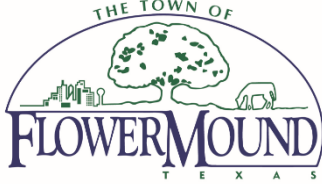


# Town Council Regular Meeting

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April 3, 2023  
Town Hall  
2121 Cross Timbers Road  
Flower Mound, TX 75028

6:00 p.m.

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

## AGENDA

### A. CALL 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. PRESENTATION(S)

1. Proclamation and presentation of Hometown Hero banner to Mason Lewis.
2. Child Abuse Prevention Proclamation
3. Mental Health Awareness Month in Denton County Proclamation
4. Recognition of the Flower Mound Citizens Academy - Class of 2023

### 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 \(PDF\)](#).

- 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**

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
4. Legislative Update

**H. FUTURE AGENDA ITEM(S)**

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 that 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. The next regular meeting is April 17.

**J. CONSENT ITEM(S)**

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. 3/20 Minutes - Consider approval of the minutes from the 3/20 regular meeting.
2. Alternate Judge Reappointment - Consider approval of an ordinance to reappoint Alternate Municipal Judge Stephanie Askew for the period of April 17, 2023, through April 18, 2025.
3. Royal Oaks Water Line Replacement Phase I - Testing Award - Consider approval of a Professional Services Agreement with Arias & Associates, Inc., to provide construction materials engineering and testing, for the Royal Oaks Water Line Replacement Phase I project, in the amount of \$15,825.00; and authorization for the Mayor to execute same on behalf of the Town.
4. CDBG-CV Amendment - Children's Advocacy Center - Consider approval of an amendment to a Service Agreement with Children's Advocacy Center for North Texas, increasing their funding by an amount not-to-exceed \$25,000.00 in Community Development Block Grant-CV funds to provide services to Flower Mound residents impacted by domestic violence; and authorization for the Mayor to execute same on behalf of the Town.
5. Denton County Hazard Mitigation Plan - Consider approval of a resolution authorizing adoption of the Denton County Hazard Mitigation Action Plan, and authorization for the Mayor to execute same on behalf of the Town.

**K. REGULAR ITEM(S)**

1. Timber Creek WL Ph. 1 Garden Homes - Construction Award - Consider approval of a Construction Agreement with A & B Construction, LLC, for the Timber Creek Water Line Phase I (Garden Homes) project, in the amount of \$1,393,317.00; and authorization for the Mayor to execute same on behalf of the Town.



2. MU23-0002 - Lakeside DFW MU-TEN Balcony Railing Amendment - Public Hearing to consider an ordinance for rezoning (MU23-0002 – Lakeside DFW MU-TEN Balcony Railing Amendment) to amend Mixed Use District-1 (MU-1) to amend the Architecture and Building Standards, specifically Section 7.4 Upper Stories, to change balcony railing standards for the MU-TEN subzone in the Lakeside Village Development Code. The property is generally located south of Edgemere Road and west of Lakeside Parkway. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting.)
3. ZPD22-0004 - Embree 2499 - Public Hearing to consider an ordinance for rezoning (ZPD22-0004– Embree 2499) to amend Planned Development District No. 186 (PD-186) with Retail-2 District (R-2) and Office District (O) uses, to modify the conceptual plans and elevations, and with certain modifications and exceptions to the Code of Ordinances. The property is generally located south of Sagebrush Drive and west of Long Prairie Road. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting)
4. MPA23-0001 - Western Flower Mound Thoroughfare Plan - Public Hearing to consider a request for a Master Plan Amendment (MPA23-0001 – Western Flower Mound Thoroughfare Plan) to amend Section 7.0, Thoroughfare Plan, by changing the designation of Various Roadways bounded by Denton Creek Boulevard on the west to the unnamed Greenway Rural Arterial on the east. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting; Transportation Commission recommended approval by a vote of 6 to 0 at its December 13, 2022, meeting).

#### **L. BOARDS/COMMISSIONS**

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 (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

#### **M. CLOSED MEETING**

1. Consultation with Town Attorney.
  - a. Oncor transmission line, switch, and substation projects
2. 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.
3. 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.
4. 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) #1, TIRZ #2, PID, MMD, and MUD.

**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**

**P. FUTURE AGENDA**

1. Future Agenda

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: March 30, 2023, at 4:00 p.m., at least 72 hours prior to the scheduled time of said meeting.

**Theresa Scott, Town Secretary**

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting by contacting Town Hall at 972.874.6000. Additional time limits will be provided for members of the public that need to address the Town Council through a translator.

# Town Council Regular Meeting

---



March 20, 2023  
Town Hall  
2121 Cross Timbers Road  
Flower Mound, TX 75028

6:00 p.m.

## DRAFT MINUTES

### A. CALL TO ORDER

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  
James W. Childers, Town Manager  
Bryn Meredith, Town Attorney  
Tommy Dalton, Assistant Town Manager  
Tiffany Bruce, Assistant Town Manager/Town Engineer  
Lexin Murphy, Director of Planning Services  
James Hoefert, Environmental Review Analyst  
Melody Eby, Senior Economic Development Specialist  
Ray Watson, Director of Economic Development  
Clay Riggs, Director of Public Works

### B. INVOCATION

Chaplain McNamer gave the 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."

Mayor France led the pledges.

### D. PRESENTATION(S)

1. None  
There were no presentations.

### 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 \(PDF\)](#).

- 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

*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 name and address        | Subject (as written on the form) |
|----|---------------------------------|----------------------------------|
| 1. | Jeffrey Fulton, 2316 Norwich St | Thanks                           |
| 2. | Todd Bayuk, 10845 Pedernales Dr | Citizens Academy, Environment    |

#### **F. ANNOUNCEMENTS**

Announcements from the mayor and council members

1. Announcements from the mayor and council members  
Councilmember Engel encouraged residents to sign up for the Flower Mound Fire Academy.

Mayor France expressed appreciation to everyone who organized or participated in Holi Fest this past Saturday.

#### **G. TOWN MANAGER'S REPORT**

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates  
Ms. Eby and Mr. Watson gave a presentation on the Towns Economic Incentives Report identifying or noting:
  - Scorecard example
  - Summary table and map

and they responded to questions from Council regarding:

- If the reports presented are available on line

Mr. Childers also reported that the Town has once again earned the Distinguished Budget Presentation Award from the Government Finance Officers Association (GFOA) for its budget beginning Oct. 1, 2022.

Mr. Childers noted that staff will address how the Town responds to disasters such as train derailments at a future meeting.

#### **H. FUTURE AGENDA ITEM(S)**

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. March 30 - Budget Priorities Work Session
2. April 3 - Regular Meeting  
Mayor France confirmed that all members of Council plan to attend the above referenced meetings.

#### **J. CONSENT ITEM(S)**

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. 3/6 Minutes - Consider approval of the minutes from the 3/6 regular meeting.
2. Wilkerson Park Playground Replacement - Consider approval of the purchase and installation of the FY 2022-23 Playground Replacements project, for Wilkerson Park Playground, from Childs Play, Inc., through the Texas Local Government Purchasing Cooperative, in the amount of \$477,869.00
3. CAC Outdoor Pool Maintenance - Consider approval of a contract with ATD Concrete Coatings for maintenance of the CAC indoor and outdoor pool decks in the amount of \$79,016.40 and for the Mayor to execute on behalf of the Town.
4. Sewer Assessment - Consider approval of Condition Assessment and Analysis Services for the existing sanitary sewer main related to the Lower Timber Interceptor Rehabilitation (Paisley Drive to Rockcreek Court) project, to Insituform Technologies, LLC., utilizing The Local Government Purchasing

Cooperative Contract #635-21, administered through BuyBoard, in the amount of \$56,996.25.

5. Street Maintenance Material - Consider approval of the annual purchase contract for flex base material from Big City Crushed Concrete, through a City of Lewisville contract (22-31-A) for an estimated annual amount of \$55,000.00.
6. Dixon Park Development Agreement - Consider approval of a Development Agreement with Toll Southwest LLC., for a 1.739 acre privately maintained and publicly accessible park and for Park Development fees associated with the Dixon Estates residential development; and authorization for the Mayor to execute same on behalf of the Town.
7. Short-Term Hotel Occupancy Tax Collection Agreement - Consider approval of a Professional Services Agreement with GovOS, in an amount not to exceed \$17,000, for the purpose of identifying and collecting hotel occupancy taxes from short-term rental properties located in Flower Mound; and authorization for Mayor to execute same on behalf of the Town.

**ACTION:** Mayor Pro Tem Sandeep Sharma moved to approve Consent items J.1 - J.7. as presented in the agenda caption. Deputy Mayor Pro Tem Ann Martin seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 6 : 0

#### **K. REGULAR ITEM(S)**

1. Annual Comprehensive Financial Report (ACFR) - Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2022.

Ms. Wilson introduced Diane Terrell, of the auditing firm Eide Bailly, LLP. Ms. Terrell provided background information regarding the audit and she, or Ms. Wilson, responded to questions from Council regarding:

- clarification of "low risk audited - no" text
- current policy on auditor rotation

**ACTION:** Councilmember Brian Taylor moved to approve item K.1. as presented in the agenda caption. Mayor Pro Tem Sandeep Sharma seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

**NAYS:** None

**ABSTAIN:** None  
**RESULT:** 5 : 0

2. TRP23-0003 - Montalcino Estates - Public Hearing to consider an application for a tree removal permit (TRP23-0003) for one (1) specimen tree on Lot 21, Block G of the Montalcino Estates PH 2 subdivision. The property is located at 5712 Bellaria Ct. (The Environmental Conservation Commission recommended approval by a vote of 6 to 0 at its March 7, 2023, meeting).

Mr. Hoefert gave a presentation identifying or noting:

- Project information
- General and detailed location
- Specimen tree survey
- Specimen tree requested for removal
- Legal consideration

and he responded to questions from Council regarding:

- clarification regarding the tree survey
- debits and credits clarification

Verity Burk, Applicant, McAdams, Landscaping Architect  
Ms. Burk gave a presentation identifying or noting:

- Letter of Intent
- Tree pictures
- Tree survey with aerial
- Site design and constraints
- Tree credit opportunity

and she responded to questions or comments from Council regarding:

- trees that are slated for preservation

There was Council discussion regarding:

- disappointed to see so many trees go
- the need to have them removed due to the floor plan and infrastructure needs is understood

**ACTION:** Mayor Pro Tem Sandeep Sharma moved to approve item K.2. as presented in the agenda caption. Councilmember Brian Taylor seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma  
**NAYS:** None  
**ABSTAIN:** None  
**RESULT:** 5 : 0

3. MPA21-0008 - Whyburn - Public Hearing to consider an ordinance amending the Master Plan (MPA21-0008 – Whyburn) 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 and Medium Density Residential uses. The property is generally located east of Long Prairie Road and south of Dixon Lane. (The Planning & Zoning Commission recommended approval by a vote of 5 to 1 at its October 10, 2022, meeting.) (On November 21, 2022, Town Council moved to table this item to its December 5, 2022, meeting by a vote of 4 to 0.) (On December 5, 2022, Town Council moved to postpone this item to applicants' time schedule by a vote of 5 to 0.) Mayor France opened items 3, 4, and 5 at the same time.

Ms. Murphy gave a presentation for items 3, 4, and 5 identifying or noting:

- General and detailed location
- Land use and zoning
- Previous/current master plan exhibit
- Previous/current conceptual site plan
- Modifications (proposed)
- Exception request (topographical slope)
- Site photos
- Landscape plan
- Tree survey
- Feb 2nd Parks Board recommendation

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

- parking plan
- drainage impacts

Heth Kendrick, Land Design

Mr. Kendrick gave a presentation for items 3, 4, and 5 identifying or noting:

- Dec. 5 discussion points
- Applicant's activities since Dec. 5
- Correspondence Jan 6 and 7
- Conceptual site plan updates

and he responded to questions or comments from Council regarding:



- long term use for the rest of the property
- what is the width of the open space by Whyburn
- what is the fencing planned along Dixon

There was Council discussion regarding:

- appreciation for the applicant listening to all the questions and comments from Council and the residents
- interest in making sure there are no historical buildings on the site
- interest in continuing to work with the neighbors regarding the fences
- how the plan presented today is like night and day from what was previously presented

Mayor France opened the Public Hearing for items 3, 4, and 5 at 7:27 pm. *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 | OPPOSITION | QUESTIONS OR COMMENTS ONLY        |
|----|---------|------------|-----------------------------------|
| 1. | None    | None       | Ganesh Koduri, 1928 Loma Linda Dr |

Mayor France closed the Public Hearing for items 3, 4, and 5 at 7:31 p.m.

**ACTION:** Councilmember Adam Schiestel moved to approve item K.3. as presented in the agenda caption. Councilmember Jim Engel seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

#### **ORDINANCE NO. 07-23**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING SECTION 1.0, "LAND USE PLAN," OF THE MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, SPECIFICALLY TO CHANGE THE CURRENT LAND USE REFLECTED ON THE LAND USE PLAN MAP FROM OFFICE AND RETAIL USES TO LOW DENSITY RESIDENTIAL AND MEDIUM DENSITY RESIDENTIAL USES ON APPROXIMATELY 38.507 ACRES OF LAND BEING A PART OF LOT 1, BLOCK B, WHYBURN ADDITION; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

4. ZPD21-0015 - Whyburn - Public Hearing to consider an ordinance amending the zoning (ZPD21-0015 – Whyburn) from Agricultural District (A) uses to Planned

Development District No.189 (PD-189) with Single Family District-15 (SF-15) and Single Family District-10 (SF-10) 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. (The Planning & Zoning Commission recommended approval by a vote of 5 to 1 at its October 10, 2022, meeting.) (On November 21, 2022, Town Council moved to table this item to its December 5, 2022, meeting by a vote of 4 to 0.) (On December 5, 2022, Town Council moved to postpone this item to applicants' time schedule by a vote of 5 to 0.)

**ACTION:** Councilmember Adam Schiestel moved to approve item K.4. as presented in the agenda caption. Councilmember Jim Engel seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

**NAYS:** None

**ABSTAIN:** None

**RESULT:** 5 : 0

**ORDINANCE NO. 08-23**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A," OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE FLOWER MOUND CODE BY CHANGING THE ZONING ON APPROXIMATELY 38.507 ACRES OF LAND BEING A PART OF LOT 1, BLOCK B, OF THE WHYBURN ADDITION, FROM A AGRICULTURAL DISTRICT USES TO PLANNED DEVELOPMENT DISTRICT-189 (PD-189) WITH CERTAIN SF15 SINGLE-FAMILY DISTRICT-15AND SF-10 SINGLE-FAMILY DISTRICT-10 USES IN ACCORDANCE WITH THE TOWN'S MASTER PLAN, SPECIFIC REQUIREMENTS, AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

5. TRP22-0006 - Whyburn - 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 tree #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). (The Town Council moved to postpone this item by a vote of 5 to 0 at its December 5, 2022, meeting.)

**ACTION:** Councilmember Adam Schiestel moved to approve item K.5. as presented in the agenda caption. Councilmember Jim Engel seconded the motion.

**AYES:** Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Sandeep Sharma

**NAYS:** None  
**ABSTAIN:** None  
**RESULT:** 5 : 0

**L. BOARDS/COMMISSIONS**

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, Historical Commission Task Force, Environmental Conservation Commission, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

No discussion.

**M. CLOSED MEETING**

The Town Council did not convene to a closed meeting and no action was taken on the following items.

1. Consultation with Town Attorney.
  - a. Oncor transmission line, switch, and substation projects.
2. 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.
3. 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.
4. 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) #1, TIRZ #2, PID, MMD, and MUD.

**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**

Not applicable.

**O. ADJOURN**

Mayor France adjourned the meeting at 7:40 p.m.

**TOWN OF FLOWER MOUND, TEXAS**

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**DEREK FRANCE, MAYOR**

**ATTEST:**

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**THERESA SCOTT, TOWN SECRETARY**



## TOWN COUNCIL AGENDA J.2. CONSENT ITEM(S)

---

**DATE:** April 3, 2023  
**FROM:** Theresa Scott, Town Secretary  
**ITEM:** **Consider approval of an ordinance to reappoint Alternate Municipal Judge Stephanie Askew for the period of April 17, 2023, through April 18, 2025.**

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**BACKGROUND:** Stephanie Askew was originally appointed to serve as Alternate Municipal Judge in 2017, and reappointed in 2019, and 2021, with a term expiration date of April 17, 2023. State law dictates a two-year term for both the main, alternate, and associate judge. In addition, any action of the governing body regarding the appointment or reappointment must be done by ordinance.

### **BOARD REVIEW/CITIZEN FEEDBACK:**

### **ALTERNATIVES:**

### **FISCAL IMPACT:**

#### **Proposed Expenditure**

\$100 (arraignments)  
\$62 (signing documents)  
\$550 (full court dates (morning & afternoon dockets)  
\$275 (half court dates (morning or afternoon docket only)  
\$75 (blood draw warrants - personally reviewed or issued  
\$50 (faxed warrants (personally reviewed or issued between 10:00 p.m. and 7:00 a.m., per warrant)  
\$100 (attendance at Municipal Court quarterly meetings)  
\$100 (court cancelation fee (payable only when court has been scheduled, but canceled less than 24 hours prior to the scheduled docket)

#### **Account Number(s):**

100-650-56000-5110

The total amount invoiced in calendar year 2022 was \$24,125. The proposed compensation remains unchanged from the previous term.

**LEGAL REVIEW:** No alteration to the legal content of this Ordinance was made, which had originally been approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P.

### **ATTACHMENTS:**

1. Alt Judge Reppointment

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_23**

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

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

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

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

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

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

**SECTION 1**

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

**SECTION 2**

Stephanie Askew is hereby reappointed as Alternate Municipal Judge of the Town of Flower Mound Municipal Court of Record for a two-year term to begin on April 18, 2023, and to expire on April 19, 2025. At the expiration of said term, in accordance with Article 16, Section 17 of the Texas Constitution, Stephanie Askew shall continue to serve until the Alternate Judge's successor shall be duly qualified.

**SECTION 3**

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

**SECTION 4**

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

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

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

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

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

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

## **SECTION 2**

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

## **SECTION 3**

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



**SECTION 4**

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS ON THIS 3<sup>rd</sup> DAY OF APRIL, 2023.**

**APPROVED:**

**Derek France, MAYOR**

**ATTEST:**

**Theresa Scott, Town Secretary**

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

***Duties.***

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

***Standing Orders.***

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

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

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

***On Call Procedures.***

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

***Municipal Court Operations.***

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

***Arraignments.***

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

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



## TOWN COUNCIL AGENDA J.3. CONSENT ITEM(S)

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**DATE:** April 3, 2023  
**FROM:** Blake Hummel, Senior Project Engineer  
**ITEM:** **Consider approval of a Professional Services Agreement with Arias & Associates, Inc., to provide construction materials engineering and testing, for the Royal Oaks Water Line Replacement Phase I project, in the amount of \$15,825.00; and authorization for the Mayor to execute same on behalf of the Town.**

---

**BACKGROUND:** The Professional Service Agreement includes construction materials engineering and testing for the Royal Oaks Water Line Replacement Phase I project.

On January 18, 2023, bids were received and opened (Bid # 2023-25-B) for the Royal Oaks Water Line Replacement Phase I project. A & B Construction LLC submitted the lowest qualified bid of the three (3) responding bidders at a base bid of \$1,353,490.00. The construction award was reviewed and approved on March 6, 2023 by Town Council.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES:** A decision not to approve the Professional Services Agreement for construction materials engineering and testing would remove the ability of Town staff to verify materials are installed to the required standards and specifications in the contract documents. This verification is necessary to ensure a quality project.

**FISCAL IMPACT:** \$15,825.00

**Proposed Expenditure/(Revenue)**  
\$15,825.00

**Account Number(s):**  
630-960-98705-6170

**LEGAL REVIEW:** The Town's standard professional service agreement form documents, prepared by Taylor, Olson, Adkins, Sralla, & Elam L.L.P., was used to draft this agreement. No alteration to the legal content of this form document was made.

**ATTACHMENTS:**

1. PSA\_Arias
2. Form 1295 (Internal Use)

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

THE STATE OF TEXAS   §  
COUNTY OF DENTON   §

**PROFESSIONAL SERVICES AGREEMENT WITH  
ARIAS & ASSOCIATES, INC.**

This contract is entered into on this 3<sup>rd</sup> day of April, 2023, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and through its Mayor, and **ARIAS & ASSOCIATES, INC.**, (“hereinafter referred to as “CONSULTANT”) whose address is 1312 Corporate Dr., Ste. B-1, Arlington, Texas 76006

**RECITALS**

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to construction materials engineering and testing and other services for the Royal Oaks Water Line Replacement Phase I project; and

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

**TERMS OF AGREEMENT**

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

**I.**

**Employment of Consultant**

CONSULTANT will perform as an independent contractor all services under this Contract to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the architectural, engineering and planning professions, both public and private, currently practicing in the same locality under similar conditions. CONSULTANT duties do not include supervising TOWN's contractors or commenting on, overseeing, or providing the means and methods, techniques, sequences, or procedures of their work, unless CONSULTANT accept such duties in writing. CONSULTANT will not be responsible for the failure of TOWN contractors to perform in accordance with their undertakings, and the providing of CONSULTANT's service will not relieve others of their responsibilities to TOWN or others. CONSULTANT will not be responsible for approving, accepting, rejecting, or stopping TOWN work or the work of any third party, unless CONSULTANT agrees to this in writing.

## **II.**

### **Scope of Services**

CONSULTANT will provide the services specifically described in this Agreement. TOWN agrees that CONSULTANT are not responsible for services that are not reasonably included in CONSULTANT's specific undertaking. CONSULTANT shall perform such services as are necessary to provide the Royal Oaks Water Line Replacement Phase I project Construction Materials Engineering and Testing specifically including, but not necessarily limited to, the tasks enumerated more fully in Attachment "A" hereto entitled "Scope of Work" (hereafter referred to as the "Project"). Attachment "A" is hereby incorporated herein by reference and made a part hereof as if written word for word. However, in case of conflict in the language of Attachment "A" and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

## **III.**

### **Payment for Services**

Total payment for services described herein shall be a sum not to exceed Fifteen Thousand Eight Hundred Twenty-Five and No/100 Dollars (\$15,825.00). This total payment for services includes CONSULTANT's ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT.

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

Each month CONSULTANT will submit to TOWN an invoice for actual services performed and reimbursable expenses incurred by CONSULTANT during the previous month for which payment is sought. Each invoice shall be itemized to show the amount of work performed that month broken down by the identity of the person(s) performing such work, the amount of time expended by such person(s) in performing that work, the billing rate for each such person, and a brief summary of the work or testing performed by each such person. Each invoice shall also state the percentage of work completed on

the Project, the total of the current invoice amount and a running total balance for the Project to date.

Assuming that TOWN agrees with the invoice, that TOWN has not determined any of the work to be unsatisfactory, or that TOWN otherwise does not dispute any of the amounts billed, within thirty (30) days of receipt of each such monthly invoice TOWN shall make monthly payments in the amount shown by CONSULTANT's approved monthly statements and other documentation submitted.

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

#### **IV.**

#### **Revisions of the Scope of Services**

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

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

#### **V.**

#### **Term**

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



**VI.**  
**Contract Termination Provision**

Notwithstanding any other provision of this Contract, this Contract may be terminated at any time by TOWN for any reason, with or without cause, by providing CONSULTANT thirty (30) days written notice of such termination. Upon receipt of such notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

**VII.**  
**Ownership of Documents**

All materials and documents prepared or assembled by CONSULTANT under this Contract shall become the sole property of TOWN and shall be delivered to TOWN without restriction on future use. CONSULTANT may retain in its files copies of all drawings, specifications and all other pertinent information for the work. CONSULTANT shall have no liability for changes made to any materials or other documents by others subsequent to the completion of the Contract. CONSULTANT shall have no liability for the Town or any third-party's use of the materials or other documents for any use other than the Project.

**VIII.**  
**Insurance**

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;

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

Blake Hummel  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874-6301 Telephone

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;
2. Companies issuing the insurance policies and CONSULTANT shall have no recourse against TOWN for payment of any premiums, or assessments for any deductible, as all such premiums are the sole responsibility and risk of CONSULTANT;
3. Approval, disapproval or failure to act by TOWN regarding any insurance supplied by CONSULTANT (or any subcontractors) shall not relieve CONSULTANT of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the insolvency or denial of liability by the insurance company exonerate CONSULTANT from liability; and
4. No special payments shall be made for any insurance that the CONSULTANT and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

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

#### **IX. Right to Inspect Records**

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

CONSULTANT further agrees to include in subcontract(s), if any, a provision that any subcontractor or engineer agrees that TOWN shall have access to and the right to examine any directly pertinent books, documents, papers and records of such engineer or sub-contractor involving transactions to the subcontract, and further, that TOWN shall have access during normal working hours to all such engineer or sub-contractor facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of the paragraph. TOWN shall give any such engineer or sub-contractor reasonable advance notice of intended audits.

**X.**  
**Successors and Assigns**

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither TOWN nor CONSULTANT shall assign or transfer its interest herein without the prior written consent of the other.

**XI.**  
**CONSULTANT's Liability**

Acceptance of the final plans by the TOWN shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or consultants for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility by TOWN for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, associates, agents or sub-consultants. In this regard, CONSULTANT acknowledges that TOWN is retaining CONSULTANT to provide the services described herein, in reliance upon CONSULTANT's specialized expertise and experience, and in reliance thereon.

**XII.**  
**Indemnification**

**THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. CONSULTANT DOES HEREBY COVENANT AND CONTRACT INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC, FROM REASONABLE, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY TO THE EXTENT CAUSED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD**

**TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, INDEMNIFY TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS. CONSULTANT SHALL IN NO CASE BE REQUIRED TO PAY AN AMOUNT DISPROPORTIONATE TO CONSULTANT NEGLIGENCE OR WILLFUL MISCONDUCT.**

**XIII.**  
**Independent Contractor**

CONSULTANT's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of TOWN in the performance of this Contract. No term or provision of or act of CONSULTANT or TOWN under this Contract shall be construed as changing that status. CONSULTANT will have exclusive control of and the exclusive right to control the details of the work performed under its scope of services, and shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and engineers and the doctrine of respondeat superior shall not apply as between TOWN and CONSULTANT, its officers, agents, employees, contractors, subcontractors and engineers, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

**XIV.**  
**Default**

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

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

- (a) Specific performance of the Contract;
- (b) Re-performance of this Contract at no extra charge to TOWN; or
- (c) Monetary damages in an amount not to exceed:
  - (1) The amount of any applicable insurance coverage CONSULTANT is required to purchase and maintain under this Contract plus any deductible amount to be paid by CONSULTANT in conjunction with said coverage regardless of whether CONSULTANT has actually purchased and maintained said coverage, plus any additional insurance maintained by CONSULTANT in excess or in addition to the coverage required under this Contract; plus
  - (2) The total dollar amount of this Contract.

#### **XV.**

#### **Provisions Surviving Termination**

The terms of Sections XII entitled Indemnification, and XVIII entitled Confidential Information shall survive termination of this Contract.

#### **XVI.**

#### **Changes**

TOWN may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between TOWN and CONSULTANT shall be incorporated by written modification to this Contract.

#### **XVII.**

#### **Conflicts of Interest**

CONSULTANT covenants and agrees that CONSULTANT and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities, investigations and other efforts made by CONSULTANT pursuant to this Contract will be conducted by employees, associates or subcontractors of CONSULTANT.

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of

any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

**XVIII.**  
**Confidential Information**

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning TOWN, its affiliates and subsidiaries, and all oral and written information concerning TOWN or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by CONSULTANT or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of CONSULTANT, or are required to be disclosed by a governmental authority or by law, as determined by TOWN's attorney.

**XIX.**  
**Notice Information**

All notices and communications under this CONTRACT to be mailed to TOWN shall be sent to the address of TOWN's agent as follows, unless and until CONSULTANT is otherwise notified:

Blake Hummel  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028  
972-874- 6301 Telephone

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

Partheeban Selvarajah, P.E.  
Arias & Associates, Inc.  
1312 Corporate Dr., Ste. B-1  
Arlington, TX 76006  
817-812-3500 Telephone



817-812-3502 Facsimile  
pselvarajah@ariasinc.com

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

**XX.**  
**Applicable Law**

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

**XXI.**  
**Non-Discrimination**

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

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

**XXII.**  
**Arbitration**

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

**XXIII.**  
**No Waiver of Governmental Immunity**

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

**XXIV.**  
**Severability**

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

**XXV.**  
**Remedies**

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

**XXVI.**  
**Entire Agreement**

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

**XXVII.**  
**Non-Waiver**

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

**XXVIII.**  
**Headings**

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

**XXIX.**  
**Venue**

This Contract is fully performable in Denton County, Texas, and the parties to this Contract agree and covenant that this Contract will be enforceable in Flower Mound, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

**XXX.**  
**No Third Party Beneficiary**

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

*[The remainder of this page left blank intentionally]*

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

**THE TOWN OF FLOWER MOUND, TEXAS**

By: \_\_\_\_\_  
The Honorable Derek France  
Mayor, Town of Flower Mound

Date Signed: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Town Secretary

CONSULTANT:  
ARIAS & ASSOCIATES, INC.

By: Partheeban Selvarajah  
Name: PS  
Title: Branch Manager  
Date Signed: 3/29/23

State of Texas §

County of Denton §

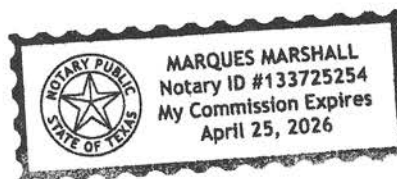
This instrument was acknowledged before me on the 29 day of March, 2023, by Partheeban Selvarajah in his capacity as Branch Manager of Arias, a testing Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same on behalf of and as the act of Project Manager.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 29 DAY OF March, 2023.

[Signature]  
Notary Public, State of Texas

My Commission Expires:

April 25<sup>th</sup> 2026





1312 Corporate Dr., Ste. B-1 Arlington, Texas 76006 • Phone: (817) 812-3500 • Fax: (817) 812-3502

Friday, February 10, 2023

Arias Job No: 2023-51

Proposal ID: 2

Mr. Blake Hummel  
Senior Project Engineer  
Town of Flower Mound  
2121 Cross Timbers Road  
Flower Mound, Texas 75028

Via Email: [blake.hummel@flower-mound.com](mailto:blake.hummel@flower-mound.com)

RE: Proposal for Construction Materials Testing (CMT)  
Proposed Royal Oaks Water Line Replacement Phase 1  
Kings Dr  
Flower Mound, Texas 75028

Dear Mr. Hummel:

Arias & Associates, Inc. dba ARIAS appreciates the opportunity to submit our proposal for testing services on the referenced project. The attachment presents our Estimate for providing CMT quality control services, as requested during the project by your representatives. We rely on your representatives to contact our dispatcher when our services are desired. Therefore, the quantity and frequency of testing is the responsibility of our customer.

Quality control or assurance tests serve to indicate the material quality for the specific material tested at a specific location at a particular time and date. Quality control (QC) or assurance tests do not represent the quality of any other portion of material placed, other than the portion tested and cannot in any way guarantee the quality of a final work product.

We understand that the project development will consist of replacement of approximately 4000 linear feet of waterline. The Qc testing will be done for the open cut utility section, which is approximately 1000 linear feet. The remaining linear feet of utility line, which is approximately 3000 feet, will be completed by pipe bursting. A line item description of our on call services that are included in the total cost estimate of this proposal are mentioned below:

- 1) Sampling subgrade, fill, and/or base materials for laboratory testing.
- 2) In-place field density testing of subgrade, fill, and/or base materials within the proposed structure and pavement areas.
- 3) Observation of placement of structural concrete and/or concrete pavement.
- 4) Sampling and testing of structural and/or pavement concrete during placement. The concrete specimens will be transported to our laboratory where they will be stored, cured, and tested for compressive strength on the specified dates.
- 5) Professional service fees for project management, data processing, engineer review, and reporting.

We have prepared an estimate for our on call scope of services based on our interpretations of the plans and specifications provided to Arias by you. A construction schedule was not available at the time this proposal was generated. Should Arias & Associates, Inc. be awarded this project, we request that a full set of plans, specifications, and all addendums - prior to the project start date - be provided to us. Efforts will be made to maintain the testing cost within our Estimate, but we recognize that variations in construction schedules could result in differences between the actual and estimated testing cost; and that our Estimate may change depending on the means and methods utilized by the contractor. Requests for any required

Arias Job No: 2023-51

Proposal ID: 2

change orders will be made as soon as possible during the construction of the project. Services authorized by the client or their designated representative in excess of the Estimated quantities will be charged per our appropriate unit rates. Based on this information, we estimate our services will cost approximately \$15,825.00 as itemized on the attached Estimate.

We propose that we conduct this work on a unit fee basis in accordance with the attached General Conditions. Charges will be incurred only for those services actually provided. Invoice payments are due upon receipt.

In order for us to better serve you, please fill out the attached Project Information Sheet and return at your earliest convenience; in addition please provide us with a copy of the plans and specifications applicable to our services and the project.

We look forward to assisting you towards the successful completion of this project.

Ricardo Cruz, E.I.T. will be the manager representative for Arias & Associates, Inc. on this job. You can contact Ricardo by calling (817) 253-0144 or by emailing [rcruz@ariasinc.com](mailto:rcruz@ariasinc.com).

**Cost Estimate**

| <b><u>Laboratory Testing (Soils)</u></b>             | <b><u>Quantity</u></b> | <b><u>Price</u></b> |      | <b><u>Total</u></b> |
|------------------------------------------------------|------------------------|---------------------|------|---------------------|
| Atterberg Limits Determination                       | 3                      | 75.00               | each | \$ 225.00           |
| Material Sample Pickup<br>(2 minimum)                | 6                      | 75.00               | hour | \$ 450.00           |
| Moisture Density Relationship                        | 3                      | 225.00              | each | \$ 675.00           |
| Percent Passing No. 200 Sieve                        | 3                      | 75.00               | each | \$ 225.00           |
| Trip Charge                                          | 2                      | 55.00               | each | \$ 110.00           |
|                                                      |                        | <b>Sub Total:</b>   |      | \$ 1,685.00         |
| <b><u>Soil Testing &amp; Observation</u></b>         | <b><u>Quantity</u></b> | <b><u>Price</u></b> |      | <b><u>Total</u></b> |
| Nuclear Gauge                                        | 10                     | 70.00               | trip | \$ 700.00           |
| Soils Observation Technician                         | 80                     | 75.00               | hour | \$ 6,000.00         |
| Assume 10 days for open cut backfilling. (3 minimum) |                        |                     |      |                     |
| Trip Charge                                          | 10                     | 55.00               | each | \$ 550.00           |
|                                                      |                        | <b>Sub Total:</b>   |      | \$ 7,250.00         |
| <b><u>Concrete Observation &amp; Testing</u></b>     | <b><u>Quantity</u></b> | <b><u>Price</u></b> |      | <b><u>Total</u></b> |
| Concrete Compression Test                            | 24                     | 20.00               | each | \$ 480.00           |
| Assume 6 sets of cylinders.                          |                        |                     |      |                     |
| Concrete Cylinder Pickup<br>(2 minimum)              | 12                     | 75.00               | hour | \$ 900.00           |
| Concrete Technician (ACI I)                          | 36                     | 75.00               | hour | \$ 2,700.00         |
| Assume 6 days for concrete placement. (3 minimum)    |                        |                     |      |                     |
| Trip Charge                                          | 12                     | 55.00               | each | \$ 660.00           |
|                                                      |                        | <b>Sub Total:</b>   |      | \$ 4,740.00         |
| <b><u>Professional Services</u></b>                  | <b><u>Quantity</u></b> | <b><u>Price</u></b> |      | <b><u>Total</u></b> |
| Clerical Time for Report Preparation                 | 10                     | 65.00               | hour | \$ 650.00           |
| Manager                                              | 10                     | 150.00              | hour | \$ 1,500.00         |
|                                                      |                        | <b>Sub Total:</b>   |      | \$ 2,150.00         |
|                                                      |                        | <b>Total:</b>       |      | \$ 15,825.00        |

## Excluded Items:

- 1) Retest of failed inspections.
- 2) The total hours for drilled pier observation do not include additional time should casing be required.
- 3) Observation and testing by owner's laboratory and/or any other agencies.
- 4) Observation of Reinforcing Steel
- 5) Observation and testing of masonry construction and/or any associated materials.
- 6) Observation and testing of roofing.
- 7) Observation and testing of structural steel.
- 8) Inspection of structural steel fabrication plant.
- 9) Observation and testing of asphalt.
- 10) Non-destructive testing and observation (radiographic testing, magnetic particle testing, dye penetrant testing, ultrasonic testing, etc.).
- 11) Observation and testing of fireproofing.
- 12) Observation and testing of wood framing.



Arias Job No: 2023-51

- 13) Observation and testing of post-installed anchors.
- 14) Observation and testing of insulation.
- 15) Observation and testing of retaining walls and/or any associated materials.
- 16) Any and all surveying services to define locations and/or boundaries including verification of limits of the vertical and/or horizontal extent of select fill or other materials placed during construction.
- 17) Engineering services not specifically requested.
- 18) Any other products or services not specifically addressed in the above scope.

Rates for excluded items and other services will be invoiced at ARIAS standard rates.

Minimum call-out charge for technician and equipment is 3 hours. Minimum call-out charge for material sampling and/or sample pickup is 2 hours. Charges are accrued portal to portal. An overtime rate of 1.5 times the above quoted rates is applicable to time worked in excess of 8 hours per day Monday through Friday, hours worked before 6:00 a.m. or after 6:00 p.m., and all hours worked on Saturdays, Sundays, and holidays.

Dispatch can be reached Monday-Friday from 7:00 am to 5:00 pm and Saturday from 7:00 am to 12:00 pm. All requests for dispatch made after 5:00 pm, Monday-Friday and after 12:00 pm on Saturday may leave a voicemail message and will be addressed by our dispatcher at 7:00 am the next working day in the order they were received. Please schedule work in a timely manner, minimally 24 hours in advance, to have an ARIAS technician available to be on site at the requested time.



## TOWN COUNCIL AGENDA J.4. CONSENT ITEM(S)

---

**DATE:** April 3, 2023  
**FROM:** Brittni Barnett, Grants and Financial Analyst  
**ITEM:** **Consider approval of an amendment to a Service Agreement with Children's Advocacy Center for North Texas, increasing their funding by an amount not-to-exceed \$25,000.00 in Community Development Block Grant-CV funds to provide services to Flower Mound residents impacted by domestic violence; and authorization for the Mayor to execute same on behalf of the Town.**

---

**BACKGROUND:** This item is to amend a Service Agreement with Children's Advocacy Center for North Texas (CACNT) for the provision of services to Town residents who have been impacted by domestic violence.

The amendment increases CACNT's original funding amount of \$80,098.25 by \$25,000.00. The \$25,000.00 was originally allocated to Ranch Hands Rescue (RHR) for the same purpose. However, despite their efforts, RHR has not spent any of their awarded funds. With less than five months remaining in their period of performance, the Town decided to move forward with terminating their grant. This reallocation to CACNT is to ensure that the funds will be utilized by the spending deadline set by the U.S. Department of Housing and Urban Development. To date, CACNT has spent almost all of their original award.

The Town of Flower Mound receives funds from the U.S. Department of Housing and Urban Development (HUD) as part of its Community Development Block Grant Program (CDBG). These funds provide services and activities that benefit primarily low- to moderate-income individuals and households. In 2020, the Town was allocated \$347,556 in CDBG funds to be used to prevent, prepare for, and respond to the coronavirus pandemic (COVID-19).

Due to a documented increase in the number of individuals affected by domestic violence during the course of the COVID-19 pandemic, the Town decided to allocate a portion of its CDBG-CV funds to agencies that assist those affected by this issue.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** \$0

**Proposed Expenditure/(Revenue)**  
(\$25,000.00)  
\$25,000.00

**Account Number(s):**  
361-4605  
361-719-97880-5110

**LEGAL REVIEW:** No alteration to the legal content of this agreement was made, which had originally been approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P.

**ATTACHMENTS:**

1. Funding Agreement Amendment

2. Original Signed Funding Agreement

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

**FUNDING AGREEMENT AMENDMENT #1  
CDBG-CV Domestic Violence Assistance**

**AGREEMENT BETWEEN THE TOWN OF FLOWER MOUND  
AND  
Children's Advocacy Center for North Texas**

The funding agreement between the Town of Flower Mound and Children's Advocacy Center for North Texas is hereby amended as follows:

**IV. PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this contract shall not exceed \$105,098.25.

**EXHIBIT A – PROGRAM SUMMARY**

**Scope of Services**

- A. Targeted Flower Mound (Unduplicated) Clients: 75
- B. Each unit of service will be reimbursed at a rate of \$196.63 not to exceed \$105,098.25 for the entire contract.

All other provisions of this contract shall remain unchanged in full force and effect.

The terms of this contract and the amendment thereto are accepted by the parties to the contract. Persons signing are expressly authorized to obligate the parties to the terms of this contract and the amendment thereto.

This amendment shall become active on the date of the last signature.

Town of Flower Mound

Children's Advocacy Center for North Texas

By: \_\_\_\_\_  
Derek France, Mayor

By: \_\_\_\_\_  
Kristen Howell, CEO

**AGREEMENT BETWEEN THE TOWN OF FLOWER MOUND  
AND  
Children’s Advocacy Center for North Texas  
  
FOR  
CDBG-CV Domestic Violence Assistance**

THIS AGREEMENT entered this 18th day of July 2022 by and between the Town of Flower Mound (herein called the “Grantee”) and Children’s Advocacy Center for North Texas (herein called the “Subrecipient”).

WHEREAS, the Town of Flower Mound has applied for and notified that it will receive grant monies from the United States Government under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136;

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds:

NOW, THEREFORE, it is agreed between the parties hereto that.

**I. SCOPE OF SERVICES**

**A. Activities**

The Subrecipient will be responsible for administering a Community Development Block Grant – Coronavirus (CDBG-CV) Domestic Violence Assistance Program (Program) in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds and with all requirements outlined in this Agreement. Such Program will include activities eligible under the Community Development Block Grant Program, as described in “Exhibit A - Program Summary.”

**B. National Objectives**

The Subrecipient certifies that the activities carried out with funds provided under this Agreement will meet the CDBG Program’s National Objectives as defined in the requirements of Title 24: Housing and Urban Development of the Code of Federal Regulations (CFR) Part 570. Grantee has applicable volumes of 24 CFR pertinent to this Agreement for review or reproduction.

**C. CDBG-CV Objective**

The primary objective of the CDBG-CV program is to prevent, prepare for, and respond to the coronavirus (COVID-19), using the CDBG program.

**D. Performance Monitoring**

The Grantee will monitor the performance of the Subrecipient against goals and performance standards as stated above and in the exhibit hereto. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is

not taken by the Subrecipient within 10 business days after being notified by the Grantee, contract suspension or termination procedures will be initiated.

## II. TIME OF PERFORMANCE

Services of the Subrecipient shall start on the 1st day of August 2022 and end on the 31st day of July 2023, or until program funds are exhausted, unless earlier terminated under the terms of this Agreement. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG-CV funds or other CDBG assets disbursed under this Agreement, including program income.

## III. BUDGET

The Subrecipient shall operate fiscally within the budget presented in “Exhibit A - Program Summary.” It is expressly understood and agreed that repayment shall be based on a cost per service unit delivered for services provided in the previous month.

The Grantee may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendment to this budget for cost per service unit delivery must be approved in writing by the Grantee and the Subrecipient.

## IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$80,098.25. Drawdowns for the payment of eligible expenses shall be made against the total project budget specified in paragraph III herein and in accordance with performance. Increases or decreases in budget line items must be approved by the Grantee in writing.

Payments may be contingent upon certification of the Subrecipient’s financial management system, in accordance with the standards specified in 2 CFR 200, Subpart D (Grantee has copy available for review or reproduction).

Failure to meet the contracted service unit goal by the end of the Agreement term shall result in reimbursement of less than the full grant award of this Agreement. Exceptions may be made on a case-by-case basis, subject to Grantee approval.

## V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery, or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals indicated below, unless otherwise modified by subsequent written notice.

Communication, details, and notices concerning this Agreement shall be directed to the following representatives:

Grantee  
 Brittnei Barnett, Grants & Financial Analyst  
 Town of Flower Mound  
 2121 Cross Timbers Road  
 Flower Mound, TX 75028  
 972-874-6040  
 brittnei.barnett@flower-mound.com

Subrecipient  
 Kristen Howell, CEO  
 Children's Advocacy Center for North Texas  
 Fed. I.D. 75-2559765  
 1854 Cain Drive  
 Lewisville, TX 75077  
 972-318-2818  
 KHowell@cacnorthtexas.org

## VI. SPECIAL CONDITIONS

Subrecipient will not commingle CDBG-CV monies with any other funds, including other CDBG funds or Town-awarded funds, in any manner that would prevent the Grantee from readily identifying expenditures for operation of the Program. Subrecipient will maintain records differentiating CDBG-CV funding from all other funding sources for auditing purposes.

## VII. GENERAL CONDITIONS

### A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 or the Recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. Grantee has a copy of the relevant sections of the CFR available for review or reproduction. The Subrecipient also agrees to comply with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this Agreement. The Subrecipient further agrees to utilize funds available under this Agreement to supplement, rather than supplant, funds otherwise available. The Subrecipient agrees to comply with all applicable requirements outlined in 24 CFR 570.502. In the event of noncompliance, Grantee may take any actions outlined under this Agreement or 2 CFR 200.338.

### B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the Parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance as the Subrecipient is an independent contractor.

### C. Hold Harmless

The Subrecipient shall hold harmless, defend, and indemnify the Grantee from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in the Agreement.

#### D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage or its equivalent for all its employees involved in the performance of this Agreement.

#### E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR 200.325 (Grantee has a copy available for review or reproduction).

#### F. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, and signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under the Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change of funding, the scope of services, or schedule of the activities to be underwritten as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

#### G. Suspension or Termination

Either party may terminate this Agreement at any time in accordance with 2 CFR 200.339, as it exists or may be amended. Partial terminations of the Scope of Service in Paragraph I.A above may only be undertaken with the prior approval of the Grantee. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports, or other materials prepared by the Subrecipient under this Agreement shall, at the option of the Grantee, become the property of the Grantee, and the Subrecipient shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

The Grantee may also suspend or terminate this Agreement, in whole or in part, if the Subrecipient materially fails to comply with any term of this Agreement, or with any of the rules, regulations, or provisions referred to herein, by giving written notice to the Subrecipient of such termination or suspension, specifying the effective date thereof, which may be immediate, and in the case of a suspension, the period of and requirements for lifting the suspension; and the Grantee may declare the Subrecipient ineligible for any further participation in the Grantee's contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the Subrecipient is in noncompliance with any applicable rules or regulations, the Grantee may withhold up to fifteen percent (15%) of all funds disbursed under this Agreement until such time as the Subrecipient is found to be in compliance by the Grantee or is otherwise adjudicated to be in compliance.



## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Subrecipient agrees to comply with the financial management requirements of 2 CFR 200, Subpart D (Grantee has a copy available for review or reproduction) and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls required therein, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The Subrecipient shall administer its program in conformance with 2 CFR 200 Subpart E as applicable (Grantee has copies available for reproduction or review). These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record-Keeping

#### 1. Records to be Maintained

The Subrecipient shall establish and maintain records sufficient to enable the Grantee to: (1) determine whether the Subrecipient has complied with this Agreement, applicable Federal statutes and regulations, and the terms and conditions of the Grantee's Federal award; and (2) satisfy recordkeeping requirements applicable to the Grantee. The Subrecipient shall maintain, at a minimum, all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement.

#### 2. Retention

As required by 24 CFR 570.502, the Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of the longer of three (3) years after the expiration or termination of the subrecipient agreement, or three (3) years after the submission of the annual performance and evaluation report in which the specific activity is reported on for the final time. Records for individual activities subject to the reversion of assets provisions at 24 CFR 570.503(b)(7) or change of use provisions at 24 CFR 570.505 must be maintained for as long as those provisions continue to apply to the activity. Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues. Subrecipient shall also comply with the requirements of 2 CFR 200.333, as specified by 24 CFR 570.502.

#### 3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, family size, income level or

other basis for determining eligibility, and description of service provided including how the service serves to prepare, prevent, or respond to COVID hardships. Such information shall be made available to Grantee monitors or their designees for review upon request and shall safeguard such information in compliance with 2 CFR 200.303. Subrecipient shall continue to maintain client data through the 'Use and Reversion of Assets' term identified in section VIII.E.2.

#### 4. Disclosure

The Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

#### 5. Close-Outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to making final payments; disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee); and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

#### 6. Audits & Inspections

All Subrecipient's records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, their designees, or the Federal Government, or any of their authorized representatives, at any time during normal business hours, as often as the Grantee, or federal government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning recipient audits and, as applicable, 2 CFR 200 (grantee has copy available for review or reproduction). The Subrecipient agrees to participate in the implementation of the programmatic and fiscal requirements outlined in the Town of Flower Mound's CDBG CARES Act Program Policies & Procedures.

### C. Reporting and Payment Procedures

#### 1. Program Income

No program income will be generated under this Agreement.

## 2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

## 3. Payment Procedures

The Grantee will pay the Subrecipient funds available under this Agreement monthly, based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. Payments will be based on the established cost per unit for actual services provided. See Exhibit A. In addition, the Grantee reserves the right to liquidate funds available under this Agreement for costs incurred by the Grantee on behalf of the Subrecipient.

## 4. Progress Reports

The Subrecipient shall submit the following Monthly Activity Summary Reports: CDBG Request for Reimbursement Form and subsequent back-up documentation, the CDBG Client Data Summary Report, Demographic Report, and Summary Performance Objectives Report to the Town of Flower Mound Financial Services Department no later than the 15<sup>th</sup> of each month. Multiple failures to submit timely reports will be reflected in the Subrecipient's file and may be considered during the renewal process.

## D. Procurement

### 1. Compliance

The Subrecipient shall comply with the procurement requirements of 2 CFR 200, Subpart D, as amended by 24 CFR 570.502, in all procurement under this Agreement. The Subrecipient shall additionally comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. See VIII.E.1. Reversion of Assets.

### 2. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

## IX. PERSONNEL & PARTICIPANT CONDITIONS

### A. Civil Rights

#### 1. Compliance

The Subrecipient agrees to comply with all local and state civil rights laws, regulations, or ordinances, as well as Title VI of the Civil Rights Act of 1964 as amended, Title VII of the Civil Rights Act of 1964 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973,

the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as Amended by Executive Orders 11375 and 12086. Grantee has copies of applicable compliance documents for review or reproduction.

## 2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as amended. Any applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

## 3. Section 504

The Subrecipient agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706), which prohibits discrimination against the handicapped in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

## B. Affirmative Action

### 1. Fair Housing

The Subrecipient agrees to assist the Grantee by taking meaningful actions to further fair housing. If requested, the Subrecipient will distribute outreach and educational materials to its clients on behalf of the Grantee and provide space for meetings, workshops, and other outreach efforts as needed.

### 2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of the Agreement. As used in this Agreement, the term “minority and female owned business enterprise” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women. For the purpose of this definition, “minority group members” are African Americans; Spanish-speaking, Spanish surnamed, or Spanish-heritage Americans; Asian-Americans; and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

### 3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, financial statements, and accounts by the Grantee or its agents, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

#### 4. Notifications

The Subrecipient will send a notice to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places to employees and applicants for employment.

#### 5. EEO/AA Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

#### 6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs XI.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

### C. Employment Restrictions

#### 1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; or lobbying, political patronage, and nepotism activities.

### D. Conduct

#### 1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

#### 2. Subcontracts

##### a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure compliance with this Agreement. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance and shall be provided to Grantee upon request.

c. Content

The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under the contract, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V United States Code.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 and 2 CFR 200 with respect to conflicts of interest. In the event of conflict between the provisions, the most stringent requirements shall apply.

5. Lobbying

The Subrecipient hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency; a Member of Congress; an officer or employee of congress; or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, it

will complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

c. It will require that the language of paragraph (d), "Lobbying Certification," be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

d. Lobbying Certification: This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 6. Copyright

If this Agreement results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.

#### 7. Religious Organization and Equal Participation of Faith-based Organizations

The Subrecipient agrees that funds provided under this Agreement will be used in compliance with 24 CFR 570.200(j) and the Federal regulations specified therein, specifically requiring equal participation, separation or religious activities, and beneficiary protections found in 24 CFR 5.109.

#### E. 24 CFR 570, Subpart K

The Subrecipient agrees to carry out each activity in compliance with all other applicable Federal laws and regulations described in 24 CFR 570, subpart K, as specified by 24 CFR 570.503, which are not specifically outlined herein.

#### X. SEVERABILITY

If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

#### XI. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

#### XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous

communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

Town of Flower Mound

Children's Advocacy Center for North Texas

By:   
Derek France, Mayor

By:   
Kristen Howell, CEO



## **EXHIBIT A – PROGRAM SUMMARY**

Children’s Advocacy Center for North Texas (CACNT) and its partners are the front-line responders to reports of child abuse in Denton County. They provide a coordinated, multi-disciplinary approach to child abuse cases, empowering child abuse victims, their families, and our community by providing education, healing, and justice. Children are considered secondary victims of domestic violence and CACNT will utilize the CDBG-CV funds provided by the Town of Flower Mound to assist Flower Mound residents who have been impacted in this area of service. Services provided will include, but are not limited to, multi-disciplinary case coordination, forensic interviews, forensic medical exams, and mental health services.

### **Program Timeline**

AUGUST 1, 2022 THROUGH JULY 31, 2023.

### **Scope of Services**

- A. Targeted Flower Mound (Unduplicated) Clients: 75
- B. Each unit of service will be reimbursed at a rate of \$196.63 not to exceed \$80,098.25 for the entire contract.



## TOWN COUNCIL AGENDA J.5. CONSENT ITEM(S)

---

**DATE:** April 3, 2023

**FROM:** Paul Henley, Fire Chief

**ITEM:** **Consider approval of a resolution authorizing adoption of the Denton County Hazard Mitigation Action Plan, and authorization for the Mayor to execute same on behalf of the Town.**

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**BACKGROUND:** FEMA has concluded their review of the Denton County Hazard Mitigation Plan and has found the plan to be approvable pending adoption by our Town Council. Flower Mound is one of thirty-one Denton County jurisdictions that participated in the plan. Each jurisdiction has their own Annex to the Plan that addresses specific hazards for their community as well as potential mitigation projects that could be done to help lessen the impacts of a disaster. Adoption of this plan will allow Flower Mound to be eligible to apply for Hazard Mitigation Grant funds after a future disaster declaration. Flower Mound has been participating in this project with Denton County since 2016.

**BOARD REVIEW/CITIZEN FEEDBACK:** N/A

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

**Proposed Expenditure/(Revenue)**  
N/A

**Account Number(s):**

**LEGAL REVIEW:** No alteration to the legal content of this resolution was made, which had originally been approved by Taylor, Olson, Adkins, Sralla, & Elam L.L.P.

**ATTACHMENTS:**

1. Flower Mound Hazard Mitigation Plan 2023
2. RESOLUTION Denton County HazMAP

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

## SECTION 19: MITIGATION ACTIONS

### TOWN OF FLOWER MOUND

| Town of Flower Mound – Action #1                                                                                                                    |                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Acquire and install generators with hard wired quick connections at all critical facilities                                                                                                                   |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                                                                                                               |
| <b>Site and Location:</b>                                                                                                                           | Community-wide critical facilities, including but not limited to designated Town shelters and the emergency operations center such as: Community Activity Center, Senior Center, Fire Administrative Building |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Provide power for critical facilities during power outages and ensure continuity of critical services.                                                                                                        |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                                                                                                                                  |

| MITIGATION ACTION DETAILS                                                                        |                                                                                                                |
|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Drought, Earthquake, Extreme Heat, Flood, Hail, Thunderstorm Winds, Lightning, Wildfire, Winter Storm, Tornado |
| <b>Community Lifeline (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication):</b> | Energy (Power/Fuel)                                                                                            |
| <b>Effect on new/existing buildings:</b>                                                         | N/A                                                                                                            |
| <b>Priority (High, Moderate, Low):</b>                                                           | High                                                                                                           |
| <b>Estimated Cost:</b>                                                                           | \$500,000                                                                                                      |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                                                                          |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Facilities Department                                                                     |
| <b>Implementation Schedule:</b>                                                                  | Within 12-24 months of plan adoption, then ongoing                                                             |
| <b>Incorporation into Existing Plans:</b>                                                        | Emergency Management Plan                                                                                      |

| COMMENTS:                                                                                                        |
|------------------------------------------------------------------------------------------------------------------|
|                                                                                                                  |
| NFIP & WHY MITIGATION ACTION IS APPROPRIATE:                                                                     |
| Helps ensure critical facilities continue to provide services during a power outage caused by unforeseen events. |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #2                                                                                                                    |                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Harden/retrofit critical facilities to a hazard-resistant level, including identifying a facility as an alternative EOC.                                                                          |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                                                                                                   |
| <b>Site and Location:</b>                                                                                                                           | Community-wide critical facilities.<br>Alternative new EOC to be proposed for Fire Station 6 or the future Fire Station 8.                                                                        |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce damages at critical facility. Ensure continuity of critical services during and after a severe storm event. Reduce risk of injury to residents, critical and emergency response personnel. |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                                                                                                                      |

| MITIGATION ACTION DETAILS                                                                        |                                                                                                       |
|--------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Earthquake, Extreme Heat, Flood, Hail, Thunderstorm Winds, Lightning, Wildfire, Winter Storm, Tornado |
| <b>Community Lifeline (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication):</b> | Safety/Security                                                                                       |
| <b>Effect on new/existing buildings:</b>                                                         | Reduce risk to existing structures                                                                    |
| <b>Priority (High, Moderate, Low):</b>                                                           | Moderate                                                                                              |
| <b>Estimated Cost:</b>                                                                           | \$500,000                                                                                             |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                                                                 |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Facilities Department                                                            |
| <b>Implementation Schedule:</b>                                                                  | Within 24-36 months of plan adoption, then ongoing                                                    |
| <b>Incorporation into Existing Plans:</b>                                                        | Emergency Management Plan                                                                             |

|                                                                                        |
|----------------------------------------------------------------------------------------|
| <b>COMMENTS:</b>                                                                       |
|                                                                                        |
| <b>NFIP &amp; WHY MITIGATION ACTION IS APPROPRIATE:</b>                                |
| Protects infrastructure, reduces cost of reparation, and prevents injury to residents. |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #3                                                                                                                    |                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Develop and implement public education program to educate citizens of hazards that can threaten the area and mitigation measures to reduce injuries, fatalities, and property damages. |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                                                                                        |
| <b>Site and Location:</b>                                                                                                                           | Community-wide                                                                                                                                                                         |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Promote hazard awareness and protect citizens from potential injuries and damages.                                                                                                     |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Education and Awareness                                                                                                                                                                |

| MITIGATION ACTION DETAILS                                                                        |                                                                                                                        |
|--------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Earthquake, Expansive Soils, Extreme Heat, Flood, Hail, Thunderstorm Winds, Lightning, Tornado, Wildfire, Winter Storm |
| <b>Community Lifeline (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication):</b> | Communication                                                                                                          |
| <b>Effect on new/existing buildings:</b>                                                         | N/A                                                                                                                    |
| <b>Priority (High, Moderate, Low):</b>                                                           | Moderate                                                                                                               |
| <b>Estimated Cost:</b>                                                                           | \$10,000                                                                                                               |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                                                                                  |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound DEM                                                                                               |
| <b>Implementation Schedule:</b>                                                                  | Within 12-24 months of plan adoption                                                                                   |
| <b>Incorporation into Existing Plans:</b>                                                        | Emergency Management Plan                                                                                              |

|                                                         |
|---------------------------------------------------------|
| <b>COMMENTS:</b>                                        |
|                                                         |
| <b>NFIP &amp; WHY MITIGATION ACTION IS APPROPRIATE:</b> |
| Promotes public safety.                                 |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #4                                                                                                                    |                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Upgrade undersized stormwater drains and culverts.                                                                 |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                    |
| <b>Site and Location:</b>                                                                                                                           | Community-wide                                                                                                     |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce flood risk through improved drainage capacity. Reduce risk of damages and injury to vulnerable populations. |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                                       |

| MITIGATION ACTION DETAILS                                                                        |                                                                |
|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Flood                                                          |
| <b>Community Lifeline</b> (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication): | Safety/Security                                                |
| <b>Effect on new/existing buildings:</b>                                                         | Reduce risk to new and existing structures and infrastructures |
| <b>Priority</b> (High, Moderate, Low):                                                           | High                                                           |
| <b>Estimated Cost:</b>                                                                           | \$4,000,000                                                    |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                          |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Public Works                              |
| <b>Implementation Schedule:</b>                                                                  | Within 12-60 months of plan adoption                           |
| <b>Incorporation into Existing Plans:</b>                                                        | Drainage Plan                                                  |

|                                                         |
|---------------------------------------------------------|
| <b>COMMENTS:</b>                                        |
|                                                         |
| <b>NFIP &amp; WHY MITIGATION ACTION IS APPROPRIATE:</b> |
| Protects communities and reduces risk of flooding.      |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #5                                                                                                                    |                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Implement stream restoration/channelization projects to ensure adequate drainage/diversion of stormwater.          |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                    |
| <b>Site and Location:</b>                                                                                                                           | Community-wide                                                                                                     |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce flood risk through improved drainage capacity. Reduce risk of damages and injury to vulnerable populations. |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                                       |

| MITIGATION ACTION DETAILS                                                                        |                                                                |
|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Flood                                                          |
| <b>Community Lifeline</b> (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication): | Safety/Security                                                |
| <b>Effect on new/existing buildings:</b>                                                         | Reduce risk to new and existing structures and infrastructures |
| <b>Priority</b> (High, Moderate, Low):                                                           | High                                                           |
| <b>Estimated Cost:</b>                                                                           | \$4,000,000                                                    |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                          |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Public Works                              |
| <b>Implementation Schedule:</b>                                                                  | Within 12-60 months of plan adoption                           |
| <b>Incorporation into Existing Plans:</b>                                                        | Drainage Plan                                                  |

|                                                         |
|---------------------------------------------------------|
| <b>COMMENTS:</b>                                        |
|                                                         |
| <b>NFIP &amp; WHY MITIGATION ACTION IS APPROPRIATE:</b> |
| Protects communities and reduces risk of flooding.      |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #6                                                                                                                    |                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Implement streambank protection projects to ensure adequate protection from streambank erosion to structures.      |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                    |
| <b>Site and Location:</b>                                                                                                                           | Community-wide                                                                                                     |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce flood risk through improved drainage capacity. Reduce risk of damages and injury to vulnerable populations. |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                                       |

| MITIGATION ACTION DETAILS                                                                        |                                                                |
|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Flood                                                          |
| <b>Community Lifeline</b> (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication): | Safety/Security                                                |
| <b>Effect on new/existing buildings:</b>                                                         | Reduce risk to new and existing structures and infrastructures |
| <b>Priority</b> (High, Moderate, Low):                                                           | High                                                           |
| <b>Estimated Cost:</b>                                                                           | \$5,000,000                                                    |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                          |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Public Works                              |
| <b>Implementation Schedule:</b>                                                                  | Within 12-60 months of plan adoption                           |
| <b>Incorporation into Existing Plans:</b>                                                        | Drainage Plan                                                  |

|                                                         |
|---------------------------------------------------------|
| <b>COMMENTS:</b>                                        |
|                                                         |
| <b>NFIP &amp; WHY MITIGATION ACTION IS APPROPRIATE:</b> |
| Protects communities and reduces risk of flooding.      |



## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #7                                                                                                                    |                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Covered parking for Flower Mound Police Department response vehicles.                                                                 |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                                                       |
| <b>Site and Location:</b>                                                                                                                           | Police Station                                                                                                                        |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce risk of property damages to emergency response equipment. Ensure continuity of critical services during and after storm event. |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                                                          |

| MITIGATION ACTION DETAILS                                                                        |                                                            |
|--------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Thunderstorm Winds, Tornado, Hail, Lightning, Winter Storm |
| <b>Community Lifeline (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication):</b> | Safety/Security                                            |
| <b>Effect on new/existing buildings:</b>                                                         | N/A                                                        |
| <b>Priority (High, Moderate, Low):</b>                                                           | Moderate                                                   |
| <b>Estimated Cost:</b>                                                                           | \$600,000                                                  |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants                      |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Facilities Department                 |
| <b>Implementation Schedule:</b>                                                                  | Within 60 months of plan adoptions                         |
| <b>Incorporation into Existing Plans:</b>                                                        | Emergency Response Plan                                    |

| COMMENTS: |
|-----------|
|           |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #8                                                                                                                    |                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Conduct soil testing and conditioning for new and reconstructed streets. |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                          |
| <b>Site and Location:</b>                                                                                                                           | Community-wide                                                           |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce risk of property damages and erosion.                             |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                             |

| MITIGATION ACTION DETAILS                                                                        |                                            |
|--------------------------------------------------------------------------------------------------|--------------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Drought, Expansive Soils, Winter Storm     |
| <b>Community Lifeline (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication):</b> | Safety/Security                            |
| <b>Effect on new/existing buildings:</b>                                                         | N/A                                        |
| <b>Priority (High, Moderate, Low):</b>                                                           | High                                       |
| <b>Estimated Cost:</b>                                                                           | \$1,000,000                                |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants      |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Facilities Department |
| <b>Implementation Schedule:</b>                                                                  | Within 60 months of plan adoptions         |
| <b>Incorporation into Existing Plans:</b>                                                        | Capital Improvement Plan                   |

| COMMENTS: |
|-----------|
|           |

## SECTION 19: MITIGATION ACTIONS

| Town of Flower Mound – Action #9                                                                                                                    |                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| <b>Proposed Action:</b>                                                                                                                             | Targeted wildland/urban interface mitigation projects based on neighborhoods identified in CWPP. |
| <b>BACKGROUND INFORMATION</b>                                                                                                                       |                                                                                                  |
| <b>Site and Location:</b>                                                                                                                           | Community-wide                                                                                   |
| <b>Risk Reduction Benefit</b> (Current Cost/Losses Avoided):                                                                                        | Reduce damages or eliminate loss of resulting from severe weather events.                        |
| <b>Type of Action:</b> (Local Plans and Regulations, Structure and Infrastructure Projects, Natural Systems Protection, or Education and Awareness) | Structure and Infrastructure                                                                     |

| MITIGATION ACTION DETAILS                                                                        |                                       |
|--------------------------------------------------------------------------------------------------|---------------------------------------|
| <b>Hazard(s) Addressed:</b>                                                                      | Wildfire                              |
| <b>Community Lifeline (Safety/Security, Health/Medical, Energy (Power/Fuel), Communication):</b> | Safety/Security                       |
| <b>Effect on new/existing buildings:</b>                                                         | N/A                                   |
| <b>Priority (High, Moderate, Low):</b>                                                           | Moderate                              |
| <b>Estimated Cost:</b>                                                                           | \$100,000                             |
| <b>Potential Funding Sources:</b>                                                                | Local Funds, State and Federal Grants |
| <b>Lead Agency/Department Responsible:</b>                                                       | Town of Flower Mound Fire Department  |
| <b>Implementation Schedule:</b>                                                                  | Within 12-36 months of plan adoption  |
| <b>Incorporation into Existing Plans:</b>                                                        | CWPP                                  |

| COMMENTS: |
|-----------|
|           |

**TOWN OF FLOWER MOUND, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE TOWN OF FLOWER MOUND ADOPTING THE DENTON COUNTY HAZARD MITIGATION ACTION PLAN, APRIL 2023.**

**WHEREAS**, the Town Council of the Town of Flower Mound, Texas recognizes the threat that natural hazards pose to people and property within the Town of Flower Mound; and,

**WHEREAS**, the Town of Flower Mound has updated the 2016 multi-hazard mitigation plan, hereby known as Denton County Hazard Mitigation Action Plan, April 2023 in accordance with the Disaster Mitigation Act of 2000 and Federal Emergency Management Agency (FEMA); and,

**WHEREAS**, Denton County Hazard Mitigation Action Plan, April 2023 identifies mitigation goals and actions to reduce or eliminate long-term risk to people and property in the Town of Flower Mound from the impacts of future hazards and disasters; and,

**WHEREAS**, adoption by the Town Council of the Town of Flower Mound, Texas demonstrates their commitment to the hazard mitigation and achieving the goals outlined in the Denton County Hazard Mitigation Action Plan, April 2023;

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

**SECTION 1**

The Town Council of the Town of Flower Mound, Texas, hereby adopts the Denton County Hazard Mitigation Action Plan, April 2023.

**SECTION 2**

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 THE 3<sup>rd</sup> DAY OF April, 2023.**

**APPROVED:**

---

Derek France, MAYOR

**ATTEST:**

---

Theresa Scott, **TOWN SECRETARY**

Enclosure A

Attached is the list of participating local governments included in the March 22, 2023 review of the referenced Hazard Mitigation plan.

| Community Name |
|----------------|
|----------------|

- 1) Argyle city
- 2) Aubrey city
- 3) Bartonville town
- 4) Copper Canyon town
- 5) Corinth city
- 6) Cross Roads town
- 7) Denton city
- 8) Denton County
- 9) DISH town
- 10) Double Oak town
- 11) Flower Mound town
- 12) Hackberry town
- 13) Hebron town
- 14) Hickory Creek town
- 15) Highland Village city
- 16) Justin city
- 17) Krugerville city
- 18) Krum city
- 19) Lake Dallas city
- 20) Lewisville city
- 21) Little Elm city
- 22) Northlake town
- 23) Oak Point city
- 24) Pilot Point city
- 25) Ponder town
- 26) Providence Village town
- 27) Roanoke city
- 28) Sanger city
- 29) Shady Shores town
- 30) The Colony city
- 31) Trophy Club town



## TOWN COUNCIL AGENDA K.1. REGULAR ITEM(S)

---

**DATE:** April 3, 2023

**FROM:** Dale Crown, Senior Project Engineer

**ITEM:** Consider approval of a Construction Agreement with A & B Construction, LLC, for the Timber Creek Water Line Phase I (Garden Homes) project, in the amount of \$1,393,317.00; and authorization for the Mayor to execute same on behalf of the Town.

---

**BACKGROUND:** On February 16, 2023, bids were received and opened for the Timber Creek Water Line Replacement Phase 1 (Garden Homes) project (Bid #2023-32-B). A & B Construction, LLC submitted the lowest qualified bid of the two responding bidders at a bid amount of \$1,393,317.00.

The project includes approximately 1100 linear feet of 8-inch water line replacement and 93 private service reconnections with associated appurtenances along Rollo Court, John Court, and Gayle Court.

**BOARD REVIEW/CITIZEN FEEDBACK:** A public meeting to provide residents with project information will be held prior to start of construction.

**ALTERNATIVES:** The existing water lines have had numerous past maintenance issues. A decision not to approve the construction agreement would result in continued maintenance and service interruptions along Rollo Court, John Court and Gayle Court.

**FISCAL IMPACT:** \$1,393,317.00

**Proposed Expenditure/(Revenue)**  
\$1,393,317.00

**Account Number(s):**  
630-960-98772-6170

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

**ATTACHMENTS:**

1. Attachment 1 - Bid Tabulations
2. Attachment 2 - Construction Agreement
3. Attachment 3 - Form 1295 (confidential)

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



## Town of Flower Mound

**Bid No: 2023-32-B – Timber Creek Water Line Replacement Phase 1 (Garden Homes)**

**Bid Opening: 2/16/2023 at 11:00 AM**

| Company                 | Total Bid       |
|-------------------------|-----------------|
| Canary Construction Inc | \$ 1,991,750.00 |
| A & B Construction LLC  | \$ 1,393,317.00 |

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

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

Date: February 16, 2023



**TOWN OF FLOWER MOUND**  
**TIMBER CREEK WATER LINE REPLACEMENT PHASE 1**  
**(GARDEN HOMES)**

**Bid # 2023-32-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 A & B 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 Line Replacement Phase 1 (Garden Homes)**  
**Bid Number 2023-32-B**

in the Town of Flower Mound, Texas, and all extra work in connection therewith, under the terms as stated in this Agreement, and under the terms of the Contract Documents; and at his, her, or their own proper cost and expense to furnish all superintendence, labor, insurance, equipment, tools, and other accessories and services necessary to complete the said construction in accordance with all the Contract Documents, incorporated herein as if written word for word, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings and printed or written explanatory manner therefore, and the Conditions and Specifications as prepared by the Town or its consultant hereinafter called “Engineer”, who has been identified by the endorsement of the Contractor's written proposal, and the General Conditions, Supplemental Conditions, and Special Provisions of this Agreement, and the payment, performance, and maintenance bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Agreement.

**ARTICLE 1.** The Contract Documents shall consist of the following documents:

- A. The Construction Agreement;
- B. Properly executed Change Orders and Field Orders in writing and executed by the Town, the last in time being first in precedence;
- C. Any listed and numbered addenda;
- D. Special Provisions;

- E. Supplementary Conditions;
- F. Construction Drawings or Plans;
- G. Technical Specifications;
- H. Town's Standard Construction Details;
- I. The most current edition of the *Town of Flower Mound Design Criteria and Construction Standards* (by reference);
- J. *Occupational Safety and Health Standards – Excavation*, 20 CFR Part 1926 (by reference);
- K. *Texas Manual on Uniform Traffic Control Devices (TMUTCD)* (by reference);
- L. The General Conditions;
- M. *Public Works Construction Standards - North Central Texas, as amended* (by reference);
- N. Notice to Bidders;
- O. Instructions to Bidders;
- P. The Town's written notice to proceed to Contractor;
- Q. The Contractor's Bid Proposal;
- R. The Performance Bond, Payment Bond and Maintenance Bond; and
- S. Bid materials distributed by the Town that relate to the Project.

These Contract Documents are incorporated by reference into this Agreement as if set out in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided; however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed herein above. If, however, there exists a conflict or inconsistency between the Technical Specifications and the Construction Drawings, it shall be the Contractor's obligation to seek clarification as to which requirements or provisions control before undertaking any work on that component of the project. Should the Contractor fail or refuse to seek a clarification of such conflicting or inconsistent requirements or provisions prior to any work on that component of the project, the Contractor shall be solely responsible for the costs and expenses - including additional time - necessary to cure, repair, and/or correct that component of the project.

ARTICLE 2. For performance of the Work in accordance with the Contract Documents, the Town shall pay the Contractor in current funds an amount not to exceed **One Million Three Hundred Ninety Three Thousand Three Hundred Seventeen Dollars and Zero cents (\$ 1,393,317.00)** taking into consideration additions to or deductions from the Total Bid through properly executed change orders by reason of alterations or modifications of the original quantities or by reason of “Extra Work” authorized under this Agreement in accordance with the provisions of the Contract Documents. It is hereby mutually agreed that for and in consideration of the payments as provided for herein to the Contractor by the Town, the said Contractor shall furnish all labor, equipment, and material (except as otherwise specified above) and shall perform all work necessary to complete the improvements in a good and workmanlike manner, ready for use, within the specified time for substantial completion of one-hundred (100) calendar days, and final completion of one-hundred twenty (120) calendar days ready for final payment, as measured from the Effective Start Date shown in the Notice to Proceed. The work shall be in strict accordance with this Agreement, a copy of which is filed pursuant to law in the office of the legal representative of the Town.

ARTICLE 3. Before commencing work, the Contractor shall, at its own expense, procure, pay for, and maintain the insurance coverage required by the Contract Documents written by companies approved by the State of Texas and acceptable to the Town of Flower Mound. Contractor shall provide the Town Purchasing Manager with certificates of insurance indicating coverage’s required by the Contract Documents. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificate of Insurance similar to the ACORD Form are acceptable. Town will not accept Memorandums of Insurance or Binders as proof of insurance. The Town reserves the right to require complete, certified copies of all required insurance policies at any time.

ARTICLE 4. The Contractor shall procure and pay for performance and payment bonds applicable to the work in the amount of the total bid price. The Contractor shall also procure and pay for a maintenance bond applicable to the work in the amount of one hundred percent (100%) of the total bid price. The period of the Maintenance Bond shall be two years from the date of acceptance of all work done under the contract, to cover the guarantee as set forth in the Special Conditions. The performance, payment, and maintenance bonds shall be issued on the forms attached to this Construction Agreement. Other performance, payment, and maintenance bond forms shall not be accepted. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance, payment, and maintenance bonds shall be issued by a corporate surety, acceptable to and approved by the Town, authorized to do business in the State of Texas, pursuant to Chapter 2253 of the Texas Government Code. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance, payment, and maintenance bonds upon Town request. In addition to the foregoing requirements if the amount of the bond exceeds One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) the bond must be issued by a surety that is qualified as a surety on obligations permitted or required under federal law

as indicated by publication of the surety's name in the current U.S. Treasury Department Circular 570. In the alternative, an otherwise acceptable surety company (not qualified on federal obligations) that is authorized and admitted to write surety bonds in Texas must obtain reinsurance on any amounts in excess of One Hundred Thousand and Zero/One Hundredths Dollars (\$100,000.00) from a reinsurer that is authorized and admitted as a reinsurer in Texas who also qualifies as a surety or reinsurer on federal obligations as indicated by publication of the surety's or reinsurer's name in the current U.S. Treasury Department Circular 570.

ARTICLE 5. It is hereby further agreed that in consideration of the faithful performance of the work by the Contractor, the Town shall pay the Contractor the compensation due him by reason of said faithful performance of the work in accordance with the provisions of this Agreement. As it completes portions of the Work, the Contractor may request progress payments from the Town. Progress payments shall be made by the Town based on the Town's estimate of the value of the Work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the Town satisfactory evidence that material suppliers have been paid for these materials.

No progress payment shall be due to the Contractor until the Contractor furnishes to the Town:

1. copies of documents reasonably necessary to aid the Town in preparing an estimate of the value of Work properly completed;
2. full releases of liens, including releases from subcontractors providing materials or delivery services relating to the Work, in a form acceptable to the Town releasing all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment;
3. an updated and current schedule clearly detailing the project's critical path elements; and
4. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the Town determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the Town determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the Town the overpayment amount specified by the Town within thirty (30) calendar days after it receives written demand from the Town.

The fact that the Town makes a progress payment shall not be deemed to be an admission by the Town concerning the quantity, quality, or sufficiency of the Contractor's work.

Progress payments shall not be deemed to be acceptance of the Work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the Town shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the Contract Work on the effective date of the Contract:

| <u>Contract Amount</u>      | <u>Retainage Percentage</u> |
|-----------------------------|-----------------------------|
| Up to \$25,000.00           | 15%                         |
| \$25,000.00 to \$400,000.00 | 10%                         |
| Over \$400,000.00           | 5%                          |

Retainage shall be withheld and may be paid to:

1. ensure proper completion of the Work. The Town may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
2. ensure timely completion of the Work. The Town may use retained funds to pay liquidated damages; and
3. provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the Town in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

ARTICLE 6. The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that the Work has not been performed in accordance with the Contract Documents. The Town may use these funds to pay replacement or substitute contractors to complete unfinished or defective Work.

The Town may withhold payment of some or all of any progress or final payment that would otherwise be due if the Town determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the Town is entitled to indemnification from Contractor under the Contract Documents. Amounts withheld under this section shall be in addition to any retainage.

ARTICLE 7. When the erosion control measures have been completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents and per TPDES General Construction Permit, it shall issue a written Notice of Acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents or TPDES General Construction Permit, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

ARTICLE 8. When the Work is completed, the Contractor shall request that the Town perform a final inspection. The Town shall inspect the Work. If the Town determines that the Work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the Work. If the Town determines that the Work has not been completed in accordance with the Contract Documents, then it shall provide the Contractor with a written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that Work shall be deemed accepted on the date specified in the Town's written notice of acceptance of the Work. The Work shall not be deemed to be accepted based on "substantial completion" of the Work, use or occupancy of the Work, or for any reason other than the Town's written Notice of Acceptance. Further, the issuance of a certificate of occupancy for all or any part of the Work shall not constitute a Notice of Acceptance for that Work.

In its discretion, the Town may issue a Notice of Acceptance covering only a portion of the Work. In this event, the notice shall state specifically what portion of the Work is accepted.

ARTICLE 9. After all Work required under the Contract Documents has been completed, inspected, and accepted, the Town shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of Work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides original full releases of liens, or other evidence satisfactory to the Town to show that all sums due for labor, services, and materials furnished for or used in connection with the Work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to

the issuance of the final payment in the form of joint checks made payable to Contractor and others. The Town may, but is not obligated to, issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the Town copies of all documents that the Town determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the Town has satisfied its obligation to administer the Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the Town shall pay the Final Payment within thirty (30) calendar days after the date specified in the Notice of Acceptance. This provision shall apply only after all Work called for by the Contract Documents has been accepted.

**ARTICLE 10. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE TOWN, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES, OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS, OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").**

**BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.**

**INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

In its sole discretion, the Town shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the Town. Contractor shall retain approved counsel for the Town within seven business days after receiving written notice from the Town that it is invoking its right to indemnification under this Agreement. If Contractor does not retain counsel for the Town within the required time, then the Town shall have the right to retain counsel and the Contractor shall pay the attorneys' fees and expenses.

The Town retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so. To the extent that Town elects to provide and pay for any such costs, Contractor shall indemnify and reimburse Town for such costs.

ARTICLE 11. The Contractor understands and agrees that time is of the essence in performing and completing the Work. The Town and Contractor acknowledge that the actual damages the Town may sustain if the Contractor fails to complete the Work on time are uncertain and will be difficult to ascertain. The Contractor agrees that the sum of Two-Hundred Forty Dollars and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages will be deducted from the Contract price by the Town for each calendar day or portion thereof that the work is not substantially complete beyond the Substantially Complete Contract time, or within such extra time as may have been allowed by an extension approved by the Town. The Contractor also agrees that the sum of Two-Hundred Forty Dollars and Zero/One Hundredths Dollars (\$240.00) per day or portion of a day in Liquidated Damages for each calendar day or portion thereof the work has not been finally completed by the Contractor beyond the Contract time for final completion, or within such extra time as may have been allowed by an extension approved by the Town. The Town and the Contractor agree that this amount is payable as reasonable and just compensation for failure to complete the Work on time. This amount is payable as liquidated damages and not as a penalty.

ARTICLE 12. For a two-year period after the date specified in a written notice of acceptance of Work and authorization to make final payment by the Flower Mound Town Council, Contractor shall provide and pay for all labor and materials that the Town determines are necessary to correct all defects in the Work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor. This shall also include areas of vegetation that did meet TPDES General Construction Permit during final close out but have since become noncompliant.

Forty-five (45) to sixty (60) calendar days before the end of the two-year warranty period, the Town may make a warranty inspection of the Work. The Town shall notify the Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, the Town shall mail to the Contractor a written notice that specifies the defects in the Work that are to be corrected.

The Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from the Town. If the Contractor does not begin the remedial work timely or prosecute it diligently, then the Town may pay for necessary labor and materials to effect repairs and these expenses shall be paid by the Contractor, the maintenance bond surety, or both.

If the Town determines that a hazard exists because of defective materials and workmanship, then the Town may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice either to the Contractor or its surety.



Expenses incurred by the Town to alleviate the hazard shall be paid by the Contractor, the maintenance bond surety, or both.

Any Work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that Work performed during the warranty period is performed with required insurance and the maintenance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

The Town may make as many warranty inspections as it deems appropriate.

ARTICLE 13. The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the Work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the Work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

Ancillary/Integral Professional Services: In selecting an architect, engineer, land surveyor, or other professional to provide professional services, if any, that are required by the Contract Documents, Contractor shall not do so on the basis of competitive bids but shall make such selection on the basis of demonstrated competence and qualifications to perform the services in the manner provided by Section 2254.004 of the Texas Government Code and shall so certify to the Town the Contractor's agreement to comply with this provision with Contractor's bid.

ARTICLE 14. The Contractor shall sign the Construction Agreement, and deliver signed performance, payment, and maintenance bonds and proper insurance policy endorsements (and/or other evidence of coverage) within fifteen (15) calendar days after the Town makes available to the Contractor copies of the Contract Documents for signature. Six copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the Town.

The Construction Agreement "effective date" shall be the date on which the Town Council acts to approve the award of the Contract for the Work to Contractor. It is expressly provided; however, that the Town Council delegates the authority to the Town Manager or his designee to rescind the Contract award to Contractor at any time before the Town delivers to the Contractor a copy of this Construction Agreement that bears the signature of the Mayor or Town Manager and Town Secretary or their authorized designees. The purpose of this provision is to ensure that:

1. the Contractor timely delivers to the Town all bonds and insurance documents; and

2. the Town retains the discretion not to proceed if the Town Manager or his designee determines that information indicates that the Contractor was not the lowest responsible bidder or that the Contractor cannot perform all of its obligations under the Contract Documents.

**THE CONTRACTOR AGREES THAT IT SHALL HAVE NO CLAIM OR CAUSE OF ACTION OF ANY KIND AGAINST THE TOWN, INCLUDING A CLAIM FOR BREACH OF CONTRACT, NOR SHALL THE TOWN BE REQUIRED TO PERFORM UNDER THE CONTRACT DOCUMENTS, UNTIL THE DATE THE TOWN DELIVERS TO THE CONTRACTOR A COPY OF THE CONSTRUCTION AGREEMENT BEARING THE SIGNATURES JUST SPECIFIED.**

Contractor stipulates that the Town is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, the Town does not waive any of its immunities from suit and/or liability, except as otherwise expressly and specifically provided herein or as specifically provided by law.

Payments under this Contract are due and payable in accordance with the provisions of Texas Government Code Section 2251.022. Interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

Attention is called to the Government Code, Chapter 2258, Prevailing Wage Rates. Contractor and any subcontractor shall pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of this Agreement. The Town has determined the general prevailing rate of per diem wages in the locality in which the public work is to be constructed by using the prevailing wage rates as determined by the United States Department of Labor in accordance with the Davis-Bacon Act as applicable to this Project. Contractor or a subcontractor who violates this provision shall be liable for the penalty specified in Texas Government Code Section 2258.023, which as of the date of this Agreement is \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. Town reserves the right to receive and review payroll records, payment records, and earnings statements of employees of Contractor, and of Contractor's Subcontractors, and of Sub-Subcontractors to verify payments made to same. However, no Claim for additional compensation shall be considered by Town because of payments of wage rates in excess of the applicable rate provided herein.

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialmen, artisan, laborer, or subcontractor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

The Contractor represents and warrants the following to the Town (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Town to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

1. that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
2. that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
3. that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project; and
4. that the execution of the Contract and its performance thereof are within its duly-authorized powers.

The Contract Documents shall be construed and interpreted by applying Texas law. Exclusive venue for any litigation concerning the Contract Documents shall be Denton County, Texas.

Although the Construction Agreement has been drafted by the Town, should any portion of the Construction Agreement be disputed, the Town and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the Town and Contractor and shall inure to their benefit as well as that of their respective successors and assigns.

If Town Council approval is not required for the Construction Agreement under applicable law, then the Construction Agreement "effective date" shall be the date on which the Mayor or Town Manager and Town Secretary or their designees have signed the Construction Agreement. If the Mayor or Town Manager and Town Secretary sign on different dates, then the later date shall be the effective date.

IN WITNESS WHEREOF, the Town and the Contractor, respectively, have caused this Agreement to be duly executed in the day and year first herein written in two copies, all of which to all intents and purposes shall be considered as the original.

This Agreement will be effective on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

TOWN OF FLOWER MOUND

CONTRACTOR

\_\_\_\_\_  
Derek France, MAYOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Signature)  
(Printed Name)  
(Position)

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST: \_\_\_\_\_  
Theresa Scott, TOWN SECRETARY

ATTEST: \_\_\_\_\_  
\_\_\_\_\_  
(Signature)  
(Position)



## TOWN COUNCIL AGENDA K.2. REGULAR ITEM(S)

---

**DATE:** April 3, 2023

**FROM:** Claire Barnes, Planner

**ITEM:** **Public Hearing to consider an ordinance for rezoning (MU23-0002 – Lakeside DFW MU-TEN Balcony Railing Amendment) to amend Mixed Use District-1 (MU-1) to amend the Architecture and Building Standards, specifically Section 7.4 Upper Stories, to change balcony railing standards for the MU-TEN subzone in the Lakeside Village Development Code. The property is generally located south of Edgemere Road and west of Lakeside Parkway. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting.)**

---

**BACKGROUND:**

- Subzones Impacted –MU-TEN. Specifically, microzones MZ1, MZ4, and MZ5.
- The developer is proposing a modification to the following section within the Lakeside Village ordinance:
  - Section 7 – Architectural and Building Standards
- [Planning and Zoning Commission Report](#)

**BOARD REVIEW/CITIZEN FEEDBACK:** The Planning & Zoning Commission recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting.

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

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

**ATTACHMENTS:**

1. Draft Ordinance
2. Exhibit A

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

**TOWN OF FLOWER MOUND, TEXAS  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 09-18, WHICH AMENDED MIXED USE DISTRICT-1 (MU-1), ALSO KNOWN AS THE LAKESIDE DFW MIXED USE DEVELOPMENT; BY AMENDING EXHIBIT “B” TO MODIFY DEVELOPMENT STANDARDS RELATED TO SECTION 7, “ARCHITECTURAL AND BUILDING STANDARDS,” AS APPLICABLE TO MICROZONES MZ1, MZ4, AND MZ5 WITHIN SUBZONE MU-TEN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town Council of the Town of Flower Mound heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

**WHEREAS**, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as Microzones MZ1, MZ4, and MZ5, within Subzone MU-TEN within the Lakeside DFW Mixed Use Development have filed an application for a zoning amendment for Mixed Use District-1 (MU-1); and,

**WHEREAS**, the Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on March 27, 2023, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on April 3, 2023, with respect to the proposed zoning amendment as described herein; and,

**WHEREAS**, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a zoning amendment on the property; and

**WHEREAS**, the Town Council finds that amendment of Ordinance No. 09-18 as outlined herein is in the best interest of the Town of Flower Mound and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public.

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

**SECTION 1**

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area as shown below:

Exhibit "B" to Ordinance No. 19-18, entitled "Lakeside DFW Development Code" is hereby amended in part as more fully described in "Exhibit A," attached to this Ordinance.

**SECTION 2**

The use of the property described above shall be subject to all restrictions, terms, and conditions contained herein, as well as the applicable regulations contained in Ordinance No. 09-18, the Lakeside DFW Development Code; the Land Development Regulations; and all other applicable and pertinent ordinances of the Town of Flower Mound.

**SECTION 3**

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

**SECTION 4**

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

**SECTION 5**

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

shall constitute a separate offense and shall be punishable as such.

### **SECTION 6**

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

### **SECTION 7**

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

### **SECTION 8**

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 3RD DAY OF APRIL, 2023.**

**APPROVED:**

\_\_\_\_\_  
**Derek France, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Theresa Scott, TOWN SECRETARY**





LAKE SIDE DFW  
DEVELOPMENT CODE  
AMENDED

ORDINANCE 09-18  
MU17-0002

SUBZONE MU-TEN  
LAKE SIDE VILLAGE:  
REVISING MU-TEN(1) AND MU-TEN(2)  
AND ADDING APPROXIMATELY 9 ACRES

Flower Mound, TX

April 3, 2023

AMENDED PAGES

P95

A DEVELOPMENT BY  
Realty Capital Management, LLC  
909 Lake Carolyn Parkway Suite 150  
Irving, TX 75039  
James W. Archie, Managing Director  
469.533.4131

PLANNING BY  
Roaring Brook Development Co.  
3058 Lakeside Parkway  
Flower Mound, TX 75022  
Dan Quinto  
817.706.8353

-style blinds either horizontal or vertical; or finished fabric drapery. Metal blinds and cellulose blinds are prohibited. Artwork located on the glass or inside the glass is permitted provided it is not serving as advertising.

#### D. PRIVATE OUTDOOR SPACES

1. Outdoor private space, design - if outdoor private space is provided for residential units on the ground floor, these areas may be separated from the public ROW by fencing or with ornamental railings or masonry walls and should be consistent with architectural character of the façade. Railings or walls must be at a height no greater than 48". The areas must be provided a mixture of hardscape to landscape including turf, ground cover, shrubs, plant boxes or planters.
2. Outdoor private space, storage of materials - outdoor private space may not be used for storage or parking. No bicycles, motorcycles, or toys may be stored within. Seasonal items such as chairs, tables, planters or grills may be included.

#### E. OTHER ITEMS

1. Signage - Signage for non-commercial ground floors shall generally be consistent with the Mixed Use Zoning District. Address numerals, unit numerals, unit nameplates may be placed on the facade wall immediately adjacent to the entry door. Wall signs announcing the name of the residential unit development may be placed at visible corners of the building in either a sign band from the top of the head of the primary floor windows to the bottom of the second floor window sills or as a blade sign.
2. Utilities - no utility service connections, meters or other appurtenances will be allowed on the building facades facing the public realm. Utility connections, meters or other appurtenances shall be located on rear facades or on "B" facades which have intervening masonry walls or on the sides or backs of the buildings.
3. Stairways - stairways shall be concealed from the street and placed within the building footprint. Entry doors shall be accessible from the public realm.

#### 7.4 UPPER STORIES -

The regulation of the façade design for the building above the first floor allows for wide latitude to encourage dignified, beautiful, creative, and gracious design.

#### A. WINDOWS

1. Windows, Jambs: Trim or panning recommended. Jamb must be recessed from the primary wall plane a minimum of one inch unless trim or panning is used.
2. Windows, Heads: In unit masonry construction, a visible masonry header is required. Stucco does not require a masonry header.

#### B. BALCONIES

1. Balconies, Doors: Swinging doors required, sliding doors prohibited. Exception: within MUTEN, swinging doors and sliding glass doors shall be permitted.
2. Balconies, Door Heads: In unit masonry construction, a visible masonry header is required. Stucco does not require a masonry header.
3. Balconies, Floors: Floors must be a solid, concrete surface (lightweight concrete is acceptable provided it is structurally sound); metal grates are prohibited. Floors may project into the public ROW.



4. Balconies, Railings: Ornamental railings are required and should be consistent with architectural character of the façade. Top of railing shall be a maximum of 3 inches wide. **Exception: within MUTEN microzones MZ1, MZ4, and MZ5, top of railing shall be a maximum of 6 inches wide.**

#### C. CORNICE

1. Cornice/Eave/Parapet: The design of the top of the building should be consistent with the architectural style of the façade. If the parapet is not tall enough to conceal the rooftop equipment, an added screen will be required behind the parapet to do so.

#### D. ROOF



## TOWN COUNCIL AGENDA K.3. REGULAR ITEM(S)

---

**DATE:** April 3, 2023

**FROM:** Poornima Kashyap, Principal Planner

**ITEM:** **Public Hearing to consider an ordinance for rezoning (ZPD22-0004– Embree 2499) to amend Planned Development District No. 186 (PD-186) with Retail-2 District (R-2) and Office District (O) uses, to modify the conceptual plans and elevations, and with certain modifications and exceptions to the Code of Ordinances. The property is generally located south of Sagebrush Drive and west of Long Prairie Road. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting)**

---

### BACKGROUND:

- Size – 6.81 acres
- Existing Zoning – PD-186 for Office and Retail District-2 uses
- Proposed Amendment – To add an updated concept plan, landscape plan, and to provide elevations for the three fast food restaurants
- SMARTGrowth – Passed
- Traffic Analysis – Passed with the previous zoning amendment application.
- Exceptions:
  1. To allow the southern detention facility to be a dry pond.
  2. Whataburger – Exception to not provide a pitched roof, to allow the use of the color grey not to exceed 40 percent on each façade, and to allow Whataburger orange banding only in the areas indicated on the concept elevations.
  3. Slim Chickens – Partial exception to the roof pitch requirement, and to allow the use of the color grey not to exceed 20 percent on each façade.
  4. Dutch Bros – Partial exception to the roof pitch requirement and to allow Dutch Bros blue banding only in the areas indicated on the concept elevations.
- Incentives – None
- [Planning and Zoning Commission Staff Report Link](#)

**BOARD REVIEW/CITIZEN FEEDBACK:** The Planning & Zoning Commission recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting.

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

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

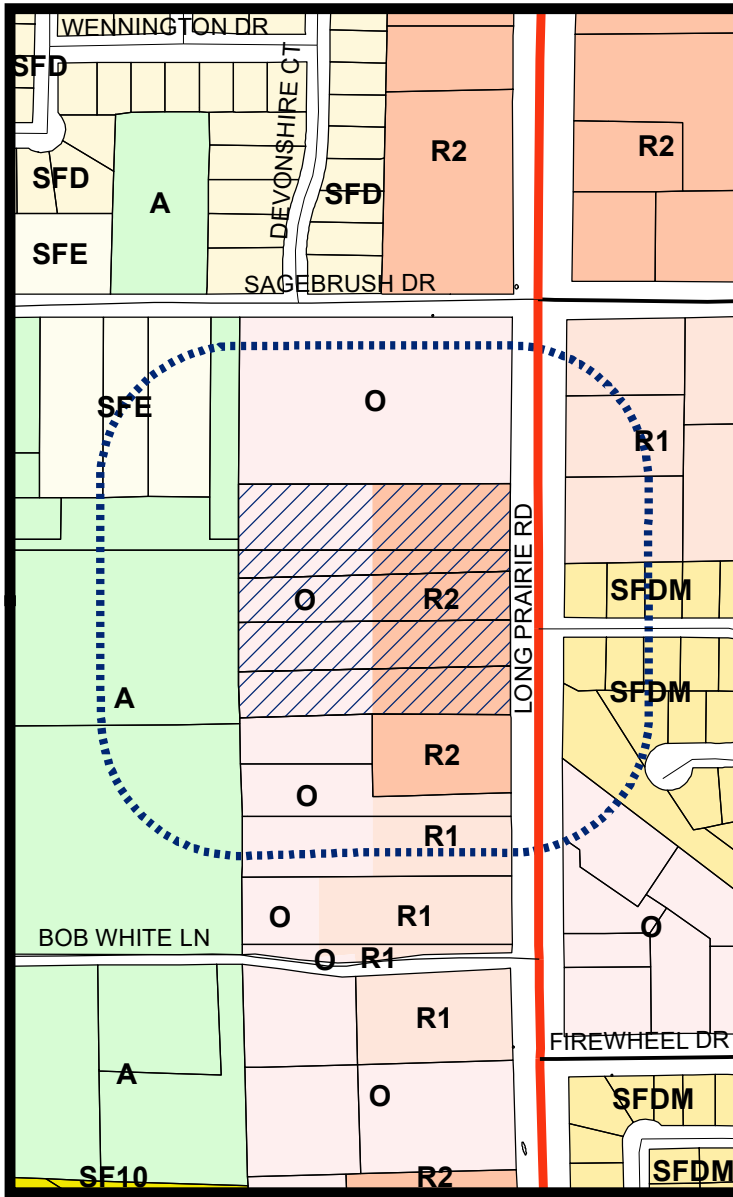
**ATTACHMENTS:**

1. Vicinity Aerial Map
2. Updated Letter of Intent
3. DRAFT Ordinance
4. DRAFT Ordinance Exhibits

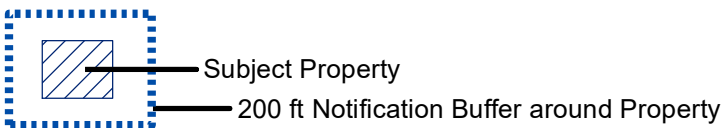
**DRAFT MOTION:** Move to approve as presented in the agenda caption.

# Vicinity Map

Reference Project: ZPD22-0004

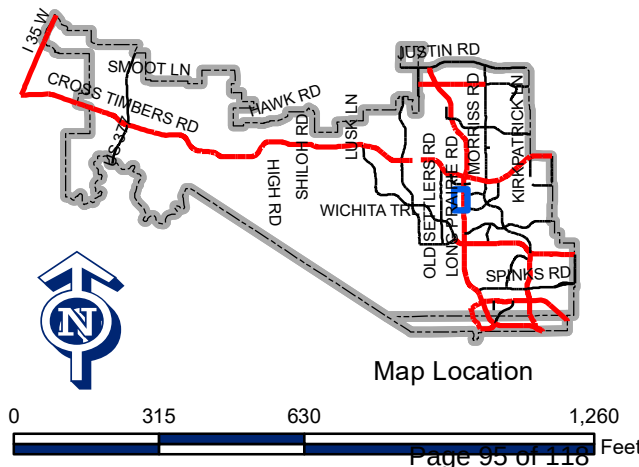


## LEGEND



Visit [www.fmdevmap.com](http://www.fmdevmap.com) to learn more about this project.

Visit <https://www.flower-mound.com/notifyme> to sign up for text message and/or email alerts for future projects.





March 22, 2023

Lexin Murphy  
Town Planner  
Town of Flower Mound  
2121 Cross Timbers  
Flower Mound, TX 75028

RE: Zoning Change Request (ZPD22-004) – Embree 2499

Ms. Murphy:

Please accept this letter, on behalf of Mr. Gene Colley, as an explanation of the proposed Amendment to Planned Development-186 (PD-186) consisting of approximately 6.81 acres of land located within the Town of Flower Mound, more specifically located west of Long Prairie Road and approximately 400 feet south of Sagebrush Drive. The current zoning on the property is Planned Development-186. The initial Planned Development was recently approved by the Town of Flower Mound Council on June 20<sup>th</sup>, 2022.

The purpose of this application is to request to amend Planned Development-186 (PD-186) to include elevations of three Restaurants with Drive-Through's, which have been called out on the Concept Plan. The requirement to amend the Planned Development to include the Restaurant's with Drive-Through is required within Exhibit B, Section C (3.) of the approved development standards, and is stated as follows:

**Exhibit B, Section C (3)**

**3. The Town's Urban Design Plan shall apply to this Planned Development.**

**Elevations of each restaurant, fast food building shall not be required at the time of initial adoption of Planned Development-186. Instead, each restaurant, fast food building must submit an application for amendment to Planned Development-186 prior to Site Plan application for the approval of Conceptual Elevations, as well as substantial changes to the Conceptual Plan or exception requests to the Urban Design Plan ("UPD") requirements.**

The three restaurants attached to this application have been designed to match materials, color, and overall design. This has been done to remain united in characteristic for the development, while also giving each of the respective restaurants their own character. The following are the list of exceptions being requested for each of the three restaurants with drive-throughs as shown on the concept plan.

**Building 1 – Whataburger**

- Exception to the pitched roof requirement.
- Whataburger orange band is permitted on the building only as shown on the concept elevations.
- Grey may be used as a secondary color not to exceed 40 percent (40%) on each façade.

**Building 2 – Slim Chickens**

- Exception to the roof pitch requirement. Roof pitch shall be provided on tower elements as shown on the concept plan. The outdoor patio on the east elevation shall also have a pitch roof having a slope between 6/12-9/12.
- Grey may be used as a secondary color not to exceed 20 percent (20%) on each façade.

**Building 3 – Dutch Bros Coffee**

- Partial waiver to the pitch roof requirement for buildings less than 15,000 square feet. Roof pitch having a slope between 6/12-9/12 shall be provided on the tower element as shown on the concept elevations.
- Dutch Bros blue (MP-2) banding is permitted on the building only as shown on the concept elevation.

Lastly, with this application we are requesting to amend the requirement for all drainage storage facilities be retention ponds. We respectfully request that the drainage storage facility located along the southern property line between Dutch Bros and Angel Vet Clinic be a detention pond. This request is due the size and depth of the drainage storage facility make it difficult for water to remain in the pond 100% of the time.

We are very excited to have the opportunity to bring this project forward to appropriately develop this infill site. This location is the ideal spot for this use and the project will be beneficial to the Town and its residents. Thank you in advance for your consideration. Please do not hesitate to contact me with any questions or comments regarding this application.

Sincerely,

**MCADAMS**

Ashton Miller

Ashton Miller, CNU-A

Cc: Embree Development Group, LLC

**TOWN OF FLOWER MOUND, TEXAS  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING ORDINANCE NO. 33-22, WHICH ESTABLISHED PLANNED DEVELOPMENT DISTRICT NO. 186 (PD-186) ON APPROXIMATELY 6.81 ACRES OF LAND SITUATED IN THE J. WIZWELL SURVEY, ABSTRACT NO. 1346, BY MODIFYING DEVELOPMENT STANDARDS BY REPLACING THE CONCEPT PLAN AND CONCEPT LANDSCAPE PLAN, AND BY ADDING CONCEPTUAL ELEVATIONS FOR FAST FOOD RESTAURANTS; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town Council of the Town heretofore adopted the Land Development Regulations of the Town of Flower Mound, as amended, which ordinance regulates and restricts the location and use of buildings, structures, and land for trade, industry, residence, and other purposes, and provides for the establishment of zoning districts of such number, shape, and area as may be best suited to carry out these regulations; and,

**WHEREAS**, in accordance with Chapter 78 of the Land Development Regulations, the owners of the property described as approximately 6.81 acres of land situated in the J. Wizwell Survey, Abstract No. 1346, Denton County, Texas, have filed an application to amend Ordinance No. 33-22 for Planned Development District-186 (PD-186); and,

**WHEREAS**, the Planning and Zoning Commission of the Town held a public hearing on March 27, 2023, and the Town Council of the Town held a public hearing on April 3, 2023, with respect to the proposed planned development amendment as described herein; and,

**WHEREAS**, the Town has complied with all requirements of Chapter 211 of the Local Government Code, Chapter 78 of the Land Development Regulations, and all other laws dealing with notice, publication, and procedural requirements for the approval of a rezoning on the property; and,

**WHEREAS**, the Town Council finds that amendment of the Zoning Map as outlined herein is in the best interest of the Town and will promote the health, safety, and general welfare of the citizens of the Town of Flower Mound and the general public;



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

**SECTION 1**

The Land Development Regulations of the Town of Flower Mound, Texas, as amended, are hereby amended on the hereinafter described property and area to establish a Planned Development District as shown below:

Approximately 6.81 acres of land situated in the J. Wizwell Survey, Abstract No. 1346, Denton County, Texas, and more fully described in Exhibit "A," attached hereto.

- A. Exhibit "B," "Development Standards," for Planned Development District No. 186 (PD-186), as amended, is hereby amended by replacing Paragraph IV.C. "Architectural Standards," to read as follows:

C. ARCHITECTURAL STANDARDS.

1. Elevations shall comply with the approved Conceptual Elevations, Exhibit "E."
2. Buildings shall use a combination of brick, stone, and stucco as a primary masonry material. Any reduction in the percentage of primary masonry materials greater than five percent (5%) per façade shall require approval of a Site Plan application from the Planning and Zoning Commission.
3. The Town's Urban Design Plan shall apply to this Planned Development except as indicated under Section IV.F. "EXCEPTIONS AND WAIVERS."

- B. Exhibit "B," "Development Standards," for Planned Development District No. 186 (PD-186), as amended, is hereby amended by replacing subsection 1 of Paragraph IV.E. "Phasing and Maintenance," to read as follows:

1. The first phase of Planned Development shall include the following:
  - a. Landscaped areas along Long Prairie Road (FM 2499) and compatibility buffers along the western property line;
  - b. Six-foot (6') masonry wall along the northern property line;
  - c. All perimeter sidewalks and Town trail connectivity;
  - d. Wet and dry detention ponds;
  - e. Fire lanes, median cuts, turn lanes, and curb cuts to support the development; and
  - f. A thirty-one-foot (31') Mutual Access Easement (Spine Road) parallel to Long Prairie Road (FM 2499) connecting the northern and southern properties. This 31-foot (31') Mutual Access Easement

shall connect the constructed Mutual Access Easement to the northern property line of the Planned Development.

- C. Exhibit "B," "Development Standards," for Planned Development District No. 186 (PD-186), as amended, is hereby amended by replacing Paragraph IV.F. "Exceptions," to read as follows:

- F. EXCEPTIONS AND WAIVERS. The following exceptions and waivers shall apply to this Planned Development.

1. Driveway Spacing Exception: An exception to the access management policy and criteria regarding driveway spacing contained in the Town's Engineering Design Criteria and Construction Standards adopted through Chapter 32 of the Code of Ordinances to allow the proposed driveway to be located approximately 300.9-feet from an existing driveway to the north, and approximately 280.8-feet from an existing driveway to the south. The second exception will no longer be necessary once the property to the immediate south develops, and the Angel Vet driveway is removed.
2. Detention Pond: An exception to Section IV.C.5. of the Town's Engineering Design Criteria to allow a dry detention pond to be located south of Building 3.
3. Waivers to Urban Design Plan:
  - a. Building 1 – Whataburger
    1. A waiver to the roof pitch requirement for buildings less than 15,000 square feet.
    2. Whataburger Orange is permitted on the building only as shown on the Concept Elevations.
    3. Grey may be used as a secondary color not to exceed 40 percent (40%) on each façade.
  - b. Building 2 – Slim Chickens
    1. A partial waiver to the roof pitch requirement for buildings less than 15,000 square feet. Roof pitch having a slope between 6/12-9/12 shall be provided on the tower elements on the north and south facades as shown on the Concept Elevations. The outdoor patio on the east elevation shall also have a pitched roof having a slope between 6/12-9/12.
    2. Grey may be used as a secondary color not to exceed 20 percent (20%) on each façade.
  - c. Building 3 – Dutch Bros
    1. A partial waiver to the roof pitch requirement for buildings less than 15,000 square feet. Roof pitch having a slope between 6/12-

9/12 shall be provided on the tower elements on the north and south facades as shown on the Concept Elevations.

2. Dutch Bros Blue (DB-Blue) banding is permitted on the building only as shown on the Concept Elevations.

- D. Ordinance No. 33-22, is hereby amended to replace the existing Concept Plan with the Concept Plan attached hereto as Exhibit "B," and incorporated herein.
- E. Ordinance No. 33-22, is hereby amended to replace the existing Concept Landscape Plan with the Concept Landscape Plan attached hereto as Exhibit "C," and incorporated herein.
- F. Ordinance No.33-22, is hereby amended to add Concept Elevations for three fast food restaurants attached hereto as Exhibit "D," and incorporated herein.

## **SECTION 2**

The use of the property described above shall be subject to all restrictions, terms, and conditions contained in Ordinance 33-22 for Planned Development District No. 186 (PD-186), the Land Development Regulations and all other applicable and pertinent ordinances of the Town of Flower Mound.

## **SECTION 3**

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

## **SECTION 4**

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

## **SECTION 5**

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

shall constitute a separate offense and shall be punishable as such.

### **SECTION 6**

All rights and remedies of the Town of Flower Mound are expressly saved as to any and all violations of the provisions of the Land Development Regulations or any ordinances governing zoning that have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

### **SECTION 7**

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

### **SECTION 8**

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

**DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 3RD DAY OF APRIL, 2023.**

**APPROVED:**

\_\_\_\_\_  
**Derek France, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**Theresa Scott, TOWN SECRETARY**



File: W:\Projects\2020\10385\Site Production\Drawings and LA\Exhibits\Zoning\202010385\_ZONING\_EXHIBIT.dwg  
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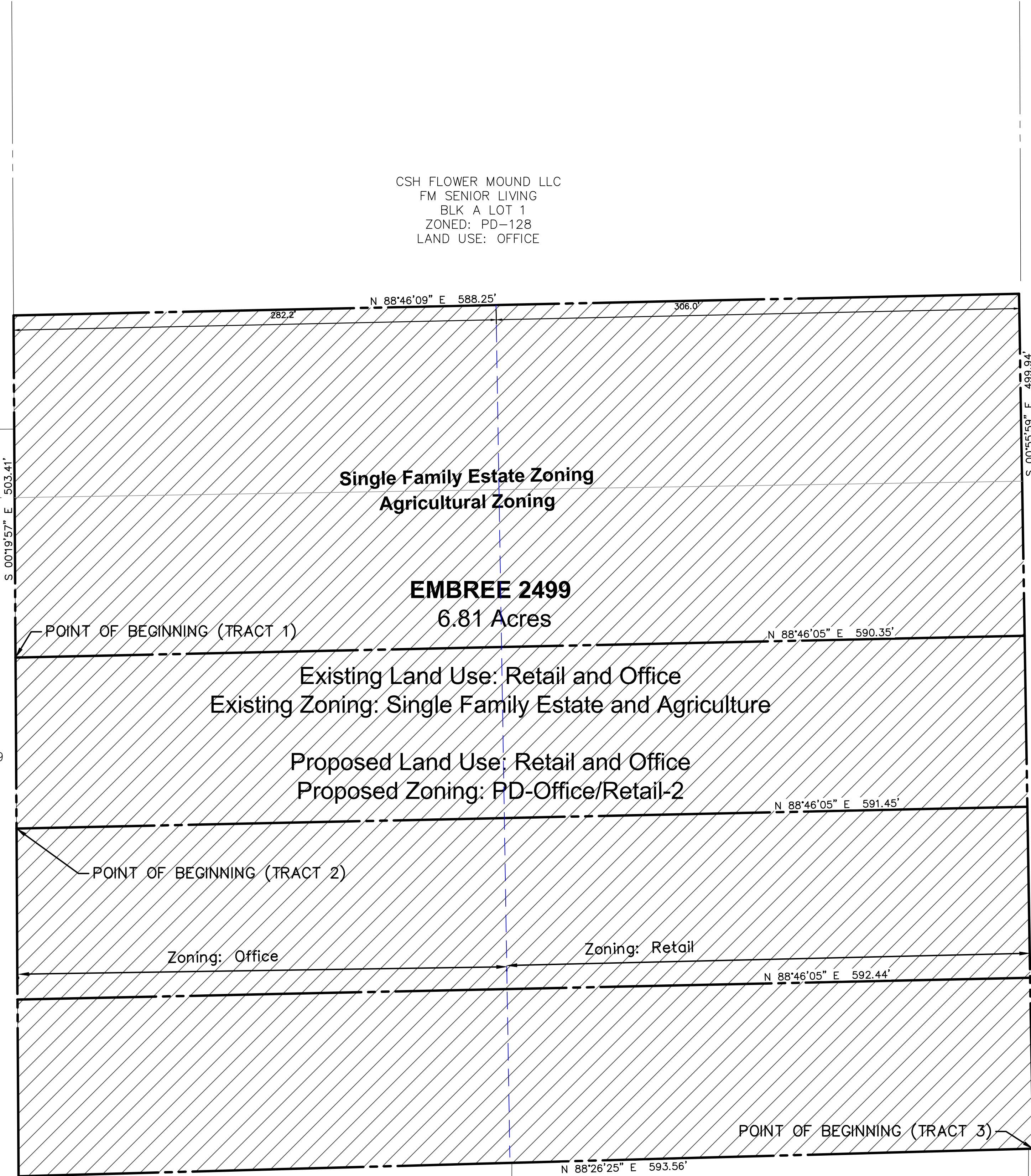
ANS, NICK  
WART, TR 59, 1.03  
DCAD TR# 24  
E FAMILY ESTATE  
USE: ESTATE

KO, TAD A  
WART, TR 60, 1.0615  
DCAD TR# 20  
AGRICULTURAL  
USE: ESTATE

LINVILLE, STEPHEN L  
A1346A J. WIZWELL, TR 38, 4.9  
ACRES, OLD DCAD TR #4,5  
ZONED: AGRICULTURAL  
LAND USE: ESTATE

WEDGE, WILLIAM PATRICK  
A1346A J. WIZWELL, TR 37, 7.06  
ACRES, OLD DCAD TR# 3  
ZONED: AGRICULTURAL  
LAND USE: ESTATE

MARKO, TAD A  
A1161A J. STEWART, TR 60C, .8867 ACRES ZONED: AGRICULTURAL  
LAND USE: ESTATE



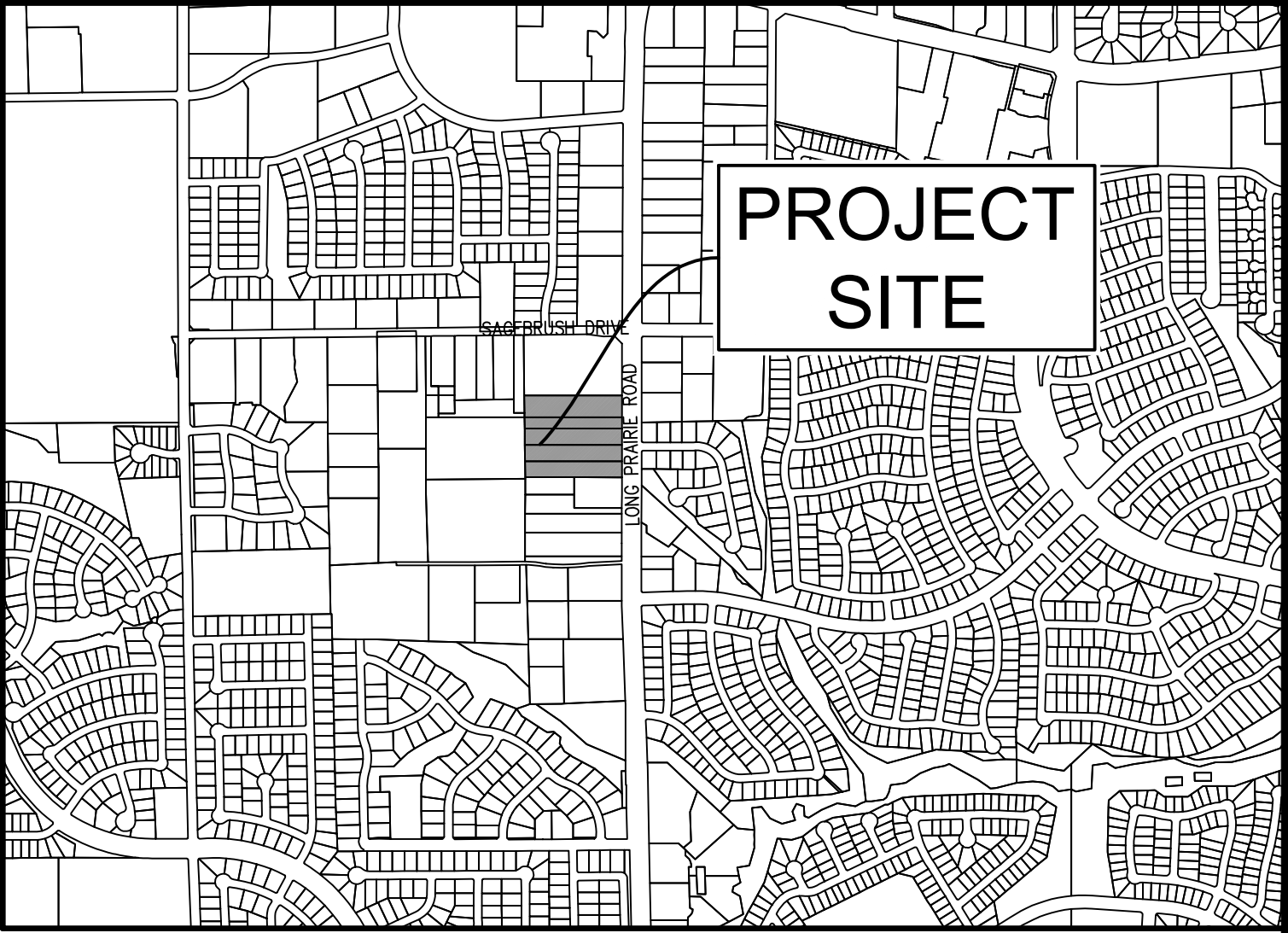
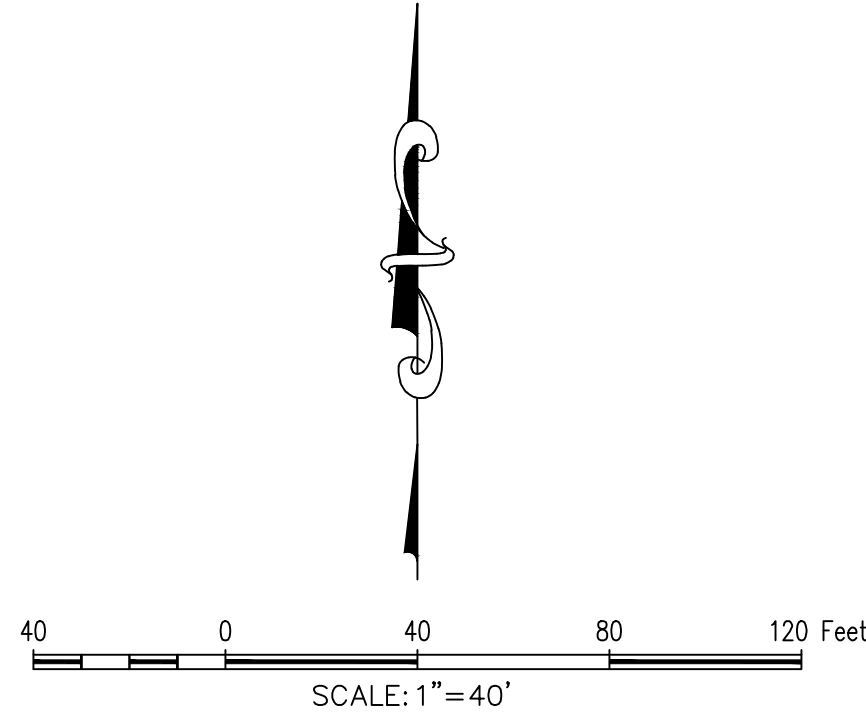
EARLES, HARVEY L  
A1346A J. WIZWELL, TR 43, .627  
ACRES, OLD DCAD TR# 23  
ZONED: PD-64  
LAND USE: OFFICE

VCA REAL PROPERTY ACQUISITION CORP  
ANGEL VET CENTER BLK A LOT 1  
ZONED: PD-64  
LAND USE: RETAIL

| Master Plan Features |                                                                    |
|----------------------|--------------------------------------------------------------------|
| Land Use Plan        | Retail/Office                                                      |
| Urban Design Plan    | Long Prairie District                                              |
| Parks and Trails     | 8' Trail along Western Property Line                               |
| Open Space Plan      | N/A                                                                |
| Thoroughfare Plan    | Long Prairie Road - Major Arterial                                 |
| Water Plan           | Existing 12" line along FM 2499.                                   |
| Wastewater Plan      | Existing 10" line at Subbasin 9"                                   |
| Economic Impact      | Increased sales tax revenue from the sales of the restaurant uses. |

| Development Standard     | Required         |                  | Provided       |                  |
|--------------------------|------------------|------------------|----------------|------------------|
|                          | Office           | Retail-2         | Office         | Retail-2         |
| Min. Lot Size            | N/A              | N/A              | N/A            | N/A              |
| Min. Lot Width           | N/A              | N/A              | N/A            | N/A              |
| Min. Area/Unit           | N/A              | N/A              | N/A            | N/A              |
| Min. Front Yard          | N/A              | N/A              | 60'            | 60'              |
| Min. Side Yard           | N/A              | N/A              | N/A            | N/A              |
| Min Rear Yard            | 15'              | 15'              | 15'            | 15'              |
| Max. Lot Coverage        | 50%              | 50%              | 50%            | 50%              |
| Max. Height (Stories/Ft) | 3 stories or 35' | 2 stories or 35' | 1 story or 35' | 3 stories or 35' |

OWNER/DEVELOPER  
Jerry Frazier  
Embree Development Group,  
Ph. 512.819.4746  
Contact: Jerry Frazier



TRACT 1  
LEGAL DESCRIPTION  
4.062 ACRES

BEING all that certain lot, tract, or parcel of land, situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being all that certain tract of land, described by deed to Imer & Sebian Bardhi, recorded in Document Number 2006-58316, Deed Records, Denton County, Texas, and being more particularly described as follows:  
COMMENCING at a 1/2" capped rebar found at the southeast corner of a certain tract of land, described by deed to Rodgers Living Trust & Nishendu Vasavada & Bela Vasavada, recorded in Document Number 2014-116754, Deed Records, Denton County, Texas, and being in the west right-of-way line of FM 2499 (Long Prairie Road, called 120' right-of-way);  
THENCE S 88°26'25" W, with the south line of said Rodgers Living Trust tract, passing the northeast corner of Lot 1, Block A, Angel Vet Center, an addition to the Town of Flower Mound, according to the plat thereof, recorded in Document Number 2007-46905, Plat Records, Denton County, Texas, at a distance of 2.56 feet, continuing a distance of 304.87 feet to a 1/2" capped rebar found, at the northwest corner thereof, same being the most northerly northeast corner of a certain tract of land described by deed to Harvey L. Earles, recorded in Document Number 2003-16340, Deed Records, Denton County, Texas, continuing a total distance of 593.56 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the northwest corner thereof, same being the southwest corner of said Rodgers Living Trust tract, same being the northeast corner of a certain tract of land, described by deed to William Patrick Wedge, recorded in Document Number 2016-36297, Deed Records, Denton County, Texas, and being the southeast corner of a certain tract of land, described by deed to Stephen Linville, recorded in Volume 2694, Page 701, Deed Records, Denton County, Texas;  
THENCE N 00°19'57" W, with the east line of said Linville tract, and the west line of said Rodgers Living Trust tract, passing at a distance of 103.36 feet, the northwest corner thereof, same being the southwest corner of a certain tract of land, described by deed to Nishendu M. Vasavada & Ramesh P. Vasani tract, recorded in Volume 1930, Page 250, Deed Records, Denton County, Texas, continuing a total distance of 203.37 feet to the POINT OF BEGINNING, at a 1/2" capped rebar set, stamped "MCADAMS", being the northwest corner of said Vasani tract, same being the southwest corner of said Bardhi tract, and being in the east line of said Linville tract;  
THENCE N 00°19'57" W, with the east line of said Linville tract, and the west line of said Bardhi tract, a distance of 300.04 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the northwest corner thereof, same being the northeast corner of said Linville tract, same being the southwest corner of Lot 1, Block A, FM Senior Living, an addition to the Town of Flower Mound, according to the plat thereof, recorded in Document Number 2014-202, Plat Records, Denton County, Texas, and being the southeast corner of a certain tract of land, described by deed to Tad A. Marko, recorded in Document Number 1993-65535, Deed Records, Denton County, Texas;

TRACT 2  
LEGAL DESCRIPTION  
1.359 ACRES

BEING all that certain lot, tract, or parcel of land, situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being all that certain tract of land, described by deed to Nishendu M. Vasavada & Ramesh P. Vasani tract, recorded in Volume 1930, Page 250, Deed Records, Denton County, Texas, and being more particularly described as follows:  
COMMENCING at a 1/2" capped rebar found at the southeast corner of a certain tract of land, described by deed to Rodgers Living Trust & Nishendu Vasavada & Bela Vasavada, recorded in Document Number 2014-116754, Deed Records, Denton County, Texas, and being in the west right-of-way line of FM 2499 (Long Prairie Road, called 120' right-of-way);  
THENCE S 88°26'25" W, with the south line of said Rodgers Living Trust tract, passing the northeast corner of Lot 1, Block A, Angel Vet Center, an addition to the Town of Flower Mound, according to the plat thereof, recorded in Document Number 2007-46905, Plat Records, Denton County, Texas, at a distance of 2.56 feet, continuing a distance of 304.87 feet to a 1/2" capped rebar found, at the northwest corner thereof, same being the most northerly northeast corner of a certain tract of land described by deed to Harvey L. Earles, recorded in Document Number 2003-16340, Deed Records, Denton County, Texas, continuing a total distance of 593.56 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the northwest corner thereof, same being the southwest corner of said Rodgers Living Trust tract, same being the northeast corner of a certain tract of land, described by deed to William Patrick Wedge, recorded in Document Number 2016-36297, Deed Records, Denton County, Texas, and being the southeast corner of a certain tract of land, described by deed to Stephen Linville, recorded in Volume 2694, Page 701, Deed Records, Denton County, Texas;  
THENCE N 00°19'57" W, with the east line of said Linville tract, and the west line of said Rodgers Living Trust tract, a distance of 103.36 feet to the POINT OF BEGINNING, being a 1/2" capped rebar set, stamped "MCADAMS" at the northwest corner thereof, same being the southwest corner of said Vasani tract, and being in the east line of said Linville tract;  
THENCE N 00°19'57" W, with the east line of said Linville tract, and the west line of said Vasani tract, a distance of 100.01 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the northwest corner thereof, same being the southeast corner of a certain tract of land, described by deed to Imer & Sebian Bardhi, recorded in Document Number 2006-58316, Deed Records, Denton County, Texas, and being in the east line of said Linville tract;  
THENCE N 88°46'05" E, with the north line of said Vasani tract, and the south line of said Bardhi tract, a distance of 591.40 feet, to a 1/2" capped rebar set, stamped "MCADAMS" at the southeast corner thereof, same being the northeast corner of said Vasani tract, and being in the west line of FM 2499, from which a 1/2" capped rebar found, stamped "SJ&F", bears N 00°55'59" W, 100.00 feet;  
THENCE S 00°55'59" E, with the east line of said Vasani tract, and the west line of FM 2499, a distance of 100.00 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the southeast corner of said Vasani tract, same being the northeast corner of said Rodgers Living Trust tract, and being in the west line of said FM 2499;  
THENCE S 88°46'05" W, with the south line of said Vasani tract, and the north line of said Rodgers Living Trust tract, a distance of 592.45 feet to the POINT OF BEGINNING and containing approximately 1.359 acres of land.

TRACT 3  
LEGAL DESCRIPTION  
1.384 ACRES

BEING all that certain lot, tract, or parcel of land, situated in the J. Wizwell Survey, Abstract Number 1346, Town of Flower Mound, Denton County, Texas, and being all that certain tract of land, described by deed to Rodgers Living Trust & Nishendu Vasavada & Bela Vasavada, recorded in Document Number 2014-116754, Deed Records, Denton County, Texas, and being more particularly described as follows:  
BEGINNING at a 1/2" capped rebar found at the southeast corner of said Rodgers Living Trust tract, and being in the west right-of-way line of FM 2499 (Long Prairie Road, called 120' right-of-way);  
THENCE S 88°26'25" W, with the south line of said Rodgers Living Trust tract, passing the northeast corner of Lot 1, Block A, Angel Vet Center, an addition to the Town of Flower Mound, according to the plat thereof, recorded in Document Number 2007-46905, Plat Records, Denton County, Texas, at a distance of 2.56 feet, continuing a distance of 304.87 feet to a 1/2" capped rebar found, at the northwest corner thereof, same being the most northerly northeast corner of a certain tract of land described by deed to Harvey L. Earles, recorded in Document Number 2003-16340, Deed Records, Denton County, Texas, continuing a total distance of 593.56 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the northwest corner thereof, same being the southwest corner of said Rodgers Living Trust tract, same being the northeast corner of a certain tract of land, described by deed to William Patrick Wedge, recorded in Document Number 2016-36297, Deed Records, Denton County, Texas, and being the southeast corner of a certain tract of land, described by deed to Stephen Linville, recorded in Volume 2694, Page 701, Deed Records, Denton County, Texas;  
THENCE N 00°19'57" W, with the east line of said Linville tract, and the west line of said Rodgers Living Trust tract, a distance of 103.36 feet to a 1/2" capped rebar set, stamped "MCADAMS" at the northwest corner thereof, same being the southwest corner of a certain tract of land, described by deed to Nishendu M. Vasavada & Ramesh P. Vasani tract, recorded in Volume 1930, Page 250, Deed Records, Denton County, Texas, and being in the east line of said Linville tract;  
THENCE N 88°46'05" E, with the north line of said Rodgers Living Trust tract, and the south line of said Vasani tract, a distance of 592.45 feet to a 1/2" capped rebar set, stamped "MCADAMS", at the southeast corner thereof, same being the northeast corner of said Rodgers Living Trust tract, and being in the west line of FM 2499, from which a 1/2" capped rebar found, stamped "SJ&F", bears N 00°55'59" W, 200.00 feet;  
THENCE S 00°55'59" E, with the east line of said Rodgers Living Trust tract, and the west line of FM 2499, a distance of 99.95 feet to the POINT OF BEGINNING and containing approximately 1.284 acres of land.

The John R. McAdams  
Company, Inc.  
111 Hillside Drive  
Lewisville, Texas 75057  
972.436.9712  
201 County View Drive  
Rockwall, Texas 75087  
940.240.1012  
TBPE: 19762 TBPLS: 1018440  
www.mcadamsco.com



EMBREE 2499  
TRACTS 18, 19, 21, 24  
6.81 Acres  
in the  
J. STEWART & J. WIZWELL SURVEY, ABSTRACT NO.  
A1161A  
A1346A  
DENTON COUNTY, TEXAS

Zoning Exhibit

PRELIMINARY PLANS  
THIS DOCUMENT IS FOR  
INTERIM REVIEW AND IS  
NOT INTENDED FOR  
CONSTRUCTION, BIDDING,  
OR PERMIT PURPOSES.  
THE JOHN R. MCADAMS  
COMPANY, INC.  
TBPE: 19762  
JOSHUA M. BARTON,  
P.E. #129227  
DATE 5/18/2022

Drawn By: PF  
Date: 6/15/2021  
Scale: 1"=40'  
Revisions:  
September 17, 2021  
March 11, 2022  
Revisions: 5/18/2022

2020310385

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MANS, NICK  
TEWART, TR 59, 1.03  
OLD DCAD TR# 24  
GLE FAMILY ESTATE  
LAND USE: ESTATE

ARKO, TAD A  
TEWART, TR 60, 1.0615  
OLD DCAD TR# 20  
LAND USE: AGRICULTURAL  
LAND USE: ESTATE

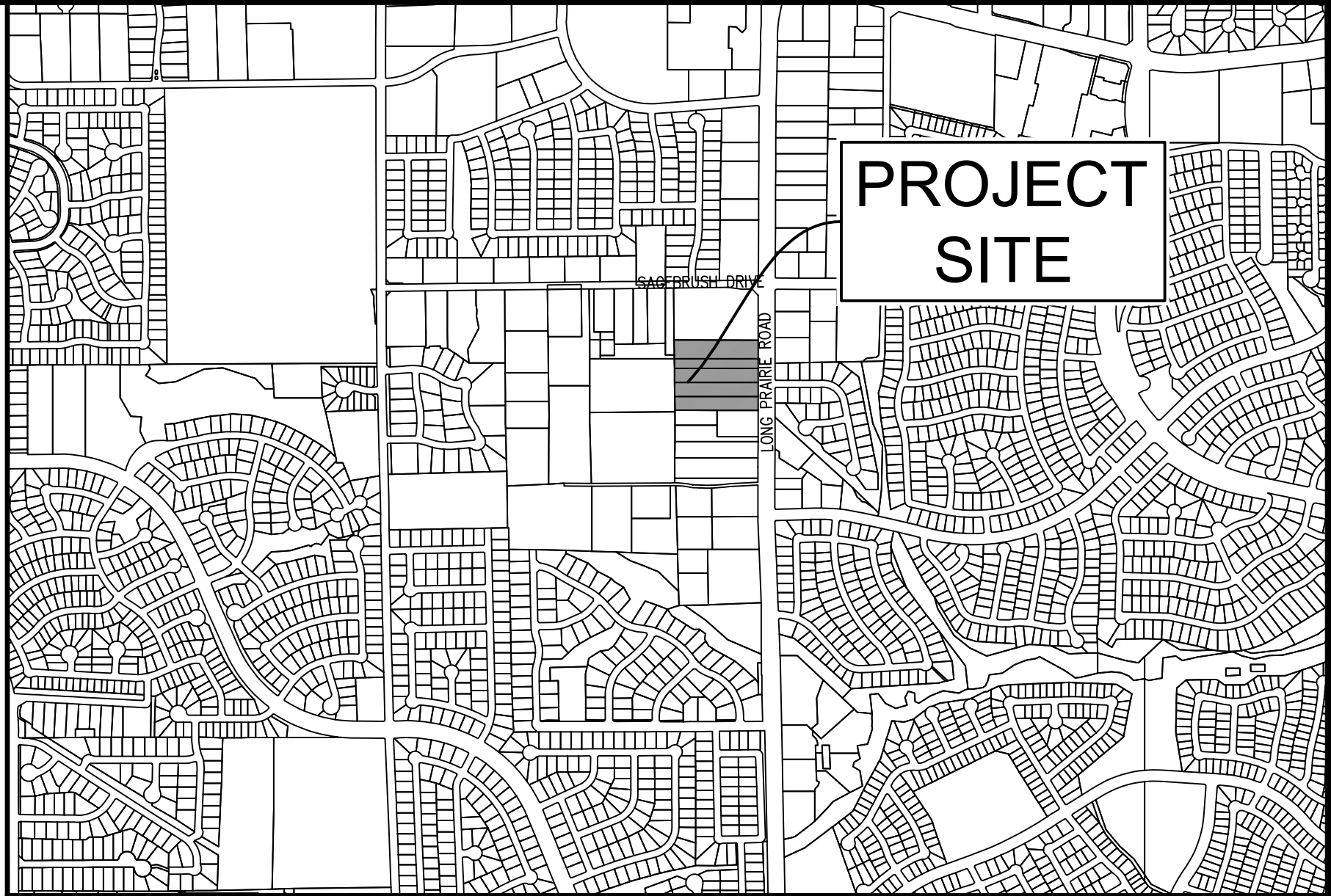
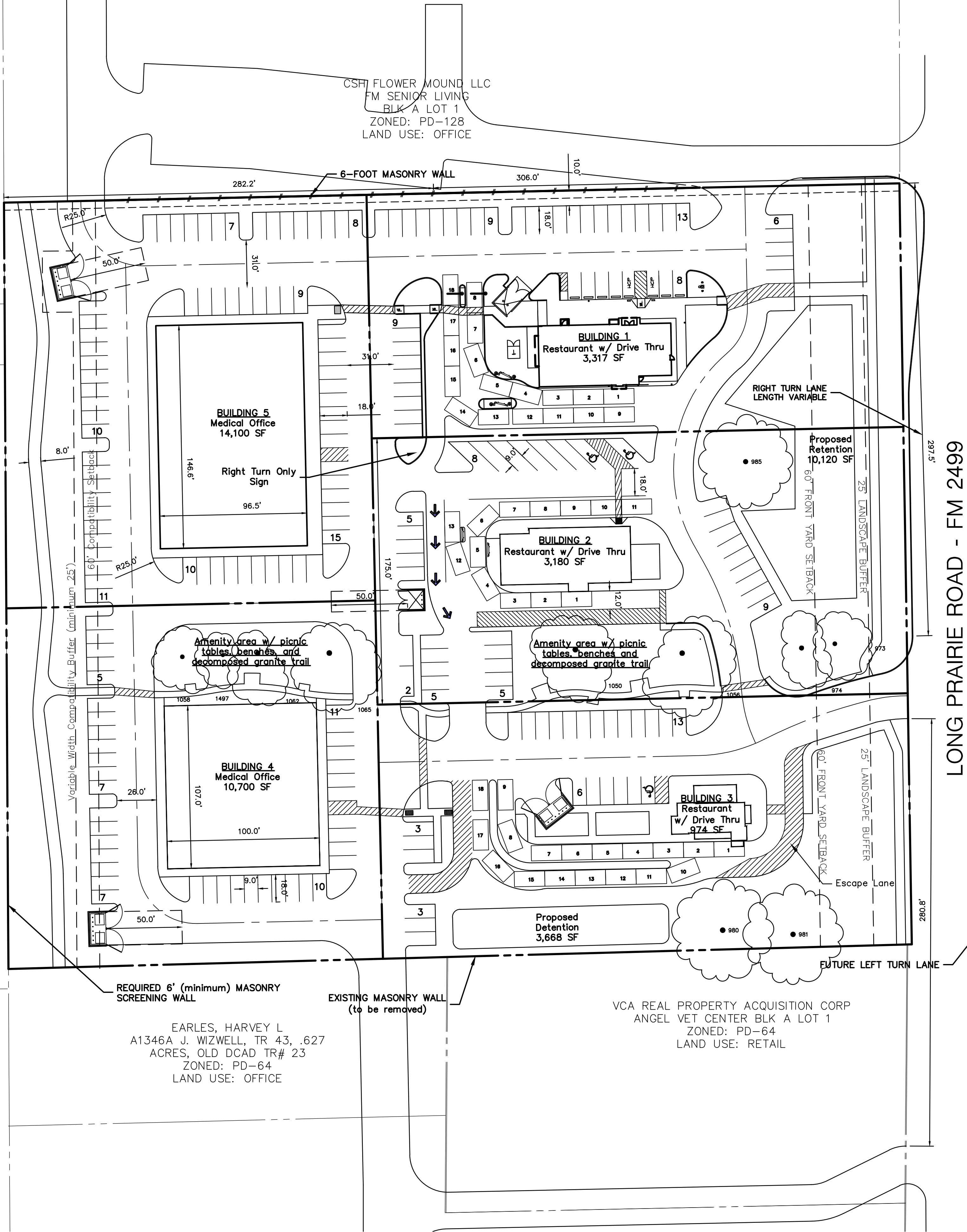
LINVILLE, STEPHEN L  
A1346A J. WIZWELL, TR 38, 4.9  
ACRES, OLD DCAD TR #4,5  
ZONED: AGRICULTURAL  
LAND USE: ESTATE

WEDGE, WILLIAM PATRICK  
A1346A J. WIZWELL, TR 37, 7.06  
ACRES, OLD DCAD TR# 3  
ZONED: AGRICULTURAL  
LAND USE: ESTATE

EARLES, HARVEY L  
A1346A J. WIZWELL, TR 43, .627  
ACRES, OLD DCAD TR# 23  
ZONED: PD-64  
LAND USE: OFFICE

VCA REAL PROPERTY ACQUISITION CORP  
ANGEL VET CENTER BLK A LOT 1  
ZONED: PD-64  
LAND USE: RETAIL

MARKO, TAD A  
A1161A J. STEWART, TR 60C, .8867 ACRES ZONED: AGRICULTURAL  
LAND USE: ESTATE



Vicinity Map 1"=1000'

| SITE DATA TABLE    |                                              |          |
|--------------------|----------------------------------------------|----------|
| Physical Address:  | 3025, 3101, 3125, 3175, 3201 Long Prairie Rd |          |
| Gross Site Area:   | 6.81 A; 296,643 SF                           |          |
| Current Zoning:    | Planned Development-186                      |          |
| Current Use:       | Residential                                  |          |
| Lot Coverage Data: |                                              |          |
| Building Coverage: | 11%                                          |          |
| Impervious Area:   | 46%                                          |          |
| Pervious Area:     | 43%                                          |          |
| Parking Summary:   |                                              |          |
|                    | Required                                     | Provided |
|                    | 230                                          | 214      |

| Zoning Standard          | PD-186   |          |
|--------------------------|----------|----------|
|                          | R-2      | O        |
| Minimum Lot Area         | None     | None     |
| Minimum Lot Width        | None     | None     |
| Minimum Floor Area       | None     | None     |
| Minimum Front Yard       | 60 ft.   | None     |
| Minimum Side Yard        | None     | None     |
| Minimum Rear Yard        | 15 ft.   | 15 ft.   |
| Maximum Lot Coverage     | 50 %     | 50 %     |
| Max Height (stories/ft.) | 3/35 ft. | 1/35 ft. |
| Maximum Floor:Area Ratio | 1:1      | 1:1      |

| Embree Site Data Summary Table |                                        |                                        |                                        |                              |                              |             |
|--------------------------------|----------------------------------------|----------------------------------------|----------------------------------------|------------------------------|------------------------------|-------------|
| Site                           | Building 1<br>Restaurant w/ Drive Thru | Building 2<br>Restaurant w/ Drive Thru | Building 3<br>Restaurant w/ Drive Thru | Building 4<br>Medical Office | Building 5<br>Medical Office | Totals      |
| Building Square Footage        | 3,317                                  | 3,180                                  | 974                                    | 10,700                       | 14,100                       | 32,271      |
| Patio Square Footage           | N/A                                    | 435                                    | N/A                                    | N/A                          | N/A                          | 435         |
| Total Building SF              | 3317                                   | 3615                                   | 974                                    | 10,700                       | 14,100                       |             |
| Building Height                | Max 35'                                |                                        |                                        |                              |                              |             |
| Parking Ratio                  | 1/75 SF                                |                                        |                                        |                              |                              | 1/200 SF    |
| Parking Required               | 45                                     | 48                                     | 13                                     | 54                           | 71                           | 230         |
| Parking Provided               | 45                                     | 34                                     | 25                                     | 40                           | 70                           | 214         |
| ToFM 20% Rule                  | ± 10 Stalls                            | ± 8 Stalls                             | ± 2 Stalls                             | ± 10 stalls                  | ± 14 stalls                  | ± 44 stalls |

NOTE:  
• RETENTION PONDS WILL BE WET PONDS.  
• A REDUCED RIGHT TURN LANE LENGTH SHALL BE PROVIDED IF IT IS DETERMINED THAT A SPECIMEN TREE CAN BE SAVED.

40 0 40 80 120 Feet



The John B. McAdams  
Company, Inc.  
111 Hillside Drive  
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972.435.9712  
201 Country View Drive  
Rockwall, Texas 75087  
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TPE: 19762 TPE/LS: 10194440  
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EMBREE 2499  
TRACTS 18, 19, 21, 24  
6.81 Acres  
in the  
J. STEWART & J. WIZWELL SURVEY, ABSTRACT NO. A1161A  
A1346A  
DENTON COUNTY, TEXAS

Conceptual Site Plan

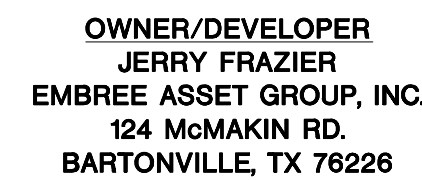
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Revisions: 04/06/2022  
Revisions: 04/27/2022  
Revisions: 05/18/2022  
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Revisions: 3/23/2023

2020310385

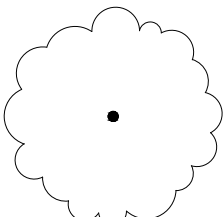
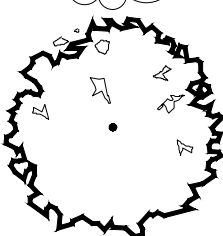
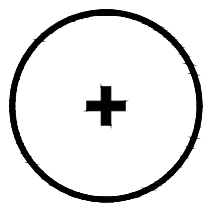
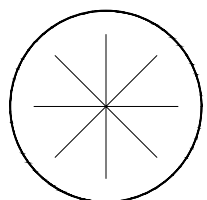
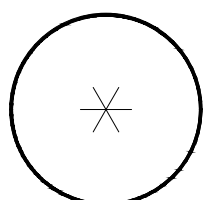
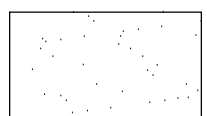
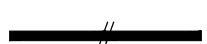




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### LEGEND

|                                                                                       |                                  |
|---------------------------------------------------------------------------------------|----------------------------------|
|   | EXISTING TREE TO REMAIN          |
|  | STREET BUFFER TREE               |
|  | PARKING AREA TREE                |
|  | STREET YARD TREE                 |
|  | COMPATIBILITY BUFFER TREE        |
|  | COMPATIBILITY BUFFER SHRUB       |
|  | SCREENING SHRUB                  |
|  | TAYLOR JUNIPER (SCREENING SHRUB) |
|  | PARKING SCREENING SHRUB          |
|  | BERMUDA SOD                      |
|  | 6' MASONRY WALL                  |

**PRELIMINARY PLANS**  
THIS DOCUMENT IS FOR INTERIM REVIEW  
AND IS NOT INTENDED FOR CONSTRUCTION  
BIDDING, OR PERMIT PURPOSES.  
JAMESON PINSON LANDSCAPE ARCHITECTS, P.A.  
REGISTERED LANDSCAPE ARCHITECT  
JAMESON P PINSON  
2826

|                  |
|------------------|
| Drawn By: MR     |
| Date: 06/21/2021 |
| Scale: 1"=30'    |
| Revisions:       |
| 08/06/2021       |
| 09/24/2021       |
| 12/15/2021       |
| 03/11/2022       |
| 03/18/2022       |
| 04/06/2022       |
| 04/29/2022       |
| 03/23/2023       |

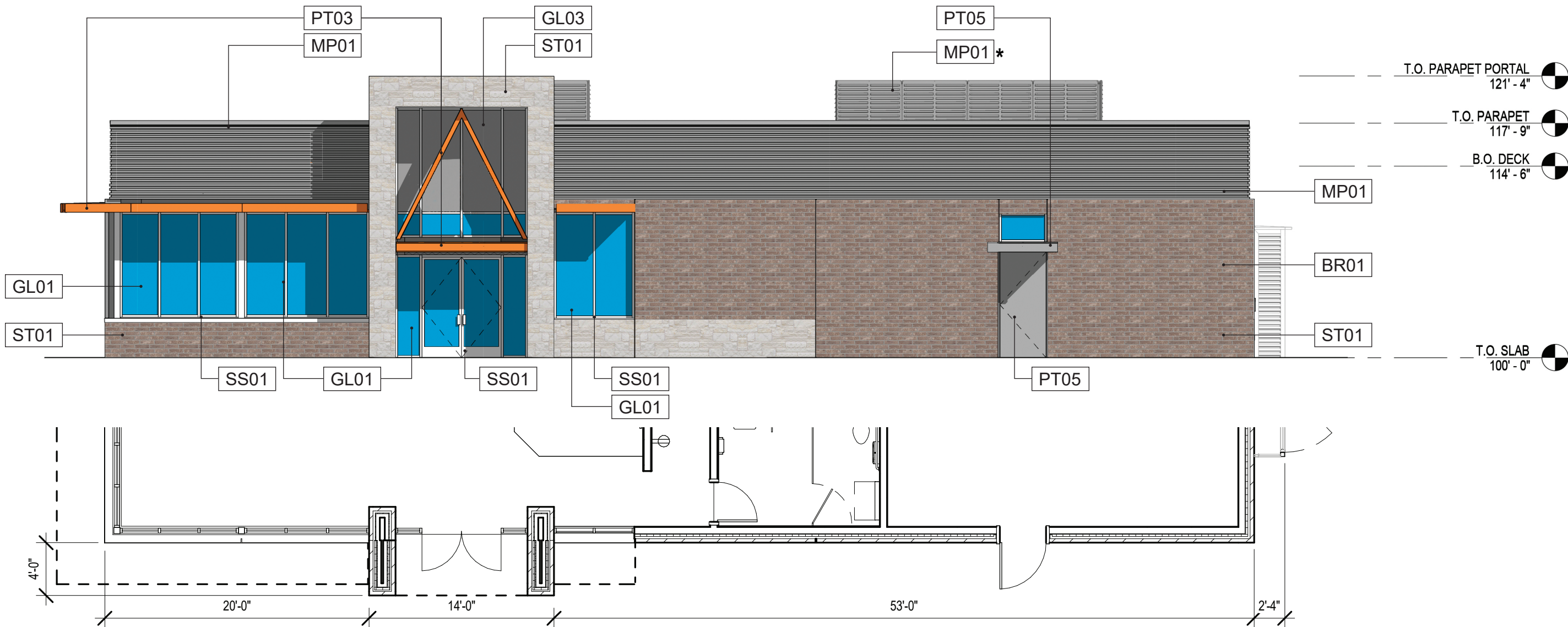
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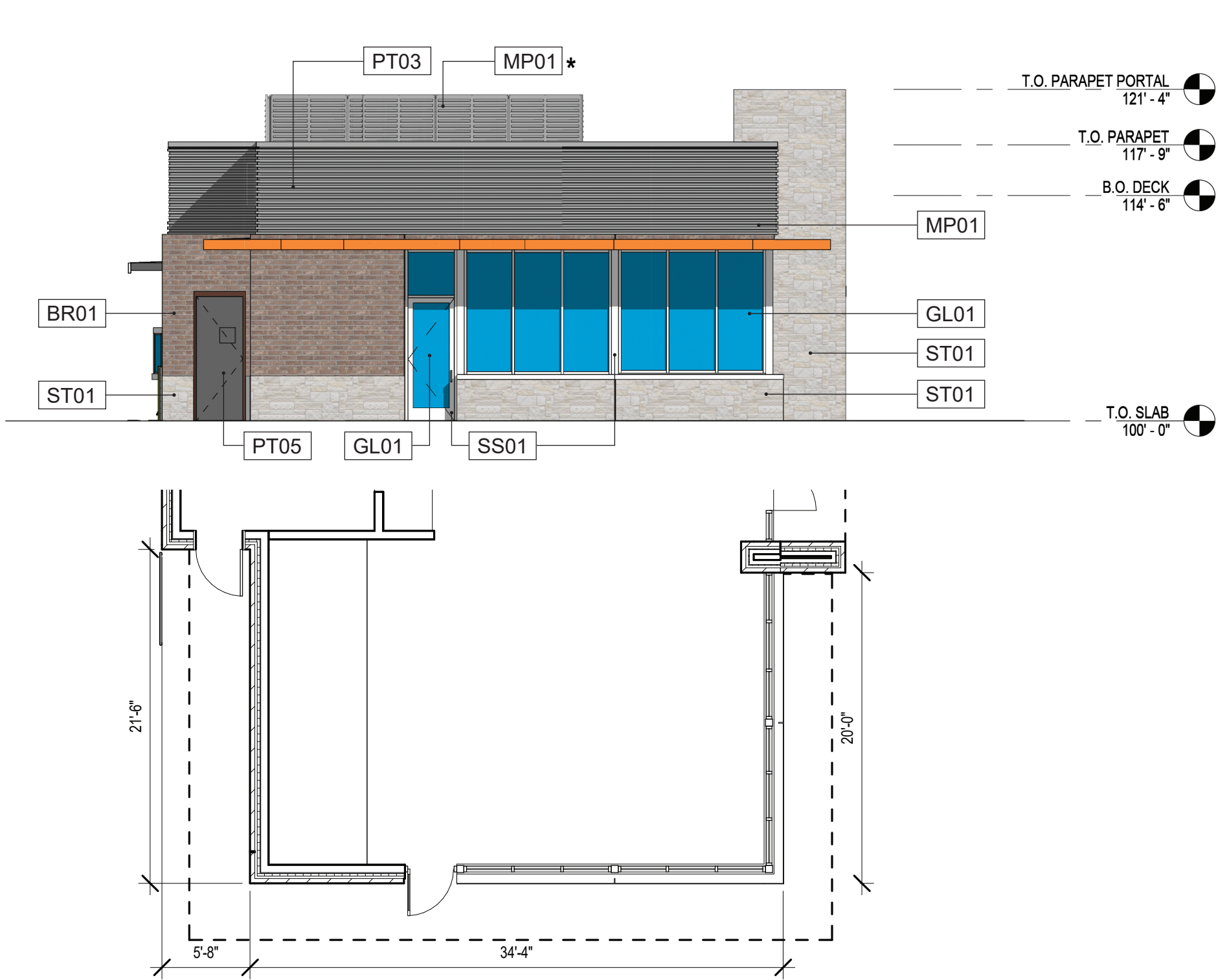


EXHIBIT "D" - CONCEPT ELEVATIONS

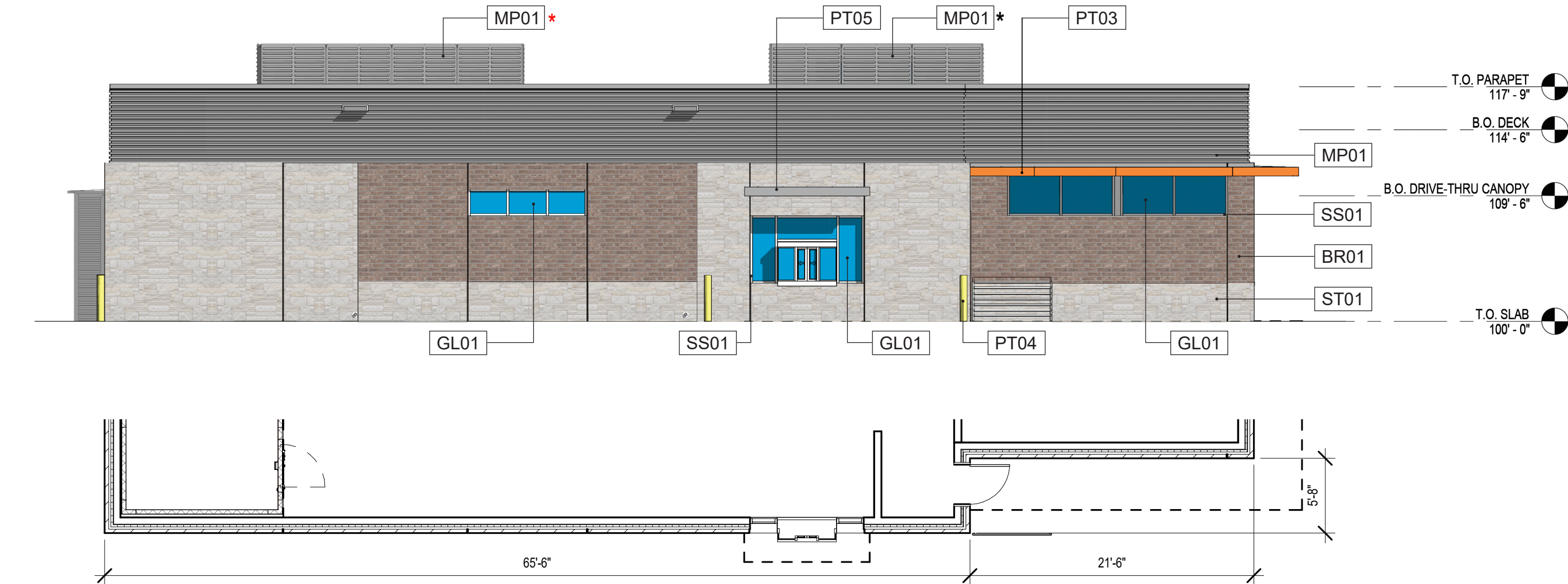
BUILDING MATERIALS



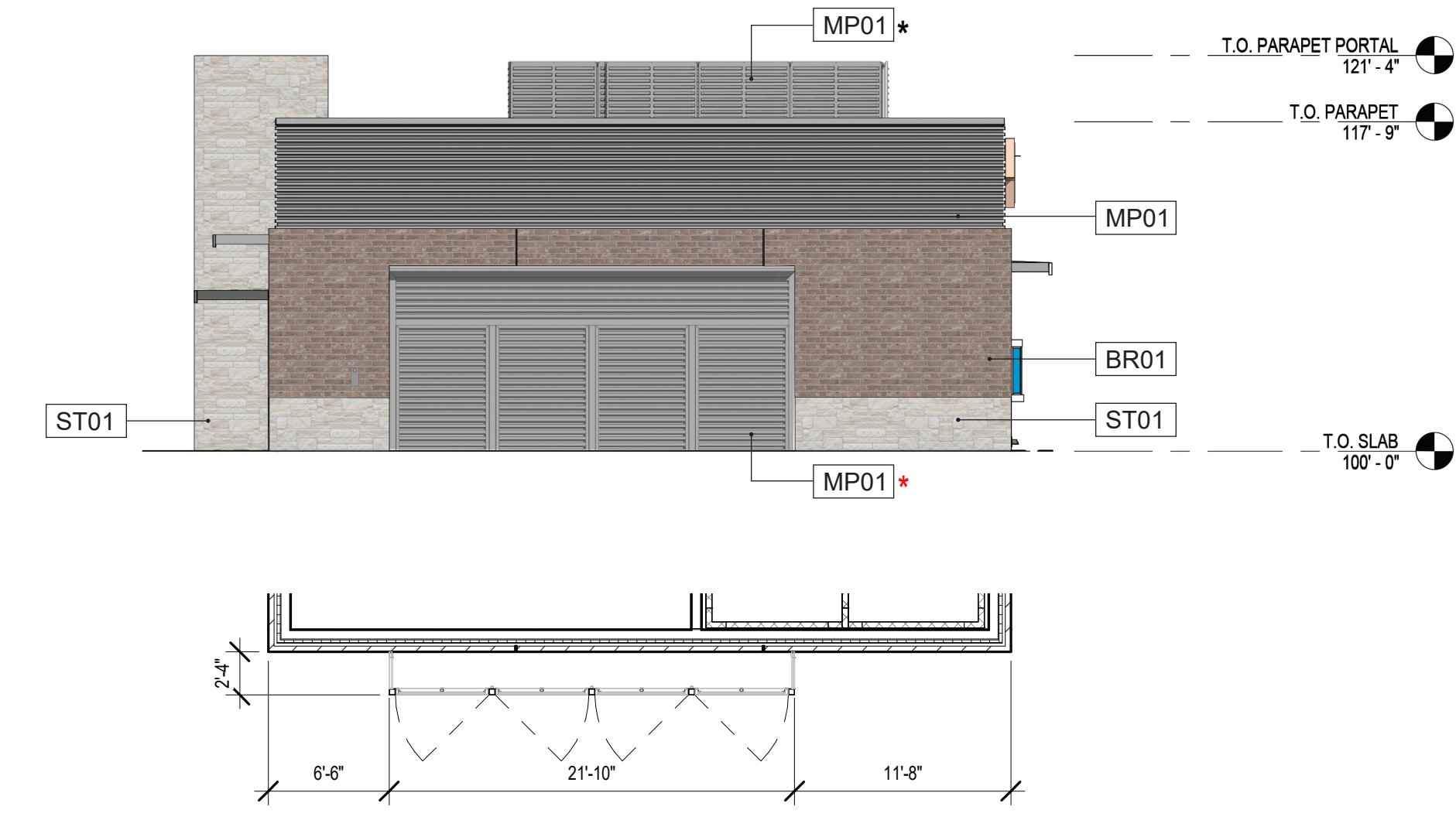
1 PLAN SOUTH ELEVATION  
1/8" = 1'-0"



3 PLAN EAST ELEVATION  
1/8" = 1'-0"



2 PLAN NORTH ELEVATION  
1/8" = 1'-0"



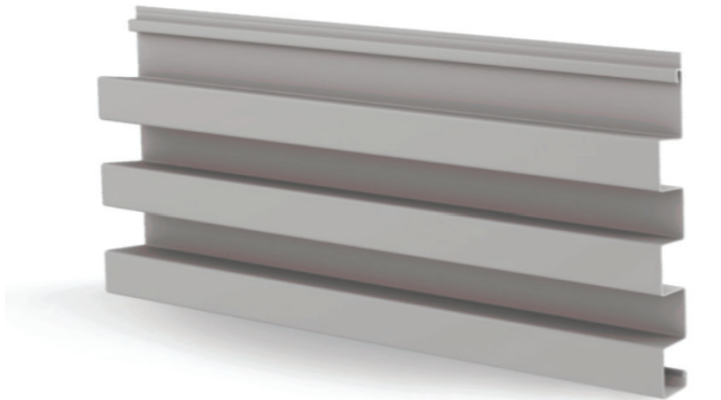
4 PLAN WEST ELEVATION  
1/8" = 1'-0"



BR01 BRICK  
ACME BRICK: RUNNING BOND (KING)  
COLOR: MOCHA BROWN ANTIQUE



ST01 STONE VENEER  
COLOR: AUSTIN WHITE



MP01 METAL PANEL  
COLOR: SW7655  
STAMPED CONCRETE



PT03 WHATABURGER ORANGE  
COLOR: PPG - YBX18, RCX:4Y36,  
GPX:2, OOX:24, NYX:36



PT04 EXTERIOR PAINT  
BOLLARDS  
COLOR: PANTONE 402C



PT05 EXTERIOR PAINT  
COLOR: SW7655  
STAMPED CONCRETE



GL01 GLAZING  
IGU VISION GLASS  
SOLARBAN Z75/70 (2)  
OPTIBLUE + CLEAR IGU



GL03 GLAZING  
IGU OPAQUE SPANDREL GLASS  
#3-5323 OPTI COAT 300

| MATERIAL TABULATION: |                                  |        |        |        |        |
|----------------------|----------------------------------|--------|--------|--------|--------|
|                      | (SQUARE FOOTAGE PER FAÇADE)      | NORTH: | SOUTH: | EAST:  | WEST:  |
| LINE 1               | TOTAL FAÇADE (SF):               | 1581   | 1628   | 812    | 594    |
| LINE 2               | DOORS AND WINDOWS (SF):          | 119    | 422    | 227    | 0      |
| LINE 3               | FAÇADE (SF) : (LINE 1 - LINE 2): | 1462   | 1206   | 585    | 594    |
|                      | (EXCLUSIVE OF DOORS AND WINDOWS) |        |        |        |        |
| LINE 4               | PRIMARY MASONRY (TOTAL %):       | 63.27% | 62.35% | 60.00% | 60.61% |
| LINE 5               | STONE (SF):                      | 527    | 410    | 237    | 152    |
| LINE 6               | (% OF LINE 3):                   | 36.05% | 34.00% | 40.51% | 25.59% |
| LINE 7               | BRICK (SF):                      | 398    | 342    | 114    | 208    |
| LINE 8               | (% OF LINE 3):                   | 27.22% | 28.36% | 19.49% | 35.02% |
| LINE 9               | SECONDARY MATERIAL (TOTAL %):    | 36.73% | 37.65% | 40.00% | 39.39% |
| LINE 10              | METAL PARAPET (SF):              | 537    | 454    | 234    | 234    |
| LINE 11              | (% OF LINE 3):                   | 36.73% | 37.65% | 40.00% | 39.39% |

\* NOT INCLUDED IN FAÇADE MATERIAL TABULATIONS

| COLOR TABULATION:                |                                        |        |        |        |        |
|----------------------------------|----------------------------------------|--------|--------|--------|--------|
| (SQUARE FOOTAGE PER FAÇADE)      |                                        | NORTH: | SOUTH: | EAST:  | WEST:  |
| LINE 1                           | TOTAL FAÇADE (SF):                     | 1581   | 1628   | 812    | 594    |
| LINE 2                           | DOORS AND WINDOWS (SF):                | 119    | 422    | 227    | 0      |
| LINE 3                           | FAÇADE (SF) : (LINE 1 - LINE 2):       | 1462   | 1206   | 585    | 594    |
| (EXCLUSIVE OF DOORS AND WINDOWS) |                                        |        |        |        |        |
| LINE 4                           | EARTH TONE COLORS (TOTAL %):           | 63.27% | 62.35% | 60.00% | 60.61% |
| LINE 5                           | STONE (AUSTIN WHITE)(SF):              | 527    | 410    | 237    | 152    |
| LINE 6                           | (% OF LINE 3):                         | 36.05% | 34.00% | 40.51% | 25.59% |
| LINE 7                           | BRICK (MOCHA BROWN) (SF):              | 398    | 342    | 114    | 208    |
| LINE 8                           | (% OF LINE 3):                         | 27.22% | 28.36% | 19.49% | 35.02% |
| LINE 9                           | ACCENT - STAMPED CONCRETE (TOTAL %):   | 36.73% | 37.65% | 40.00% | 39.39% |
| LINE 10                          | METAL PARAPET (STAMPED CONCRETE) (SF): | 537    | 454    | 234    | 234    |
| LINE 11                          | (% OF LINE 3):                         | 36.73% | 37.65% | 40.00% | 39.39% |

\* NOT INCLUDED IN FAÇADE COLOR TABULATIONS

GENERAL NOTES:

- ANY EXTERNAL ELECTRICAL PANELS WILL BE PAINTED/ TEXTURED TO MATCH THE MATERIAL AND COLOR OF THE BUILDINGS.
- SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ ELEVATIONS ARE NOT APPROVED AS PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



SS01 STOREFRONT  
OLD CASTLE  
CLEAR ANODIZED



EXHIBIT "D" - CONCEPT ELEVATIONS

BUILDING MATERIALS

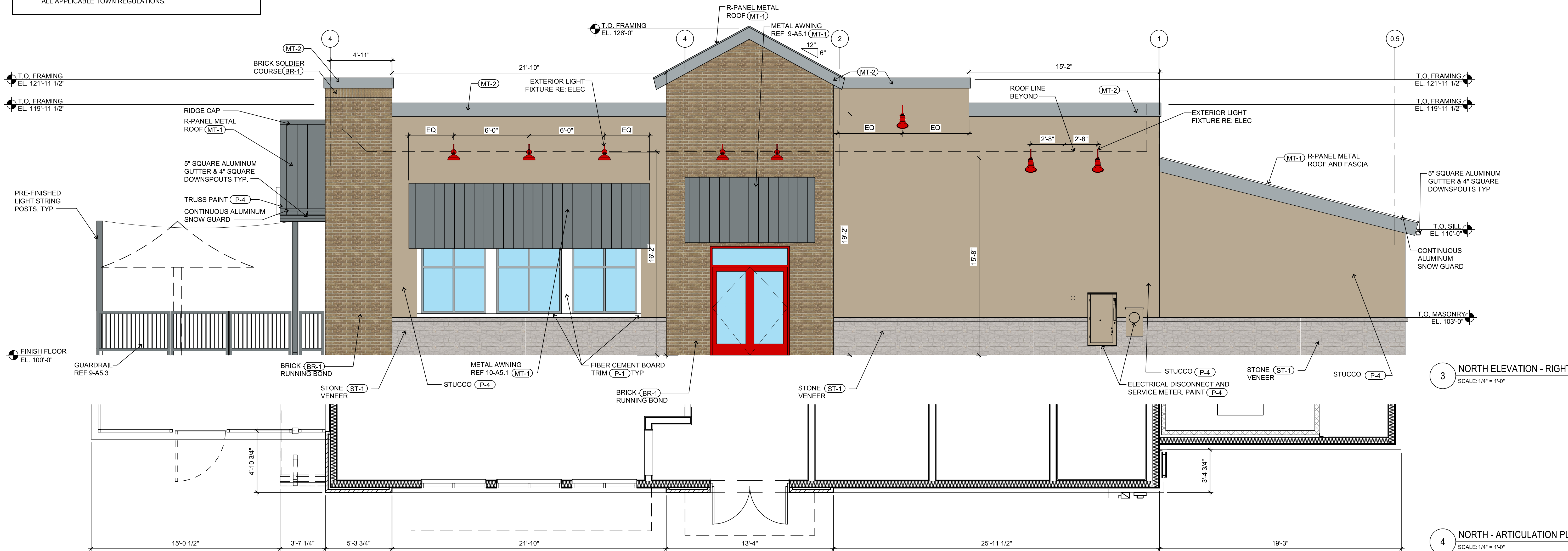
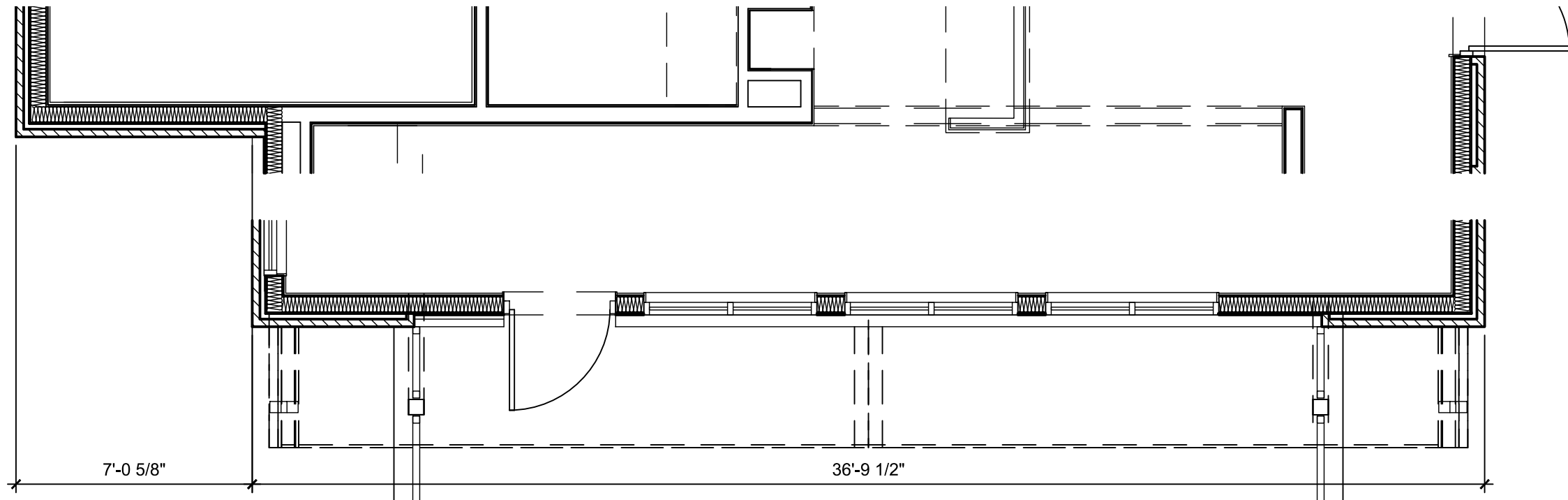
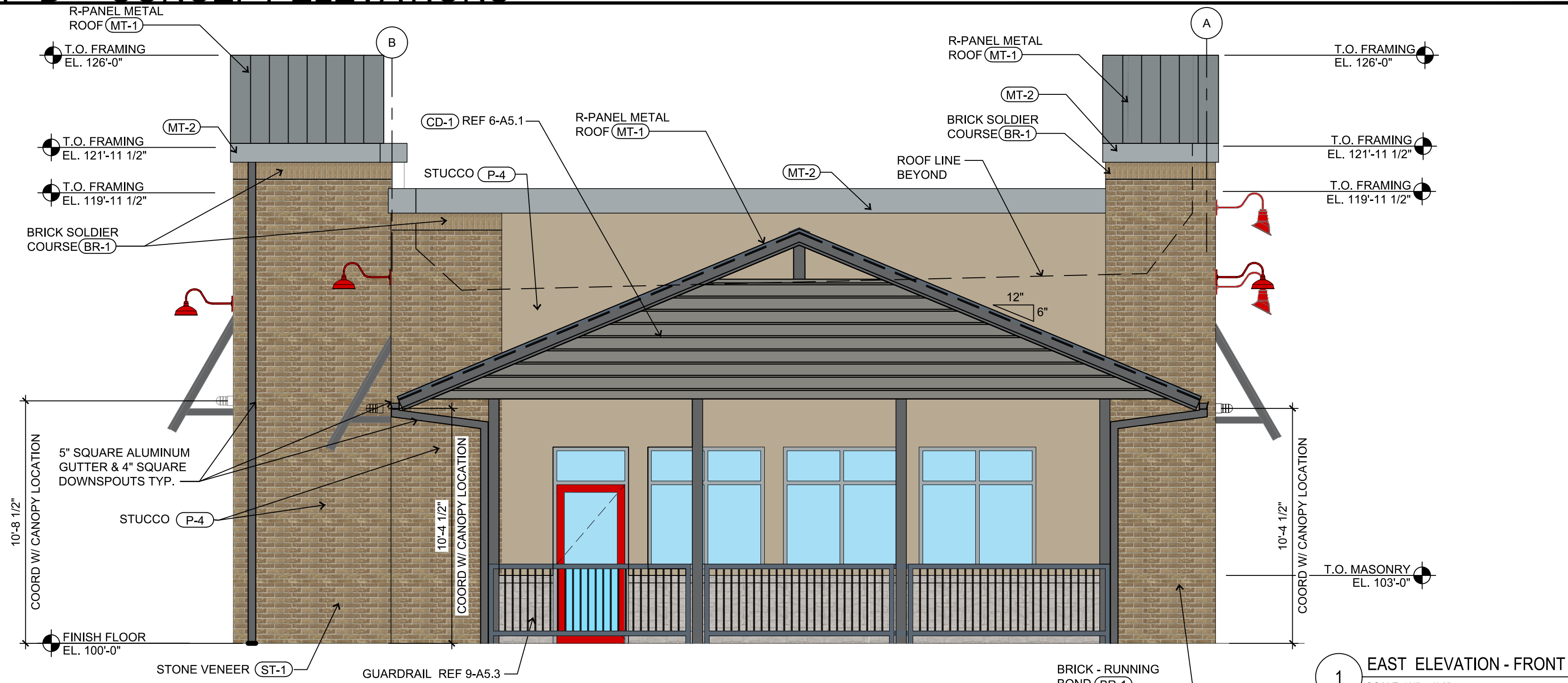
|      |                                                                                                             |      |                                                                         |      |                                                                              |     |                                                                                                            |
|------|-------------------------------------------------------------------------------------------------------------|------|-------------------------------------------------------------------------|------|------------------------------------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------|
| ST-1 | STONE VENEER<br>COLOR: AUSTIN WHITE                                                                         | BR-1 | BRICK<br>ACME BRICK : RUNNING BOND (KING)<br>COLOR: MOCHA BROWN ANTIQUE | P-1  | PAINT<br>SHERWIN WILLIAMS<br>COLOR: PURE WHITE SW7005                        | P-4 | STUCCO - PAINT<br>SHERWIN WILLIAMS<br>COLOR: UNIVERSAL KHAKI SW6150                                        |
| MT-1 | METAL ROOFING AND AWNINGS<br>MANUFACTURER: BERRIDGE<br>PROFILE: STANDING SEAM - 26 GAUGE<br>COLOR ZINC GRAY | MT-2 | METAL PARAPET CAP<br>WESTERN STATES METAL: BOX RIB<br>COLOR: DB GRAY    | CD-1 | COMPOSITE DECKING BOARDS<br>LOCAL SUPPLIER<br>COLOR: CAPE COD GREY EVERGRAIN | SF  | STOREFRONT SYSTEM<br>MANUFACTURER: KAWNEER<br>GLAZING: 1" TEMPERED LOW-E<br>COLOR: CLEAR ANODIZED ALUMINUM |

ELEVATION MATERIALS CALCULATION TABLE

|    |                                                 | NORTH                                         | SOUTH                                         | EAST                                                                      | WEST                                             |
|----|-------------------------------------------------|-----------------------------------------------|-----------------------------------------------|---------------------------------------------------------------------------|--------------------------------------------------|
| 1. | TOTAL FACADE S.F.                               | 1,716 S.F.                                    | 1,720 S.F.                                    | 903 S.F.                                                                  | 722 S.F.                                         |
| 2. | FACADE S.F.<br>(EXCLUSIVE OF DOORS AND WINDOWS) | 1,576S.F.                                     | 1,646 S.F.                                    | 781 S.F.                                                                  | 668 S.F.                                         |
| 3. | DOORS AND WINDOWS S.F.                          | 140 S.F.                                      | 74 S.F.                                       | 122 S.F.                                                                  | 54 S.F.                                          |
| 4. | PRIMARY MASONRY TOTALS<br>(MIN. 80%)            | 1,434 S.F.AND 91%                             | 1,497 S.F.AND 91%                             | 624 S.F.AND 80%                                                           | 572 S.F.AND 86%                                  |
|    | STONE S.F.<br>(AS APPLICABLE)                   | 202 S.F.AND 13%                               | 179 S.F.AND 11%                               | 72 S.F.AND 9%                                                             | 85 S.F.AND 13%                                   |
|    | BRICK S.F.<br>(AS APPLICABLE)                   | 372 S.F.AND 24%                               | 465 S.F.AND 28%                               | 344 S.F.AND 44%                                                           | 133 S.F.AND 20%                                  |
|    | STUCCO S.F.<br>(AS APPLICABLE)                  | 860 S.F.AND 55%                               | 853 S.F.AND 52%                               | 208 S.F.AND 27%                                                           | 354 S.F.AND 53%                                  |
|    | TILT WALL S.F.<br>(AS APPLICABLE)               | N/A                                           | N/A                                           | N/A                                                                       | N/A                                              |
| 5. | SECONDARY MASONRY TOTALS<br>(MAX. 20%)          | 142 S.F.AND 9%                                | 149 S.F.AND 9%                                | 157 S.F.AND 20%                                                           | 95 S.F.AND 14%                                   |
|    | EIFS S.F.<br>(AS APPLICABLE)                    | N/A                                           | N/A                                           | N/A                                                                       | N/A                                              |
|    | HARDIPLANK S.F.<br>(AS APPLICABLE)              | 20 S.F.AND 1%                                 | 14 S.F.AND 1%                                 | N/A                                                                       | N/A                                              |
|    | WOOD/METAL<br>(AS APPLICABLE)                   | 122 S.F.AND 8% - METAL<br>(EXCLUDING AWNINGS) | 135 S.F.AND 8% - METAL<br>(EXCLUDING AWNINGS) | 52 S.F.AND 7% - METAL<br>105 S.F.AND 13% - WOOD<br>(EXCLUDING ROOF METAL) | 95 S.F.AND 14% - METAL<br>(EXCLUDING ROOF METAL) |

SHEET NOTES

1. ANY EXTERNAL ELECTRICAL PANELS WILL BE PAINTED/TEXTURED TO MATCH THE MATERIAL AND COLOR OF THE BUILDING
2. SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



**HFA**  
HARRISON FRENCH  
& ASSOCIATES, LTD

1705 S. Walton Blvd. Suite 3  
Bentonville, Arkansas 72712  
t 479.273.7780  
f 479.273.9436  
www.hfa-ac.com

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**SLIM CHICKENS**  
Life Changing Chicken  
3201 LONG PRAIRIE RD  
FLOWER MOUND, TX 75022

JOB NUMBER: 28-22-20005 DATE: 03/21/23

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DRAWN BY: KTE  
P SIZE: B1-NP-L  
P CYCLE: Q2 2022  
DOCUMENT DATE: 03/21/23

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PERMITTING, OR CONSTRUCTION

LAWRENCE LOTT  
ARCHITECT

EXTERIOR  
ELEVATIONS

SHEET:  
**A2.1**



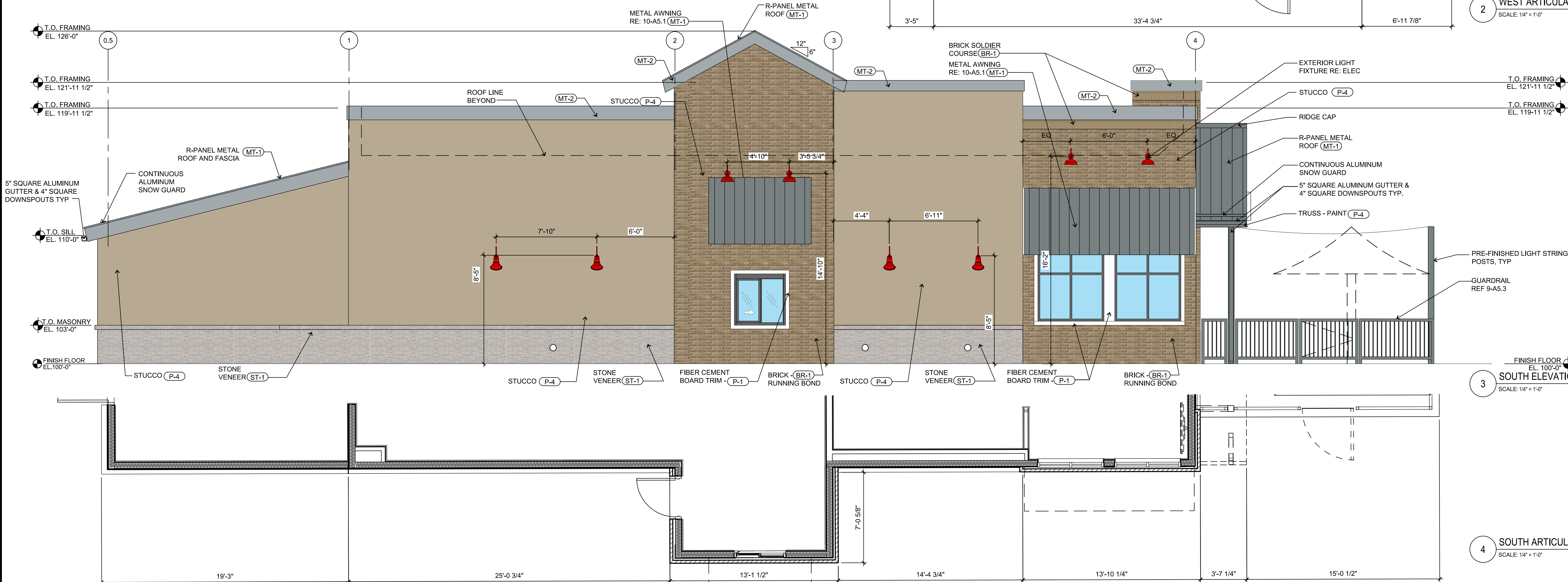
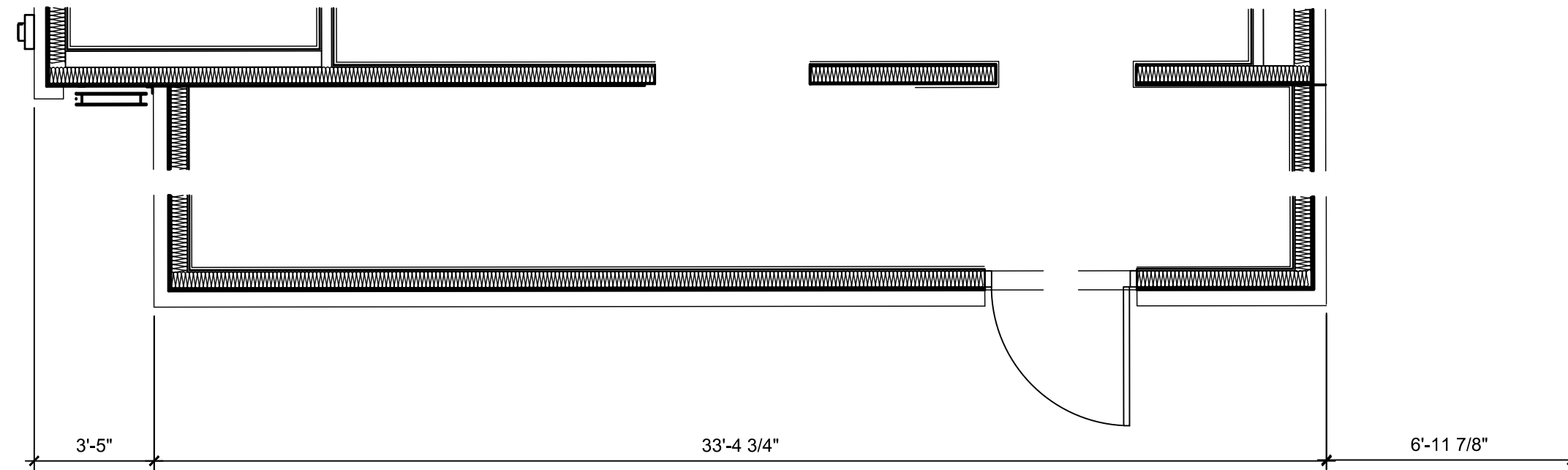
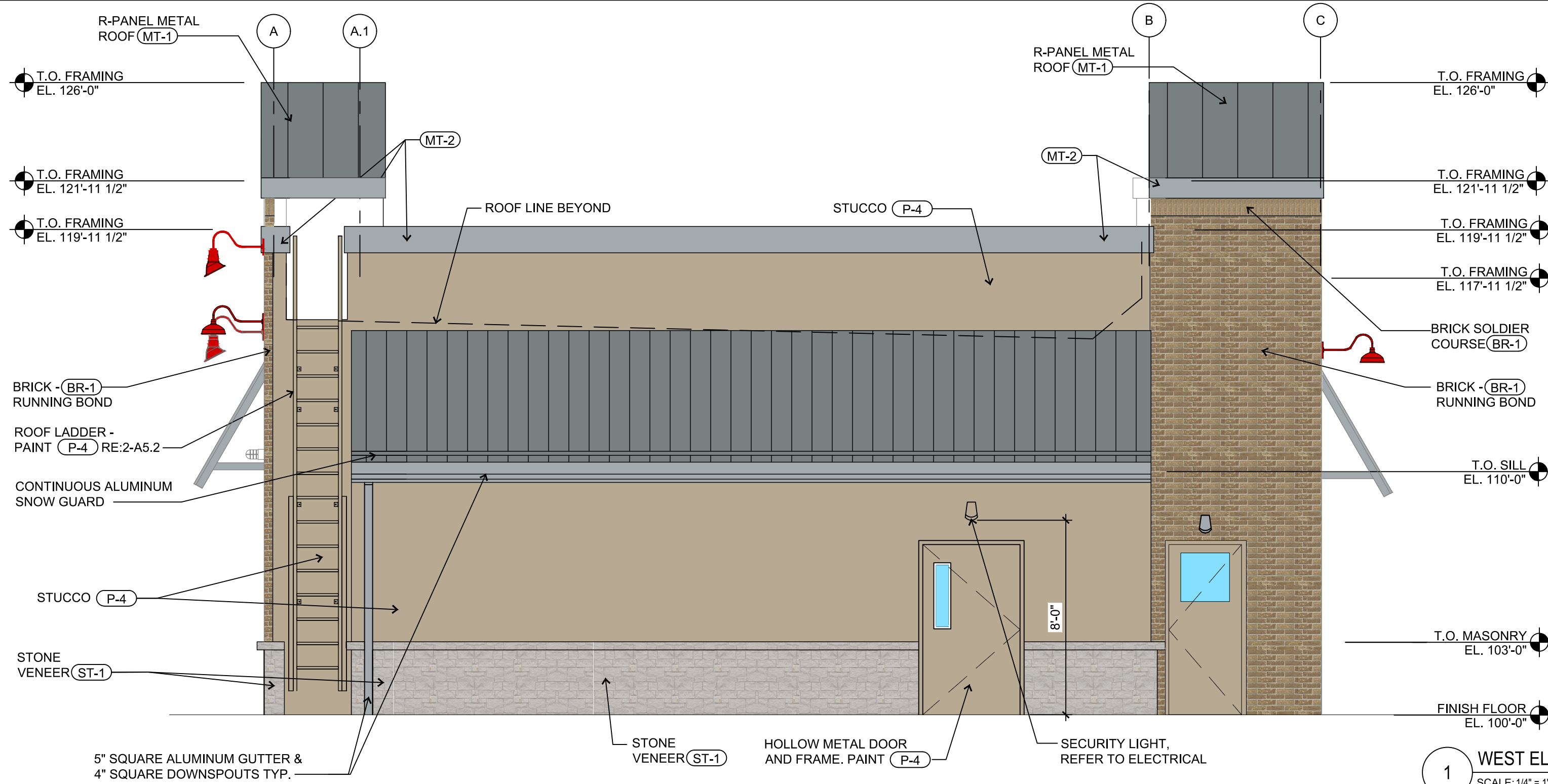
EXHIBIT "D" - CONCEPT ELEVATIONS

BUILDING MATERIALS

|      |                                                                                                              |      |                                                                         |      |                                                                              |     |                                                                                                            |
|------|--------------------------------------------------------------------------------------------------------------|------|-------------------------------------------------------------------------|------|------------------------------------------------------------------------------|-----|------------------------------------------------------------------------------------------------------------|
| ST-1 | STONE VENEER<br>COLOR: AUSTIN WHITE                                                                          | BR-1 | BRICK<br>ACME BRICK : RUNNING BOND (KING)<br>COLOR: MOCHA BROWN ANTIQUE | P-1  | PAINT<br>SHERWIN WILLIAMS<br>COLOR: PURE WHITE SW7005                        | P-4 | STUCCO - PAINT<br>SHERWIN WILLIAMS<br>COLOR: UNIVERSAL KHAKE SW6150                                        |
| MT-1 | METAL ROOFING AND AWNINGS<br>MANUFACTURER: BERRIDGE<br>PROFILE: STANDING SEAM - 26 GAUGE<br>COLOR: ZINC GRAY | MT-2 | METAL PARAPET CAP<br>WESTERN STATES METAL: BOX RIB<br>COLOR: DB GRAY    | CD-1 | COMPOSITE DECKING BOARDS<br>LOCAL SUPPLIER<br>COLOR: CAPE COD GREY EVERGRAIN | SF  | STOREFRONT SYSTEM<br>MANUFACTURER: KAWNEER<br>GLAZING: 1" TEMPERED LOW-E<br>COLOR: CLEAR ANODIZED ALUMINUM |

SHEET NOTES

1. ANY EXTERNAL ELECTRICAL PANELS WILL BE PAINTED/TEXTURED TO MATCH THE MATERIAL AND COLOR OF THE BUILDING
2. SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLANELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.



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HARRISON FRENCH  
& ASSOCIATES, LTD

1705 S. Walton Blvd, Suite 3  
Bentonville, Arkansas 72712  
t 479.273.7780  
f 479.273.9436  
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SLIM CHICKENS  
Lift Cleaning Chicken  
3201 LONG PRAIRIE RD  
FLOWER MOUND, TX 75022  
JOB NUMBER: 28-22-20005  
DATE: 03/21/23

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| DRAWN BY:      | MBM      |
| P SIZE:        | B1-NP-L  |
| P CYCLE:       | Q2 2022  |
| DOCUMENT DATE: | 03/21/23 |

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PERMITTING, OR CONSTRUCTION

LAWRENCE LOTT  
ARCHITECT

EXTERIOR  
ELEVATIONS

SHEET:  
A2.2



EXHIBIT "D" - CONCEPT ELEVATIONS

GENERAL NOTES:

1. ANY EXTERNAL ELECTRICAL PANELS WILL BE PAINTED/TEXTURED TO MATCH MATERIAL AND COLOR OF THE BUILDING
2. SIGNS REQUIRE A SEPARATE PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS PART OF THIS REVIEW AND MUST COMPLY WITH APPLICABLE TOWN REGULATIONS

BUILDING MATERIALS



S STONE VENEER  
COLOR: AUSTIN WHITE



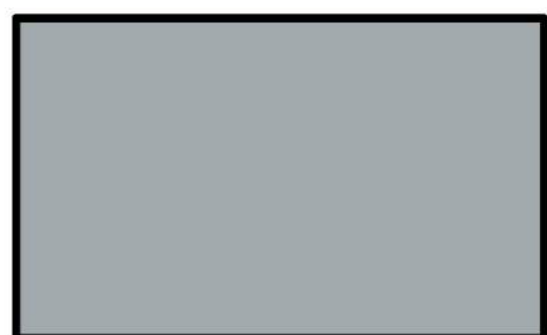
S-1 STUCCO  
PAINT: SHERWIN-WILLIAMS  
COLOR: UNIVERSAL KHAKI (SW6150)



B-1 BRICK  
ACME BRICK: RUNNING BOND (KING)  
COLOR: MOCHA BROWN ANTIQUE



B-2 BRICK  
ACME BRICK: SOLDIER COURSE  
COLOR: ASHWOOD



MP-1 METAL PARAPET CAP  
WESTERN STATES METAL: BOX RIB  
COLOR: DB GRAY



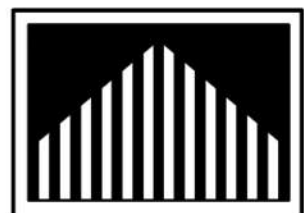
MP-2 METAL PARAPET CAP  
WESTERN STATES METAL: BOX RIB  
COLOR: DB BLUE



CF CANOPY FASCIA  
COLOR: DB DARK GRAY



MA METAL AWNING  
COLOR: POWDERCOATED DB DARK GRAY



Castles Design Group

DUTCH BROS COFFEE  
NEW FREESTANDING BUILDING  
3101 LONG PRAIRIE ROAD  
FLOWER MOUND, TX 75022

ARCHITECT:  
CASTLES DESIGN GROUP  
3801 KIRBY DR. STE. 600  
HOUSTON, TEXAS 77098  
TEL: (713) 664-7974  
ARCHITECT OF RECORD: STEVEN PRATT, AIA, NCARB

CLIENT:  
EMBREE DEVELOPMENT GROUP, INC.  
BRYAN BRADY / SENIOR PROJECT MANAGER  
4747 WILLIAMS DRIVE  
GEORGETOWN, TEXAS 78633  
TEL: (682) 605-8079  
CEL: (214) 724-9011  
E-MAIL: BBRADY@EMBREEGROUP.COM

SUBMITTAL DATE:  
FEBRUARY 28, 2023

GENERAL NOTES:

1. ALL MECHANICAL UNITS SHALL BE SCREENED FROM PUBLIC VIEW AS REQUIRED BY THE COMPREHENSIVE ZONING ORDINANCE.
2. WHEN PERMITTED, EXPOSED UTILITY BOXES AND CONDUITS SHALL BE PAINTED TO MATCH THE BUILDING.
3. SIGNS REQUIRE A SEPARATE PERMIT. ANY SIGNS DEPICTED ON THE SUBJECTS SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.

MATERIAL TABULATIONS:

(SQUARE FOOTAGE PER FAÇADE)

|                                | NORTH: | SOUTH: | EAST:  | WEST:  |
|--------------------------------|--------|--------|--------|--------|
| TOTAL FAÇADE (SF):             | 1030   | 1030   | 550    | 550    |
| DOORS & WINDOWS (SF):          | 70     | 24     | 57     | 72     |
| FAÇADE (SF): (LINE 1 - LINE 2) |        |        |        |        |
| (EXCLUSIVE OF DOORS & WINDOWS) | 960    | 1006   | 493    | 478    |
| PRIMARY MASONRY (TOTAL %):     | 93.02% | 94.53% | 94.93% | 92.68% |
| STONE (SF):                    | 153    | 124    | 50     | 38     |
| (% OF LINE 3)                  | 15.94% | 12.33% | 10.14% | 7.95%  |
| BRICK (SF):                    | 50     | 220    | 220    | 105    |
| (% OF LINE 3)                  | 5.21%  | 21.87% | 44.62% | 21.97% |
| STUCCO (SF):                   | 690    | 607    | 198    | 300    |
| (% OF LINE 3)                  | 71.88% | 60.34% | 40.16% | 62.76% |
| SECONDARY MATERIAL (TOTAL %):  | 6.98%  | 5.47%  | 5.07%  | 7.32%  |
| METAL PARAPET CAP (SF):        | 67     | 55     | 25     | 35     |
| (% OF LINE 3):                 | 6.98%  | 5.47%  | 5.07%  | 7.32%  |

COLOR TABULATIONS:

(SQUARE FOOTAGE PER FAÇADE)

|                                | NORTH: | SOUTH: | EAST:  | WEST:  |
|--------------------------------|--------|--------|--------|--------|
| EARTH TONE COLORS (TOTAL %):   | 87.81% | 72.66% | 50.30% | 70.71% |
| STONE (EARTH TONE COLOR):      | 153    | 124    | 50     | 38     |
| (% OF TOTAL FAÇADE)            | 15.94% | 12.33% | 10.14% | 7.95%  |
| BRICK (EARTH TONE COLOR):      | 50     | 220    | 220    | 105    |
| (% OF TOTAL FAÇADE)            | 5.21%  | 21.87% | 44.62% | 21.97% |
| STUCCO (EARTH TONE COLOR):     | 690    | 607    | 198    | 300    |
| (% OF TOTAL FAÇADE)            | 71.88% | 60.34% | 40.16% | 62.76% |
| ACCENT - DBC BLUE (TOTAL %):   | 6.98%  | 5.47%  | 5.07%  | 7.32%  |
| METAL CAP (BLUE ACCENT COLOR): | 67     | 55     | 25     | 35     |
| (% OF TOTAL FAÇADE)            | 6.98%  | 5.47%  | 5.07%  | 7.32%  |

BUILDING LIGHTING

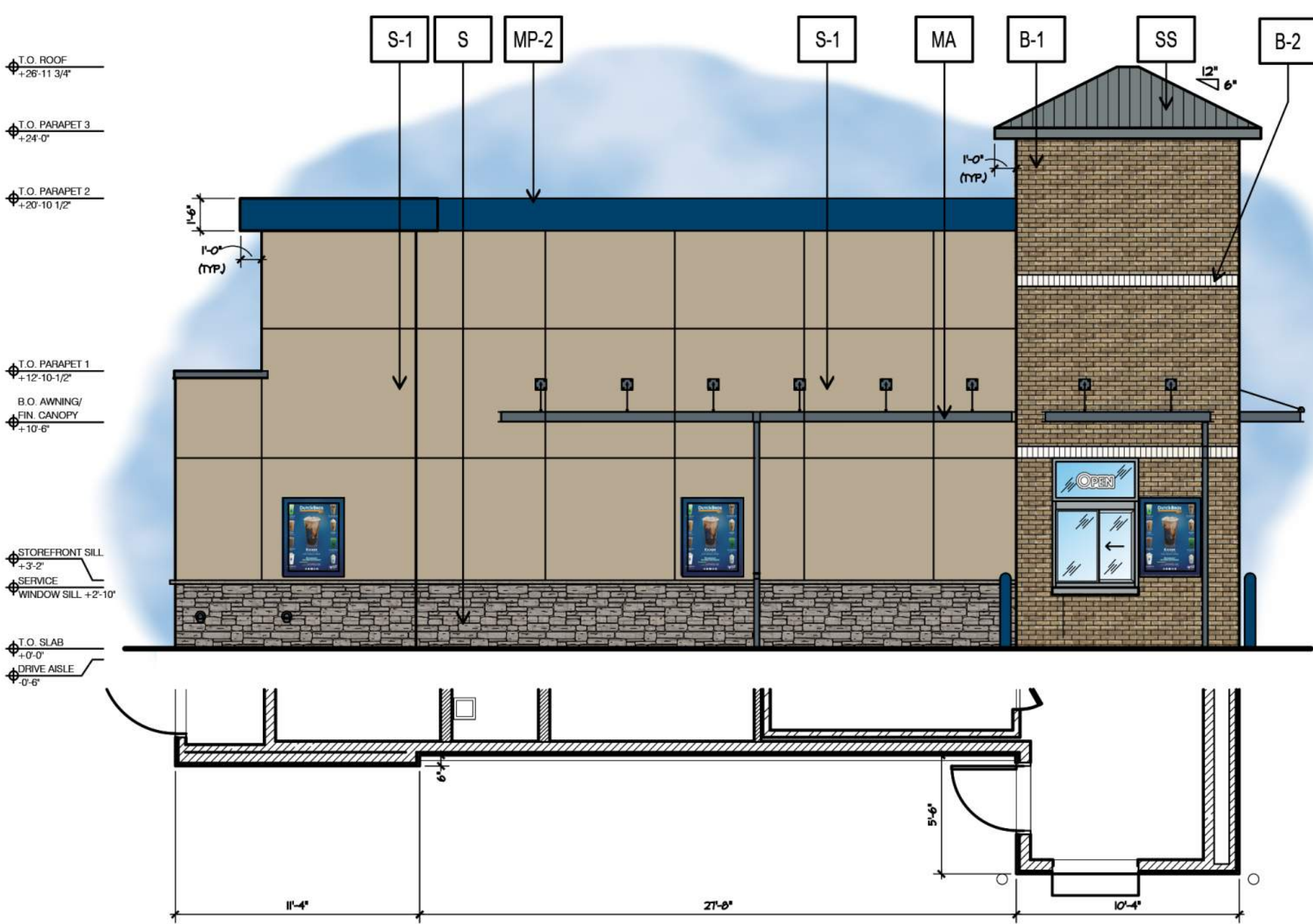
L4 WALL SCONCE  
MANUFACTURER: TECH LIGHTING  
COLOR: CHARCOAL

L6 WALL PACK  
MANUFACTURER: RAB  
COLOR: CHARCOAL

SF STOREFRONT SYSTEM  
MANUFACTURER: KAWNEER  
GLAZING: 1" TEMPERED LOW-E  
COLOR: CLEAR ANODIZED ALUMINUM

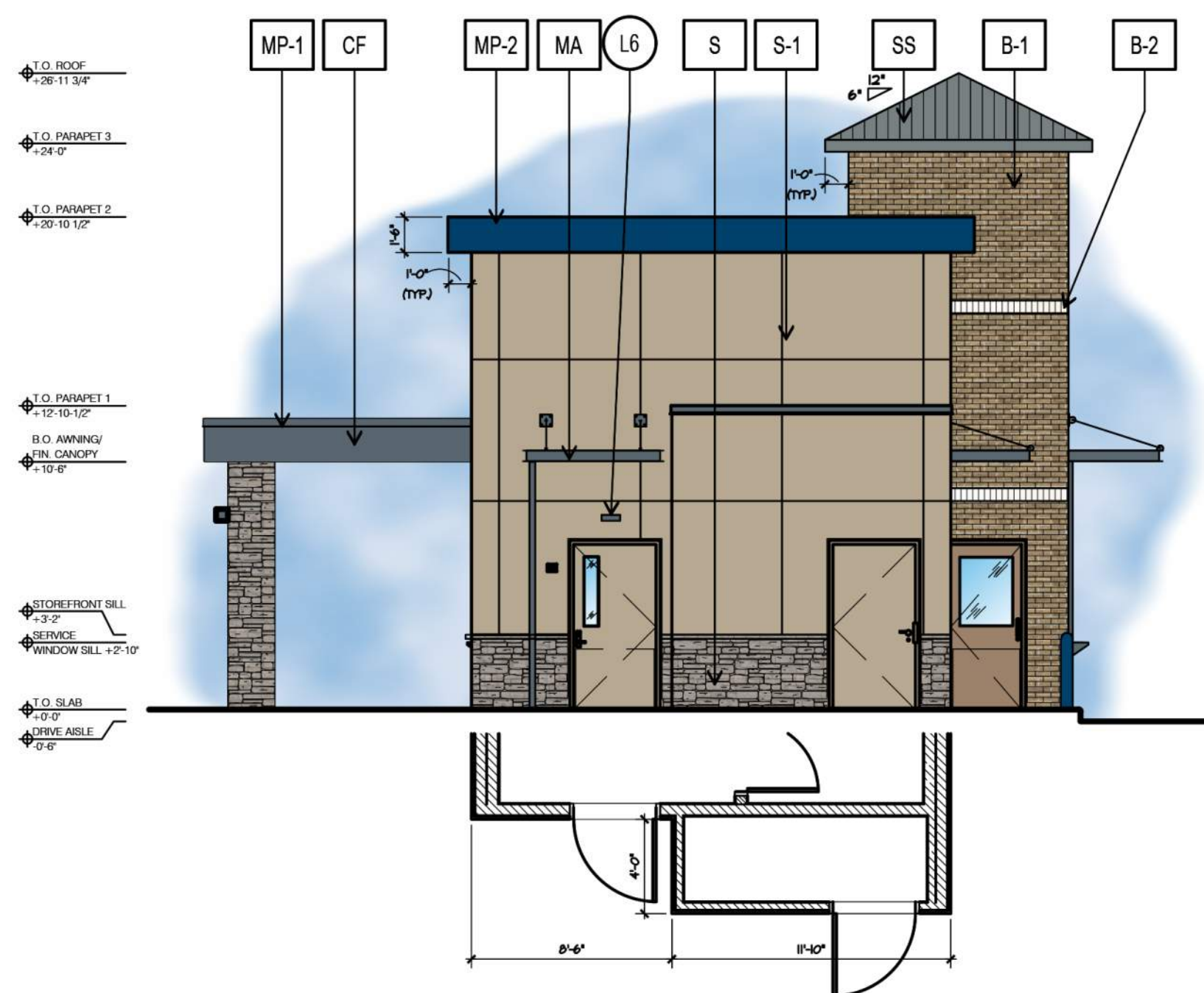


SS METAL ROOF  
MANUFACTURER: BERRIDGE (OR SIMILAR)  
PROFILE: STANDING SEAM  
COLOR: ZINC GRAY



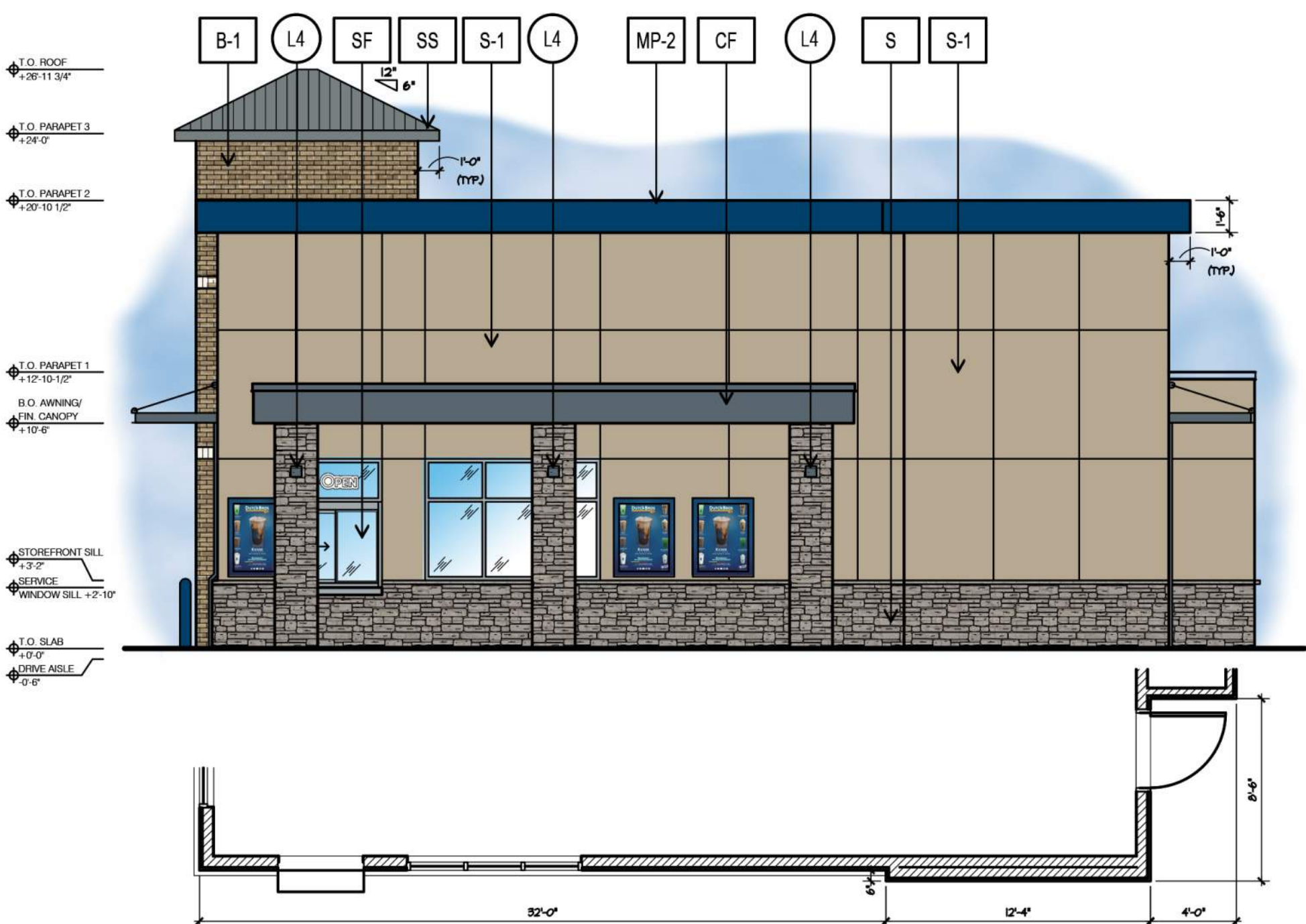
DRIVE-THRU ELEVATION - SOUTH FAÇADE

3/8" = 1'-0"



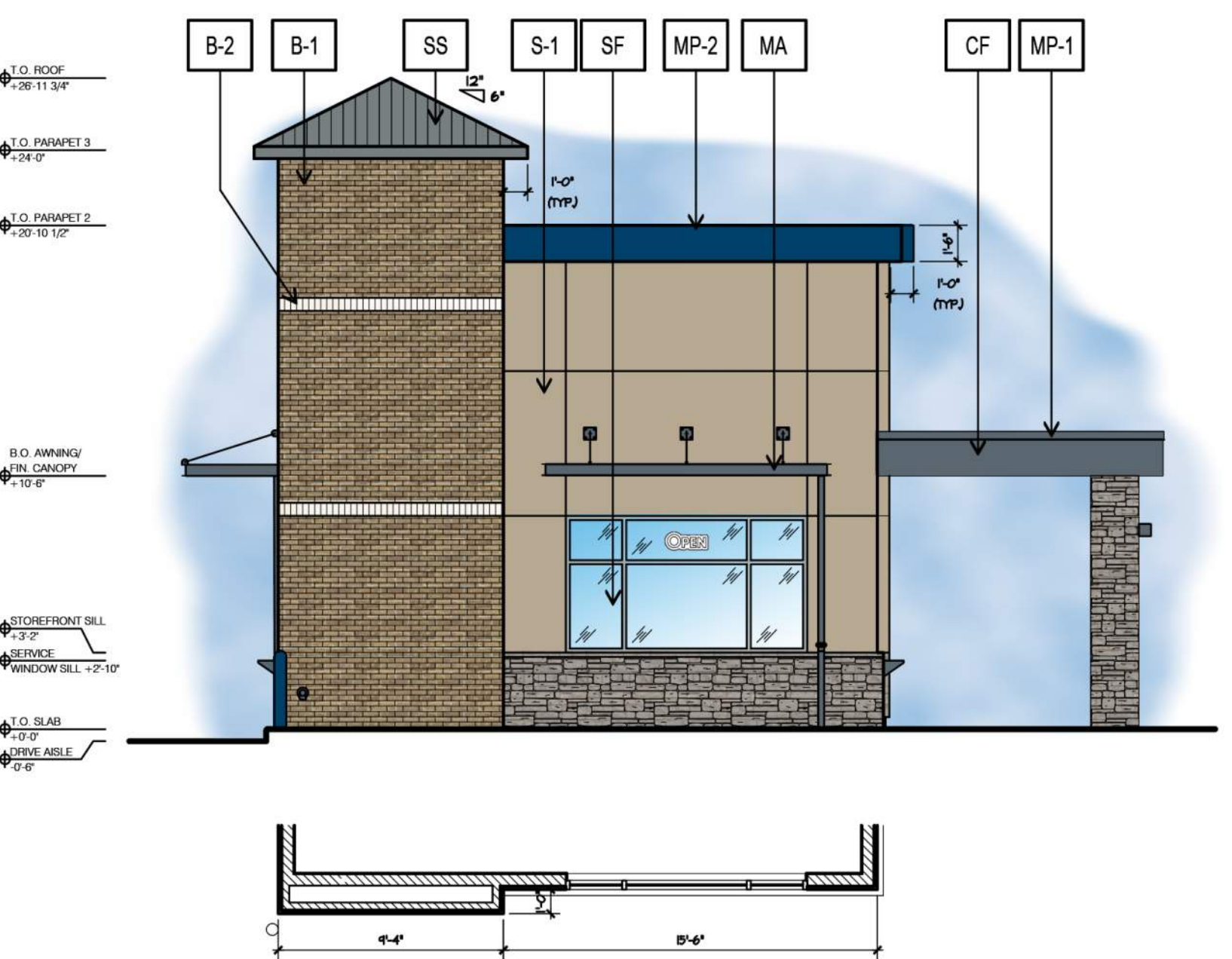
REAR ELEVATION - WEST FAÇADE

3/8" = 1'-0"



NON DRIVE-THRU ELEVATION - NORTH FAÇADE

3/8" = 1'-0"



FRONT ELEVATION - EAST FAÇADE

3/8" = 1'-0"





## TOWN COUNCIL AGENDA K.4. REGULAR ITEM(S)

---

**DATE:** April 3, 2023  
**FROM:** Matthew Hotelling, Senior Engineering Transportation Manager  
**ITEM:** **Public Hearing to consider a request for a Master Plan Amendment (MPA23-0001 – Western Flower Mound Thoroughfare Plan) to amend Section 7.0, Thoroughfare Plan, by changing the designation of Various Roadways bounded by Denton Creek Boulevard on the west to the unnamed Greenway Rural Arterial on the east. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting; Transportation Commission recommended approval by a vote of 6 to 0 at its December 13, 2022, meeting).**

---

**BACKGROUND:** This application was presented to the Planning and Zoning Commission (P&Z) on March 27, 2023. The Planning and Zoning Commission Report can be viewed [here](#). The plan presented as part of this item incorporates the Transportation Commission (TRC) recommendation and the approved zoning case, MU21-0002, which was approved on October 3, 2022. Those streets were verified to operate at an acceptable level of service (LOS). The Thoroughfare Plan does not display local streets. Therefore, the mixed use local streets shown in the approved street concept plan for MU21-0002 are not a part of the Master Thoroughfare Plan. This Thoroughfare Plan Amendment amends the Thoroughfare Master Plan to align with the approved zoning. The proposed Thoroughfare Plan for western Flower Mound is shown in attachment 2.

**BOARD REVIEW/CITIZEN FEEDBACK:** Public comment at the Planning and Zoning Commission meeting was in regards to the ability to easily access the Town facilities on the southeast corner of US 377 and FM 1171. The difficulty of crossing US 377 until such time that the streets connect to FM 1171 was a concern. Both the Planning and Zoning Commission as well as the Transportation Commission recommended approval 6 to 0 at their respective meetings. The main question received from the Planning and Zoning Commission related to when the Texas Department of Transportation (TxDOT) work related to US 377 would take place. The Town had previously heard that the construction would start in the 2025 - 2026 timeframe. However, a check of the TxDOT project tracker online indicates that the construction of this phase of US 377 is 10+ years from construction. The TxDOT project tracker website can be found at: [https://apps3.txdot.gov/apps-cq/project\\_tracker/](https://apps3.txdot.gov/apps-cq/project_tracker/)

**ALTERNATIVES:** N/A

**FISCAL IMPACT:** N/A

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

**ATTACHMENTS:**

1. Draft Ordinance Western Flower Mound Thoroughfare Plan Amendment
2. Proposed Thoroughfare Plan Change Update

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

**TOWN OF FLOWER MOUND, TEXAS**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE FLOWER MOUND 2001 MASTER PLAN BY AMENDING ORDINANCE NO. 24-01, IN PART, WHICH ADOPTED THE MASTER PLAN, BY AMENDING SECTION 7.0, "THOROUGHFARE PLAN", BY CHANGING THE DESIGNATION OF VARIOUS EXISTING THOROUGHFARE PLAN STREETS EAST OF DENTON CREEK BOULEVARD AND WEST OF HIGH ROAD AS DEPICTED IN EXHIBIT A;; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, on March 19, 2001, the Town Council of the Town of Flower Mound adopted all nineteen component plans specifically including the Land Use Plan, together with all amendments thereto, by Ordinance No. 24-01 as a component to Flower Mound Master Plan 2001; 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 Planning and Zoning Commission of the Town of Flower Mound, Texas, held a public hearing on March 27, 2023, and the Town Council of the Town of Flower Mound, Texas, held a public hearing on April 3, 2023, with respect to the Master Plan Amendment described herein and to consider the adoption of the updated Section 7.0 "Thoroughfare Plan" as components of the Master Plan; and

**WHEREAS**, the Town has complied with all requirements of Chapter 213 of the 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 the Master Plan Amendment described herein; and

**WHEREAS**, after public notice and public hearing as required by law, and upon due deliberation and consideration of the recommendation of the Planning and Zoning Commission and of all testimony and information submitted during said public hearings, the Town Council of the Town of Flower Mound, Texas, has determined that it is in the public's best interest and in support of the health, safety, morals, and general welfare of the citizens of the Town of Flower Mound that Section 7.0 Thoroughfare Plan of the

Master Plan of the Town of Flower Mound, Texas, be amended as more particularly set forth herein.

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

**SECTION 1**

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

**SECTION 2**

The Master Thoroughfare Plan Map component in Section 7.0 of the Master Plan of the Town of Flower Mound, Texas, is hereby amended as described below:

- Unnamed Urban Minor Arterial between Denton Creek Boulevard and US 377 has been removed.
- Stonecrest Road has been realigned south of the Argyle High School Property to generally follow the southern boundary of Argyle High School property to Denton Creek Boulevard. The crossing of the Union Pacific Railroad (UPRR) track and any portion on the east side of UPRR has been removed.
- Unnamed Rural Collector from the Unnamed Greenway Rural Collector to Dunham Road has been removed.
- Unnamed Urban Collector ring road encompassing all four corners of the US 377 and FM 1171 (Cross Timbers Road) intersection has been removed.
- Unnamed Greenway Rural Arterial has been realigned to start across from Canyon Falls Drive at US 377 and terminating on the north end of Burger Lake. A portion of the Greenway Rural Arterial is located outside of the Town Limits and shows the intent of the connection of the roadway in another jurisdiction.
- Four modern Roundabout locations, as shown, matches approved MU21-0002 street layout. Four additional modern roundabouts are shown in the approved MU21-0002 street layout are connected by Local Streets and not shown on this map.

- Mixed Use Street designations (MU-Arterial, MU-Collector, MU-Dam Road and MU-Couplet) as shown matches the approved MU21-0002 street layout. MU-Couplet is designated as a Local Urban Street and has all of the characteristics of a Local Urban Street except it a one-way roadway in each direction. Mixed Use Streets characteristics shall be as shown in the MU21-0002 case.

The remainder of the Master Thoroughfare Plan Map component of the Master plan is not amended hereby, and remains in full force and effect.

### **SECTION 3**

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 4**

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 5**

This Ordinance shall take effect and be in full force from and after its passage, and it is so ordained.



DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 3RD DAY OF APRIL, 2023.

APPROVED:

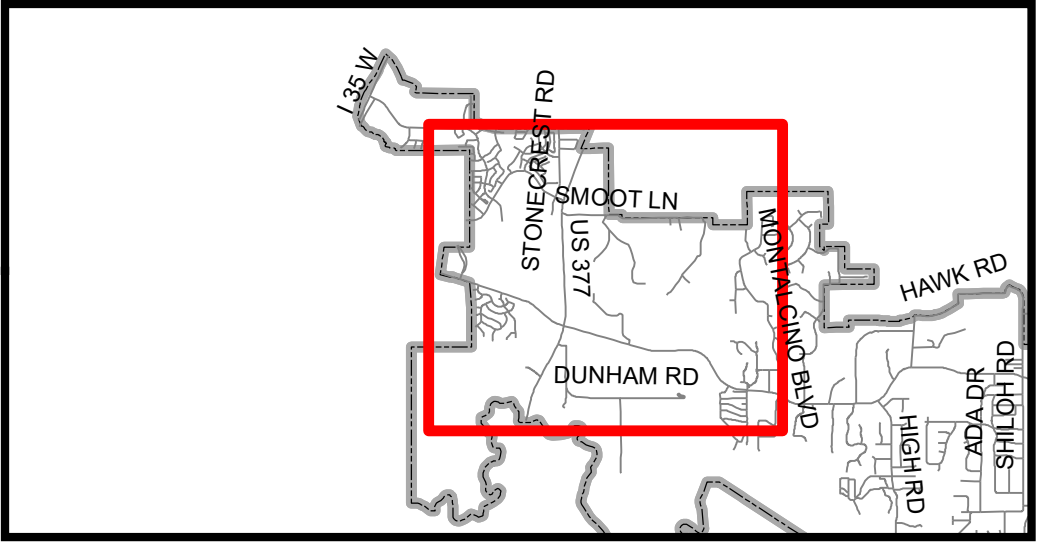
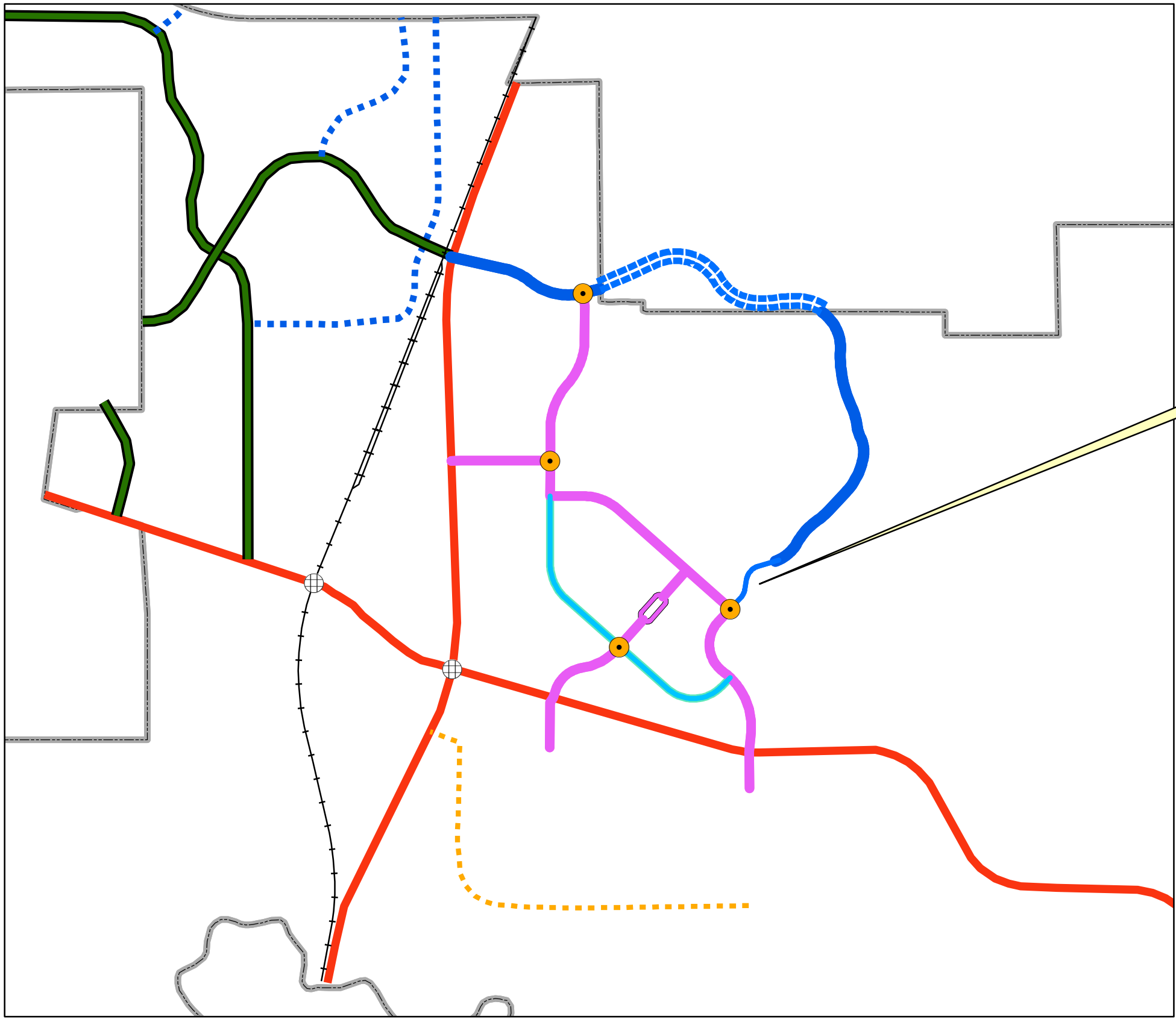
\_\_\_\_\_  
Derek France, MAYOR

ATTEST:

\_\_\_\_\_  
Theresa Scott, TOWN SECRETARY



# Exhibit A. Proposed 2023 Thoroughfare Plan Map Changes



**Project Location(s)**

**Legend**

**Flower Mound Ranch Roads**

- Greenway Rural Arterial
- Greenway Rural Arterial-Outside Town Limts
- MU - Arterial
- MU - Collector
- MU - Couplet
- MU - Dam Road

**Current Thoroughfare Plan**

- Major Arterial
- Urban Minor Arterial w/Bike Lane
- Urban Collector
- Rural Collector
- Service Road
- Diamond Interchange
- Grade Separation
- Roundabout

## TOWN COUNCIL FUTURE AGENDA ITEMS

|     | Meeting Date | Agenda Item                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Category                       |
|-----|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 1.  | 4/17/2023    | Consider approval of the minutes from the 4/3 regular meeting.                                                                                                                                                                                                                                                                                                                                                                                                                | Minutes                        |
| 2.  | 4/17/2023    | Consider approval of a Professional Services Agreement with Flock Group, Inc., to provide equipment, installation, technical support, and software for license plate reader technology at five (5) locations along Town roadways as part of a sixty-day pilot period as no cost-effectiveness trial to evaluate effectiveness for consideration as a decision package in the FY 23 - 24 fiscal budget; and authorization for the Mayor to execute same on behalf of the Town. | Professional Service Agreement |
| 3.  | 4/17/2023    | Best Practices presentation to Fire and Emergency Services                                                                                                                                                                                                                                                                                                                                                                                                                    | Presentation                   |
| 4.  | 4/17/2023    | Public Hearing to consider an ordinance amending the zoning (ZPD22-0006 – Oncor Dunham Substation) from Interim Holding (IH) uses to Planned Development District No. 195 (PD-195) with Single Family Estate (SF-E) uses, with certain modifications and exceptions to the Code of Ordinances. The property is generally located south of Dunham Road and east of Haynes Road. (PZ recommended approval by a vote of 6 to 0 at its March 27, 2023, meeting.)                  | MPA/ZPD/SUP                    |
| 5.  | 4/17/2023    | Consider approval of a Development Agreement with Toll Southwest LLC., for park land dedication and construction of park improvements, and for construction of Aberdeen Drive with associated utility improvements for the Oakbridge Crossing residential development; and authorization for the Mayor to execute same on behalf of the Town.                                                                                                                                 | Construction Agreement         |
| 6.  | 4/17/2023    | Consider approval of a TIRZ Consulting agreement with P3 Works LLC.                                                                                                                                                                                                                                                                                                                                                                                                           | Contracts                      |
| 7.  | 5/1/2023     | Consider approval of the minutes from a regular meeting on 4/17 and a work session held on 4/20.                                                                                                                                                                                                                                                                                                                                                                              | Minutes                        |
| 8.  | 5/16/2023    | Oak Street Lift Station and Force Main Phase IV - Testing PSA                                                                                                                                                                                                                                                                                                                                                                                                                 | Professional Service Agreement |
| 9.  | 5/16/2023    | Consider approval of the minutes from a regular meeting held on 5/1.                                                                                                                                                                                                                                                                                                                                                                                                          | Minutes                        |
| 10. | 5/16/2023    | Forest Vista AC Water Line Decommissioning - Design PSA                                                                                                                                                                                                                                                                                                                                                                                                                       | Professional Service Agreement |
| 11. | 5/16/2023    | Lakeside Parkway Capacity Improvements - Design PSA                                                                                                                                                                                                                                                                                                                                                                                                                           | Professional Service Agreement |
| 12. | 5/16/2023    | Placeholder: Canvass Results from May 6 Election                                                                                                                                                                                                                                                                                                                                                                                                                              | Elections                      |

3/30/2023

## TOWN COUNCIL FUTURE AGENDA ITEMS

|     | Meeting Date | Agenda Item                                                                             | Category                       |
|-----|--------------|-----------------------------------------------------------------------------------------|--------------------------------|
| 13. | 5/16/2023    | Placeholder: Canvass Results from May 6 Bond Election                                   | Elections                      |
| 14. | 5/16/2023    | Upper Timber Interceptor (Morriss Road to One Place Lane) - Buyboard Award              | Contracts                      |
| 15. | 5/18/2023    | Board Reports                                                                           | Other                          |
| 16. | 6/5/2023     | High Road Water Line Phase II - Construction Agreement                                  | Construction Agreement         |
| 17. | 6/5/2023     | High Road Water Line Phase II - Testing PSA                                             | Professional Service Agreement |
| 18. | 6/5/2023     | Lower Timber Interceptor Rehabilitation (Paisley Drive to Rockcreek Court) - Design PSA | Professional Service Agreement |