repository from which Agency desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Agency’s third-party data into an Axon Digital Evidence Management System or the transfer of Agency data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work (**“Channel Services SOW”**). Channel Services will not delete any Agency Content. Agency is responsible for verifying all necessary data is migrated correctly and retained per Agency policy.

3. **Purpose and Use.** Agency is responsible for verifying Agency has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Agency is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Agency’s network and systems to perform the Services described in the Channel Services SOW. Agency is responsible for facilitating this access per all laws and policies applicable to Agency.

4. **Project Management.** Axon will assign a Project Manager to work closely with Agency’s project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.

5. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.

6. **Monitoring.** Axon may monitor Agency’s use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure from Axon Agency’s use of channel services.

7. **Agency’s Responsibilities.** Axon’s successful performance of the Channel Services requires Agency:

- 7.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);
- 7.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Agency (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Agency premises with laptop personal computers and any other materials needed to perform the Channel Services);
- 7.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;
- 7.4. Ensure all appropriate data backups are performed;
- 7.5. Provide Axon with remote access to the Agency’s network and third-party systems when required for Axon to perform the Channel Services;
- 7.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and
- 7.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators, and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).



VIEVU Data Migration Appendix

This Appendix applies if Agency purchases Migration services, as set forth on the Quote.

1. **Scope.** Agency currently has legacy data in the VIEVU Solution from which Agency desires to move to Axon Evidence. Axon will work with Agency to copy legacy data from the VIEVU solution into Axon Evidence (“**Migration**”). Before Migration, Agency and Axon will work together to develop a Statement of Work (“**Migration SOW**”) to detail all deliverables and responsibilities. The Migration will require the availability of Agency resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Agency’s request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon’s resource availability.
 - 1.1. A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Agency. The Migration SOW will provide further detail.
2. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
3. **Project Management.** Axon will assign a Project Manager to work closely with Agency’s project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
4. **Downtime.** There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Agency is migrating. Axon will work with Agency to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.
5. **Functionality Changes.** Due to device differences between the VIEVU solution and the Axon’s Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration
6. **Acceptance.** Once the Migration is complete, Axon will notify Agency and an acceptance form. Agency is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Agency policy. Agency will have 90 days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.
 - 6.1. In the event Agency does not accept the Migration, Agency agrees to notify the Axon within a reasonable time. Agency also agrees to allow Axon a reasonable time to resolve any issue. In the event Agency does not provide Axon with a written rejection of the Migration during these 90 days, Agency may be charged for additional monthly storage costs. After Agency provides acceptance of the Migration, the Axon will delete all data from the VIEVU solution 90 days after the Migration.
7. **Post-Migration.** After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Agency elects to maintain data within the VIEVU solution, Axon will provide Agency 90 days’ notice before ending support for the VIEVU solution.
8. **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.
9. **Monitoring.** Axon may monitor Agency’s use of Migration to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure from Axon Agency’s use of Migration.



Axon Support Engineer Appendix

This Appendix applies if Axon Support Engineer services are included on the Quote.

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

Ongoing System Set-up and Configuration

Assisting with assigning cameras and registering docks
Maintaining Agency’s Axon Evidence account
Connecting Agency to “Early Access” programs for new devices

Account Maintenance

Conducting on-site training on new features and devices for Agency leadership team(s)
Thoroughly documenting issues and workflows and suggesting new workflows to improve the effectiveness of the Axon program
Conducting weekly meetings to cover current issues and program status

Data Analysis

Providing on-demand Axon usage data to identify trends and insights for improving daily workflows
Comparing Agency’s Axon usage and trends to peers to establish best practices
Proactively monitoring the health of Axon equipment and coordinating returns when needed

Direct Support

Providing on-site, tier 1 and tier 2 technical support for Axon devices
Proactively monitoring the health of Axon equipment
Creating and monitoring RMAs on-site
Providing Axon app support
Monitoring and testing new firmware and workflows before they are released to Agency’s production environment

Agency Advocacy

Coordinating bi-annual voice of customer meetings with Axon’s Device Management team
Recording and tracking Agency feature requests and major bugs

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

**Account Maintenance**

Conducting remote training on new features and devices for Agency's leadership

Thoroughly documenting issues and workflows and suggesting new workflows to improve the effectiveness of the Axon program

Conducting weekly conference calls to cover current issues and program status

Visiting Agency quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Agency's goals for your Axon program, and continue to ensure a successful deployment of Axon devices

Direct Support

Providing remote, tier 1 and tier 2 technical support for Axon devices

Creating and monitoring RMAs remotely

Data Analysis

Providing quarterly Axon usage data to identify trends and program efficiency opportunities

Comparing an Agency's Axon usage and trends to peers to establish best practices

Proactively monitoring the health of Axon equipment and coordinating returns when needed

Agency Advocacy

Coordinating bi-yearly Voice of Agency meetings with Device Management team

Recording and tracking Agency feature requests and major bugs

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



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Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate, the following appendix shall apply.

1. **License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Agency a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("Software") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Agency any right to enhancements or updates, but if such are made available to Agency and obtained by Agency they shall become part of the Software and governed by the terms of this Agreement.
2. **Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Agency agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Agency terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
3. **Restrictions on Use.** Agency may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Agency may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Agency may not rent, lease, sublicense, grant a security interest in or otherwise transfer Agency's rights to or to use the Software. Any rights not granted are reserved to Axon.
4. **Term.** For purchased perpetual Licenses only--excluding Licenses leased for a pre-determined period of time, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Agency fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period of time, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Agency.
5. **Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This agreement does not provide Agency with title or ownership of the Software, but only a right of limited use.
6. **Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Agency may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Agency. If Agency receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Agency to use the copy of media on an additional server.
7. **Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Agency agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Agency ("Software Documentation"), or return such copies to Axon. Agency agrees that with respect to any copies that may exist with respect to media containing regular backups of Agency's computer or computer system, that Agency shall not access such media for the purpose of recovering the Software or online Software Documentation.
8. **Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, by the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. treasury Department's list of Specially Designated Nations or the U.S. Department of Commerce's Table of Denials.
9. **U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software



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provided with RESTRICTED RIGHTS under Federal Acquisition Regulations and agency supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.

My90 Terms of Use Appendix

Definitions.

- 1.1. **"My90"** means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon Products.
- 1.2. **"Recipient Contact Information"** means contact Information, as applicable, including phone number or email address (if available) of the individual whom Customer would like to obtain feedback.
- 1.3. **"Customer Data"** means
 - 1.3.1. "My90 Customer Content" which means data, including Recipient Contact Information, provided to My90 directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Customer Content does not include My90 Non-Content Data.
 - 1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Customer's My90 tenant, and client software, users, and survey recipients that is Processed when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Customer Content.
 - 1.3.3. "Survey Response" which means survey recipients response to My90 Survey.
- 1.4. **"My90 Data"** means
 - 1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Customer and survey recipients within My90.
 - 1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual.
- 1.5. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
- 1.6. **"Processing"** means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.7. **"Sensitive Personal Data"** means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.
2. **Access.** Upon Axon granting Customer a subscription to My90, Customer may access and use My90 to store and manage My90 Customer Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.
3. **IP address.** Axon will not store survey respondents' IP address.
4. **Customer Owns My90 Customer Content.** Customer controls or owns all right, title, and interest in My90 Customer Content. Except as outlined herein, Axon obtains no interest in My90 Customer Content, and My90 Customer Content is not Axon's business records. Except as set forth in this Agreement, Customer is responsible for uploading, sharing, managing, and deleting My90 Customer Content. Axon will only have access to My90 Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to My90 Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon Products.

5. Details of the Processing The nature and purpose of the Processing under this Appendix are further specified

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in Schedule 1 Details of the Processing, to this Appendix.

6. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Customer Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Customer Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Customer, such as ISO 27001 certification or SOC 2 Reporting.
7. **Privacy.** Customer use of My90 is subject to the My90 Privacy Policy, a current version of which is available at <https://www.axon.com/legal/my90privacypolicy>. Customer agrees to allow Axon access to My90 Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon Products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon Products.
8. **Location of Storage.** Axon may transfer Customer Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Customer Data. For all Customers, Axon will Process including store Customer Data within the United States. Ownership of My90 Customer Content remains with Customer.
9. **Required Disclosures.** Axon may be required to disclose Customer Data that Customer shares with Axon as part of a subpoena process or other order issued by a court or administrative body or otherwise required by any law or regulation. Axon will not disclose Customer Data except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Customer if any disclosure request is received for Customer Data so Customer may file an objection with the court or administrative body, unless prohibited by law.
10. **Data Sharing.** Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:
 - 10.1. Axon may share Customer Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.
 - 10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon Customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or could reasonably be linked directly or indirectly to a particular individual.
11. **License and Intellectual Property.** Customer grants Axon and, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Customer Data for internal use including but not limited to analysis and creation of derivatives but Axon may not release Customer Data to any third party under this right that is not aggregated and de-identified. Customer acknowledges that Customer will have no intellectual property right in any media, good or service developed or improved by Axon. Customer acknowledges that Axon may make any lawful use of My90 Data and any derivative of Customer Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Customer will have no intellectual property right in any good, service, media, or other product that uses My90 Data.
12. **Customer Use of Aggregated Survey Response.** Axon will make available to Customer Aggregated Survey Response and rights to use for any Customer purpose.
13. **Data Subject Rights.** Taking into account the nature of the Processing, Axon shall assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Customer Content. If in regard to My90 Customer Content, Axon receives a Data Subject Request from Customer's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within 72 hours, to make its request directly to Customer. Customer will be responsible for responding to any such request.
14. **Assistance with Requests Related to My90 Customer Content.** With regard to the processing of My90 Customer Content, Axon shall, if not prohibited by applicable law, notify Customer without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Customer Content; (b) receives a complaint or request from a third party regarding the obligations of Customer or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Customer Content or the Processing or protection of My90 Customer Content. Axon



shall not respond to such requests, complaints, or communications, unless Customer has given Axon written instructions to that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Customer of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

15. **Axon Evidence Partner Sharing.** If Axon Evidence partner sharing is used to share My90 Customer Content, Customer will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Customer acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Customer also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.
16. **Data Retention.** Phone numbers provided to Axon directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for 24 hours. Axon will not delete Aggregated Survey Response for four years following termination of this Agreement. There will be no functionality of My90 during these four years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.
17. **Termination.** Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Customer Content or the potential monetization of Survey Response and Aggregated Survey Response.
18. **Managing Data Shared.** Customer is responsible for:
 - 18.1. Ensuring My90 Customer Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;
 - 18.2. Ensuring that only My90 Customer Content that is authorized to be shared for the purposes outlined is shared with Axon. Customer will periodically monitor or audit this shared data;
 - 18.3. Using an appropriately secure data transfer mechanism to provide My90 Customer Content to Axon;
 - 18.4. Immediately notifying Axon if My90 Customer Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Customer Content in the event Customer requests to un-share previously shared My90 Customer Content;
19. **Prior to enrollment in My90.** Prior to enrolling in MY90, Customer will:
 - 19.1. determine how to use MY90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations.
 - 19.2. develop a set of default qualification criteria of what My90 Customer Content may be shared with Axon; and
 - 19.3. assign responsibilities for managing what My90 Customer Content is shared with Axon and educate users on what data may or not be shared with Axon.
20. **Customer Responsibilities.** Customer is responsible for:
 - 20.1. ensuring no My90 Customer Content or Customer end user's use of My90 Customer Content or My90 violates this Agreement or applicable laws;
 - 20.2. providing, and will continue to provide, all notice and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Customer Data in accordance with this Agreement; and
 - 20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to My90. Customer will also maintain the security of end usernames and passwords and security and access by end users to My90 Customer Content. Customer is responsible for ensuring the configuration and utilization of My90 meets applicable Customer regulations and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or My90 Customer Content or if



account information is lost or stolen.

21. **Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Customer or end user's use of or registration for My90 may (a) pose a security risk to Axon Products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Customer Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.
22. **My90 Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;
 - 22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;
 - 22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - 22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;
 - 22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;
 - 22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or
 - 22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.

Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Customer obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:
- 1.1. Survey Tool where Customer may create, distribute, and analyze feedback from individuals it designates. Customer may designate members of the community, staff or officers from whom they would like to obtain feedback;
 - 1.2. Creation of custom forms for surveys. Customer may select questions from a list of pre-drafted questions or create their own;
 - 1.3. Distribution of survey via multiple distribution channels such as text message;
 - 1.4. Ability to access and analyze Survey Response. Axon may also provide Customer Aggregated Survey Responses which contain analysis and insights from the Survey Response;
 - 1.5. Direct integrations into information systems including Computer Aided Dispatch ("CAD"). This will enable Customer to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback - enabling Axon to communicate directly with these individuals;
 - 1.6. Data Dashboard Beta Test ("Data Dashboard") where Survey Response and Aggregated Survey Response will be displayed for Customer use. Customers will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Customer to test before they are publicly available;
 - 1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Customer; (2) other Axon Customers; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and
 - 1.8. Provide services and materials to engage Customer stakeholders, market the partnership to the public, and facilitate training.



TOWN COUNCIL AGENDA ITEM NO. 8

CONSENT ITEM

DATE: October 17, 2022

FROM: Paul Henley, Fire *PH*

ITEM: Consider approval of a client agreement with TargetSolutions/LMS Staffing to track required training hours and staffing for ISO and TCFP compliance in the amount of \$25,389.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: Target Solutions Learning/LMS Staffing is an online learning management and credential tracking system that includes a Fire Department staffing model. This software will streamline many Fire Department operational issues and is an approved FY22-23 Decision Package. It will track training credentials needed to meet ISO requirements as well as replace the multiple spreadsheets used for staffing.

FISCAL IMPACT: \$25,389.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 25,389.00	100-660-60000-5130

Finance Review by: Kay Wilkinson, Director of Budget Services *KSW*

ATTACHMENTS:

1. Attachment 1 – Target Solutions Learning Schedule A

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

**TargetSolutions Learning, LLC d/b/a Vector Solutions****Schedule A**

The Participating Agency ("Client") identified below has entered into an Intergovernmental Cooperative Purchasing Agreement ("IGA") with Government Division of the National Purchasing Partners ("NPPGov") pursuant to the Master Price Agreement entered into on March 24, 2021 (the "MPA") between the League of Oregon Cities (the "Lead Contracting Agency") and TargetSolutions Learning, LLC, d/b/a Vector Solutions ("TSL").

TSL agrees to provide, and Client agrees to purchase the Services described below in accordance with and subject to the terms, covenants, and conditions of the MPA, including but not limited to the Target Solutions Client Agreement attached to the MPA as Attachment F. This document serves as a "Schedule A" as identified in Attachment F to the MPA.

Date: Monday, September 26, 2022

Client Information

Client Name: Flower Mound Fire Department (TX)	
Address: 3911 S. Broadway Avenue Flower Mound, TX 75028	
Primary Contact Name: Paul Henley	Primary Contact Phone: 972-874-6270

Agreement Term

Effective Date: 10/01/2022	Initial Term: 36 months
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Invoicing Contact Information (Please fill in missing information)

Billing Contact Name: Paul Henley		
Billing Address: 3911 S. Broadway Avenue Flower Mound, Texas 75028		Billing Phone: 972-874-6270 Billing Email: paul.henley@flower-mound.com
PO#:	Billing Frequency: Annual	Payment Terms: Net 30 NPP Member ID: ID: M-5692373

Annual Fee(s)

Product Code	Product	Description	Minimum Annual Commitment	Price	Sub Total
TSPREMIER	Vector LMS, TargetSolutions Edition Premier Membership	Training management for public entities and professionals	130	\$89.00	\$11,570.00

TSMINTFEE S	Vector LMS, TargetSolutions Edition - Maintenance Fee	Annual maintenance of Vector LMS, TargetSolutions Edition	1	\$395.00	\$395.00
TSEVAL	Vector Evaluations+	Vector Evaluations+ for web and mobile	130	\$23.00	\$2,990.00
TSSCH	Vector Scheduling	Vector Scheduling for web and mobile	130	\$79.00	\$10,270.00
TSSCHMF	Vector Scheduling - Maintenance Fee	Annual maintenance of Vector Scheduling	1	\$164.00	\$164.00

Annual Total: \$25,389.00

One-Time Fee(s)

Product Code	Product	Description	Qty	Price	Sub Total
TSPS-IMP	Vector LMS, TargetSolutions Edition Implementation Investment	Waived	1	\$0.00	\$0.00
EVALIMP	Vector Evaluations+ Implementation Investment	Waived	1	\$0.00	\$0.00
SCHIMP	Vector Scheduling Implementation Investment	Waived	1	\$0.00	\$0.00

One-Time Total: \$0.00

Grand Total (including Annual and One-Time): \$25,389.00

Please note that this is not an invoice. An invoice will be sent within fourteen (14) business days. Totals do not include any applicable taxes.

TSL and Client have executed this Schedule A by their authorized representatives as of the last date set forth below.

TargetSolutions d/b/a Vector Solutions
4890 W. Kennedy Blvd., Suite 300
Tampa, FL 33609

Flower Mound Fire Department (TX)
3911 S. Broadway Avenue
Flower Mound, TX 75028

By: _____

By: _____

Printed Name: Kegan Konrady

Printed Name: Derek France

Title: Director of Sales

Title: Mayor

Date: _____

Date: _____



TOWN COUNCIL AGENDA ITEM NO. 9

CONSENT ITEM

DATE: October 17, 2022

FROM: Paul Henley, Fire *PH*

ITEM: Consider approval of an Annual Maintenance Contract with Goddard Enterprises for Mass Notification Systems in the amount of \$17,400.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The Town of Flower Mound currently has 29 emergency outdoor warning sirens. To ensure they are always working properly; preventative maintenance is necessary. With the annual service provided by Goddard Enterprises, these systems will be maintained and provide the emergency coverage should the need arise. This service will be purchased under the City of Mesquites Contract #1068-2021 (TOFM Contract 2021-103-I).

FISCAL IMPACT: \$17,400.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 17,400.00	100-660-64000-4100

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

ATTACHMENTS:

1.Attachment 1 – Goddard Maintenance Agreement

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



Prepared for Flower Mound, Texas

To James Childers

Email null@null.com

Copy to Peggy Gutierrez, Brandon Barth

Prepared by Logan Shelts, Joe Goddard Enterprises

Address 11950 Thousand Oaks Drive Edmond, Oklahoma 73034

Phone 405-830-9057 Website www.goddardenterprises.net

Quote number 236 Date September 23, 2022 Valid until October 23, 2022

Maintenance For Flower Mound, Texas

Preventative Maintenance

Warning systems are public safety infrastructure, and the reliability of these systems is of utmost importance. This is why Joe Goddard Enterprises recommends proactive preventative maintenance, inspection and service of your outdoor sirens and controllers.

The quoted service includes:

- A full inspection of all siren components and includes minor repairs if necessary.
- Work will be performed by trained technicians.
- Staff time, travel, lodging, pole & base station assessments
- Recommendations will be made for future maintenance.
- The inspection provides documentation that your system is up to factory specification.

Mandatory Tasks

- Inspection of all electrical and mechanical connections. Minor repairs or recommended corrective action plan included.
- Check of radio modulation FSK/DTMF levels.
- Check of radio frequency alignment using radio service monitor.
- Perform speaker driver inspection and verify power output of amplifiers.
- Verify operation of all control board or circuits.
- Verify proper voltages are present.
- Check charger(s) for proper voltage.
- Battery inspection for age, voltage, and possible replacement (cost of battery replacement not included)
- Check/verify wiring and fuses for all circuits.
- Verify antenna connector integrity and mounting.
- Clean debris from cabinets.
- Verify AC/Solar, battery, battery cables, radio/Cell/Sat operation.
- Verify intrusion switch is operating and repair as required.
- Inspect Siren installation for vertical orientation; will recommend corrective action if required.
- Follow all Goddard Enterprises procedures for preventative maintenance.
- Provide inspection report on all sirens.

600.00
x 29
17,400.00



Total

\$17,400.00

Terms & Conditions

This estimate is an approximation and is not guaranteed. The estimate is based on information provided from the customer regarding project requirements, needs, and wants. Actual cost may change once all project elements are finalized or negotiated. Prior to any changes of cost, the customer will be notified. Estimate valid for 30 days unless otherwise indicated.

Goddard Enterprises reserves the right to accept or reject any order, in our sole discretion. Order acceptance is expressly limited by and to the terms and conditions stated herein, which supersede any terms and conditions set forth in any document you provided to us.

Prices are subject to change and are exclusive of any applicable sales or other taxes, freight, handling and insurance charges. Freight quotations are provided as estimates only – actual freight charges are determined at the time of shipping and may differ from the amount originally quoted. The cost of any equipment within this estimate exceeding \$30,000 will be due at time of shipment unless otherwise arranged with Goddard Enterprises.

Any Installation that requires network access will be customers responsibility to facilitate and must be completed before work or commissioning can begin. All network requirements must meet factory recommendations to gain factory support.

Rock Clause: Rock, poor soil conditions, water in excavations and other unforeseen site conditions may incur additional charges upon digging.

This quotation/proposal and any files or attachments transmitted with it contain Information that is confidential and privileged. This document may contain information that is intended only for the use of the individual(s) and entity(ies) to whom it is addressed. If you are the intended recipient, further disclosures are prohibited without proper authorization from Goddard Enterprises. If you are not the intended recipient, any disclosure, copying, printing, or use of this information is strictly prohibited and possibly a violation of federal or state law and regulations. If you have received this information in error, please delete it and call 405-282-1978 immediately.

You agree to be bound by these Terms and Conditions in effect at the time of purchase. You also agree that we may change any of the Terms and Conditions upon 15 days written notice to you and that such changed Terms and Conditions will apply to any subsequent transactions with us. Additionally, you agree that in the event that any portion of these Terms and Conditions are found to be unenforceable, the remainder will remain in full force and effect.

Derek France
Mayor
Town of Flower Mound

Date



TOWN COUNCIL AGENDA ITEM NO. 10

CONSENT ITEM

DATE: October 17, 2022

FROM: Paul Henley *PH*

ITEM: Consider approval of an Annual Maintenance Contract with ProCare Services / Stryker for Emergency Services ambulance equipment in the amount of \$31,415.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: The power ambulance cots used to transport patients are mechanical and lift with the assistance of hydraulics (power-loads) to prevent injury to the patient and firefighters. The stair chairs help the firefighters safely move patients down inclines and stairs. The LUCAS device is a mechanical chest compression device that helps deliver high-quality, guidelines-consistent chest compressions to sudden cardiac arrest patients. Routine preventative maintenance will keep this equipment in good working order. The Services Agreement will provide for routine, manufacturer recommended repairs and preventative maintenance to ensure the safety of the devices for our personnel and patients. The preventative maintenance will also help prevent costly repairs from broken components that wear when not serviced regularly, keeping the equipment in optimal condition for the care of our patients.

FISCAL IMPACT: \$31,415.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$ 31,415.00	100-660-61000-4060

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

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

ATTACHMENTS:

1.ProCare Services agreement

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



Sales Rep Name: Gary Montana
ProCare Service Rep: M Glass - R Hurst

3800 E. Centre Ave
Portage, MI 49009

Date: 9/28/2022
ID #: 220928082350

PROCARE PROPOSAL SUBMITTED TO:

Billing Acc Num: 1077937	Name: Dean Feldpausch
Shipping Acct Num: 1077937	Title:
Account Name Flower Mound Fire Dept	Phone: (972) 874-3369
Account Address 3911 S Broadway Ave	Email: dean.feldpausch
City, State Zip Flower Mound , TX 75028	

PROCARE COVERAGE

Item No.	Model Number	Model Description	ProCare Program	Qty	Yrs		Total
1	LUCAS	LUCAS	LUCAS Prevent Onsite	7	1		\$10,514.00
2	6506	Power Cots	EMS Prevent	7	1		\$9,870.00
3	6390	Power-LOAD	EMS Prevent	5	1		\$9,260.00
4	6252	Stair Chair	EMS Prevent NB	7	1		\$1,771.00

PROGRAM INCLUDES:

EMS Prevent NB:

*Includes parts, labor, travel
*Includes 1 annual PM inspection
*Includes unscheduled service and product equipment checklists.
*Replacement parts do not include mattresses, batteries, and other Disposable or expendable parts.

EMS Prevent:

*Includes parts, labor, travel
*Includes 1 annual PM inspection
*Includes unscheduled service
*Includes battery replacement
*Includes product equipment checklists.
*Replacement parts do not include mattresses, and other Disposable or expendable parts.

LUCAS Prevent Onsite:

ProCare LUCAS Prevent Service: Annual onsite preventive maintenance inspection and unlimited repairs including parts, labor and travel with battery coverage

Unless otherwise stated on contract, payment is expected upfront.

ProCare Total \$31,415.00

FINAL TOTAL \$31,415.00

Start Date: 10/1/2022
End Date: 9/30/2023

Stryker Signature

Date

Customer Signature

Date

The Terms and Conditions of this quote and any subsequent purchase order of the Customer are governed by the Terms and Conditions located at
<https://techweb.stryker.com>

The terms and conditions referenced in the immediately preceding sentence do not apply where Customer and Stryker are parties to a Master Service Agreement.

Purchase Order Number

This is not an invoice. A physical invoice will be mailed.
Remit payment to: P.O. Box 93308 Chicago, IL 60673-3308

If contract is over \$5,000 please send hard copy PO

COMMENTS:

Please email signed Proposal and Purchase Order to procarecoordinators@stryker.com.
All information contained within this quotation is considered confidential and proprietary and is not subject to public disclosure.
**Quote pricing valid for 30 days.

SERIAL NUMBER SHEET

Item No.	Model	Serial Number	Program
1	LUCAS	3518B224	LUCAS Prevent Onsite
2	LUCAS	3518C201	LUCAS Prevent Onsite
3	LUCAS	3518B827	LUCAS Prevent Onsite
4	LUCAS	3518C199	LUCAS Prevent Onsite
5	LUCAS	3520P704	LUCAS Prevent Onsite
6	LUCAS	3520P898	LUCAS Prevent Onsite
7	LUCAS	3520P901	LUCAS Prevent Onsite
8	6506	121040709	EMS Prevent
9	6506	131139602	EMS Prevent
10	6506	160240774	EMS Prevent
11	6506	180739793	EMS Prevent
12	6506	180739794	EMS Prevent
13	6506	2006003500532	EMS Prevent
14	6506	2006003500533	EMS Prevent
15	6390	150340210	EMS Prevent
16	6390	170240451	EMS Prevent
17	6390	170840279	EMS Prevent
18	6390	171239488	EMS Prevent
19	6390	171239489	EMS Prevent
20	6252	030839529	EMS Prevent NB
21	6252	051240501	EMS Prevent NB
22	6252	081239237	EMS Prevent NB
23	6252	081239238	EMS Prevent NB
24	6252	081239240	EMS Prevent NB
25	6252	180841364	EMS Prevent NB
26	6252	180841365	EMS Prevent NB



TOWN COUNCIL AGENDA ITEM NO. 11

CONSENT ITEM

DATE: October 17, 2022

FROM: Paul Henley, Fire Chief *PH*

ITEM: Consider approval of the annual firefighter physical examinations with Front Line Mobile Health through the Professional Service Agreement in the total amount of \$64,350.00 and authorization for the Mayor to approve same on behalf of the Town.

BACKGROUND INFORMATION: Annual firefighter physicals are highly effective in providing early detection and prevention of many kinds of diseases and health conditions that may make the performance of the firefighter's job unsafe for the individual, as well as the rest of the department. In addition, the physicals provide a baseline of where personnel are, and measures change over time.

The annual firefighter physicals consist of a comprehensive series of various diagnostic screenings and an extensive physician examination with one-on-one counseling. This item is for approval of the Fire Department's annual firefighter physical examinations with Front Mobile Health, at the contracted price, in the estimated amount of \$64,350.00.

This is an annual expenditure and requirement for the firefighters to remain fit for duty.

FISCAL IMPACT: \$64,350.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$64,350.00	100-660-62000-5110

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

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

ATTACHMENTS:

1. Professional Services Agreement

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

PROFESSIONAL SERVICE AGREEMENT

The following Terms of the Professional Service Agreement ("Agreement") are entered into and made effective on the date of execution of this Agreement by both Parties.

BETWEEN:

FRONT LINE MOBILE HEALTH, PLLC, ("Service Provider"), a professional limited liability company organized and existing under the laws of Texas, with its principal office located at 6517 N. LAKEWOOD DR, GEORGETOWN, TX 78633 info@frontlinemobilehealth.com

AND:

The Town of Flower Mound Fire Department ("Contracting Agency"), a governmental agency organized and existing under the laws of Texas, with its principal office located at 3911 S Broadway Avenue, Flower Mound, TX 75028 which may be contacted at

Email Address: _____dean.feldspausch@flower-mound.com_____

Point of Contact: _____Dean Feldpausch_____ _972-874-6204_____

Name

Phone Number

Service Provider and Contracting Agency may be referred to herein individually as "Party," or collectively as "Parties."

WHEREAS, Service Provider is in the business of providing professional medical services relating to Pre-Employment Medical Evaluations, Annual Medical Evaluations, and Psychological Evaluations; and,

WHEREAS, Contracting Agency will provide such medical services to Contracting Agency's personnel ("Participants").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto, intending to be legally bound, agree as follows:

AGREEMENT

Service Provider will provide the following services to Contracting Agency under the terms of this Agreement:

1. ENTIRE AGREEMENT

- 1.1. This Agreement, recitals, and attachments represent the entire understanding and agreement between Service Provider and Contracting Agency, and supersede all other negotiations, proposals, understandings, and representations (written or oral) made by and

between Service Provider and Contracting Agency. This Agreement includes the following attachments which are incorporated herein:

- 1.1.1 Exhibit "A", "Requirements" referencing 14 Essential Job Tasks from NFPA 1582 Chapter 6 (Candidates) Chapter 7 (Incumbents);
- 1.1.2 Exhibit "B", "Scope of Services and Fee Schedule";
- 1.1.3 Exhibit "C", "Service Charges for Partially Completed Evaluation and Make up Policy";
- 1.1.4 Exhibit "D", "Scope of Services and Fee Schedule for Psychological Suitability Evaluations";
- 1.1.5 Exhibit "E", "Examinee Waiver"; and
- 1.1.6 Exhibit "F", "Contracting Agency Job Descriptions".

2. TERM

- 2.1. The initial term of this Agreement shall begin on October 1, 2022 (the "Effective Date") and shall expire on September 30, 2023 ("Expiration Date"), unless terminated earlier in accordance with this Agreement ("Initial Term"). After the Initial Term, the Contracting Agency shall have the option, in its sole discretion, to renew this Agreement under the same terms and conditions for up to four (4) one-year renewal terms, subject to any price increases as identified in paragraph 2.2.
- 2.2. Service Provider may at its discretion, and subject to approval by Contracting Agency, increase the price for those services identified in Exhibit "B" of this Agreement a maximum of 5% at the start of each year the Agreement is renewed.

3. DEFINITIONS

The terms used in this Agreement shall have the following meaning:

- 3.1. Authority Having Jurisdiction ("AHJ") means Contracting Agency's Authority Having Jurisdiction (as that term is defined in NFPA 1582 Section 3.2.2) as an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. The AHJ for Contracting Agency is the Town of Flower Mound Fire Chief.
- 3.2. Annual Medical Evaluation: Periodic evaluation of Incumbent Firefighter to assess the Firefighter's ability to meet the Fire Department's standards regarding Firefighter fitness, as well as to identify areas of the Firefighter's medical status that may present future health issues.
- 3.3. Candidate Firefighter: A person whom the Fire Department leadership wants medically evaluated before starting employment
- 3.4. Human Performance Assessment: A series of self-reported standardized behavioral health assessments that measure the Participant's condition regarding behavioral health attributes that Service Provider has determined impact the Participant's personal and work performance.
- 3.5. Incumbent Firefighter: A firefighter who has been hired and is no longer a Candidate firefighter.

- 3.6. Pre-Employment Medical Evaluation: A series of laboratory tests, diagnostic exams, hands-on physical exam, and consultation with a medical provider to assess whether the Candidate firefighter meets the minimum requirements provided to Service Provider by Fire Department leadership.
- 3.7. Post-Offer Psychological Evaluations: More comprehensive psychological evaluation of Candidate Firefighter conducted by licensed psychologist after a job offer has been made to the Candidate Firefighter.
- 3.8. Psychological Evaluation: More comprehensive psychological evaluation of Candidate Firefighter or Incumbent Firefighter conducted by licensed psychologist
- 3.9. Psychological Wellness Check: A self-reported Behavioral Health analysis tool using standard psychological tests.

4. COMPENSATION

- 4.1. Contracting Agency will compensate Service Provider for services performed in the amounts specified in the attached Exhibit "B" "Fee Schedule."
- 4.2. Contracting Agency will compensate Service Provider for partially completed examinations in accordance with the provisions listed in Exhibit "C", "Charges for Partially Completed Evaluations."
- 4.3. The signed agreement between Service Provider and Contracting Agency, acknowledges that Contracting Agency agrees to Service Provider's "Make-up Policy" provided in Exhibit C.

5. PAYMENT

- 5.1. Service Provider will invoice Contracting Agency for services completed, based on a mutually agreed-upon schedule.
- 5.2. If Participants are re-scheduled through a request initiated by Contracting Agency, invoicing will still take place for services rendered according to the billing schedule agreed upon by both Parties.
- 5.3. If Service Provider initiates the re-schedule, then invoicing will be delayed until the evaluation is complete.
- 5.4. Payment is due within 30 days of invoice.

6. NON-APPROPRIATION

- 6.1. This Agreement is a commitment of Contracting Agency's current revenues only for the term of this Agreement.
- 6.2. It is understood and agreed that Contracting Agency shall have the right to terminate this Agreement at the end of any Contracting Agency fiscal year if the governing body of the Contracting Agency does not appropriate funds sufficient to compensate for the services, by providing immediate written notice to Service Provider of the non-appropriation.

7. PROFESSIONAL SERVICES TO BE PROVIDED

- 7.1. Service Provider will work with Contracting Agency/AHJ to develop the medical testing parameters of the Annual Medical Examination for Incumbent Firefighters using the latest version of NFPA 1582, as well as the Job Descriptions provided in Exhibit "F" of this Agreement as a basis of the Annual Medical Examination and adding the most recent, best medical science standards, in cardiovascular testing, blood work, and other medical testing to include testing for pulmonary function and cancer.
- 7.2. Service Provider will work with Contracting Agency to provide an annual "Psychological Wellness Check" for Incumbent Firefighters during their Annual Medical Evaluation known as the Human Performance Assessment. The Human Performance Assessment will be conducted by a Physician Assistant or MD/DO.
- 7.3. Service Provider will work with Contracting Agency/AHJ to test Candidate Firefighters using standards found in the latest version of NFPA 1582 as well as the Job Descriptions provided in Exhibit "F" of this Agreement.
- 7.4. Service Provider will work with Contracting Agency/AHJ to provide Candidate Firefighters with an optional entry-level Psychological Evaluation by a qualified Psychologist.

8. LIMITED SCOPE OF MEDICAL EVALUATION

- 8.1. Service Provider's Annual Medical Evaluation is limited to only those services specified in Exhibit "B" "Scope of Services" and in compliance with Exhibit "C", and "D" using the latest version of NFPA 1582 with modifications for Incumbent Firefighters.
- 8.2. The Annual Medical Evaluation is intended to meet or exceed those testing parameters as found in the latest version of NFPA 1582 and based on the most updated, adopted, and acceptable medical industry standards.
- 8.3. The Annual Medical Evaluation is conducted for the sole purpose of providing a recommendation to Contracting Agency regarding Participant's medical fitness for duty.
- 8.4. It is understood that medical and psychological evaluations are NOT a functional or occupational assessment. If an Incumbent Firefighter, Candidate Firefighter, or staff participant refuses to acknowledge the limited scope of service or refuses to participate in any part of the evaluation, then Service Provider reserves the right to decline to make a recommendation of that Participant's medical fitness for duty.
- 8.5. It is also understood that an Annual Medical Evaluation alone cannot determine the occupational success of the Participant, and therefore, Service Provider recommends that Contracting Agency combines the Annual Medical Evaluation with other occupational specific evaluations in determining a Participant's overall fitness for duty such as a job analysis and skill performance for the essential elements of the job.
- 8.6. Contracting Agency acknowledges that Psychological Evaluations cannot determine the occupational success of a Participant, and therefore, Contracting Agency releases Service Provider from any adverse candidate outcome.
- 8.7. This Annual Medical Evaluation is partially based on Job Descriptions created and approved by Contracting Agency. See Exhibit "F" of this Agreement for said Job Descriptions.
- 8.8. AHJ or Contracting Agency is not required to adopt the latest version of NFPA 1582.
- 8.9. Contracting Agency's final authority for work and/or employment will remain with the Fire Chief/AHJ.

9. DISPUTED RESULTS

- 9.1. This Agreement is between Contracting Agency and Service Provider only. SERVICE PROVIDER SHALL NOT HAVE AN AGREEMENT WITH THE PARTICIPANT(S) TESTED.
- 9.2. In the event the Participant disputes the recommendation submitted by Service Provider to Contracting Agency, the resolution of such dispute will be accomplished through a process to be established by Service Provider and Contracting Agency.
- 9.3. Since medical clearance recommendations by Service Agency are based upon the standards put forth in NFPA 1582, as well as the applicable Job Descriptions and approved modifications by Contracting Agency for Participants and agreed upon in this Agreement, any expense incurred for re-testing or re-evaluation will be Contracting Agency's sole responsibility.
- 9.4. Since medical clearance recommendations by Service Agency are based upon the standards put forth in NFPA 1582, as well as applicable Job Descriptions (Exhibit "F") with agreed upon modifications and approved by Contracting Agency for Candidate Firefighters and agreed upon in this, any expense incurred for re-testing or re-evaluation will be the Contracting Agency sole responsibility.

EVALUATIONS PROVIDED

10. ANNUAL INCUMBENT FIREFIGHTER MEDICAL EVALUATIONS

- 10.1. Service Provider will provide an Annual Medical Evaluation for Participants identified by Contracting Agency, as set forth in the attached Exhibit "A" "Requirements", and in compliance with Exhibit "F", Contracting Agency Job Descriptions.
- 10.2. In addition, Contracting Agency may initiate a change order to add additional lab tests and other components made available by Service Provider at Service Provider's then current pricing.

11. PRE-EMPLOYMENT CANDIDATE FIREFIGHTER MEDICAL EVALUATION

- 11.1. The Service Provider will perform Pre-Employment Medical Evaluations and Psychological Evaluations for Contracting Agency, addressing the applicable components listed under the provisions in Exhibit "A", "Requirements", and in compliance with the 2022 version of NFPA 1582 as well as the Job Descriptions provided in Exhibit "F" of this Agreement.

12. LOCATION AND SCHEDULE OF SERVICES TO BE PROVIDED

- 12.1. Annual Medical Evaluations will be conducted by Service Provider at a location mutually agreeable to the Parties.
- 12.2. These Annual Medical Evaluations will be provided on a schedule that is mutually agreeable to the Parties, with the understanding that all Annual Medical Evaluations must be completed by the end of the Agreement Term.
- 12.3. Pre-Employment Medical Evaluations will take place at one of Service Provider's clinics on a schedule mutually agreeable to the Parties.
- 12.4. Service Provider specifically acknowledges that time is of the essence for scheduling Pre-Employment Medical and Psychological Evaluations and will make all reasonable efforts to complete such evaluations within the time specified by Contracting Agency.

- 12.5. Contracting Agency acknowledges that it takes no less than two weeks to coordinate, schedule, perform and report on any Medical Evaluations performed for Pre-Employment Medical Evaluations.
- 12.6. Contracting Agency acknowledges that it takes no less than three weeks to coordinate, schedule, perform and report on any Psychological Evaluations performed for Pre-Employment or, Post-Offer Psychological Evaluations. Service Provider reserves the right to conduct Psychological Evaluations via a HIPAA compliant telehealth platform.

13. ADDITIONAL SERVICES

- 13.1. To receive any additional services not provided for under this Agreement, Contracting Agency must separately contract with Service Provider under a change order. No services other than those specifically identified under this Agreement will be provided without a change order.
- 13.2. Additional services may be requested by Contracting Agency at any time and will be consistent with the services and fees set forth in Exhibit B, "Scope of Services and Fee Schedule," of the Agreement.

ADDITIONAL TERMS AND CONDITIONS

14. TERMINATION

- 14.1. Contracting Agency may terminate this Agreement for non-appropriation of sufficient funds, pursuant to **Paragraph 5**.
- 14.2. If either Party materially breaches any covenant under this Agreement, the other Party may notify the breaching Party in writing and, if the breach is not cured within 30 days, the non-breaching Party may terminate this Agreement.
- 14.3. Service Provider may immediately suspend services if it reasonably believes continued service would violate State or Federal law or violate applicable rules of professional conduct. Service Provider shall provide prior notice to Contracting Agency of suspended services.
- 14.4. In the event that this Agreement is terminated prior to the Expiration Date, Contracting Agency shall pay Service Provider for all services actually rendered up to the effective date of termination and Service Provider shall continue to provide Contracting Agency with services requested by Contracting Agency and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Service Provider shall provide Contracting Agency with copies of all completed or partially completed documents prepared under this Agreement. In the event Service Provider has received access to Contracting Agency's information or data as a requirement to perform services hereunder, Service Provider shall return all Contracting Agency provided data to Contracting Agency in a machine-readable format or other format deemed acceptable by Contracting Agency.

15. INDEPENDENT CONTRACTING AGENCY

- 15.1. The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or joint venture. Service Provider's services shall be those of an independent contracting agency.

- 15.2. Service Provider agrees and understands that the Agreement does not grant any rights or privileges established for employees of Contracting Agency.
- 15.3. Service Provider shall not be within protection or coverage of Contracting Agency's Worker Compensation Insurance, Health Insurance, Liability Insurance, or any other insurance that Contracting Agency, from time to time, may have in force for its existing employees.

16. NON DISCLOSURE AND CONFIDENTIALITY

- 16.1. Both Parties to this Agreement agree and understand that from time to time they may receive from each other certain information that is confidential to both Parties, hereinafter "Confidential Information." Contracting Agency understands that: (i) Confidential Information is commercially and competitively valuable to Service Provider and that it and its protection are vital to the success of Service Provider's business; (ii) the use or disclosure of Confidential Information by Contracting Agency, except in accordance with this Agreement, would cause irreparable harm to Service Provider; and (iii) nothing contained in this Agreement shall prohibit Service Provider from pursuing any remedies, whether at law or in equity, available to Service Provider for a breach or threatened breach of this Agreement, including the recovery of damages from, and injunctive relief against Contracting Agency and its members, both appointed or elected.
- 16.2. During the term of this Agreement and following the termination thereof, Contracting Party, to the extent permitted by law, will not use or disclose, directly or indirectly, any Confidential Information in any manner or for any purpose not in accordance with this Agreement or Texas law.
- 16.3. Upon termination of this Agreement, or at any time upon Service Provider's request, Contracting Party agrees to surrender to Service Provider, or destroy at Service Provider's request, some or all records, notes, notebooks, or the like, relating to Service Provider's operations, products, or business made or received by it during the term of this Agreement.
- 16.4. Upon termination of this Agreement, Contracting Party will return all other Service Provider's property in its custody, and shall be bound by this Non-Disclosure and Confidentiality Agreement. Notwithstanding the foregoing, Contracting Party may disclose Confidential Information to the extent required by law. As required by the Texas Public Information Act (the "Act"), Contracting Party will notify Service Provider in the event a public information request made to Contracting Party encompasses any information protected by this Agreement. As authorized by the Act, Service Provider may submit arguments against disclosure of the requested information directly to the Office of the Texas Attorney General. Contracting Party will only release the requested information if required to do so by the Office of the Texas Attorney General.

17. HIPAA COMPLIANCE

- 17.1. Service Provider is currently compliant and will remain compliant with all security measures required by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH").
- 17.2. Contracting Agency acknowledges that once Service Provider has delivered a medical or psychological evaluation recommendation, as outlined in this Agreement, it is Contracting

Agency's responsibility to maintain these reports and protect this information as outlined by HIPAA and HITECH.

18. INSURANCE

- 18.1. Service Provider shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability insurance; and fidelity insurance.
- 18.2. The insurance certificate shall name Contracting Agency, its agents, officers, servants, and employees as additional insureds under the commercial general liability and automobile policies with respect to the operations and work performed by the named insured as required by written contract.
- 18.3. The General Liability policy is Primary & Non-Contributory.
- 18.4. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The commercial general liability insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence, and \$1,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$350,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to Contracting Agency, except in the case of cancellation for non-payment of premium, which shall be at least 10 days written notice.

19. LIABILITY AND INDEMNIFICATION

- 19.1. **SERVICE PROVIDER SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE, AND/OR PERSONAL INJURY TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE, OR INTENTIONAL MISCONDUCT OF SERVICE PROVIDER, ITS OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES.**
- 19.2. **FURTHERMORE, SERVICE PROVIDER HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND CONTRACTING AGENCY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO SERVICE PROVIDER'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY TO ANY AND ALL PERSONS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS, MALFEASANCE, OR INTENTIONAL MISCONDUCT OF SERVICE PROVIDER, ITS OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES.**
- 19.3. **FURTHERMORE, TO THE EXTENT PERMITTED BY TEXAS LAW, CONTRACTING AGENCY HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND SERVICE PROVIDER, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO CONTRACTING AGENCY'S BUSINESS AND ANY RESULTING COSTS) AND/OR PERSONAL INJURY TO ANY AND ALL PERSONS ARISING OUT OF OR IN**

CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF CONTRACTING AGENCY, ITS OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES.

20. FORCE MAJEURE

- 20.1. Contracting Agency and Service Provider will exert all efforts to perform the tasks set forth herein within the proposed schedules. However, neither Contracting Agency nor Service Provider shall be held responsible for inability to perform under this Agreement if such inability is a direct result of a force substantially beyond its control, including but not limited to the following: strikes, riots, civil disturbances, fire, insurrection, war, embargoes, failures of carriers, acts of God, or the public enemy.

21. CONFLICTS OF INTEREST

Texas Local Government Code Chapter 176 ("Chapter 176") requires the disclosure of certain matters by contracting agencies doing business with or proposing to do business with local governmental agencies such as Contracting Agency. Service Provider has reviewed Chapter 176 and, if it is required to do so, will disclose such matters within seven (7) days of the date of submitting this Agreement to Contracting Agency, or within seven (7) days of becoming aware of a matter that requires disclosure, whichever is applicable.

22. NON-BOYCOTT VERIFICATION

For purposes of Chapter 2270 of the Texas Government Code, Service Provider represents and warrants that, at the time of execution and delivery of this Agreement, neither Service Provider, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of Service Provider, boycotts Israel. Service Provider agrees that, except to the extent otherwise required by applicable federal law, neither Service Provider nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of Service Provider, will boycott Israel during the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this clause have the meaning assigned to the term "boycott Israel" in Section 808.001 of the Texas Government Code.

23. NO BUSINESS WITH FOREIGN TERRORIST VERIFICATION

For purposes of Subchapter F of Chapter 2252 of the Texas Government Code, Service Provider represents and warrants that, at the time of execution and delivery of this Agreement, neither Service Provider, nor any wholly owned subsidiary, majority owned subsidiary, parent company, or affiliate of Service Provider engages in business with Iran, Sudan, or any foreign terrorist organization, as described in Chapter 2252 of the Texas Government Code, or is a company listed by the Texas Comptroller under sections 2270.0201 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

24. NO WAIVER

The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach hereof.

25. NONDISCRIMINATION

- 25.1. Service Provider, with regard to the work performed by it after award and prior to completion of this Agreement, shall not discriminate on the basis of race, color, sex, or national origin, including procurements of materials and leases of equipment. Service Provider shall not participate either directly or indirectly in the discrimination prohibited by any Federal, State, or Local law.
- 25.2. IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY SERVICE PROVIDER, ITS PERSONAL REPRESENTATIVES, ASSIGNS, OR SUCCESSORS IN INTEREST, SERVICE PROVIDER AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CONTRACTING AGENCY AND HOLD CONTRACTING AGENCY HARMLESS FROM SUCH CLAIM.

26. RIGHT TO AUDIT

- 26.1. Service Provider agrees that the representatives of Contracting Agency shall have access to, and the rights to audit, examine, and reproduce any and all Service Provider business records related to the performance under this Agreement.
- 26.2. Service Provider shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters that Contracting Agency has brought to the attention of Service Provider are resolved, whichever is longer.

27. NOTICES.

Any notice or communication permitted or required by this Agreement shall be deemed effective when personally delivered or deposited, postage prepaid, in the first-class mail of the United States properly, or sent via electronic means, addressed to the appropriate party at the address set forth in the identification of Parties section of this Agreement.

28. CONSTRUCTION

The captions or headings in this Agreement are for convenience only and do not define, limit, or otherwise describe the scope or intent of any provision or section of this Agreement. References to the singular include the plural and vice versa.

29. SEVERABILITY

If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect.

30. COMPLETE AGREEMENT

This Agreement supersedes all prior oral or written agreements and understandings between the Parties respecting the subject matter thereof, and constitutes the entire agreement between the Parties, and cannot be changed unless mutually agreed upon in writing by both Parties.

31. GOVERNING LAW: SUCCESSORS AND ASSIGNS

- 31.1. This Agreement and all matters or issues directly or collaterally relating thereto shall be interpreted by, governed in accordance with, and construed pursuant to the laws of the State of Texas without regard to its conflict of laws and rules, and both Parties agree to submit to jurisdiction in Texas.
- 31.2. Further, any action arising out of or relating to the performance of the parties hereunder, or the interpretation of this Agreement shall be brought exclusively in a court of competent jurisdiction located in Denton County, Texas.
- 31.3. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.

32. COUNTERPARTS

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

SIGNATURES

“Contracting Agency”

CONTRACTING AGENCY OF

____ Town of Flower Mound _____

____ 2121 Cross Timbers Road _____

____ Flower Mound, TX 75028 _____

By: *Derek France, Mayor*

Date Signed: _____

Approved as to form:

By *Name, Title*

“Service Provider”

Front Line Mobile Health, PLLC

____ 6517 N Lakewood Drive _____

____ Georgetown, TX 78633 _____

By: Bruce VanderHaar, Chief Financial Officer

Date Signed: _____

EXHIBIT A

Requirements

NFPA 1582 is not incorporated by reference due to the size of the document. However, the 14 Essential Jobs tasks are included for reference and can be superseded by the Contracting Agency's job description if provided to Service Provider:

- (1) Wearing personal protective equipment (PPE) and self-contained breathing apparatus (SCBA) while performing firefighting tasks (e.g., hose line operations, extensive crawling, lifting, and carrying heavy objects, ventilating roofs or walls using power or hand tools, forcible entry), rescue operations, and other emergency response actions under stressful conditions, including working in extremely hot or cold environments for prolonged time periods
- (2) Wearing an SCBA, which includes a demand-valve-type positive-pressure facepiece or HEPA filter mask, which requires the ability to tolerate increased respiratory workloads
- (3) Exposure to toxic fumes, irritants, particulates, biological (i.e., infectious) and nonbiological hazards, or heated gases, despite the use of PPE and SCBA
- (4) Climbing at least six flights of stairs or walking a similarly strenuous distance and incline in jurisdictions without tall buildings while wearing PPE and SCBA, commonly weighing 40–50 lb. (18–23 kg) and carrying equipment/tools weighing an additional 20–40 lb. (9–18 kg)
- (5) Wearing PPE and SCBA that is encapsulating and insulated, which will result in significant fluid loss that frequently progresses to clinical dehydration and can elevate core temperature to levels exceeding 102.2°F (39°C)
- (6) Working alone while wearing PPE and SCBA, searching, finding, and rescue-dragging or carrying victims ranging from newborns to adults weighing over 165 lb. (75 kg) to safety despite hazardous conditions and low visibility
- (7) While wearing PPE and SCBA, advancing water-filled hose lines up to 1 3/4 in. (45 mm) in diameter from fire apparatus to occupancy [approximately 150 ft (50 m)], which can involve negotiating multiple flights of stairs, ladders, and other obstacles
- (8) While wearing PPE and SCBA, climbing ladders, operating from heights, walking, or crawling in the dark along narrow and uneven surfaces that might be wet or icy, and operating in proximity to electrical power lines or other hazards
- (9) Unpredictable, prolonged periods of extreme physical exertion as required by emergency operations without benefit of a warm-up period, scheduled rest periods, meals, access to medication(s), or hydration
- (10) Operating fire apparatus or other vehicles in an emergency mode with emergency lights and sirens
- (11) Critical, time-sensitive, complex problem solving during physical exertion in stressful, hazardous environments, including hot, dark, tightly enclosed spaces, that is further aggravated by fatigue, flashing lights, sirens, and other distractions
- (12) Ability to communicate (i.e., give and comprehend verbal orders) while wearing PPE and SCBA under conditions of high background noise, poor visibility, and drenching from hose lines or fixed protection systems (e.g., sprinklers)

- (13) Functioning as an integral component of a team, where sudden incapacitation of a member can result in mission failure or in risk of injury or death to members of the public or other team members
- (14) Working in shifts, including during nighttime, that can extend beyond 12 hours

EXHIBIT B
Scope of Services and Fee Schedule

Exams and Tests to be done

Contracting Agency has chosen the “Essentials” level of services for its Annual Medical Evaluations from Service Provider for the Fiscal Year 2023 contract period.

Service Provider reserves the right, upon prior notice to Contracting Agency, to modify the list of services in this Exhibit in the event better results can be obtained by using different lab tests or methodologies. Cost will not change without the approval of the Contracting Agency.

Additional lab tests are available and can be added to this Agreement at Service Provider’s then current pricing through the Change Order process established by Service Provider.

For the 2022-23 contract period of October 1, 2022 – September 30, 2023, the general scope of services to be performed by Service Provider for an Annual Medical Evaluation includes, but is not limited to, the following:

ESSENTIALS LEVEL LAB TESTS AND PHYSICAL EXAMS
Personalized Risk Assessment
Health Questionnaire & Screening
Annual Human Performance Assessment
Physical Examination & Consultation w/ Medical Provider
LABORATORY ANALYSIS:
• Complete CBC
• Lipid Panel
• Comprehensive Metabolic Panel
• Prostate Specific Antigen (male) or CA-125 (female) AGE-BASED
• Urinalysis, with microscopic
• Fecal Occult Blood AGE-BASED
• Uric Acid AGE-BASED
• HBA1C
Vision Screening
Body Composition Analysis
Audiogram
Cardiopulmonary Exercise Test (CPET) AGE-BASED
Chest Radiograph (X-Ray) AGE-BASED
Cancer Screening Ultrasound: thyroid, testicular (male only), abdomen (liver, gallbladder, pancreas, spleen, kidneys, ovaries, non-invasive) AGE-BASED

Cost per Participant for the 2022-23 contract period is \$550.

As an option for 2022-23 and subsequent years, Service Provider does offer a more comprehensive package of lab tests, behavioral health assessments, cardio-vascular testing, and cancer screening. This package would be the PARTNERSHIP tier.

Components and prices are shown in the following tables:

PARTNERSHIP LEVEL LAB TESTS AND PHYSICAL EXAMS
Personalized Risk Assessment
Health Questionnaire & Screening
Annual Human Performance Assessment
Physical Examination & Consultation w/ Medical Provider
LABORATORY ANALYSIS:
• Complete CBC
• Lipid Panel
• Comprehensive Metabolic Panel
• Prostate Specific Antigen (male) or CA-125 (female)
• Urinalysis, with microscopic
• Fecal Occult Blood
• C-Reactive Protein
• Uric Acid
• HBA1C
• Free Testosterone
• Cortisol
• TSH (Thyroid)
Vision Screening
Body Composition Analysis
Audiogram
Cardiopulmonary Exercise Test (CPET)
Chest Radiograph (X-Ray)
Cancer Screening Ultrasound: thyroid, testicular (male only), abdomen (liver, gallbladder, pancreas, spleen, kidneys, ovaries, non-invasive)

The most comprehensive level of services we offer is the PARTNERSHIP tier, which offers more extensive lab testing and provides the most comprehensive experience for the Participant. The price for PARTNERSHIP for 2022-23 is \$850 per Participant and is subject to change in subsequent years.

In recognition of the importance of only hiring physically and mentally qualified people, Service Provider offers a comprehensive set of exams and lab tests to Contracting Agency.

For the 2022-23 contract period of October 1, 2022 – September 30, 2023, Service Provider is making available as an option three tiers of Candidate Evaluations, so that Contracting Agency can choose the level of testing and cost to be undertaken. The choice of tier selected initially can be changed throughout the year depending upon the requirements of the Contracting Agency.

The entry-level candidate/applicant Medical Evaluation is the Foundations Tier, and it is composed of the following lab tests and exams:

CANDIDATE PHYSICAL -FOUNDATIONS TIER	
MEDICAL EVALUATION OF CANDIDATES	
Individualized Health Risk Appraisal	
Medical History Questionnaire & Screening	
Physical Examination & Consultation w/ Medical Provider w/ range of motion on all extremities and spine	
Vision test (distance/color/peripheral)	
Hernia Exam	
LABORATORY ANALYSIS:	
• Complete CBC	
• Lipid Panel	
• Comprehensive Metabolic Panel	
• Urinalysis, with microscopic	
• Drug Screen 11 w/ETOH	
• UricAcid	
• HBA1C	
Audiogram	
Body Composition Analysis	
Cardiopulmonary Exercise Test (CPET)	

Cost of Candidate Physical-Foundations Tier per Participant is \$ 800.00. This is subject to change in subsequent years.

Please note: In accordance with paragraph 12.5, if a request is made by Contracting Agency to do a candidate evaluation in less than two weeks, Service Provider may apply a \$250 per exam expediting charge. In the event such a charge is required, Service Provider will notify Contracting Agency in advance of starting the evaluation.

The next tier candidate evaluation is performed at the Essentials Tier. It provides the following more extensive list of lab tests and exams:

CANDIDATE PHYSICAL - ESSENTIALS TIER
MEDICAL EVALUATION OF CANDIDATES
Individualized Health Risk Appraisal
Medical History Questionnaire & Screening
Human Performance Assessment
Physical Examination & Consultation w/ Medical Provider w/ range of motion on all extremities and spine
Vision test (distance/color/peripheral)
Hernia Exam
LABORATORY ANALYSIS:
• Complete CBC
• Lipid Panel
• Comprehensive Metabolic Panel
• Prostate Specific Antigen (male) or CA-125 (female)
• Urinalysis, with microscopic
• Fecal Occult Blood
• C-Reactive Protein
• QuantiFERON Gold (TB Test- Blood)
• Hepatitis Profile
• Drug Screen 11 w/ETOH
• Uric Acid
• HBA1C
• TSH Third Generation
• Tetanus IGG
• Measles, Mumps, Rubella (MMR)
• Lipoprotein (a)
Audiogram
Body Composition Analysis
Chest X-Ray
Cardiopulmonary Exercise Test (CPET)

Cost per Participant at the Essentials Tier level in 2022-23 is \$1,200. This is subject to change in subsequent years.

The highest tier candidate evaluation is performed at the Partnership Tier. It provides the following most extensive list of lab tests and exams:

CANDIDATE PHYSICAL - PARTNERSHIP TIER	
MEDICAL EVALUATION OF CANDIDATES	
Individualized Health Risk Appraisal	
Medical History Questionnaire & Screening	
Human Performance Assessment	
Physical Examination & Consultation w/ Medical Provider w/ range of motion on all extremities and spine	
Vision test (distance/color/peripheral)	
Hernia Exam	
LABORATORY ANALYSIS:	
• Complete CBC	
• Lipid Panel	
• Comprehensive Metabolic Panel	
• Prostate Specific Antigen (male) or CA-125 (female)	
• Urinalysis, with microscopic	
• Fecal Occult Blood	
• C-Reactive Protein	
• QuantiFERON Gold (TB Test- Blood)	
• Coagulation Studies (PT, PTT, INR)	
• Hepatitis Profile	
• Drug Screen 11 w/ETOH	
• Uric Acid	
• HBA1C	
• TSH Third Generation	
• Sickle Cell Screen	
• Blood Type (ABO and RH Type)	
• Tetanus IGG	
• Measles, Mumps, Rubella (MMR)	
• Lipoprotein (a)	
• Heavy Metals	
• Cholinesterase	
Audiogram	
Body Composition Analysis	
X-Ray- Chest PA/Lat, Cervical, Thoracic, and Lumbar Spines	
Cardiopulmonary Exercise Test (CPET)	

The cost of Participant at the Partnership Tier level \$1,600 in the 2022-23 fiscal year. Should Contracting Agency decide to upgrade the Annual Medical Evaluations to the Partnership Tier, the cost per Candidate Partnership tier drops to \$1,300 for 2022-23. Price is subject to change in subsequent years.

Exhibit C
Charges for Partially Completed Evaluations:

In the event a Participant of Contracting Agency withdraws and does not complete the entire 4-Step process conducted by Service Provider, cancellation charges will be billed to Contracting Agency, based on how many of the steps have been completed by the participant. The charges will be based on the following:

1. If a Participant (Incumbent or Candidate Firefighter) withdraws or is withdrawn after the roster of names has been submitted to Service Provider, but before any specimens are collected or lab tests have taken place, a charge of 25% of the cost for an annual or candidate physical will be assessed.
2. If a Participant withdraws after the specimen collection and lab tests, but before any physical testing has taken place, the charge will be 50% of the cost for an annual or candidate physical.
3. If a Participant withdraws after the physical testing but before the medical examination and one-on-one consultation with the medical provider, the charge will be 75% of the cost for an annual or candidate physical.
4. Once the medical exam and consultation have taken place, 100% of the charge will be billed.

In the event a participant withdraws from the process due to injury, FLMA, deployment or other extenuating circumstances, Service Provider and Contracting Agency agree to negotiate an appropriate cancellation charge, depending on if/when the participant is scheduled to resume duties.

Make up Policy

Service Provider will coordinate and reschedule any portion of the Annual Medical Evaluation directly with any member that was not available during the pre-determined event schedule for up to 30 days after the last scheduled medical exam and provider consultation (#4) as listed above. After 30 days, Contracting Agency accepts the responsibility to coordinate with Service Provider for these services. Service Provider will bill for partially completed exams as referenced above after 30 days for all services rendered. Make ups will occur at one of Service Provider's physical offices and not Contracting Agency's location.

Exhibit D
Scope of Services and Fee Schedule for Psychological Suitability Evaluations

The purpose of this optional psychological screening, conducted by the Front Line staff forensic psychologist, is twofold. When evaluating potential firefighters, the goal is to screen-out or deselect candidates who do not meet minimum requirements and standards. When evaluating sworn officers considered for promotion or movement to positions of greater responsibility, the goal is to select-in or identify the best candidates from among those who have already been determined to meet minimum qualifications.

The psychological evaluation is conducted at the post-offer phase or during the promotion evaluation phase, although both include an assessment of normal-range personality traits and characteristics. The test scores are interpreted within the context of other information gathered from interviews, behavioral observations, reviews of psychological and other relevant medical records, as well as information provided by third parties (e.g., background investigators, health professionals). The integration of information from across a variety of sources serves to strengthen the confidence placed in the resulting inferences.

SUITABILITY EVALUATION
Individualized evaluation
Review of Department Documents (investigation, polygraph)
Clinical Interview with Psychologist
Psychological Testing:
• Personality Assessment Inventory (PAI)
• State and Trait Anxiety Inventory (STAXI)
Completed Risk Matrix
Dichotomous Recommendation for Hire

The cost per suitability evaluation for 2022 is \$ 475.00 per Participant

Exhibit E
Examinee Waiver

Scope of Service
To be signed by each Participant examined

By initialing and signing below, I acknowledge that I understand the scope of the medical services I receive today is solely to identify whether I am physically and mentally able to continue to perform my essential job duties without undue risk of harm to myself or others, in accordance with the standards established under the National Fire Protection Association 1582 (Standard on Comprehensive Occupational Medical Program for Fire Departments, 2022 Edition).

Initial _____

I acknowledge and understand that Front Line Mobile Health, PLLC is not establishing a patient-provider relationship. This evaluation is performed pursuant to the Professional Services Agreement between Front Line Mobile Health, PLLC and your department, and/or Texas Local Government Code, Chapter 143 (if applicable), and/or your department's labor/management agreement (if applicable) and it does not replace those evaluations or health care treatment plans recommended by my primary care physician/manager or other specialty provider. I will discuss any abnormal findings or results with my primary care physician/manager for a comprehensive diagnosis and treatment plan.

Initial _____

Please note that due to the sensitivity of the testing equipment and lab procedures used by Front Line Mobile Health, PLLC, abnormal results and findings, along with revaccination or intervention after certain exposures, may be detected that are of insignificant physiological importance concerning your ability to perform your duties. However, they may warrant a recommended referral to your primary care physician/manager. You are encouraged to discuss these abnormal results and findings with them. Please note that Front Line Mobile Health, PLLC will not reimburse you or your department for the cost of any appointments, additional examinations, or testing you and your primary care physician choose to undertake.

Initial _____

This medical evaluation consists of an examination of major body systems, the analysis of laboratory results, radiographic studies, online questionnaires, and various other diagnostic studies. All findings and results are strictly confidential and will be provided only to me unless I provide a separate written consent for their release. However, I fully understand and acknowledge that the specific information, results, and findings from the medical examination, evaluation, laboratory results, and medical findings, will form the basis of the Medical Director's recommendation to the Fire Chief regarding my continued fitness for duty.

Initial _____

Non-identifiable aggregated medical and health information gathered from this and other co-workers' medical examinations will be used to monitor acute and long-term effects of the working environment; detect patterns of disease in the workforce; provide quantifiable medical information on the entire workplace; to inform others in the workforce of the occupational hazards of your occupation; and for research studies that will be used to identify patterns, make correlations, and drive positive change in your chosen profession.

Initial _____

I acknowledge that the Fire Chief, his/her designee, or the Authority Having Jurisdiction makes the final determination on employment, work restrictions and adherence to medical recommendations. Front Line Mobile Health, PLLC and its medical director have no authority or jurisdiction as it relates to my work status, they only make recommendations. If I wish to question or contest the results of this exam, I must do so using the rules and regulations adopted in the Professional Services Agreement between my organization and Front Line Mobile Health, PLLC.

Initial _____

Examinee Signature

Date

Copy: Examinee
Medical File

Exhibit F

Contracting Agency Job Descriptions

Authority Having Jurisdiction (“AHJ”) means Contracting Agency’s Authority Having Jurisdiction (as that term is defined in NFPA 1582 Section 3.2.2) as an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. The AHJ for Contracting Agency is the Town of Flower Mound Fire Chief.

Annual Medical Evaluation: Periodic evaluation of Incumbent Firefighter to assess the Firefighter’s ability to meet the Fire Department’s standards regarding Firefighter fitness, as well as to identify areas of the Firefighter’s medical status that may present future health issues.

Candidate Firefighter: A person whom the Fire Department leadership wants medically evaluated before starting employment

Human Performance Assessment: A series of self-reported standardized behavioral health assessments that measure the Participant’s condition regarding behavioral health attributes that Service Provider has determined impact the Participant’s personal and work performance.

Incumbent Firefighter: A firefighter who has been hired and is no longer a Candidate firefighter.

Pre-Employment Medical Evaluation: A series of laboratory tests, diagnostic exams, hands-on physical exam, and consultation with a medical provider to assess whether the Candidate firefighter meets the minimum requirements provided to Service Provider by Fire Department leadership.

Post-Offer Psychological Evaluations: More comprehensive psychological evaluation of Candidate Firefighter conducted by licensed psychologist after a job offer has been made to the Candidate Firefighter.

Psychological Evaluation: More comprehensive psychological evaluation of Candidate Firefighter or Incumbent Firefighter conducted by licensed psychologist

Psychological Wellness Check: A self-reported Behavioral Health analysis tool using standard psychological tests.



TOWN COUNCIL AGENDA ITEM NO. 12

CONSENT ITEM

DATE: October 17, 2022

FROM: Paul Henley, Fire Chief *PH*

ITEM: Consider approval of an Extended Three-Year Warranty and Preventative Maintenance Contract with Zoll Medical Corporation for the Fire Department's heart monitors in the amount of \$65,981.25 due in three equal annual payments; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: This three-year extended warranty and maintenance agreement will cover Emergency Services fifteen cardiac monitors approved with the FY 16-17 budget. These monitors were under a 5-year agreement which expires in 2022. The Zoll cardiac monitoring equipment is required to be calibrated and all systems checked at least annually. In addition to this calibration, the extended warranty provides repair and parts for equipment that is damaged as the result of water, rain or deployed at a fire, being dropped, exposure to the compartments of the fire equipment and just the wear and tear of daily use. The extended warranty is critical to keeping the equipment operating properly when something is damaged. This maintenance coverage is an approved FY22/23 Decision Package and will be billed by Zoll in three equal payments of \$21,993.75 annually for the contract life.

FISCAL IMPACT: \$65,981.25

Proposed Expenditure/(Revenue):	Account Number(s):
\$65,981.25 (\$21,993.25 FY 22/23)	100-660-61000-4060

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

LEGAL REVIEW: Jeremy Page of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the previous agreement as to form and legality. No alternation to the legal content of this agreement was made in the preparation of this warranty and maintenance agreement.

ATTACHMENTS:

1. Zoll Extended Warranty Maintenance Contract

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


EXPERTCARE EXTENDED WARRANTY & PREVENTIVE MAINTENANCE CONTRACT
Flower Mound Fire Department (Customer # 6067)
ZOLL Medical Corporation

 269 Mill Road
 Chelmsford, MA 01824-4105
 (978) 421-9655 Main
 (800) 348-9011
 (978) 421-0022 Fax

Attn: Jonathan Castro (972) 874-6265 / jonathan.castro@flower-mound.com

Bill To: Flower Mound Fire Department

 3911 South Broadway Avenue
 Flower Mound, TX 75028

Ship To: Flower Mound Fire Department

 3911 South Broadway Avenue
 Flower Mound, TX 75028

From: Catherine Santos

Service Contracts

800-242-9150 ext 9760 / csantos@zoll.com

QUOTATION: 00032204

Quote Date: September 29, 2022

Quote Pricing: Valid for 60 Days

PM Contact: Jonathan Castro - (972) 874-6265 jonathan.castro@flower-mound.com

X Series

Part No	Description	Contract Dates	Qty	Price	Adj. Price	Ext. Price
8889-89033-WF	3 Year On-Site Worry-Free Service Plan - ZOLL X Series X SERIES-Worry-Free Service Plan, 3 Years, On-Site, Post-sale. Includes: Annual preventive maintenance, 27% discount on new cables, 27% discount on additional SurePower II Batteries, discount on parameter upgrades, SurePower II Battery replacement upon failure, and accidental damage (See comments) coverage. Shipping and use of a Service Loaner during repairs, no charge shipping. Extended warranty is a continuation of the EMS One Year Product Limited Warranty. Serial Number(s): AR16I021636,AR16J021821 AR16J021823,AR16J021826 AR16J021828,AR16K022312 AR16K022314,AR16K022317 AR16K022320,AR16K022322 AR16K022323,AR16K022324 AR16K022325,AR16K022328 AR16K022329	01/01/2023 to 12/31/2025	15	\$5,175.00	\$4,398.75	\$65,981.25

TOTAL: \$65,981.25
COMMENTS: Annual Payments of \$ 21,993.75

1. Applicable tax will be added at the time of invoicing.
2. Payment terms are Net 30 after ZOLL Medical Corporation invoice date.
3. If PM's are purchased or applicable: customer visit to complete the PM work will be scheduled 60-90 days after the agreement is signed.
4. 10% Multi-Unit Discount only applies when the Total Contract Value is invoiced in full and paid in Net 30 Days.

TERMS & CONDITIONS: The terms and conditions of this contract are set forth in the attachments. By signing this contract, Customer acknowledges having read the terms and conditions and agrees to be bound by them.

ZOLL Medical Corporation

Signature:

 Name: Catherine Santos

 Title: Service Contracts

Date: _____

Flower Mound Fire Department

Authorized Signature:

Print Name _____

Title: _____

Date: _____

Preventive Maintenance Terms and Conditions

- 1.** Preventive maintenance ("PM") will be invoiced upon ZOLL's receipt of quote with an authorized signature (the "PM Contract") and, if available, a purchase order.
- 2.** Any PMs that remain unused as of the end of a one-year PM contract will be forfeited and no monies will be refunded to the customer. Any PMs that remains unused as of the end of the initial term of the Multi-year PM Contract will automatically roll over into the next year of the PM Contract. Any PMs that remains unused as of the end of the second and subsequent years of the PM Contract, will be forfeited and no monies will be refunded to the customer.
- 3.** If the customer purchases new ZOLL equipment, unused PMs will be transferred to the new equipment at the end of the factory warranty.
- 4.** If ZOLL determines during the course of performing PM that a repair is required and the device is not covered under warranty, ZOLL will request customer authorization in order to repair the device.
- 5.** Upon the customer's request, a loaner will be provided free of charge pursuant to ZOLL's Loaner Policy. The loaner will be provided for use while the device is being serviced by ZOLL.
- 6.** It is the customer's responsibility to ensure devices covered by the PM Contract are available for Preventative Maintenance at the scheduled times.

EXTENDED WARRANTY & PREVENTIVE MAINTENANCE CONTRACT for Flower Mound Fire Department**Extended Warranty Terms and Conditions**

- 1.** The ZOLL Extended Warranty ("EW") extends the term of ZOLL's Factory Warranty by the number of years selected by the customer. EW coverage commences upon the expiration of the Factory Warranty, and is subject to the terms and conditions contained in the Factory Warranty. The EW does not apply to accessories.
- 2.** The price of the EW will be invoiced upon ZOLL's receipt of quote with an authorized signature from the customer and, if available, a purchase order from the customer.
- 3.** The EW is not transferrable and cannot be cancelled. However, if the customer replaces equipment covered by an EW with new ZOLL equipment, upon customer's request, the remaining time under the EW will be transferred to the new equipment at the end of the factory warranty. All requests to transfer the remaining balance of an EW must be submitted in writing to the ZOLL Service Contracts department within 60 days of date of shipment of new equipment. Failure to submit EW transfer request will result in the forfeiture of remaining EW.
- 4.** If the customer has a claim under an EW, customer must call the ZOLL Help Desk (800-348-9011) to arrange for a Return Authorization in advance of sending the unit for evaluation at ZOLL Headquarters.
- 5.** All repairs are performed at ZOLL headquarters in Chelmsford, MA. If a unit needs to be repaired, upon the customer's request, a loaner will be provided free of charge pursuant to ZOLL's Loaner Policy.
- 6.** If no claims are made under the EW during the EW period, the purchase price of the EW is not refundable.



TOWN COUNCIL AGENDA ITEM NO. 13

CONSENT ITEM

DATE: October 17, 2022

FROM: Paul Henley, Fire Chief *PH*

ITEM: Consider approval to continue contracted services with Dr. Sean Fleming in the amount of \$63,000.00 for EMS Medical Direction.

BACKGROUND INFORMATION: Being a provider of emergency medical services (EMS), the Town is required by the Texas Administrative Code to contract with a physician to perform as the Town's Medical Director. Dr. Fleming has fulfilled that role since January 1, 2014.

The contracted services include, but are not limited to develop, implement, and revise protocols, malpractice coverage, certification verification and interpersonal interactions for Continuous Quality Improvement (CQI) and Quality Assurance/Quality Improvement (QA/QI) findings for Fire and Emergency Services employees. In addition, Dr. Fleming provides medical continuing education for the department's Paramedics and Emergency Medical Technicians, helping to fulfill some of the State's and ISO's requirements.

This is an annual expenditure for the Fire and Emergency Services Department.

FISCAL IMPACT: \$63,000.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$63,000.00	100-660-61000-5110

Finance Review by: Tammy Wilson, Chief Financial Officer *tw*

LEGAL REVIEW: Bradley Anderlee of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the agreement as to form and legality on November 6, 2020. No alternation to the legal content was made in the preparation of this agreement.

ATTACHMENTS:

1. FY22/23 Invoice

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



Sean D. Fleming, MD
2300 Shoreham Circle
Lewisville, TX 75056
drseanfleming@yahoo.com
469-363-0284

October 5, 2022

Town of Flower Mound EMS in c/o Captain Castro,

For services listed below being rendered as Medical Director for the Town of Flower Mound EMS from October 1, 2022 through September 30, 2023, a total of \$63,000 is due.

- Personnel Development including annual review and updates of protocols which includes training and competency-based testing, testing of new employees, interaction with QA/QI Program, FTP Program and CQI Review Boards.
- Online Medical Control with 24-hour access to a Medical Control physician
- Fire Department Medical Control
- Police Department Medical Director for Narcan Administration and Tactical Medical Program
- Town AED Program
- Quality Assurance/Quality Improvement Chart Reviews
- Initiate App Based Access to Protocols

Thank you for allowing me to assist in serving our hospitals, community, and patients. Please let me know if any questions or concerns.

Sincerely,

Sean D. Fleming, MD



TOWN COUNCIL AGENDA ITEM NO. 14

CONSENT ITEM

DATE: October 17, 2022

FROM: Jeremy Jennings, Utility Line Maintenance Manager

ITEM: Consider approval of the purchase of three new Ford F450 Crew Cab Dual Rear Wheel Cab and Chassis Trucks per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's Five Star Ford in the amount of \$201,645.25.

BACKGROUND INFORMATION: The Public Works Department is requesting the purchase of Three – new Ford F450 Crew Cab Dual Rear Wheel Cab and Chassis Trucks in the amount of \$201,645.25 utilizing the BuyBoard Cooperative Contract # 601-19.

These vehicle purchases replace 92320-07, 92320-08, and 92330-04, all of which are 2015 Ford F450 Crew Trucks w/Service Body; and are part of the approved Fiscal Year 22-23 Vehicle and Equipment Replacement Fund (VERF).

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: N/A

FISCAL IMPACT: \$201,645.25

Proposed Expenditure/(Revenue):	Account Number(s):
\$201,645.25	565-450-84500-6130 - VERF

Finance Review by: Kay Wilkinson, Director of Budget Services KSW

LEGAL REVIEW: N/A.

ATTACHMENTS:

1. Fleet Manager's Bid Award Recommendation.
2. Sam Pack's Five Star Ford Quote

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



Bid Award Recommendation

Date: 10/10/2022

Description: **Cab and Chassis Crew Truck Equipped with Service Body – FY2023 VERF**

Qty.: 3

Replaces: 92320-07, 92320-08, and 92330-04, all of which are 2015 F450 Crew Trucks w/Service Body

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

Item: **Three – F450 Crew Cab Dual Rear Wheel Cab and Chassis Trucks Equipped with Service Body as per attached Cooperative Quote Identified as “NEW FORD F450 CHASSIS”**

Total Cost of Vehicles, Equipment & Installation:

\$201,645.25

It is Fleet Services recommendation to award the bid to **Sam Pack Five Star Ford** in the amount of **\$201,645.25** utilizing the **BuyBoard Cooperative Contract # 601-19**.

Fleet Services Manager

10/10/2022

Date

Sam Pack's Five Star Ford
1635 S. IH 35E Carrollton Texas, 75006
(888) 8 FLEET 9 (888-835-3389) - FAX 972-245-5278

CUSTOMIZED PRODUCT PRICING SUMMARY BASED ON CONTRACT

Cars and Light Trucks

Team Members - Kevin Moore - Jessica Wooten - Jorge Guerra - Jose Deanda - Alan Rosner

Contract Name:BuyBoard 601-19

End User: **FLOWER MOUND**

Sam Pack's Rep: **KEVIN MOORE**

Contact: **BILLY STERNER**

Date: 10.10.22

Contact TN/Email

Phone #

Product Description: **NEW FORD F450 CHASSIS**

Interior and
Exterior Color
Code

WHITE

A. Bid Line # 129

Base Price:

\$ 29,209.00

B. Published Options (Itemize Each Below)

Code	Description	Bid Price	Code	Description	Bid Price
	Automatic Transmission	Included		HD SERVICE SUSPENSION	\$ 175.00
	Air Conditioning	Included			
	POWER GROUP	\$ 1,025.00		POWER TAKE OFF	\$ 280.00
	CRUISE	\$ 325.00		UPGRADE TO CREW CAB	\$ 5,688.00
	SYNC SYSTEM	Included			
	7.3L V8 GAS ENGINE	INCLUDED			
	4.88 LIMITED SLIP	\$ 360.00			
	UPFITTER SWITCHES	Included			
	REAR VIEW CAMERA PREP	\$ 415.00			
	SPARE TIRE	\$ 350.00			
	TRAILER BRAKE CONTROLLER	\$ 270.00			

Total of B. - Published Options \$ 8,888.00

C. Dealer Published Options

Code	Description	Bid Price	Code	Description	Bid Price

Total of C. - Dealer Published Options \$ -

D. Off Menu Options

Code	Description	Bid Price	Code	Description	Bid Price
	KSW 6108D54J SERVICE BODY WITH MASTER LOCK HITCH PLUG AND SPRAY IN	\$15,788.00			
	2023 PRICE INCREASE AND GPC DIFF	\$10,875.00			

Off Menu Options limited to 25% of Published Price Current % 69.99% Total of D. - Off Menu Options \$26,663.00

Delivery Charges

15 Miles @ \$: 1.49/PER MILE

\$ 41.25

Floorplan Expense

30 Days

\$9.76 Per Diem

\$ 292.75

Lot Insurance Expense

30 Days

\$9.76 Per Diem

\$ 292.75

Manufacturer Destination and Delivery

\$ 1,695.00

Total Each

\$ 67,081.75

Quantity Ordered 3 X F =

\$ 201,245.25

Administrative Fee

\$ 400.00

Trade In Allowance - Non-Equipment debits and credits

\$ -

TOTAL PURCHASE PRICE INCLUDING ADMIN FEE

\$201,645.25



TOWN COUNCIL AGENDA ITEM NO. 15

REGULAR ITEM

DATE: October 17, 2022

FROM: Joelle Hainley, Building Official

ITEM: **Public Hearing to consider approval of an Ordinance amending Chapter 14, “Buildings and Building Regulations,” Article II, of the Code of Ordinances of the Town of Flower Mound, to provide for the adoption of the 2021 edition of the *International Building Code* and local amendments thereto.**

BACKGROUND INFORMATION: The International Code Council (ICC) is a nonprofit organization founded in 1994 to develop a single set of comprehensive and coordinated national model construction codes by combining the three largest building codes in the country. These combined codes are referred to as the International Codes and have replaced the Uniform Codes that were used in the past.

The Town of Flower Mound has been involved and supportive throughout the code development process and in the creation of the International Codes. This support has been through the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG).

The International Codes were developed with the support of many organizations that have interest in the construction industry, although the final vote on all items is by code officials only. Work on the International Codes has been a model of democracy, without territorial disparities getting in the way. The American Institute of Architects and the National Association of Home Builders were both very active participants in the code development process.

The Building Codes are a set of universally accepted standards adopted as guidelines for construction of buildings and related building operations. The term “building codes” is a generic phrase that actually encompasses several individual codes, each of which must be approved and adopted by the Town Council before they can be applied or enforced.

The Town of Flower Mound is currently using the 2018 *International Building Code*. The 2021 *International Building Code* is the most current published building code at this time. It takes at least a year for area cities to complete the review of the code and recommend regional amendments to the code through the Council of Governments.

The *International Building Code* (IBC) addresses the general design and construction aspects of all buildings except one- and two-family dwellings and townhouses, which are covered in the *International Residential Code* (IRC). The IBC specifies, for example, how many exits are required for a building, what type of construction material may be used on the structure, and what special rules exist for the construction of the framework.

In addition to adopting the IBC, the proposed ordinance adopts certain local amendments to the Code to meet the unique needs of the Town. These local amendments, prepared by NCTCOG, have been reviewed, approved, and modified as appropriate by Town staff.

During the 87th legislature, a change was made requiring that if a local authority proposed amendments to the code, the adoption of the code and local amendments must be done through a public hearing. In April of this year, the adoption of this code was approved as a consent item on the agenda. This item is coming back to the council as a public hearing to obtain compliance with this new legislation.

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. Proposed Ordinance

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. ____-22

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE II, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR THE ADOPTION OF THE 2021 EDITION OF THE *INTERNATIONAL BUILDING CODE* AND LOCAL AMENDMENTS THERETO; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known as the "International Codes"); and,

WHEREAS, the *International Building Code* has been prepared by the ICC, and in addition to review by the North Central Texas Council of Governments (NCTCOG), has been reviewed by Town staff; and,

WHEREAS, the current building code in the Town is the 2018 edition of the *International Building Code*, and the Town's building code should be updated to the most current published building code available; and,

WHEREAS, the 2021 edition of the *International Building Code* is the most current published code available that addresses the general design and construction aspects of all buildings in the Town, except one- and two-family dwellings and townhouses (which are covered by the *International Residential Code*); and,

WHEREAS, the Town Council of the Town of Flower Mound has determined that it is in the best interest of the citizens of the Town of Flower Mound to update and adopt the 2021 edition of the *International Building Code* and has determined that this will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public; and,

WHEREAS, the Town Council of the Town of Flower Mound further desires to adopt certain local amendments to such Code reflecting the unique needs of the Town of Flower Mound;

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Section 14-31 of the Code of Ordinances of the Town of Flower Mound, entitled "International Building Code Adopted," is hereby repealed and replaced with the following provision:

"Sec. 14-31. International Building Code Adopted"

The *International Building Code*, 2021 edition, a copy of which is on file in the office of the town secretary, is hereby adopted and designated as the building code of the town, the same as though the provisions of the *International Building Code*, 2021 edition, were copied at length in this section, subject to the deletions, amendments, and additions provided in section 14-32."

SECTION 3

From and after the effective date of this Ordinance, Section 14-32 of the Code of Ordinances of the Town of Flower Mound, entitled "Amendments to International Building Code," is hereby repealed and replaced with a new Section 14-32, also entitled "Local Amendments to International Building Code," to read as follows:

"Sec. 14-32. Local Amendments to International Building Code"

The building code adopted in section 14-31 is hereby amended as follows, and all sections not expressly amended remain in full force and effect.

- (a) Section 101.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 101.1. Title. These regulations shall be known as the Building Code of The Town of Flower Mound, hereinafter referred to as "this code."

- (b) Section 101.4 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 101.4. Referenced codes. The other codes listed in Sections 101.4.1 through 101.4.8 and referenced elsewhere in this code, when specifically adopted, shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever

amendments have been adopted to the referenced codes and standards, each reference to said codes and standards shall be considered to reference the amendments as well. Any reference to NFPA 70 or the Electrical Code shall mean the Electrical Code as adopted and amended.

- (c) Section 101.4.8 of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 101.4.8. Electrical. The provisions of the Electrical Code shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto.

- (d) Section 103 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 103 DEPARTMENT OF BUILDING INSPECTIONS

- (e) Section 103.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 103.1. Creation of enforcement agency. The Department of Building Inspections is hereby created and the official in charge thereof shall be known as the *building official*.

- (f) Section 104.2.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 104.2.1. Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas. Deleted.

- (g) Section 104.10.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 104.10.1. Flood hazard areas. Deleted.

- (h) Section 105.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 105.1. Required. Any owner, contractor, or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change

the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or causes any such work to be done, shall first make application to the *building official* and obtain the required *permits*.

It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by this code, to register as a contractor with the Town of Flower Mound. The registration form must be submitted prior to or with the permit application. Said registration shall become null and void one year from the date of registration with the Town. An appropriate fee for registration shall be assessed in accordance with the provisions of Appendix A of the Code of Ordinances of the Town of Flower Mound.

Any contractor registration regulated by this code may be placed on hold or suspended by the *building official*, thereby preventing any additional *permits* being issued to the contractor or applicant, if it is determined by the *building official* that corrective action is needed for compliance with the requirements of Chapter 18, Article II, Section 18-32. If any contractor registration regulated by this code is suspended, the procedures outlined in Chapter 18, Article II, shall apply. Any registration placed on hold more than three times in a calendar year may be subject to suspension by the *building official*.

- (i) Section 105.2 of the *International Building Code*, 2021 edition, is hereby amended by deleting Item Nos. 1, 2, 6, 10 and 12, from the list of items that are exempt from building permit requirements.
- (j) Section 105.5 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 105.5. Expiration. Every *permit* issued shall become invalid unless the work on the site authorized by such *permit* is commenced within 180 days after its issuance, or if the work authorized on the site by such *permit* is suspended or abandoned for a period of 180 days after the time the work is commenced. For this section, *suspended* or *abandoned* will be defined as an elapsed time of 180 days between any two approved required inspections. The *building official* is authorized to grant, in writing, one or more extensions of time, for periods of not more than 180 days each. The extension shall be requested in writing, and justifiable cause demonstrated. Once a *permit* becomes invalid and before such building or work can be recommenced, a new *permit* shall first be obtained to do so,

and the fee therefor shall be one-half the amount required for a new *permit* for such building or work, provided no changes have been made or will be made in the previously submitted and approved plans and specifications for such building or work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a *permit* after expiration of more than one year, the permittee shall pay a new full *permit* fee.

- (k) Section 109.4 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 109.4. Work commencing before permit issuance. Whenever work for which a *permit* is required by this code has been commenced without first obtaining a *permit*, a special investigation shall be made before a permit may be issued for such work. Any person who commences any work on a building, structure, electrical, gas, mechanical, or plumbing system before obtaining the necessary permits shall be subject to a citation and/or an investigation fee equal to the total permit fee for that project, and this citation and/or investigation fee shall be in addition to the required permit fees. The payment of such investigation fee shall not exempt the applicant from compliance with all other provisions of either this code or the technical codes nor from penalty prescribed by law for performing work without the required permit(s).

- (l) Section 110.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 110.1. General. Construction or work for which a *permit* is required shall be subject to inspection by the *building official*, and such work shall remain visible and able to be accessed for inspection purposes until approved. Before any inspection is approved, all rights-of-way, streets, and alleys shall be clean and clear of mud, sand, concrete, and building materials. All trash, construction debris, and construction material on site shall be contained. In addition to the above requirements, toilet facilities shall be provided for construction workers, and such facilities shall be maintained in a sanitary condition. Construction-worker toilet facilities of the non-sewer type shall conform to ANSI Z4.3. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid. It shall be the duty of the owner, contractor, or the owner's authorized agent to cause the work to remain visible and able to be

accessed for inspection purposes. Neither the *building official* nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

- (m) Section 110.3.5 of the *International Building Code*, 2021 edition, is hereby amended by deleting the exception to such Section as follows:

Section 110.3.5. Lath and gypsum board inspection. Exception: Deleted.

- (n) Section 110.3.12 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 110.3.12. Final inspection. The final inspection shall be made after all work required by the building *permit* is completed. No building or structure or any portion of a building or structure shall be occupied by persons or possessions without first receiving final inspection and approval from the *building official*.

- (o) Section 110.7 of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 110.7. Inspections on high-rise buildings. All inspections required by Section 110 for the construction of a new high-rise building shall be performed by a third-party inspection firm selected and engaged by the *building official*. The applicant of the permit shall pay to the Town a fee to cover the entire expense of the third-party inspections in accordance with the provisions of Appendix A of the Code of Ordinances of the Town of Flower Mound.

- (p) Section 111.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 111.1. Use and Occupancy. No building or structure shall be used or occupied by persons or possessions, and no change in the existing occupancy classification or change in tenant or change in business name or ownership of a building or structure or portion thereof shall be made until the *building official* has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

- (q) Section 113.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 113.1. General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The members of the Flower Mound Board of Adjustment are hereby appointed to serve as the Board of Appeals as provided by the *International Building Code*, 2021 edition. Any changes in membership of the Flower Mound Board of Adjustment shall likewise be reflected in the membership of said Board of Appeals.

- (r) Section 202 of the *International Building Code*, 2021 edition, is hereby amended by amending the definitions of “ambulatory health care facility”, “assisted living facilities”, “atrium”, “high-rise building”, “special inspector” and creating a new definition for “construction trash and debris” to read as follows, each of which definitions shall be inserted into the list of definitions to replace the amended definition or add a new definition in alphabetical order:

Section 202. Definitions. {Text of existing definitions save and except to the extent specifically amended hereby remains unchanged.}

AMBULATORY CARE FACILITY. Buildings or portions thereof used to provide medical, surgical, psychiatric, nursing, or similar care on a less than 24-hour basis to individuals who are rendered incapable of self-preservation. This group may include but not be limited to the following:

- Dialysis centers
- Sedation dentistry
- Surgery centers
- Colonic centers
- Psychiatric centers

ASSISTED LIVING FACILITIES. A building or part thereof housing persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are capable of responding to an emergency situation without physical assistance from staff.

ATRIUM. An opening connecting three or more stories... {Balance remains unchanged}.

CONSTRUCTION TRASH AND DEBRIS. Any material generated by or from a construction site that has no useful purpose as determined by the administrative authority.

HIGH-RISE BUILDING. A building having any floor used for human occupancy located more than 55 feet (16,764 mm) above the lowest level of fire department vehicle access.

SPECIAL INSPECTOR. A qualified person employed or retained by an approved agency who shall prove to the satisfaction of the registered design professional in responsible charge and the Building Official as having the competence necessary to inspect a particular type of construction requiring special inspection.

- (s) Section 303.1.3 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 303.1.3 Associated with Group E occupancies. A room or space used for assembly purposes that is associated with a Group E occupancy is not considered a separate occupancy, except when applying the assembly requirements of Chapter 10 and 11.

- (t) Section 304.1 of the *International Building Code*, 2021 edition, is hereby amended by adding the following new occupancies to the list of business occupancies for Business Group B, which new occupancies shall be inserted therein in alphabetical order:

Section 304.1. Business Group B. {List of existing occupancies remains unchanged.}

Fire Stations

Police Stations with detention for 5 or less

- (u) Section 307.1.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a sentence to the end of Exception No. 4 to read as follows:

Section 307.1.1. High Hazard Group H. Exception: 4. *{existing text remains unchanged}* ... See also IFC chapter 21, Dry Cleaning Plant provisions.

- (v) Section 403.1 of the *International Building Code*, 2021 edition, is hereby amended by deleting Exception No. 3 in its entirety and providing a new

Exception No. 3 to read as follows:

Section 403.1. Applicability. Exception 3. Open air portions of buildings with an occupancy in Group A-5 in accordance with Section 303.6.

- (w) Section 403.3 of the *International Building Code*, 2021 edition, is hereby amended by deleting the Exception as follows:

Section 403.3. Automatic sprinkler systems. Exception. Deleted.

- (x) Section 403.3.2 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 403.3.2 Water supply to required fire pumps. In buildings that are more than 120 feet (36.5 m) in building height, required fire pumps shall be supplied by connections to no fewer than two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate.

- (y) Section 404.5 of the *International Building Code*, 2021 edition, is hereby amended by deleting Exception No. 1 and No. 2 in its entirety as follows:

Section 404.5. Smoke control. Exception No. 1 and No. 2: Deleted.

- (z) Section 406.3.3.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a sentence to read as follows:

Section 406.3.3.1. Carport separation. *{existing text remains unchanged}* ...A separation is not required between a Group R-2 and U carport provided that the carport is entirely open on all sides and that the distance between the two is at least 10 feet (3048mm).

- (aa) Table 506.2 of the *International Building Code*, 2021 edition, is hereby amended by deleting footnote i. in its entirety read as follows:

Table 506.2 Allowable Area Factor in Square Feet. Footnote i.: Deleted.

- (bb) Section 506.3.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a sentence to the end of the existing text to read as follows:

Section 506.3.1. Minimum percentage of perimeter. *{existing text remains unchanged}* ... In order to be considered as accessible, if not in direct contact with a street or an *approved fire lane*, a minimum 10-foot-wide pathway meeting fire department access from the street or *approved fire lane* shall be provided.

- (cc) Section 602.1.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a sentence to read as follows:

Section 602.1.1. Minimum requirements. *{existing text remains unchanged}* ... Where a building contains more than one distinct type of construction, the building shall comply with the most restrictive area, height, and stories, for the lesser type of construction or be separated by fire walls.

- (dd) Section 708.4.2 of the *International Building Code*, 2021 edition, is hereby amended by adding a sentence to read as follows:

Section 708.4.2 Fireblocks and draftstops in combustible construction. Exception 1. *{existing text remains unchanged}* ... Portions of buildings containing concealed spaces filled with noncombustible insulation as permitted for sprinkler omission shall not apply to this exception for draftstopping.

- (ee) Section 712.1.9 of the *International Building Code*, 2021 edition, is hereby amended by replacing No. 4 to read as follows:

Section 712.1.9 Two-story opening. 4. Is not open to a corridor in Group I and H occupancies.

- (ff) Section 718.3 of the *International Building Code*, 2021 edition, is hereby amended by to read as follows:

Section 718.3 Draftstopping in floors. Exception. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. and provided that in combustible construction, sprinkler protection is provided in the floor space.

- (gg) Section 718.4 of the *International Building Code*, 2021 edition, is hereby amended by to read as follows:

Section 718.4 Draftstopping in attics. Exception. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. and provided that in combustible construction, sprinkler protection is provided in the floor space.

- (hh) Section 901.6.1.1. of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 901.6.1.1 Standpipe Testing. Building owners/managers must maintain and test standpipe systems as per NFPA 25 requirements. The following additional requirements shall be applied to the testing that is required every 5 years:

1. The piping between the Fire Department Connection (FDC) and the standpipe shall be backflushed when foreign material is present, and also hydrostatically tested for all FDC's on any type of standpipe system. Hydrostatic testing shall also be conducted in accordance with NFPA 25 requirements for the different types of standpipe systems.
2. For any manual (dry or wet) standpipe system not having an automatic water supply capable of flowing water through the standpipe, the tester shall: connect hose from a fire hydrant or portable pumping system (as approved by the fire code official) to each FDC, and flow water through the standpipe system to the roof outlet to verify that each inlet connection functions properly; confirm that there are no open hose valves prior to introducing water into a dry standpipe; there is no required pressure criteria at the outlet; verify that check valves function properly and that there are no closed control valves on the system.
3. Any pressure relief, reducing, or control valves shall be tested in accordance with the requirements of NFPA 25. All hose valves shall be exercised.
4. If the FDC is not already provided with approved caps, the contractor shall install such caps for all FDCs as required by the fire code official.
5. Upon successful completion of standpipe test, place a blue tag (as per Texas Administrative Code, Fire Sprinkler Rules for Inspection, Test and Maintenance Service (ITM) Tag) at the bottom of each standpipe riser in the building. The tag shall be check-marked as "Fifth Year" for Type of ITM, and the note on the back of the tag shall read "5 Year Standpipe Test" at a minimum.

6. The procedures required by Texas Administrative Code Fire Sprinkler Rules with regard to Yellow Tags and Red Tags or any deficiencies noted during the testing, including the required notification of the local Authority Having Jurisdiction (fire code official) shall be followed.

7. Additionally, records of the testing shall be maintained by the owner and contractor, if applicable, as required by the State Rules mentioned above and NFPA 25.

8. Standpipe system tests where water will be flowed external to the building shall not be conducted during freezing conditions or during the day prior to expected night time freezing conditions.

9. Contact the fire code official for requests to remove existing fire hose from Class II and III standpipe systems where employees are not trained in the utilization of this firefighting equipment. All standpipe hose valves must remain in place and be provided with an approved cap and chain when approval is given to remove hose by the fire code official.

- (ii) Section 903.1.1 of the *International Building Code*, 2021 edition, is hereby deleted in its entirety and replaced with a new Section [F] 903.1.1 to read as follows:

Section 903.1.1. Alternative protection. Alternative automatic fire-extinguishing systems complying with Section 904 shall be permitted in addition to automatic sprinkler protection where recognized by the applicable standard, or as *approved* by the fire code official.

- (jj) Section 903.2 of the *International Building Code*, 2021 edition, is hereby amended to read as follows and by deleting the exception:

Section 903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in Sections 903.2.1 through 903.2.12. Automatic Sprinklers shall not be installed in elevator machine rooms, elevator machine spaces, and elevator hoistways, other than pits where such sprinklers would not necessitate shunt trip requirements under any circumstances. Storage shall not be allowed within the elevator machine room. Signage shall be provided at the entry doors to the elevator machine room indicating "ELEVATOR MACHINERY – NO STORAGE ALLOWED."

- (kk) Section 903.2.9.4 of the *International Building Code*, 2021 edition, is hereby amended by deleting the exception:

Section 903.2.9.4 Group S-1 Upholstered furniture and mattresses.

Exception: Deleted

- (II) Section 903.2. of the *International Building Code*, 2021 edition, is hereby amended by adding a new Section 903.2.9.5, entitled "Self-service storage facility," to read as follows:

Section 903.2.9.5. Self-service storage facility. An automatic sprinkler system shall be installed throughout all self-storage facilities.

- (mm) Section 903.2.11 of the *International Building Code*, 2021 edition, is hereby amended by amending Section 903.2.11.3, entitled "Buildings more than 35 feet in height," and by adding new Sections 903.2.11.7, entitled "High-piled combustible storage," 903.2.11.8, entitled "Spray booths and rooms," and 903.2.11.9, entitled "Buildings over 4,000 sq. ft.," to read as follows:

Section 903.2.11.3. Buildings more than 35 feet in height. An *automatic sprinkler system* shall be installed throughout buildings with a floor level, other than penthouses in compliance with Section 1510 of the *International Building Code*, that is located 35 feet (10,668 mm) or more above the lowest level of fire department vehicle access.

Exception: Open parking structures in compliance with Section 406.5 of the *International Building Code*, having no other occupancies above the subject garage.

Section 903.2.11.7. High-piled combustible storage. For any building with a clear height exceeding 12 feet (4,572 mm), see IFC Chapter 32 to determine if those provisions apply.

Section 903.2.11.8. Spray booths and rooms. New and existing spray booths and spraying rooms shall be protected by an approved automatic fire-extinguishing system.

Section 903.2.11.9. Buildings over 4,000 sq. ft. An *automatic sprinkler system* shall be installed throughout all buildings with a building area over 4,000 sq. ft. For the purpose of this provision, fire walls shall not define separate buildings.

Exceptions:

1. Open parking garages in compliance with Section 406.5 of the *International Building Code* where all of the following conditions apply:

- a. The structure is freestanding.
- b. The structure does not contain any mixed uses, accessory uses, storage rooms, electrical rooms, elevators, or spaces used or occupied for anything other than motor vehicle parking.
- c. The structure does not exceed 3 stories.
- d. An approved fire apparatus access road is provided around the entire structure.

(nn) Section 903.3.1.1.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 903.3.1.1.1. Exempt locations. When approved by the fire code official, automatic sprinklers shall not be required in the following rooms or areas where such rooms or areas are protected with an approved automatic fire detection system in accordance with Section 907.2 that will respond to visible or invisible particles of combustion. Sprinklers shall not be omitted from any room merely because it is damp, of fire-resistance-rated construction, or contains electrical equipment.

1. Any room where the application of water, or flame and water, constitutes a serious life or fire hazard.

2. Any room or space where sprinklers are considered undesirable because of the nature of the contents, when approved by the fire code official.

3. Generator and transformer rooms, under the direct control of a public utility, separated from the remainder of the building by walls and floor/ceiling or roof/ceiling assemblies having a fire-resistance rating of not less than 2 hours.

4. Elevator machine rooms, machinery spaces, and hoistways, other than pits where such sprinklers would not necessitate shunt trip requirements under any circumstances.

- (oo) Section 903.3.1.2 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 903.3.1.2 NFPA 13R sprinkler systems. Automatic sprinkler systems in Group R occupancies shall be permitted to be installed throughout in accordance with NFPA 13R where the Group R occupancy meets all of the following conditions:

1. Four stories or less above grade plane.
2. The floor level of the highest story is 35 feet (10668 mm) or less above the lowest level of fire department vehicle access.
3. The floor level of the lowest story is 35 feet (10668 mm) or less below the lowest level of fire department vehicle access. {No change to remaining text.}

- (pp) Section 903.3.1.2.2 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 903.3.1.2.2 Corridors and balconies. Sprinkler protection shall be provided in all corridors and for all balconies.

- (qq) Section 903.3.1.2.3 of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 903.3.1.2.3. Attached garages and attics. Sprinkler protection is required in attached garages and in the following attic spaces:

1. {existing text remains unchanged}
2. {existing text remains unchanged}
3. Attic spaces of buildings that are two or more stories in height above grade plane or above the lowest level of fire department vehicle access.
4. Group R-4, Condition 2 occupancy attics not required by Item 1 or 3 to have sprinklers shall comply with one of the following: {existing text remains unchanged}

- (rr) Section 903.3.1.3 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 903.3.1.3. NFPA 13D sprinkler systems. *Automatic sprinkler systems* installed in one- and two-family dwellings; Group R-3; Group R-4 Condition 1, and townhouses shall be permitted to be installed throughout in accordance with NFPA 13D or in accordance with state law.

- (ss) Section 903.3.1.4 of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 903.3.1.4 Freeze protection. Freeze protection systems for automatic fire sprinkler systems shall be in accordance with the requirements of the applicable referenced NFPA standard and this section.

Section 903.3.1.4.1 Attics. Only dry-pipe, preaction, or listed antifreeze automatic fire sprinkler systems shall be allowed to protect attic spaces.

Exception: Wet-pipe fire sprinkler systems shall be allowed to protect non-ventilated attic spaces where:

1. The attic sprinklers are supplied by a separate floor control valve assembly to allow ease of draining the attic system without impairing sprinklers throughout the rest of the building, and
2. Adequate heat shall be provided for freeze protection as per the applicable referenced NFPA standard, and
3. The attic space is a part of the building's thermal, or heat, envelope, such that insulation is provided at the roof deck, rather than at the ceiling level.

Section 903.3.1.4.2 Heat trace/insulation. Heat trace/insulation shall only be allowed where approved by the fire code official for small sections of large diameter water-filled pipe.

- (tt) Section 903.3.5 of the *International Building Code*, 2021 edition, is hereby amended by adding a paragraph to read as follows:

Section 903.3.5 Water supplies. *{existing paragraph unchanged}* ... Water supply as required for such systems shall be provided in conformance with the supply requirements of the respective standards; however, every water-based *fire protection system* shall be designed with

a 10 psi safety factor. Reference Section IFC 507.4 for additional design requirements.

- (uu) Section 903.4 of the *International Building Code*, 2021 edition, is hereby amended by adding a new paragraph after the exceptions to read as follows:

Section 903.4. Sprinkler system supervision and alarms. *{text of existing paragraph and exceptions remain unchanged.}*...

Sprinkler and standpipe system water-flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

- (vv) Section 903.4.2 of the *International Building Code*, 2021 edition, is hereby amended by adding a new paragraph after the existing text to read as follows:

Section 903.4.2. Alarms. *{existing text remains unchanged}* ...

The alarm device required on the exterior of the building shall be a weatherproof horn/strobe notification appliance with a minimum 75 candela strobe rating, installed as close as practicable to the fire department connection.

- (ww) Section 905.2 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 905.2. Installation standards. Standpipe systems shall be installed in accordance with this section and NFPA 14. Manual dry standpipe systems shall be supervised with a minimum of 10 psig and a maximum of 40 psig air pressure with a high/low alarm.

- (xx) Section 905.3 of the *International Building Code*, 2021 edition, is hereby amended by adding a new Section 905.3.9, entitled "Building area," and adding an Exception to Section 905.3.9 to read as follows:

Section 905.3.9. Building exceeding 10,000 sq. ft. In buildings exceeding 10,000 square feet in area per story and where any portion of the building's interior area is more than 200 feet (60,960 mm) of travel,

vertically and horizontally, from the nearest point of fire department vehicle access, Class I automatic wet or manual wet standpipes shall be provided.

Exception:

1. Automatic dry and semi-automatic dry standpipes are allowed as provided for in NFPA 14.

2. R-2 occupancies of four stories or less in height having no interior corridors.

(yy) Section 905.4 of the *International Building Code*, 2021 edition, is hereby amended by amending Item 1, 3, and 5, and adding a new Item No. 7 to read as follows:

Section 905.4. Location of Class I standpipe hose connection.

1. In every required exit stairway, a hose connection shall be provided for each story above and below grade plane. Hose connections shall be located at an intermediate landing between stories, unless otherwise approved by the fire code official.

3. In every exit passageway, at the entrance from the exit passageway to other areas of a building.

Exception: Where floor areas adjacent to an exit passageway are reachable from an exit stairway hose connection by a{No change to remaining text.}

5. Where the roof has a slope less than four units vertical in 12 units horizontal (33.3-percent slope), each standpipe shall be provided with a two-way hose connection located to serve the roof or at the highest landing of a stairway with stair access to the roof provided in accordance with Section 1011.12.

7. When required by this Chapter, standpipe connections shall be placed adjacent to all required exits to the structure and at two-hundred-foot (200') intervals along major corridors thereafter, or as otherwise approved by the fire code official.

(zz) Section 905.8 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 905.8 Dry standpipes. Dry standpipes shall not be installed.

Exception: Where subject to freezing and in accordance with NFPA 14. Additionally, manual dry standpipe systems shall be supervised with a minimum of 10 psig and a maximum of 40 psig air pressure with a high/low Supervisory alarm.

- (aaa) Section 905.9 of the *International Building Code*, 2021 edition, is hereby amended by adding a new paragraph after the two listed exceptions to read as follows:

Section 905.9. Valve supervision. *{text of existing paragraph and two listed exceptions remain unchanged}* ...

Sprinkler and standpipe system water flow detectors shall be provided for each floor tap to the sprinkler system and shall cause an alarm upon detection of water flow for more than 45 seconds. All control valves in the sprinkler and standpipe systems except for fire department hose connection valves shall be electrically supervised to initiate a supervisory signal at the central station upon tampering.

- (bbb) Section 906.1(1) of the *International Building Code*, 2021 edition, is hereby amended by deleting exception 3 to read as follows:

Section 906.1(1) Exception 3: Deleted

- (ccc) Section 907.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a new Section 907.1.4, entitled "Design standards," to read as follows:

Section 907.1.4. Design standards. Where a new fire alarm system is installed the devices shall be addressable. Fire alarm systems utilizing more than 20 smoke detectors shall have analog initiating devices.

- (ddd) Section 907.2.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 907.2.1. Group A. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in Group A occupancies having an occupant load of 300 or more persons or more than 100 persons above or below the lowest level of exit discharge. Group A occupancies not separated from one another in accordance with Section 707.3.10 of the *International Building Code* shall

be considered as a single occupancy for the purposes of applying this section. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

Activation of fire alarm notification appliances shall:

1. Cause illumination of the means of egress with light of not less than 1 foot-candle (11 lux) at the walking surface level, and
2. Stop any conflicting or confusing sounds and visual distractions.

{existing exception remains unchanged}

- (eee) Section 907.2.3 of the *International Building Code*, 2021 edition, is hereby amended by amending the first paragraph of 907.2.3, amending Exception No. 1, and adding a new Exception No. 1.1 to read as follows:

Section 907.2.3. Group E. A manual fire alarm system that activates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E educational occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. An approved smoke detection system shall be installed in Group E day care occupancies. Unless separated by a minimum of 100' of open space, all buildings, whether portable buildings or the main building, will be considered one building for alarm occupant load consideration and interconnection of alarm systems.

Exception:

1. A manual fire alarm system is not required in Group E occupancies with an *occupant load* of 50 or less.

1.1 Residential in-home day care with not more than 12 children may use interconnected single station detectors in all habitable rooms. (For care of more than five children 2 ½ or less years of age, see Section 907.2.6.)
{No change to remainder of exceptions.}

- (fff) Section 907.2.10 of the *International Building Code*, 2021 edition, is hereby amended by to read as follows and by deleting the exception:

Section 907.2.10 Group S. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be

installed in Group S public- and self-storage occupancies for interior corridors and interior common areas. Visible notification appliances are not required within storage units.

Exception: Deleted

- (ggg) Section 907.2.13 of the *International Building Code*, 2021 edition, is hereby amended by amending the third exception to read as follows:

Section 907.2.13 High-rise buildings. Exception 3. Open air portions of buildings with an occupancy in Group A-5 in accordance with Section 303.1 of the *International Building Code*; however, this exception does not apply to accessory uses including but not limited to sky boxes, restaurants, and similarly enclosed areas.

- (hhh) Section 907.4.2 of the *International Building Code*, 2021 edition, is hereby amended by amending the first paragraph of 907.4.2 and adding a new Section 907.4.2.7, entitled “Type,” to read as follows:

Section 907.4.2 Manual fire alarm boxes. {Text unchanged} ... Section 907.4.2.1 through 907.4.2.7.

Section 907.4.2.7. Type. Manual alarm initiating devices shall be an approved double-action type.

- (iii) Section 907.6.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a new Section 907.6.1.1, entitled “Installation,” to read as follows:

Section 907.6.1.1. Wiring Installation. All fire alarm systems shall be installed in such a manner that a failure of any single initiating device or single open in an initiating circuit conductor will not interfere with the normal operation of other such devices. All signaling line circuits (SLC) shall be installed in such a way that a single open will not interfere with the operation of any addressable devices (Class A). Outgoing and return SLC conductors shall be installed in accordance with NFPA 72 requirements for Class A circuits and shall have a minimum of four feet separation horizontal and one foot vertical between supply and return circuit conductors. The initiating device circuit (IDC) from a signaling line circuit interface device may be wired Class B, provided the distance from the interface device to the initiating device is ten feet or less.

- (jjj) Section 907.6.3 of the *International Building Code*, 2021 edition, is hereby amended by deleting all four exceptions as follows:

Section 907.6.3. Initiating device identification. Exceptions 1 through 4. Deleted.

- (kkk) Section 907.6.6 of the *International Building Code*, 2021 edition, is hereby amended by adding a sentence at the end of the paragraph to read as follows:

Section 907.6.6. Monitoring. {Text unchanged}... See 907.6.3 for the required information transmitted to the supervising station.

- (lll) Section 910.2 of the *International Building Code*, 2021 edition, is hereby amended by amending Exception No. 2 and 3 and adding a new subsection 910.2.3. with exceptions to read as follows:

Section 910.2. Where required. Exception:

2. Only manual smoke and heat removal shall not be required in areas of buildings equipped with early suppression fast-response (ESFR) sprinklers. Automatic smoke and heat removal is prohibited.

3. Only manual smoke and heat removal shall not be required in areas of buildings equipped with control mode special application sprinklers with a response time index of $50(m \cdot S)^{1/2}$ or less that are listed to control a fire in stored commodities with 12 or fewer sprinklers. Automatic smoke and heat removal is prohibited.

Section 910.2.3. Group H. Buildings and portions thereof used as a Group H occupancy as follows.

1. In occupancies classified as Group H-2 or H-3, any of which are more than 15,000 square feet (1394 m²) in single floor area.

Exception: Buildings of noncombustible construction containing only noncombustible materials.

2. In areas of buildings in Group H used for storing Class 2, 3, and 4 liquid and solid oxidizers, Class 1 and unclassified detonable organic peroxides, Class 3 and 4 unstable (reactive) materials, or Class 2 or 3 water-reactive materials as required for a high-hazard commodity classification.

Exceptions: Buildings of noncombustible construction containing only noncombustible materials.

(mmm) Section 910.4.3.1. of the International Building Code, 2021 edition, is hereby amended to read as follows:

Section 910.4.3.1. Makeup air. Makeup air openings shall be provided within 6 feet (1829 mm) of the floor level. Operation of makeup air openings shall be automatic. The minimum gross area of makeup air inlets shall be 8 square feet per 1,000 cubic feet per minute (0.74 m² per 0.4719 m³/s) of smoke exhaust.

(nnn) Section 910.4.4. of the International Building Code, 2021 edition, is hereby amended to read as follows:

Section 910.4.4 Activation. The mechanical smoke removal system shall be activated automatically by the automatic sprinkler system or by an approved fire detection system. Individual manual controls shall also be provided.

Exception: Manual only systems per Section 910.2.

(ooo) Section 912.2 of the *International Building Code*, 2021 edition, is hereby amended by adding a new Section 912.2.3. to read as follows:

912.2.3. Hydrant distance. An approved fire hydrant shall be located within 100 feet of the fire department connection as the fire hose lies along an unobstructed path.

(ppp) Section 913.2.1 of the International Building Code, 2021 edition, is hereby amended by adding a new subsection 913.2.1.1 to read as follows:

913.2.1.1 Fire Pump Room Access. When located on the ground level at an exterior wall, the fire pump room shall be provided with an exterior fire department access door that is not less than 3 ft. in width and 6 ft. – 8 in. in height, regardless of any interior doors that are provided. A key box shall be provided at this door, as required by IFC Section 506.1.

Exception: When it is necessary to locate the fire pump room on other levels or not at an exterior wall, the corridor leading to the fire pump room access from the exterior of the building shall be provided with equivalent fire resistance as that required for the pump room, or as approved by the fire code official. Access keys shall be provided in the key box as required by IFC Section 506.1.

- (qqq) Section 1006.2.2 of the *International Building Code*, 2021 edition, is hereby amended by adding a Section 1006.2.2.7 to read as follows:

Section 1006.2.2.7. Electrical rooms. For electrical rooms, special exiting requirements may apply. Reference the electrical code as adopted.

- (rrr) Section 1009.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a new Exception No. 3 to read as follows:

Section 1009.1. Accessible means of egress required. Exception: 3. Buildings regulated under State Law and built in accordance with State-registered plans, including any variances or waivers granted by the State, shall be considered compliant with the requirements of Section 1009.

- (sss) Section 1010.2.5 of the *International Building Code*, 2021 edition, is hereby amended by amending Exception No. 3 and Exception No. 4 to read as follows:

Section 1010.2.5. Bolt locks. Exceptions:

3. Where a pair of doors serves an *occupant load* of less than 50 persons in a Group B, F, M, or S occupancy, *{remaining existing text unchanged}*.
4. Where a pair of doors serves a Group A, B, F, M, or S occupancy, *{remaining existing text unchanged}*.

- (ttt) Section 1015.8 of the *International Building Code*, 2021 edition, is hereby amended by changing item 1. to read as follows:

Section 1015.8. Window openings. Item 1.

1. Operable windows where the top of the sill of the opening is located more than 55 feet (16,764 mm) above the finished grade or other surface below and that are provided with window fall prevention devices that comply with ASTM F 2006.

- (uuu) Section 1020.2 of the *International Building Code*, 2021 edition, is hereby amended by adding a new Exception No. 6 to read as follows:

Section 1020.2. Construction. Exceptions: 6. In group B occupancies, corridor walls and ceilings need not be of fire-resistive construction within a single tenant space when the space is equipped with approved automatic smoke-detection within the corridor. The actuation of any

detector shall activate self-annunciating alarms audible in all areas within the corridor. Smoke detectors shall be connected to an approved automatic fire alarm system where such system is provided.

- (vvv) Section 1030.1.1.1 of the *International Building Code*, 2021 edition, is hereby amended by deleting this section as follows:

Section 1030.1.1.1 Spaces under grandstands and bleachers. Deleted.

- (www) Section 1101.1. of the *International Building Code*, 2021 edition, is hereby amended by adding a new exception to read as follows:

Section 1101.1. Design. Exception: Projects approved through the Texas Architectural Barriers Program, either directly by the state or a licensed registered accessibility specialist shall be deemed in compliance with the requirements of this chapter.

- (xxx) Section 1203.1. of the *International Building Code*, 2018 edition, is hereby amended to read as follows:

Section 1203.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1202.5, or mechanical ventilation in accordance with the *International Mechanical Code*.

Where air infiltration rate in a *dwelling unit* is 5 air changes or less per hour when tested with a blower door at a pressure 0.2 inch w.c. (50 Pa) in accordance with Section 402.4.1.2 of the *International Energy Conservation Code*, the *dwelling unit* shall be ventilated by mechanical means in accordance with Section 403 of the *International Mechanical Code*. {remaining text unchanged}.

- (yyy) Table 1505.1 of the *International Building Code*, 2021 edition, is hereby amended by amending footnote “b” and deleting footnote “c” to read as follows:

Table 1505.1. Minimum roof covering classification for types of construction. Footnote: b. Non-classified roof coverings shall be permitted on buildings of U occupancies having not more than 120 sq. ft. of projected roof area. When exceeding 120 sq. ft. of projected roof area, buildings of U occupancies may use non-rated non-combustible roof coverings.

Table 1505.1. Minimum roof covering classification for types of construction. Footnote: c. Deleted.

- (zzz) Section 1505.7 of the *International Building Code*, 2021 edition, is hereby amended by deleting this section:

Section 1505.7. Special purpose roofs. Deleted.

- (aaaa) Section 1512.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 1512.1. General. Materials and methods of applications used for recovering or replacing an existing roof covering shall comply with the requirements of Chapter 15. All individual replacement shingles or shakes shall be in compliance with the rating required by Table 1505.1.

{Text of exception unchanged}

- (bbbb) Section 1704.2 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 1704.2 Special inspections and tests. Where application is made to the Building Official for construction as specified in Section 105, the owner or the owner's authorized agent, or the registered design professional in responsible charge, other than the contractor, shall employ one or more approved agencies to provide special inspections and tests during construction on the types of work specified in Section 1705 and identify the approved agencies to the Building Official. The special inspector shall not be employed by the contractor. These special inspections and tests are in addition to the inspections identified by the Building Official that are identified in Section 110.

{Text of exceptions unchanged}

- (cccc) Section 1704.2.1. of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 1704.2.1 Special inspector qualifications. Prior to the start of construction and/or upon request, the approved agencies shall provide written documentation to the registered design professional in responsible charge and the building official demonstrating the competence and relevant experience or training of the special inspectors who will perform

the special inspections and tests during construction. *[Remainder unchanged]*

(dddd) Section 1704.2.4. of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 1704.2.4 Report requirement. Approved agencies shall keep records of special inspections and tests. The approved agency shall submit reports of special inspections and tests to the Building Official upon request, and to the registered design professional in responsible charge. Individual inspection reports shall indicate that work inspected or tested was or was not completed in conformance to approved construction documents. *[Remainder unchanged]*

(eeee) Section 1704.2.5.1 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Section 1704.2.5.1. Fabricator approval. Special inspections during fabrications required by Section 1704 are not required where the work is done on the premises of a fabricator registered and approved to perform such work without special inspection. Approval shall be based upon review of the fabricator's written fabrication procedures and quality control manuals and periodic auditing of fabrication practices by an approved agency, or a fabricator that is enrolled in a nationally accepted inspections program. At completion of fabrication, the acceptable or approved fabricator shall submit a certificate of compliance to the owner or the owner's authorized agent or the registered design professional in responsible charge stating that the work was performed in accordance with the approved construction documents. The certificate of compliance shall also be made available to the Building Official upon request.

(ffff) Section 2901.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a new paragraph to the end of the existing paragraph to read as follows:

Section 2901.1. Scope. *{existing text remains unchanged} ...*

The provisions of this chapter are meant to work in coordination with the provisions of Chapter 4 of the International Plumbing Code. Should any conflict arise between the two chapters, the building official shall determine which provision applies. All Health Department required fixtures for food related occupancies are in addition to fixtures listed in Table 2902.1.

(gggg) Section 2902.1 of the *International Building Code*, 2021 edition, is hereby amended by adding a new paragraph to the end of the existing paragraph to read as follows:

Section 2902.1. Minimum number of fixtures. *{existing text remains unchanged} ...*

In other than E occupancies, the minimum number of fixtures in Table 2902.1 may be lowered, if requested in writing by the applicant, stating reasons for a reduced number, and approved by the *building official*.

(hhhh) Section 2902.2 of the *International Building Code*, 2021 edition, is hereby amended by changing Exception 2. to read as follows:

Section 2902.2 Separate facilities. 2. Separate facilities shall not be required in structures or tenant spaces with a total occupant load, including both employees and customers, of 25 or fewer.

(iiii) Section 2902.6 of the *International Building Code*, 2021 edition, is hereby amended to read as follows:

Table 2902.6 Small occupancies. Drinking fountains are not required in M and B occupancies with an occupant load of 100 or less, and for dining and/or drinking establishments.

(jjjj) Section 3002.1 of the *International Building Code*, 2021 edition, is hereby amended by adding two exceptions to read as follows:

Section 3002.1. Hoistway enclosure protection. Exceptions:

1. Elevators wholly located within atriums complying with Section 404 shall not require hoistway enclosure protection.
2. Elevators in open or enclosed parking garages that serve only the parking garage, and complying with Sections 406.5 and 406.6, respectively, shall not require hoistway enclosure protection.

(kkkk) Section 3005.5 of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 3005.5.1 Fire Protection in Machine rooms, control rooms, machinery spaces and control spaces.

Section 3005.5.1.1 Automatic sprinkler system. The building shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, except as otherwise permitted by Section 903.3.1.1.1 and as prohibited by Section 3005.5.1.1.1.

Section 3005.5.1.1.1 Prohibited locations. Automatic sprinklers shall not be installed in machine rooms, elevator machinery spaces, control rooms, control spaces and elevator hoist-ways.

Section 3005.5.1.1.2 Sprinkler system monitoring. The sprinkler system shall have a sprinkler control valve supervisory switch and water-flow initiating device provided for each floor that is monitored by the building's fire alarm system.

Section 3005.5.1.2 Water protection. An approved method to prevent water from infiltrating into the hoistway enclosure from the operation of the automatic sprinkler system outside the elevator lobby shall be provided.

Section 3005.5.1.3 Omission of Shunt trip. Means for elevator shutdown in accordance with Section 3005.5 shall not be installed.

(III) Section 3005.8 of the *International Building Code*, 2021 edition, is hereby added to read as follows:

Section 3005.8 Storage. Storage shall not be allowed within the elevator machine room, control room, machinery spaces and/or control spaces. Provide approved signage at each entry to the above listed locations stating: "No Storage Allowed."

(mmmm) Section 3006.2 of the *International Building Code*, 2021 edition, is hereby amended by changing Item 5. to read as follows:

Section 3006.2 Hoistway opening protection required. Item 5.

5. The building is a high rise and the elevator hoistway is more than 55 feet (16,764 mm) in height. The height of the hoistway shall be measured from the lowest floor at or above grade to the highest floors served by the hoistway.

SECTION 4

This Ordinance shall be cumulative of all provisions of the ordinances of the Town of Flower Mound, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5

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

SECTION 6

Any person, firm, or corporation who violates any provision of this Ordinance 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, Texas. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

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 its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS 3RD DAY OF OCTOBER 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 16

REGULAR ITEM

DATE: October 17, 2022

FROM: Joelle Hainley, Building Official

ITEM: **Public Hearing to consider approval of an Ordinance amending Chapter 14, “Buildings and Building Regulations,” Article XIV, of the Code of Ordinances of the Town of Flower Mound, to provide for the adoption of the *International Residential Code*, 2021 edition, and local amendments thereto.**

BACKGROUND INFORMATION: During the 77th regular session of the Texas Legislature, SB 365 was passed requiring all municipalities to adopt the 2000 *International Residential Code* (IRC) and the 1999 *National Electrical Code* (NEC) as the residential building codes for Texas. This bill also requires municipalities to review and adopt each code update. These codes are updated on a three-year cycle. Adopting the 2021 IRC will keep us up-to-date with the most current version of the code.

The principle concerns of the *International Residential Code* are the protection of public health, safety, and welfare. The *International Residential Code* addresses the design and construction of one- and two-family dwellings and townhouses. This code provides flexibility and efficient designs for the code official, designer, engineer, plumber, and architect. The 2021 code sets a minimum energy performance and coincides with the *International Energy Conservation Code*.

The Town of Flower Mound has been involved and supportive throughout the code development process. This support has been through the North Texas Chapter of the International Code Council and through the regional review process by the Regional Codes Coordinating Committee of the North Central Texas Council of Governments (NCTCOG). NCTCOG, along with Town staff, has reviewed this code and added regional amendments. NCTCOG has encouraged area municipalities to adopt the 2021 *International Residential Code* with these specific regional amendments. These recommended amendments are included in this ordinance. Town staff has reviewed the proposed amendments and made additional changes to meet Town specific needs.

During the 87th legislature, a change was made requiring that if a local authority proposed amendments to the code, the adoption of the code and local amendments must be done through a public hearing. In April of this year, the adoption of this code was approved as a consent item on the agenda. This item is coming back to the council as a public hearing to obtain compliance with this new legislation.

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. Proposed Ordinance

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

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. ____-22

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 14, "BUILDINGS AND BUILDING REGULATIONS," ARTICLE XIV, OF THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TO PROVIDE FOR ADOPTION OF THE *INTERNATIONAL RESIDENTIAL CODE*, 2021 EDITION, AND LOCAL AMENDMENTS THERETO; PROVIDING THAT THE BOARD OF ADJUSTMENT SHALL BE THE BOARD OF APPEALS FOR PURPOSES SET OUT HEREIN; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the International Code Council (ICC) has developed a set of comprehensive and coordinated national model construction codes (known as the "International Codes"); and,

WHEREAS, the *International Residential Code* has been prepared by the ICC, and in addition to review by the North Central Texas Council of Governments (NCTCOG), has been reviewed by Town staff; and,

WHEREAS, the current residential code in the Town is the 2018 edition of the *International Residential Code*, and the Town's residential building code should be updated to the most current published building code available; and,

WHEREAS, the 77th Texas Legislature passed Senate Bill 365 (SB 365) in 2001 adopting the *International Residential Code* for municipalities of the state; and,

WHEREAS, SB 365 provides that municipalities may adopt local amendments to the *International Residential Code*; and,

WHEREAS, the 2021 edition of the *International Residential Code* is the most current published code available that addresses the general design and construction aspects of all residential buildings in the Town; and,

WHEREAS, the Town Council of the Town of Flower Mound has determined that it is in the best interest of the citizens of the Town of Flower Mound to update and adopt the 2021 edition of the *International Residential Code* and has determined that this will promote the health, safety and general welfare of the citizens of the Town of Flower Mound and the general public; and,

WHEREAS, the Town Council of the Town of Flower Mound further desires to adopt certain local amendments to such Code reflecting the unique needs of the Town of Flower Mound;

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Section 14-571 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "International Residential Code Adopted," is hereby deleted and replaced with the following provision:

"Sec. 14-571. International Residential Code Adopted.

The *International Residential Code*, 2021 edition, including Appendix H, a copy of which is on file in the office of the town secretary, is hereby adopted and designated as the residential building code of the town, the same as though these provisions of the *International Residential Code*, 2021 edition, were copied at length in this section; subject to the deletions, amendments, and additions provided in section 14-572."

SECTION 3

From and after the effective date of this Ordinance, Section 14-572 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Local Amendments to International Residential Code," is hereby deleted and replaced with the following provision:

"Sec. 14-572. Local Amendments to International Residential Code

The *International Residential Code*, 2021 edition, is hereby amended by amending only the enumerated sections and provisions, as follows, and all sections and provisions not expressly amended or deleted shall remain in full force and effect:

- (a) Section R101.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R101.1. Title. These provisions shall be known as the *Residential Code for One- and Two-family dwellings* of the Town of Flower Mound and shall be cited as such and will be referred to herein as "this code."

- (b) Section R102.4 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R102.4. Referenced codes and standards. The codes, when specifically adopted, and standards referenced in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Section R102.4.1 and R102.4.2. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Any reference made to NFPA 70 or the electrical code shall mean the electrical code as adopted.

- (c) Section R104.10.1 of the *International Residential Code*, 2021 edition, is hereby deleted in its entirety as follows:

Section R104.10.1. Flood hazard area. Deleted.

- (d) Section R105.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R105.1. Required. Any owner, contractor, or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or causes any such work to be performed, shall first make application to the *building official* and obtain the required *permits*.

It shall be the responsibility of any person, firm, or corporation, upon submittal of an application for a building permit for work regulated by this code, to register as a contractor with the town. Said registration shall become null and void one year from the date of registration with the Town. An appropriate fee for registration shall be assessed in accordance with the provisions of Appendix A of the Code of Ordinances of the Town of Flower Mound.

Exception: Any residential property owner who, at his legal residence, desires to personally make or perform any installation, alteration, repair, replacement, or remodel regulated by this code shall be exempt from paying a registration fee. For this section, *legal residence* shall be defined as property for which a property owner shows proof of a homestead exemption.

Any contractor registration regulated by this code may be placed on hold or suspended by the *building official*, preventing any additional permits being issued, if it is determined by the *building official* that corrective action is needed for compliance with the requirements of Section 18-32 of the Code of Ordinances of the Town of Flower Mound. If any contractor registration regulated by this code is suspended, the procedures outlined in Chapter 18, Article II, of the Code of Ordinances of the Town of Flower Mound shall apply. Any registration placed on hold more than three times in a calendar year may be subject to suspension by the *building official*.

- (e) Section R105.2 of the *International Residential Code*, 2021 edition, is hereby amended, in part, by deleting Item Nos. 5 and 10 and amending Item Nos. 1 and 2 to read as follows:

Section R105.2. Work exempt from permit. Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed 120 square feet (11.15 m²).
2. Fences where an existing gate or pickets are being replaced as long as they are of the same height, material, size, and location, as those being replaced.
5. Deleted.
10. Deleted.

- (f) Section R105.3.1.1 of the *International Residential Code*, 2021 edition, is hereby deleted in its entirety to read as follows:

Section R105.3.1.1. Determination of substantially improved or substantially damaged existing buildings in flood hazard areas.
Deleted.

- (g) Section R105.3.2 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R105.3.2. Time limitations of applications. An application for a *permit* for any proposed work shall be deemed to have been abandoned 45 days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the *building official* is

authorized to grant one or more extensions of time for additional periods not exceeding 45 days each. The extension shall be requested in writing and justifiable cause demonstrated.

- (h) Section R105.5 of the *International Residential Code*, 2021 edition, is hereby amended by amending Section 105.5, adding a new Section 105.5.1, entitled "Lawn irrigation systems," adding a new Section 105.5.2, entitled "Fences and retaining walls," adding a new Section 105.5.3, entitled "Foundation repair, electrical, patio cover, re-roof, window/door, and all MISC permits," adding a new Section 105.5.4, entitled "Plumbing permits," adding a new Section 105.5.5, entitled "Mechanical permits," adding a new Section 105.5.6, entitled "Demolition permits," and adding a new Section 105.5.7, entitled "Umbrella permits," to read as follows:

Section R105.5. Expiration. Every *permit* issued shall become invalid unless the work on the site authorized by such permit is commenced within 45 days after its issuance. In addition, except for those *permits* specifically named in this section, every permit issued shall become invalid if work authorized on the site by such *permit* is suspended or abandoned for a period of 180 days after the time the work is commenced. For this section, *suspended* or *abandoned* will be defined as an elapsed time of 180 days between any two approved required inspections. The *building official* is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing, and justifiable cause demonstrated. Once a permit becomes invalid and before such building or work can be recommenced, a new *permit* shall first be obtained to do so, and the fee therefor shall be one-half the amount required for a new *permit* for such building or work, provided no changes have been made or will be made in the original plans and specifications for such building or work and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a *permit* after expiration of more than one year, the permittee shall submit a new application and pay a new full *permit* fee.

105.5.1. Lawn irrigation systems. Every lawn irrigation system permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 60 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

105.5.2. Fences and retaining walls. Every fence or retaining wall permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 60 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

105.5.3. Foundation repair, electrical, patio cover, re-roof, window/door, and all MISC permits. Every foundation repair, electrical, patio cover, or any other MISC permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 60 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by

this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

105.5.4. Plumbing permits. Every plumbing permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 45 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Exception: Water heater replacement permits must receive a final inspection within 10 days of issue date.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

105.5.5. Mechanical permits. Every mechanical permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 45 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not

exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

Exception: Indoor unit replacement permits must receive a final inspection within 10 days of issue date.

105.5.6. Demolition permits. Every demolition permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 60 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

105.5.7. Umbrella permits. Every umbrella permit issued by the building official under the provisions of this code shall expire by limitation and becomes null and void if the building or work authorized by such permit has not received final inspection approval within 180 days of the issuance of the permit. In the event of the expiration of the permit, no work or inspections shall be performed until a new permit shall be first obtained to do so, and the fee therefor shall be equal to the original fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 30 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented

action from being taken. Permits may be extended more than once, but not more than three times.

- (i) Section R105.10 of the *International Residential Code*, 2021 edition, is hereby added to read as follows:

Section R105.10. Work commencing before permit issuance. Any person who commences any work on a building, structure, electrical, gas, mechanical, or plumbing system before obtaining the necessary *permits* shall be subject to a citation for working without a *permit* and/or a fee equal to the total permit fee for that project, which shall be in addition to the required *permit* fees.

- (j) Section R106.1 of the *International Residential Code*, 2021 edition, is hereby amended by appending a paragraph following the existing text, to read as follows:

Section R106.1 Submittal documents. {existing text unchanged}.... Foundation and framing plans must be submitted with each application. These plans shall be designed by an engineer licensed by the State of Texas and shall bear that engineer's seal. With the exception of conventional framing per this code, all framing plans for residential dwellings shall be designed by an engineer licensed by the State of Texas, and all drawings and documents must be signed and sealed. Additionally, any structure that contains cedar framing components must be designed by an engineer licensed by the State of Texas and shall bear that engineer's seal.

- (k) Section R106.1.4 of the *International Residential Code*, 2021 edition, is hereby deleted in its entirety to read as follows:

Section R106.1.4. Information for construction in flood hazard area. Deleted.

- (l) Section R106.5 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R106.5. Retention of construction documents. One set of approved foundation documents shall be retained by the *building official* for a period of not less than 180 days from the date of completion of the permitted work, or as required by state or local laws.

- (m) Section R109.1.1 of the *International Residential Code*, 2021 edition, is hereby amended by appending a paragraph following the existing text, to read as follows:

Section R109.1.1 Foundation inspection. {existing text unchanged}... Prior to scheduling the required foundation inspection, the design engineer must perform an inspection and provide the building official with a signed and sealed letter stating that the foundation has been installed per the design.

- (n) Section R109.1.4 of the *International Residential Code*, 2021 edition, is hereby amended by appending a paragraph following the existing text, to read as follows:

Section R109.1.4 Framing and masonry inspection. {existing text unchanged}... Prior to scheduling the required “top-out” inspection, the design engineer must perform an inspection and provide the building official with a signed and sealed letter stating that the framing has been installed per the design.

- (o) A new Section R109.5 of the *International Residential Code*, 2021 edition, is hereby added to read as follows:

Section R109.5. General. Construction or work for which a *permit* is required shall be subject to inspection by the *building official*, and such work shall remain accessible and exposed for such purposes until approved. Before any inspection is approved, an address shall be posted that can be read from the street; and all rights-of-way, streets, and alleys shall be clean and clear of mud, sand, concrete, and building materials. All trash, construction debris, and construction material on site shall be contained in an approved manner. In addition to the above requirements, toilet facilities shall be provided for construction workers, and such facilities shall be maintained in a sanitary condition. Construction-worker toilet facilities of the non-sewer type shall conform to ANSI Z4.3. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the town. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the town shall not be valid. It shall be the duty of the *permit* applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the *building official* nor the town shall be liable for any expense entailed in the removal or replacement of any material required to allow inspection. Any inspection that is scheduled and found not to be ready may be assessed a re-inspection fee listed in Appendix A of the code of ordinances. This fee must be paid before approval of a Utility Final inspection. If a Utility Final

inspection is not required, this fee must be paid before approval of the All Finals inspection.

- (p) Section R110 of the *International Residential Code*, 2021 edition, is hereby deleted in its entirety:

Section R110. Certificate of occupancy. Deleted.

- (q) Section R202 of the *International Residential Code*, 2021 edition, is hereby amended by adding a definition for “Construction trash and debris” and amending the definition of “Townhouse” to read as follows, in alphabetical order:

Section R202. Definitions.

CONSTRUCTION TRASH AND DEBRIS. Any material generated by or from a construction site that has no useful purpose as determined by the administrative authority.

TOWNHOUSE. A single-family dwelling unit constructed in a group of three or more attached units separated by property lines in which each unit extends from foundation to roof and with a yard or public way on at least two sides.

- (r) Table R301.2(1) of the *International Residential Code*, 2021 edition, is hereby amended to read as follows and by deleting the remainder of table Manual J Design Criteria and footnote N:

Table R301.2 (1). Climatic and Geographic Design Criteria.

GROUND SNOW LOAD	WIND DESIGN				SEISMIC DESIGN CATEGORY ^f	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP ^e	ICE BARRIER UNDER-LAYMENT ^h	FLOOD HAZARDS ^g	AIR FREEZING INDEX ⁱ	MEAN ANNUAL TEMP ^j
	SPEED ^d (MPH)	Topographic Effects ^k	Wind Special Detail ^l	Windborne Debris ^m		Weathering ^a	Frost Line Depth ^b	Termite ^c					
5 lb/ft	115 (3 sec-gust)/ 76 fastest mile	No	No	No	A	Moderate	6"	Very Heavy	22 ^o F	No	Local Code	150	64.9 ^o F

- (s) Section R302.1 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new Exception No. 6 to read as follows:

Section R302.1. Exterior walls. Exceptions:

6. Open non-combustible carport structures may be constructed when approved as required by other adopted ordinances.

- (t) Section R302.3 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new Exception No. 3 to read as follows:

Section R302.3. Two-family dwellings. Exception:

3. Two-family dwelling units that are also divided by a property line through the structure shall be separated as required for townhouses.

- (u) Section R302.5.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R302.5.1. Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1 3/8 inches (35mm) in thickness, solid or

honeycomb core steel doors not less than 1 3/8 inches (35mm) thick, or 20-minute fire-rated doors.

- (v) Section R303.3 of the *International Residential Code*, 2021 edition, is hereby amended by amending the Exception to read as follows:

Section R303.3. Bathrooms. Exception: The glazed areas shall not be required where artificial light and a local exhaust system are provided. The minimum local exhaust rates shall be determined in accordance with Section M1507. Exhaust air from the space shall be exhausted directly to the outdoors unless the space contains only a water closet, a lavatory, or a water closet and a lavatory, which are permitted to be ventilated using an approved mechanical recirculating fan or similar system device designed to remove odors from the air.

- (w) Section R311.7.3 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R311.7.3. Vertical rise. A flight of stairs shall not have a vertical rise larger than 20 feet (6,096 mm) between floor levels or landings.

- (x) Section R311.7.8 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section R311.7.8. Handrails. Handrails shall be provided on at least one side of each continuous run of treads or flight with four or more risers, except that for stairs or flights of stairs that incorporate winders, the handrail shall be located on the inside radius of the stair or flight of stairs.

- (y) Section R313 of the *International Residential Code*, 2021 edition, is hereby amended by deleting it in its entirety as follows:

Section R313. AUTOMATIC FIRE SPRINKLER SYSTEMS. Deleted.

- (z) Section R315.2.2 of the *International Residential Code*, 2021 edition, is hereby amended by amending exception 2. to read as follows:

Exceptions:

- 2. Installation, *alteration*, or repairs of all electrically powered plumbing or mechanical systems are exempt from the requirements of this section.

- (aa) Section R322 of the International Residential Code, 2021 edition, is hereby amended by deleting it in its entirety as follows:

Section R322. FLOOD-RESISTANT CONSTRUCTION. Deleted

- (bb) Section R401.2 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new paragraph following the existing paragraph and adding two new exceptions to read as follows:

Section R401.2. Requirements. *{existing text unchanged}* ...

Every foundation and/or footing, or any size addition to an existing post-tension foundation, regulated by this code shall be designed and sealed by a Texas-registered engineer. In addition, a letter stating that the design complies with this code shall be submitted at time of application for permit.

Exceptions:

1. Detached storage sheds, playhouses, and other similar buildings up to and including 150 square feet:

Buildings up to and including 150 square feet may be placed on the ground and shall provide resistance to wind load by one of the following methods:

Anchored to a 4-inch-thick slab reinforced with 6 X 6 #10 wire mesh or #3 (3/8") rebar spaced at 18 inches on center each way.

Anchored at all corners, each corner anchored by a system to resist a horizontal wind load of 115 (3-sec-gust)/76 miles per hour.

2. Habitable additions up to and including 500 square feet, and accessory buildings, playhouses, and similar buildings greater than 150 square feet up to and including 500 square feet:

Beams must be constructed at all perimeters. All beams are required to be at least 10 inches wide and 20 inches deep with 2 #5 (5/8") bars in the top and 2 #5 (5/8") bars in the bottom of the beam. Interior beams must also be constructed and located no more than 15 feet apart. All beams must extend at least 12 inches

into undisturbed soil. Place #3 (3/8") bars 18 inches on center each way in the middle of the new 4-inch slab.

For house additions, the existing concrete pad must be connected to the perimeter beam of the new foundation by #3 (3/8") bars doweled into the existing foundation at 24-inch centers. The dowel bars must penetrate into the existing slab a minimum of 6 inches and extend into the new perimeter beam a minimum of 6 inches.

Note: Regardless of square footage, if the existing slab is post-tensioned, an engineer's design is required.

- (cc) Section R602.6.1 of the *International Residential Code*, 2021 edition, is hereby amended, the Exception is deleted in its entirety, and Figure R602.6.1 is replaced with a new Figure R602.6.1, entitled "Top Plate Framing to Accommodate Piping" to read as follows:

Section R602.6.1 Drilling and notching of top plate. When piping or ductwork is placed in or partly in an exterior wall or interior load-bearing wall, necessitating cutting, drilling, or notching of the top plate by more than 50 percent of its width, a galvanized metal tie not less than 0.054 inch thick (1.37 mm) (16 Ga) and 5 inches (127 mm) wide shall be fastened across and to the plate at each side of the opening with not less than eight 10d (0.148 inch diameter) having a minimum length of 1 ½ inches (38 mm) at each side of the notch to the first nail hole or equivalent. Fasteners will be offset to prevent splitting of the top plate material. The metal tie must extend a minimum of 6 inches past the opening. See figure R602.6.1.

Exception: Deleted.

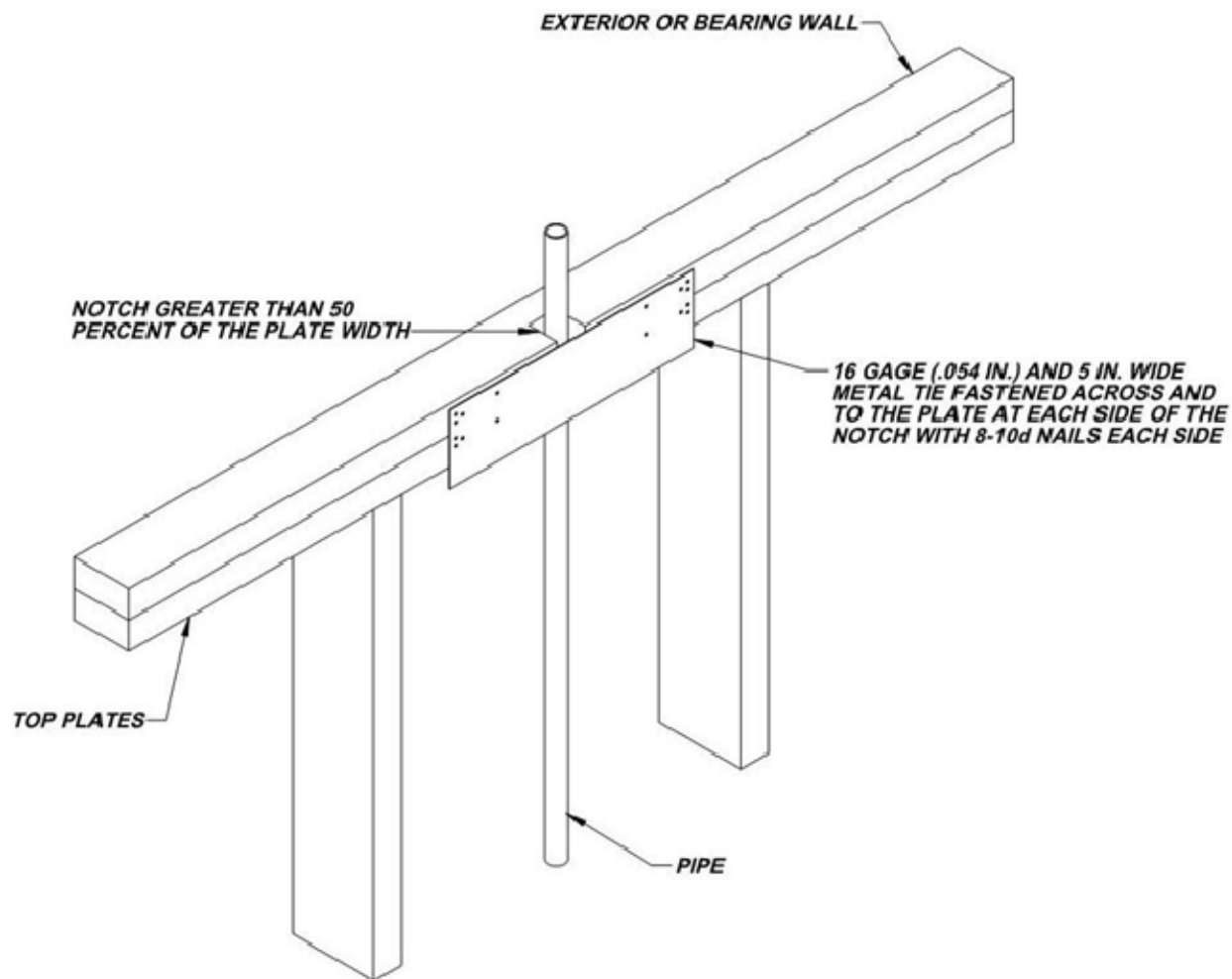


FIGURE R602.6.1
Top Plate Framing to Accommodate Piping

- (dd) Section R703.8.4.1 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new second paragraph prior to the existing Exception to read as follows:

Section R703.8.4.1. Size and spacing. *{Existing paragraph unchanged.}* ...

In stud framed exterior walls, all ties shall be anchored to studs as follows:

1. When studs are 16 in (407 mm) o.c., stud ties shall be spaced no further apart than 24 in (737 mm) vertically starting approximately 12 in (381 mm) from the foundation; or

2. When studs are 24 in (610 mm) o.c., stud ties shall be spaced no further apart than 16 in (483 mm) vertically starting approximately 8 in (254) from the foundation.
- (ee) Section R902.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows, and a new Exception No. 5 is added to read as follows:

Section R902.1. Roofing covering materials. Roofs shall be covered with materials as set forth in Sections R904 and R905. Class A, B, or C roofing shall be installed..... *{remainder unchanged}*.

Exceptions:

5. Non-classified roof coverings shall be permitted on one-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided the floor area does not exceed 120 square feet.
- (ff) Part IV-Energy Conservation of the *International Residential Code*, 2021 edition, is hereby amended by renaming this Part IV, as follows:

Part IV-Residential Provisions for Energy Efficiency

- (gg) Chapter 11 of the *International Residential Code*, 2021 edition, is hereby deleted and replaced with the *International Energy Conservation Code*, 2021 edition, *Residential Provisions* with amendments.
- (hh) Section M1305.1.2 of the *International Residential Code*, 2018 edition, is hereby amended to read as follows:

Section M1305.1.2. Appliances in attics. Attics containing appliances shall be provided . . . *{bulk of paragraph unchanged}* . . . sides of the appliance where access is required. The clear access opening dimensions shall be a minimum of 20 inches by 30 inches (508 mm by 762 mm), or larger and large enough to allow removal of the largest appliance. A walkway to an appliance shall be rated as a floor as approved by the building official. As a minimum, access to the attic space shall be provided by one of the following:

1. A permanent stair.
2. A pull down stair with a minimum 300 lb (136 kg) capacity.

3. An access door from an upper floor level.

Exceptions:

1. The passageway and level service space are not required where the *appliance* can be serviced and removed through the required opening.
2. Where the passageway is unobstructed...*{remaining text unchanged}*.

- (ii) Section M1401.3 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section M1401.3 Equipment and appliance sizing. Heating and cooling equipment and appliances for new construction, including additions 500 square feet or greater, shall be sized in accordance with ACCA Manual S or other approved sizing methodologies based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies. *{remaining existing text unchanged}*....

- (jj) Section M1411.3 of the *International Residential Code*, 2021 edition, is hereby amended to replace the first sentence to read as follows:

Section M1411.3. Condensate disposal. Condensate from all cooling coils or evaporators shall be conveyed from the drain pan outlet to the sanitary sewer through the fixture side of a trap, by means of a direct or indirect drain. *{remaining existing text unchanged}*....

- (kk) Section M1411.3.1 of the *International Residential Code*, 2021 edition, is hereby amended by amending Item Nos. 3 and 4 by adding a new sentence at the end of each item to read as follows:

Section M1411.3.1. Auxiliary and secondary drain systems.

3. *{existing text unchanged}*.... A water-level detection device may be installed only with prior approval of the building official.
4. *{existing text unchanged}*.... A water-level detection device may be installed only with prior approval of the building official.

- (ll) Section M1411.3.1.1 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new sentence at the end of the existing paragraph to read as follows:

Section M1411.3.1.1. Water-level monitoring devices. *{existing text unchanged}*.... A water-level detection device may be installed only with prior approval of the building official.

- (mm) Section M1503.6 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section M1503.6. Makeup air required. Exhaust hood systems capable of exhausting in excess of 400 cubic feet per minute (0.19 m³/s) shall be provided with makeup air at a rate approximately equal to the difference between the exhaust air rate and 400 cubic feet per minute. Such makeup air systems shall be equipped with a means of closure and shall be automatically controlled to start and operate simultaneously with the exhaust system.

Exception: Where all appliances in the house are of sealed combustion, power-vent, unvented, or electric, the exhaust hood system shall be permitted to exhaust up to 600 cubic feet per minute (0.28 m³/s) without providing makeup air. Exhaust hood systems capable of exhausting in excess of 600 cubic feet per minute (0.28 m³/s) shall be provided with a makeup air at a rate approximately equal to the difference between the exhaust air rate and 600 cubic feet per minute.

- (nn) Section M2005.2 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section M2005.2. Prohibited locations. Fuel-fired water heaters shall not be installed in a room used as a storage closet. Water heaters located in a bedroom or bathroom shall be installed in a sealed enclosure so that *combustion air* will not be taken from the living space. Access to such enclosure may be from the bedroom or bathroom when through a solid door, weather-stripped in accordance with the exterior door air leakage requirements of the *International Energy Conservation Code* and equipped with an approved self-closing device. Direct-vent water heaters are not required to be installed within an enclosure.

- (oo) Section G2408.3 of the *International Residential Code*, 2021 edition, is hereby amended by deleting this section and the listed Exception in their entirety to read as follows:

Section G2408.3. Private garages. Deleted.

Exception. Deleted.

- (pp) Section G2413.3 of the *International Residential Code*, 2021 edition, is hereby amended by adding an exception after the three listed Items to read as follows:

Section G2413.3. (402.3) Sizing. {existing text unchanged}

Exception: Corrugated stainless steel tubing (CSST) shall be a minimum of 1/2" (18 EDH).

- (qq) Section G2415.2 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new second paragraph to the existing paragraph to read as follows:

Section G2415.2. CSST. {existing text unchanged}....

Both ends of each section of medium pressure corrugated stainless steel tubing (CSST) shall identify its operating gas pressure with an approved tag. The tags are to be composed of aluminum or stainless steel, and the following wording shall be stamped into the tag:

"WARNING
1/2 to 5 psi gas pressure
Do Not Remove"

- (rr) Section G2415.12 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section G2415.12. (404.12) Minimum burial depth. *Underground piping systems* shall be installed a minimum depth of 18 inches (457 mm) below grade.

- (ss) Section G2415.12.1 of the *International Residential Code*, 2021 edition, is hereby amended by deleting this section in its entirety as follows:

Section G2415.12.1. (404.12.1) Individual outside appliances. Deleted.

- (tt) Section G2417.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section G2417.1. (406.1) General. Prior to acceptance and initial operation, all *piping* installations shall be inspected and *pressure tested* to determine that the materials, design, fabrication, and installation practices comply with the requirements of this code. The permit holder shall make the applicable tests prescribed in sections 2417.1.1 through 2417.1.5 to determine compliance with the provisions of this code. The permit holder shall give reasonable advance notice to the building official when the *piping system* is ready for testing. The equipment, material, power, and labor necessary for the inspections and test shall be furnished by the permit holder, and the permit holder shall be responsible for determining that the work will withstand the test pressure prescribed in the following tests.

- (uu) Section G2417.4 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section G2417.4. (406.4) Test pressure measurement. Test pressure shall be measured with a manometer or with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss caused by leakage during the *pressure test* period. The source of pressure shall be isolated before the pressure tests are made.

- (vv) Section G2417.4.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section G2417.4.1. (406.4.1) Test pressure. The test pressure to be used shall be not less than 3 psig (20 kPa gauge), or at the discretion of the building official, the *piping* and valves may be tested at a pressure of at least six (6) inches (152 mm) of mercury, measured with a manometer or slope gauge. For tests requiring a pressure of 3 psig, diaphragm gauges shall utilize a dial with a minimum diaphragm diameter of three and one-half inches (3 ½"), a set hand, 1/10 pound incrementation, and pressure range not to exceed 6 psi for tests requiring a pressure of 3 psig. For tests requiring a pressure of 10 psig, diaphragm gauges shall utilize a dial with a minimum diameter of three and one-half inches (3 ½"), a set hand, a minimum of 2/10 pound incrementation, and a pressure range not to exceed 20 psi.

For welded *piping*, and for piping carrying gas at pressures in excess of fourteen (14) inches of water column pressure (3.48 kPa) (1/2 psi) and less than 200 inches of water column pressure (52.2 kPa) (7.5 psi), the test

pressure shall not be less than ten (10) pounds per square inch (69.6 kPa). For *pipng* carrying gas at a pressure that exceeds 200 inches of water column pressure (52.2 kPa) (7.5 psi), the test pressure shall be not less than one and one-half times the proposed maximum working pressure.

Diaphragm gauges used for testing must display a current calibration and be in good working condition. The appropriate test must be applied to the diaphragm gauge used for testing.

- (ww) Section G2420.1 (409.1) of the *International Residential Code*, 2021 edition, is hereby amended by adding a new Section G2420.1.4 (409.1.4), entitled “Valves in CSST installations,” to read as follows:

Section G2420.1.4. (409.1.4) Valves in CSST installations. Shutoff valves installed with corrugated stainless steel (CSST) *pipng* systems shall be supported with an approved termination fitting, or equivalent support, suitable for the size of the valves, of adequate strength and quality, and located at intervals so as to prevent or damp out excessive vibration, but in no case greater than 12 inches from the center of the valve. Supports shall be installed so as not to interfere with the free expansion and contraction of the system's *pipng*, fittings, and valves between anchors. All valves and supports shall be designed and installed so they will not be disengaged by movement of the supporting *pipng*.

- (xx) Section G2420.5.1 of the *International Residential Code*, 2021 edition, is hereby amended by adding a sentence at the end to read as follows:

Section G2420.5.1. (409.5.1) Located within the same room. {existing text unchanged} A secondary shutoff valve must be installed within 3 feet (914 mm) of the firebox if appliance shutoff is located in the firebox.

- (yy) Section G2421.1 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new second paragraph and new exception to read as follows:

Section G2421.1. (410.1) Pressure regulators. {existing text unchanged}
....

Access to regulators shall comply with the requirements for access to appliances as specified in section M1305.

Exception: A passageway or level service space is not required when the regulator is capable of being serviced and removed through the required attic opening.

- (zz) Section G2422.1.2.3 of the *International Residential Code*, 2021 edition, is hereby amended by deleting Exception Nos. 1 and 4 in their entirety as follows:

Section G2422.1.2.3. (411.1.3.3) Prohibited locations and penetrations.

Exception No.1. Deleted

Exception No. 4. Deleted.

- (aaa) Section G2445.2 of the *International Residential Code*, 2021 edition, is hereby amended by adding a new exception to read as follows:

Section G2445.2. Prohibited use. {existing text unchanged}

Exception: Existing approved unvented heaters may continue to be used in dwelling units, in accordance with the code provisions in effect when installed, when approved by the building official, unless an unsafe condition is determined to exist as described in *International Fuel Gas Code* section 108.7.

- (bbb) Section G2448.1.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section G2448.1.1. (624.1.1) Installation requirements. The requirements for *water heaters* relative to access, sizing, *relief valves*, drain pans, and scald protection shall be in accordance with this *code*.

- (ccc) Section P2603.3 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section P2603.3 Protection against corrosion. Metallic piping, except for cast iron, ductile iron and galvanized steel, shall not be placed in direct contact with steel framing members, concrete or cinder walls and floors or other masonry. Metallic piping shall not be placed in direct contact with corrosive soil. Where sheathing is used to prevent direct contact, the sheathing shall have a thickness of not less than 0.008 inch (8 mil) (0.203 mm) and the sheathing shall be made of approved material. Where sheathing protects piping that penetrates concrete or masonry walls or floors, the

sheathing shall be installed in a manner that allows movement of the piping within the sheathing.

- (ddd) Section P2603.5.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section P2603.5.1. Sewer depth. Building sewers shall be a minimum of 12 inches (304 mm) below grade.

- (eee) Section P2801.6.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section P2801.6.1. Pan size and drain. {existing text unchanged}.....The pan shall not be less than 11/2 inches (38 mm) in depth and shall be of sufficient size and shape to receive all dripping or condensate from the tank or water heater. The pan shall be drained by an indirect waste pipe having a diameter of not less than 3/4 inch (19 mm). Piping for safety pan drains shall be of those materials listed in Table 2906.5. Where a pan drain was not previously installed, a pan drain shall be required for replacement water heaters located on exterior walls or in garages. Replacement water heaters that are not located on an exterior wall or in a garage, shall not be required to add a pan drain, but must be equipped with an automatic shutoff or water-level detection device.

- (fff) Section P2801.7 of the *International Residential Code*, 2021 edition, is hereby amended by adding new Exception No. 2 to read as follows:

Section P2801.7. Water heaters installed in garages. {existing text unchanged}

Exception 2: Electric water heaters.

- (ggg) Section P2801.9 of the *International Residential Code*, 2021 edition, is hereby added to read as follows:

Section P2801.9 Water heaters installed in attics or with living space below. Water heaters other than tankless, when located in attic space or a space located above living space, shall be equipped with an approved device to automatically shut off the water supply if a water leak is detected.

- (hhh) Section P2804.6.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section P2804.6.1. Requirements for discharge piping. The discharge piping serving a pressure relief valve, temperature relief valve or combination thereof shall:

1. Not be directly connected to the drainage system.
2. Discharge through an air gap
3. Not be smaller than the diameter of the outlet of the valve served and shall discharge full size to the air gap.
4. Serve a single relief device and shall not connect to piping serving any other relief device or equipment.

Exception: Multiple relief devices may be installed to a single T & P discharge piping system when approved by the administrative authority and permitted by the manufacturer's installation instructions and installed in compliance with those instructions.

5. Discharge to an approved location or to the outdoors.

[remainder unchanged]

- (iii) Section P2902.5.3 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section P2902.5.3. Lawn sprinkler systems. The potable water supply system to lawn irrigation systems shall be protected against backflow by an atmospheric-type vacuum breaker, a pressure-type vacuum breaker, or a reduced pressure principle backflow preventer. A valve shall not be installed down-stream from an atmospheric breaker. Where chemicals are introduced into the system, the potable water supply shall be protected against backflow by a reduced pressure principle backflow preventer.

All lawn sprinkler systems shall be equipped with a temperature sensing device that stops the flow of water through the lawn sprinkler system when the ambient temperature is thirty-eight degrees Fahrenheit or less. In addition, all systems shall be equipped with a device that stops the flow of water through the lawn sprinkler system when one-quarter inch or more of rain falls. Further, pursuant to Section 551.006 of the Texas Local Government Code, all lawn sprinkling systems shall comply with Section

1903.053 of the Texas Occupations Code, and any rules adopted by the Texas Commission on Environmental Quality pursuant to that section.

- (jjj) Section P3003.9.2 of the *International Residential Code*, 2021 edition, is hereby amended by deleting the exceptions to read as follows:

Section P3003.9.2. Solvent cementing.

Exceptions. Deleted.

- (kkk) Section P3005.2.2.1 of the *International Residential Code*, 2021 edition, is hereby added to read as follows:

Section P3005.2.2.1. Building sewer and sewer lateral junction. A clean out must be provided at this junction in compliance with most current Town of Flower Mound Design Criteria and Construction Standards.

- (lll) Section P3005.2.3 of the *International Residential Code*, 2018 edition, is hereby amended by adding a second paragraph to read as follows:

Section P3005.2.3. Building drain and building sewer junction.

For swimming pools that are constructed on lots that have public sewer, a drain or backwash line with a minimum size of 1½ inch must be provided. This line must direct waste into the public sewer by use of an air gap into a 3-inch trap. The trap seal of this trap must be protected from freezing, and the standpipe must rise at least 3 inches above grade.

- (mmm) Section P3111 of the *International Residential Code*, 2021 edition, together with all of its component sections, is hereby deleted in its entirety as follows:

Section P3111. Combination waste and vent system. Deleted.

Section 3111.1. Type of fixtures. Deleted.

Section 3111.1.1 Single-fixture systems. Deleted.

Section 3111.2. Installation. Deleted.

Section 3111.2.1. Slope. Deleted.

Section 3111.2.2. Vent connection. Deleted.

Section 3111.2.3. Vent size. Deleted.

Section 3111.3. Size and length. Deleted.

- (nnn) Section P3112.2 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section P3112.2. Installation. Traps for island sinks and similar equipment shall be roughed in above the floor and may be vented by extending the vent as high as possible, but not less than the drain board height, and then returning it downward and connecting it to the horizontal sink drain immediately downstream from the vertical fixture drain. The return vent shall be connected to the horizontal drain through a wye-branch fitting and shall, in addition, be provided with a foot vent taken off the vertical fixture vent by means of a wye-branch immediately below the floor and extending to the nearest partition and then through the roof to the open air, or may be connected to other vents at a point not less than six (6) inches (152 mm) above the flood level rim of the fixtures served. Drainage fittings shall be used on all parts of the vent below the floor level, and a minimum slope of one-quarter (1/4) inch per foot (20.9 mm/m) back to the drain shall be maintained. The return bend used under the drain board shall be a one (1) piece fitting or an assembly of a forty-five (45) degree (0.79 radius), a ninety (90) degree (1.6 radius), and a forty-five (45) degree (0.79 radius) elbow in the order named. Pipe sizing shall be as elsewhere required in this code. The island sink drain, upstream of the return vent, shall serve no other fixtures. An accessible cleanout shall be installed in the vertical portion of the foot vent.

- (ooo) Section AH101.2 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section AH101.2 Permitted uses. Solid-roofed patio covers shall be permitted to be attached or detached. Attached solid-roofed patio covers must maintain the setbacks required for the main structure. Detached solid-roofed patio covers must be set back five feet from any building or structure located on the property, must be located no closer to the front property line than the main building, and must maintain a minimum of five feet from all property lines, except that on corner lots, the patio cover must adhere to the exterior side-yard setback established for the primary structure. Open-roofed patio covers shall be permitted to be attached or detached and must be located at least five feet from any property line and must be located no closer to the front property line than the main building. Patio covers shall be used

for recreational, outdoor living purposes and not as carports, storage areas, accessory buildings, or habitable rooms.

- (ppp) Section AH103.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section AH103.1. Patio covers. The sides of detached patio cover structures shall not enclose more than 25 percent of the exterior walls measured around the perimeter or more than 25 percent of the floor area measured under roof. Any structure that exceeds these percentages must be reviewed and permitted using the accessory building regulations. No patio cover may exceed 25 percent of the floor area of the main structure.

- (qqq) Section AH104.1 of the *International Residential Code*, 2021 edition, is hereby amended to read as follows:

Section AH104.1 Height. Attached patio covers must comply with the height requirements of the main structure. Detached patio covers shall be permitted as one-story structures not exceeding 14 feet in height, except that those located in SFE (single-family estate) and A (agriculture) zoning shall be limited in height to 20 feet. Height shall be measured from the average grade adjacent to the patio cover to the peak of the roof.

SECTION 4

From and after the effective date of this Ordinance, Section 14-573 of the Code of Ordinances of the Town of Flower Mound, Texas, entitled "Board of Appeals," is hereby deleted and is replaced with the following:

"Sec. 14-573. Board of Appeals.

The members of the town board of adjustment are hereby appointed as the board of appeals as provided by the *International Residential Code*, 2021 edition, and any changes in membership of the board of adjustment shall likewise be reflected in the membership of said board of appeals."

SECTION 5

All ordinances, orders, or resolutions heretofore passed and adopted by the Town of Flower Mound, Texas, are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, are in conflict herewith.

SECTION 6

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

SECTION 7

Any person who violates any provision of this Ordinance 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, Texas. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 8

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

SECTION 9

This Ordinance shall take effect and be in full force from and after its passage and publication, as provided by the Revised Civil Statutes of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS 3rd DAY OF OCTOBER 2022.

APPROVED:

Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



TOWN COUNCIL AGENDA ITEM NO. 17

REGULAR ITEM

DATE: October 17, 2022

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

ITEM: Consider approval of a Construction Agreement with Excel 4 Construction, LLC, for the Timber Creek Water and Sewer Replacements project, in the amount of \$2,609,265.00; and authorization for the Mayor to execute same on behalf of the Town.

BACKGROUND INFORMATION: On September 8, 2022, bids were received and opened for the Timber Creek Water and Sewer Replacements project (Bid #2022-61-B), which consists of two projects shown on the 5-Year CIP Plan as Spring Meadow Lane Sewer Line Replacement and Timber Creek Water Line Replacement Phase II. Excel 4 Construction, LLC submitted the lowest qualified bid of the two responding bidders at a bid amount of \$2,609,265.00.

The project consists of the construction of approximately 6400 linear feet of sewer line by pipe bursting, approximately 3200 linear feet of water line by pipe bursting and approximately 900 linear feet of water line by open cut. Sewer lines will be replaced along Spring Meadow Ln. Water lines will be replaced along Sweetgum Ct., Pepperwood Dr. White Oak Ct. and sections of Spring Meadow Ln.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES/OPTIONS: The existing water and sewer lines have ongoing maintenance and service issues. A decision to not approve the construction agreement would result in continued and worsening maintenance/service issues with the existing water and sewer lines resulting in a lower level of service.

FISCAL IMPACT: \$2,609,265.00

Proposed Expenditure/(Revenue):	Account Number(s):
\$1,409,265.00	630-970-98703-6180
\$1,200,000.00	630-960-98775-6170

Finance Review by: Kay Wilkinson, Director of Budget Services KSW

Total project cost for Spring Meadow Lane Sewer Line Replacement is \$1,635,000. Total project cost for Timber Creek Water Line Replacement Phase II is \$1,285,000. Funding sources are:

- Utility Debt

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

ATTACHMENTS:

1. Bid Tabulation
2. Construction Agreement

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



Town of Flower Mound
Bid Tabulation

Bid No: 2022-61-B -Timber Creek Water and Sewer Replacements

Bid Opening: 9/8/2022 at 11:00 AM

Company	Base Bid
Douglas Dailey Construction, LLC	\$ 2,609,969.60
Excel 4 Construction, LLC	\$ 2,609,265.00

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

Certified By: Marquita Shamlin
Purchasing - Buyer
Town of Flower Mound, Texas

Date: September 8, 2022

TOWN OF FLOWER MOUND
TIMBER CREEK WATER AND SEWER REPLACEMENTS

Bid # 2022-61-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 Excel 4 Construction, LLC, a Limited Liability Company, hereinafter referred to as the "Contractor." For and in consideration of the payment, agreements, and conditions hereinafter mentioned, and under the conditions expressed in the bonds herein, Contractor hereby agrees to complete the construction of improvements described as follows:

TIMBER CREEK WATER AND SEWER REPLACEMENTS,
Bid # 2022-61-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 **Two Million**

Six Hundred Nine Thousand Two Hundred Sixty Five Dollars and Zero cents (\$2,609,265.00) taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of "Extra Work" authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of Two Hundred Ninety (290) calendar days, and final completion of Three Hundred Thirty Five (335) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

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

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

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

federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

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

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

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

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified by the Town within thirty (30) calendar days after it receives written demand from the Town.

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

payment release the Contractor from any of its responsibilities under the Contract Documents.

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

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

Retainage shall be withheld and may be paid to:

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

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

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

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

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two Hundred Forty and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

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

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

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

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

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is

to ensure that Work performed during the warranty period is performed with required insurance and the maintenance and payment bonds still in effect.

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

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

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

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

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

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

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

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

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

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

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

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

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

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

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

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

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

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

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

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

TOWN OF FLOWER MOUND

CONTRACTOR

Derek France, MAYOR

_____(Signature)
_____(Printed Name)
_____(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST:_____
Theresa Scott, TOWN SECRETARY

ATTEST:_____(Signature)
_____(Position)



TOWN COUNCIL AGENDA ITEM NO. 18

REGULAR ITEM

DATE: October 17, 2022

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Master Plan (MPA22-0001 – Cross Timbers Conservation Development District Update) by amending Section 1 “Land Use Plan,” Section 2 “Area Plan,” and Section 4 “Urban Design Plan,” for the purpose of updating conservation expectations and vision within the Cross Timbers Conservation Development District. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 10, 2022, meeting.*)**

SUMMARY DATA: This Town-initiated item proposes to amend various sections contained within the Town’s Master Plan by updating and introducing language related to the Cross Timbers Conservation Development District.

BACKGROUND INFORMATION: Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item.

ATTACHMENTS:

1. Draft Ordinance
 - a. Exhibit A. Land Use Plan
 - b. Exhibit B. Area Plans
 - c. Exhibit C. Urban Design Plan
 - d. Exhibit D. Land Use Map
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 COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE FLOWER MOUND 2001 MASTER PLAN BY AMENDING ORDINANCE NO 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, BY REPLACING AND REPLACING SECTIONS 1.0, "LAND USE PLAN;" 2.0, "AREA PLANS;" AND 4.0, "URBAN DESIGN PLAN;" PROVIDING THIS ORDINANCE IS 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, on March 19, 2001, the Town Council of the Town of Flower Mound adopted the Flower Mound 2001 Master Plan (the "Master Plan"), which consisted of nineteen component plans, including the Land Use Plan, Area Plans, and Urban Design Plan; and,

WHEREAS, the Master Plan establishes and articulates a community-based vision to: preserve the country atmosphere and natural environment that makes Flower Mound a unique and desirable community, mitigate the ill effects of rapid and intense urbanization, create a balanced tax base to ensure the Town's long-term economic health and prosperity, and ensure all development is of enduring and exemplary quality; and,

WHEREAS, the Town Council directed the Town to review standards and recommendations for the Cross Timbers Conservation Development District and seek input from the public ("CTCDD 2022"); and,

WHEREAS, the Town Council finds and determines that it is necessary to amend various elements of the Master Plan related to conservation development after reviewing findings from the CTCDD 2022 update effort; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on October 10, 2022, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on October 17, 2022, with respect to the amendments described herein; and,

WHEREAS, upon due deliberation and consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during the public hearings, the Town Council of the Town of Flower Mound, Texas, has determined that it is in the best interest of the citizens of the Town of Flower Mound that the Master Plan be amended to remove and replace Sections 1.0, "Land Use Plan;" 2.0, "Area Plans;" and 4.0, "Urban Design Plan," and to adopt updates to these components of the Master Plan;

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

SECTION 1

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

SECTION 2

From and after the effective date of this Ordinance, Section 1.0, "Land Use Plan," of the Master Plan, is hereby amended by repealing and replacing the existing Section 1.0, "Land Use Plan," with a new Section 1.0, "Land Use Plan," to read as set forth in Exhibit A attached hereto.

SECTION 3

From and after the effective date of this Ordinance, Section 2.0, "Area Plan," of the Master Plan, is hereby amended by repealing and replacing the existing Section 2.0, "Area Plans," with a new Section 2.0, "Area Plan," to read as set forth in Exhibit B attached hereto.

SECTION 4

From and after the effective date of this Ordinance, Section 4.0, "Urban Design Plan," of the Master Plan, is hereby amended by repealing and replacing the existing Section 4.0, "Urban Design Plan," with a new Section 4.0, "Urban Design Plan," to read as set forth in Exhibit C attached hereto.

SECTION 5

This Ordinance shall be cumulative of all provisions of ordinances of the Town of Flower Mound, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 6

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

ORDINANCE NO. _____

Page 3

phrase, clause, sentence, paragraph, or section, and said remaining portions shall remain in full force and effect.

SECTION 7

This Ordinance shall take effect and be in full force on and after its passage.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 17TH DAY OF OCTOBER, 2022.

APPROVED:

Derek France, **MAYOR****ATTEST:**

Theresa Scott, **TOWN SECRETARY**

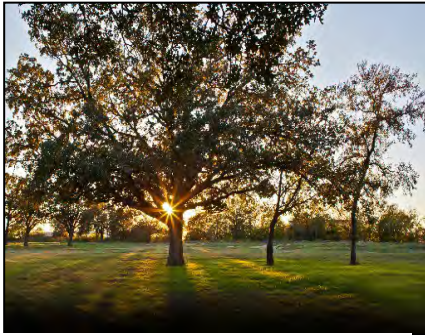
EXHIBIT A

Exhibit A

1.0 LAND USE PLAN**Vision Statement for the Town of Flower Mound Master Plan**

The Town of Flower Mound Master Plan furthers the established community based vision to:

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



....Preserve the country atmosphere and natural environment that makes Flower Mound a unique and desirable community



....Mitigate the ill effects of rapid and intense urbanization



....Create a balanced tax base
....Ensure all development is of enduring and exemplary quality

Purpose and Benefit of Six (6) Major Planning Areas***Lakeside Business District***

The Lakeside Business District emphasizes high quality, regional commercial development enabling Flower Mound to effectively compete in the economic development arena and develop a balanced tax base which will lower the tax burden on homeowners.

Long Prairie District

Due to rapid and intense urbanization between 1990 and 2000, the Long Prairie District is approximately 90% developed or committed for existing and future development. Emphasizing quality of life issues, this plan preserves remaining natural landscapes and promotes natural greenways, trails and linear park systems to mitigate the ill effects of rapid and intense urbanization. Remnants of the Cross Timbers in this area that have been compromised remain in the Cross Timbers Protection Area.

Provision adopted by Ordinance No. 01-16 and moved to 1.0 Land Use Plan by Ordinance No. 73-16:

Access from the Seller's remaining property and all those with ingress/egress easements over Bob White Lane will continue over Bob White Lane to FM 2499 in its current location since the spine road within SPA 2 was not designated or dedicated as a public street.

- "Seller's remaining property" shall mean: the property described as Tract II in deed to Janvier Gentry Scott, recorded in Document Number 2013-60264 of the Real Property Records of Denton County, Texas, unencumbered by easements held by the Town of Flower Mound on said described property.

Exhibit A

1.0 LAND USE PLAN

Cross Timbers Protection Area

The Cross Timbers Protection Area consists of those areas within the Long Prairie District where remnants of the Cross Timbers exist, but have been compromised due to the encroachment of rapid and intense urbanization. Development within the protection area may occur according to existing land use categories and densities; however, additional development standards will be enacted to preserve the remnants and the remaining Cross Timbers environmental character.

Cross Timbers Conservation Development District & Prairie Vista District

The Cross Timbers Conservation District and Prairie Vista District preserve the integrity of the largely intact Cross Timbers ecological area in central Flower Mound, which provides the Town with its unique country atmosphere and natural environment, while allowing environmentally sensitive development to occur. There are a total of two (2) area plans in these districts establishing appropriate land uses and relationships between land uses in these districts.

Denton Creek District

The Denton Creek District emphasizes high quality, regional commercial and industrial development, as well as mixed office, retail and residential uses. This recently annexed land offers a significant opportunity to ensure the Town's long-term economic health and prosperity.

Exhibit A

1.0 LAND USE PLAN

Land Use Category Definitions

Primarily Residential Land Use Categories:

Rural Density

Residential development, typically being single family detached residential development with minimum 2-acre lots (87,120 square feet) or greater.

Estate Density

Residential development, typically being single family detached residential development with minimum 1-acre lots (43,560 square feet) or greater.

Low Density

Residential development, typically being single family detached residential development with minimum 15,000 square foot lots (nominally 1/3 acre) or greater.

Medium Density

Residential development, typically being single family detached residential development with minimum 10,000 square foot lots (nominally 1/4 acre) or greater.

Medium High Density

Residential development, typically being single family detached residential development with minimum 7,500 square foot lots or greater.

High Density Single Family Detached

Residential development, typically being single family detached residential development with minimum 3,000 square foot lots or greater.

High Density

Residential development with 5 dwelling units per net acre or greater. Included in this category are duplexes, townhouses and garden apartments.

Primarily Commercial Land Use Categories

Retail

Neighborhood or Community oriented commercial area with a variety of uses ranging from restaurants and beauty salons to supermarkets and drug stores. Small professional offices, such as title companies, doctors and dentists, legal, real estate, etc. could be included in this land use category.

Office

Office and service uses ranging from garden office developments for small professional practices to larger, multi-story facilities for large tenants. This category would not typically include retail uses, except for incidental service or convenience retail for the office building tenants. In larger office districts, restaurants are encouraged within walking distance of the office buildings.

Commercial/Industrial

A variety of office, retail, repair/service and light industrial uses.

Exhibit A

1.0 LAND USE PLAN

Mixed use

A variety of commercial, office, retail, civic, institutional and residential uses within pedestrian oriented, vertical and horizontal mixed use environments. These uses may be combined within a single district, site, or building in the mixed use area. Components of a mixed use development include specialized street standards, open space, parks and plazas and enhanced architectural standards. Mixed use developments are intended to accommodate physical development patterns characteristic of those found in historic American downtown areas while taking into consideration contemporary building and development techniques. Key development concepts include: (i) horizontal and vertical mix of uses throughout the development, (ii) unifying landscape elements, (iii) integrated street networks shared by vehicles, cyclists and pedestrians, (iv) responsible environmental stewardship, (v) connectivity to existing Town transportation networks and surrounding neighborhoods, (vi) walkability within the development, and (vii) interconnected public spaces (parks, open space, water features).

Primarily Governmental and Institutional Land Uses

Institutional

Town, County, State and other government uses, such as offices, courts, police stations, jails, libraries and fire stations; churches, synagogues and other institutional uses such as the YMCA, fraternal organizations, boys and girls clubs, and similar not-for-profit uses and public or private schools and day care centers. Institutional uses are appropriate within areas designated for residential land uses, with special site design consideration to minimize impacts on the surrounding neighborhoods.

Utility

Sewage treatment plants, water towers, telephone switching stations and other facilities necessary to provide utility services.

Primarily Park and Open Space Land Uses

Park

Mini, Neighborhood, Community or Regional parks, including both active and passive recreation areas and some open space, such as The Flower Mound. This can include both publicly and privately owned park, open space and recreation areas. Park and open space uses are appropriate in all residential land use categories. The Land Use Plan indicates only parks existing and in the development process at the time of adoption of the plan. Further development of parks and trails is intended to occur in conjunction with the update of the Parks and Trails Plan.

Flood Plain

Flood plain outside of the Corps of Engineer property, as defined by the Federal Emergency Management Agency (FEMA) flood plain maps.

Corps of Engineers

Public land set aside for flood control on Grapevine Lake. When this land is not flooded, it may be used for parks and open space.

Grapevine Lake

The normal pool elevation of Grapevine Lake, much of which is within the Flower Mound Town Limits, is indicated.



Flower Mound Public Library



Grapevine Lake

Exhibit A

1.0 LAND USE PLAN

Mixed Use Land Use



The Mixed Use land use category is intended to allow for the flexibility and creativity in the development of pedestrian oriented, vertical and horizontal mixed use environments. The standards and criteria established under this land use category constitute general guidelines for the staff, Planning & Zoning Commission, and Town Council to evaluate comprehensive development proposals for specific properties within the Town of Flower Mound.



This land use category is applied to both greenfield and in-fill properties within the Town. Greenfield properties are larger, undeveloped properties that may have access to a major transportation infrastructure, but may not have access to any other infrastructure. They are generally located away from the core of the town and adjacent to other undeveloped parcels. Greenfield properties are generally larger (greater than 20 acres) than in-fill sites. These properties may have significant environmental characteristics that need development flexibility in order to balance environmental protection and market feasibility.



In-fill properties are those that are vacant with access to most urban infrastructure and adjacent to existing development. They may be adjacent to both commercial land uses or arterial roadways and lower intensity residential uses and may be properties that are difficult to develop under current policies. These properties share unique characteristics in that they have commercial potential due to adjacency to a major arterial or existing commercial uses, but need to address compatibility and transition issues with adjacent established neighborhoods. These properties may also share site specific environmental characteristics that need development flexibility in order to balance environmental protection and market feasibility. In-fill properties are generally between 5 and 20 acres in size.

The Mixed Use land use category is intended to allow for creative development and flexible opportunities with a mix of development types (retail, office, hospitality, and residential) on properties that generally demonstrate the above listed criteria.

Overall Character & Design: Development in the Mixed Use land use category should generally meet the Town's vision for mixed use:

- Establish a high level of development standards to create development of exemplary and enduring quality, and design.
- Emphasize vehicular and pedestrian connectivity to adjacent opportunities that balances neighborhood integrity, market demand for development and regional access.
- Use of both vertical and horizontal design that facilitates flexibility.
- Creation of a variety of connected community gathering places and entertainment opportunities of differing scales and character to make walking easy from one place to another.
- Design of streets, squares, plazas, parks, opens spaces and other civic spaces that facilitate easy walking both inside the development and to adjoining uses where appropriate.
- Emphasis on building form, mix of uses, and site design that can accommodate changing market conditions while creating a high quality of life.
- Include a range of residential options that reflect changing lifestyles while balancing market demand and community preferences.
- Provide appropriate transitions to protect any existing adjacent neighborhoods and to promote sustainable value.
- Leverage any significant environmental features on the site and treat them as "features" and not constraints.

Exhibit A

1.0 LAND USE PLAN

In order to appropriately address scale, compatibility, and character; each master planned development in the Mixed Use land use category should generally be composed of at least two (2) of the following “character and intensity” zones:

- Mixed Use Core – is generally intended to be the area of highest intensity of land uses and buildings within the overall Mixed Use development.
- Mixed Use Neighborhood – is generally intended to be the area with the highest concentration of a range of residential uses. Non residential uses such as retail and office uses may be appropriately located within the neighborhood.
- Mixed Use Transition – is generally intended to be the area that forms the transition between the Mixed Use Core or Neighborhood to adjoining conditions. Based on site-specific adjacency conditions, a Mixed Use Transition zone may include:

Mixed Use Transition Zones:

- Neighborhood Transition zone –the area between an existing residential neighborhood and a Mixed Use core or Neighborhood. The neighborhood transition zone shall include residential uses that are of compatible scale and density to the immediately adjacent existing neighborhoods.
- Major Roadway Transition zone – the area between the Mixed Use Core or Neighborhood and a major roadway corridor. A major roadway corridor is either an arterial roadway or state highway. This transition area may be an appropriate location for more automobile oriented commercial uses due to the adjacency and access along the roadway while transitioning to a pedestrian-oriented development towards the interior of the site.
- Environmental Transition zone – the area between the Mixed Use Core or Neighborhood and a major environmental feature. The environmental feature may be a creek, water body, significant grades, or tree stands. In particular, the environmental transition zone should consider appropriate buffers and edge conditions to the specific environmental resource in order to maximize its value to the overall mixed use development as a focal point.

Scale & Context: The scale of uses within a Mixed Use development should be compatible and consistent with that of the existing commercial/residential development. Appropriate buffering with respect to height and intensity of use is required if this use abuts existing residential uses.



Based on the specific location and scale of the proposed Mixed Use development, the following table shall be a guide to building heights within the component zones and transitions to adjoining neighborhoods. The lower end of the range should be considered as an appropriate transition to existing residential uses where the mixed use zone abuts it.



Land Use Mix: The percentages in the table below for the land use mix in the Mixed Use land use category are intended only to be guidelines, and greater flexibility may be appropriate under site specific conditions.

Exhibit A

1.0 LAND USE PLAN



Component Zone	Compatibility Criteria (Height in number of stories)
Mixed Use Core	2 – 5 stories*
Mixed Use Neighborhood	2 – 4 stories
Mixed Use Transition	
Neighborhood	2 – 3 stories
Major Roadway	1 – 3 stories
Environmental	2 – 5 stories*

**Height allowances greater than 5 stories may be considered based upon several factors including pedestrian amenities, streetscape, public and private open space provision, protection of significant environmental features, and the specific design of mid-rise buildings.*



Land Use	Percentage of the Acreage	Flexibility Factor
Non-residential uses**	45%	±25%
Public uses	5%	±5%
Residential uses ^β	45%	±25%
Civic/Open Space (public and private)	5%	+10%
Total	100%	

***Non-residential uses shall include retail, office, hospitality, entertainment, etc.*

^βResidential uses above commercial uses shall not be included in the calculation of percentage of residential uses in the overall development.

Exhibit A

1.0 LAND USE PLAN

Area Plan Districts

Appropriate land uses and relationships between land uses in these districts are described in Area Plans, which provide a greater degree of detail and specificity than land uses in other parts of Flower Mound. These districts are:

Lakeside Business District

Large scale commercial and/or light industrial developments such as corporate offices, office parks, industrial parks, clean manufacturing, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Cross Timbers Conservation Development District

Predominantly residential development, typically being single family residential. This district contains the remaining portion of the Cross Timbers ecosystem. Because of this character, conservation techniques that preserve this unique habitat, other natural systems, and Scenic Corridors, should be highly considered and promoted. Commercial and recreation uses, such as equestrian facilities and other appropriate uses compatible with the conservation goals of this district are also suitable.

Denton Creek District

Area west of US 377 and north of Denton Creek in which a variety of commercial, industrial, or residential uses could be appropriate, such as office, retail, industrial, and/or high density residential, in planned developments providing coordination between the uses and with surrounding areas.

Prairie Vista District

Predominantly residential development, typically being single family residential development at net densities no greater than one unit per one acre in combination with conservation easements and/or other conservation techniques that preserve the Cross Timbers ecosystem and other natural systems. Commercial recreation uses, such as equestrian facilities, golf courses, and other uses compatible with the conservation goals of the district are also suitable.

Cross Timbers Protection Area

An area in which the Eastern Cross Timbers environmental quality has been compromised and where development may occur at indicated land use categories and densities, but with additional development standards to protect the remaining Cross Timbers environmental character.

EXHIBIT B

Exhibit B

2.0 AREA PLANS

Lakeside Business District

1. Lakeside Business District Land Use Categories:

Campus Commercial – Campus Commercial means a mixture of uses which includes corporate offices, office parks, hotels, commercial, similar uses, and may include limited residential development. The intent is to create a vibrant area that encourages dynamic economic development focused around live, work, and play opportunities. A mixture of uses is important as well as its design details, amenity quality, and the use of natural areas and open spaces to provide a unique quality of life and sense of place.

Development in the district must demonstrate the following:

1. Compliance with the three elements of the District's Vision:
 - a. Create high quality, regional commercial development;
 - b. Competes in the economic development arena; and
 - c. Develops a balanced tax base to reduce the residential tax burden;
2. Exemplary and enduring quality and design shall be achieved by establishing a high level of development standards;
3. Market factors should ensure a robust mix of uses that are economically viable, support a high quality of life, and provide sustainable fiscal health for the Town;
4. No one single use should be allowed to predominate in the District at build-out;
5. Uses and design shall be in context with the existing environment and adjacent developments; and
6. Residential development should provide a range of residential options that reflect changing lifestyles and demographics, and should be facilitated through the balancing of market demand and community preferences.

Campus Industrial - Large scale developments such as corporate offices, office parks, service/repair, light industry, clean assembly and similar uses, in a planned campus setting. Retail and restaurant uses serving the campus industrial uses could be included, if they are planned as integral elements of the developments.

Office - Office and services uses ranging from garden office developments for small professional practices to larger, multi-story facilities for large tenants. This category would not typically include retail uses, except for incidental service or convenience retail for the office building tenants. In larger office districts, restaurants are encouraged within walking distance of the office buildings.

2. Lakeside Business District Elements:

Roadways – There are various roadways within the Lakeside Business District. Please refer to the “Town of Flower Mound Thoroughfare Plan” for more specific information on roadways in the Lakeside Business District.

Town Entrance Landscape - International Parkway, Lakeside Parkway and Gerault Road are all major roads into Flower Mound. Landscape for developments along these roads should be of an exemplary quality that reflects their importance as entrances into the Town. The “Town of Flower Mound Urban Design Plan” indicates suggested standards for private and public landscape development along these roads along with the Town’s “Median and Right-of-way Design

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Guidelines.” It will be appropriate for the private landscapes to reflect the individuality of the various developments within the Lakeside Business District, while the public landscape should provide an element of continuity through the District.

Architectural facades along the Town Entrance streets will be a significant contributor to the image of the Lakeside Business District, and should be designed to an exemplary standard for their use. Parking between the building line and the street should be kept to a minimum to enhance the landscape image of the District.

District Arterial Landscape - Spinks Road, Garden Ridge Road and the new north-south urban minor arterial between International Parkway (FM 2499) and Spinks Road are all significant routes within and through the Lakeside Business District. The “Town of Flower Mound Urban Design Plan” along with the Town’s “Median and Right-of-way Design Guidelines” also indicates suggested standards for private and public landscape development along these roads. The landscape is particularly important along Spinks, as there are single family residential neighborhoods north of Spinks. It is desirable, though not essential for the landscape treatment to be continued on the edges of the Town parks along Spinks and Garden Ridge Road.

Parks and Flood Plain - There are two parks in the Lakeside Business District: Gerault Park and Bakersfield Park. These are community parks. Refer to the “Town of Flower Mound Parks and Trails Plan” for more specific information on these parks.

There is a significant flood plain along the eastern and southeastern edge of the Lakeside Business District. Since the Town of Flower Mound discourages construction in flood plains, and alteration of flood plains, these areas should be preserved. They should be incorporated into the landscape planning for adjoining development. Since they are anticipated to include segments of the Town’s multi-purpose trail in the future, site development in the adjoining Commercial/Industrial areas should be planned for compatible adjacent uses and site features, and avoid exterior storage, utility and similar uses in direct view of the potential trail areas.

Landscape Setback Buffer - Landscape and setback buffers are necessary to provide suitable separations between commercial and/or industrial uses in the Lakeside Business District from residential neighborhoods and developments which abut the District. These are required between the Campus Commercial and Office/Retail land uses west of International Parkway and the existing neighborhoods to their west.

A landscape/setback buffer is also indicated along the southern edge of Spinks Road. Because of the existing and planned single family residential neighborhoods and the school on the north side of Spinks, the northern boundaries of the Campus Commercial area between International Parkway and Gerault Road should include a landscape buffer at least that screens service and utility areas from view from the neighborhoods and from Spinks Road.

The “Town of Flower Mound Urban Design Plan” along with the Town’s “Median and Right-of-way Design Guidelines” indicates standards for landscape and setback buffers between non-residential and residential land uses.

Trail System - There are existing segments of the Town’s multi-purpose trail system in this area along with other trail opportunities. Please refer to the “Town of Flower Mound Parks and Trails Plan” for more specific information on the trail system.

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Internalized Service Areas - In the areas of the Lakeside Business District designated as suitable for Commercial/Industrial land uses, service areas such as truck docks, layout or storage yards, utility components, trash handling and similar unsightly elements that are essential to appropriate commercial and industrial uses should be planned for locations internal to the major surrounding streets: International Parkway, Gerault Road, Lakeside Parkway, and Garden Ridge Road. Such uses should not be visible from these streets.

Architectural Impact Zone - The land at the southern edge of the Commercial/Industrial area east of Gerault Road and north of International Parkway is highly visible from northbound traffic on International Parkway as it enters Flower Mound. Because of the prominence of this site, and its significance to the Town's entry, buildings in this zone should be designed with particular attention to architectural quality and features as seen from International Parkway. This does not preclude industrial buildings from being built in this zone, but it does require that facades and elevations seen from International Parkway be of significantly higher architectural quality than is generally associated with industrial buildings.

Trees and Natural Features - Several large areas of trees, drainage courses and other natural features exist within the Lakeside Business District. These natural features are representative of the distinctive natural atmosphere of Flower Mound, and can have high amenity value for development. Existing trees fall within the purview of the Town's Tree Preservation Ordinance. Trees and other natural amenities should be incorporated into the planning and landscape design of developments within the Lakeside Business District.

Flower Mound Gateways - Distinctive entry demarcation to the Town of Flower Mound will help distinguish it as a unique community. Flower Mound Gateways are planned at or near the Town limits on International Parkway, Lakeside Parkway and Spinks Road.

Refer to the "Town of Flower Mound Urban Design Plan" along with the Town's "Median and right-of-way Design Guidelines" for more specific information on the Flower Mound Gateways.

Town Landmark Intersections - The three major arterials in the Lakeside Business District, International Parkway, Lakeside Parkway, and Gerault Road, are all principal entrances into the Town for both residents and visitors. The intersections with other arterials and collectors on these three streets will be significant orientation locations, particularly for visitors not familiar with Flower Mound. Consequently, these intersections will be major landmarks in the Town, and should be landscaped to provide an exemplary quality of entrance and orientation experience for residents and visitors to Flower Mound.

Refer to the "Town of Flower Mound Urban Design Plan" along with the Town's "Median and Right-of-way Design Guidelines" for more specific information on Town Landmark Intersections.

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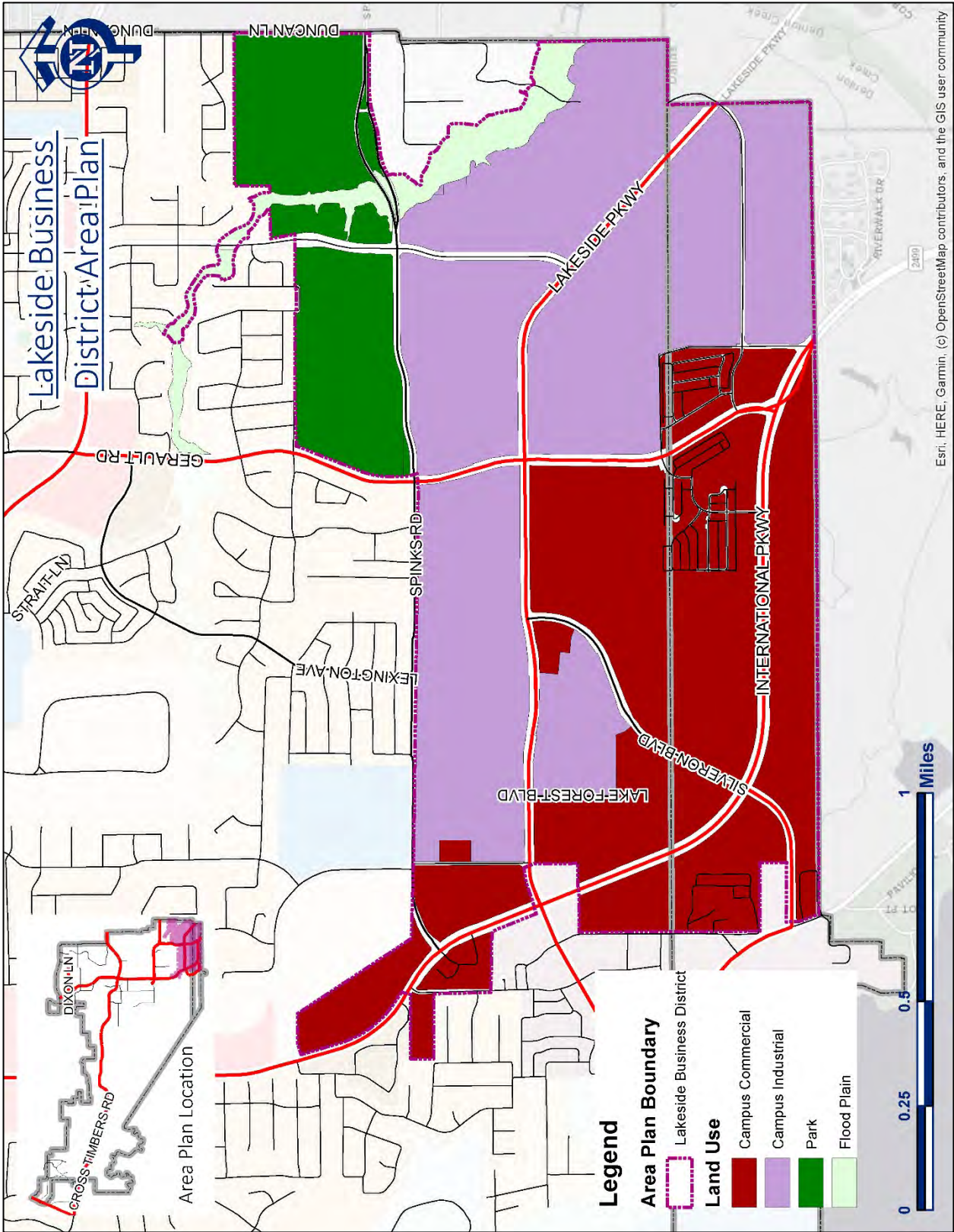


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Denton Creek District

1. Denton Creek District Land Use Categories:

Regional Campus Commercial - Large scale uses serving a regional market, and suitable for location easily accessible from an Interstate freeway, such as: corporate offices, office parks, hotels and resorts, retail, entertainment, restaurants and similar uses. These should be developed in large scale planned campus settings.

Campus Industrial - Large scale developments such as corporate offices, office parks, Service/repair, light industry, clean assembly and similar uses, in a planned campus settings. Retail and restaurant uses serving the campus industrial uses could be included, if they are planned as integral elements of the developments.

Commercial/Industrial - Large scale developments such as corporate offices, office parks, retail, service/repair, light industry, clean assembly and similar uses. In larger commercial/industrial districts, restaurants are encouraged within walking distance of the commercial/industrial buildings.

Office - Office and services uses ranging from garden office developments for small professional practices to larger, multi-story facilities for large tenants. This category would not typically include retail uses, except for incidental service or convenience retail for the office building tenants. In larger office districts, restaurants are encouraged within walking distance of the office buildings.

Mixed Residential - Land use area suitable for residential uses oriented toward I-35W as an option to Campus Industrial or Office uses. Appropriate residential uses could include Medium or High Density Residential. Medium density residential development, typically would be single family detached residential development with minimum 10,000 square foot lots (nominally 1/4 acre) or greater. High density residential development typically would have a maximum of five dwelling units per net acre or less, such as single family detached residential development with 5,000 to 8,000 square foot lots, zero-lot line houses, duplexes, townhouses or garden apartments.

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2. Denton Creek District Elements:

Roadways - There are various roadways planned within the Denton Creek District. Please refer to the “Town of Flower Mound Thoroughfare Plan” for more specific information on roadways in the Denton Creek District.

Town Entrance Landscape - I-35W, FM 1171, and US 377 are all major roads into Flower Mound. Landscape for developments along these roads should be of an exemplary quality that reflects their importance as entrances into the Town. The “Town of Flower Mound Urban Design Plan” along with the Town’s “Median and Right-of-way Design Guidelines” indicates suggested standards for private and public landscape development along these roads. It will be appropriate for the private landscapes to reflect the individuality of the various developments within the Denton Creek District, while the public landscape should provide an element of continuity through the District.

Architectural facades along the Town Entrance streets will be a significant contributor to the image of the Denton Creek District, and should be designed to an exemplary standard for their use. Parking between the building line and the street should be kept to a minimum to enhance the landscape image of the District.

District Arterial Landscape - The proposed urban minor arterial roads will be a significant route within and through the Denton Creek District. The “Town of Flower Mound Urban Design Plan” along with the Town’s “Median and Right-of-way Design Guidelines” also indicates suggested standards for private and public landscape development along these roads.

Parks and Flood Plain - There is a significant flood plain along the southwestern, western and northwestern edge of the Denton Creek District. Since the Town of Flower Mound discourages construction in flood plains, and alteration of flood plains, these areas should not be developed. They should be incorporated into the landscape planning for adjoining development. Since they are anticipated to include segments of the Town’s multi-purpose trail in the future, site development in the adjoining Regional Campus Commercial, High Density Residential, Office, Campus Commercial, and Commercial/Industrial areas should be planned for compatible adjacent uses and site features, and avoid exterior storage, utility and similar uses in direct view of the potential trail areas.

Trail System – There are various trail segments planned within the Denton Creek District including the regional Veloweb Trail System. Refer to the “Town of Flower Mound Parks and Trails Plan” for more specific information on the trail system.

Internalized Service Areas - In the areas of the Denton Creek District designated as suitable for Commercial/Industrial, Regional Campus Commercial, or Campus Industrial land uses, service areas such as truck docks, railroad platforms, layout or storage yards, utility components, trash handling and similar unsightly elements that are essential to appropriate commercial and industrial uses should be planned for locations internal to the major surrounding streets: FM 1171, I-35W, US 377, and the proposed urban minor arterials. Such uses should not be visible from these streets.

Architectural Impact Zone - The land at the western edge Campus Industrial along FM 1171 is highly visible from traffic on FM 1171 as it enters Flower Mound. Because of the prominence of this site, and its significance to the Town’s entry, buildings in this zone should be designed with particular attention to architectural quality and features as seen from FM 1171. This does not preclude industrial buildings from being built in this zone, but it does require that facades and elevations seen from FM 1171 be of significantly higher architectural quality than is generally associated with industrial buildings.

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Trees and Natural Features - Several large areas of trees, drainage courses and other natural features exist within the Denton Creek District. These natural features are representative of the distinctive natural atmosphere of Flower Mound, and can have high amenity value for development. Existing trees fall within the purview of the Town's Tree Preservation Ordinance. Trees and other natural amenities should be incorporated into the planning and landscape design of developments within the Denton Creek District.

Flower Mound Gateways - Distinctive entry demarcation to the Town of Flower Mound will help distinguish it as a unique community. Flower Mound Gateways are planned at or near the Town limits I-35W, US 377, and FM 1171.

Refer to the "Town of Flower Mound Urban Design Plan" along with the Town's "Median and Right-of-way Design Guidelines" for more specific information on the Flower Mound Gateways.

Town Landmark Intersections - The three major arterials in the Denton Creek District, I-35W, FM 1171, and US 377 are all principal entrances into the Town for both residents and visitors. The intersections with other arterials and collectors on these three streets will be significant orientation locations, particularly for visitors not familiar with Flower Mound. Consequently, these intersections will be major landmarks in the Town, and should be landscaped to provide an exemplary quality of entrance and orientation experience for residents and visitors to Flower Mound.

Refer to the "Town of Flower Mound Urban Design Plan" along with the Town's "Median and Right-of-way Design Guidelines" for more specific information on Town Landmark Intersections.

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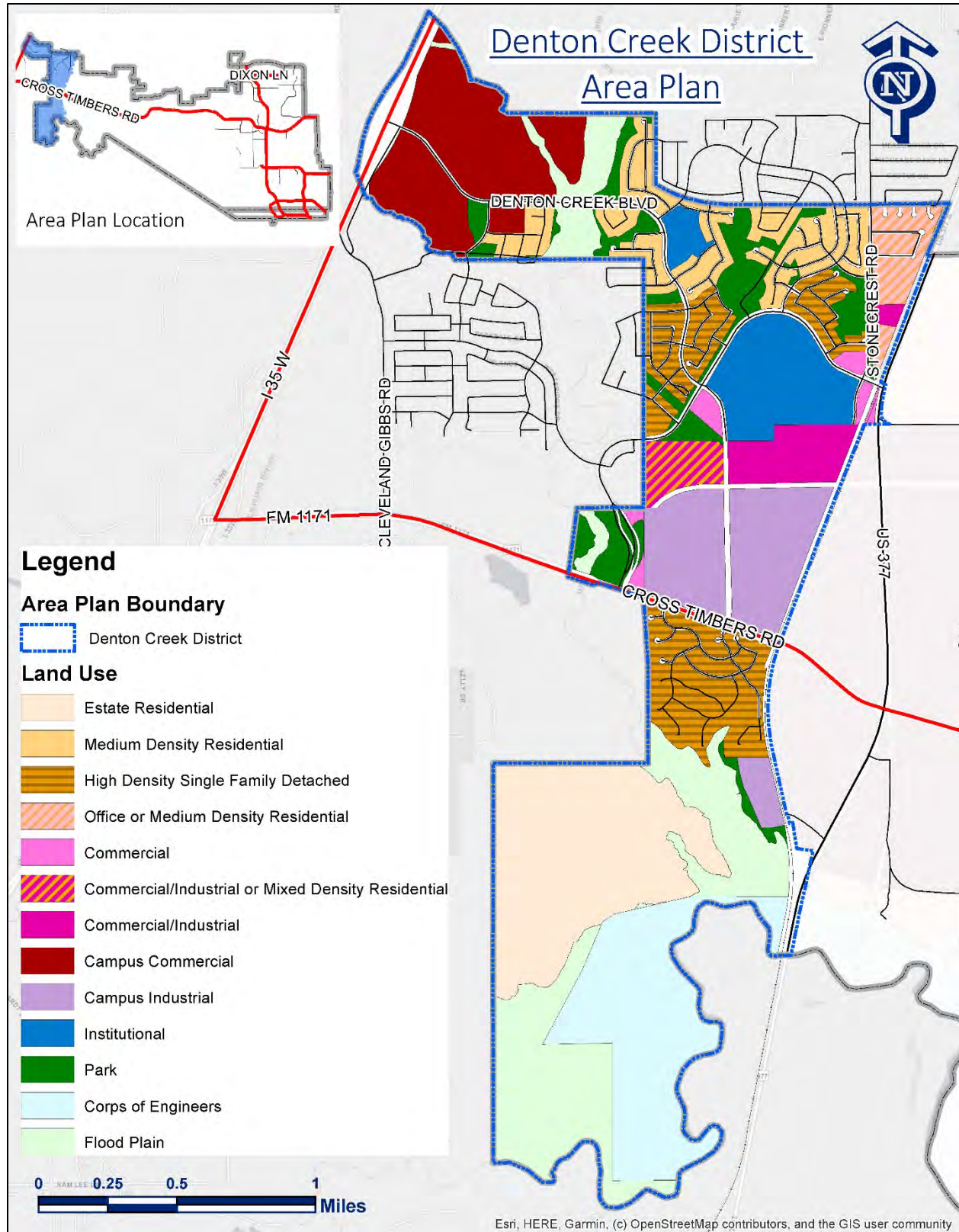


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2.0 AREA PLANS

Cross Timbers Conservation Development District Area Plan

The Cross Timbers Conservation Development District (CTCDD) is predominantly a residential area, typically being single-family residential in combination with conservation areas. The CTCDD area plan identifies several elements intended to preserve ecosystems and other natural systems of the largely intact Cross Timbers ecological area in central Flower Mound. The CTCDD provides the Town with its unique country atmosphere and natural environment, while allowing environmentally sensitive development to occur.

There are multiple acceptable development options as well as existing developments within this district:



Entitled Residential Development

- Currently, several residential zoning districts exist within the CTCDD, with the majority designated for rural residential land uses



Conservation Residential Development

- This development type is only permitted within the A, Agricultural zoning district in the CTCDD
- Requires a planned development zoning application
- Provides ability for special environmental features to be preserved without unnecessarily compromising the number of buildable lots



Non-Residential Development

- Non-residential development is allowed as permitted by underlying zoning districts
- Appropriate uses include, but are not limited to, equestrian centers, dude ranches, religious institutions, and boutique vendor markets.

Elements for consideration within the district include:

1. Scenic Corridors
2. Scenic Road (FM 1171)
3. Country Roads (Rural Collectors)
4. Conservation Design
5. Parks

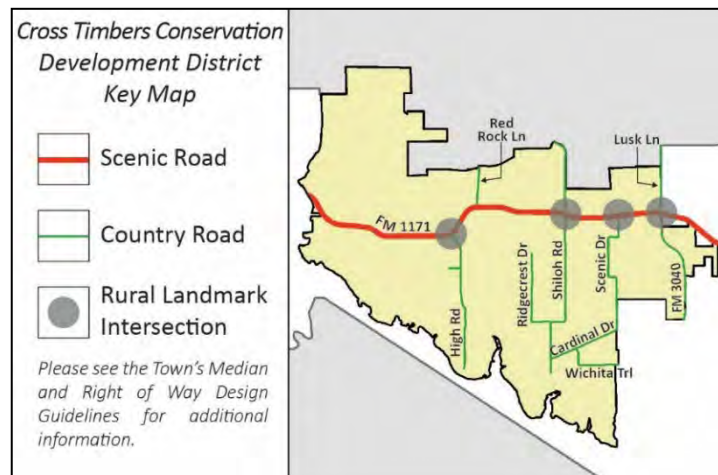


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2.0 AREA PLANS

1. Scenic Corridors



A Scenic Corridor is comprised of land visible from scenic or country roads that possesses natural elements indicative of a country atmosphere or natural environment.

To preserve these views, developments should be mindful of the relationship with these corridors and incorporate them as appropriate for the enjoyment of residents and motorists.

Scenic corridors are present along many roadways, including, but not limited to: Skillern Rd., Scenic Rd., Shiloh Rd., Rocky Point Rd., Red Rock Rd., High Rd., and FM 1171.

Scenic Road/Corridor Development Pattern

- Placement of homes along the Scenic Road should be behind a scenic corridor and face toward the Scenic Road.
- New homes should be accessed by internal local roadways and not directly from the Scenic Road.
- Homes visible within the scenic corridor should incorporate staggered setbacks and a meandering internalized roadway.
- The goal of siting homes using these methods is to ensure subdivisions are more distinct from their suburban counterparts elsewhere in Town.

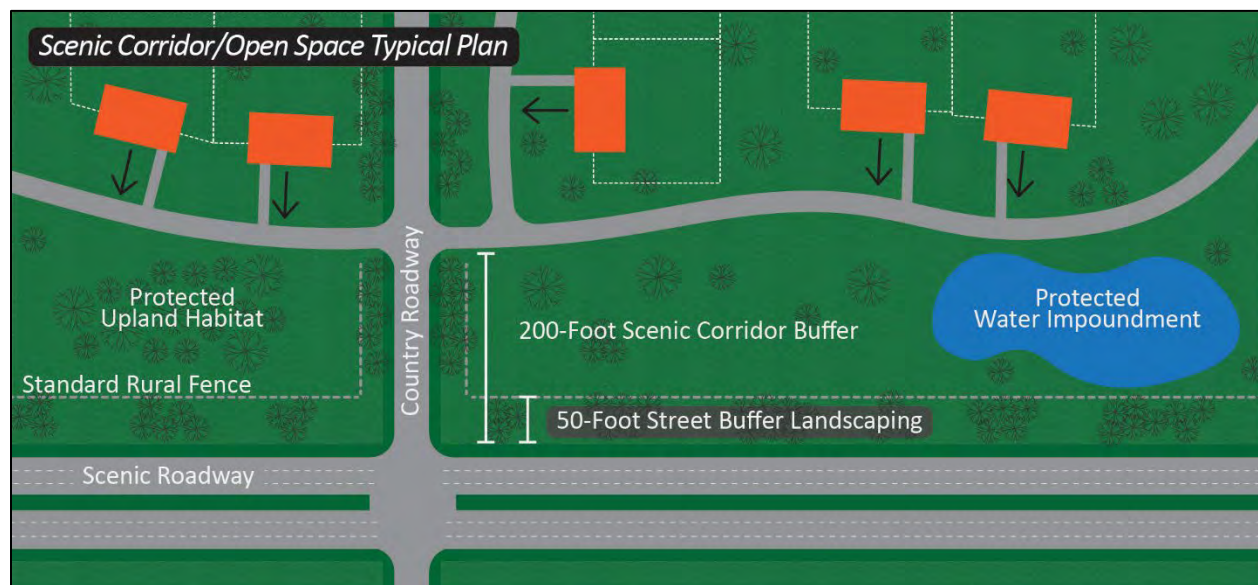


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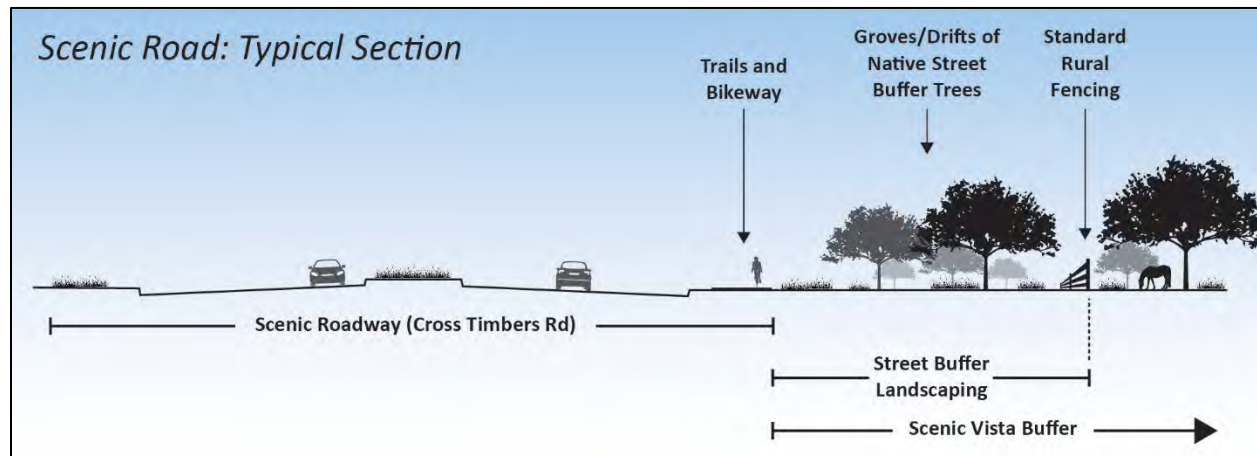
2.0 AREA PLANS

2. Scenic Road

Scenic Road (FM 1171) is a State-controlled right-of-way. The Town's vision for land adjacent to this roadway includes landscape treatments and a scenic corridor buffer, which will provide motorists with views of the native landscape and open spaces of the Cross Timbers ecosystem. Combined, the vision for these elements help distinguish the CTCDD from other areas of the Town and to preserve the rural and country atmosphere.

Scenic Road Landscape Treatment

- Within the street buffer landscaping area, trees should be planted in groves or drifts with informal native tree plantings randomly spaced to create a more natural design.
- Groves and drifts should be spaced to maximize visual corridors and not compromise scenic views of motorists.
- Newly planted tree groves should not be planted within rural landmark intersections that would limit motorists' views of scenic corridors.
- Native low-growth habit shrubs and/or ground cover plantings in association with intersections may be incorporated.
- Standard rural fencing should be considered as a boundary between the street buffer landscaping area and the remaining scenic corridor buffer.
- Trails and bikeways* along Scenic Road should meander between the right-of-way and street buffer landscaping area. * *See the Town's Technical Report – Trails and Bikeways for more.*



Access onto the Scenic Road

- New developments should be discouraged from having direct access onto Scenic Road, however, special circumstances may necessitate otherwise.
- It is preferred that internal entrance roadways feed onto Country Roads.
- The goal of limiting access onto Scenic Road is to avoid excessive congestion, traffic conflicts, and signalization of intersections.

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Scenic Road Subdivision Entrances

- Subdivision entrances should reinforce the design and appearance of rural Texas ranch entrances.
- Elements such as open- or multi-rail fencing, metal signage, and limited use of masonry columns are acceptable.
- Surrounding landscaping should promote an inviting, rural appearance and utilize native plantings.
- Plantings for new tree-lined drive entrances are only acceptable if the trees are native species and do not obstruct motorist' view of the scenic corridor buffer (i.e. drives can be located directly alongside a substantial existing tree stand or grove).



Ranch Entrance Example



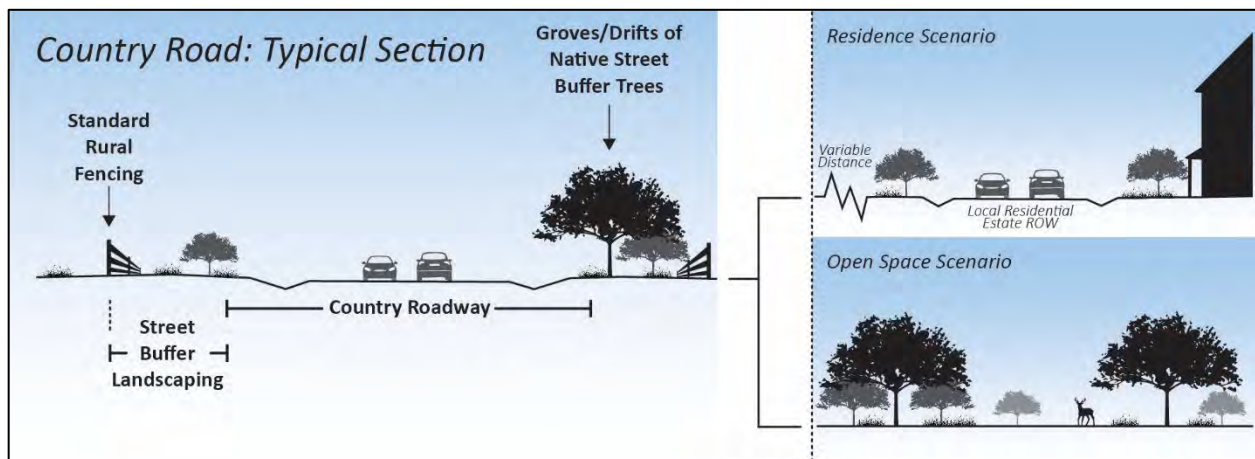
Subdivision Entrance Example



Tree-lined Driveway Example

3. Country Roads

The vision for Country Roads (Rural Collectors) promotes the protection of the natural landscape, opportunities for new native landscaping, and other design features intended to preserve the country atmosphere and natural environment of the District. Beyond the street buffer trees, may be scenic corridors/open spaces or residences, depending on the location and character of environmental features.



Country Road Development Pattern

- Placement of homes along a Country Road should face toward the Country Road.
- New homes should be accessed by internal local roadways, and not directly from Country Roads.
- Homes visible along a Country Road should incorporate staggered setbacks and a meandering internalized roadway.
- The goal of siting homes using these methods is to ensure subdivisions are more distinct from their suburban counterparts elsewhere in Town.

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2.0 AREA PLANS

Country Road Landscape Treatment

- Should limit new plantings to native trees deemed appropriate to preserve scenic views.
- Trees should be planted in groves or drifts and spaced to maximize visual corridors and not compromise scenic views from Country Roads.
- Native low-growth habit shrubs and/or ground cover plantings in association with intersections may be incorporated.

4. Conservation Design

The purpose of a conservation development is to protect significant environmental features to preserve the rural and country atmosphere of this district. While considering the previous sections, subdivision design should plan for all environmentally sensitive areas (ESAs) to be protected when designing the location of infrastructure and home sites.



*Land Planning for Conservation
Development Typical Plan*

Environmental Features

Careful consideration should be made to ensure ESAs are a prominent characteristic of a conservation development without endangering the integrity of the habitats contained within. In instances where environmental features do not provide a natural buffer, land permitting, proposed residential lots should be sited in a manner that respects the privacy of adjacent residences.



Example of designing around ESAs

Infrastructure

Infrastructure should be layed out to create a meandering internal local roadway to limit the appearance of traditional cul-de-sacs found elsewhere in Town.

Restoration of Open Spaces

If portions of a planned open space were impacted by prior development, restoration efforts should focus on vegetation-types native to the area.

Perimeter Fencing

Fencing associated with a conservation development should be limited when possible to preserve wildlife access. When used, fencing should consider the following based on its intended location and use.

- Perimeter fencing along the Scenic Road or Country Roads should be multi-railed or pipe styled, and be neutral in color.
- Masonry walls and wood stockade fences are not appropriate for residential development within the CTCDD. The use of masonry columns may be appropriate if used sparingly or in association with a subdivision entrance.
- Internal fencing should be open air and meet minimum safety requirements for residential pools.



*Multi-rail Fencing
Example*



*Pipe Fencing
Example*

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2.0 AREA PLANS

5. Parks

75% of respondents from the 2022 CTCDD survey supported allowing some recreational activities as an acceptable use within open spaces. The most cited examples for potentially acceptable parks included the following:

1. Soft surface trails	73%	< More Interest --- Less Interest >		
2. Equestrian trails	57%			
3. Mountain bike trails	57%			
4. Playgrounds	49%			
5. Fishing piers	44%			
7. Concrete trails	38%			
8. Dog park	36%			

Recreational activities receiving less support included: pavilions with grills (27%), disc golf courses (27%), camping grounds (26%), playing fields (25%), and playing courts (22%).

Active Parks

The location of active parks should be based on the following priorities:

1. Should not disrupt natural features or habitats.
2. Equitable access from most residential lots within the development.
3. Parks should be visible from roadways and homes for safety purposes.

Parks should also feature earth tones, natural materials, and equipment with natural appearances.

Passive Parks

Trails of various types are considered passive parks. Though passive parks are appropriate through the entire development, careful consideration should be made to the location of trails based on the following priorities:

1. Trails should not disrupt natural features or habitats.
2. Trails should be visible from roadways and homes for safety purposes.

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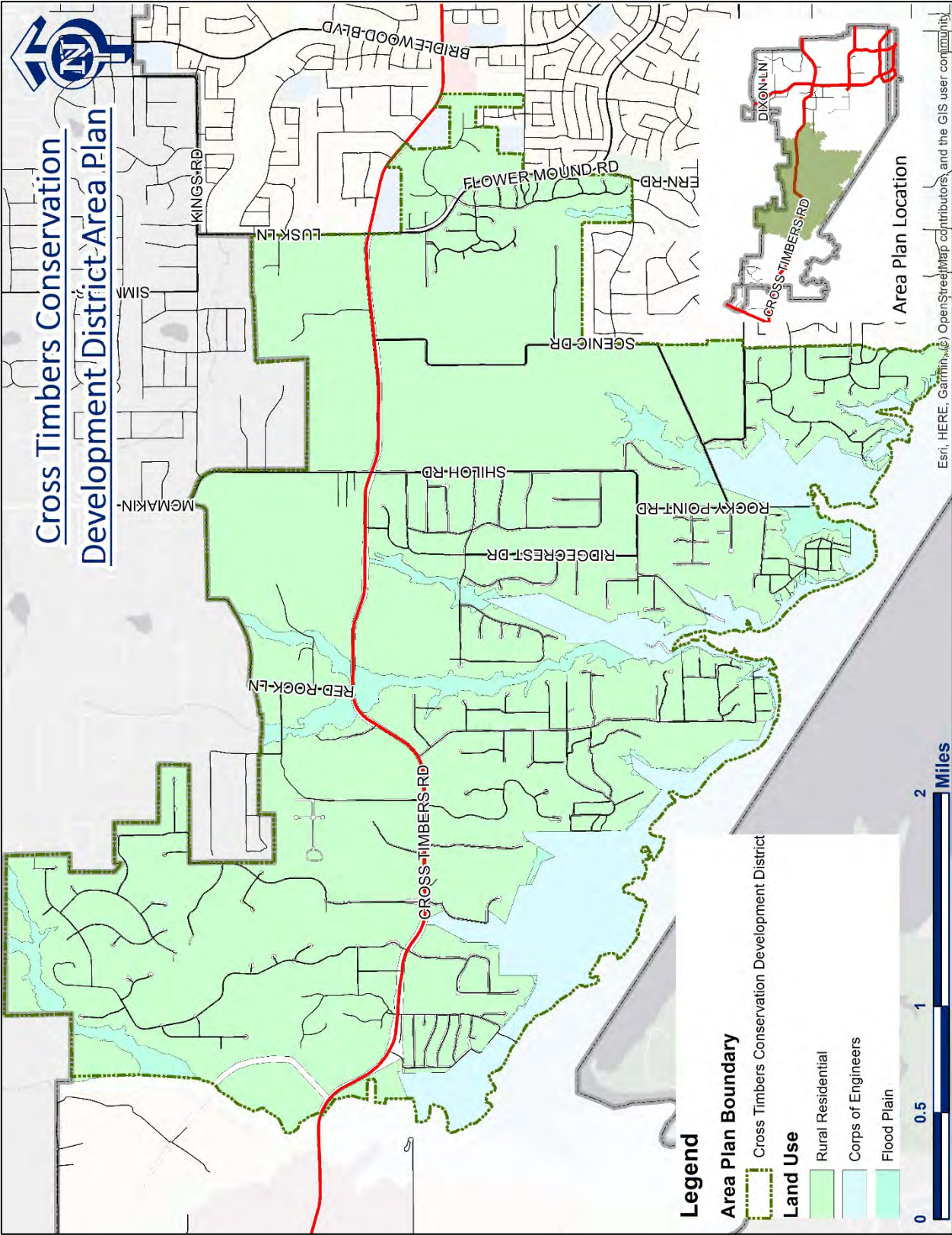


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Prairie Vista District

1. White's Branch to US 377

Potential development includes property west of White's Branch floodplain and east of US 377, north and south of FM 1171. This zone consists of a few ranch type residences on very large tracts of land, with actively used pasture lands.

There are several options for land owners, including:

- Retain all or part of the property for personal use. This option would include (but not require) the potential of donating a conservation easement on all or part of the property in order to realize some economic benefit.
- Develop all or part of the property, or sell all or part of the property to others for development on one acre lots as permitted under the Estate Land Use Designation.
- Develop all or part of the property, or sell all or part of the property to others for development as a conservation development, with the number of lots as permitted under Estate Land Use Designation, but with smaller lots and eligibility for incentive benefits as established by the Town's SMARTGrowth Program. This option would include the potential donation of a conservation easement on all or part of the property in order to realize some additional economic benefit.
- Develop all or part of the property at lot sizes larger than one acre, as permitted under the Estate Land Use Designation. This could include coordinated development for specialized types of development, such as equestrian oriented developments.
- Coordinate development planning with adjoining land owners as a combined conservation development, with the number of lots as permitted under the Estate Land Use Designation but with smaller lots and eligibility for incentive benefits as established by the Town's SMARTGrowth Program, as a coordinated Planned Development. This option would include (but not require) the potential of donating a conservation easement on all or part of the property in order to realize some additional economic benefit.

Roadways – For roadway information within the Prairie Vista District, please refer to the “Town of Flower Mound Thoroughfare Plan” for more specific information.

Parks and Trails - For parks and trails information within the Prairie Vista District, please refer to the “Town of Flower Mound Parks and Trails Plan” for more specific information.

Flood Plain - There is flood plain through a portion of the Prairie Vista District associated with White's Creek, as well as in the Corps of Engineers Property along Lake Grapevine. The flood plain would provide limitations and influence on development of property both north and south of FM 1171.

Trees and Natural Features – Prairie Vista is part of the Grand Prairie ecology, with the natural features featuring rolling prairie and wooded floodplains.

Scenic Corridors - The scenic corridor along FM 1171 at the upper level of the Cross Timbers escarpment is predominantly comprised of views close to the roadway as limited by heavily wooded areas. These viewsheds would have to be incorporated into any land planning for each of the zones,

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2.0 AREA PLANS

if development is contemplated, and would require compliance with the “Town of Flower Mound SMARTGrowth Program” SMARTGrowth Analysis. This compliance could be achieved by locating development behind the trees and out of the view corridor from FM 1171.

The viewshed at the lower portion of the escarpment is extensive, due especially to the visibility from FM 1171 at the top of the escarpment. These viewsheds would have to be incorporated into any land planning for each of the zones, if development is contemplated, and would require compliance with the “Town of Flower Mound SMARTGrowth Program” SMARTGrowth Analysis. This might require large-scale open space or recreational developments, such as golf courses, on both the north and south sides of FM 1171.

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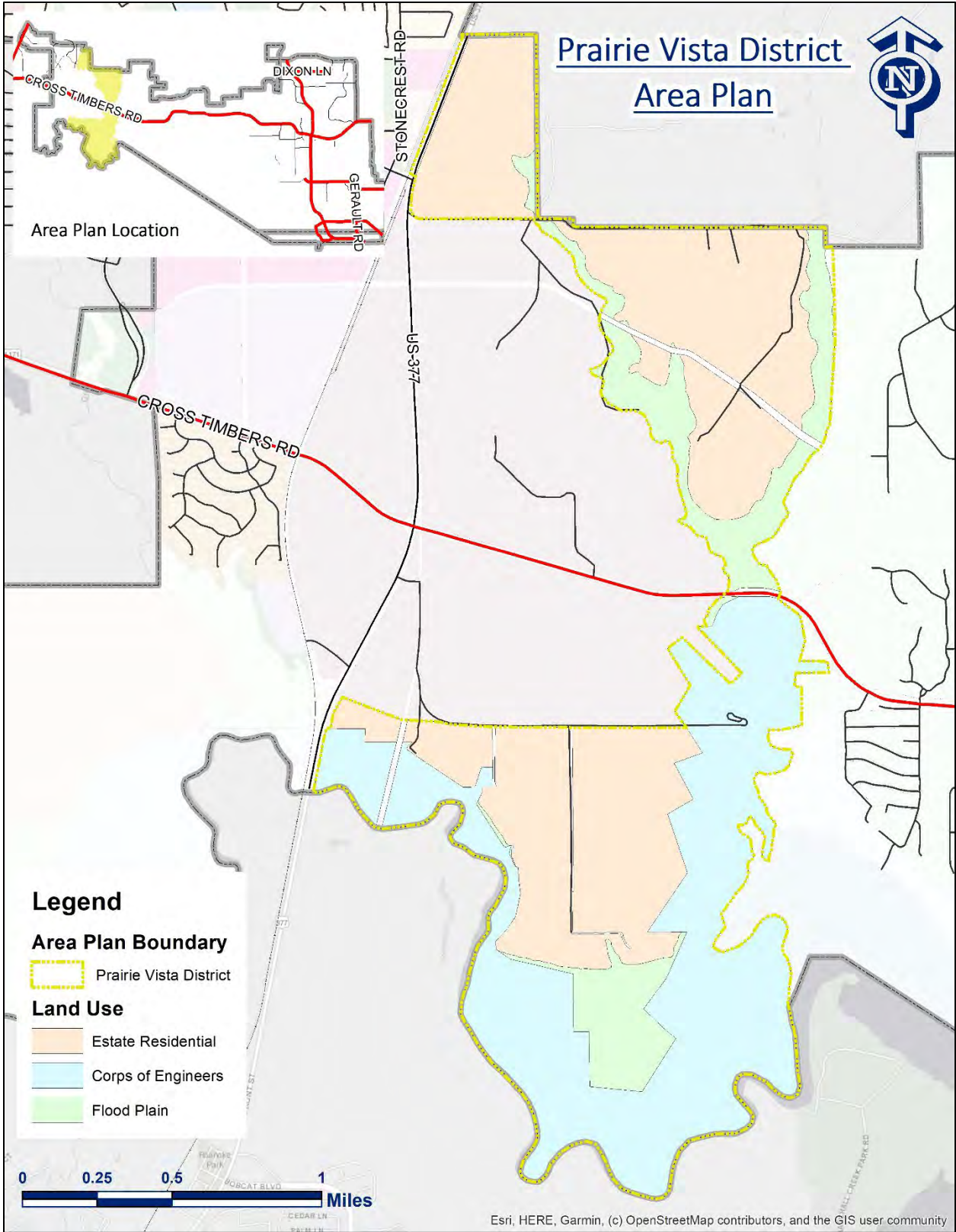


EXHIBIT C

Exhibit C

4.0 URBAN DESIGN PLAN

Introduction

The Town of Flower Mound Urban Design Plan provides for design direction for landscaping elements within and visible from public rights of way as well as architectural standards for non-residential buildings. The intent of the Urban Design Plan is to reinforce the Master Plan Vision Statement, provide linkage between the built and natural environment and acknowledge and sustain the unique nature of the Town's corporate-commercial, suburban and rural lifestyles.

The conceptual structure of the Urban Design Plan (UDP) and its components was developed as part of the Area Plan and Specific Plan elements of the Town of Flower Mound Master Plan. Through community involvement, focus groups provided direction for the UDP including review of the architectural and landscape design elements. The UDP discusses these elements in detail and provides illustrations of intent. Following the adoption of the Urban Design Plan by the Town Council, some of the design elements will be codified in the Land Development Regulations as appropriate.

In 2009, the firm of Teague Nall and Perkins worked with the Town to update the Town's landscape requirements for roadways. A new document, Median and Rights-of-Way Design Guidelines, was adopted to work in conjunction with the standards in the Urban Design Plan.

The Urban Design Plan is structured to establish community-wide architectural standards for non-residential projects and landscape, gateway and intersection treatments in each of the five districts established by the Land Use Plan:

1. Lakeside Business District
2. Long Prairie District
3. Cross Timbers Conservation Development District
4. Denton Creek District
5. Prairie Vista District

Each of these Districts is distinct and in a differing stage of development. The predominantly commercial Lakeside Business District and Denton Creek District share the same guidelines. The extensively developed, suburban Long Prairie District has guidelines intended to strengthen and unify an overall community identity. The Cross Timbers District and the Prairie Vista District have guidelines that reinforce its country atmosphere and natural environment.

Exhibit C

4.0 URBAN DESIGN PLAN

Definitions

Articulation: The use of varying depth of wall planes both in the vertical and horizontal dimension to create interest and an aesthetically pleasing appearance in a building facade.

Compatibility Buffer: A 60' min. width Landscape Buffer that includes the use of earthen berms, shrubs, trees, and other plant screening elements without suggesting a walled structure. The 60' Compatibility Buffer is located on existing or proposed non-residential or multifamily property.

Curvilinear Edge: A curvilinear edge is an undulating line where the planting bed and or groundcover/shrubs meet the lawn area. Curvilinear lines in a natural landscape are considered more aesthetically pleasing.

District Arterials: District Arterials mentioned in the Lakeside Business and Denton Creek Districts, refer to the four lane, 90' R.O.W. Urban minor arterials from the Thoroughfare Plan.

Drifts: A grouping of trees consisting of two to three different species. This condition is found in natural settings; large shade trees are to be randomly spaced for a more natural design.

Earthen Berm: An earthen berm is a small man-made earth mound that is usually elongated and natural in shape and character. As a landscape element, an earthen berm's primary purpose is to both limit views in a natural way and to enhance the ground plane vegetation.

Gateways: Gateways refer to the impression upon entering the town limits of Flower Mound. A statement of rural character is emphasized by the use of groves and/or drifts; a standard rural fence or other similar fencing; and landscape elements, signage, and plantings dependent on which district within which they occur. **Please see the Town's Median and Right of Way Design Guideline for additional information.*

Groves: A grouping of trees comprised of the same species. Large shade trees are to be randomly spaced for a more natural design.

Street Buffer: A landscape screening element located on private property adjacent to the street right-of-way line.

Town Entrance Landscape: The Town Entrance Landscape is the R.O.W. area in principal arterials located in both Lakeside Business & Denton Creek districts.

Exhibit C

4.0 URBAN DESIGN PLAN

Architectural Standards

The following standards for non-residential architecture throughout Flower Mound are intended to reflect the Town's Master Plan goal of creating development of "enduring and exemplary quality and design." Their purpose is to encourage building design of meritorious quality throughout the Town and prohibit franchise architecture.

The Central Business District (CBD) is a unique mixed use development, as such buildings within the CBD shall not be required to conform to the following standards, but rather buildings within the CBD shall be required to conform to the Mixed Use Architectural Standards set forth later in this section.

1. Design Review

- 1.1. Determination of a proposed building design's compliance with these standards will be made by the Town's staff and/or Planning and Zoning Commission and Town Council.
- 1.2. In considering conformance to these standards, the Town will evaluate the suitability of meritorious design that might not comply exactly with these standards, but that is of exceptional enough design quality that it would be a desirable addition to the Town.
- 1.3. In considering conformance to these standards, the Town will evaluate the suitability of buildings certified as Leadership in Energy and Environmental Design (LEED) Gold or better that might not comply exactly with these standards, but that are of exceptional enough design quality that they would be a desirable addition to the Town.

Exhibit C

4.0 URBAN DESIGN PLAN**2. Franchise Architecture**

- 2.1. To ensure that the character and quality of retail and commercial buildings or structures contribute to desired community character objectives, franchise architecture is prohibited. The term "franchise architecture" means the design and construction of buildings for which the tenants and/or uses are readily recognizable solely by the buildings' architectural elevations, colors, materials, other architectural elements and/or the arrangement thereof.

Examples of Compliant Architecture:



Examples of Non-Compliant Architecture:



Exhibit C

4.0 URBAN DESIGN PLAN**3. Facade Articulation of Low-rise non-residential buildings (one to two stories)**

3.1. Each building elevation of 80 linear feet or less may be a single plane.

Examples of Compliant Façade Articulation of non-residential buildings 80 linear feet or less:



Examples of Non-Compliant Façade Articulation of non-residential buildings 80 linear feet or less:



Exhibit C

4.0 URBAN DESIGN PLAN

- 3.2. Each building elevation greater than 80 linear feet up to a maximum of 250 linear feet, should have a minimum of two planes, offset by a minimum of two feet.

Examples of Compliant Façade Articulation of non-residential buildings between 80 and 250 linear feet:



Examples of Non-Compliant Façade Articulation of non-residential buildings b/t 80 and 250 linear feet:



Exhibit C

4.0 URBAN DESIGN PLAN

- 3.3. Each building elevation greater than 250 linear feet, should have a minimum of three planes, each offset by a minimum of two feet.

Examples of Compliant Façade Articulation of non-residential buildings greater than 250 linear feet:



Examples of Non-Compliant Façade Articulation of non-residential buildings greater than 250 linear feet:



Exhibit C

4.0 URBAN DESIGN PLAN**4. Facade Articulation of non-residential buildings of three stories or greater.**

- 4.1. Each building elevation should have a minimum of two offsets in vertical and horizontal planes, with each plane being offset by a minimum of two feet.

Examples of Compliant Facade Articulation of non-residential buildings of three stories or greater:



Examples of Non-Compliant Facade Articulation of non-residential buildings of three stories or greater:



Exhibit C

4.0 URBAN DESIGN PLAN**5. Facade Materials**

- 5.1. Elevations of low-rise non-residential buildings (one to two stories) should be a minimum of 50% masonry, excluding doors and windows, consisting of stone, brick, stucco or finished tilt-wall concrete, or a mixture of those materials.

Examples of Compliant Façade Materials:



Examples of Non-Compliant Façade Material:



Exhibit C

4.0 URBAN DESIGN PLAN

- 5.2. Elevations of non-residential buildings of three stories or greater should be a minimum of 40% masonry, excluding doors and windows, consisting of stone, brick, stucco or finished tilt-wall concrete, or a mixture of those materials.

Examples of Compliant Façade Material of non-residential buildings three stories or greater:



Examples of Compliant Façade Material of non-residential buildings three stories or greater:



Exhibit C

4.0 URBAN DESIGN PLAN

- 5.3. At least 80% of each building elevation, excluding doors and windows, should be primary masonry, consisting of hand-laid brick or stone, of stucco, or of finished tilt-wall concrete. Up to 20% of each building elevation may be secondary masonry, consisting of concrete block or e.i.f.s. Notwithstanding the aforementioned standard, the maximum percentage of stucco allowed on any building elevation shall be 80%. If the entire 80% primary masonry on a building elevation consists of stucco, then the remaining 20% on the same building elevation shall be limited to hand-laid brick or stone.

Examples of Compliant Primary Façade Material:



Examples of Non-Compliant Primary Façade Material:



Exhibit C

4.0 URBAN DESIGN PLAN

5.4. Outward facing mirrored glass may not be used.



6.

Exhibit C

4.0 URBAN DESIGN PLAN

Facade Colors

- 6.1. Colors comprising at least 80% of each elevation of the building should be primarily natural and **earth** tone colors. The range of tones include, but are not limited to: ochre, brown, umber, rust, olive, beige, taupe, sepia, white, off-white and slight variations. Further definition of building colors is provided in the Town's Land Development Regulations.

Examples of Compliant Façade Colors:



Examples of Non-Compliant Façade Colors:



Exhibit C

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- 6.2. Accent colors may comprise the remaining 20% of each building elevation, and should relate to the base tones. Decorative canopies, special elements, including patio umbrellas and signage can be more contrasting in color as appropriate.

Examples of Compliant Façade Accent Colors:



Examples of Non-Compliant Façade Accent Colors:



Exhibit C

4.0 URBAN DESIGN PLAN**7. Pedestrian Scale**

- 7.1. A pedestrian scale is desired near entry points of buildings to relate to the users. This scale can be achieved through the use of arcades, porte-cocheres, loggias and entry gardens which help buildings transition to a pedestrian scale environment.

Examples of Compliant Pedestrian Scale:



Examples of Non-Compliant Pedestrian Scale:



Exhibit C

4.0 URBAN DESIGN PLAN**8. Building Entry Points**

- 8.1. Buildings should have a recognizable main entry, which should directly relate to the primary street address of that building .

Examples of Compliant Building Entry Points:



Examples of Non-Compliant Building Entry Points:



Exhibit C

4.0 URBAN DESIGN PLAN

These entry points should have an identifiable design presence through a change of materials, variation of wall planes and roof features.

Examples of Compliant Building Entry Points:



Examples of Non-Compliant Building Entry Points:



Exhibit C

4.0 URBAN DESIGN PLAN

Building entry points should have site design features such as special paving, landscaping, pedestrian lights, pedestrian benches, earth forms, water fountains / displays and other furnishings.

Examples of Compliant Building Entry Points:



Examples of Non-Compliant Building Entry Points:



Exhibit C

4.0 URBAN DESIGN PLAN

9. Unified Design Theme

- 9.1. A grouping of buildings (3 or more) should have a unified design theme for all buildings within the development. This design theme may be unique to the development, but should maintain a standard of high-quality construction and should respect the contextual setting of the development within its district.

Examples of Compliant Unified Design Theme:



Examples of Non-Compliant Unified Design Theme:



Exhibit C

4.0 URBAN DESIGN PLAN**10. Building Orientation**

- 10.1. Highly visible locations from major and minor arterials need to reflect an architectural prominence, with particular attention being paid to architectural quality on the facades, rooflines and elevations visible from these thoroughfares.

Examples of Compliant Building Orientation:



Examples of Non-Compliant Building Orientation:



Exhibit C

4.0 URBAN DESIGN PLAN

- 10.2. Buildings near natural features and view sheds should respond to them in a manner that respects and preserves the feature, in such a way that the environment can be a marketable element of the development.

Examples of Compliant Building Orientation:



Examples of Non-Compliant Building Orientation:



Exhibit C

4.0 URBAN DESIGN PLAN**11. Massing and Form**

- 11.1. Building massing (elevations & floor plate configurations) should vary to avoid monotony and linear forms. Strip or linear retail development is not desirable.

Examples of Compliant Massing and Form:



Examples of Non-Compliant Massing and Form:



Exhibit C

4.0 URBAN DESIGN PLAN

- 11.2. Building floor plans should be sited in order to create definable pedestrian spaces: courtyards, pocket areas, larger sidewalks, variations of outdoor space, etc., which are all desirable design attributes that should be taken into consideration in the overall site design plan.

Examples of Compliant Massing and Form:



Examples of Non-Compliant Massing and Form:



Exhibit C

4.0 URBAN DESIGN PLAN

- 11.3. Building Form (articulation, scale and proportion) should be contextual. Buildings should be in a harmonious relationship to each other to promote an atmosphere of consistency of form rather than style relationships only.

Examples of Compliant Massing and Form:



Examples of Non-Compliant Massing and Form:



Exhibit C

4.0 URBAN DESIGN PLAN**12. Roofs and Parapets**

- 12.1. Roofs of non-residential buildings 15,000 square feet or less are to reflect hip and/or gable styles that replicate residential scale and pitch. In designing a residential scaled roof for non-residential buildings 15,000 square feet or less, the goal shall be a roof that provides for characteristic roof pitches/slopes of residential homes in the Town of Flower Mound (6/12 to 9/12 slope) and high steeply-pitched and/or expansive roof pitches/slopes shall be avoided. The Town Council may approve, upon recommendation from the Planning and Zoning Commission a waiver to this request for individual projects. Such requests should only be contemplated in areas that are not adjacent to residences, are part of large scale developments, and provide architectural detail to soften the appearance of large, tall vertical walls.

Examples of Compliant Pitch Roof:



Examples of Non-Compliant Roofs:



Exhibit C

4.0 URBAN DESIGN PLAN

- 12.2. Buildings of one or two stories over 15,000 square feet may have a flat or low-slope roof, but should use a parapet wall or mansard roof along the building perimeter, so that the flat or low-slope roof and any roof top mounted mechanical equipment is not visible from the public right-of-way or from neighboring residential buildings.

Examples of Compliant Flat Roof:



Examples of Non-Compliant Roof:



Exhibit C

4.0 URBAN DESIGN PLAN

13. “Big box” and warehouse/industrial development

13.1. The development of “Big box” retail, as defined by the Town’s Land Development Regulations, and warehouse/industrial development shall follow the above architectural standards except as follows:

13.1.1. Generally, buildings should avoid long, monotonous, uninterrupted walls or roof planes. The location of required building wall offsets, including projections, and recesses should be in context with the length of the building and used to add architectural interest and variety, and to relieve the visual effect of a simple, long wall. Roofline offsets should be provided in order to provide architectural interest and variety to the massing of the building and to break the roof into smaller scale components. Concentrating articulation for “big box” retail and large scale warehouse/industrial buildings at entry points and the corners of the building may be acceptable if other architectural details/accents and enhanced landscaping are used to mitigate the expansiveness of the wall.

Examples of Compliant “Big-box” and warehouse/industrial articulation:



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Examples of Non-Compliant “Big-box” and warehouse/industrial wall articulation:



13.1.2. Tilt-wall concrete that is used to meet the minimum masonry requirement of 80% on any elevation should include details and patterns that provide interest to the tilt-wall component. Such detail can be accomplished by patterned scoring, casting, texturing, or other finishing treatment.

Examples of Compliant “Big-box” and warehouse/industrial finished tilt-wall detail:



Exhibit C

4.0 URBAN DESIGN PLAN

Examples of Non-Compliant "Big-box" and warehouse/industrial tilt-wall:



Exhibit C

4.0 URBAN DESIGN PLAN

14. Open Space and Amenity Areas

14.1. Open space and amenity areas as required by the Master Plan or as proposed for a Planned Development District should have the following elements:

14.1.1. Open space and amenity areas should be integral to the development and include a plaza, park, linear greens, environmental preserves, or public square that serves as a prominent visual enhancement for the development, and provides amenities for employees and shoppers, is effective with the first phase of development, and adds value to nearby buildings;

Examples of Compliant Open Space and Amenity Areas:



Exhibit C

4.0 URBAN DESIGN PLAN

14.1.2. Open space and amenity areas should include enhanced landscape plantings and landscaped features and may include water elements that are connected to the development by sidewalks;

Examples of Compliant Open Space and Amenity Area:



Exhibit C

4.0 URBAN DESIGN PLAN



Exhibit C

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Exhibit C

4.0 URBAN DESIGN PLAN

- 14.1.3. Open space and amenity areas may include the preservation of existing wooded areas, view sheds, water bodies, topography, and stream corridors in a natural and contiguous state.

Examples of Compliant Open Space and Amenity Area:



15. Redevelopment

- 15.1. Buildings/sites planned for redevelopment are subject to the above architectural standards of the Urban Design Plan. In each case, amendments to a building's elevations and/or site plan should meet each requirement above or be in substantial conformance thereto. If complete conformance to the above standards cannot be practically achieved, substantial conformance is demonstrated by illustrating that the proposed changes to the elevations and/or site plan have moved the building / site closer to conformance with the standards and increased the building's enduring quality and design as applicable within the Town's Master Plan.

16. Mixed Use Architectural Standards

The following standards shall apply to all buildings and structures within Mixed Use Developments and the Central Business District in lieu of the Architectural Standards section above.

Franchise Architecture

- To ensure that the character and quality of retail and commercial buildings contribute to the desired objectives for the District, franchise architecture, as defined in the Arcitectural Standards section above, is prohibited.

Exhibit C

4.0 URBAN DESIGN PLAN***Building Façades***

- Building projections are encouraged. However, parts of each individual building's elements such as bays, show windows, balconies, canopies, awnings, colonnades, etc., need to be considered as a whole along the length of a block in terms of their scale, rhythm, and relationship to one another.
- Building facades employing offsets in the exterior wall plane in order to highlight the movement of sunlight across the building face are encouraged, along with elements such as cornices, spandrels, window sills, lintels, and building projections which visually break down the scale of the façade into more human scale components.
- Buildings should vary in their levels of detail, richness of material, and overall complexity of design. Buildings at significant sites, for example at corners, mid-block locations, and vista terminations, will utilize massings that are more varied and/or incorporate a higher level of detail.
- The quality of building facades shall reflect the hierarchy and relative importance of spaces which they face, marking a progression from principal streets, secondary streets, alleys, and interior block spaces.

Façade Materials

Exterior Building Finish materials shall consist of:

- Masonry, which is defined as brick, stone, cast stone, terra cotta, glass fiber reinforced concrete, precast concrete, and split face concrete masonry units
- Stucco, including synthetic stucco (exterior insulation finishing systems – EIFS).
- Glazed ceramic and porcelain tile.
- Fiber reinforced plastic (with the exception of plastic or vinyl siding) – used for exterior building components including but not limited to: cornice and entablature elements, decorative columns and pilasters, storefront trim, railings and balustrades, spandrel panels, and similar elements.
- Painted steel and aluminum, cast iron, bronze, copper, and zinc.
- Roofing materials (visible from any public right of way): copper, factory finished painted metal, slate, synthetic slate, terra cotta, cement tile, glass fiber shingles
- Materials other than those used above may be used for architectural trim and accent applications including but not limited to: cornices and decorative brackets, frieze panels, decorative lintels, shutters, and porch or balcony railings.
- The aggregate surface area of the primary façade material of building facades that front onto a public right-of-way or private streets shall be at least eighty percent (80%) masonry and may be up to twenty percent (20%) stucco/EIFS.
- The aggregate surface area of the primary façade material of building facades that front onto allies, vehicular block breaks and pedestrian block breaks shall be at least sixty percent (60%) masonry and may be up to forty percent (40%) stucco/EIFS.
- The aggregate surface area of the primary façade material of building facades that front onto the Block Interior shall be at least fifty percent (50%) masonry and may be up to fifty percent (50%) stucco/EIFS.

Notwithstanding the foregoing, the indicated maximum percentages may be exceeded on a per building basis provided they are maintained in the aggregate for any street side of a sub-district. For example, a single building may have a façade that is 100% stucco fronting onto a public right-of-way, provided that the aggregate area for all facades fronting that street, in that sub-district do not exceed 20%. Further, notwithstanding the foregoing, the limitations on the percentage of stucco/EIFS shall not apply to stucco or EIFS that is applied to a masonry or concrete substrate.

Exhibit C

4.0 URBAN DESIGN PLAN***Building Entrances***

- The design and location of building entrances shall be easily identifiable as primary points of access.
- Primary building entrances shall be defined and articulated by massing, or architectural elements such as lintels, pediments, pilasters, columns, porticos, canopies, overhangs, railings, balustrades, and other similarly appropriate elements. Building elements employed at entrances shall be compatible with the architectural style, materials, colors, and details of the building as a whole.
- Primary building entrances to lobbies for upper level uses shall be clearly identifiable and integrated into the design of the overall building façade.

Building Orientation

- Buildings shall be oriented toward the major street front with a primary entrance located on that street.
- The design of buildings on corner lots shall address both streets; however, where the cross street is a less important street, the façade design may change to reflect the relative importance of that street.
- Along major arterial roads, retail buildings may be oriented towards surface parking only if they are not adjacent to another major street.

Building Massing

- A building's massing and scale shall relate to its site, use, and the character of its neighborhood.
- Along any given block, building facades should align with each other at the primary exterior wall plane in order to create a consistent street edge.
- Buildings shall be built close to or up to the edge of the sidewalk. Exceptions can be made for the creation of entry courts within the length of a single façade or setbacks deemed appropriate for civic or institutional buildings.

Building heights should vary along the length of a block. Adjoining buildings of the same story height should, where practical and not in conflict with their overall architectural expression, have offsets in their adjoining parapet or cornice heights.

Roofs and Parapets

There is no required type of roof for particular building types, however, roofs shall be appropriate to the architectural style of the building. Roof mounted equipment shall be screened from public rights-of-way.

Utilities

There will be no overhead utility lines within a Mixed Use Development or within the Central Business District.

17. Rights-of-Way Landscaping Elements

The Town of Flower Mound Urban Design Plan provides for design direction for landscaping elements within and visible from public rights-of-way. These standards are to be implemented in conjunction with the Median and Right-of-Way Design Guidelines.

The landscaping standards related to rights-of-way include the following elements:

- Cross Timbers Conservation Development District
- Lakeside Business District and Denton Creek District
- Long Prairie District
- Prairie Vista District

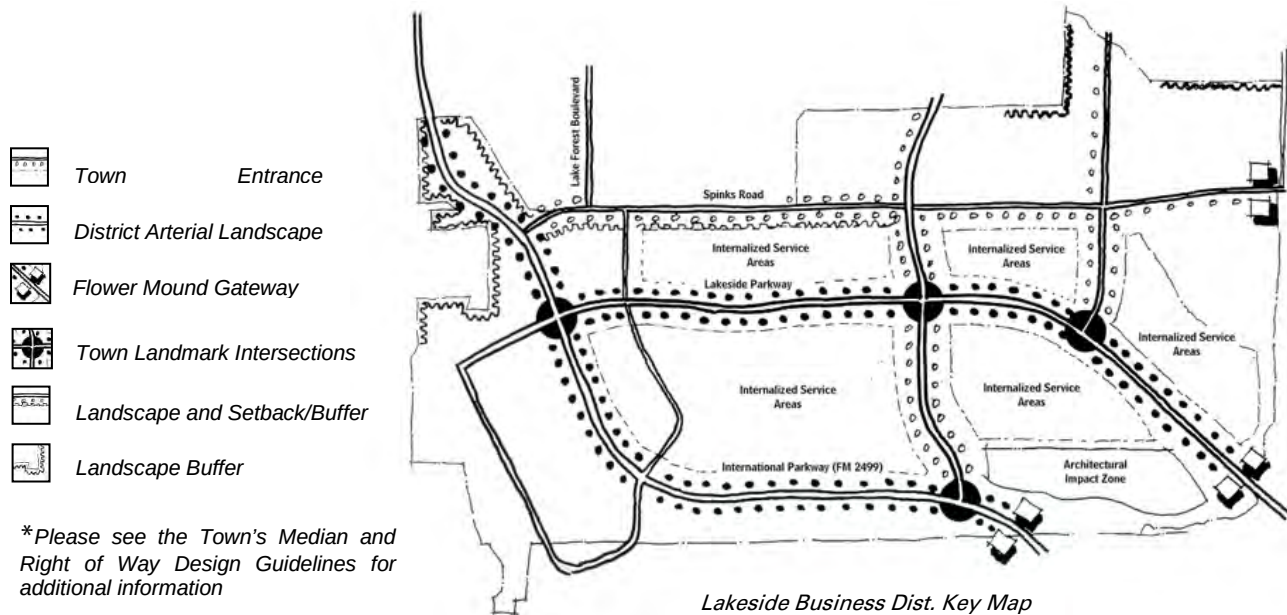
Exhibit C

4.0 URBAN DESIGN PLAN

Lakeside Business District and Denton Creek District

The Lakeside Business District and the Denton Creek District are two significant areas which are planned to develop as major commercial / employment centers in the DFW Metroplex.

The Lakeside Business District is located in the southeastern region of Flower Mound two miles north of the Dallas Fort Worth International Airport. Regional access is provided by International Parkway (FM 2499) and the planned Lakeside Parkway to SH 121 and SH 114.

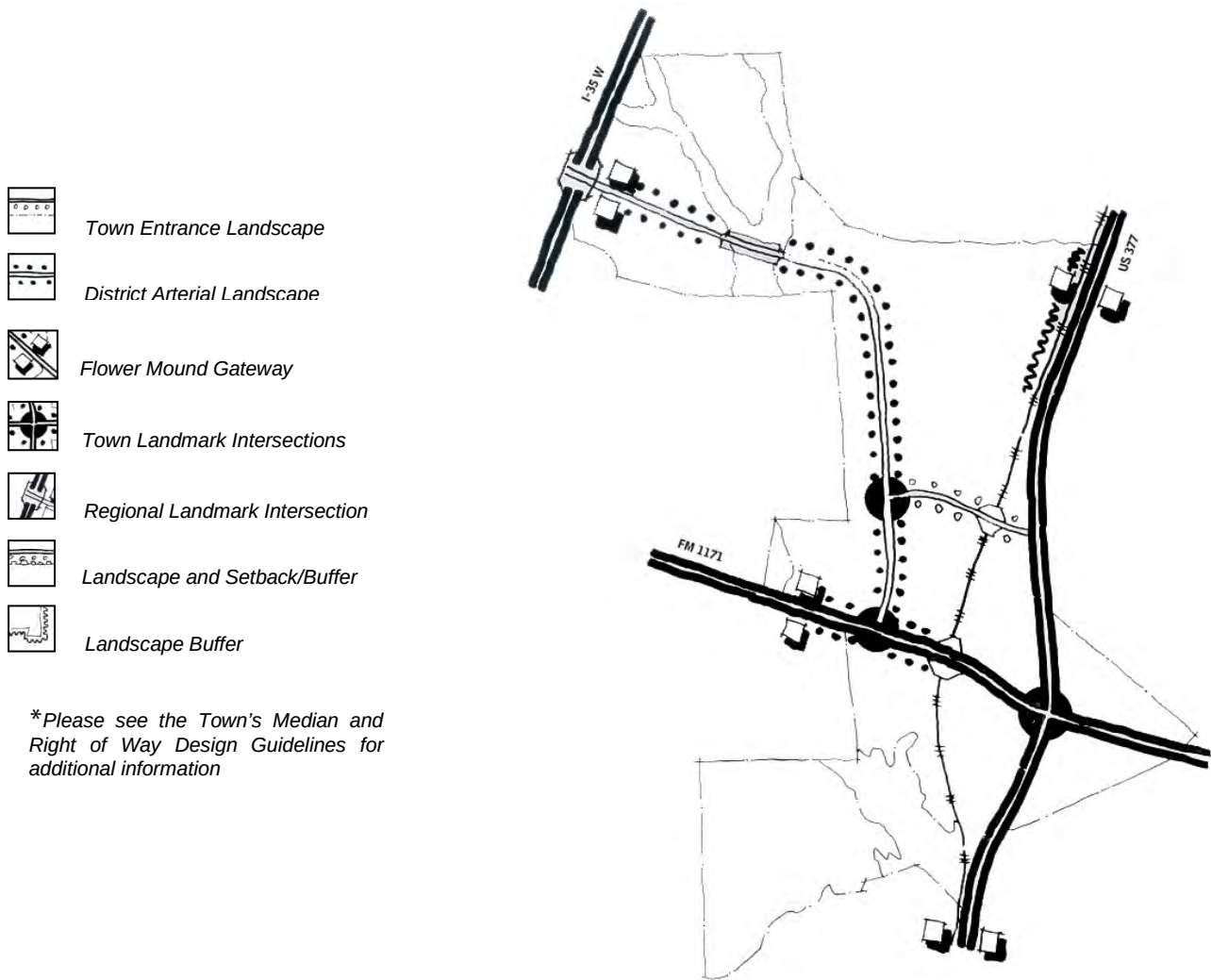


*Please see the Town's Median and Right of Way Design Guidelines for additional information

Exhibit C

4.0 URBAN DESIGN PLAN

The Denton Creek District is located in western Flower Mound near Alliance Airport and the Texas Motor Speedway. Excellent regional access for future development is provided by Interstate 35-W, US 377 and FM 1171.



**Please see the Town's Median and Right of Way Design Guidelines for additional information*

Denton Creek District Key Map

Exhibit C

4.0 URBAN DESIGN PLAN

1. Town Entrance Landscape

Town Entrance Landscape applies to the highways and major arterials which are the entrances into Flower Mound for the entire Town. They pass through the Lakeside Business District and the Denton Creek District, so they should be appropriate for and compatible with the commercial development anticipated in those districts. However, because they serve all of Flower Mound, they should reflect the character and quality of the entire Town as a front door entrance.

The intent is that the public and private landscape on these thoroughfares will be an integrated design, whether it is accomplished separately by the public and private sectors, as a joint public-private effort, or entirely be the private sector.

These landscape standards for the Lakeside Business District and the Denton Creek District are intentionally more stringent than the landscape buffer requirements of the Land Development Regulations. The resulting design is intended to be different from other districts in Flower Mound.

The Town Entrance Landscape is appropriate on the following roads:

Lakeside Business District:

- International Parkway (FM 2499)
- Lakeside Parkway

Denton Creek District:

- FM 1171
- US 377
- New arterial between FM 1171 and I-35W

Town Entrance Landscape: Public landscape within the right-of-way parkway

This approach is appropriate when utilities are located under the street or the median, and do not infringe upon the ability to provide the planting indicated within the parkway.

- Tree groves of not less than 100' in length spaced not more than 700' apart with an alternating pattern across the street.
- Trees are to be a large deciduous tree species from the approved Town of Flower Mound R.O.W. & Median Plant List.

Tree groves are comprised of a group of trees of the same species from the Town of Flower Mound approved Tree Planting list.

- Planting layout is to be informal.



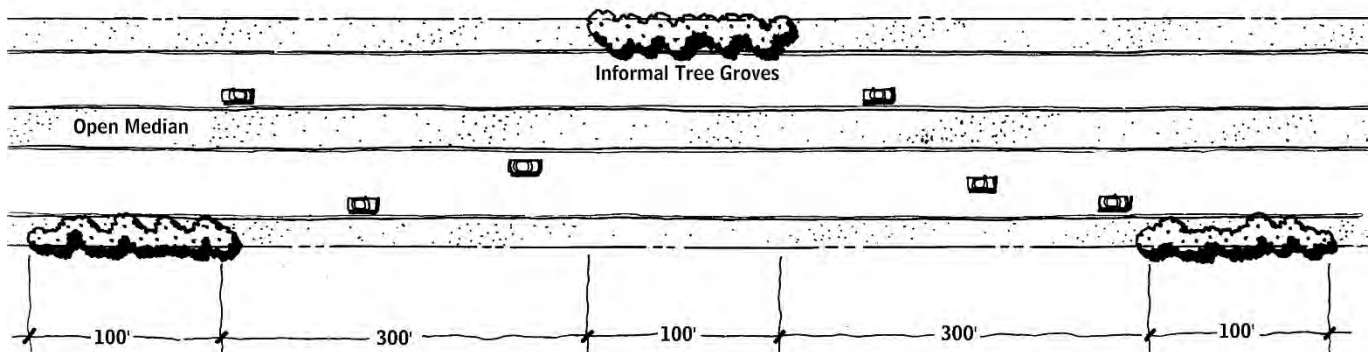
Native tree grove in right-of-way example



Informal tree groves example

Exhibit C

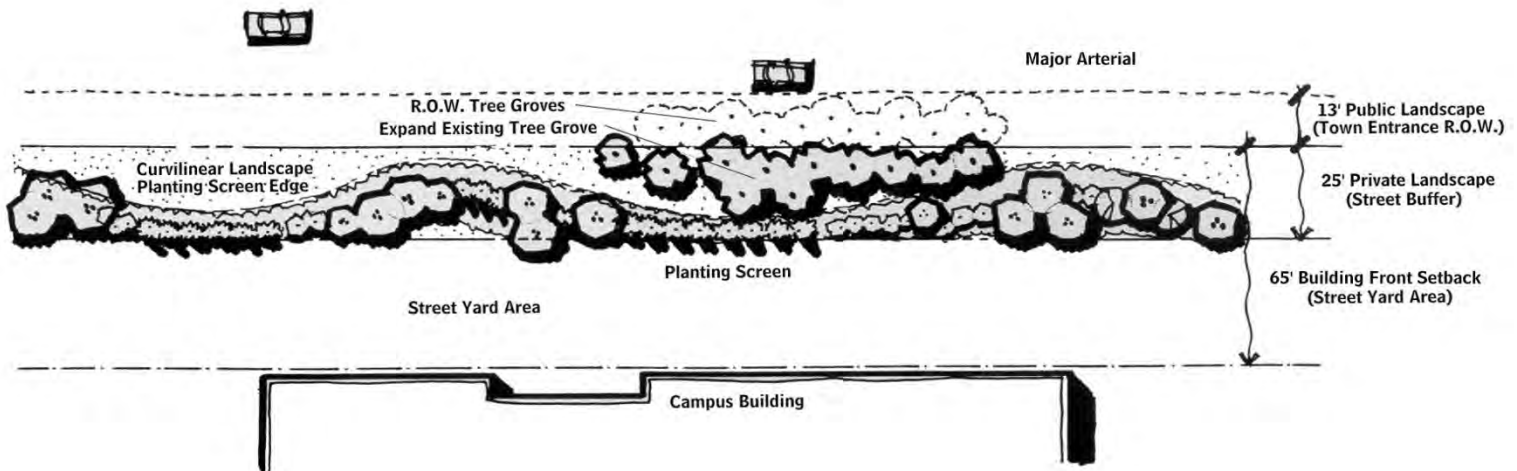
4.0 URBAN DESIGN PLAN



Public landscape within the right-of-way parkway typical plan

Town Entrance Landscape: Private Street Yard Area Landscape

- A 25' width Landscape Street Buffer is located from the R.O.W. / Property line set back into the private property. This Buffer is within the Building Setback (Street Yard) area described in the Town's Landscaping Standards.
- Plantings shall be in a curvilinear planting layout.
- Implementation will be provided at the time of development by the developer.



Town entrance arterial street buffer typical plan

Town Entrance Landscape: Flexibility of Private Street Yard Area Landscape

- Because of utility requirements, it is intended that the private street yard area landscape standard be flexible in its application.
- As much as five feet of the private street yard area landscape may be placed within the public right-of-way, with ten feet being on the private property.
- Alternately, as much as ten feet of the private street yard area landscape may be placed within the public right-of-way, with five feet being on the private property.
- Alternately, all 15' may be on private property next to parking.
- If any of the private street yard area landscape is placed within the public right of way, a public access easement is to be granted to the Town, at the Town's discretion.

Exhibit C

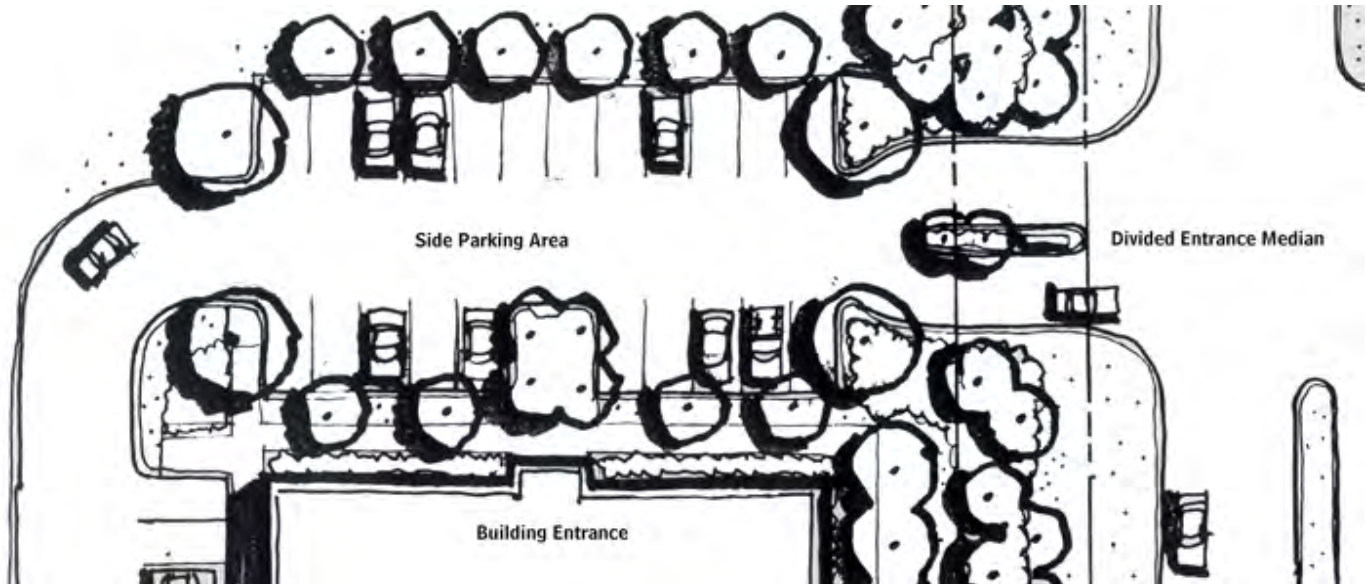
4.0 URBAN DESIGN PLAN

Town Entrance Landscape: Sidewalks

- Sidewalks are required by the Land Development Regulations, in addition to the Landscape Street Buffer.
- Implementation will be provided at the time of development by the developer.
- Sidewalks should be curvilinear and integrated with the public landscape and the private landscape buffer.

Town Entrance Landscape: Parking

- Parking shall be allowed in the front, side and rear yards of buildings.
- Parking in the front yards of Town Entrance Arterials shall be a maximum double loaded configuration with a single travel lane.



Side yard parking typical plan

Town Entrance Landscape: Vehicular Access from Major Arterials

- Divided entries shall have a 6' minimum width highly landscaped median to improve traffic safety.
- Access to provide opportunities for shared access between adjacent developments to aid in traffic management.



Divided entrance median example

Exhibit C

4.0 URBAN DESIGN PLAN***Town Entrance Landscape: Bridges***

- Vehicular bridges should have a special architectural treatment and enhancement beyond standard conditions.
- The treatments should include railing and abutment designs that increase their civic character and relationship to the Town.
- These bridge enhancements can be adapted to existing structures or completed with new construction.
- The future Bridge at Interstate 35W is a reflection of Flower Mound for all regional traffic, and should be of exemplary architectural quality as seen both from the freeway and on the bridge itself.
- Bridges on arterials are to incorporate sidewalk access to provide pedestrian continuity, as appropriate.



*Enhanced freeway and overpass
bridge treatment example*



*Enhanced freeway and overpass
bridge treatment example*



*Enhanced freeway and overpass
bridge treatment example*



*Enhanced arterial bridge treatment
with sidewalk example*

Exhibit C

4.0 URBAN DESIGN PLAN

2. District Arterial Landscape

District Arterial Landscape is appropriate for key roads serving the Lakeside Business District and the Denton Creek District in which they are located, and which are also important for Flower Mound residents as entry routes to other districts. Their landscape and urban design treatment should reflect the predominantly commercial nature of development anticipated in the Lakeside Business and Denton Creek Districts, but should also reflect the character and quality of the overall Town.

The intent is that the public and private landscape on these streets will be an integrated design, whether it is accomplished separately by the public and private sectors, as a joint public-private effort, or entirely be the private sector.

These landscape standards for the Lakeside Business District and the Denton Creek District are intentionally more stringent than the landscape buffer requirements of the Land Development Regulations. The resulting design is intended to be different from other districts in Flower Mound.

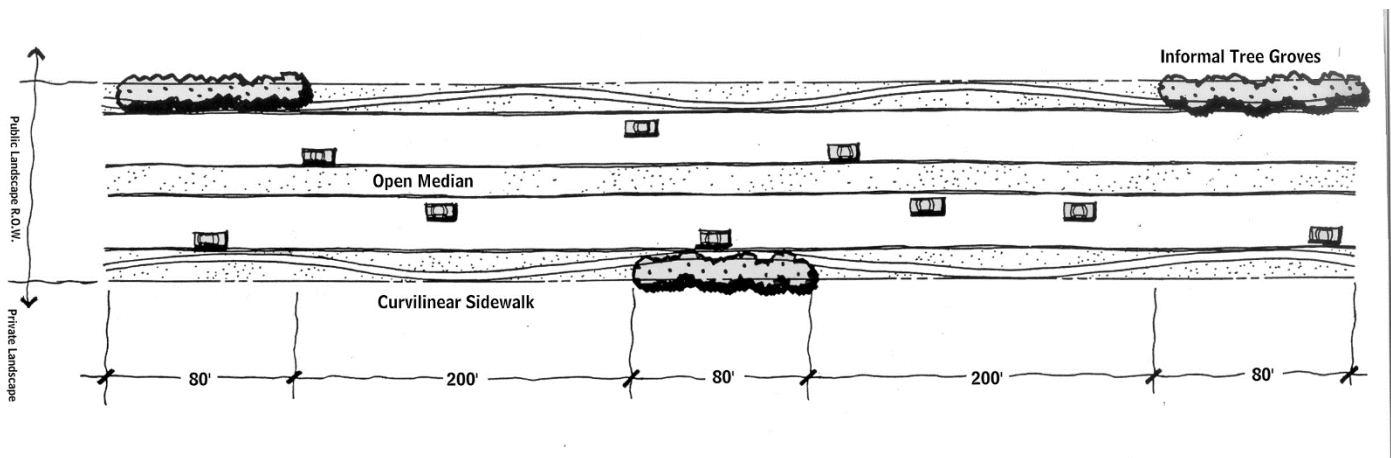
The District Arterial Landscape is appropriate on the following roads:

Lakeside Business District:

- Gerault Road
- Garden Ridge Road
- Spinks Road

Denton Creek District:

- New arterial between new I-35W / FM1171 arterial and US 377



District arterial landscape in the public right-of-way typical plan

Exhibit C

4.0 URBAN DESIGN PLAN***District Arterial: Public Landscape within the right of way parkway***

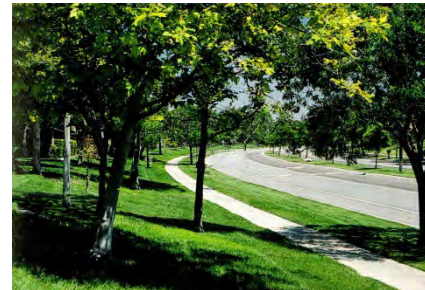
- This approach is appropriate when utilities are located under the street or the median, and do not infringe upon the ability to provide the planting indicated within the parkway.
- Tree groves of 80' in length spaced 480' apart with an alternating pattern across the street.
- Trees are to be a large deciduous tree species type from the approved Town of Flower Mound R.O.W. & Median Tree Plant List.
- For Denton Creek District:
 - A curvilinear sidewalk with large tangent curves with no less than 400' tangent intersection points, within the public right-of-way.
- For Lakeside Business District:
 - Sidewalks should be integrated into the landscaping in the public right-of-way.

Planting layout is to be informal, random tree placement.

- Tree groves are defined as a group of trees that consist of the same species.
- Placement of driveway curb cuts should be in accordance with the Town's Engineering Standards. When there are conflicts between driveway locations and the landscape guidelines, the planting should be adjusted, but follow the intent of the guidelines as closely as possible.



Example of informal public district arterial landscape in the right-of-way



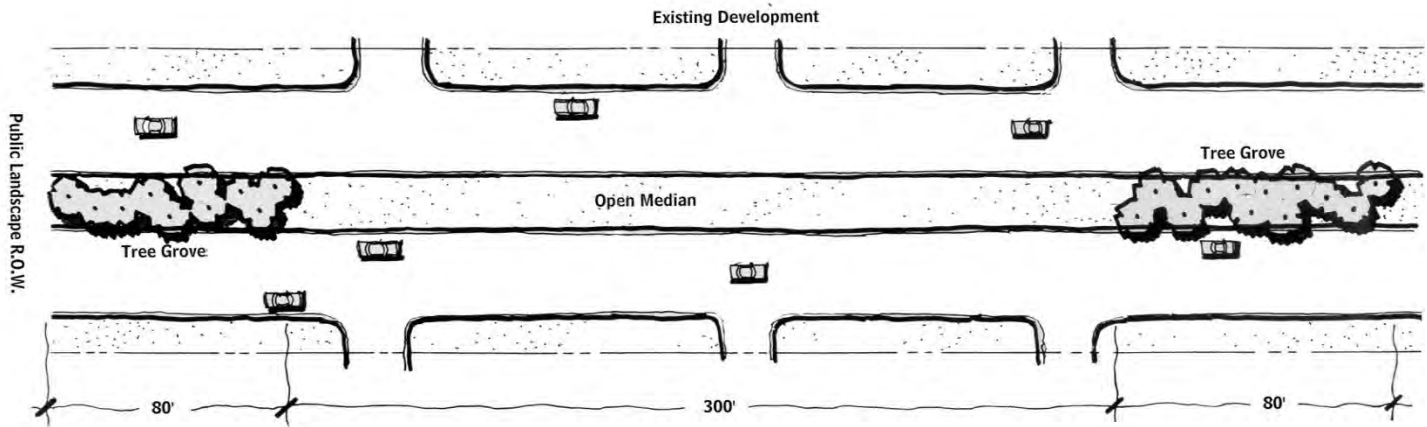
Example of informal public district arterial landscape in the right-of-way

District Arterial: Public Landscape within the median

- This approach is appropriate when utilities are located under the parkway, and infringe upon the ability to provide the landscape within the parkway.
- Tree Groves of 80' in length spaced 480' apart.
- Trees are to be a large deciduous tree species type from the approved Town of Flower Mound R.O.W. & Median Tree Plant List.
- Planting layout is to be informal, random tree placement.
- Tree groves are defined as a group of trees that consist of the same species.
- For Denton Creek District:
 - A curvilinear sidewalk with large tangent curves with no less than 400' tangent intersection points, within the public right-of-way.
- For Lakeside Business District:
 - Sidewalks should be integrated into the landscaping in the public right-of-way parkway.

Exhibit C

4.0 URBAN DESIGN PLAN



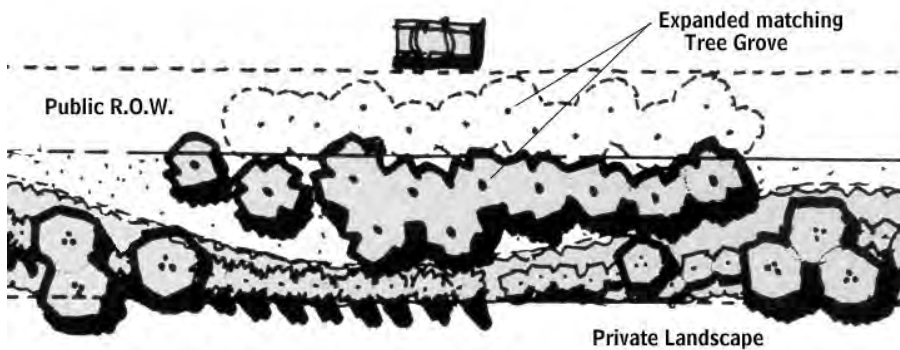
District arterial landscape in the median typical plan

District Arterial: Private Street Yard Area Landscape

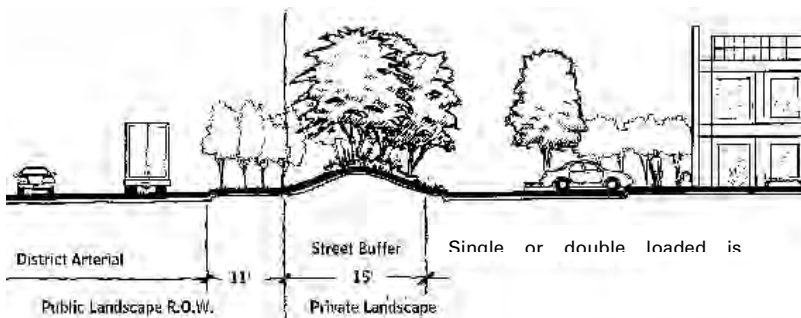
- Landscape Street Buffer planting located adjacent to the ROW/ Property line back into private property to a width of 15'.
- Planting layouts should be informal with a curvilinear planting edge.
- Improvements include landscaping and/or earthen berms, to a height of three feet maximum to screen surface parking in accordance with the Town's Land Development Regulations.

A double loaded parking bay is acceptable in the street yard area if the building setback exceeds the 60' Land Development Regulations minimum.

- Implementation will be provided at the time of development by private developer.



District Arterial Street Buffer Typical Plan



15' wide street buffer typical section

Exhibit C

4.0 URBAN DESIGN PLAN

District Arterial: Compatibility buffer on the south side of Spinks Road

- A 25' minimum street buffer and landscape screen is required along the south side of Spinks Road for Commercial /Industrial development, including berms and shrubs for complete visual screening from the residential neighborhoods on the north side of Spinks Road.

District Arterial: Flexibility of Private Street Yard Area Landscape

- Because of utility requirements, it is intended that the private street yard area landscape standard be flexible in its application.
- As much as five feet of the private street yard area landscape may be placed within the public right-of-way, with ten feet being on the private property.
- Alternately, as much as 10 ft. of the private street yard area landscape may be placed within the public right-of-way, with five feet being on the private property.
- Alternately, all 15' may be on private property next to parking.
- If any of the private street yard area landscape is placed within the public right of way, a public access easement is to be granted to the Town, at the Town's discretion.

District Arterial: Sidewalks

- Sidewalks are required by the Land Development Regulations, in addition to the landscape street buffer.
- Implementation will be provided at the time of development by the developer.
- Denton Creek District:
 - Sidewalks should be curvilinear and integrated with the public landscape and the private landscape buffer.
- Lakeside Business District:
 - Sidewalks should be integrated with the public landscape and the private landscape buffer.

District Arterial: Parking

- Parking shall be allowed in the front, side and rear yards of buildings.
- Parking in the front yards shall be a maximum double loaded configuration with a single travel lane.
- Private landscape planting, topography and/or landform features shall reasonably screen the parking from view of the District Arterial.
- Shade Trees are required in accordance with the Land Development Regulations.



Landscape screening of parking example

Exhibit C

4.0 URBAN DESIGN PLAN

District Arterial: Vehicular Entrances from Arterials

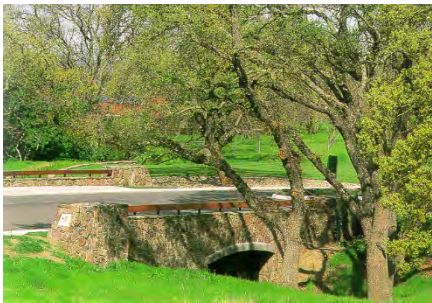
- Divided Entries shall have a 6' minimum width highly landscaped median to improve traffic safety.
- Sight distances and visibility at driveway intersections must be in accordance with the Land Development Regulations.
- Planting layout to be informal and utilize small flowering trees and shrubs.
- Access to provide opportunities for shared access to aid in traffic management.
- Signage if utilized, shall conform to the Land Development Regulations, be monument signs, and be set back from street enough to allow for driver visibility.



Signage in the divided median example

District Arterial Bridges

- Vehicular bridges for District Arterials should have a special treatment design and materials enhancement beyond standard bridge construction.
- The treatments should include railing and abutment designs that increase their civic character and reflection of the Town's community character.
- These bridge enhancements can be adapted to existing structures or completed with new construction.
- Bridges are to incorporate sidewalk access to provide pedestrian continuity, as appropriate.



District arterial bridge enhancement



District arterial bridge enhancement

Exhibit C

4.0 URBAN DESIGN PLAN***Lakeside Business/Denton Creek Street Lighting***

- The street lighting standard and fixture on Town Entrance and District Arterial streets should be selected by the Town as a distinctive lighting element for these districts.



Example of Lakeside/Denton Creek Town Entrance and District Arterial light fixture

Architectural Impact Zone

The land in this zone in the Lakeside Business District is highly visible from northbound traffic on International Parkway as it enters Flower Mound. Because of the prominence of this site, and its significance to the Town's entry, buildings in this zone as seen from International Parkway should be designed with particular attention to architectural quality and features.

Architectural Impact Zone: architectural elements visible from International Parkway

- Industrial buildings are not precluded from this zone.
- Facades and elevations seen from International Parkway should be of significantly higher architectural quality than is generally associated with industrial buildings.
- Mechanical systems in this zone should be 100% screened from view from the International Parkway public right of way.



Example of industrial building with high architectural quality facade



Example of industrial building with high architectural quality facade

Exhibit C

4.0 URBAN DESIGN PLAN

3. Internalized Service Areas

- Service areas such as truck docks, layout or storage yards, utility components, trash handling and similar unsightly elements that are essential to appropriate commercial and industrial uses should be planned for locations internal to the development areas bounded by Town Entrance arterials and District arterials.
- Such service uses should not be visible from the Town Entrance arterial and District arterial streets.
- Screening should be by planting, landforms or walls, as described under District Landscape Street Buffers.

In the Lakeside Business District, the Town Entrance arterials and District arterials include:

- International Parkway (FM 2499)
- Gerault Road
- Lakeside Parkway
- Spinks Road
- Garden Ridge Road

In the Denton Creek District, the Town Entrance arterials and District arterials include:

- FM 1171
- US 377
- the new arterial from I-35W to FM 1171
- the arterial between the new I-35W/FM 1171 arterial and US 377

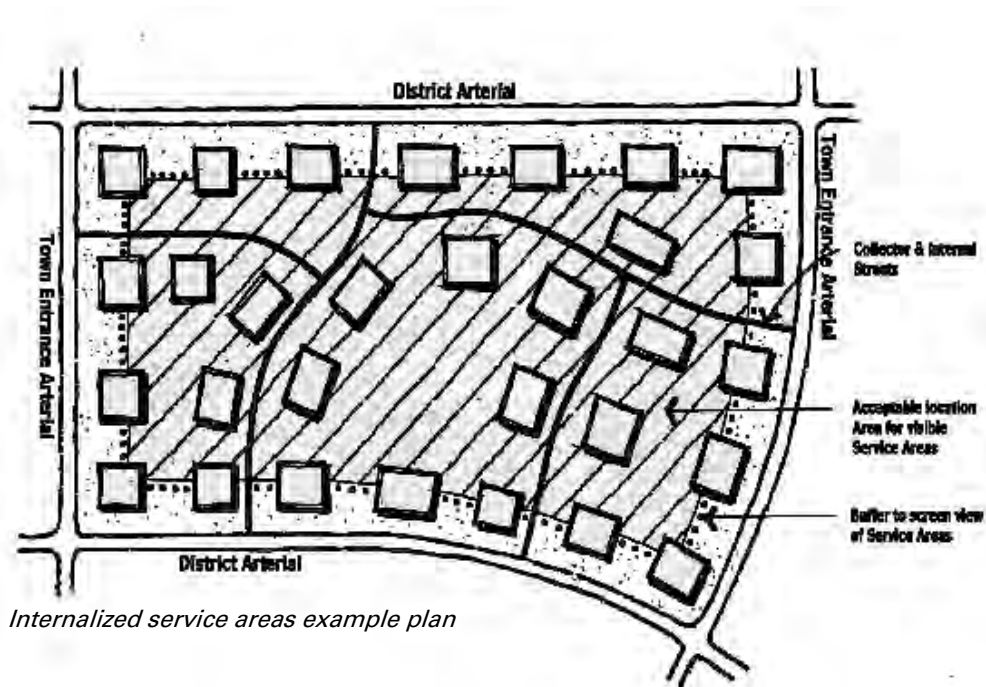


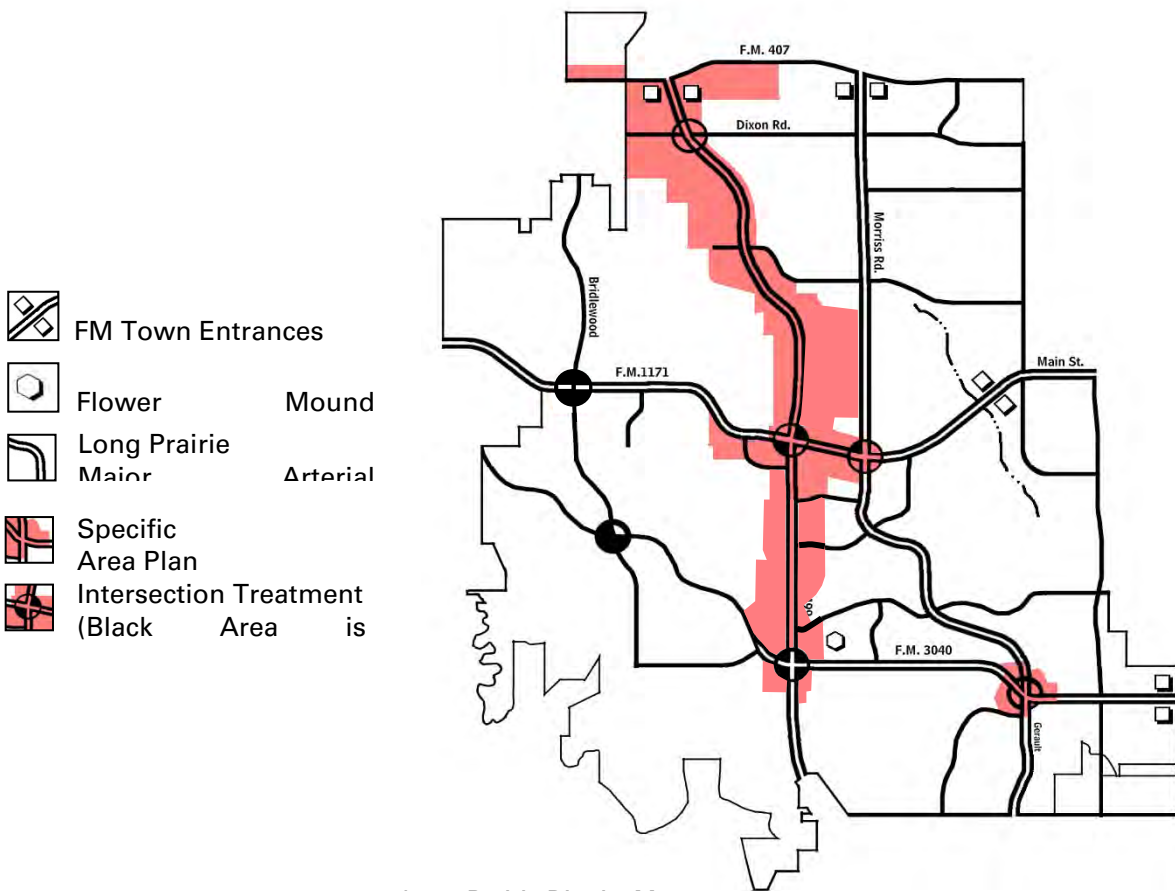
Exhibit C

4.0 URBAN DESIGN PLAN

Long Prairie District

The Long Prairie District is located in the northern and eastern most areas of Flower Mound. This district is primarily developed with suburban residential and commercial land uses. This district provides many of the commercial and employment opportunities in current Flower Mound. FM 1171, FM 3040, FM 407 and FM 2499 provide access to this district. The Urban Design Plan for the Long Prairie District emphasizes elements which will provide a relation to the rest of the Town, as well as unifying elements for Long Prairie:

- Flower Mound Town Entrances
- Major Arterial Landscape
- Flower Mound Landmarks
- Long Prairie Minor Arterial Landscape
- Intersection Treatment (Black Area is developed)



Long Prairie District Map

**Please see the Town's Median and Right of Way Design Guidelines for additional information*

The Central Business District (CBD) shall not be required to conform to the standards of this section.

Exhibit C

4.0 URBAN DESIGN PLAN

Natural Landmarks

Protecting the natural landmarks which remain in the Long Prairie District will help to unify the district with the overall character of the Town through preserving remnants of the area's country atmosphere and natural environment.

1. Natural Landmarks

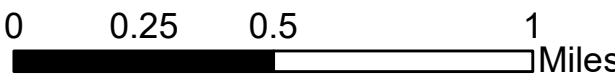
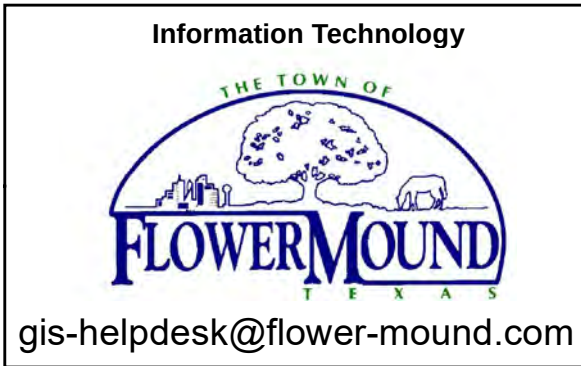
- Enhance existing natural landmark elements through providing the following: public access and/or views, parking and connections to pedestrian walkways and/or trail system.
- Natural landmarks should include; Flower Mound's Mound, specimen trees, significant earth forms and other historic or cultural elements



Landmark Tree Preservation example



Flower Mound Landmark



Land Use - Oct 2022

Land Use - Oct 2022

- County Limit
- Boundaries
- Cross Timbers Protection Area
- Parcels
- Mixed Use
- Rural Residential
- Estate Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- High Density Single Family Detached
- High Density Residential
- Retail
- Office
- Office or Medium Density Residential
- Commercial
- Commercial/Industrial
- Commercial/Industrial or Mixed Density Residential
- Campus Commercial
- Campus Industrial
- Utility
- Institutional
- Grapevine Lake
- Corps of Engineers
- Flood Plain
- Park
- Canyon Falls Open Space
- Area Plan**
- Cross Timbers Conservation Development District
- Denton Creek District
- Lakeside Business District
- Prairie Vista District

This data has been compiled by the Town of Flower Mound and is for informational purposes. Various official and unofficial sources were used to gather this data, but it does not represent an on-the-ground survey and shows only the approximate relative location of property boundaries.

Every effort was made to ensure the accuracy of this data, but it may not be suitable for legal, engineering, or surveying purposes. As such, no guarantee is given or implied as to the accuracy of of this data. For official verification of landuse and zoning boundaries please contact the Planning Department.



TOWN COUNCIL AGENDA ITEM NO. 19

REGULAR ITEM

DATE: October 17, 2022

FROM: Lexin Murphy, Director of Planning Services

ITEM: **Public Hearing to consider an ordinance amending the Land Development Regulations (LDR22-0002 – Cross Timbers Conservation Development District Update) by amending Chapter 98 “Zoning,” of the Town's Code of Ordinances to amend conservation development standards within the Cross Timbers Conservation Development District. (The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 10, 2022, meeting.)**

SUMMARY DATA: This Town-initiated item proposes to amend the Town’s Land Development Regulations by updating and introducing language related to development standards for the Cross Timbers Conservation Development District. The proposed amendment focuses on elements related to conservation development such as density, minimum lot size, open space characteristics, landscaping, and buffers.

BACKGROUND INFORMATION: Town Council was provided with an overview of the CTCDD and the three primary development patterns during the 2021 Strategic Planning Session (SPS). Following the presentation, Council’s discussion led to the call for a future work session. Since then, several work sessions and public input opportunities have taken place. Following these opportunities, and the 2022 SPS, Council signaled for the item to be reviewed by the Planning and Zoning Commission for recommendations. The Commission held a work session on this topic during their August 29, 2022, meeting, and staff incorporated the recommendations from the work session into the draft documents that were presented during the regular item discussion on October 10, 2022.

Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item. During P&Z deliberation, there was discussion on the importance of emphasizing tree preservation within designated open spaces and the limitations of conservation efforts within utility easements. The Commission recommended approval with the incorporation of additional language prioritizing tree preservation and removing any acreage in dedicated and maintained, but unimproved, utility easements from counting toward open space calculations. These changes are reflected in the draft ordinance.

To learn more about the CTCDD Update process to date, visit <https://www.flower-mound.com/2148/2022-CTCDD-Review>.

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.

ORDINANCE NO. _____

Page 1

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 98, "ZONING," OF THE TOWN'S CODE OF ORDINANCES, TO AMEND CONSERVATION DEVELOPMENT STANDARDS RELATED TO THE CROSS TIMBERS CONSERVATION DEVELOPMENT DISTRICT; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town Council of the Town of Flower Mound previously adopted Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended; and,

WHEREAS, the Town Council finds and determines that it is necessary to amend various development standards related to conservation development after reviewing findings from the Cross Timbers Conservation Development District ("CTCDD") 2022 update effort initiated by Town Council at their January 18, 2022 regular meeting; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on October 10, 2022, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on October 17, 2022, with respect to the amendments described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Texas Local Government Code, Chapter 78 of the Town's Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a Land Development Regulations amendment; and,

WHEREAS, the Town Council finds that the amendments to Chapter 98 as outlined herein are in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public;

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

SECTION 1

Portions of Section 98-167, "Conservation development," of Subdivision G, "Community Character," of Division 4, "Criteria Categories and Applications," of Article II, "Smartgrowth Program," of Chapter 98, "Zoning," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-167. – Conservation development.

- (a) No development application or project shall be approved for a conservation development unless it complies with applicable requirements set forth in the land development code for a conservation development within an A agricultural district or SF-E single-family estate district.

***"

SECTION 2

Section 98-271, "Purpose and intent," of Division 3, "A agricultural district, conservation district, and rural development," of Article III, "District regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-271. Purpose and intent.

The A agricultural district is designed primarily for agricultural uses and for single-family detached development. It is intended for areas designated as "rural residential" land use or within the "Cross Timbers Conservation Development District" area on the land use map of the comprehensive master plan, as amended. In addition to the use and area regulations of this division, development in the A agricultural district must be in compliance with all other applicable provisions of this chapter."

SECTION 3

Portions of Section 98-276, "Minimum dimensions," of Division 3, "A, agricultural district, conservation district, and rural development," of Article III, "District regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-276. – Minimum dimensions.

- (a) *Minimum lot area per dwelling.* The minimum lot area per dwelling unit for residence uses in the A agricultural district shall be two acres or 87,120 square feet, unless otherwise provided by section 98-277.
- (b) *Minimum lot width.* The minimum lot width for residential uses in the A agricultural district shall be 200 feet, unless otherwise provided by section 98-277, subject to section 98-1024.

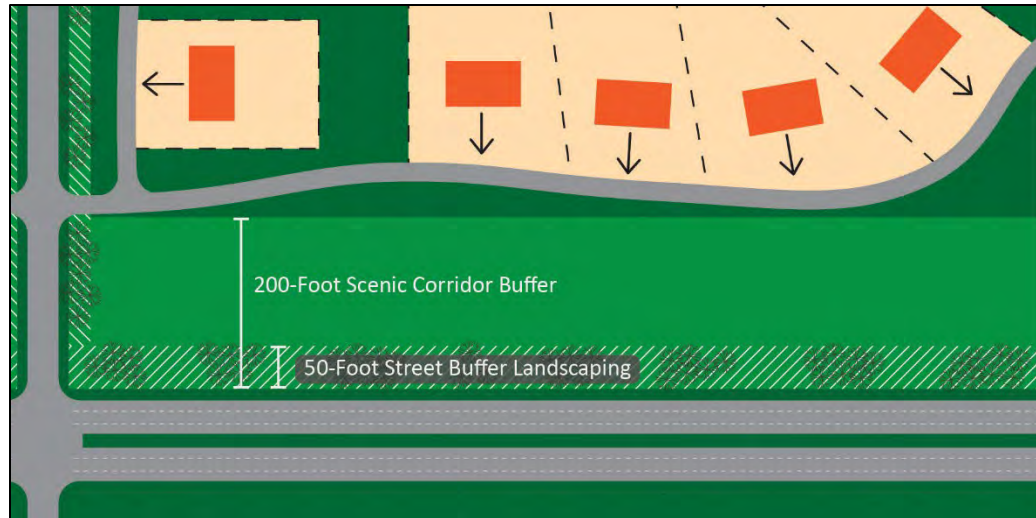
***"

SECTION 4

Section 98-277, "Conservation development option and standards," of Division 3, "A, agricultural district, conservation district, and rural development," of Article III, "District regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended in its entirety to read as follows:

"Sec. 98-277. – Conservation development options and standards.

- (a) *Purpose and definition.* The following standards and conditions shall apply to any proposed conservation development in the A agricultural district as part of a planned development application, and its associated uses. The term "conservation development" means a residential development project in which dwelling units are constructed on smaller lots than otherwise permitted by the A agricultural district, for the purpose of preserving open or natural lands as an integral component of the development.
- (b) *Development standards.* This subsection describes standards related to lot size, lot width, and project density.
 - (1) *Project density.* The maximum allowable residential density for a conservation development project shall be one unit per two acres.
 - (2) *Minimum land area per dwelling unit.* The minimum land area per dwelling unit for residential uses shall be 0.75 acres or 32,670 square feet.
 - a. *Lot size variety.* No less than 25 percent of the proposed lots in a development must be at least one acre or 43,560 square feet in size.
 - (3) *Minimum lot width.* The minimum lot width for residential uses shall be 150 feet, subject to section 98-1024.
 - (4) *Street buffer yard.* Development must comply with sections 82-241 and 94-62.
 - a. *Trees.* The number of trees required must comply with section 82-242; the placement of trees must comply with section 94-62.
 - (5) *Scenic corridor buffer.* A 200-foot scenic corridor buffer is required along the scenic roadway. The required street buffer yard may be used to partially satisfy this requirement.
 - (6) *Illustration.*



(c) *Open space standards.* This subsection describes standards for dedication of land for and improvement of public and private open space for conservation development projects.

(1) *Preservation of natural features.*

- a. Preservation of the following areas shall be prioritized and counted toward fulfillment of open space requirements.
 - i. Development must be designed and sited to preserve and protect the 100-year floodplain, consistent with applicable provisions of this chapter.
 - ii. Significant stands of native trees and any other areas of substantial vegetation should be preserved and protected from alteration or destruction. The establishment of new vegetative communities is encouraged.
 - iii. All other significant natural features should be preserved and, where necessary, protected by setbacks from development.
- b. *Minimum project open space.* Applications for a conservation development must propose an appropriate percentage of open space based on the character of natural features of the site. In no instance shall the percentage be less than 45 percent of the gross project area.
- c. *Open space dedication.* In meeting requirements for open space, the developer must dedicate land or convey open space using one of the following methods.
 - i. *Conservation easement.* Land must be held within a conservation easement by a qualified nonprofit entity or organization that manages open space, such as a land trust, or other qualified entity, pursuant to section 170(h) of the Internal Revenue Code, as amended.
 - ii. *Homeowners' association.* Conserved land conveyed as open

space must be platted into an x lot and be maintained by the homeowner's association.

- iii. *Dedicated to governmental entity.* Land proposed to be used as parkland may be approved and accepted by the Town.
- d. *Open space design and improvements.* The design and improvements of open space shall be in accordance with the following standards. These standards may be supplemented by administrative guidelines.
 - i. For land to be considered open space, the following must be met.
 - 1. *Minimum area.* Must be equal to or greater than 15,000 square feet or one percent of the project's gross area, whichever is greater.
 - 2. *Minimum width.* Must not have a width or length less than 40 feet.
 - 3. *Utility easements.* Utility easements shall be counted toward open space if a trail and/or appropriate amenity is proposed, or if vegetation within the utility easement is native and not required to be manicured.
 - ii. Open spaces in a conservation development must be linked to any existing and planned public open space and conserved areas to provide an overall open space system within the Cross Timbers Conservation Development District.
 - 1. Eco-fringe buffers, required by subsection f below, meeting the minimum width standard used to satisfy this requirement may count toward meeting the open space requirement.
 - 2. Open spaces divided by necessary roadways, as determined by the Town Manager or their designee, shall be considered linked for the purpose of this subsection.
 - iii. Open spaces shall be arranged to maximize reasonable access, equity, and utilization for all residential lots within the proposed development.
- e. *Trees.* Trees used within open space areas associated with a conservation development must only include trees denoted as appropriate from section 94-68 of this Code.
- f. *Parks.* Parks may be proposed and approved as part of a conservation development.
 - i. *Active parks.* Such parks must be limited to an area no greater than the minimum parkland area required by section 90-443.
 - 1. *Permitted parks.* Examples of appropriate active parks

include fishing piers and neighborhood playgrounds.

2. *Restricted parks.* Playing fields, motorized vehicle trails, and campgrounds are not permitted.

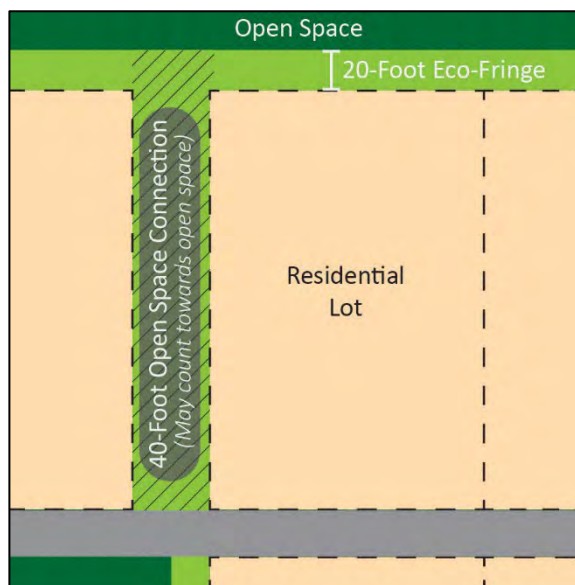
ii. *Passive parks.* Passive parks such as walking, running, and equestrian trails shall be permitted as identified on the Town's master plan, and throughout the development as appropriate. Such trails should be planned to minimize disturbances to environmentally sensitive areas.

g. *Eco-fringe buffer.* An eco-fringe buffer extending at least 20 feet from all exterior side and rear residential property lines adjacent to open spaces is required.

i. The eco-fringe buffer shall not count toward meeting open space requirements, unless otherwise provided by subsection d. above.

ii. Maintenance for eco-fringe buffers must be documented within the required open space management plan, subject to subsection h. of this section below.

iii. Illustration.



(d) *Project design.*

(1) The intent of the following regulations is to encourage outstanding project design for conservation development projects. The following standards will be used to evaluate project design:

a. The arrangement of all uses and improvements should reflect the natural capabilities and limitations of the site, as well as the characteristics and limitations of adjacent property.

b. Development must be compatible with the immediate environment of the site and neighborhood relative to existing adjacent residential

densities unless otherwise buffered in an acceptable manner; scale, bulk, and building height; historical character; and disposition and orientation of buildings on the lot.

- c. Buildings, roadways, open space, and landscaping must be:
 - i. Designed and arranged to produce an efficient, functionally organized, and cohesive development;
 - ii. In favorable relationship to the existing natural topography, bodies of water, exposure to sunlight and wind, and view corridors; and
 - iii. Designed and arranged to maximize the opportunity for privacy by the residents of the project and surrounding areas.
- d. Building sites must be located to minimize their impact on view corridors.
 - i. To protect the integrity of the view corridors and the scenic corridor buffer, homes closest to the scenic roadway or a country roadway should face toward either roadway so that the rear side of homes is not visible.

(e) *Outdoor lighting.* New residential subdivisions with five or more buildable lots within the Cross Timbers Conservation Development District must comply with the following outdoor lighting standards.

- (1) *Applicability.* The following standards do not apply to lighting on residential lots.
- (2) New public outdoor lighting, including street lighting, must make use of timers, dimmers, motion sensors, or other adaptive controls, and must be substantially dimmed or extinguished by 11:00 p.m., unless public safety concerns demand otherwise, as determined by Town Council.
- (3) Lighting for public and private outdoor facilities must be shielded such that no light-emitting part of fixtures is visible from any other property.
- (4) Outdoor lighting fixtures using lamps or bulbs, regardless of the number of bulbs and level of initial lamp lumens, must not exceed 3,000 kelvins and meet the following:
 - a. If the initial lamp lumens are equal to or greater than 1,500, the fixture must be fully shielded. No shielding is required for fixtures with an initial lamp lumens less than 1,500.
 - b. Outdoor lighting fixtures must be sufficiently shielded and aimed such that spillage of light onto adjacent properties is minimized and glare from the light emitting and/or reflecting parts of a luminaire is not visible from an adjacent property.
 - c. Sag-lens, drop-lens, searchlights, beacons, laser sources, and mercury vapor fixtures are prohibited.
 - d. Outdoor uplighting is prohibited, except in cases where the fixture is

shielded by a roof overhang or similar structural shield that will not cause light to extend beyond the structural shield.

- (f) *Subdivision entry and signage.* Applications for a conservation development must include design standards for subdivision entries and signage. The design should include elements of wood, stone or rock, and integrate fencing complying with section 98-1143(b).
 - (1) *Maximum height.* Subdivision entries shall not exceed 12 feet in height.
 - (2) *Maximum sign face.* Subdivision entry sign faces shall not exceed 60 square feet.
 - (3) *Exception.* The Town Council may grant an exception to the subdivision entry and signage standards contained in this subsection, provided that the proposed modification conforms with the vision of the CTCDD area plan.
- (g) *Scenic roadway fencing.* Fencing along scenic roadways must comply with section 98-1143(b).
- (h) *Open space management plan.* An open space management plan must accompany all zoning applications for a conservation development and be reviewed yearly by the Environmental Conservation Commission. The plan must include the following:
 - (1) Conceptual landscaping associated with the applicant's zoning application that complies with the town's concept landscape plan requirements.
 - (2) Location, description, and size of all open spaces.
 - (3) Location and description of natural features listed in section 90-449(f) as well as any such features identified in the environmentally sensitive area survey required by the Town's SMARTGrowth program.
 - (4) Location and preliminary design details of all proposed open space amenities.
 - (5) A summary of the perpetual maintenance proposed for each open space area, which must be feasible and appropriate.
 - (6) Phasing and location of the open space associated with the overall development and the open space associated with, and integral to, specific bona fide agricultural buildings.
- (i) *Enhanced public notification.* The approval of a planned development application for a conservation development is required to complete the following:
 - (1) An initial meeting must be coordinated by the property owner, or their designee, with all interested parties prior to submitting a planned development application.
 - a. The property owner or their designee must present plans to adjacent property owners, and homeowner associations of adjacent properties, for comment and input prior to a public hearing before the Town.
 - (2) A second meeting with interested parties must be held prior to the Planning

and Zoning Commission public hearing to ensure the agenda item will reflect any consensus reached by the group.

- (j) *Alternative proposals and variation from requirements.* The performance standards for conservation development projects contained in this section are considered to be the minimum standards necessary for approval. It is recognized, however, that project size, location, and design may necessitate a different arrangement or distribution of open space or buffers than are envisioned in the regulations of this section, and that different amenities than those specified in this section may become valuable options. Consequently, an applicant for a conservation development project may submit an alternative proposal with corresponding variations in the standards applicable to such a development, which alternative shall be evaluated and action taken thereon in accordance with the procedures contained in this chapter; provided, however, that the following limitations apply:
- (1) No variations will be granted from the allowed residential densities for conservation development projects.
 - (2) The alternative proposal and variations requested shall achieve the same basic objectives as the particular standards that are to be varied.
 - (3) Where the proposal seeks to vary project size limitations, the alternative design shall be evaluated in accordance with standards applicable to larger projects.
- (k) *Conservation development incentives.* Conservation development will be considered for conservation incentives commensurate with the quality and character of the open or natural lands to be placed within a conservation easement or otherwise conserved and the extent to which the conserved land contributes to the preservation of the Cross Timbers Conservation Development District's country character, including its open, natural, scenic, and ecological values.
- (1) Incentives will be considered on a project-by-project basis and will be approved by the Town Council only after community input and public hearing. Such incentives may include, but are not limited to:
 - a. Permit fee waivers,
 - b. Up to and including 50 percent reduction in park land dedication requirements.
- (l) The purpose of this criterion is to protect the open lands, natural landscapes and ecological resources that create and define the Town's unique community character and that are essential to the accomplishment of community character, quality of life, and economic development objectives."

SECTION 5

Section 98-1143, "Perimeter and open space walls and fences," of Division 7, "Fences and walls," of Article IV, "Supplementary district regulations," of Chapter 98,

“Zoning,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended in its entirety to read as follows:

“Sec. 98-277. – Conservation development options and standards.

(a) *Generally.* The following standards shall apply to development not contained within the Cross Timbers Conservation Development District (CTCDD).

- (1) Subdivision perimeter fences and walls constructed adjacent and parallel to the rights-of-way of arterial and collector streets shall consist of masonry, stone, wrought-iron or tubular steel, or a combination of such materials. The fences and walls shall be a minimum of six feet in height and shall have masonry or stone columns measuring a minimum of 24 inches by 24 inches, with monolithic tops, and shall be placed a maximum of 40 feet apart on center. Vertical or horizontal spacing of members of wrought-iron or tubular steel fencing and their attachment to any column shall not allow passage of a four-inch sphere. Wrought-iron and tubular steel fencing shall be used in conjunction with, and further provide for, approved plantings from section 82-277 of this Code, “Screening plant selection list,” placed three feet on center adjacent to all wrought-iron and tubular steel fencing. Such perimeter fencing shall be located within a three-foot wide fence easement dedicated to the mandatory homeowners’ association for perpetual maintenance by such association. Parallel privacy fences of wood or other construction shall not be allowed between the perimeter fencing and parallel foundation lines on adjacent or contiguous lots. Notwithstanding the foregoing, wrought-iron or tubular steel fencing of a minimum of four feet in height may be allowed at the open end of cul-de-sacs and between parallel streets, provided that such fencing complies with all of the requirements contained in this section other than height.
- (2) Fences constructed adjacent and parallel to dedicated park, trail, or open space areas shall consist of wrought-iron or tubular steel. Such fences shall be a minimum of four feet in height and shall be of consistent color throughout a development. Vertical or horizontal spacing of members of wrought-iron or tubular steel fencing shall not allow passage of a four-inch sphere. Parallel privacy screening of masonry construction, not exceeding 50 percent of the lot width, shall be allowed between the wrought-iron or tubular steel fencing and parallel foundation lines on abutting lots. Approved plantings from section 82-277, screening plant selection list, shall be placed three feet on center along the entire length of that side of the masonry screening facing the wrought-iron or tubular steel fencing. Such masonry screening shall be located a minimum distance of ten feet from the wrought-iron or tubular steel fencing. Fences of wood shall not be allowed between such perimeter fencing and parallel foundation lines on adjacent or contiguous lots.
- (3) Property owners replacing existing masonry walls in neighborhoods where HOAs were not established and/or designated to provide ongoing

fence/wall maintenance and that have no applicable planned development standards, shall either match original construction materials or meet the perimeter fence standards established in section 14-542 of the Town's Code of Ordinances.

- (b) *Scenic roadway fencing.* New fencing along the scenic roadway within the CTCDD must be multi-railed or pipe-styled and either white, black, dark green, or an earth-tone in color. Wood stockade and masonry perimeter fencing is prohibited. However, masonry columns may be used sparingly.

SECTION 6

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

SECTION 7

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

SECTION 8

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

SECTION 9

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance, but may be prosecuted until final disposition by the courts.

SECTION 10

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

SECTION 11

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 17TH DAY OF OCTOBER, 2022.

APPROVED:

Derek France, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**



TOWN COUNCIL AGENDA ITEM NO. 20

REGULAR ITEM

DATE: October 17, 2022

FROM: John Chapman, Planner

ITEM: **Public Hearing to consider an ordinance amending the Development Regulations (LDR22-0001 – Landscape Ordinance Update) by amending Chapter 74 “General Provisions,” Chapter 82 “Development Standards,” Chapter 94 “Trees,” and Chapter 98 “Zoning,” of the Town's Code of Ordinances to amend and propose new landscaping standards for the purpose of clarifying and updating certain sections. (*The Planning and Zoning Commission recommended approval by a vote of 6 to 0 at its October 10, 2022, meeting.*)**

SUMMARY DATA: This Town-initiated item proposes to amend the Town’s Land Development Regulations by updating and introducing language related to landscaping standards. The proposed amendment focuses on the following:

- Street buffer landscaping,
- Retention, detention, and water impoundment landscaping,
- Parking area landscaping (traditional parking),
- Large vehicle parking area landscaping, and
- Foundational plantings

BACKGROUND INFORMATION: Updates to Chapter 94, “Trees,” were presented to the Environmental Conservation Commission (ECC) at their September 6, 2022, meeting ([Click here to view ECC Staff Report](#)), and recommended for approval.

Below is the link for the Planning and Zoning Commission (P&Z) report and backup for this item. During P&Z deliberation, there was discussion of potential impacts from using non-native landscaping. The Commission ultimately recommended approval with the removal of four shrubs from Section 82-277, “Screening plant selection list,” due to invasive characteristics. These changes are reflected in the draft ordinance.

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 COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 74, "GENERAL PROVISIONS;" CHAPTER 82, "DEVELOPMENT STANDARDS;" CHAPTER 94, "TREES;" AND CHAPTER 98, "ZONING," OF THE TOWN OF FLOWER MOUND CODE OF ORDINANCES, TO AMEND AND PROPOSE NEW LANDSCAPING STANDARDS AND TO CLARIFY AND UPDATE CERTAIN SECTIONS; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town Council of the Town of Flower Mound ("Town Council") previously adopted Chapter 74, "General provisions," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended; and,

WHEREAS, the Town Council previously adopted Chapter 82, "Development standards," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended; and,

WHEREAS, the Town Council previously adopted Chapter 94, "Trees," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended; and,

WHEREAS, the Town Council previously adopted Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Town of Flower Mound Code of Ordinances, as amended; and,

WHEREAS, the Town Council finds and determines that it is necessary to amend various development standards related to landscaping for the purpose of clarifying certain sections, and establishing new sections relevant to the Town's Master Plan vision; and,

WHEREAS, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on October 10, 2022, and the Town Council held a public hearing on October 17, 2022 with respect to the amendments described herein; and,

WHEREAS, the Town has complied with all requirements of Chapter 211 of the Texas Local Government Code, Chapter 78 of the Town's Land Development Regulations, and all other laws dealing with notice, publication, and procedural

requirements for the approval of a Land Development Regulations amendment; and,

WHEREAS, the Town Council finds that the amendments to Chapters 74, 82, 94, and 98, as outlined herein, are in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public;

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

SECTION 1

Portions of Section 74-3, "Definitions," of Chapter 74, "General provisions," of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to read as follows:

"Sec. 74-3. – Definitions.

Roadway, country, means all existing, proposed, and portions of rural collector roadways located within or adjacent to the Cross Timbers Conservation Development District.

Roadway, principal, means all existing and proposed arterial streets included in the thoroughfare plan that are hereby designated as principal roadways, excluding portions of such streets that are classified as country roadways or scenic roadways, and excluding the following roadways:

- (1) College Parkway;
- (2) Kirkpatrick Lane;
- (3) Gerault Road/Morriss Road;
- (4) Dixon Lane/Valley Ridge Boulevard; and
- (5) FM 407/Justin Road.

Roadway, scenic, means the section of FM 1171/Cross Timbers Road located within the Cross Timbers Conservation Development District.

***"

SECTION 2

Section 82-73, "Computing parking and loading requirements," of Article III, "Off-street parking and loading," of Chapter 82, "Development standards," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended by adding subsection (11) to read as follows:

“Secs. 82-73. Computing parking and loading requirements.

- (11) *Mitigation.* The purpose of mitigation is to reduce adverse effects caused by the excessive use of concrete, which includes but is not limited to: heat island effect, increased water runoff, and surface pollution. In addition to complying with sections 82-243, 82-271, and 94-63, mitigation must be achieved by incorporating at least one of the following methods.
- a. *Primary mitigation option.* At least one of the following options must be used.
 - i. *Increased tree planting requirement.* In addition to section 94-63, provide one tree for every ten parking spaces that exceed the maximum allowable deviation.
 - ii. *Increased stormwater treatment.* A stormwater or curb inlet treatment system may be used to mitigate the effects of increased stormwater runoff and surface pollutants, as approved by the Town Manager or their designee.
 - iii. *Alternative paving.* Alternative paving may be approved by the Town Manager or their designee. The alternative paving must improve performance measures such as reducing the heat island effect and demonstrate durability over time.
 - b. *Secondary mitigation option.* In the event a primary mitigation option is not possible due to site restrictions, the following option must be used.
 - i. *Increased landscaping.* All parking area screening required for the site must include two rows of vegetation including shrubs, ornamental grasses, and ground cover.”

SECTION 3

Portions of Division 1, “Generally,” of Article V, “Landscaping and screening,” of Chapter 82, “Development standards,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to read as follows:

“Sec. 82-211. – Purpose.

This article is designed to provide standards for the installation and maintenance of landscaping, walls, and screening devices so as to promote the general welfare of the community. This is accomplished by encouraging the creation of an attractive appearance along public streets and by screening uses that may be unattractive to the public eye. Landscaping materials, including ground covers, shrubs, and trees, further facilitate the control of erosion, reduce glare and dust, and visually soften building masses. Walls and screening devices allow for the separation of incongruous uses and for the buffering of intensive activities. Landscaping, walls, screening devices, and the

combination thereof, help to effectuate privacy, logical development, and the enhancement of property values.

Sec. 82-212. – Applicability of article provisions.

This article shall apply to the following:

- (1) *Nonresidential*. New nonresidential development in all districts shall be subject to all provisions of this article, provided that a one-time expansion of the floor area of buildings on a lot or building tract not exceeding 15 percent of the existing floor area shall not be subject to the requirements of this article.
- (2) *Residential subdivisions and multifamily*. New residential development, excluding the construction of single-family detached, single-family attached, or duplex dwellings on lots of record, or unless otherwise provided.
- (3) *Residential lots*. The development of single-family, duplex, and multifamily uses shall be subject to the standards of section 94-67, tree planting requirements, residential lots.

Sec. 82-213. – Approving bodies.

The approval of a landscape plan shall be considered a part of the respective application's approval process.

- (1) *Nonresidential developments*. A landscape plan must be submitted and considered in conjunction with any site plan, planned development, or specific use permit application.
- (2) *Residential developments*. A landscape plan must be submitted and considered in conjunction with any development plan or planned development containing more than four (4) lots.

Sec. 82-214. – Landscape plan.

- (a) *Landscape Plan Required*. Any proposed building or use shall be shown on a landscape plan and shall include the location of buildings to remain, proposed buildings, parking areas, street improvements, locations and types of landscaped areas, walls, and screening devices. The appropriate method of submitting the landscape plan to the Town for a development plan, record plat, planned development, specific use permit, or site plan is outlined on the Town's website.
- (b) *Licensed Landscape Architect*. All landscape plans accompanying a site plan must be signed and sealed by a licensed landscape architect.

Secs. 82-216. – Installation.

Landscaping, irrigation, trees, walls, and screening structures shall be installed in accordance with the approved final landscape and site plan prior to the issuance of a final certificate of occupancy for the building or use. Per section 90-222, if extenuating circumstances exist, the Town may allow the developer/owner to delay installation and provide a cash escrow. Failure to comply with the requirements of this article shall be considered a misdemeanor, punishable as such by a fine in accordance with section 74-06.

Secs. 82-218 – 82-238. Reserved.”

SECTION 4

Division 2, “Landscaping,” of Article V, “Landscaping and screening,” of Chapter 82, “Development standards,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to establish Section 82-239, “Applicability,” and Section 82-240, “Foundational plantings,” to read as follows:

“Sec. 82-239. – Applicability.

This division is not applicable to proposed residential subdivisions with four or less lots that do not require or have a homeowner’s association or an X-lot.

Sec. 82-240. – Foundational planting.

- (1) This section shall only be required for the following use types from Sec. 98-952:
 - a. Educational, institutional, civic uses;
 - b. Bank or savings and loan;
 - c. Restaurant, fast food;
 - d. Restaurant, general; and/or
 - e. Office, general business and professional.
- (2) Nonresidential buildings of 15,000 square feet or less must install foundation planting areas along the front and side foundation lines where not impeded by building entrances, loading areas, parking spaces, or sidewalks. Foundation planting areas may also be required at the rear of the building if visible from streets, other buildings, or open spaces.
- (3) The minimum width for foundation planting areas is five (5) feet.
- (4) Foundation planting areas must include a combination of ground covers, shrubs, and ornamental trees.
- (5) Foundation plant material may be installed at grade, in raised planters, or in

decorative plant containers.”

SECTION 5

Portions of Division 2, “Landscaping,” of Article V, “Landscaping and screening,” of Chapter 82, “Development standards,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to rename Section 82-244, “Irrigation” to “Large vehicle parking area,” to renumber proceeding sections accordingly, and to read as follows:

Sec. 82-241. – Street yard landscaping.

- (3) Landscaping required to satisfy other provisions of this article and lying within the street yard may be used to satisfy the requirements of this section.
- (4) *Trees*. Street yard landscaping must comply with section 94-61.

Sec. 82-242. – Street buffer landscaping.

- (1) *Generally*. Street buffer landscaping shall count toward the street yard landscaping requirement and is located adjacent to the street right-of-way line.
 - a. *Principal streets*. The minimum width of the street buffer landscaping shall be 25 feet for all residential and nonresidential development.
- (2) *Residential subdivisions*.
 - a. *Streets*. The minimum width of the street buffer landscaping area is 15 feet. Streets located within a residential subdivision, not considered a principal, collector, scenic, or country roadway, are exempt from this requirement.
 - b. *X-lots*. Street buffer landscaping areas must be placed within an X-lot and must be maintained by a homeowners’ association.
 - c. *Subdivision entry*. Access into a residential subdivision may be located within a street buffer landscaping area; private residential driveways may not.
- (3) *Nonresidential development*. Nonresidential development includes multifamily for landscaping purposes.
 - a. *Streets*. The minimum width of the street buffer landscaping area is 15 feet.
 - b. *Necessary driveways*. Necessary driveways may be located within a street buffer landscaping area.
- (4) *Cross Timbers Conservation Development District (“CTCDD”)*.
 - a. *Cross Timbers Road (FM 1171)*. The minimum width of the street buffer landscaping area is 50 feet, which shall count toward satisfying scenic

buffer requirements.

- b. *Rural Collectors*. The minimum width of the street buffer landscaping area is 25 feet, which shall count toward satisfying scenic buffer requirements.

(5) *Trees*. Street buffer landscaping areas must comply with section 94-62.

Sec. 82-243. – Parking area landscaping.

The required amount of parking area landscaping is subject to the following standards:

- (1) *Applicability*. Paved surfaces intended for the parking, storage, or display of vehicles must comply with the following requirements:
 - a. *Generally*. Landscaped areas shall be provided within off-street parking areas at a minimum ratio of 90 square feet per 12 parking spaces.
 - b. *Scenic roadway*. Landscaped areas shall be provided within off-street parking areas at a minimum ratio of 170 square feet per 12 parking spaces.
 - c. *Religious assembly/institution or rectory and/or schools*. Landscaped areas shall be provided within off-street parking areas at a minimum ratio of 45 square feet per 12 parking spaces.
 - d. Landscaped areas within parking lots shall count toward satisfying section 82-241 related to street buffer landscaping.
 - e. *Trees*. Parking areas must comply with section 94-63.

Sec. 82-244. – Large vehicle parking area.

The required amount of large vehicle parking area landscaping is subject to the following standards:

- (1) *Applicability*. Paved surfaces including spaces intended for vehicles not commonly associated with a 9-foot by 18-foot parking space. Additionally, this section shall only apply to spaces adjacent to the site's property line, compatibility buffer, or street buffer. Spaces adjacent to primary structures or internal to the parking lot are not required to meet this section.
- (2) *Large landscape island*. Applicable parking spaces must be within 75 feet of a large landscape island measured from the landscape island's back of curb. The landscape island must have a minimum radius of 29 feet and be at least 55 feet in length or the length of the large vehicle parking space, whichever is less.
- (3) *Trees*. Large vehicle parking areas must comply with section 94-64.

Sec. 82-245. – Irrigation.

All required landscaped areas shall include an irrigation system to ensure the health and growth of the landscape. Medians, rights-of-way, visibility clips, and other common

areas that are landscaped shall be irrigated. Irrigation plans for such landscaped areas must be approved by the Town prior to the acceptance of public improvements for the development.

Sec. 82-246. – Maintenance.

- (1) Landscaped areas shall be reasonably maintained by the owner or the lessee of the property, including pruning, trimming, watering, and other requirements necessary to create an attractive appearance for the development.
- (2) Any plant material not surviving shall be replaced within 30 days of its demise. Variances, because of seasonal requirements, can be granted by the Town Manager or designated representative.
- (3) Lack of maintenance of required landscaping material shall be considered a misdemeanor, punishable as such by a fine in accordance with section 74-06.

Sec. 82-247. – Outdoor patios and seating areas.

Outdoor patios and seating areas associated with nonresidential uses shall be shown on the site plan and landscape plan. These regulations do not apply to sidewalks or other pedestrian spaces. An elevation drawing may be required to determine compliance with this section. In addition, outdoor patios and seating areas are subject to the following standards:

- (1) The area must be clearly defined as part of the plan. The area must be clearly defined through the use of ornamental fencing or similar fencing that is consistent and complementary to the building or development in which it is located.
- (2) Additional elements such as roofs, arbors, trellises, tables, chairs, umbrellas, and awnings shall be consistent and complementary in material, design, and color to the building or development in which it is located.
- (3) Outdoor patios must not impede pedestrian circulation or encroach into a designated parking area or fire lane.

Sec. 82-248. – Aggregate or inorganic materials.

Aggregate or inorganic materials (AIM) may be used to satisfy the landscape requirements of this article if such materials do not predominate over organic material. For the purpose of this requirement, the following more particularly describes the criteria applicable for the use of AIM as a soil cover:

- (1) The use of AIM shall be restricted by the following requirements:

- d. Synthetic turf is restricted only to outdoor recreation and play areas. Town council may approve additional locations and coverage amounts for properties located in areas master planned for campus industrial uses within the lakeside business district. All synthetic turf applications must meet the criteria for synthetic turf installation as maintained by the Town Manager or their designee.

***"

Secs. 82-249–82-270. – Reserved."

SECTION 6

Portions of Division 3, "Screening," of Article V, "Landscaping and screening," of Chapter 82, "Development standards," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to clarify certain sections and reorganize the screening plan section list to read as follows:

"Sec. 82-271. Parking areas.

Parking areas shall be screened from street view to a minimum height of three feet (3') above the highest finished grade adjacent to the street or curb line of the parking area. Such screening may be accomplished by the use of plants, earth berms, walls or fences, or natural topography, provided that walls or fences shall not be used for screening parking areas from principal, country, or scenic roadways. However, notwithstanding the foregoing, schools shall be exempt from the requirements of this division.

- (1) *Parking mitigation requirement.* Developments approved for excess parking must comply with section 82-73.

Sec. 82-272. Outdoor storage areas.

All outdoor storage areas for materials, trash, mechanical equipment (to include ground-based satellite dishes), vehicles, and fountain equipment (retention ponds) or other similar items shall be screened by a screening device of sufficient height, and subject to the following conditions.

- (2) Smaller items measuring less than four feet (4') in height may be screened by either plant material or a wall constructed of or finished with materials that match the main building of the site.

Sec. 82-275. Outdoor lighting.

- (b) Luminaires or lighting standards installed for the purpose of illuminating a private outdoor recreational activity shall be subject to the following standards:

- (3) When permanent or temporary luminaires or lighting standards are installed for the purpose of illuminating private outdoor recreational activities and do not comply with subsection (b)(2), a waiver will be required, as set forth herein, prior to installation.

- ii. A waiver is permissible as to the requirements set forth in subsection (b)(2) only where application by the property owner or their designee has been submitted to the Town. Upon recommendation by the planning and zoning commission, the Town Council may grant a waiver if the Town Council determines that the permanent or temporary luminaires or lighting standards would not:

Sec. 82-277. Screening plant selection list.

- (1) When the Code requires a contiguous dense six-foot screen, the following plants may be used:

Cherry Laurel (*Prunus caroliniana*)
 Glossy Abelia (*Abelia x grandiflora*)
 Hollies (*Ilex* sp.)
 Nellie R. Stevens Holly
 Oakland Holly
 Mary Nell Holly
 Willow Leaf Holly
 Junipers (*Juniperus* sp.)
 Pittosporum (*Pittosporum tobira*)
 Sweet Viburnum (*Viburnum* sp.)

- (2) In no instance shall the following plants be used to satisfy the requirement of a contiguous dense six-foot screen.

Arborvitae (*Arborvitae* sp.)
 Azaleas (*Rhododendron* sp.)
 Indian Hawthorn (*Raphiolepis indica*)
 Oleander (*Nerium oleander*)

Pampas grass (*Cortaderia selloana*)
 Photinia (*Photinia fraseri*)
 Pyracantha (*Pyracantha* sp.)
 Texas Purple Sage (*Leucophyllum frutescens*)
 Wax Myrtle (*Morella cerifera*)

SECTION 7

Portions of Section 82-302, "Compatibility buffer," of Division 4, "Screening," of Article V, "Landscaping and screening," of Chapter 82, "Development standards," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to rename the instances of "church" to "religious institutions," and to update cited section to read as follows:

"Sec. 82-302. Compatibility buffer.

A landscaped buffer shall be located on the site of the nonresidential or multifamily use along all property lines adjacent to the existing or proposed residential uses, subject to the following standards:

- (1) A brick wall or masonry wall with stucco or mortar wash finish, both exterior finishes being the same, shall be constructed along the property line. Such walls shall have no vehicular access point into or from an alley and shall be a minimum of six feet (6') in height, except that the first 25 feet in from the street line may be stepped down to a minimum height of four feet (4'). However, notwithstanding the foregoing, religious institutions and/or schools shall be exempt from the requirements of this division.
- (2) For nonresidential development, except those provided below, the landscaped setback shall consist of a minimum 25-foot landscaped buffer. Understory plants of species included in section 82-277, "Screening plant selection list," shall be provided in order to achieve a continuous dense six-foot screen. Native shade trees, a minimum of three-inch caliper and of species included in section 94-68 of this Code, "Approved tree lists," shall be provided at a ratio of one tree per 400 square feet of buffer area.

- (4) For religious institutions, the landscape setback shall consist of a minimum 25-foot landscape buffer, with native shade trees, a minimum three-inch caliper and of species included in section 94-66 of this Code, "Approved tree lists," provided at a ratio of one tree per 500 square feet of buffer area. Additionally, religious institutions shall be exempt from the requirements of subsection (1) of this section, requiring the construction of a brick wall or masonry wall with stucco or mortar

wash finish.

SECTION 8

Section 94-13, "Landscape nursery, or replacement trees," of Article II, "Measurement," of Chapter 94, "Trees," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 94-13. Landscape nursery, or replacement trees.

Unless specified otherwise, tree caliper (diameter) or circumference shall be measured at a height of six inches (6") above ground level. The caliper of multi-trunk trees shall be measured by determining the diameter or circumference of the largest trunk at full caliper added to one-half of the diameter or circumference of each remaining trunk, measured at a height of six inches (6") above ground level."

SECTION 9

A portion of Section 94-22, "Protected trees," of Article III, "Preservation," of Chapter 94, "Trees," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to add "Eve's necklace," scientifically known as, "Styphnolobium affine," to the list of trees that are protected and to read as follows:

"Sec. 94-22. Protected trees.

- (1) Lists of trees that are protected. Unless otherwise specified in this chapter, only those tree species found on the following lists shall be subject to the preservation, protection, and replanting requirements of this section.

Small Tree List

Common Name	Scientific Name
Carolina buckthorn	(Rhamnus caroliniana)
Yaupon holly	(Ilex vomitoria)
Possum haw	(Ilex deciduas)
Redbud	(Cercis species)
Texas buckeye	(Aesculus glabra variety arguta)
Chickasaw plum	(Prunus agustifolia)
Mexican plum	(Prunus mexicana)
Eve's necklace	(Styphnolobium affine)

SECTION 10

Portions of Article VI, “Tree planting requirement and planting lists,” of Chapter 94, “Trees,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to clarify certain standards; rename section 94-64, “Median and right-of-way trees,” to “Large vehicle parking area trees;” rename section 94-65, “Residential lots,” to “Detention, retention, and water impoundment areas;” renumber proceeding sections; and include new standards to read as follows:

“Sec. 94-61. Street yard trees.

Trees shall be planted or existing trees preserved within the street yard of a nonresidential lot or building tract according to the following provisions:

- (6) When calculating the number of required street yard trees results in fractions, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall be rounded upward to the next highest full number.

Sec. 94-62. Street buffer trees.

Trees shall be planted or existing trees preserved within the street buffer landscaping area required by Section 82-242 of this Code, “Street buffer landscaping,” according to the following provisions:

- (1) *Generally*. Street buffer trees shall be provided at a ratio of one (1) tree for every 30 feet of linear frontage excluding any necessary driveways, unless otherwise provided.

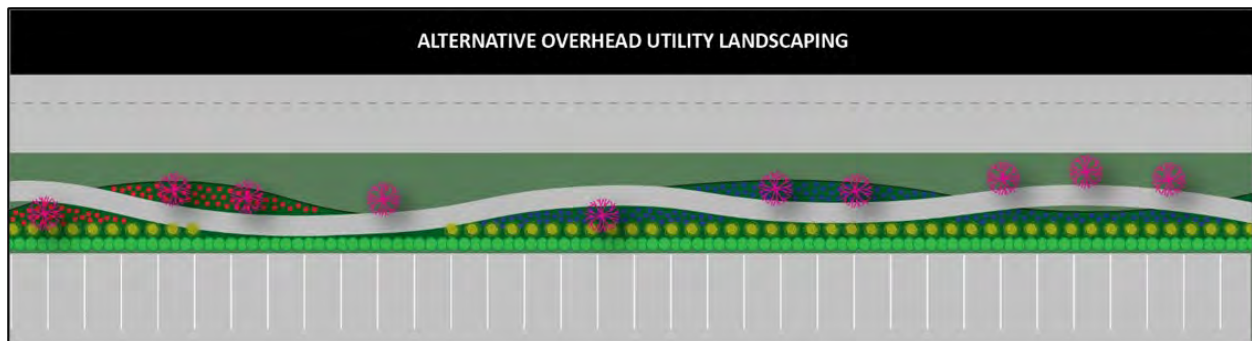
(2) *Cross Timbers Conservation Development District (CTCDD)*.

- a. *Cross Timbers Road (FM 1171)*. Street buffer trees shall be provided at a ratio of one (1) tree for every 25 feet of linear frontage and contain native species only.
 - i. *Groves or drifts*. Random groves, which are a grouping of trees comprised of the same species, or drifts, which are a grouping of trees consisting of several species of not less than three (3) trees, should be spaced every 100 to 350 feet.
 - ii. *Ornamental trees*. Trees from subsection 94-68(2) may make up thirty percent (30%) of the required trees and be incorporated within

the groves or drifts.

- b. *Rural Collectors*. Street buffer trees shall be provided at a ratio of one (1) tree for every 30 feet of linear frontage and must contain native species only. Trees are to be randomly spaced in odd numbered groves or drifts of no less than three (3) trees every 100 to 150 feet.
- (3) All street buffer trees shall be a minimum of three-inch caliper at the time of installation.
- (4) All street buffer trees shall have a minimum spacing of 20 feet on center.
- (5) *Utility easements and overhead utilities*.
- a. *Generally*. Trees planted in utility easements, where required, must use trees from section 94-68(4) and be planted at a ratio of three (3) ornamental trees for each tree required.
 - b. *Alternative*. Trees planted in utility easements may use trees from section 94-68(4) and be planted at a ratio of one (1) ornamental tree for each tree otherwise required within the easement with one (1) additional tree from section 94-68(1) planted elsewhere on the site. A landscaped area with a mixture of groundcover, native grasses, and shrubs incorporated into a curvilinear design must be included. The landscaped area must span the length of the utility easement within the street buffer, and be at least five (5) feet in width. In no instance shall parking area screening count toward meeting the required minimum width. However, parking area screening and sidewalks are encouraged to be incorporated into the design.
- (6) When calculating the number of required street buffer trees results in fractions, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall be rounded upward to the next highest full number.

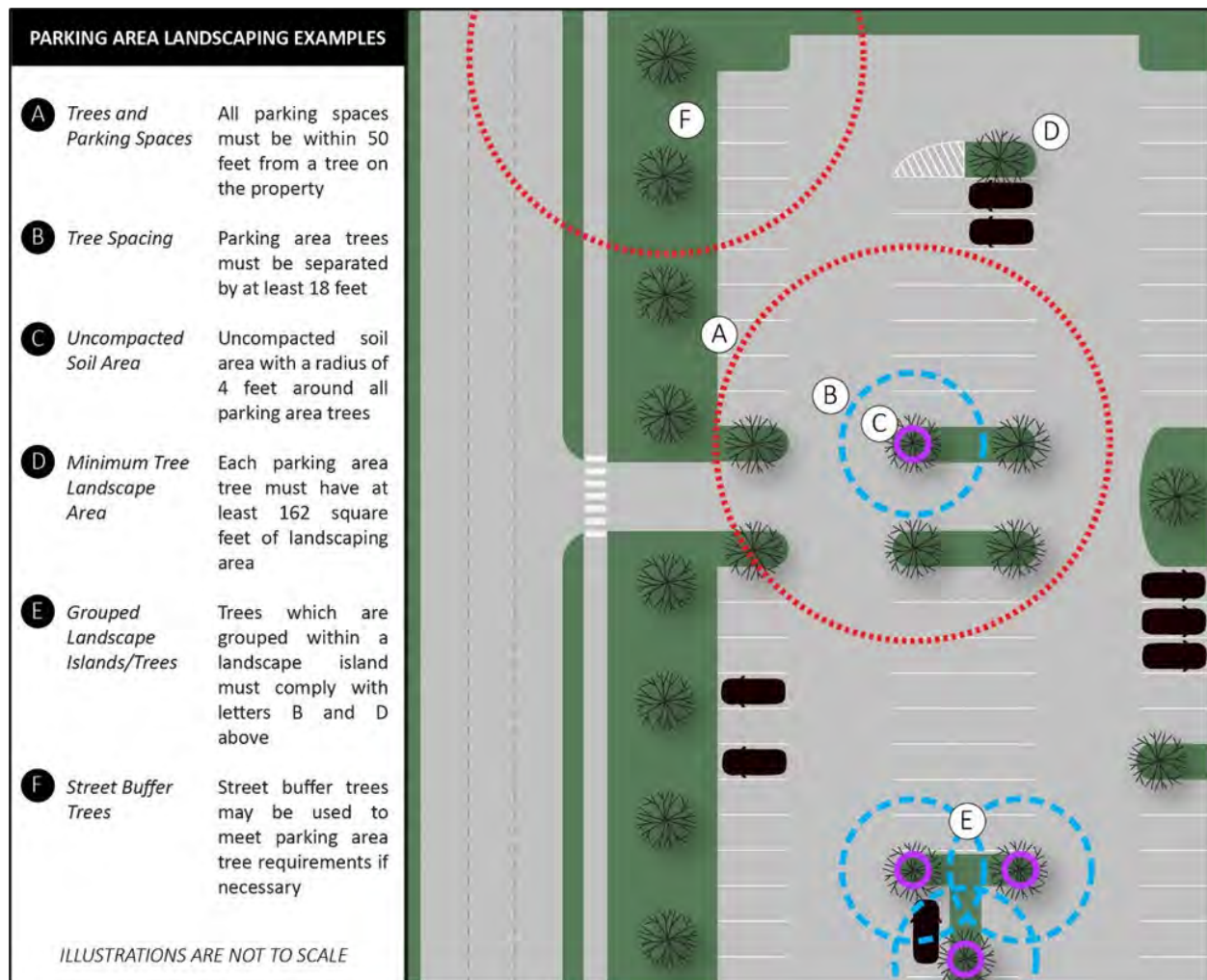
(7) *Illustration*.



Sec. 94-63. Parking area trees.

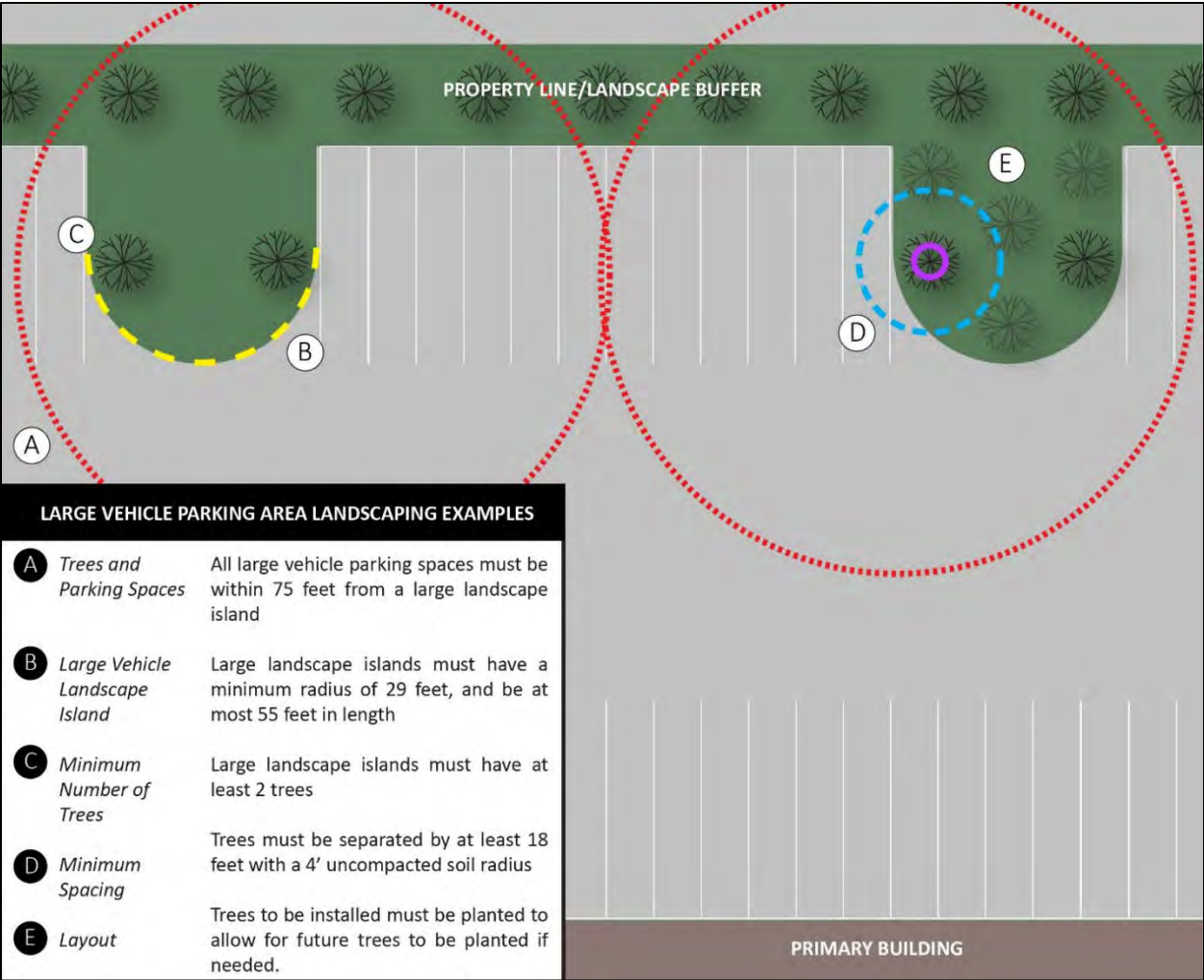
Trees must be planted, or existing trees preserved, within off-street parking areas according to the following provisions:

- (1) One (1) tree shall be provided for each ten (10) parking spaces on the site; provided, however, that religious institutions and schools shall be required to provide one (1) tree for each 20 parking spaces on the site, at a minimum.
- (2) Parking area trees must be a minimum of three-inch (3") caliper, except as provided in subsection 4, when planted.
- (3) All parking spaces must be located within 50 feet of a tree on the site, measured from the trunk of the tree; provided, however, all parking spaces for religious institutions and schools must be located within 100 feet of a tree on the site, measured from the trunk of the tree.
 - a. *Exception.* An exception to this requirement may be approved by the Town Council for any redevelopment or restriping of parking lots located within the campus commercial, campus industrial, industrial district-1, or industrial district-2 zoning district. Requests for an exception must be mitigated by increasing landscaping comparable to the new parking area tree requirement.
 - i. *Fees in lieu.* In the event an applicant can demonstrate there is inadequate space to allow for planting of a comparable number of trees, fees in lieu of planting must be paid to the Town's tree preservation fund.
- (4) A maximum of 30 percent of the trees used to satisfy the requirements of this section may come from subsection 94-66(2), "Approved median and right-of-way planting list."
- (5) A landscaped area not less than 162 square feet must be provided for each parking area tree and be surrounded by uncompacted soil with a radius not less than four feet (4') on center, measured from the trunk of the tree. In instances where a contiguous landscape island is used, trees shall be spaced 18 feet on center.

(6) *Illustration.***Sec. 94-64. Large vehicle parking area trees.**

Trees must be planted or existing trees preserved according to the following provisions:

- (1) *Trees.* Two (2) trees must be provided within the landscape island from section 94-68. Trees must have an uncompacted soil radius of four feet (4') and be spaced 18 feet on center from other trees.
- (2) *Layout.* New trees must be installed in such a way to allow for future trees to be planted within the landscape island if desired.
- (3) *Illustration.*



Sec. 94-65. Detention, retention, and water impoundment areas.

All detention, retention, and water impoundment areas must comply with the following landscaping requirements.

- (1) *Purpose.* The purpose of this section is to beautify detention ponds, retention ponds, and water impoundments. Required landscaping is intended to amenitize ponds, and is not intended to screen from public view.
- (2) *Placement.* Trees should be placed to provide a natural design and provide access for necessary maintenance equipment.
- (3) *Perimeter trees.* Perimeter trees must be provided based on the following surface areas:

- a. *Surface area.* For the purpose of this section, “surface area” shall be defined as the 100-year flood event capacity of the retention pond, detention pond, or water impoundment.
 - b. For retention or detention surface areas less than 10,000 square feet, one (1) tree shall be provided for each 500 square feet of surface area, or fraction thereof, with a minimum of one (1) tree.
 - c. For retention or detention surface areas between 10,000 and less than 20,000 square feet, 20 trees must be provided for the first 10,000 square feet, plus one (1) additional tree for each 700 square feet of remaining retention or detention surface area, or fraction thereof.
 - d. For retention or detention surface areas between 20,000 and less than 35,000 square feet, 34 trees must be provided for the first 20,000 square feet, plus one (1) additional tree for each 1,000 square feet of remaining retention or detention surface area, or fraction thereof.
 - e. For retention or detention surface areas greater than 35,000 square feet, 49 trees must be provided for the first 35,000 square feet, plus one (1) additional tree for each 1,400 square feet of remaining retention or detention surface area, or fraction thereof.
- (4) *Alternative trees.* Trees from section 94-66(4) may be used and must not account for more than 15 percent of the required trees.
- (5) *Location.* All required perimeter trees must be located within 50 feet of the detention or retention pond surface area.
- (6) Trees required to satisfy other provisions of this article and lying within 50 feet of the detention or retention pond’s surface area may be used to satisfy the requirements of this section.
- (7) When calculating the number of required street buffer trees results in fractions, any fraction less than one-half shall be disregarded and any fraction of one-half or more shall be rounded upward to the next highest full number.

Sec. 94-66. Median and right-of-way trees.

Trees may be planted in medians and rights-of-way only with the approval of the Town, provided that such trees are selected from subsection 94-68(2), “Approved median and right-of-way planting list.”

Sec. 94-67. Residential lots.

The following tree planting requirements shall be satisfied prior to the issuance of

a certificate of occupancy for a single-family, duplex, or multi-family use:

- (1) A minimum of three (3) trees, with a minimum caliper width of two and one-half inches to three inches, and at least eight feet in height, shall be provided on each 10,000 square foot and greater single-family and duplex lot prior to the issuance of a certificate of occupancy. A minimum of two (2) trees, with a minimum caliper width of two and one-half inches to three inches, and at least eight feet in height, shall be provided on each single-family and duplex lot between 5,000 and 10,000 square feet prior to the issuance of a certificate of occupancy. At least one (1) of the required trees shall be located within the front yard area of the lot.

Sec. 94-68. Approved tree planting lists.

Unless otherwise specified in this chapter, only those tree species included in this section shall satisfy the tree planting requirements of this article.

- (1) *Generally.* The tree species lists contained in this section has been developed and will be periodically updated by the Town's Environmental Conservation Commission and shall be maintained and distributed to the public by the tree preservation and enforcement officer or authorized designee as a guide for the identification and selection of tree species that meet the various standards and requirements of this article. Trees included on these tree species lists were selected on the basis of one or more of the following criteria or factors: hardiness, resistance to disease, suitability relative to local climate and soil conditions, adaptability for transplantation, longevity, adaptability to various landscape conditions, resistance to drought, aesthetic qualities, shade provision, windbreak provision, and screening qualities. To promote biodiversity, there shall be no more than 20 percent of a tree species, and no more than 50 percent of any tree genus permitted to satisfy the planting requirements on all new developments.
- (2) *Approved tree planting list.* Only those tree species found on the following approved tree planting list shall satisfy the tree planting standards and requirements of this article.

*Denotes trees not appropriate within the CTCDD.

Approved Tree Planting List

Common Name	Scientific Name
Southern live oak	(<i>Quercus virginiana</i>)
Escarpment live oak	(<i>Quercus fusiformis</i>)
Shumard oak	(<i>Quercus shumardi</i>)
Chinkapin oak	(<i>Quercus muehlenbergii</i>)
Monterrey oak	(<i>Quercus polymorpha</i>)
Bur oak	(<i>Quercus macrocarpa</i>)

Texas red oak	(Quercus texana)
Water oak	(Quercus nigra)
American elm	(Ulmus americana)
Cedar elm	(Ulmus crassifolia)
Winged elm	(Ulmus alata)
Lacebark elm*	(Ulmus parvifolia)
Bald cypress	(Taxodium distichum)
Pecans and hickories	(Carya species)
Juniper tree	(Juniperus species)
White ash*	(Fraxinus americana)
Green ash*	(Fraxinus pennsylvanica)
Texas ash*	(Fraxinus texensis)
Western soapberry	(Sapindus drummondii)
Sweet gum	(Liquidambar styraciflua)
Eastern red cedar	(Juniperus virginiana)
Pines	(Pinus species)
Leyland cypress	(Cypressocyparis leylandi)
Black walnut	(Juglans nigra)
Magnolia*	(Magnolia grandiflora)

(3) *Approved median and right-of-way tree planting list.* The following tree species shall be allowed to be planted in medians and rights-of-way when approved by the Town. Additional tree species with non-aggressive root systems/deep root systems may be authorized for planting in such areas by the town manager or their designee.

*Denotes trees appropriate within the CTCDD.

*Approved Median and ROW Tree
Planting List*

Common Name	Scientific Name
Sweet gum	(Liquidambar styraciflua)
Crepe myrtle	(Lagerstroemia indica)
Wax myrtle	(Myrica cerifera)
Plum*	(Prunus species)
Holly	(Ilex species)
Possum haw*	(Ilex decidua)
Native pecan	(Carya species)
Redbuds/whitebuds*	(Cercis species)
Fruitless crabapples	(Malus species)
Southern live oak	(Quercus virginiana)
Escarpment live oak	(Quercus fusiformis)
Texas red oak	(Quercus texana)

Shumard oak	(Quercus shumardi)
Chinkapin oak	(Quercus muehlenbergii)
Bur oak	(Quercus macrocarpa)
Water oak	(Quercus nigra)
Winged elm	(Ulmus alata)
Cedar elm	(Ulmus crassifolia)
Lacebark elm	(Ulmus parvifolia)
Slippery elm	(Ulmus rubra)
Bald cypress	(Taxodium distichum)
Hickories	(Carya species)
Pines	(Pinus species)
Juniper tree	(Juniperus species)
Texas buckeye	(Aesculus glabra variety arguta)
Common persimmon	(Diospyros virginiana)
Texas ash	(Fraxinus texensis)
White ash	(Fraxinus Americana)
Green ash	(Fraxinus pennsylvanica)
Western soapberry	(Sapindus drummondii)
Black walnut	(Juglans nigra)
Magnolia	(Magnolia grandiflora)
Yaupon holly *	(Ilex vomitoria)
Carolina buckthorn *	(Rhamnus caroliniana)
Thornless honey locust	(Gleditsia triacanthos variety inermis)
Eve's Necklace*	(Styphnolobium affine)

(4) *Approved mitigation and replacement tree planting list.* The following list of tree species shall be allowed to be planted to satisfy mitigation and replacement standards for trees removed from the buildable area on sites, trees removed with approved tree removal permits, and/or trees removed without authorization.

*Approved Mitigation and Replacement
Tree Planting List*

Common Name	Scientific Name
Native pecan	(Carya species)
Texas red oak	(Quercus texana)
Shumard oak	(Quercus shumardi)
Bur oak	(Quercus macrocarpa)
Water oak	(Quercus nigra)
Winged elm	(Ulmus alata)
Slippery elm	(Ulmus rubra)
Post oak	(Quercus stellata)
Cedar elm	(Ulmus crassifolia)

- (5) *Approved overhead utility easement tree planting list.* The following list of tree species shall be allowed to be planted in overhead utility easements where required. These species were selected due to their relatively small mature size and growth characteristics.

*Approved Overhead Utility Easement
Tree Planting List*

Common Name	Scientific Name
Yaupon holly	(Ilex vomitoria)
Carolina buckthorn	(Rhamnus caroliniana)
Possum haw	(Ilex decidua)
Plum	(Prunus species)
Redbuds/whitebuds	(Cercis species)
Wax myrtle	(Myrica cerifera)
Crepe myrtle	(Lagerstroemia indica)

Sec. 94-69. Limits on credit for preservation of existing or established trees.

Secs. 94-70—94-80. Reserved.”

SECTION 11

Section 94-83, “Informational assistance,” of Article VII, “Miscellaneous,” of Chapter 94, “Trees,” of Subpart B, “Land Development Regulations,” of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

“Sec. 94-83. – Informational assistance.

- (3) A current edition of the American Standard for Nursery Stock for Type 1 and Type 2 trees, as applicable to the tree species on the Town's protected tree list and approved tree planting and replacement list, shall be maintained by the Town Manager or their designee and made available to applicants for building permits, tree removal permits, or tree replanting permits and to the general public, as only those trees meeting and planted or replanted in accordance with the applicable American Standard for Nursery Stock for Type 1 and Type 2 trees shall satisfy the tree planting, replanting, and/or replacement standards and requirements contained in this chapter.”

SECTION 12

Portions of Article III, “District regulations,” of Chapter 98, “Zoning,” of Subpart

B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, are hereby amended to remove Sections 98-846, "Landscaping standards;" 98-847, "Tree planting standards;" 98-876, "Landscaping standards;" and 98-877, "Tree plantings standards;" and to renumber proceeding sections accordingly to read as follows:

Sec. 98-46. – Compliance with area plan components.

Sections. 98-847–98-870. – Reserved.

Sec. 98-876. – Compliance with area plan components.

Secs. 98-877 – 98-889. – Reserved.

Sec. 98-903. – Performance and design standards.

(h) Landscaping standards.

(3) Proposed landscaping shall meet the following standards:

f. Meet the standards for maintenance in section 82-246.

***"

SECTION 13

Section 98-977, "Communication tower, commercial," of Division 2, "Uses," of Article IV, "Supplementary district regulations," of Chapter 98, "Zoning," of Subpart B, "Land Development Regulations," of the Code of Ordinances, Town of Flower Mound, Texas, is hereby amended to read as follows:

"Sec. 98-977. Communication tower, commercial.

A commercial communication tower shall comply with the following standards:

- (6) *Fencing*. A solid fence or wall of brick, stone, or approved masonry construction not less than eight feet (8') in height from finished grade for the purpose of concealing grounded mechanical equipment shall be constructed around each commercial communication tower and around each guy anchor, if used. Access to the tower shall be through a locked gate. Barbed wire shall be used along the top of the fence or wall if it is necessary to preclude unauthorized access to the tower.

- (8) *Landscaping and screening*. Commercial communication towers shall comply with the screening requirements of section 82-301 of this Code, "Residential compatibility standards," for the purpose of concealing grounded mechanical equipment subject to the following provisions:

- a. The landscape screen or wall shall be placed around the perimeter of the tower and any accessory structures, including guy anchors, provided that the screening requirement shall be waived when the base of the tower is not visible from adjacent lots or rights-of-way. Landscaping shall be placed on the outside of fences.
- b. The requirements of section 82-303 of this Code, "Compatibility setback," shall not apply to commercial communication towers.

SECTION 14

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 15

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 16

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 17

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Code of Ordinances as amended or revised herein, or any other ordinances affecting the matters regulated herein 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 18

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 19

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

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 17TH DAY OF OCTOBER, 2022.

APPROVED:

Derek France, **MAYOR**

ATTEST:

Theresa Scott, **TOWN SECRETARY**

Town Council Future Agenda Items



SCHEDULED	10/20/2022	Work Session	Presentation and discussion on Tennis Center Funding
		Work Session	Presentation and discussion on Mandatory Sewer Connections
		Work Session	Presentation and discussion on Accessory Structures
		Work Session	Presentation and discussion on All Together Flower Mound Commission
	11/7/2022	Consent	Consider approval of a Professional Services Agreement for the Denton Creek and Prairie Vista Wastewater Model update project, with Kimley-Horn, for \$82,000; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Timber Creek Water & Sewer Replacement - Testing Award
		Consent	Consider approval of the award of RFP No. 2023-2-A with TBD in the amount of TBD for health benefits brokers services with TBD and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of an agreement with CampLife to provide reservation software for Twin Coves Park in the amount of \$6,200.00; and include approval of an agreement with Worldpay to provide merchant card services for said agreement in the estimated amount of \$10,800.00; and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Consider approval of an Interlocal Cooperation Agreement with Denton County for the provision of library services for the benefit of the citizens of Denton County, and authorization for the mayor to execute same on behalf of the Town.
		Presentation	Proclamation to designate November as Arts Month in Flower Mound
		Presentation	Presentation by the Friends of the Library of a donation to the Town in the amount of \$60,000
		Regular	Consider approval of a Development Agreement with Samuel GT Partners, LLC., to address certain development items associated with the development of the Flower Mound Ranch and Prairie Vista development projects; and authorization for the Mayor to execute same on behalf of the Town

SCHEDULED	11/7/2022	Regular	Public Hearing to consider an application for a tree removal permit (TRP22-0006) for nine (9) specimen trees on property proposed for development as Whyburn Farms. The property is generally located south of Dixon Lane, north of Waketon Road, and east of Long Prairie Road. (The Environmental Conservation Commission recommended denial for specimen trees #s 652, 654, 667, 668A and 668B and approval of specimen trees #s 661, 662, 772, 779, 780, 781, 842, 851 and 853 by a vote of 4-2-0 at its October 4, 2022, meeting).
		Regular	Public Hearing to consider an ordinance amending the zoning (ZPD21-0015 – Whyburn Farms) from Agricultural District (A) uses to Planned Development District No.189 (PD-189) with Single Family District-15 (SF-15), Single Family District-10 (SF-10) and Single Family District-5 (SF-5) uses, with certain waivers, exceptions and modifications to the Code of Ordinances. The property is generally located east of Long Prairie Road and south of Dixon Lane. (PZ recommended approval by a vote of 5 to 1 at its October 10, 2022, meeting.)
		Regular	Public Hearing to consider an ordinance amending the Master Plan (MPA21-0008 – Whyburn Farms) to amend Section 1.0, Land Use Plan, of the Master Plan to change the current land use designations from Low Density Residential, Office and Retail uses to Low Density Residential, Medium Density Residential and High Density Single Family Detached Residential uses. The property is generally located east of Long Prairie Road and south of Dixon Lane. (PZ recommended approval by a vote of 5 to 1 at its October 10, 2022, meeting.)
	11/17/2022	Regular	Discuss and receive direction on Community Support funding policy
	11/21/2022	Consent	Consider approval of naming the Wildlife Encounter Nature Trail at Heritage Park as the Gary Sims Wildlife Encounter Nature Trail.
		Consent	Annual Sidewalk Links & ADA Improvements Contract
		Consent	Placeholder: Canvass Election
		Consent	Consider approval of an amended Professional Services Contract with Promoter Line, Inc. to increase the event budget, and authorization for the Mayor to execute same on behalf of the Town.
		Consent	Innovative Transportation Solutions, Inc. - PSA
		Consent	City Works Migration and Implementation Services
		Regular	Consider approval of an ordinance amending Appendix A “Fee Schedule,” to revise various fees related to the review and issuance of permits under Chapter 14 entitled “Buildings and Building Regulations,” Chapter 18 entitled “Businesses,” and Chapter 34 entitled “Environment,” of the Town’s Code of Ordinances.
		Regular	Consider approval of an ordinance amending Appendix A “Fee Schedule,” to revise various fees related to the review and issuance of permits under Chapter 38 entitled “Fire Prevention and Protection,” of the Town’s Code of Ordinances.

SCHEDULED	11/21/2022	Regular	Public Hearing to consider an ordinance amending the Town's Code of Ordinances (LDR22-0003 – Development Fees) by amending appendix A entitled “Fee Schedule,” to update fees related to land development within the Town. (PZ recommended approval/denial by a vote of 0 to 0 at its November 14, 2022, meeting.)
	12/5/2022	Consent	Consider approval of Standards of Care for Youth Recreation Programs operated by the Town, in accordance with the Texas Human Resources Code - Section 42.041 and to adopt an ordinance providing for said Standards. (The Parks Board recommended approval by a vote of 6 to 0 at its November 3, 2022 regular
		Consent	Consider approval of the sale and consumption of alcoholic beverages (beer and wine) at Bakersfield Park, during the 2023 Independence Fest (The Parks Board recommended approval by a vote of 6 to 0 at its November 3, 2022 meeting).
	12/19/2022	Consent	Annual Slurry Seal Services Contract
		Regular	Placeholder: Judge reappointment
	1/17/2023	Consent	Chinn Chapel Soccer Complex Drainage Improvements - Construction Award
		Consent	Sunrise Circle Wastewater Connection
	2/20/2023	Consent	Royal Oaks Waterline Replacement Phase I - Construction Award