

Town Council Regular Meeting



March 4, 2024
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 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 Robert Aguirre

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. LISD Career Out Day
5. Upcoming Work Sessions

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. March 19 - Regular Meeting

J. BOARDS/COMMISSIONS

Conduct interviews and discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Animal Services Board, Capital Improvements Advisory Committee, Cultural Arts Commission, Denton County Transportation Authority, Environmental Conservation Commission, Historical Commission, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

K. 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. Minutes 2/15 & 2/19 - Consider approval of the minutes from a work session held on February 15, and a regular meeting held on February 19.
2. Lakeside Pkwy Capacity Improvement - ICA - Consider the approval of an Interlocal Cooperation Agreement with Denton County for the construction of the Lakeside Parkway Capacity Improvement project, and authorize the mayor to execute the same on behalf of the Town.
3. Denton Creek Boulevard Bridge - ICA - Consider the approval of Amendment 1 to the Interlocal Cooperation Agreement with Denton County for the construction of the Denton Creek Boulevard Bridge, and authorize the mayor to execute the same on behalf of the Town.
4. Municipal grounds maintenance - Consider the approval of the award of Best Value Bid No. 2024-56-A Municipal Grounds Maintenance to American Landscape Systems, Inc. at the unit bid, and to establish an annual bid price contract for routine Municipal Grounds Maintenance at specific facilities throughout the town at an annual estimated amount of \$260,000, and

- authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.
5. 2024 Water and Wastewater Model Update - Consider approval of a Professional Services Agreement for the 2024 Water and Wastewater Model update project, with Kimley-Horn, for \$36,400.00; and authorization for the Mayor to execute same on behalf of the Town.
 6. Bracewell LLP Engagement Letter - Consider approval of an Engagement Letter with Bracewell LLP, for legal and economic development consulting services associated with TIRZ #2 and the proposed PID.
 7. Upgrade Access Control - Consider approval of Schneider Electric to perform the upgrade conversion to remove the obsolete Inet access hardware and install new Security Expert hardware and software in all Town facilities with access control systems for the amount of \$225,000.00.
 8. Amendment to Active Network Agreement - Consider approval of an amended Service Agreement Contract with Active Network, LLC. to adjust payment processing, and authorization for the Mayor to execute the same on behalf of the Town.

L. REGULAR ITEM(S)

1. SUP23-0007 - Prairie Plaza Building 2 Veterinary Dental Clinic - Public Hearing to consider an ordinance granting Specific Use Permit No. 489 (SUP23-0007– Prairie Plaza Building 2 Veterinary Dental Clinic) to permit a veterinary hospital (inside pens) use. The property is generally located north of Cross Timbers Road and west of Long Prairie Road. (PZ recommended approval by a vote of 6 to 0 at its February 26, 2024, meeting.)
2. MPA23-0008-Scenic Drive - Public Hearing to consider a request for a Master Plan Amendment (MPA23-0008 - Scenic Drive) to amend Section 7.0, Thoroughfare Plan, to consider a request to keep Scenic Drive as a Rural Collector street as shown on the Town's Thoroughfare Plan or consider an amendment to the classification of Scenic Drive. (Planning and Zoning recommended approval to keep the existing classification by a vote of 6 to 0 at its February 26, 2024, meeting. Transportation Commission recommended approval to keep the existing classification by a vote of 6 to 0 at its December 12, 2023, meeting.)

M. CLOSED MEETING

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

1. Consultation with Town Attorney.
 - a. La Estancia Investments, L.P. v. Town of Flower Mound, Texas, et al
2. Discuss and consider purchase, exchange, lease or value of real property for parks, cultural arts, public safety, 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, grocers, corporate relocation/expansion/retention, hospitality projects, health care facilities, performance related to certain incentive agreements, and Tax Increment Reinvestment Zone (TIRZ) #1, TIRZ #2, River Walk PID No. 1, Proposed PID, MMDs, and MUDs

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

O. ADJOURN

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 1, 2024, at 8:40 a.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for 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.

To preview upcoming items of business that may appear on future agendas click [HERE](#).

Town Council Work Session & Special Meeting



February 15, 2024

Town Hall

2121 Cross Timbers Road

Flower Mound, TX 75028

6:00 p.m.

DRAFT MINUTES

A. CALL TO ORDER

Mayor France called the meeting to order at 6:00 p.m. with the following members present:

Derek France, Mayor
Jim Engel, Mayor Pro Tem
Ann Martin, Deputy Mayor Pro Tem
Adam Schiestel, Councilmember Place 1
Chris Drew, Councilmember Place 2
Brian Taylor, Councilmember Place 3

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 Development Services
JP Walton, Chief Strategic Officer
Sarah Luxton, Senior Management Analyst
Blake Manuel, Management Analyst

B. INVOCATION

Mayor France 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. PUBLIC COMMENT

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- Speakers must address their comments to the Town Council
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No one spoke.

E. WORK SESSION ITEM

1. FY 23-24 Strategic Plan

Mr. Walton or Ms. Luxton gave a presentation identifying or noting:

- Strategic Services Team introduction
- overview
- status update on FY 23-24 strategic initiatives
- performance metrics
- strategic goals
- objectives (1 - 9)
- major/special projects
- performance dashboard

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

- trees
- website (search function)
- permance dashboard (update timing, comparisons)
- benchmarks or targets
- performance metrics and approach

2. FloMo Convos: Teen Series

Mr. Manuel gave a presentation identifying or noting:

- FloMo Convos background
- community engagement
- Teen FloMo convos report (purpose, what they did)
 - what teens love about Flower Mound
 - what's missing in Flower Mound
 - what does a perfect day in Flower Mound look like
 - dream park features
 - looking ahead: what teens want in 10 years

- key takeaways

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

- what school grades and class types were used
- Parks Master Plan
- next steps

F. BOARDS/COMMISSIONS

Conduct interviews for the following boards or commissions:

1. Historical Commission
There were no Historical Commission applicants interviewed.
2. Veterans Liaison Board
John Travis interviewed for the Veterans Liaison Board position.

G. ADJOURN

Mayor France adjourned the work session and special meeting at 7:13 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



Town Council Regular Meeting

February 19, 2024

Town Hall

2121 Cross Timbers Road

Flower Mound, TX 75028

6:00 p.m.

DRAFT MINUTES

A. CALL TO ORDER

Mayor France called the meeting to order at 6:00 p.m. with the following members present:

Derek France, Mayor

Jim Engel, Mayor Pro Tem

Ann Martin, Deputy Mayor Pro Tem

Adam Schiestel, Councilmember Place 1

Chris Drew, Councilmember Place 2

Brian Taylor, Councilmember Place 3

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 Development Services

JP Walton, Chief Strategic Officer

Matt Woods, Director of Environmental Services

B. INVOCATION

Chaplain Liles 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."

D. PRESENTATION(S)

1. 2023 Red Kettle Challenge Report by Mary Freeman, The Salvation Army

Major Dwayne Durham, Corps Officer, The Salvation Army of Lewisville, presented Mayor France with a certificate of appreciation and a bell.

E. PUBLIC COMMENT

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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.	Cheryl Moore, 1900 Tennyson Dr	Candidacy for Mayor
2.	Joe Bernard, 10605 Sunrise Cir	\$40,000 wasted

** Indicates person did not wish to speak*

F. ANNOUNCEMENTS

1. Announcements from the mayor and council members
There were announcements from the mayor and councilmembers regarding:
 - Voting - primary election
 - Fire Academy
 - Lewisville Lake Symphony
 - Father Daughter Prom

G. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
 - a. Introduction of new Chief Financial Officer, John Zagurski

Mr. Childers introduced John Zagurski.

b. We Own It Champion Recognition

Mr. Childers recognized past and current recipients of the We Own It Championship award.

c. Fire personnel recognition

Mr. Childers announced that Fire Chief Henley was recently recognized by the Texas Fire Chief's Association for being the 2024 recipient of the Lone Star Achievement Award.

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).

Councilmember Drew requested a future agenda item on the topic of expanding SPAN services to address additional public transportation needs for residents, such as going to the airport or businesses outside of town or allowing others to come into town in the interest of supporting those businesses. There was Council consensus to have it as a future agenda item.

I. COORDINATION OF CALENDARS

1. March 4 Regular Meeting

Mayor France confirmed that all members of Council plan to attend the March 4th meeting.

J. BOARDS/COMMISSIONS

Conduct interviews or discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Animal Services Board, Capital Improvements Advisory Committee, Cultural Arts Commission, Denton County Transportation Authority, Environmental Conservation Commission, Historical Commission, Parks Board, School Liaison Committee, SMARTGrowth Commission, Tax Increment Reinvestment Zone Number (TIRZ #1), Transportation Commission, and Veterans Liaison Board.

The following applicants were interviewed for board positions by the Council:

Dawn Shapley, applicant for the Historical Commission

ACTION: Adam Schiestel moved to appoint Dawn Shapley to the Historical Commission, Place 2, with a term beginning March 6, 2024 and ending September 30, 2024. Brian Taylor seconded the motion.

AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

K. CLOSED MEETING

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

Mayor France announced that the Town Council is convening into a closed meeting at 6:40 p.m., pursuant to Texas Government Code Chapter 551, including, but not limited to, Sections 551.071, 551.072, 551.074, and 551.087.

1. Consultation with Town Attorney.
 - a. La Estancia Investments, L.P. v. Town of Flower Mound, Texas, et al
 - b. Canyon Falls Park
2. Discuss and consider purchase, exchange, lease or value of real property for parks, cultural arts, public safety, 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, grocers, corporate relocation/expansion/retention, hospitality projects, health care facilities, performance related to certain incentive agreements, and Tax Increment Reinvestment Zone (TIRZ) #1, TIRZ #2, River Walk PID No. 1, and Proposed PID.

L. RECONVENE

The Town Council reconvened into an open meeting at 8:10 p.m., and no action was taken on the above items.

M. 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.

ACTION: Brian Taylor moved to approve consent items 1 - 4 as presented in the agenda caption. Chris Drew seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

1. Minutes 2/5 - Consider approval of the minutes from a regular meeting held on February 5.
2. USACE Contract - law enforcement services - Consider approval of the 2024 US Army Corps of Engineer (USACE) solicitation for contract with the Town of Flower Mound for law enforcement services at Lake Grapevine and authorize the Mayor to execute same.
3. PSA - Sanitary Sewer Rehab (Kirkpatrick Ln. & Stapleton St.) - Consider approval of a Professional Services Agreement with Criado & Associates, Inc., for the design phase services associated with the Kirkpatrick Lane and Stapleton Street Sanitary Sewer Rehabilitation project, in the amount of \$50,600.00; and authorization for the Mayor to execute same on behalf of the Town.
4. Purchase of Wood Chipper - Consider approval of the purchase of one Vermeer BC1800XL T4F 130 Horsepower Trailer Mounted Wood/Brush Chipper per Town Specifications and Vendor Quote from Vermeer Texas-Louisiana in the amount of \$97,000.

N. REGULAR ITEM(S)

1. Merchant Card Services (Open Edge Payments LLC) - Consider approval of a Client Satisfaction Offer and Utility Merchant Addendum Questionnaire with OpenEdge Payments LLC and authorization for the Mayor to execute same on behalf of the Town.

Mr. Walton gave a presentation identifying or noting:

- overview
- fee types
- client satisfaction agreement
- settlement funding fee and risk assessment fee

- utility merchant addendum
- estimated \$100,000 in annual savings

and he responded to questions from Council regarding:

- online payment card charges

ACTION: Jim Engel moved to approve N.1. as presented in the agenda caption. Brian Taylor seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

2. CON23-0001 - FM 1171 Conservation Development - Public Hearing to consider an ordinance for amending the zoning (CON23-0001 – FM 1171 Conservation Development) from Interim Holding (IH) and Agricultural (A) uses to Planned Development District No. 196 (PD-196) with Agricultural (A) uses for a conservation development with certain exceptions, modifications, and waivers to the Code of Ordinances. The property is generally located north of Cross Timbers Road and east of U.S. Hwy 377. (PZ recommended approval by a vote of 6 to 0 at its November 13, 2023, meeting.) (TC moved to table this item by a vote of 5 to 0 at its November 16, 2023, meeting.)
 Mayor France opened items N.1 and N.2 at the same time.

Ms. Murphy gave a presentation identifying or noting:

- general and detailed location of the property
- land use and zoning
- overall concept plan
- meeting dates
- changes to the plan
- exceptions
- modifications
- site photos
- concept plan
- concept open space plan
- tree survey
- ECC recommendation
- Parks Board recommendation

and she, Mr. Woods, or Ms. Bruce responded to questions from Council regarding:

- trees
- structure sizes
- retaining wall language
- drainage

Applicant Presentation

Randi Rivera, Jameson Pinson with McAdams

Ms. Rivera and Mr. Pinson gave a presentation identifying or noting:

- existing conditions
- previous plan
- updated plan
- 200' scenic buffer (previous plan and updated plan)
- specimen trees to be preserved
- ECC recommendation
- impact to slopes - 12%
- retaining walls
- entry signs
- Cross Timbers entrance

and they responded to questions from council regarding:

- landscaping
- trees
- 25% lot coverage

There was Council discussion regarding:

- like the changes bring in the natural topography, especially with the entrance

Mayor France opened the public hearing for items N.2 and N.3 at 9:03 p.m.

No one spoke.

Mayor France closed the public hearing for items N.2 and N.3 at 9:04 p.m.

ORDINANCE NO. 09-24

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING

THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY CHANGING THE ZONING ON APPROXIMATELY 148.008 ACRES OF LAND SITUATED IN THE BUFFALO BAYOU, BRAZOS AND COLORADO RAILROAD SURVEY, ABSTRACT NO. 187 AND THE JAMES C. MCGOWAN AND C.G. PITCOCK SURVEY, ABSTRACT NO. 959, DENTON COUNTY, TEXAS, FROM A AGRICULTURAL USES AND IH INTERIM HOLDING USES TO PLANNED DEVELOPMENT DISTRICT-196 (PD-196) WITH A AGRICULTURAL USES FOR A CONSERVATION DEVELOPMENT IN ACCORDANCE WITH THE TOWN'S MASTER PLAN AND SPECIFIC REQUIREMENTS AND EXHIBITS INCORPORATED HEREIN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Jim Engel moved to approve N.2. as presented in the agenda caption. Ann Martin seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

3. TRP23-0017 - FM 1171 Conservation - Public Hearing to consider an application for a tree removal permit (TRP23-0017) for eighteen (18) specimen trees on property proposed for development as FM 1171 Conservation. The property is generally located north of Cross Timbers Road and west of Kimball Crossing. (The ECC recommended approval of fourteen (14) specimen trees and recommended denial of four (4) specimen trees by a vote of 6 - 0 at its October 3, 2023, meeting. The ECC recommended approval of two (2) specimen trees and recommended denial of one (1) specimen tree by a vote of 7 - 0 at its February 6, 2023, meeting).

ACTION: Jim Engel moved to approve N.3. as presented in the agenda caption. Chris Drew seconded the motion.
AYES: Ann Martin, Jim Engel, Adam Schiestel, Brian Taylor, Chris Drew
NAYS: None
ABSTAIN: None
RESULT: 5 : 0

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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.

O. ADJOURN

Mayor France adjourned the meeting at 9:08 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

DEREK FRANCE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



TOWN COUNCIL AGENDA K.2. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Brian Waltenburg, Assistant Director of Engineering
ITEM: **Consider the approval of an Interlocal Cooperation Agreement with Denton County for the construction of the Lakeside Parkway Capacity Improvement project, and authorize the mayor to execute the same on behalf of the Town.**

BACKGROUND: The Denton County Transportation Road Improvement Program – 2022 (TRIP-22) was listed as Proposition A on the Nov. 8, 2022 Election Day Ballot. The program, approved by voters, funds more than 119 projects in more than 32 municipalities and unincorporated areas. The projects include state highways, local arterials within cities, safety improvements, and county roads and bridges. The Lakeside Parkway Capacity Improvement project was one of the projects funded.

The proposed ICA between Denton County and the Town of Flower Mound includes \$4,270,000 of TRIP-22 Denton County Bond funding for purpose of providing engineering, right-of-way acquisition, utility relocations, inspections, and construction of Lakeside Parkway as a six-lane divided arterial between FM 2499 and SH 121.

BOARD REVIEW/CITIZEN FEEDBACK:

ALTERNATIVES:

FISCAL IMPACT: \$(4,270,000)

Proposed Expenditure/(Revenue)
\$(4,270,000)

Account Number(s):
506-4793

LEGAL REVIEW: Rachel Raggio, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Interlocal Cooperation Agreement as to form and legality.

ATTACHMENTS:

1. 2024 ICA Flower Mound - Lakeside Parkway

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

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
DENTON COUNTY, TEXAS, AND THE TOWN OF FLOWER MOUND, TEXAS**

THIS AGREEMENT is made, entered into and executed by and between Denton County, Texas, a political subdivision of the State of Texas, hereinafter “the County”; and the Town of Flower Mound, Texas, a home rule municipality chartered under the laws of the State of Texas, hereinafter “the Town.” The County and the Town are collectively referred to herein as “the Parties.”

WHEREAS, the County and the Town mutually desire to enter into this Agreement for the purpose of providing engineering, right-of-way acquisition, utility relocations, inspections, and construction of Lakeside Parkway as a six-lane divided arterial between FM 2499 and SH 121 located entirely within the municipal limits of the Town and within Denton County Commissioner Precinct #3, hereinafter “the Project”; and

WHEREAS, the estimated cost of completion for the Project is EIGHT MILLION FIVE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$8,540,000.00), with the County contribution toward satisfactory completion of the Project in an amount which shall not exceed FOUR MILLION TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$4,270,000.00), and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code Chapter 791, hereinafter “the Act,” provides authorization for a local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act, and the County and the Town hereby mutually agree to be subject to the provisions of the Act; and

WHEREAS, in accordance with Section 791.011 (d)(3) of the Act, each Party is paying for the performance of the functions herein from current revenues available to that Party;

WHEREAS, the County and the Town value the timely completion of the Project which involves roads which are an integral part of the County’s road system, and the Parties are undertaking the Project to facilitate safe travel on an improved roadway; and

NOW, THEREFORE, this Agreement is hereby made and entered into by the County and the Town upon and for the mutual consideration stated herein:

WITNESSETH:

I.

Pursuant to Texas Government Code §791.011, the County and the Town hereby enter into this Agreement in order to perform certain governmental functions and services in the area of streets, roads, and drainage. The purpose of this Agreement is to provide a governmental function or service that each party is authorized to perform individually.

II.

The County and the Town hereby agree that the scope of the Project shall consist of engineering, right-of-way acquisition, utility relocations, inspections, and construction of Lakeside Parkway as a six-lane divided arterial between FM 2499 and SH 121, at an estimated cost of EIGHT MILLION FIVE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$8,540,000.00), whereby the County agrees to make a contribution toward satisfactory completion of the Project in an amount which shall not exceed FOUR MILLION TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$4,270,000.00). The Project is located entirely within the municipal limits of the Town and in Denton County Commissioner Precinct #3.

III.

The County hereby agrees to make a financial contribution toward satisfactory completion of the project in an amount which shall not exceed FOUR MILLION TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$4,270,000.00), provided that any and all funding is approved by formal action of the Denton County Commissioners Court.

IV.

The Town hereby agrees to manage all engineering, right-of-way acquisition, utility relocations, inspections, construction, and maintenance of the Project. The Town shall timely provide the County with all invoices for reimbursement and requested documentation in an amount which shall not exceed FOUR MILLION TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$4,270,000.00).

V.

This exchange of in-kind services between the County and the Town is deemed adequate consideration for the obligations exchanged by the Parties herein.

VI.

As the Town proceeds with the completion of the Project, the Town shall submit all invoices for reimbursement to the Denton County Auditor, Mr. Jeff May, 1 Courthouse Drive, Suite 2000, Denton, Texas 76208, c/o Mr. John Polster, Innovative Transportation Solutions, Inc., 2701 Valley

View Lane, Farmers Branch, Texas 75234. The Town shall submit invoices on a monthly basis, and the County shall reimburse the Town on a pro rata basis for all approved expenses related to the Project within thirty calendar days of receipt of an invoice from the Town, provided that all expenditures are made in a manner which is consistent with the terms of this Agreement. Upon satisfactory completion of the Project, the County and the Town shall prepare and complete a full audit of the Project.

VII.

As required by Texas Transportation Code §251.012 and as evidenced by the signature of the Town's representative below, the governing body of the Town by the execution of and approval of this Agreement hereby approves of the expenditure of County money to finance the construction, improvement, maintenance, or repair of a street or alley in the County that is located in the Town.

VIII.

This agreement may be terminated in whole, or in part, by the County or the Town upon thirty days written notice to the other Party. In the event of termination by the County, the County shall pay all approved invoices submitted up to and including the date of termination.

IX.

This Agreement represents the entire integrated agreement between the County and the Town and supersedes all prior negotiations, representations, and agreements, either oral or written. This Agreement may be amended only by written instrument signed by both of the Parties. Notices shall be directed as follows:

For Town: Honorable Derek France, Mayor
Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028

Copy To: Theresa Scott, Town Secretary
Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028

For County: Honorable Andy Eads, Denton County Judge
1 Courthouse Drive, Suite 3100
Denton, Texas 76208
andy.eads@dentoncounty.com
holly.sadlowski@dentoncounty.com

Copy To: Denton County District Attorney's Office - Civil Division
1450 East McKinney Street, Suite 3100
Denton, Texas 76209
john.feldt@dentoncounty.gov
cio@dentoncounty.gov

X.

The covenants, terms, and conditions herein are to be construed under the laws of the State of Texas and are performable by the Parties in Denton County, Texas. The Parties mutually agree that venue for any obligation arising from this Agreement shall lie in Denton County, Texas.

XI.

The Town agrees and understands that the Town, its employees, servants, agents or representatives shall at no time represent themselves to be employees, servants, agents or representatives of the County.

XII.

The Town agrees to accept full responsibility for the acts, negligence and omissions of all Town employees, agents, subcontractors or contract laborers and for all other persons doing work under a contract or agreement with the Town.

XIII.

This Agreement is not intended to extend the liability of the Parties beyond that provided for by law. Neither the County nor the Town waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims made by third parties.

XIV.

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the Parties hereto that the remaining portions shall remain valid and in full force and effect to the fullest extent possible.

XV.

The undersigned officers and agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto, and each Party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

XVI.

This Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed, and the term of this Agreement is for the life of the Project beginning on the date of execution of this Agreement and continuing until the Project is completed.

Executed this _____ day of _____, 2024.

DENTON COUNTY, TEXAS

1 Courthouse Drive, Suite 3100
Denton, Texas 76209

By: _____
Honorable Andy Eads
Denton County Judge
Acting by and on behalf of the authority
of the Denton County Commissioners Court

ATTEST:

By: _____
Denton County Clerk

TOWN OF FLOWER MOUND, TEXAS

2121 Cross Timbers Road
Flower Mound, Texas 75028

By: _____
Honorable Derek France
Mayor of the Town of Flower Mound, Texas
Acting by and on behalf of the authority
of the Town of Flower Mound, Texas

ATTEST:

By: _____
Town Secretary

COUNTY AUDITOR'S CERTIFICATE

I hereby certify funds are available to accomplish and pay the obligation of Denton County, Texas, under this Agreement.

Denton County Auditor

APPROVAL OF INTERLOCAL COOPERATION AGREEMENT

Denton County, Texas, acting by and through the Denton County Commissioners Court, hereby gives its specific written approval to the following Project, prior to beginning of the Project in satisfaction of Texas Government Code §791.014. The scope of the Project shall consist of engineering, right-of-way acquisition, utility relocations, inspections, and construction of Lakeside Parkway as a six-lane divided arterial between FM 2499 and SH 121, at an estimated cost of completion of EIGHT MILLION FIVE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$8,540,000.00). The Project shall be located entirely within the municipal limits of the Town of Flower Mound and in Denton County Commissioner Precinct #3.

The County hereby agrees to make a contribution toward satisfactory completion of the project in an amount which shall not exceed FOUR MILLION TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$4,270,000.00), provided that any and all funding is approved by formal action of the Denton County Commissioners Court.

The local governments which requested the Project and with whom the Agreement is by and between are Denton County, Texas, and the Town of Flower Mound, Texas.

By vote on the date below, the Denton County Commissioners Court has approved the project identified above and authorized execution of this document by the presiding officer of the Denton County Commissioners Court.

Date: _____

By: _____
Presiding Officer of the Denton
County Commissioners Court



TOWN COUNCIL AGENDA K.3. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Brian Waltenburg, Assistant Director of Engineering
ITEM: **Consider the approval of Amendment 1 to the Interlocal Cooperation Agreement with Denton County for the construction of the Denton Creek Boulevard Bridge, and authorize the mayor to execute the same on behalf of the Town.**

BACKGROUND: The Denton County Transportation Road Improvement Program – 2022 (TRIP-22) was listed as Proposition A on the Nov. 8, 2022 Election Day Ballot. The program, approved by voters, funds more than 119 projects in more than 32 municipalities and unincorporated areas. The projects include state highways, local arterials within cities, safety improvements, and county roads and bridges. The Denton Creek Boulevard Bridge was one of the projects funded.

The original executed ICA (attached) between Denton County and the Town of Flower Mound, approved in 2018, includes \$1,000,000 of Denton County Bond funding for the construction associated with expanding Denton Creek Boulevard Bridge as a new four-lane urban minor arterial bridge with bicycle lanes over Graham Creek. The attached amendment, includes an additional \$5,000,000 that was approved by voters in the TRIP-22 Bond Election. The funding will be utilized by the Town of Flower Mound for the construction of the Denton Creek Boulevard Bridge project, that is expected to start mid to late 2024.

BOARD REVIEW/CITIZEN FEEDBACK:

ALTERNATIVES:

FISCAL IMPACT: \$(5,000,000)

Proposed Expenditure/(Revenue)
\$(5,000,000)

Account Number(s):
506-4793

LEGAL REVIEW: Rachel Raggio, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the Interlocal Agreement Amendment as to form and legality.

ATTACHMENTS:

1. 2018 ICA - Flower Mound Denton Creek Blvd Bridge
2. 2024 ICA Amendment #1 - Flower Mound Denton Creek Blvd Bridge

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

DENTON COUNTY
COMMISSIONERS COURT

12/11/2018

Month Day Year

Court Order Number

14. D.

THE ORDER:

Approval of an Interlocal Cooperation Agreement between Denton County, Texas, and the Town of Flower Mound, Texas, for construction of Denton Creek Boulevard Bridge, at an estimated project cost of \$7,000,000.00, with Denton County, Texas, agreeing to contribute an amount which shall not exceed \$1,000,000.00, with funding as follows: \$500,000.00 to come from Denton Creek Spine Road Bridge, TRIP-08, 2015 PI Bond Funds, Auditor Line Item #71-7538-90-70; and \$500,000.00 to come from I-35W and Denton Creek Interchange, TRIP-08, 2015 PI Bond Funds, Auditor Line Item #71-7537-90-70, which shall be transferred to Denton Creek Spine Road Bridge, Auditor Line Item #71-7538-90-70, and any appropriate action. Commissioner Precinct #4.

Motion by

Ezra

Seconded by

Marchant

County Judge
Mary Horn

Yes ☒
Abstain ☐
No ☐
Absent ☐

Commissioner Precinct No 1
Hugh Coleman

Yes ☒
Abstain ☐
No ☐
Absent ☐

Commissioner Precinct No 2
Ron Marchant

Yes ☒
Abstain ☐
No ☐
Absent ☐

Commissioner Precinct No 3
Bobbie J. Mitchell

Yes ☐
Abstain ☐
No ☐
Absent ☒

Commissioner Precinct No 4
Andy Eads

Yes ☒
Abstain ☐
No ☐
Absent ☐

Motion Carried

4-0-0

Other Action: Pulled from Consent ☐

No Action ☐

Postponed ☐

BY ORDER OF THE COMMISSIONERS COURT:

Presiding Officer

APPROVED AS TO FORM:

Assistant District Attorney

ATTEST:

Juli Luke, County Clerk
and Ex-Officio Clerk of the
Commissioners Court of
Denton County, Texas

BY: Deputy County Clerk

Memo

To: Town of Flower Mound
Attn: Secretary's Office
2121 Cross Timbers Rd.
Flower Mound, TX 75028

From: Ashley D'Anna
Date: January 11, 2019
Re: Agreement

Enclosed is one original of the above referenced documents approved by Denton County Commissioners Court December 11, 2018.

Thank you.

Ashley D'Anna
Administrator/Commissioners Court
1450 East McKinney
Denton, TX 76209

CC: Civil DA

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

**INTERLOCAL COOPERATION AGREEMENT BETWEEN
DENTON COUNTY, TEXAS, AND THE TOWN OF FLOWER MOUND, TEXAS**

THIS AGREEMENT is made and entered into by and between Denton County, Texas, a duly organized political subdivision of the State of Texas, hereinafter “the County,” and the Town of Flower Mound, Texas, a duly organized municipality, existing under the laws of the State of Texas, hereinafter “the Town.” The County and the Town are both collectively referred to herein as “the Parties.”

WHEREAS, the County and the Town mutually desire to enter into this Agreement for the purpose of providing for construction associated with the new 4-lane urban minor arterial bridge with bicycle lanes, located entirely within the corporate limits of the Town and Denton County Commissioner Precinct #4, hereinafter “the Project;” and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code Chapter 791, hereinafter “the Act,” provides authorization for a local government to contract with one or more local governments to perform governmental functions and services under the terms of the Act, and the County and the Town hereby mutually agree to be subject to the provisions of the Act; and

WHEREAS, the County and the Town value the timely completion of the Project, which involves roads which are an integral part of the County’s road system, and the Parties are undertaking the Project to facilitate safe travel on an improved roadway; and

NOW, THEREFORE, the County and the Town, for the mutual consideration stated herein, agree and understand as follows:

WITNESSETH:

I.

Pursuant to Texas Government Code §791.011, the County and the Town hereby enter into this Agreement in order to perform certain governmental functions and services in the area of streets, roads, and drainage. The purpose of this Agreement is to provide a governmental function or service that each party is authorized to perform individually.

II.

The County and the Town agree that the scope of the Project shall consist of construction associated with the new 4-lane urban minor arterial bridge with bicycle lanes for Denton Creek Boulevard Bridge at Graham Creek, with a total estimated project cost of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00).

III.

The County hereby agrees to contribute an amount which shall not exceed ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) toward the satisfactory completion of the Project, provided that any and all funding is approved by formal action of the Denton County Commissioners Court.

IV.

The Town hereby agrees to contribute an estimated total amount of SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00) and hereby agrees to provide all necessary construction required for satisfactory completion of the Project.

V.

The Town agrees to secure the contracts for the construction of the Project and to oversee any and all necessary engineering which may be required for satisfactory completion of the Project. In addition, the Town will ensure all inspections are conducted and will approve all payments, including funding requested from the County, as invoices are received.

VI.

This exchange of in-kind services between the County and the Town is deemed adequate consideration for the obligations exchanged by the Parties herein.

VII.

As the Town proceeds with the completion of the Project, the Town shall submit invoices for reimbursement to the Denton County Auditor, James Wells, 401 W. Hickory Street, Suite 423, Denton County, Texas 76201, on a monthly basis, and the County shall reimburse the Town for all approved expenses related to the Project within thirty (30) calendar days of receipt of an invoice from the Town, provided that all expenditures are made in a manner which is consistent with the terms of this Agreement. Upon satisfactory completion of the Project, the County and the Town shall prepare and complete a full audit of the Project. The Town shall submit a copy of all invoices to Mr. John Polster, c/o Innovative Transportation Solutions, Inc., 2701 Valley View

Lane, Farmers Branch, Texas 75234, at the same time invoices are submitted to the Denton County Auditor.

VIII.

As required by Texas Transportation Code §251.012 and as evidenced by the signature of the Town's representative below, the governing body of the Town by the execution of and approval of this Agreement hereby approves of the expenditure of County money to finance the construction, improvement, maintenance, or repair of a street or alley in the County that is located in the Town.

IX.

This Agreement may be terminated in whole, or in part, by the County or the Town upon thirty (30) days written notice to the other party. In the event of termination, the County shall pay all approved invoices submitted up to and including the date of termination.

X.

This Agreement represents the entire integrated agreement between the County and the Town and supersedes all prior negotiations, representations, and agreements, either oral or written. This Agreement may be amended only in writing, signed by both of the Parties. Notices shall be directed as follows:

For Town: Honorable Steve Dixon, Mayor
Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028

For Town: Jimmy Stathatos, Town Manager
Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028

For County: Honorable Mary Horn
Denton County Judge
110 West Hickory, 2nd Floor
Denton, Texas 76201

Copy To: Denton County Criminal District Attorney's Office
Civil Division
1450 East McKinney Street, Suite 3100
Denton, Texas 76209

XI.

The covenants, terms, and conditions herein are to be construed under the laws of the State of Texas and are performable by the Parties in Denton County, Texas. The Parties mutually agree that venue for any obligation arising from this Agreement shall be in Denton County, Texas.

XII.

The County agrees and understands that the County, its employees, servants, agents, or representatives shall at no time represent themselves to be employees, servants, agents, or representatives of the Town.

XIII.

The Town agrees and understands that the Town, its employees, servants, agents, or representatives shall at no time represent themselves to be employees, servants, agents, or representatives of the County.

XIV.

The County agrees to accept full responsibility for the acts, negligence, or omissions of all County employees, agents, subcontractors, or contract laborers doing work under a contract or agreement with the County.

XV.

The Town agrees to accept full responsibility for the acts, negligence, or omissions of all Town employees, agents, subcontractors, or contract laborers doing work under a contract or agreement with the Town.

XVI.

This Agreement is not intended to extend the liability of the Parties beyond that provided for by law. Neither the County nor the Town waive, nor shall be deemed to have hereby waived, any immunity or defense that would otherwise be available to it against claims made by third parties.

XVII.

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the Parties hereto that the remaining portions of this Agreement shall remain valid and in full force and effect to the fullest extent allowed by the law.

XVIII.

The undersigned officers or agents of the Parties hereto are the properly authorized officials who have the necessary authority to execute this Agreement on behalf of the Parties, and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

XIX.

This Agreement becomes effective when signed by the last party whose signing makes the respective agreement fully executed and the term of this Agreement is for the life of the Project beginning on the date of execution of this Agreement and continuing until the Project is completed.

Executed on this 11th day of December, 2018.

DENTON COUNTY, TEXAS

110 West Hickory Street, 2nd Floor
Denton, Texas 76201

By: Mary Horn
Honorable Mary Horn
Denton County Judge
Acting by and on behalf of the authority of
Denton County Commissioners Court
ATTEST:

By: [Signature]
Denton County Clerk



TOWN OF FLOWER MOUND, TEXAS

2121 Cross Timbers Road
Flower Mound, Texas 76226

By: [Signature]
Steve Dixon, Mayor
Town of Flower Mound, Texas
Acting by and on behalf of the
Town of Flower Mound, Texas
ATTEST:

By: [Signature]
Town Manager

APPROVED AS TO FORM:

By: John Zeldt
Assistant District Attorney

APPROVED AS TO FORM:

By: [Signature]
Town Attorney

**APPROVAL OF INTERLOCAL COOPERATION AGREEMENT BETWEEN
DENTON COUNTY, TEXAS, AND THE TOWN OF FLOWER MOUND, TEXAS**

Denton County, Texas, acting by and through the Denton County Commissioners Court, having been advised of the Project with a total estimated project cost of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00), whereby Denton County shall make a contribution which shall not exceed ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) toward satisfactory completion of the Project, hereby gives its specific written approval to the Project prior to beginning of the Project in satisfaction of Texas Government Code §791.014.

The description of the Project and its location are as follows: providing for all necessary construction associated with the new 4-lane urban minor arterial bridge with bicycle lanes for Denton Creek Boulevard Bridge at Graham Creek, located in the Town of Flower Mound, Texas, and Denton County Commissioner Precinct #4.

The local governments who requested the Project and with whom this Agreement is by and between are Denton County, Texas, and the Town of Flower Mound, Texas.

By vote on the date below, the Denton County Commissioners Court has approved the Project identified above and authorized execution of this document by the presiding officer of the Denton County Commissioners Court.

Date: _____

By: _____

Presiding Officer of the Denton
County Commissioners Court

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

**AMENDMENT NO. 1 TO INTERLOCAL COOPERATION AGREEMENT BETWEEN
DENTON COUNTY, TEXAS, AND THE TOWN OF FLOWER MOUND, TEXAS**

THIS AMENDMENT to the Interlocal Cooperation Agreement is made and entered into by and between Denton County, Texas, hereinafter “the County”; and the Town of Flower Mound, Texas, hereinafter “the Town.” The County and the Town are collectively referred to herein as “the Parties.” On December 11, 2018, the Parties entered into an Interlocal Cooperation Agreement under Denton County Commissioners Court Order Number 18-0882, hereinafter “the original Agreement,” for the purpose of providing for construction associated with expanding Denton Creek Boulevard Bridge as a new four-lane urban minor arterial bridge with bicycle lanes over Graham Creek at a total estimated project cost of SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00).

WHEREAS, under the terms of the original Agreement, the County and Town agreed that the County would contribute an amount which shall not exceed ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) toward satisfactory completion of the Project; and

WHEREAS, under the original Agreement the County and the Town agreed that the Town would contribute an amount which shall not exceed SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00). The Town agreed to provide all necessary construction required for satisfactory completion of the Project; and

WHEREAS, in accordance with Section 791.011 (d)(3) of the Act, each Party is paying for the performance of the functions herein from current revenues available to that Party;

WHEREAS, the Parties to the original Agreement now intend to amend the original Agreement, in order to reflect an increase in total estimated Project cost and an increase in the financial contribution of the County toward satisfactory completion of the Project, which shall be memorialized in this document as Amendment No. 1 to the original Agreement between the County and the Town; and

NOW, THEREFORE, the County and the Town for the mutual covenants and agreements contained in the original Agreement and as contained herein, and for the other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to amend

Section II, Section III, and Section IV of the original Agreement to reflect the change in the Project estimate and an increase in the County's contribution toward satisfactory completion of the Project. All other terms and conditions of the original Agreement are hereby affirmed by the Parties. The amended portions of the original Agreement are as follows:

AMENDED SECTION II

The County and the Town hereby agree that Amendment No. 1 will revise the Project estimate from SEVEN MILLION AND NO/100 DOLLARS (\$7,000,000.00) to TEN MILLION AND NO/100 DOLLARS (\$10,000,000.00).

AMENDED SECTION III

The County and the Town hereby agree that Amendment No. 1 will amend the original Agreement to increase the County contribution toward satisfactory completion of the Project from ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) to an amount which shall not exceed SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00), for an increased County contribution toward satisfactory completion of the Project of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00).

AMENDED SECTION IV

The Town hereby agrees to contribute a revised amount which shall not exceed FOUR MILLION AND NO/DOLLARS (\$4,000,000.00).

This Amendment to the original Agreement shall replace and supersede Section II, Section III, and Section IV of the original Agreement between the Parties. **All other provisions of the original Agreement shall remain in full force and effect unless modified by subsequent written amendment signed by both of the Parties to the original Agreement.**

This Agreement may be executed in multiple counterparts, attached to the original Agreement, and shall collectively constitute an Amendment to the original Agreement. All other terms and conditions of the original Agreement are hereby affirmed by the Parties.

Executed this _____ day of _____, 2024.

DENTON COUNTY, TEXAS

1 Courthouse Drive, Suite 3100
Denton, Texas 76209

TOWN OF FLOWER MOUND, TEXAS

2121 Cross Timbers Road
Flower Mound, Texas 75028

By: _____

Honorable Andy Eads
Denton County Judge
Acting by and on behalf of the authority
of the Denton County Commissioners Court

By: _____

Honorable Derek France
Mayor of the Town of Flower Mound, Texas
Acting by and on behalf of the authority
of the Town of Flower Mound, Texas

ATTEST:

ATTEST:

By: _____

Denton County Clerk

By: _____

Town Secretary

COUNTY AUDITOR'S CERTIFICATE

I hereby certify funds are available to accomplish and pay the obligation of Denton County, Texas, under this Agreement.

Denton County Auditor

APPROVAL OF
AMENDMENT NO. 1 TO INTERLOCAL COOPERATION AGREEMENT BETWEEN
DENTON COUNTY, TEXAS, AND THE TOWN OF FLOWER MOUND, TEXAS

Denton County, Texas, acting by and through the Denton County Commissioners Court, having been advised of the Project, hereby agrees to amend Section II, Section III, and Section IV of the Interlocal Cooperation Agreement which was approved on December 11, 2018, under Denton County Commissioners Court Order Number 18-0882.

Amendment No. 1 will amend the original Agreement to provide additional funding by the County toward satisfactory completion of the Project in the amount of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00). The scope of the Project shall continue to be to provide for the construction associated with expanding Denton Creek Boulevard Bridge as a new four-lane urban minor arterial bridge with bicycle lanes over Graham Creek. The total increased Denton County commitment toward satisfactory completion of the Project shall be in an amount which shall not exceed SIX MILLION AND NO/100 DOLLARS (\$6,000,000.00).

All other provisions of the original Agreement shall remain in full force and effect unless modified by subsequent written amendment signed by both of the Parties to the original Agreement.

Denton County, Texas, hereby gives its specific written approval of the Parties prior to beginning the Project in satisfaction of the requirements of the Interlocal Cooperation Act, Texas Government Code Chapter 791.

By vote on this date, the Denton County Commissioners Court has approved the Project identified above and authorized execution of this document by the presiding officer of the Denton County Commissioners Court.

Date: _____

By: _____
Presiding Officer of the Denton
County Commissioners Court



TOWN COUNCIL AGENDA K.4. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Jeff Garner, Director of Facilities Management
ITEM: **Consider the approval of the award of Best Value Bid No. 2024-56-A Municipal Grounds Maintenance to American Landscape Systems, Inc. at the unit bid, and to establish an annual bid price contract for routine Municipal Grounds Maintenance at specific facilities throughout the town at an annual estimated amount of \$260,000, and authorization for the Mayor to execute same on behalf of the Town. The contract is for one-year with four one-year renewal options.**

BACKGROUND: The Town of Flower Mound solicited bids for municipal ground maintenance to be done at twenty-six town facilities. Services to be performed vary by facility and include: mowing, trimming, edging, maintaining beds, pruning, removing dead leaves, mulching, and caring for turf, tree and shrubs. The bid specifications were developed, and a notice to bidders was advertised. A mandatory pre-bid meeting was conducted with representatives from four interested companies. Bids were evaluated by representatives from Facilities Management based on the following criteria:

1. Cost
2. Equipment
3. Safety Program
4. Work Request Program
5. Licences
6. References

Staff recommends awarding the bid to American Landscape Systems, Inc., the best value bidder. American Landscape Systems, Inc. has previously provided satisfactory landscape maintenance services to the Town of Flower Mound, Lewisville ISD, the Town of Addison, and the city of Frisco.

American Landscape Systems, Inc. bid for an annual base price of \$202,188.00. Based on unit prices bid, the Facilities Management Division estimates an annual expenditure of \$60,000.00 for additional services to be provided on an as-needed basis. These additional services include aeration, seeding, tree trimming, plant replacement, fertilization, irrigation system maintenance, winterization, and pest management. The total estimated annual expenditure for municipal ground maintenance is \$260,000.00.

BOARD REVIEW/CITIZEN FEEDBACK: NA

ALTERNATIVES: NA

FISCAL IMPACT: \$260,000

Proposed Expenditure/(Revenue)

Account Number(s):

\$260,000

100-655-59200-5110

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Draft of Contract No. 2024-7-A

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

**TOWN OF FLOWER MOUND
STANDARD TERMS & CONDITIONS FOR SERVICES/PRODUCTS**

This Contract is made by the Town of Flower Mound, Texas, a Municipal Corporation (“Town”) and American Landscape Systems, Inc. (“Contractor”). The Town and Contractor agree:

1. **EMPLOYMENT OF THE CONTRACTOR.** The Town agrees to retain the Contractor, and the Contractor agrees to provide services relative to: Municipal Grounds Maintenance (hereinafter referred to as “Services”) in connection with the terms and conditions as set forth in the Contract Documents, attached hereto and incorporated by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in the solicitation. Deviations from the Contractor’s Pricing Sheet or Criteria may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Contractor agrees to begin work upon receipt of written authorization from the Town. Time is of the essence for this Contract and work is to commence immediately.
4. **CONTRACT PERIOD.** The initial contract period will be one year, with four (4) optional one-year renewal periods from date of award of contract. All pricing is to remain firm during the contract period. This agreement may be terminated by either party with written notice at least ninety (90) days prior to the current term renewal date, indicating their intent not to renew
5. **COMPENSATION.** Contractor’s total compensation for products or services to be performed and expenses to be incurred is specified in the Contractor’s Pricing Sheet or Criteria.
6. **PAYMENTS.** Payments will be processed monthly with payment available within 30 days after receipt of the invoice for the previous month’s service.
7. **PRICING ESCALATION:** Unless otherwise stated in the specification herein, prices must remain firm for the initial term of the contract. The contracted vendor may request an adjustment at the time of contract renewal by submitted a request in written form to the Purchasing Manager. Basis for price escalation should be based on the consumer price index for the most recent twelve-month period reported for the Dallas-Fort Worth area. The contracted vendor shall provide the Town with copies of the appropriate indices for verification purposes. The Town of Flower Mound reserves the right to approve or reject all request for price escalations.

8. **PRICE REDUCTION:** If during the life of the contract, the contracted vendor's net prices to other customers for the same goods or services are lower than the Town of Flower Mound's contracted prices, an equitable adjustment shall be made in the contract price in favor of the Town.

9. **INVOICING.** Invoices should be prepared and submitted to the Town for payment in accordance with the Contract Documents. Invoices should be mailed to Accounts Payable, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028 or accountspayable@flower-mound.com.

10. **RIGHTS OF WITHHOLDING.** The Town may withhold any payment or partial payment otherwise due the Contractor on account of unsatisfactory performance by the Contractor. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and will not be paid to the Contractor.

11. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to Contractor.

12. **TRANSFER OF INTEREST.** Neither Town nor Contractor may assign or transfer their interests in the Contract without the written consent of the other party. Such consent shall not be unreasonably withheld. This Contract is binding on Town, Contractor, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee, or agent.

13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Contractor shall make available to the Town for examination all its records with respect to all matters covered by the Contract and will permit the Town to audit, examine, and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to the Contract.

14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

a. The Contractor agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

b. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract so that such provisions will be binding upon each subcontractor, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.

c. The Contractor shall keep records and submit reports concerning the racial and ethnic origin(s) of applicants from employment and employees as the law may require.

15. TERMINATION OF CONTRACT. The Town may terminate this contract upon ninety (90) days written notice to Contractor, except in the event (i) Contractor is in breach of this Contract or (ii) Contractor fails to comply with the terms of the Contractor's Pricing Sheet or Criteria. If either of the foregoing conditions exists, The Town shall notify Contractor and Contractor shall be given two (2) days to cure such breach. Should Contractor fail to cure to the satisfaction of the Town, the Town may terminate this Contract upon written notice.

a. Furthermore, the Town retains the right to terminate this Contract at the expiration of each Town budget period (September 30) for funding purposes during the term of this Contract, even without prior notice as described in the preceding sentence.

b. In the event of any termination hereunder, the Contractor consents to the Town's selection of another Contractor to assist the Town in any way in completing the Services. Contractor further agrees to cooperate and provide any information requested by the Town in connection with the completion of the Services.

c. Contractor shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that Contractor shall receive a portion of fees and expenses permitted under this Contract in direct proportion to percentage of work completed up to the termination date. This provision shall not deprive the Town of any remedies against Contractor that may be available under applicable law.

16. CONTRACTOR'S REPRESENTATIONS. Contractor hereby represents to the Town that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required.

17. TOWN APPROVAL FOR ADDITIONAL WORK. No payment, of any nature whatsoever, will be made to Contractor for additional work without the Town's written approval before such work begins.

a. PERFORMANCE BY CONTRACTOR. All Services provided by the Contractor hereunder shall be performed in accordance with the highest professional standards and in accordance with the Contract Documents, and Contractor shall be responsible for all Services provided hereunder whether such services are provided directly by contractor or by any contractors hired by Contractor. The Contractor shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. Contractor shall not utilize subcontractors to perform Services without the Town's prior written consent.

18. DAMAGE. In all instances where Town property and/or equipment is damaged by the Contractor's employees, a full report of the facts, extent of the damage and estimated impact on the Contractor's schedule shall be submitted to the Town's Human Resources Division by 8 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Contractor must notify Police Dispatch immediately. The Contractor shall be fully liable for all damage to Town property or equipment caused by the Contractor's officers, employees, or agents.

19. TOWN OBJECTION TO PERSONNEL. If at any time after entering this Contract, Town has any reasonable objection to any of Contractor's personnel, or any personnel retained by Contractor, then Contractor shall promptly propose substitutes to whom the Town has no reasonable objection, and the Contractor's compensation shall be equitably adjusted to reflect any difference in the Contractor's costs occasioned by such substitution.

20. COMPLIANCE WITH LAWS. The Contractor warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town's Representative are followed.

21. ENTIRE CONTRACT. This instrument together with the Contract Documents of which this Contract is a part contains the entire Contract between the Town and Contractor concerning the Services. There will be no understandings or contracts other than those incorporated herein. The Contract may not be modified except by an instrument in writing signed by the parties hereto. In the event of a conflict between an attachment to this Contract and this Contract, this Contract shall control.

22. **ADVERTISING:** Contractor shall not advertise or publish, without the Town's prior consent, the fact that the Town has entered this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.

23. COOPERATIVE GOVERNMENTAL PURCHASING NOTICE (INTERLOCAL)

Other governmental entities maintaining interlocal agreements or may enter into an interlocal agreement with the Town, may desire, but not obligated, to purchase goods and services defined in this RFP from the successful Bidder. All purchases by governmental entities, other than the Town, will be billed directly to and paid by that governmental entity. The Town will not be responsible for another governmental entity's debts. Each governmental entity will place their own orders with the successful Bidder and be responsible for ensuring full compliance with the RFP specifications. Prior to other governmental entities placing order, the Town will notify the successful Bidder of their intent.

Please indicate below if you will permit other governmental entities to purchase from your agreement with the Town.

_____ **Yes, Others can purchase**

_____ **No, only the Town can purchase**

24. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C 1324a):** The Town supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall always during the term of the contract with the Town comply with therequirement of IRCA and shall notify the Town within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Town may terminate a contract with the Seller if the Town determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Town of an IRCA violation.

25. **NO BOYCOTT OF ISRAEL:** Pursuant to Texas Government Code Chapter 2270, the Seller agrees that acceptance of these Terms & Conditions serves as written verification that

- 1) Seller does not boycott Israel, as defined by Texas Government Code Section 808.001 and
- 2) Seller will not boycott Israel during the term of the contract.

26. COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION: Pursuant to Texas Government Code Chapter 2252, Subchapter F. Seller affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

27. MAILING ADDRESSES. All notices and communications concerning this Contract to be mailed or delivered to the Town shall be sent to the address of the Town as follow, unless and until the Contractor is otherwise notified:

Sabrina Zadow Purchasing Manager
Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, TX 75028

All notices and communications under this Contract to be mailed or delivered to the Contractor shall be sent to the address listed below until the Town is otherwise notified:

Name: Joseph Angelone
Title: Vice President
Company: American Landscape Systems, Inc.
Address: 1780 Midway Rd.
City, State, Zip: Lewisville, TX 75056

ADDITIONAL VERIFICATIONS

To the extent required by Texas law, Seller verifies that: (1) It does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as defined in Texas Government Code § 2274.001, and that it will not during the term of the Agreement discriminate against a firearm entity or firearm trade association; and (2) It does not “boycott energy companies,” as those terms are defined in Texas Government Code §§ 809.001 and 2274.001, and it will not boycott energy companies during the term of the Agreement.

Any notices and communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date in the notice or communication is placed in the United States Mail or hand delivered.

28. LEGAL CONSTRUCTION. If any one or more of the provisions contained in the Contract for any reason is held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been included.

29. **GOVERNING LAW.** The validity of this Contract and of any of its terms or provisions as well as the rights and duties hereunder, shall be governed by and construed in accordance with Texas law. Venue for this Contract shall be in Denton County, Texas.

30. **COUNTERPARTS.** The Contract may be signed in counterparts, each of which shall be deemed to be an original.

31. **EFFECTIVE DATE.** This contract shall be effective once it is signed by the Town and Contractor.

AGREED TO BY: AMERICAN LANDSCAPE SYSTEMS, INC.

Signature _____
Joseph Angelone, Vice President

Date: _____

AGREED TO BY: TOWN OF FLOWER MOUND, TEXAS

Signature _____
Honorable Mayor Derek France

Date: _____



TOWN COUNCIL AGENDA K.5. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Robert Pegg, Assistant Director of Engineering
ITEM: **Consider approval of a Professional Services Agreement for the 2024 Water and Wastewater Model update project, with Kimley-Horn, for \$36,400.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: The 2024 Water and Wastewater Model update project is used to keep the Town's water and wastewater models updated with all changes that were made during fiscal year 2023. The consultant will update the computer models to reflect commercial, residential and CIP projects that impacted the Town's water and wastewater systems. By keeping the models up to date, the Town is able to ensure future developments will meet the requirements of SmartGrowth and that the Town is able to adequately plan for future CIP projects.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: Tiffany Bruce

FISCAL IMPACT: \$36,400.00

Proposed Expenditure/(Revenue)

\$11,935.00

\$1,265.00

\$13,200.00

\$5,000.00

\$5,000.00

Account Number(s):

610-980-95040-6070

601-900-95040-6070

610-980-95050-6070

601-900-95040-6070

600-971-95050-6070

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. Professional Service Agreement
2. 1295 (internal only)

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

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

This contract is entered into on this _____ day of _____, 20____, by and between the **TOWN OF FLOWER MOUND, TEXAS**, a municipal corporation located in Denton County, Texas, (hereinafter referred to as “TOWN”), acting by and through its Mayor, and **Kimley-Horn and Associates, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 105 N. Oak St, Roanoke, TX 76262.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to updating the current water and wastewater models project; and

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

TERMS OF AGREEMENT

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

I.

Employment of Consultant

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

II.

Scope of Services

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

III.

Payment for Services

Total payment for services described herein shall be a sum not to exceed Thirty-Six Thousand Four Hundred and No/100 Dollars (\$36,400.00). This total payment for services includes CONSULTANT’s ordinary expenses. Additional expenses and charges, which are extraordinary in nature, must be approved in advance by TOWN in writing signed by the parties. Such extraordinary expenses may be paid as incurred and billed to the TOWN pursuant to this Contract over and above the total payment amount identified in this provision. Any extraordinary expenses or charges not approved in writing in advance by the TOWN shall remain the sole responsibility of the CONSULTANT. If CONSULTANT retains any subcontractors to perform any of the work, CONSULTANT acknowledges that payments to such subcontractors are due and payable in accordance with the provisions of Texas Government Code Section 2251.022, and that interest on unpaid and overdue amounts shall accrue in accordance with Texas Government Code Section 2251.025.

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

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

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

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

IV.

Revisions of the Scope of Services

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

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

V.

Term

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

VI.

Contract Termination Provision

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

notice, CONSULTANT shall immediately terminate working on, placing orders or entering into contracts for supplies, assistance, facilities or materials in connection with this Contract and shall proceed to promptly cancel all existing contracts insofar as they are related to this Contract.

VII.

Ownership of Documents

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

VIII.

Insurance

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

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

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

The following policies and coverage shall be required:

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

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

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

1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;

3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

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

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

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

D. CONSULTANT agrees to the following:

1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of

recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

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

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

IX.

Right to Inspect Records

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

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

X.
Successors and Assigns

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

XI.
CONSULTANT's Liability

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

XII.
Indemnification

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

CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONSULTANT OF ITS OBLIGATIONS UNDER THIS SECTION.

XIII.

Independent Contractor

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

XIV.

Default

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

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

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

XV.
Provisions Surviving Termination

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

XVI.
Changes

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

XVII.
Conflicts of Interest

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

No officer or employee of TOWN shall have any personal, financial interest, direct or indirect, in this Contract nor have any direct financial interest in the sale to TOWN of any land, materials, supplies, or services under this Contract, except on behalf of TOWN as a TOWN officer or employee. Any violation of this prohibition with knowledge, expressed or implied, of the person or corporation contracting with TOWN shall render the Contract voidable by the Director or the Town Council.

XVIII.
Confidential Information

CONSULTANT hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. CONSULTANT shall treat any such information received in full confidence and will not disclose or appropriate such Confidential Information for its own use or the use

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

XIX.

Notice Information

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

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

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

Joette Jackson, P.E.
Project Manager
Kimley-Horn and Associates, Inc.
13455 Noel Road, Two Galleria
Office Tower, Suite 700
Dallas, Texas 75240
972-770-1387 Telephone

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

XX.

Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (TOWN and CONSULTANT) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship

with TOWN or CONSULTANT or both; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either TOWN or CONSULTANT.

[Signature Page to Follow]

AGREED AND SIGNED by the authorized representatives of the Parties hereto on the dates indicated below.

**CONSULTANT:
KIMLEY-HORN AND
ASSOCIATES, INC.**

THE TOWN OF FLOWER MOUND, TEXAS

By: Bradley J. Hill

Name: Bradley J. Hill

Title: Regional Contract Lead

Dated: February 14, 2024

By: _____

Name: _____

Title: _____

Dated: _____

ATTACHMENT A

SCOPE OF SERVICES

PROJECT NAME: FY 2022-2023 Water and Wastewater Model Updates

PROJECT UNDERSTANDING

The Town has asked Kimley-Horn and Associates, Inc. (Kimley-Horn) to assist in updating the current water and wastewater models. Two major tasks are included with model updates: adding new developments and their associated demands to the water and wastewater models and adding new Capital Improvement infrastructure to the models. Kimley-Horn will add developments and infrastructure to account for changes since the prior model update in December of 2022 (FY 2021). Kimley-Horn will revise and evaluate system capacities, update Capital Improvement Project Maps, and prepare a technical memorandum detailing the model updates.

SCOPE OF PROFESSIONAL SERVICES

A. Demand (Development) Update

This task includes adjusting the percent developed for land use parcels in the model to reflect the current amount and type of development in the Town. The Town provided the following list of developments that will be included in the update:

1. Lakeside Crossing
2. Pepper Creek Ranch
3. Prairie Plaza Ph I & Ph II
4. Home2Suites Hotel River Walk
5. Alexan the Point
6. Sunset Point at Twin Coves
7. Argyle ISD High School Phase 2 (Canyon Falls)
8. St. Philip the Apostle Catholic Church
9. Southgate Commercial South Tract (Eastgroup) 1C
10. Canyon Falls Village 12
11. Watermere at Flower Mound
12. Whyburn Addition
13. Highland Pointe Park
14. Lakeside Villas
15. Stone Hill West Retail
16. Adams Estates Sanitary Sewer Extension
17. Heritage West
18. Canyon Falls Village 15B
19. Argyle Elementary School Number 3
20. Whyburn Medical Office
21. Grace Park

22. Premier Nationwide Lending
23. Long Prairie Plaza
24. Niagara Conservation
25. Loreto House
26. Victory Medical Morriss
27. Glen Smith Office Building

The cost associated with adding a development to the model is \$550 for water and \$550 for wastewater for each development. In early 2023, Kimley-Horn created an all-pipes model of the Town's existing wastewater infrastructure in the Denton Creek and Prairie Vista sewer service areas. The Denton Creek and Prairie Vista service areas are served by Trinity River Authority (TRA). The projected wastewater flows of these developments located in these service areas will be updated in the wastewater model. Buildout conditions will be updated in GIS and wastewater tracking spreadsheets.

Pepper Creek Ranch and St. Phillip the Apostle Catholic Church are not served by the Town's or TRA's wastewater systems; therefore, the \$550 wastewater fee is not applied to these developments. Adams Estates Sanitary Sewer Extension only include sewer improvements, so the \$550 water fee is not applied to these developments.

As part of these updates, Kimley-Horn will also log the building square footage of non-residential developments in the GIS files to facilitate land use updates with future Master Plan Amendments.

B. CIP Infrastructure Update

This task includes adding water and wastewater infrastructure to the existing models which has been constructed since the last model update. This task also includes calibration of the water and wastewater models as necessary to include new operational changes due to pumping modifications and/or new pipeline. Infrastructure to be added to the model includes:

1. Morris Road Water Line Phase II (1171 to Eaton)

The Town's preliminary list of CIP to be added to the model also included:

1. FM 2499 12-Inch Water Line Phase I
2. Garden Ridge Blvd Water Line Phase II
3. Kirkpatrick Lane 12-Inch Water Line Phase II

These improvements were added to the wastewater and water models as part of the 2020 Master Plan updates. Therefore, these water updates are not needed as part of this update.

Kimley-Horn will update the Capital Improvements Project map for water projects. The revised maps will show current aerial photography as available, existing infrastructure, projects under design or construction, and future capital improvement projects.

Kimley-Horn will also update Non-Capital Improvements Project map for water projects. Non-Capital Improvements Project projects to be updated on the map include:

1. Hillside Water Line Connection
2. High Road Water Line Replacement Phase II
3. Morris Road 20-Inch Water Line

C. Denton Creek and Prairie Vista Model Infrastructure Updates

Kimley-Horn created an all-pipes model of the Town's Denton Creek and Prairie Vista service areas. Kimley-Horn will update the model to include any wastewater infrastructure proposed by the development in these basins.

D. Deliverables

1. Kimley-Horn will prepare a technical memorandum describing the model update, including the above lists of developments and infrastructure added to the model. The memo will also include updated water demand and wastewater load projections. Kimley-Horn will provide one PDF copy of the draft memorandum prior to the project review meeting (see task D) and one PDF of copy of the final memorandum.
2. Kimley-Horn will provide one PDF copy of the updated Water CIP map.
3. Kimley-Horn will provide one PDF copy of the updated Water Non-CIP map.

E. Meetings

Kimley-Horn will attend one project review meeting with the Town.

ADDITIONAL SERVICES

Any services not specifically provided for in the above scope will be considered additional services and can be performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Providing surveying and engineering design of future Capital Improvement Projects.
- Providing presentations to the Town Council.
- Attending additional public meetings during the project.
- Preparing an Opinion of Probable Construction Cost for improvement projects.
- Assisting Town or Contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Kimley-Horn on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Preparing applications and supporting documents for government grants, loans, or planning advances, and providing data for detailed applications.
- Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Town.
- Reviewing Contractor's References.
- Any services not listed in the Scope of Services.

ATTACHMENT B

COMPENSATION

Kimley-Horn will provide the Scope of Services for a lump sum fee.

Demand Update	\$26,400
Water Infrastructure Updates	\$5,000
Wastewater Infrastructure Updates	\$5,000
<u>TOTAL</u>	<u>\$36,400</u>

Additional services will be negotiated at the time they are identified.

ATTACHMENT C

TIME OF COMPLETION

We are prepared to begin our services immediately upon authorization. Upon receipt of a notice to proceed, we anticipate performing the model updates and preparing a draft memorandum within 60 calendar days.



TOWN COUNCIL AGENDA K.6. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Tommy Dalton, Assistant Town Manager
ITEM: **Consider approval of an Engagement Letter with Bracewell LLP, for legal and economic development consulting services associated with TIRZ #2 and the proposed PID.**

BACKGROUND: The Town first engaged Bracewell LLP in February 2023 to provide legal and economic development consulting services associated with Tax Increment Reinvestment Zone No. 2 (TIRZ #2) and the proposed Public Improvement District (PID) associated with the Furst Ranch development. TIRZ #2 was created on [November 6, 2023](#), and the Town Council approved a resolution implementing a PID on [February 5, 2023](#). At the same meeting, the Town Council [called a special election](#) to seek voter approval for the creation of the PID.

The Town worked closely with Julie Partain at Bracewell LLP for the initial review and consideration of TIRZ #2 and the proposed PID. With the creation of TIRZ #2, the Town seeks to continue its engagement with Bracewell on the next steps, which include the drafting, review, and negotiation of a Capital Improvement Agreement which formalizes how a developer may be reimbursed from impact fees and TIRZ revenues for the construction of qualified public infrastructure projects identified in the TIRZ #2 project plan.

The Town will also utilize Bracewell's services associated with the proposed PID. Should the PID proposition pass during the May 4 election, Bracewell will be instrumental in providing legal and economic development negotiation assistance associated with formally creating the PID under Chapter 372 of the Texas Local Government Code, as well as formalizing a PID agreement. If the PID proposition fails, Bracewell's services will be focused on TIRZ #2.

TIRZ and PID agreements are specialized matters requiring expertise in economic development and public finance law that is not currently contained in-house. Bracewell will perform duties as directed by the Town Manager as it pertains to TIRZ #2 and the proposed PID and will be compensated on an hourly basis per work completed. Approving this agreement secures Bracewell's services for both this fiscal year and future fiscal years, subject to annual appropriation by the Town Council. Approving this item appropriates funds for this FY, while funding in future years is contingent on approval by the Town Council through the budget process.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$60,000

Proposed Expenditure/(Revenue)
\$60,000

Account Number(s):
100-600-01000-5100

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

ATTACHMENTS:

1. Engagement Letter

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

March 4, 2024

Mayor Derek France
Town of Flower Mound, Texas
2121 Cross Timbers Road
Flower Mound, Texas 75028

Re: Engagement Letter – Development Project (2)

Dear Mayor France:

We appreciate the opportunity to represent the Town of Flower Mound, Texas (the “Town”) and provide legal advice in connection with the Town’s economic development project (the “Project” involving large acre mixed-use development within the Town (the “Property”).

We appreciate the confidence you have shown in Bracewell LLP (“Bracewell” or “Firm”) and look forward to this opportunity to represent your interests. It is our practice to confirm the terms and conditions of our engagements, and that is the purpose of this Engagement Letter and the attached Terms of Engagement. This engagement has been approved by Bracewell subject to the conditions described in this letter.

Client

The client for this engagement is the Town, and its Town Council, officers, departments and employees acting in their official capacities. Our services will be performed under the direction of the Town Manager, subject to approval by the Town Council of the Town as to all matters where such approval is required.

Scope of Engagement

We will represent the Town and will perform the following in connection with the second phase of the Project, including the following, as directed by the Town Manager:

- Attend meetings with Town Staff and the developer of the Property to discuss the Project.
- Advice and counsel regarding creation of a TIRZ and the TIRZ Project and Finance Plan, which may include the funding of infrastructure and projects to serve the Property.

S-I

- Advice and counsel regarding possible additional incentives for development of the Property, including the use of special districts.
- Initial negotiating and drafting of agreements relating to the Project.
- Coordination with Town consultants, including the Town Attorney's Office, regarding the terms of the Project.

Fees and Expense Reimbursements

We propose that our initial fees for the second phase of the Project be performed on an hourly basis according to our discounted rates charged to other clients, as adjusted annually and billed monthly for the second phase of this Project as described herein. Our current billing rates for those attorneys who have worked on or may be expected to work on such matters are attached as Schedule I. Should you require additional services beyond the scope of work for the initial Project, such work will be subject to additional fees to be as agreed upon.

The payment of our fees is not contingent and will be billed monthly based on the time spent by the lawyers and legal assistants who perform professional services billed at the stated discounted hourly rates.

Conflicts of Interest: Applicable Standard

For purposes of evaluating conflicts of interests, you acknowledge that Bracewell relies upon the Texas Disciplinary Rules of Professional Conduct. Bracewell may represent other clients that may be adverse to your interests in substantially unrelated matters, and it may represent other clients within the same industry.

Conclusion

You are encouraged to discuss the terms of this engagement letter with the independent counsel of your choice. Please call me if you wish to discuss any aspect of this engagement.

If this Engagement Letter, including the provisions in the attached Terms of Engagement, correctly reflects your understanding of the terms and conditions of our representation, please sign the enclosed copy of this letter in the space provided and return one original to Bracewell.

Very truly yours,

Bracewell LLP

By: _____
Julie Partain, Partner

AGREED TO AND ACCEPTED this _____ day of _____, 2024:

Town of Flower Mound

By: _____
Derek France, Mayor

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SCHEDULE I

<u>Name</u>	<u>Hourly Rate</u>
Julie Partain, Partner	\$875
Sarah Tahir, Associate	\$700
Shana Hight, Paralegal	\$425

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BRACEWELL LLP

TERMS OF ENGAGEMENT

Introduction

These are the Terms of Engagement adopted by Bracewell LLP (“Bracewell”) and the addressee of the preceding Engagement Letter (“Client”) and referred to in our Engagement Letter as the basis for our representation. Because they are an integral part of our agreement to provide representation, we ask that you review this document carefully and retain it for your files. If you have any questions after reading it, please promptly inform your principal contact at the Firm.

Client of the Firm

Because Bracewell has been engaged to represent the Client only, the engagement does not include the Client’s family members, affiliated or related entities, or their respective individual officers, directors, partners, equity owners or employees.

Unless otherwise specifically stated in the Engagement Letter, our representation does not include any parent, subsidiary, or affiliated entity; employee, officer, director, shareholder, member or partner of an entity; or, any commonly owned entity. For any trade association, our representation does not include any member of the trade association; and for individuals, our representation does not include any employer, partner, spouse, sibling, or other family member. In the event we are asked to undertake representation of any other entity in connection with this engagement, we will do so only by agreement defined in the Engagement Letter. By execution of the Engagement Letter, Client consents to Bracewell’s use of the name and a generic description of the transaction in Bracewell marketing materials. Confidential Client information will not be included in such materials.

Our Relationship with Others and Conflicts of Interest

Conflict of Interest is a concern for Bracewell and its clients. We attempt to identify actual and potential conflicts at the outset of each engagement. Unfortunately, conflicts sometimes arise or become apparent after work begins on an engagement. When that happens, we will do our best to address and resolve the situation in the manner that best serves the interests of all of our affected clients.

Client and Bracewell agree that matters relating to legal ethics and professionalism, including Conflicts of Interest, will be resolved by the Texas Disciplinary Rules of Professional Conduct.

Bracewell accepts this engagement on the understanding that our representation of you will not preclude us from accepting another engagement from a new or existing client provided that (1) such engagement is not substantially related to the subject matter of services we provide to you and (2) such other engagement would not impair the confidentiality of related client information.

Staffing the Project

In most cases, one attorney will be your primary contact. In order to provide you with the expertise of our firm, and to provide services on a cost effective basis, that attorney will delegate parts of your work to other lawyers, paralegals and professionals.

Billing Arrangements and Terms of Payment

Fees for professional services and expenses are not contingent on the outcome of the project, unless expressly stated in the Engagement Letter.

Unless expressly stated in the Engagement Letter, Bracewell issues invoices on a periodic basis, normally each month, for fees and expenses. Invoices are due on receipt and are considered past due 30 days after receipt.

Clients frequently ask us to estimate the fees and other charges they are likely to incur in connection with a particular matter. Any estimate is based on professional judgment and facts and circumstances that appear at the time. As such, any estimate is subject to the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

It may be necessary for us to retain third parties, such as consultants, experts and investigators, in order to represent you adequately. In that event, you will be responsible for the prompt payment of the invoices of those third parties. Although we may advance third-party disbursements in reasonable amounts, we will ask you to pay larger third-party invoices (usually those over \$500) directly to the third party providing the services.

If the representation will require a concentrated period of activity, such as a trial, arbitration, or hearing, we reserve the right to require the payment of all amounts owed and the prepayment of the estimated fees and expenses to be incurred in completing the trial, arbitration, or hearing, as well as arbitration fees likely to be assessed. If you fail to pay timely the estimated fees and expenses, we will have the right to cease performing further work and the right to withdraw from the representation, subject to any applicable rules of court or other applicable tribunal.

Although an insurer's payment of defense costs may be applied to billings of the firm, the payment obligation remains with you. Failure of any insurer to pay all or part of the billings for this project does not relieve you from the obligation to pay billings in full and in a timely manner.

Taxes

The Client agrees that all payments under the Engagement Letter shall be payable to Bracewell in U.S. Dollars, free and clear of any and all present and future taxes, levies, imposts, duties, deductions, withholdings, fees, liabilities and similar charges (the "Taxes"). If any Taxes are required to be withheld or deducted from any amount payable under the Engagement Letter, then the amount payable under the Engagement Letter shall be increased to the amount which, after deduction from such increased amount of all Taxes required to be withheld or deducted therefrom, will yield to Bracewell the amounts stated to be payable to Bracewell under the Engagement Letter.

Termination

Because Bracewell has been engaged to provide services in connection with the representation specifically defined in our Engagement Letter, the attorney-client relationship terminates upon our completion of those services.

You may terminate the engagement at any time, with or without cause, by notifying us in writing. The firm also can terminate the engagement before the completion of its representation of you in the specified matter if (a) the continued representation would result in a violation of the applicable rules of professional conduct or other law; (b) the termination can be accomplished without material adverse effect on your interests; (c) you persist in a course of action that Bracewell reasonably believes is criminal or fraudulent, or you have used our services to perpetrate a crime or fraud, (d) the firm has a fundamental disagreement with the objective or tactics in this engagement; (e) you deliberately and substantially fail to discharge an obligation regarding this engagement, including the payment of fees and expenses and the duty of cooperation as provided in the Terms of Engagement; or (f) other good cause for termination exist. In the event that the firm intends to terminate the engagement, the firm will give reasonable notice and allow you access to your files relating to this engagement.

For purposes of this Engagement Letter, this engagement terminates upon written notice of termination by Client or by Bracewell.

The termination of our services will not affect your responsibility for payment of legal services rendered and other charges incurred before termination and in connection with an orderly transition of the project.

After completion of the representation, however, changes may occur in the applicable laws or regulations that could affect your future rights and liabilities in regard to the matter. Bracewell has no continuing obligation to give advice with respect to any future legal developments that may relate to the project.

Retention of Client Files

Client files are limited to: materials supplied by Client; final contracts; estate planning documents, deeds and corporate records; and, routine correspondence related to this engagement. At the close of any matter, Client files may be returned to you, sent to a private storage facility, archived for a limited time or destroyed. The attorney closing the file will determine, at his or her discretion, the disposition of Client files, unless you make a specific written request that they be returned.

Your request for return of Client files must be delivered to Bracewell no later than 120 days after the last substantive service relating to the closed matter. A substantive service does not include audit letter research and preparation, or any other service that does not directly relate to the substantive discharge of a Client engagement. Your request must be specific and designate your representative to receive the files. Client is responsible for paying the reasonable cost to retrieve, duplicate and deliver the Client files.

Bracewell adopted a program of document retention and management of electronically stored information, including regular deletion of outdated, corrupt or useless files. Such program may change from time-to-time.

It is important for Client to alert Bracewell in advance of special treatment, sensitive information, retention requirements and other unique conditions pertaining to Client files. Client agrees that it will notify Bracewell in a timely, written and specific manner, concerning any requirement for special or unusual handling or attention of its Client files. This includes any statutory or regulatory requirements relating to confidentiality and retention of Client files.

Bracewell Files

You agree that Bracewell will own and retain its own files and any related electronically stored information pertaining to the engagement. You will not have the right or ability to require us to deliver such files and records (or copies thereof) to you. Examples of Bracewell files and records are: firm administrative records, financial files and documents, time and expense reports, personnel and staffing materials, credit and accounting records, electronic mail correspondence (other than such correspondence which was sent to you by a member of our firm) and internal lawyer's work product, such as drafts, notes, memoranda and legal and factual research, including investigative reports prepared by or for the internal use of lawyers. Further, at the discretion of the responsible partner for the project in question, we may destroy any such documentation which is the property of Bracewell or any documentation which such partner determines to be duplicative or unnecessary in all cases without having to obtain your consent.

Choice of Law

Because Bracewell performs legal services in a number of jurisdictions, for consistency and predictability, the Client and Bracewell agrees that the Texas Disciplinary Rules of Professional Conduct (found at www.texasbar.com or www.txethics.org) will govern all issues of legal ethics and professionalism.

Disclaimer

We cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control.

Either at the commencement or during the course of the representation, we may express opinions or beliefs about the matter or various courses of action and the results that might be anticipated. Any expressions on our part concerning the outcome of the representation, or any other legal matters, are based on our professional judgment and are not guarantees.

By signing the Engagement Letter or otherwise indicating your acceptance of the Engagement Letter, you acknowledge that Bracewell has made no promises or guarantees to you about the outcome of the representation, and nothing in these Terms of Engagement shall be construed as such a promise or guarantee.

Your Cooperation

To enable us to provide effective representation, you agree to: (1) disclose to us fully, accurately and on a timely basis, all facts and documents that are or might be material or that we may request; (2) keep us apprised on a timely basis of all developments relating to the representation that are or might be material; (3) attend meetings, conferences, and other proceedings when it is reasonable to do so; (4) provide updated information for conflicts purposes, if necessary; and (5) cooperate fully with us in all matters relating to the engagement.

Modification of Our Agreement

The Terms of Engagement reflect our agreement on the terms of all engagements, and are not subject to any oral agreements, modifications, or understandings. Any change in these Terms of Engagement must be made in writing signed by both Bracewell and Client.

Anti-Boycott Verification.

Bracewell hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, 'boycott Israel' means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Bracewell understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with Bracewell and exists to make a profit.

Iran, Sudan and Foreign Terrorist Organizations.

Bracewell represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer's internet website: <https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>, <https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or <https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>. The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law neither Bracewell nor any wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. Bracewell understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with Bracewell and exists to make a profit.

Petroleum

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, Bracewell hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The foregoing

verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, “boycott energy companies” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by (A) above. Bracewell understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Bracewell within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit.

Firearms

To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, Bracewell hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, ‘discriminate against a firearm entity or firearm trade association’ (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association. As used in the foregoing verification, (b) ‘firearm entity’ means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and (c) ‘firearm trade association’ means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

Bracewell understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with Bracewell within the meaning of SEC Rule 133(f), 17 C.F.R. §230.133(f), and exists to make a profit.

In Conclusion

If you have questions or concerns, at any time, relating to the terms and conditions of this engagement, the services or advice provided by Bracewell, or the fees and expenses reflected in the invoices, please bring them to the attention of your principal contact at our firm, or Bracewell’s General Counsel or Managing Partner.



TOWN COUNCIL AGENDA K.7. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Jeff Garner, Director of Facilities Management
ITEM: **Consider approval of Schneider Electric to perform the upgrade conversion to remove the obsolete Inet access hardware and install new Security Expert hardware and software in all Town facilities with access control systems for the amount of \$225,000.00.**

BACKGROUND: The Facilities Management Division has been systematically moving our antiquated access control system from Inet to Security Expert over the past few years. The Inet system by Schneider Electric had become outdated and was being phased out, requiring the Town to seek a new system. The Town elected to move to the Schneider Electric Security Expert which provides enhanced security features, remote access, and is compatible with our Building Management Software (Ecostruxture). When we started to move our access control system from Inet to Security Expert, Security Expert afforded us the capability of using the old Inet hardware (controllers, card readers, etc.) without having to purchase and install new hardware. As with most upgrades of this nature, new systems eventually require new hardware. The old components (28 years) are becoming more unstable and the time has come when the existing Inet hardware needs to be updated to new Security Expert hardware with software updates. Schneider Electric is the Sole Source provider of the Security Expert hardware and software.

Schneider Electric has submitted a proposal for the final phase of the transition from Inet to Security Expert to perform the upgrade conversion of removing the obsolete Inet access controllers and installing new Security Expert MRDM2 controllers in place of the old DPU7920 two door controllers and for the old SCU1284 four door controllers providing and installing (2) MRDM2 controllers side by side to replace the same space as the SCU. New SC-SPC main board controllers will be installed to build away from the Inet HW integration to free up spare controllers and or be used in locations where additional main controllers are needed as the access hardware conversion progresses throughout the Town.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$225,000

Proposed Expenditure/(Revenue)
\$225,000

Account Number(s):
100-655-59200-6090

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Scope of Work

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

February 16, 2024

TO: Jeff Garner

SITE: Town of Flower Mound
2121 Cross Timbers Rd,
Flower Mound, TX 75028

REF: Town of Flower Mound-SecurityXpert HW Convert from Obsolete Inet ACS HW
Proposal #24-0068

Schneider Electric is pleased to offer the following proposal for your consideration to perform the upgrade conversion of removing the obsolete Inet access controllers and installing new Security Expert MRDM2 controllers in place of the old DPU7920 two door controllers and for the old SCU1284 four door controllers providing and installing (2) MRDM2 controllers side by side to replace the same space as the SCU. New SC-SPC main board controllers will be installed to build away from the Inet HW integration to free up spare controllers and or be used in locations where additional main controllers are needed as the access hardware conversion progresses throughout the Town. This quote includes the following services:

SCOPE OF WORK – FM TOWN’S BUILDING BY BUILDING ACCESS HARDWARE CONVERSIONS

- Provide and install at each existing Inet wall of access enclosures one new SX-SPC in a local enclosure with space or provide and install one small enclosure to support the SX-SPC. Provide and install with IT support one CAT6 drop to the new SX-SPC. Provide and install one SX-4APWS to power the SCP and adjacent new MRDM2 controllers up to design limit. Run new power and communication cable as necessary.
- Provide and install new Security Expert (SX) MRDM2 two door controllers in place of each existing Inet two door DPU-7920 as it relates to the local number of legacy Inet access controllers. Reuse the existing wiring in the respective access control panel and terminate accordingly for control of each access door and run new communications up to the new SX-SPC.
- Provide and install new Security Expert (SX) MRDM2 two door controllers in place of each existing Inet four door SCU-1284 as it relates to the local number of legacy Inet access controllers having four doors terminated. Reuse the existing door wiring in the respective access control panel and terminate accordingly for control of each access door and run new communications up to the new SX-SPC in a daisy chained configuration.
- Remove the obsolete/legacy Inet controllers and either return to the customer or plan to dispose of them environmentally as appropriate.
- As each SX-SPC is brought online over the network install new configuration values including new IP info being provided by the customer's IT department. Each SPC must be online and ready in the Security Expert Head End before converting any door controllers. Each MRDM2 will be programmed similar to the previous Inet controller utilizing all existing field devices at the respective door(s). Testing of each door will be performed before moving to the next DPU/SCU is converted to prove physical and programming changes are working properly by using a programmed access card.
- This process will be refined as progress is made performing each building's conversion.

- It is highly recommended that this process be started at the smallest site located at the Water Treatment Plant standalone office where 2 or 3 doors are located. This is a low security risk site and ideal for the first phase/building to be converted.
- From this site's success the next least risky building should be started on converting next. Repeating the effort performed at the previous building(s) should be implemented and then with continued success for each conversion continue progressively through the Town's buildings with the final building being the Town Hall conversion.
- Once completed, the Town will have 100% new access controllers installed native to Security Expert.
- There will be a few spare SX-SPC controllers that were committed to the Inet legacy hardware for communication into the Security Expert Head End that will be "reset" so they can be used for future door additions at any facility. Each original SPC can manage two doors on its own.

EXCLUSIONS

- Workstation, network drops, and IP addresses to be provided by others.
- Any existing system repair labor, parts, or materials not specifically mentioned above.
- All 120V power by others as necessary. Each SX4APWS will need to be plugged in for 120V power. To speed up the conversion process temporary extension cords will be necessary to keep the physical upgrade process executing in a timely manner. Electrical needs can be addressed at a later date.
- Pricing does not include sales tax or bonding cost.

CLARIFICATIONS

- Pricing does not include a lift.
- Conduit by others as required except for stub ups when/where necessary.
- 1-year warranty parts and labor included.
- All work to be performed during normal operating hours: Monday-Friday 8 AM to 5 PM.
- Pricing is valid for a period of 30 days and subject to escalation thereafter.

PRICING

TOTAL PRICE (excluding tax)	\$225,000.00
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We would like to thank you for the opportunity to present our company’s proposal and look forward to working with you to address your building’s needs. If you have any questions regarding this proposal, please do not hesitate to reach out.

Sincerely,

Mark A. Boyd

Mark Boyd
Account Manager
(214) 882-8398
mark.a.boyd@se.com
SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.

TERMS AND CONDITIONS OF SALE



Please refer to previous agreed to Terms and Conditions.

This quotation and any exhibits and attachments hereto (collectively, "Agreement") and any information contained herein, is the property of Schneider Electric Buildings Americas Inc. ("Seller") and shall constitute proprietary and confidential information unless given to a public entity and required by law to be public information. The party to whom this quotation is addressed ("Buyer") acknowledges the confidential nature of this Agreement and agrees to take all commercially reasonable and necessary precautions to ensure the confidential treatment of this Agreement and all information contained herein. This Agreement will not be used, copied, reproduced, disclosed or otherwise disseminated or made available, directly or indirectly, to any third party for any purpose whatsoever without the prior written consent of Seller. The parties agree to be bound by the following terms and conditions.

1. **Quotations and Acceptance.** The quotation is based solely on the bid documents, which consist of the project drawings, specifications and/or instructions of the Buyer only modified by written agreement or Seller objection. Significant deviations between the actual conditions and circumstances of the work and those specified in the bid documents shall be cause for an adjustment in work scope, price and time allowed for performance. Written quotations shall be valid for no more than thirty (30) days from the date of issue, unless specifically stated otherwise herein. Buyer may accept the quotation by signing and returning a copy to Seller or by returning Buyer's own written instrument or order expressly acknowledging the quotation and terms set forth herein, provided, however, Seller hereby gives notice of its objection to any different or additional terms or conditions contained or referenced in Buyer's order, which will be of no force or effect except as may be expressly agreed to by Seller in writing. It is the intent of the parties that these Terms and Conditions of Sale shall govern the sale of goods delivered and services performed. Upon acceptance, this Agreement constitutes the entire understanding between the parties respecting the goods or services delineated herein and supersede all prior oral or written understandings or representations relating to such goods or services. This Agreement may not be discharged, extended, amended or modified in any way except by a written instrument signed by a duly authorized representative of each party. Seller assumes that the Subcontract Agreement offered will contain terms that are substantively similar to the AIA provisions that are in accordance with the provisions of the prime contract, including any supplements. Upon award, Seller assumes that contract provisions will be reviewed and negotiated in good faith to reach a mutual acceptance of both parties.
2. **Payment.** Absent a contrary provision herein, Buyer will pay Seller monthly progress payments on a net thirty (30) days basis from date of invoice for materials delivered (or stored at an off-site storage facility) and services performed, less any retained reserve which will be mutually agreed upon in writing by the parties. The aggregate amount of any such retained reserves shall be paid by Buyer to Seller within thirty (30) days after the date of substantial completion. If Seller provides a Certificate of Substantial Completion, such certificate shall conclusively establish such date. All invoices due and payable to Seller, less any applicable retained reserve, shall accrue interest at a compounded per annum rate not to exceed 1½% per month (18% per annum) or the maximum rate permitted by law. Acceptance and endorsement by Seller of an instrument for less than the full amount which Seller claims to be due shall not be deemed to be an admission of payment in full and any conditions to the contrary which are noted on such an instrument shall not be binding on Seller. If Buyer does not pay Seller, through no fault of Seller, within seven (7) days from the time payment was due, Seller may, without prejudice to any other remedy it may have, upon seven (7) additional days' written notice to Buyer, stop its work until payment of the amount owing has been received and the contract sum shall be equitably adjusted for reasonable costs of shutdown, delay and startup or in the alternative Seller may terminate this contract for material breach and all monies due Seller for services performed and materials delivered shall be paid upon demand. Seller shall be entitled to recover from Buyer all costs for collection, including reasonable attorneys' and professionals' fees. To the extent payments are received and as required by law, and upon Buyer's request, Seller will furnish mechanics lien waivers as the work progresses.

Seller reserves a security interest in any goods sold to the extent of the invoiced amount to secure payment of Buyer's obligation. In event of payment default, Seller may repossess such goods and a copy of the invoice may be filed with appropriate authorities as a financing statement to event or perfect Seller's security interest in the goods. At Seller's request, Buyer will execute any necessary instrument to perfect Seller's security interest.
3. **Price and Taxes.** The price for the goods and services hereunder are those shown on the face of this Agreement. The price of this Agreement does not include sales, use, excise, duties or other similar taxes, unless otherwise expressly provided herein. Any taxes (other than taxes due on Seller's net income) that are payable hereunder shall be the responsibility of Buyer. If applicable, Buyer shall provide Seller a copy of any appropriate tax exemption certificate for the state(s) into which the goods are to be shipped.
4. **Changes and Claims.** All materials and labor furnished hereunder shall be in accordance with shop drawings submitted by Seller and approved by Buyer. Any changes in the work as set forth in approved shop drawings, or from the scope of work as described herein, will require a written change order submitted to Seller by Buyer. An equitable adjustment will be made in the contract price or delivery dates or both, and this Agreement will be modified accordingly in writing. The cost or credit to Buyer for performance of such change order shall be determined by mutual written agreement prior to the commencement of any work under such change order. Buyer shall notify Seller promptly in writing of any circumstances arising from the performance of the work herein described which reasonably may be anticipated to result in a claim or back charge to Seller. Upon Seller's receipt of such notification, Seller shall have five (5) working days in which to remedy such circumstances and to avoid the imposition of such claim or back charge. Seller will not be liable for any claim or back charge where Seller has not been notified in the manner as set forth above.
5. **Access and Overtime.** This Agreement is based upon the use of straight time labor only during regular working hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Seller's holidays). If Buyer requests Seller to perform any work outside of regular working hours, overtime and other additional expense occasioned thereby will be charged to and paid by Buyer. If Seller's work is to be performed on the project site, Buyer will afford unrestricted access to Seller and its employees and agents to all work areas.

6. **Damage or Loss to Equipment.** In the case of equipment not to be installed by or under supervision of Seller, Seller shall not be liable for damage to or loss of equipment after delivery of such equipment to the point of shipment. In the case of equipment to be installed by or under supervision of Seller, Seller shall not be liable for damage or loss after delivery by the carrier to the site of installation; if thereafter, pending installation or completion of installation or full performance by Seller, any such equipment is damaged or destroyed by any cause whatsoever, other than by the fault of Seller, Buyer agrees to promptly pay or reimburse Seller an amount equal to the damage or loss which Seller incurs as a result thereof, in addition to or apart from, any and all other sums due or to become due hereunder.
7. **Delays.** Buyer shall prepare all work areas so as to be acceptable for Seller's work required hereunder. Buyer acknowledges that the contract sum is based upon Seller being able to perform the work in an orderly and sequential manner, as Seller so determines. If Seller's performance is delayed, interfered with, suspended, or otherwise interrupted, in whole or in part, by Buyer, other contractors on the project site, or by any other third party or by any act within the power and/or duty of Buyer to control, then Buyer agrees that it will be liable to Seller for all increased costs and damages which Seller incurs as a result thereof. Furthermore, if Seller is delayed at any time in the progress of the work by any act or neglect of Buyer, or by any separate contractor employed by Buyer, or by changes ordered in the work or by labor disputes, fire, delay in transportation, adverse weather conditions, casualties, or any other causes beyond Seller's control, then the time for completion of the work shall be extended for a period equal to the time lost by reason of such delay.
8. **Warranty.** Seller warrants to Buyer that all tangible articles manufactured by Seller will be free of defects in workmanship and material and that the work performed will be of good quality and will conform to the requirements of the bid documents. If the article is installed by Seller, Seller's sole obligation under this warranty shall be to provide, without charge, parts and labor necessary to remedy defects which appear within twelve (12) months from the date of beneficial use or occupancy, as applicable. If Seller provides a Certificate of Substantial Completion, such certificate shall conclusively establish such date. If article is not installed by Seller, the warranty period shall be within twelve (12) months of shipment of said article. Warranty claim must be made to Seller in writing within such twelve (12) month period. All transportation charges incurred in connection with the warranty for equipment not installed by Seller shall be borne by Buyer. Seller warrants that for equipment furnished and or installed, but not manufactured by Seller, Seller will extend the same warranty terms and conditions which Seller receives from the manufacturer of said equipment.

This warranty is the sole and exclusive warranty given with respect to any articles delivered or services performed by Seller. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty is subject to proper installation of the articles (if installation is not performed by Seller or authorized subcontractors of the Seller) and maintenance and storage of the articles in accordance with the specifications and directions supplied by Seller. This warranty does not apply to any defect, malfunction or failure caused by repairs made by other than or without the consent of Seller or the article has been subject to abuse, misuse, neglect, tampering, accident or damage by circumstances beyond Seller's control, including without limitation, acts of God, war, acts of government, corrosion, power fluctuations, freeze-ups, labor disputes, differences with workmen, riots, explosions, vandalism, or malicious mischief, nor to defective associated equipment or use of the articles with equipment for which they were not sold. All of Seller's obligations under this warranty will immediately terminate and be of no further force or effect if all or any part of the purchase price (including any installment payment) with respect to any article covered by this warranty is not paid to Seller when due. If cause of defect is found not to be Seller's responsibility, standard rates for repair or replacement and labor shall apply.
9. **Limitation of Liability.** In no event will Seller's total aggregate liability in warranty or contract exceed the contract price paid for the specific product or service that gives rise to the claim excluding third party claims for personal injury, death or property damage or as may be required by law. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF GOODWILL, BUSINESS INTERRUPTION OR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **Laws and Permits.** Seller shall comply with all applicable federal, state, and local laws and regulation and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits of a permanent nature shall be procured and paid for by the Buyer. This contract shall be interpreted and governed under and in accordance with the laws of the jurisdiction in which the goods are delivered or services are performed without regard to its choice of law provisions.
11. **Disputes.** Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by good faith consultation and negotiation. If those attempts fail, either party shall provide written notice within thirty (30) days to the other to mutually agree on an arbitration process. If a process is not agreed upon within thirty (30) days, final and binding arbitration in accordance with the then current Construction Industry Arbitration Rules of the American Arbitration Association shall commence and judgment upon the award rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held in the federal, state or municipal courts serving the county in which the project is located unless the parties mutually agree otherwise. The prevailing party shall recover all reasonable legal costs and attorney's fees incurred as a result, which shall be promptly paid by the non-prevailing party. Any dispute or demand for arbitration must be commenced within one (1) year after the cause of action has accrued. Nothing herein shall limit any rights Seller may have under construction mechanic or materialmen lien laws. Seller shall have the right to suspend affected services pending resolution of disputes.
12. **Insurance.** The parties shall each maintain insurance coverage including without limitation, Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned vehicles, and Commercial General Liability covering public liability and property damage with limits generally required for its respective industry with not less than \$1,000,000 minimum coverage per occurrence. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the state in which the project and services are being performed. No credit will be given or premium paid by Seller for insurance afforded by others.
13. **Clean Up.** Seller agrees to keep the job site clean of debris arising out of its operations. Buyer shall not back charge Seller for any costs or expenses for clean up or otherwise without prior written notice and Seller's written consent.

14. **Severability.** The invalidity or unenforceability of any provision herein shall in no way affect the validity or enforceability of any other provision.



TOWN COUNCIL AGENDA K.8. CONSENT ITEM(S)

DATE: March 4, 2024
FROM: Travis Cunniff, Assistant Director of Parks and Recreation
ITEM: **Consider approval of an amended Service Agreement Contract with Active Network, LLC. to adjust payment processing, and authorization for the Mayor to execute the same on behalf of the Town.**

BACKGROUND: On December 7, 2015, Town Council approved a contract with the Active Network, LLC. (Active) to provide service, support, and software access for the technical management of park facilities and recreational programs. The Town's Parks and Recreation Department had been using Active's CLASS Database Software since 2007 and their public web-based interface (online registration) since March 2011.

In 2015, the Town migrated from Active's existing hybrid system to the ActiveNet hosted solution which provided similar program registration functions while adding features that improved operations. The approval of the new agreement was necessary as Active was phasing out its CLASS software in 2017 and stopped support for it in December 2016.

In 2017, the Town signed an amendment to the original agreement to adjust transaction fees. These fees were originally set based on a special Texas Group Buy incentive program that Active offered. Due to additional cities migrating to Active, the fees for the cities already in the Group Buy program decreased, resulting in the need to amend the service agreement contract.

Since then, annually staff have evaluated and renewed the contract through March 31, 2025.

In early February 2024, Active sent a request for signature on a second amendment that would update the current contract to appoint Active as the Town's limited payments agent for payment processing purposes in accordance with Texas Finance Code § 152.004(2). Parks and Recreation staff and TOASE consulted with Finance staff regarding the language and have been assured that this amendment is standard protocol and will help facilitate commercial transactions moving forward.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: Town Council could deny approval of the amendment and the contract with Active Network will terminate on April 1, 2024.

FISCAL IMPACT: N/A
N/A

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

ATTACHMENTS:

1. Amendment 2 to Active Network Agreement
2. Executed Agreement with Active Network
3. Amendment Request Letter from Active Network

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

**AMENDMENT #2
TO THE AGREEMENT**

This Amendment No. 2 (this "**Amendment 2**") is made effective as of 3/4/2024 (the "**Amendment 2 Effective Date**") by and between the Town of Flower Mound ("**Client**") and Active Network, LLC ("**Active**") and amends that certain Service Agreement Contract #01440014, dated as of December 7, 2015, (the "**Agreement**") entered into by the Parties. Client and Active are also individually referenced herein as a "Party" and collectively as the "Parties." Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW THEREFORE in consideration of the mutual covenants, recitals and promises contained in this Amendment 2 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto hereby agree as follows:

1. **Changes to the Agreement.**

A. The Agreement is amended to add the following as Section 4(j):

"Client hereby authorizes and appoints Active as its limited agent to initiate payment card and ACH credit or debit entries to and from Client's bank account. Payment by Receiver (in the case of ACH entries) or card networks (in the case of Payment Card transactions) to Active is considered the same as payment made directly to Client. Client, upon receipt of funds by Active, must (1) provide the purchased goods or services to the End User, or (2) credit the End User for the full amount of funds received by Active, which credit is not revocable by Client, and evidence this credit in writing in a form capable of being retained for future reference. For transactions involving goods or services, Client must provide the purchased goods and services as agreed to between Client and End User, regardless of whether Active transmits the funds to Client."

2. **Full Force and Effect.** Except as expressly modified herein, the Agreement remains in full force and effect. All references in the Agreement to "this Agreement," "hereto," "hereof," "hereunder" or words of like import referring to the Agreement shall mean the Agreement as amended by this Amendment 2. In the event any of the terms and conditions of the Agreement conflict with the terms and conditions of this Amendment 2, the terms and conditions of this Amendment 2 shall prevail only as to the subject matter expressly stated herein.

3. **Counterparts.** This Amendment 2 may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document, binding against each of the Parties. To the maximum extent permitted by law or by any applicable governmental authority, this Amendment 2 may be transmitted by facsimile, electronic mail (including pdf) or other transmission method with the same validity as if it were an ink-signed document and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment 2 as of the Amendment 2 Effective Date.

Active Network, LLC
by its authorized signatory

Town of Flower Mound
by its authorized signatory

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Service Agreement Contract #[01440014]

This Service Agreement ("Agreement") is made effective as of December 7, 2015 (the "Effective Date") and entered into between Active Network, LLC ("Active" or "we" or "us") and [the Town of Flower Mound, Texas] ("you" or "your" or "Client"). The parties agree as follows:

1. **Services.** Active will provide services and support ("Services") related to Parks and Recreation Division events, camps, licenses, classes, tickets, contests, permits, facility/equipment use, transactions, sales, memberships, reservations, donations, and/or activities (together, "Events"), including without limitation access to its software as a solution product ("Software"). The features, services, options, and fees may be described more fully on web pages describing the Software and Services, and/or in an applicable schedule, quote, pricing form, order form, or similar document (each, a "Schedule"). From time to time, the parties may enter into new Schedules. Each Schedule will be generated by Active, reference this Agreement or the Contract Number above (if applicable), must be signed by Client, and will be governed by and incorporated into this Agreement. You agree to cooperate with us and to provide us with certain information relating to your organization as necessary for us to provide the Software and Services. Software provided under this Agreement is deemed delivered when access is made available to you.

2. **License to Intellectual Property/Promotion.** a) Active retains all right, title, and interest in and to its Software and Services and any underlying software subject to the limited license in this Agreement.

b) Active hereby grants to you a limited, non-exclusive, non-transferable, non-sublicensable license during the term of this Agreement (i) to use the Software and Services for the purposes of offering, promoting, managing, tracking, and collecting fees in connection with your Event(s) solely in accordance with the Schedule and this Agreement, and (ii) to display, reproduce, distribute, and transmit in digital form Active's name and logo solely for the purposes set forth in this Section 2. You hereby grant to Active a limited license to use information provided by you relating to your organization and Event, which may include content regarding the Event, your organization's name, trademarks, service marks, and logo, solely in connection with the promotion of your organization or Events and the Services that we provide. All rights not expressly granted herein are reserved.

c) You will make reasonable efforts to promote and encourage the use and availability of the Software in connection with the promotion of Events. During the term of this Agreement, Active will be the sole and exclusive provider of registration software and other services similar to the Software and Services provided to Client hereunder for all of Client's Events with respect to Client's existing facilities and any similar future facilities for which registration begins during the term of this Agreement. Client shall allow Active an opportunity to bid for services similar to the Software and Services provided to Client hereunder for all future facilities Client acquires during the term of this Agreement which are not similar to Client's existing facilities. Client expressly understands and agrees that the exclusivity set forth in this Section is consideration in exchange for the pricing and other benefits being provided to Client hereunder. In the event that Client breaches its exclusivity obligations under this Section, Client agrees to pay the Liquidated Damage Amount (as defined below) related to the breach of exclusivity.

d) Client shall: (i) not reverse engineer, disassemble, modify, incorporate into or with other software, or decompile any Software or prepare derivative works thereof; (ii) not copy, modify, transfer, display, or use any portion of the Software or Services except as expressly authorized in this Agreement or in the applicable documentation; (iii) not contest or do or aid others in contesting or doing anything which impairs the validity of any proprietary or intellectual property rights, title, or interest of Active in and to any Software or Services; (iv) not use the Software to transmit, publish, or distribute any material or information: (1) for which Client does not have all necessary rights and licenses, including any material or information that infringes, violates, or misappropriates the intellectual property rights of any third party; (2) that contains a computer virus or other code, files, or programs designed to disrupt or interfere with the functioning of the Software; (3) that is inaccurate or misleading; or (4) that is or that may reasonably be perceived as being harmful, threatening, offensive, obscene, or otherwise objectionable; (v) not attempt to gain access to any systems or networks that connect thereto except for the express purpose of using the Software for their intended use; (vi) not rent, lease, sublicense, resell, or provide access to the Software on a time-share or service bureau basis; (vii) not engage in any activity that interferes with or disrupts the Software or Services; (viii) not obliterate, alter, or remove any proprietary or intellectual property notices from the Software or Services; (ix) use the Software and Services exclusively for authorized and legal purposes, consistent with all applicable laws, regulations, and the rights of others; (x) not take any steps to avoid or defeat the purpose of security measures associated with the Software and Service, such as sharing of login and password information, or attempt to circumvent any use restrictions.

e) The Software may include encryption software or other encryption technologies that may be controlled for import, export, or purposes under the laws and regulations of the countries and/or territories in which the Software and Services are used ("Applicable Law"). Client may not export, re-export, or assist or facilitate in any manner the export or re-export of, any portion of the Software, as determined by Applicable Law under which Client operates: (i) to any country on Canada's Area Control List; (ii) to any country subject to UN Security Council embargo or action; (iii) contrary to Canada's Export Control List Item 5505; (iv) to countries subject to U.S. economic sanctions and embargoes; and (v) to persons or entities prohibited from receiving U.S. exports or U.S.-origin items, including, to any person or entity appearing on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the Bureau of Industry and Security's Denied Persons List. Client hereby represents and covenants that: (a) to the best of Client's knowledge, Client is eligible to access the Software under Applicable Law; (b) Client will import, export, or re-export the Software to, or use or access the Software in, any country or territory only in accordance with Applicable Law; and (c) Client will ensure that users who register for, sign up, or otherwise use the Services in connection with Events ("End Users") use the Software in accordance with the foregoing restrictions.

3. **Information Collection.** Active collects certain information from End Users. You may login to our data management system to access End User information relevant to an Event. You are responsible for the security of your login information and for the use or misuse of such information. You will immediately disable a user's access who is using the Software or Services on your behalf or notify Active in writing if any such user is no longer authorized or is using such information without your consent. Active may rely, without independent verification, on such notice, and Client, inclusive of Client's parent, subsidiary and affiliated entities, as applicable, and each of their respective officers, directors, managers, shareholders, owners, agents, employees, contractors, and representatives, to the extent allowed by Texas law and not otherwise void against public policy, covenant not to sue and agree to defend, indemnify, and hold harmless Active from any claims arising from Active providing, denying, suspending, or modifying access to or use of the Software and Services of any individual as directed by Client or by someone who Active reasonably, under the circumstances, believes is authorized to act on behalf of Client. In the event of any dispute between two or more parties as to account ownership, you agree that Active will be the sole arbiter of such dispute in its sole discretion and that Active's decision (which may include termination or suspension of any account subject to dispute) will be final and binding on all parties. You agree not to use the Software or Services to collect or elicit (a) any special categories of data (as defined in the European Union Data Protection Directive, as may be amended from time to time), including, but not limited to, data revealing racial or ethnic origin, political opinions, or religious or other beliefs, trade-union membership, as well as personal data concerning health or sexual life or criminal convictions other than as expressly directed by Active, and in such event, only in pre-defined fields within the Software that are intended for that purpose; or (b) credit card information other than in pre-defined fields within the Software that are intended for that purpose. Both parties agree to use the collected information in compliance with (i) all applicable laws, rules and regulations, including, without limitation, those governing privacy (e.g., by including an appropriate CAN-SPAM opt out mechanism in email communications) and the use of credit card data (e.g., using credit card information only for purposes authorized by the cardholder); (ii) applicable credit card network rules and Payment Card Industry Data Security Standards; and (iii) Active's privacy policy, as published on its website or otherwise provided by Active from time to time. Notwithstanding any other provision to the contrary in Active's privacy policy or as a part of this Agreement, information collected or relating to this Agreement may be disclosed or released upon request by a third party as required by the Texas Public Information Act, Texas Attorney General Opinion, or court ruling. Client agrees to timely provide notice of any such Public Information Act request, so that Active can seek appropriate relief or take action to prevent such disclosure.

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4. **Fees.** a) Client will pay the fees as more fully described in the applicable Schedule. Unless otherwise set forth on the applicable Schedule, Active will charge registration fees to individuals who register for the Events online, and will process and collect such fees as a merchant of record according to the card networks. On a weekly basis, unless otherwise set forth in the applicable Schedule, Active will pay you sums due you based on the total fees collected, net of Active's service fees as set forth in the applicable Schedule and any other deductions provided herein. The applicable currency will be set forth on the Schedule.
- b) Active may suspend its performance hereunder, including remitting payments or terminate this Agreement in the event it reasonably believes that your use of the Software or Services is not in compliance with applicable law or this Agreement, is fraudulent, or is otherwise suspect, or if there is a dispute as to the legal authority of a Customer-associated party to perform hereunder. If Active reasonably believes that a transaction may be fraudulent or otherwise contrary to law, Active may issue an invoice or offset an equivalent amount from your account or any payment Active owes to you and return the value to the End User (as set forth below) and if sufficient funds are not available, you must reimburse Active on demand. Active will notify you of the reason for such offset provided that it is lawful to do so.
- c) Any minimum volume commitment will be set forth in the applicable Schedule. The minimum volume calculation will begin on the date of the first live operational use of the Software for the Event(s) ("Go-Live Date"). If the Schedule indicates that you are paying on a subscription basis, you will be invoiced for the first year of subscription fees upon the Go-Live Date, with subsequent annual subscription fees being invoiced upon each anniversary of Go-Live Date.
- d) If (i) you fail to meet an agreed upon minimum volume commitment as set forth in a Schedule; (ii) there are any overdue amounts owed by you; or (iii) there are returned charges or items, including those resulting from any error or complaint related to an Event, Active has the right to charge fees owed to Active by you by issuing an invoice, or by offsetting the deficiency from any account balance you maintain with Active or any payment Active owes you.
- e) All amounts owed by you that are not directly collected by Active from End Users are due from you within thirty (30) days from either (i) the end of the remittance cycle during which the fees accrued (if related to registrations) or (ii) the date of the applicable invoice. These fees are displayed on your account statement. Past due fees shall accrue interest at the lesser of the annual rate of ten percent (10%) per annum or the maximum amount permitted by applicable Texas law. In the event of delay in paying a fee, you agree to reimburse Active for any reasonable fees incurred in its collection efforts as specified in Texas Gov't Code Ch. 2251. Active may suspend or deactivate your account, including suspending its performance and obligation to remit payments hereunder, if your account is more than thirty (30) days past due.
- f) Active may modify the fees once per calendar year, provided that any increase will not exceed twelve and a half percent (12.5%) over the then-current fees. Active shall notify Client at least thirty (30) days in advance of any such change.
- g) You are solely responsible for, and will pay, any and all use, excise, sales or privilege taxes, duties, value added taxes, fees, assessments, or similar liabilities, chargeable by a governmental authority (collectively, "Taxes") as a result of any Software or Service provided under this Agreement. Taxes on Active's net income are excluded. h) All fees described in the applicable Schedule are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agrees not to impose such a surcharge on any end user.
- i) In the event you are entering into this Agreement and using the Services for the benefit of a third-party Event or organization ("Third Party Beneficiary"), you agree that we may remit amounts directly to the Third Party Beneficiary identified by you. In addition, you agree to include provisions in your agreement with such Third Party Beneficiary that are at least as protective of Active as Sections 5 and 6 herein. Should you fail to include such provisions in your contract with the Third Party Beneficiary and the failure results in costs or damages to Active, to the extent allowed by Texas law and unless otherwise void as against public policy, you agree to defend, indemnify, and hold Active harmless from any such costs and damages, including, without limitation, reasonable attorneys' fees. In addition, you agree to be responsible and liable for each Third Party Beneficiary's compliance with the terms and conditions of this Agreement.
- j) It is your responsibility to notify End Users of your refund policy. You must ensure that your refund policies are consistent with this Agreement. You agree that all fees for a given Event are earned by you only following either the conclusion or delivery of the applicable Event (as applicable) and all amounts ultimately due to you will be net of all service fees, reversals, refunds, disputed charges, chargebacks and other deductions, whether due to customer complaints, allegations of fraud, discrepancies related to the applicable Event or otherwise. No payments shall be made to you with respect to any Event that is cancelled. If payments have already been made by Active to you for a cancelled Event or if Active reasonably determines that it is prudent or otherwise necessary to pay a refund to or honor a chargeback request from an End User, Active may issue an invoice or offset an equivalent amount from your account or payment owed by Active to you and return the value to the End User, and if sufficient funds are not available, you must reimburse Active on demand. Active will notify you of the reason for such offset provided that it is lawful to do so.
5. **Disclaimer of Warranty/Limitation of Liability.** ACTIVE EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE USE OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE SOFTWARE OR SERVICES WILL MEET YOUR REQUIREMENTS. SOFTWARE AND SERVICES ARE PROVIDED TO YOU ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACTIVE SHALL NOT BE LIABLE FOR INDIRECT DAMAGES OR LOSSES (IN CONTRACT, TORT, OR OTHERWISE), INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST SAVINGS, COST OF REPLACEMENT SERVICES, LOST DATA, LOSS OF USE OF INFORMATION OR SERVICES, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES. ACTIVE'S TOTAL AGGREGATE LIABILITY FOR ALL MATTERS ARISING FROM OR RELATED TO THIS AGREEMENT IS LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID BY YOU AS CONSIDERATION FOR THE SOFTWARE AND SERVICES GIVING RISE TO SUCH CLAIMS DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE FIRST CAUSE OF ACTION AROSE.
6. **Indemnification.** a) Active shall defend, settle, and pay damages (including reasonable attorneys' fees) ("Damages") relating to any third party claim, demand, cause of action or proceedings (whether threatened, asserted, or filed) ("Claims") against Client to the extent that such Claim is based upon Active's proprietary Software infringing a United States patent, registered copyright, or registered trademark provided that the Software is used in accordance with this Agreement. b) To the extent allowed by Texas law and unless otherwise void as against public policy, you shall defend, settle, and pay Damages relating to Claims to the extent based on (i) injury or death to a person or damage to property resulting from the participation in an Event operated by you in connection with the Software and/or Services; (ii) your provision of materials, products, or services as part of your obligations hereunder that infringe the intellectual property rights of any third party provided that such materials, products, or services are used by Active in accordance with this Agreement; (iii) your use of the Software and/or Services in violation of Section 2(e); (iv) any claims for refunds, reversals, or chargeback requests from End Users; and/or (iv) brought by a Third Party Beneficiary or brought in connection with Active's payment to a Third Party Beneficiary of any fees due hereunder in accordance with this Agreement. For the purposes of Sections 5 and 6, reference to Active shall also include its suppliers and licensors.
7. **Term and Termination.** The term of this Agreement shall be for three (3) years from the Effective Date with automatic renewals for one (1) year terms thereafter, unless either party gives written notice to the other party to terminate this Agreement no less than six (6) months prior to the expiration of the then-current term. Either party may terminate this Agreement: (a) upon a material breach by the other party, if such breach is not cured within thirty (30) days following written notice to the breaching party; or (b) where the other party becomes unable to fulfill its payment obligations generally or is subject to a filed bankruptcy petition or formal insolvency proceeding that is not dismissed within thirty (30) days. Notwithstanding the termination or expiration of this Agreement under any circumstance other than in the event of Active's breach of the Agreement, the parties agree that Active will continue to be the exclusive provider of registration

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software and other services similar to the Software and Services provided to Client hereunder for all of Client's Events for which registration begins during the term of this Agreement until the Event occurs or registration or similar services are no longer needed.

7.1. Non-appropriation of Funds. Client, a political subdivision of the State of Texas, operates on a fiscal year October 1 through September 30. In the event funds are not appropriated and Active has begun performance, Client will provide Active with prompt, not to exceed five (5) days', written notice and reasonable documentation of such failure to appropriate funds. Upon receipt of such notice, Active shall immediately terminate this Agreement without further obligation to Client. Notwithstanding anything herein to the contrary, for the period prior to the date of termination, Client will pay Active for all services rendered, a prorated amount of all Software license fees, and all non-cancelable commitments entered into by Active on behalf of the Client.

8. Assignment. a) Active may assign any of its rights or obligations under this Agreement. Client may not resell, assign, or transfer any of its rights or obligations hereunder except as expressly provided herein, and any attempt to resell, assign, or transfer such rights or obligations without Active's prior written approval will be null and void.

b) Except for Retained Assets (as defined below), Client shall cause each Schedule hereunder to be assigned to (i) the purchaser of all or substantially all of Client's assets or equity securities or (ii) to any successor by way of merger, consolidation, or other corporate reorganization of Client ((i) and (ii) together, a "Change of Control").

c) In addition, if Client seeks to sell, assign or otherwise transfer any Events which are the underlying subject matter of any Schedule (the "Subject Assets") regardless of whether such sale, assignment or transfer constitutes a Change of Control (any such transaction, a "Transfer"), Client shall cause the portion of the applicable Schedule relating to such Event(s) to be assigned to the purchaser or assignee of the Subject Assets (i.e. Client shall require the purchaser to assume Client's obligations under the applicable Schedule and this Agreement relating to such Event); provided however, in the event Client seeks to consummate a Transfer or enters into a Change of Control, but Client retains assets (i.e. Events) which are the underlying subject matter of a Schedule ("Retained Assets"), Client shall cause the applicable portion of the Schedule relating to the Subject Assets to be assigned to the purchaser or assignee of the Subject Assets, and Client shall retain its obligations under this Agreement and the Schedule(s) relating to the Retained Assets. Client shall be responsible for any and all costs incurred by it in connection with any such assignment to the extent allowed by Texas law. In the event that Client fails to cause an assignment as specified above, to the extent that there is a line item in the Schedule(s) entitled "Projected Contract Value," Client agrees to pay the amount of the Projected Contract Value related to such failed assignment as liquidated damages to Active, minus the amount of revenue already paid to Active net of all refunds, credit card chargebacks, and all other deducted amounts (the "Liquidated Damage Amount").

d) In the event that Client plans to enter into a Change of Control or otherwise consummate a Transfer, Client agrees to provide prior written notice to Active of the contemplated transaction. Within the thirty (30) day period following such transaction, Active shall have the right to immediately terminate each applicable Schedule if Active determines, in its reasonable good faith discretion that the purchaser or assignee of the Subject Assets is a competitor of Active or a party with whom Active does not want to do business. In the event of such termination by Active, Client will pay the Liquidated Damage Amount.

e) Client agrees (i) to require that the assignee (as outlined in this Section 8) agree, in writing, to be bound by the terms and conditions of the Agreement and each applicable Schedule; (ii) that Active may offset any Liquidated Damages Amount set forth in this Agreement from any account balance you maintain with Active or any payment Active owes you; (iii) all Liquidated Damage Amounts set forth in this Agreement will automatically reset during each renewal term; and (iv) because of the difficulty in making a precise determination of actual damages incurred by Active in the event that Client breaches its exclusivity obligations in Section 2(c), fails to cause an assignment pursuant to Section 8(c), or if Active terminates this Agreement pursuant to Section 8(d), the Liquidated Damage Amount will be assessed, not as a penalty, but as a reasonable approximation of costs incurred by Active and Active's loss of revenue; and (iv) that in any suit or other action or proceeding involving the assessment or recovery of liquidated damages, the reasonableness of the Liquidated Damage Amount shall be presumed and the liquidated damages assessed will be in addition to every other remedy now or hereinafter enforceable at law, in equity, by statute, or under the Agreement.

9. Miscellaneous. a) Any notices required to be given under this Agreement shall be in writing sent to the address set forth below for Client or, in the case of Active, to the address set forth above to the attention of Chief Legal Officer. Notices will be deemed received the next day if sent via overnight mail or courier with confirmation of receipt, or three (3) days after deposited in the mail sent certified or registered.

b) This Agreement shall be governed by the laws of the State of Texas, without giving effect to the conflict of laws provisions thereof. Provided, however, that nothing in this Agreement shall be construed as a waiver of the Client's governmental immunities as a Texas Home-rule municipality, which it expressly retains, and the Client shall not be bound by any provision that violates the Texas Constitution, abrogates the Client's police power, or that may otherwise be considered to be void as against public policy in the State of Texas or under the Charter of the Town of Flower Mound. Neither the United Nations Convention of Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement. The parties irrevocably agree that any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Texas.

c) This Agreement contains the entire understanding of the parties regarding the subject matter hereof and can only be modified or amended by a subsequent written agreement executed by both parties. This Agreement supersedes and replaces all oral or written RFPs, proposals, prior agreements, and other prior or contemporaneous communications between the parties concerning the subject matter of this Agreement, including without limitation that certain Products and Services Agreement dated as of September 10, 2007 between Town of Flower Mound - Parks and Recreation Department and The Active Network, Inc. (predecessor-in-interest to Active Network, LLC). The Products and Services Agreement shall automatically terminate on the Go-Live Date without further action by the parties.

d) Sections 2, 3, 5, 6, and 9 of this Agreement and any fees owed by you shall survive any termination or expiration of this Agreement.

e) If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) shall not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the unenforceable provision shall be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and the Agreement shall be deemed amended accordingly.

f) No waiver of any provision of this Agreement or any attachment shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

g) Neither party will be deemed to be in default hereunder, or will be liable to the other, for delay or failure to perform any of its obligations under this Agreement to the extent that such delay or failure results from any event or circumstance beyond that party's reasonable control, including without limitation, delays or failures of any Internet service provider, third-party payment processor or other third party.

h) Client has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an Active employee or agent in connection with this Agreement.

i) The Software is provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraphs (b)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Manufacturer is Active Network, LLC or one of its affiliates or subsidiaries.

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j) This Agreement may be executed in separate counterparts and delivered by facsimile or such other electronic means as are available to the parties. Such counterparts taken together shall constitute one and the same original document.
k) Active's proposal to Client (revised proposal dated November 25, 2015) is hereby incorporated by reference and made part of this Agreement. Active agrees to notify Client in writing of the outcome of the proposed Group Buy Incentive for Class Customers in Texas and the percentage discount applicable to Client.

SIGNATURE PAGE

By signing this Agreement, each party represents and warrants that it has the necessary and full right, power, authority, and capability to enter into this Agreement and to perform its obligations hereunder.

Active Network, LLC By: <u>[Signature]</u> Signature (Authorized Representative Only) Name: <u>Sheryl D. Hoskins</u> Title: <u>General Manager</u> Date: <u>12-4-15</u>	Town of Flower Mound By: <u>[Signature]</u> Signature (Authorized Representative Only) Name: <u>Thomas E. Hayden</u> Title: <u>Mayor</u> Date: <u>12-7-15</u>	Email: <u>parks@flower-mound.com</u> Phone: <u>972-874-6300</u> Address: <u>2121 Cross Timbers Rd.</u> <u>Flower Mound TX 75028</u> Event URL (site): <u>www.flower-mound.com</u>
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Schedule

Company Address 717 North Harwood Street, Suite 2500
Dallas, Texas 75201
US

Created Date 11/30/2015
Quote Number 01440014
Currency USD

Prepared By Janette Onizuka
Email janette.onizuka@activenetwork.com

Contact Name Chuck Jennings
Phone 972-874-6273
Email chuck.jennings@flower-mound.com

Bill To Name CITY OF FLOWER MOUND
Bill To Contact David Powell
Bill To Address 2121 CROSS TIMBERS ROAD
Flower Mound, TX 75028

Ship To Contact David Powell
Ship To Address 2121 CROSS TIMBERS ROAD
Flower Mound, TX 75028
United States

Estimated Transaction Volume 2,240,382.50

Transaction Fees

Product	Fee	Fee %	Product Description
ACTIVE Net - Staff Interface - Technology Fee		1.25%	Migration Loyalty Rates for organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.
ACTIVE Net - Public Interface - Online Transaction Fee		3.75%	Migration Loyalty Rates for U.S. organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net.
ACTIVE Net - Staff Interface - Payment Processing Fee - Credit Card		2.50%	Migration Loyalty Rates for for U.S. organizations between \$1,500,000 to \$8,000,000 in annual revenue through ACTIVE Net and Canadian organizations exceeding \$8,000,000 annual revenue.
ACTIVE Net - Staff Interface - Payment Processing Fee - Electronic Cheque/Check Processing		0.50%	
ACTIVE Net - Public Interface Fee Set up - Split			
ACTIVE Net - (credit card refunds - flat fee)	0.10		

Product	Product Type	Product Description	Quantity	Sales Price	Total Price
Facility Reservation	SaaS		1		
Private Lessons	SaaS		1		
Camps	SaaS		1		
POS	SaaS		1		
Activity Registration	SaaS		1		
Memberships	SaaS		1		
Payroll	SaaS		1		
ACTIVE Net - Service Package Standard 7	Service	ACTIVE Net Service Package Standard 7 consists of the following Services: • remote business process review • remote functionality review & data collection preparation • remote data collection review • remote data entry (system inventory and policy controls)	1	30,000.00	30,000.00



Product	Product Type	Product Description	Quantity	Sales Price	Total Price
		• remote user testing • remote train the trainer training • remote Go Live preparation • remote hardware configuration The scope of Services is contained to the 7 functionalities listed below. 50% of total Service costs will be billed at Service initiation, payable within 30 days of the date of invoice. 50% of total Service costs will be billed at Service completion, payable within 30 days of the date of invoice.			
ACTIVE Net - Technical Services: Financial Export	Service	ACTIVE Net Technical Services: Financial Export consists of the following Services: • remote configuration, testing & training	1	1,400.00	1,400.00
ACTIVE Net - Class Customer Loyalty - Professional Services Conversion to ACTIVE Net Credit	Service	The Class Customer Loyalty – Professional Services Conversion to ACTIVE Net Credit (the "Credit") is conditioned upon Client fulfilling all of its obligations under the Agreement during the initial term of the Agreement or three years, whichever is longer. If Client fails to fulfill such obligations, Client must pay to Active the full amount of the Credit. The Credit is only to be used for professional services, but cannot be used for hardware or reimbursement of airfare/transportation cost. Client must be current on Class Maintenance until ACTIVE Go Live to be eligible for the Credit. Service Charges will increase to standard list rate after initial term of the Agreement.	1	-17,246.55	-17,246.55
ACTIVE Net - ACH Remittance - "Daily" Every 72 Hours	Service	Daily remittances are processed by Active on non-holiday business days 72 hours after the transaction day. Payments take one to three banking business days to process	1		
ACTIVE Net - Technical Services: Refund Export	Service	ACTIVE Net Technical Services: Refund consists of the following Services: • remote configuration, testing & training	1	1,400.00	1,400.00

Service Total

USD 15,553.45

Total Price

USD 15,553.45

All fees described herein are in consideration of the Software and Services that Active provides. Active and Client acknowledge that certain credit card network rules and laws prohibit imposing a surcharge that is based on the type of payment method used (e.g., having a different fee for the use of a credit card vs. debit card), and therefore, each agree not to impose such a surcharge on any End User.

The payment options we offer may include MasterCard, Visa, American Express and Discover.

*Sales Tax not included in total price. Sales tax, where applicable, will be added to your invoice.



Quote Acceptance Information

Signature: Thomas Hayden

Printed Name: Thomas E. Hayden

Title: Mayor

Date: 12-7-15

PO# (if applicable): _____

**THIRD PARTY PRODUCTS ADDENDUM
TO SOFTWARE AS A SERVICE AGREEMENT**

This Addendum to the Software as a Service Agreement ("Addendum") is entered into by and between the Town of Flower Mound, Texas ("Client") and Active Network, LLC ("Active") as of December 7, 2015 (the "Effective Date"). Client and Active are also singularly referenced herein as a "Party" and collectively as the "Parties."

- A. This Addendum is made part of that certain Software as a Service Agreement dated as of December 7, 2015 between Client and Active (the "Agreement") that provides Software and Services.
- B. Client and Active now desire to supplement and amend certain terms and conditions of the Agreement, pursuant to the terms and conditions set forth in this Addendum.

NOW, THEREFORE, in consideration of the mutual covenants, recitals and promises contained in this Addendum and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each Party, the Parties hereto hereby agree as follows:

1. **Changes to the Agreement.** The Appendix attached hereto is hereby incorporated by reference into the Agreement.

2. **Agreement Remains in Effect.** Except as expressly described herein, the Agreement remains in full effect according to its terms. The Agreement and this Addendum, as well as any exhibits attached to each respectively, shall be read in concert to the fullest extent possible and be considered collectively as a singular agreement. In the event any of the terms and conditions of the Agreement conflict with the terms and conditions of this Addendum, the terms and conditions of this Addendum shall prevail only as to the subject matter expressly stated herein.

3. **General.**

3.1 **Miscellaneous.** If any one or more of the provisions of this Addendum is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Addendum, and this Addendum shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The captions used in this Addendum are for convenience and reference only and will not be deemed to limit, characterize or in any way affect any other provision contained herein. All provisions of this Addendum will be enforced and construed as if no caption had been used. This Addendum will be assigned automatically and only upon the assignment of the Agreement according to its terms.

3.2 **Entire Agreement.** The Agreement, this Addendum and any exhibits attached to each respectively constitute the entire agreement between the Parties with respect to the subject matter thereof and supersede all previous negotiations, comments and writings by the Parties with respect to the subject matter referenced in each. The Agreement and this Addendum may be changed only by a written agreement signed by both Parties. No oral agreement or conversation with any officer, agent or employee of Client, either before or after the execution of the Agreement or this Addendum, shall affect, alter or modify the obligations hereunder.

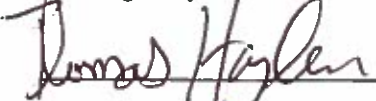
3.3 **Counterparts and Facsimile:** This Addendum may be executed by the Parties in separate counterparts, which counterparts when combined are hereby deemed to constitute a single document, and the Parties may execute this Addendum by facsimile and such facsimile(s) will have the same effect as an originally executed document.

The Parties hereto have executed this Addendum effective as of the Effective Date.

ACTIVE NETWORK, LLC:
by its authorized signatory

Per: 
Name: Sheryl D. Hoskins
Title: General Manager
Date: 12-4-15

The Town of Flower Mound:
by its authorized signatory

Per: 
Name: Thomas E. Hayden
Title: Mayer
Date: 12-7-15

APPENDIX: TERMS APPLICABLE ONLY TO THIRD PARTY PRODUCTS AND SERVICES

1. PURCHASE AND SALE; DELIVERY

1.1 Purchase Commitment and Price. Active hereby agrees to make available to sell to Client, and Client may agree to purchase from Active, the Third Party Products listed in the applicable Schedule in the volumes and at the prices described therein. For purposes of this Addendum, "Third Party Products" means those hardware, firmware and/or software products, provided to Active by third parties, listed in the Pricing Form, together with all user manuals and other documents accompanying the delivery of the Third Party Products, provided that the Third Party Products shall not include software developed by Active.

1.2 Delivery. Active will ship all or any part of the Third Party Products to Client as soon as reasonably practicable (or, if the below-described purchase order documentation does not seek immediate shipping, at the time Active considers reasonable in order to meet the desired delivery date described) after receipt by Active of a purchase order from Client specifying the particular Third Party Products sought, the number of such Third Party Products sought, the price payable therefore, and the desired date and location of delivery thereof. Any such purchase order must, at a minimum, reference quantity, description and price.

1.3 Changes by Client to Delivery Schedule. Following delivery by Client of any purchase order documentation described in section 1.2, no changes by Client to the shipment schedule described therein will be permitted unless Active is notified thereof in writing at least ninety (90) days in advance of the delivery date sought in such purchase order documentation.

1.4 Acceptance of Purchase Orders. Purchase orders delivered by Client to Active in respect of Third Party Products are not binding upon Active until accepted by Active in writing. In any case, despite any indication to the contrary contained in any such purchase order documentation, no terms or conditions on purchase order documentation issued by Client, other than the information required by Active as set forth expressly in this Agreement, will be binding upon Active, nor will any such terms or conditions modify or supplement this Agreement in any way, notwithstanding the fact that Active may accept or otherwise approve such purchase orders. Active reserves the right to refuse any such purchase order for any reason not contrary to this Agreement, including without limitation pricing differences as described in section 2.2.

1.5 Additional Third Party Products. Client may purchase Third Party Products in addition to those listed in the Schedule by issuing additional purchase order documentation as described herein, provided that the supply (or non-supply) of such additional Third Party Products will be subject to this Agreement as though such additional Third Party Products had been included in the Schedule on the date of execution of Schedule subject to the following:

(a) the price for such additional Third Party Products is subject to agreement between the parties each in their own absolute discretion, and

(b) Active shall have the right to discontinue delivery of such additional Third Party Products upon at least ninety (90) days written notice to Client without any liability to Client whatsoever for such discontinuance.

2. CHARGES AND PAYMENTS

2.1 Prices. The pricing applicable to Third Party Products is as set out in the Schedule in the form finally agreed to by the Parties.

2.2 Pricing Variability. Client acknowledges that:

(a) the prices described in the Schedule are applicable for six (6) months after the date of execution hereof, and such prices are based upon Client taking delivery of the full number of any particular Third Party Product listed in the Schedule in a single shipment; and

(b) Client hereby agrees that after the expiry of such initial six-month period or, in case of Client seeking, in a particular shipment, delivery of less than all of the Third Party Products of a particular type listed the Schedule, the actual prices may be higher. Prior to shipment of any Third Party Products that would be subject to pricing that differs from that described in the Schedule, Active will notify Client of any such different pricing and Client will accept such different pricing, as mutually agreed between Client and Active, in writing.

3. SUPPORT FOR THIRD PARTY PRODUCTS

For the purpose of isolating support issues and responsibility in respect of Third Party Products and their interaction with any Products, Active will provide initial first-tier support, to a maximum of fifteen (15) minutes per support inquiry.

4. PROPRIETARY RIGHTS

4.1 Third Party Proprietary Rights and Indemnity by Client. Client acknowledges that any Third Party Products supplied by Active hereunder are supplied by Active as a reseller thereof and that the Third Party Products are subject to the intellectual property rights of the various third party developers and/or manufacturers thereof, as applicable, including without limitation copyright, trade secret, trademark, and patent rights. Client will maintain in confidence and not use or disclose any and all confidential business or technical information connected with any Third Party Product except as specifically permitted by a party having legal control of such rights, or as may be required under the Texas Public Information Act, and to the extent allowed by Texas law and unless otherwise void as against public policy Client will defend or settle any claim made or any suit or proceeding brought against Active insofar as such claim, suit, or proceeding is based on an allegation that any Third Party Product provided to Client hereunder has been installed, used, or otherwise treated by Client or any client or customer of Client in violation of the proprietary rights of any third party or on an allegation that Client or any client or customer of Client has disclosed or used any confidential business or technical information connected with any Third Party Product, provided that Active will notify Client in writing promptly after the claim, suit, or proceeding is known to Active and will give Client such information and assistance as is reasonable in the circumstances. Client will have sole authority to defend or settle any such claim at Client's expense. To the extent allowed by Texas law and unless otherwise void as against public policy, Client will indemnify and hold Active harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit or proceeding.

4.2 Third Party Products which are Software. Client acknowledges that the possession, installation and use of all

Third Party Products which are software shall be governed by the terms of the software license(s) of the persons other than Active who possess the rights to control such possession, installation and use.

5. WARRANTY

5.1 Warranty. Active warrants to Client that Active has the right to deliver the Third Party Products subject to any documentation accompanying such Third Party Products at the time of delivery and/or any licensing mechanisms, physical, electronic or otherwise, included in any Third Party Products that are software.

5.2 Warranties Provided by Third Party Suppliers. Third Party Products are warranted by the manufacturers, suppliers or licensors thereof in accordance with the warranty statements accompanying delivery of the Third Party Products, and Client agrees that Client will rely solely on such Third Party Product warranties. Client agrees not to make a claim against Active on account of any warranty, express or implied, which may apply to any Third Party Product. If Client notifies Active of a defect or nonconformity within thirty (30) days of the date of delivery of such Third Party Product, Active will assist Client in troubleshooting such Third Party Product in accordance with Section 3. If such defect or nonconformity cannot be remedied during such troubleshooting and such Third Party Product is still under the Third Party Product warranty, Active shall contact the applicable manufacturer, supplier or licensor of such Third Party Product to coordinate any returns or refunds. If a notice of a defect or nonconformity is received by Active from Client of the defect or nonconformity following the initial the 30-day period, Active's sole obligation and liability will be to provide support in accordance with Section 3. Returns and refunds are at the sole discretion of the applicable manufacturer, supplier or licensor.

SUPPORT AND MAINTENANCE

The following supplies and services are included in Support and Maintenance:

- Unlimited technical support between 5:00am and 6:00pm Pacific Time, Monday through Friday via telephone (800.663.4991), email or web portal (<http://support.theactivenetwork.com>)
- Unlimited phone support for System Down issues on a **24 hours x 7 days a week** basis, provided that:
 - If self-hosted, the site must have remote access and Internet email capability for extended support hours
 - Support calls placed during extended support hours must be placed by an authorized contact person
 - The type of support call is an urgent issue that includes site down, revenue impacting, or customer facing issues that have no reasonable work-around
- Access to Active's secure customer care web portal, discussion forums, knowledgebase and online training materials
- Regular documentation and communication
- **Support also includes, if such assistance can be provided in 15 minutes or less:**
 - Assistance troubleshooting Third Party Products (e.g., Crystal Reports, Citrix client)
 - Assistance to isolate and/or troubleshoot difficulties resulting from sources other than Active Network products and services, such as:
 - General network/internet support (e.g., network access, printing, internet access)
 - PC hardware troubleshooting
 - PC setup, configuration and optimization
 - Network operating system configuration and functionality
 - Basic Microsoft Windows functionality (i.e. Windows Explorer or Internet Explorer)
 - Loss of supervisor or other password

ANNUAL SUPPORT AND MAINTENANCE FOR NON-HOSTED CUSTOMERS

The following supplies and services are included in Support and Maintenance for non-hosted customers:

- New releases and version of the Software and free assistance in planning upgrades

SUPPORT AND MAINTENANCE FOR HOSTED CUSTOMERS

The following supplies and services are included in Support and Maintenance:

- Installation of new Software releases
- Monitoring of connectivity and critical functionality at all times (24hr x 365 days/year) by skilled personnel using an extensive series of automated probes from multiple locations
- Response to site-down/critical issues within one hour, with reasonable efforts to advise your organization of the current status and expected resolution time
- Service agreements between Active and critical vendors essential to the continuing successful operation of the hosted environment
- Scheduled maintenance to increase performance, fix defects or update applications, with reasonable efforts to notify your organization of scheduled maintenance times and potential impacts to service
- Urgent maintenance (done to correct network, hardware or Software issues that are likely to cause significant service disruption and that require immediate action), which may temporarily degrade service or cause outages. Active may undertake urgent maintenance at any time deemed necessary and shall provide status updates to your organization as soon as possible.

SUPPORT ISSUE PRIORITIES AND TIMELINES

TICKET RESOLUTION TARGETS

- New support incidents are assigned one of the following levels, each with its respective standard ticket resolution target:

Call Priority Level	Description	Standard Completion Target
Priority 1 – System Outage	Fatal issues that result in the customer's inability to fulfill critical business functions (i.e., those pertaining to core functionality such as processing registrations, memberships, rentals) and that have no reasonable work-around	1 business Day
Priority 2 – High Business Impact	Serious issues significantly impacting use of the system but do not prevent core functions from being fulfilled (i.e., Customer cannot perform critical business functions; Customer experiences severe site degradation)	2 business day
Priority 3 – Medium Business Impact	All other issues, except those classified as low; (e.g., how-to questions, reporting/reconciliation issues, general questions, work around options)	3 business days
Priority 4 – Low Business Impact	Issues that are not time-sensitive or may be undertaken as customer service initiatives outside the scope of this Agreement (i.e., feature requests or low priority questions)	None
Guaranteed Uptime	For clients licensing Hosted Software	99%

SERVICES NOT INCLUDED

The following supplies and services are excluded from Support and Maintenance:

- Services required to remedy problems that stem from changes to or defects in system configuration upon which the Software was originally installed
- Services required to remedy problems which do not stem from any defect in the Software
- Services required to remedy problems caused by lack of training of Client's personnel
- Improper treatment or use of the Software
- Onsite or remote training services
- Full report customization service
- Database-specific services or assistance

RESTRICTIONS

The following actions will void Active's obligations under this Support and Maintenance Handbook:

- The use of any other application that modifies data in the database, whether created by you or otherwise
- The use or creation of third party applications that work in connection with Active's application or application database without prior written notification and consent from Active

HOLIDAY HOURS (US AND CANADA)		
Holiday	Open with reduced staff	Closed
New Year's Day (January 1st)		✓
Martin Luther King Day (3rd Monday in January)	✓	
President's Day (3rd Monday in February)	✓	
Good Friday (Friday before Easter)	✓	
Victoria Day (3rd Monday in May)	✓	
Memorial Day (Last Monday in May)	✓	
Canada Day (July 1st)	✓	
Independence Day (July 4th)	✓	
Civic holiday (1st Monday in August)	✓	
Labor Day (1st Monday in September)		✓
Canadian Thanksgiving/Columbus Day (2nd Monday in October)	✓	
Remembrance Day/Veteran's Day (November 11th)	✓	
US Thanksgiving (4th Thursday in November)	✓	
Day after US Thanksgiving (4th Friday in November)	✓	
Christmas Day (Dec. 25th)		✓
Boxing Day (December 26th)	✓	
New Year's Eve (December 31st)	✓	



5850 Granite Parkway, Suite 1200
Plano, TX 75024
T. 469.291.0300
www.ACTIVENetwork.com

VIA EMAIL AND OVERNIGHT MAIL

February 23, 2024

Town of Flower Mound
Attn: David Powell
2121 Cross Timbers Road
Flower Mound, TX 75028
david.powell@flower-mound.com

RE: Amendment 1 to Service Agreement Contract #01440014, dated as of December 7, 2015

Dear David:

Active has been informed by the State of Texas that its agreements for the ACTIVENet product must be updated. The attached Amendment previously sent to you provides that ACTIVENet customers appoint Active as their limited payments agent for payment processing purposes in accordance with Texas Finance Code § 152.004(2).

Active has communicated with you with telephone and email, and it is our understanding that the Town of Flower Mound intends to present the Amendment to its governing body for signature on or around March 3, 2024. The Town must execute and return the attached Amendment No. 1 by March 31, 2024, or Active will terminate the Town's ACTIVENet agreement as of April 1, 2024.

Please note this deadline has been imposed on Active by the State of Texas. We want to collaborate with you to resolve this issue as soon as possible and prevent any disruption to your operations. Thank you in advance for your understanding and cooperation.

Please execute the attached Amendment as soon as possible and return it to Active via email. If you have any questions, Farid Kiblawi, Senior Director Account Management, can be contacted via email at farid.kiblawi@activenetwork.com or telephone at 214-940-8866.

Sincerely,

DocuSigned by:

12719EB5A10E45D...
Kevin Farmer
Vice President, Sales



TOWN COUNCIL AGENDA L.1. REGULAR ITEM(S)

DATE: March 4, 2024
FROM: Chuck Russell, Principal Planner
ITEM: **Public Hearing to consider an ordinance granting Specific Use Permit No. 489 (SUP23-0007– Prairie Plaza Building 2 Veterinary Dental Clinic) to permit a veterinary hospital (inside pens) use. The property is generally located north of Cross Timbers Road and west of Long Prairie Road. (PZ recommended approval by a vote of 6 to 0 at its February 26, 2024, meeting.)**

BACKGROUND:

- Size – Approximately 4.76 acres
- Zoning - Planned Development District No. 150 (PD-150) with Office District (O) uses.
- Proposed use – Veterinary hospital (inside pens); this is an expansion of the existing veterinary hospital located in Building 1.
- Building Size – 7,360 square feet, a maximum of 4,400 square feet will be occupied by the proposed veterinary hospital; the remaining 2,960 square-feet will continue to be occupied by a medical office use.
- SMARTGrowth – N/A, review not triggered
- Traffic Analysis – N/A, review not triggered
- Incentives – None requested
- [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 February 26, 2024, meeting.

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

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

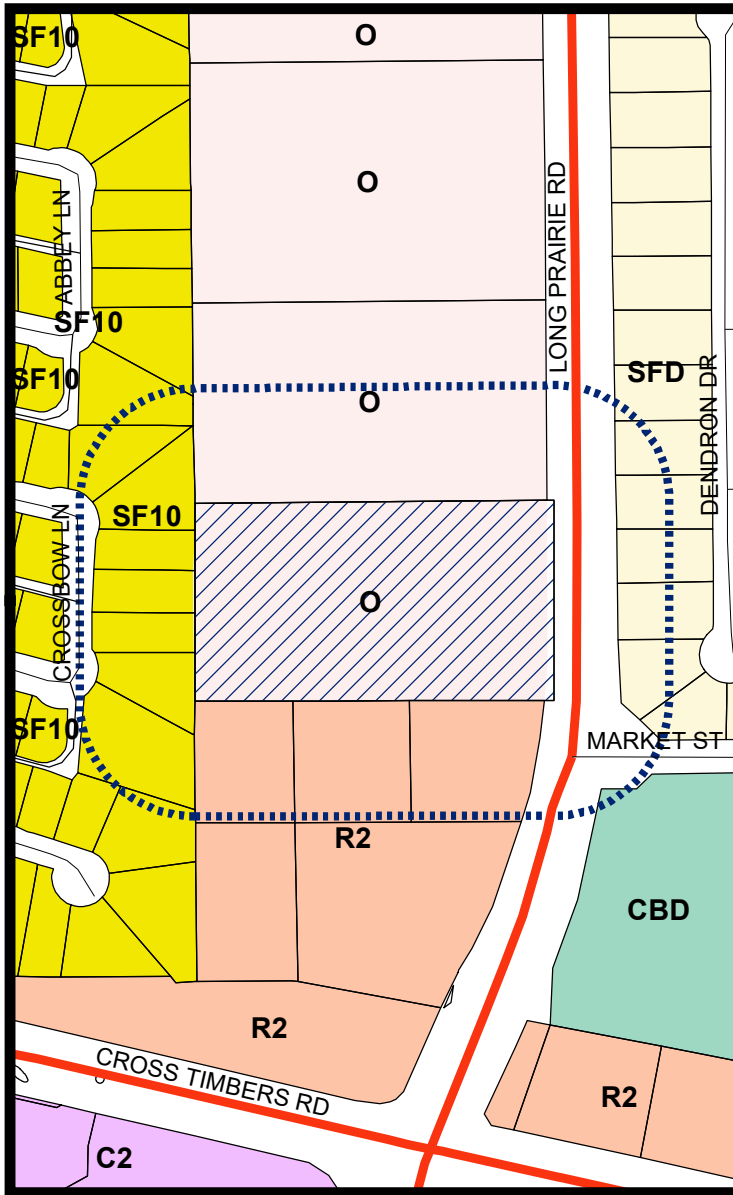
ATTACHMENTS:

1. Map - Zoning & Aerial
2. DRAFT Ordinance
3. DRAFT Exhibits

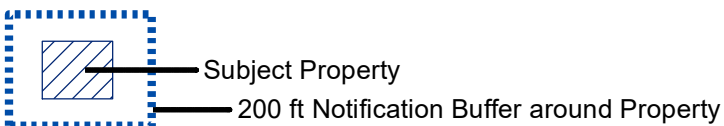
DRAFT MOTION: Move to approve as presented in the agenda caption.

Vicinity Map

SUP23-0007: Prairie Plaza Veterinary Dental Clinic

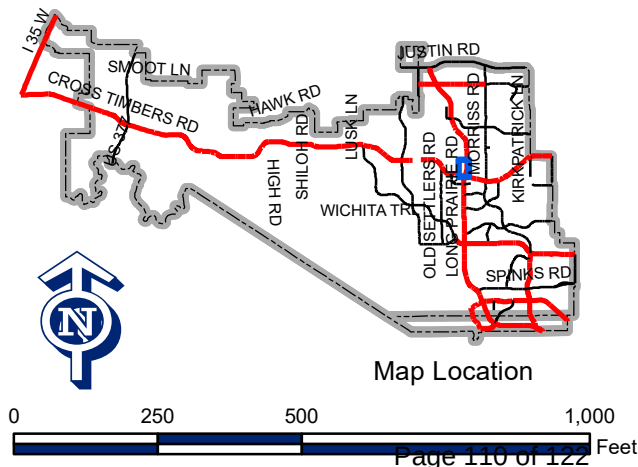


LEGEND



Visit 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.



Map Location

TOWN OF FLOWER MOUND, TEXAS
ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE OFFICIAL ZONING MAP, EXHIBIT "A" OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY APPROVING SPECIFIC USE PERMIT NO. 489 (SUP-489) FOR A VETERINARY HOSPITAL (INSIDE PENS) USE ON CERTAIN PROPERTY DESCRIBED AS 4.7568 ACRES OF LAND AND BEING ALL OF LOT 1, BLOCK A, OF THE PRAIRIE PLAZA ADDITION, AND ZONED PLANNED DEVELOPMENT DISTRICT NO. 150 (PD-150) WITH OFFICE USES; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Flower Mound, Texas (the "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, 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 owner of the property described as 4.7568 acres of land and being all of Lot 1, Block A, of the Prairie Plaza Addition, Denton County, Texas (the "Property") has filed an application for a Specific Use Permit to allow a veterinary hospital (inside pens) use; and,

WHEREAS, the Planning and Zoning Commission of the Town held a public hearing on February 26, 2024, and the Town Council of the Town held a public hearing on March 4, 2024, with respect to the Specific Use Permit 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 Specific Use Permit on the property described herein; and,

WHEREAS, the Town Council finds that the Specific Use Permit should be granted as outlined herein as it is in the best interest of the Town and will promote the health, safety, and general welfare of the citizens of the Town 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, as amended, are hereby amended on the hereinafter described property and area as shown below:

4.7568 acres of land, being all of Lot 1, Block A, of the Prairie Plaza Addition, Denton County, Texas, and zoned Planned Development District No. 150 (PD-150) with Office uses.

The Property shall remain in Planned Development District No. 150 (PD-150) zoning district and Specific Use Permit No. 489 (SUP-489) is hereby approved to allow a veterinary hospital (inside pens) use as more fully described in the exhibits attached hereto and incorporated herein, subject to the following conditions:

- (a) SUP-489 is limited to a 4,400 square-foot lease space within Building 2 located on Lot 1, Block A, of the Prairie Plaza Addition.
- (b) The applicant shall submit an amended site plan for approval in conformance with the Conceptual Site Plan, attached hereto as Exhibit "A," which shall show the addition of the pet yard and fencing, including fence details.
- (c) A maximum of 250 square feet of fenced pet yard as shown on the Concept Plan, attached hereto as Exhibit "A," shall be permitted subject to following conditions:
 - (1) Any use of the fenced pet yard requires a minimum of one (1) employee to be present to monitor the use of this area; and
 - (2) There shall be a minimum of at least one (1) employee per two (2) animals in the pet yard at all times.
- (d) The building must be treated acoustically so that noise generated by the enterprise is not perceptible at the property boundary line as required by Sec. 98-998 of the Flower Mound Code.

SECTION 2

The Conceptual Site Plan, Conceptual Landscape Plan and Conceptual Elevations of the proposed veterinary hospital (inside pens) use, attached hereto as Exhibits "A", "B" and "C" and incorporated herein for all purposes allowed by law, are hereby approved as the Conceptual Site Plan, Conceptual Landscape Plan and Conceptual Elevations for this Specific Use Permit No. 489 (SUP-489).

SECTION 3

The official map of the Town is amended and the Director of Planning Services is directed to revise the official zoning map to reflect the approved Specific Use Permit No. 489 (SUP-489), as set forth above.

SECTION 4

The use of the Property described above shall be subject to all applicable regulations contained in the Land Development Regulations and all other applicable and pertinent ordinances of the Town including the regulations contained in Planned Development District-150 (PD-150) and the SUP conditions provided herein.

SECTION 5

This Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, 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 6

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 7

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

SECTION 8

All rights and remedies of the Town 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 9

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

SECTION 10

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.

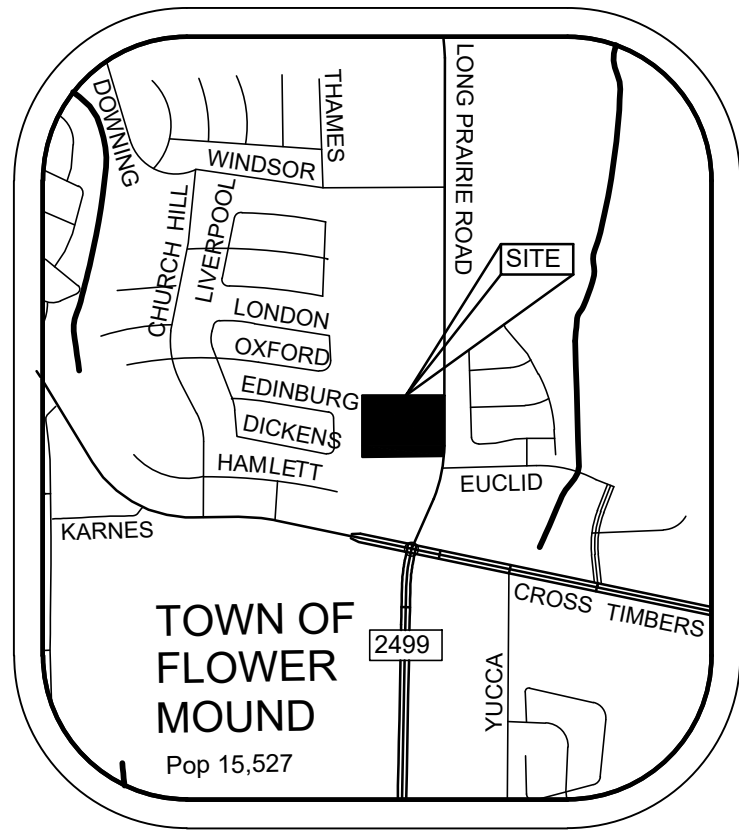
DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF ____ TO ____, ON THIS THE 4TH DAY OF MAY, 2024.

APPROVED:

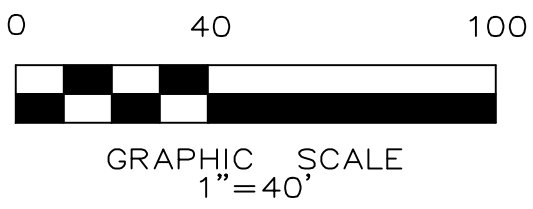
Derek France, MAYOR

ATTEST:

Theresa Scott, TOWN SECRETARY



VICINITY MAP
NTS



LEGEND

- Firelane
- Proposed Sidewalk
- Ex. Concrete
- Proposed Retaining Wall
- Existing Fire Hydrant
- Proposed Fire Hydrant
- BFR Barrier Free Ramp
- Parking Count
- P.A.E. Pedestrian Access Easement
- AD Aeration Device

The Following Plat/Graphic
Case Number **ASP23-0004**
Was Administratively Approved
On Date **03/14/2023**

SITE DATA — PHASE I and II

Address: 3901 Long Prairie Road
Town of Flower Mound, Texas
Gross Lot Area: 5.00 Acres (217,799 sf)
Net Lot Area: 4.7604 Acres (207,364 sf)
Zoning: PD-150 with Office uses
Proposed Use: Office/Medical Office Uses
Lot Coverage Data: Building Coverage 41,591 sf
Impervious Area 91,104 sf
Pervious Area 91,710 sf

Site Parking Summary:	Required	Provided
Medical Office	65 Spaces	64 Spaces
Medical Office (Vet Clinic)	38 Spaces	38 Spaces
App. Office Use (Retail)	13 Spaces	13 Spaces
App. Office Use (Rest.)	56 Spaces	57 Spaces
Office	13 Spaces	13 Spaces
Daycare	17 Spaces	17 Spaces
Total Parking	202 Spaces	202 Spaces

Building Parking Summary:	Required	Provided
Building 1 Vet Clinic 9345sf	38	38
Building 2 Restaurant 4200sf Retail 3160sf	56 13	57 13
Building 3 Medical Office 7200sf	29	29
Building 4 Office 3227sf	13	13
Building 5 Medical Office 7226sf	29	29
Building 6 Medical Office 1467sf Daycare 5766sf	7 17	6 17
Total Parking	202 Spaces	202 Spaces

Total Accessible Parking 14 Spaces

OWNER:
FM Prairie Properties, LLC
10325 Mateo Trail
Irving, TX 75063
Phone (214) 208-4160
Contact: Rajeshwari Desari

ENGINEER:
Cross Engineering Consultants, Inc.
131 S. Tennessee St.
McKinney, Texas 75069
Phone (972) 562-4409
Fax (972) 562-4471
Contact: Dwayne Zinn, P.E.

ARCHITECT:
DB Constructors, Inc.
2400 Great Southwest Pkwy.
Fort Worth, TX 76106
Phone (817) 626-7300
Fax (817) 626-9305
Contact: Matthew Peterson

SURVEYOR:
Votex Surveying
10440 N. Central Expressway, Ste. 800
Dallas, TX 75231
Phone (469) 333-8831
Contact: Candy Hone

NOTE: THIS IS NOT A CONSTRUCTION DOCUMENT.
THIS DOCUMENT IS FOR PLANNING PURPOSES ONLY.

STANDARD NOTES:

- All Parking Spaces are 9'x18' unless otherwise noted.
- Retention/Detention Pond shall be concrete structural walls with stone clad interior to match buildings. Bottom shall be natural earth and pond shall have aeration device. Top shall have wrought iron fence for safety. Aeration device to be Aqua Control SS2 Display Aerator — Cluster Arch — 1 HP, or approved equal.
- All infrastructure necessary for the full development of the property to be constructed with Phase I.
- The 30' Road easement shown on Site Plan shall be considered the east Right-of-way line for the purposes of this project. Any areas within the easement shall be considered to be under the jurisdiction of TxDOT.

MASTER PLAN FEATURES

LAND USE PLAN	OFFICE USE
URBAN DESIGN PLAN	LONG PRAIRIE DISTRICT
PARKS AND TRAILS	FUTURE 8' MULTI-PURPOSE TRAIL TO BE INSTALLED ON THE EAST SIDE OF LONG PRAIRIE
OPEN SPACE PLAN	NOT A CONSERVATION DEVELOPMENT
THOROUGHFARE PLAN	LONG PRAIRIE ROAD — MAJOR ARTERIAL WITH 150' R.O.W. — CROSS ACCESS TO BE PROVIDED WITH LIMITED ACCESS TO LONG PRAIRIE ROAD
WATER PLAN	LONG PRAIRIE DISTRICT-12" WATER ALONG WEST SIDE OF F.M. 2499
WASTEWATER PLAN	LONG PRAIRIE DISTRICT-8" SANITARY SEWER LINE AT THE SOUTHEAST CORNER OF THIS TRACT

NOTES:

- ALL RETAINING/DETAINING WALLS, TURN-DOWN CURBS, TREE RETAINING WALLS SHALL BE CLAD IN A MATERIAL TO COMPLEMENT THE MATERIALS AND COLORS WITHIN THIS DEVELOPMENT.
- ALL GROUND BASED HVAC SHALL BE SCREENED WITH LIVE SCREENING OR MASONRY ENCLOSURE. MASONRY ENCLOSURE SHALL BE CLAD IN THE SAME MATERIAL AS THE MAIN BUILDING.
- ALL ROOF-MOUNTED MECHANICAL UNITS AND/OR EQUIPMENT SHALL BE SCREENED FROM VIEW.
- DUMPSTER SCREENING WALL SHALL BE CLAD IN A MATERIAL TO MATCH THE MATERIALS ON THE MAIN BUILDING.
- DUMPSTER SCREENING WALL REQUIRES A SEPARATE BUILDING PERMIT.
- SIGNS REQUIRE A SEPARATE BUILDING PERMIT. ANY SIGNS DEPICTED ON THE SUBJECT SITE PLAN/ELEVATIONS ARE NOT APPROVED AS A PART OF THIS REVIEW AND MUST COMPLY WITH ALL APPLICABLE TOWN REGULATIONS.
- ALL FIRE LANES TO BE DEDICATED AS FIRE LANE, WATER, SANITARY SEWER AND ACCESS EASEMENTS.

Building Data:

Building	All 1 Story
Peak Height	Building 1 31'-2" Building 2 33'-5" Buildings 3-6 31'-7"
Mean Height	Building 1 21'-10" Building 2 25'-7" Buildings 3-6 24'-3"
Building Square Footage	Building 1 9,345 sf Building 2 7,360 sf Building 3 7,200 sf Building 4 3,227 sf Building 5 7,226 sf Building 6 7,233 sf
Total Square Footage	41,591 sf

NOTE:
THE TOWN OF FLOWER MOUND CONSTRUCTION STANDARDS APPLY WHETHER INDICATED ON THESE PLANS OR NOT.

REVIEWED
TOWN OF FLOWER MOUND
Released for Construction
Date _____
Town of Flower Mound
Engineering Services Division

Issue Dates:	Revisions:	Date:
1	1	
2	2	
3	3	
4	4	
5	5	
6	6	

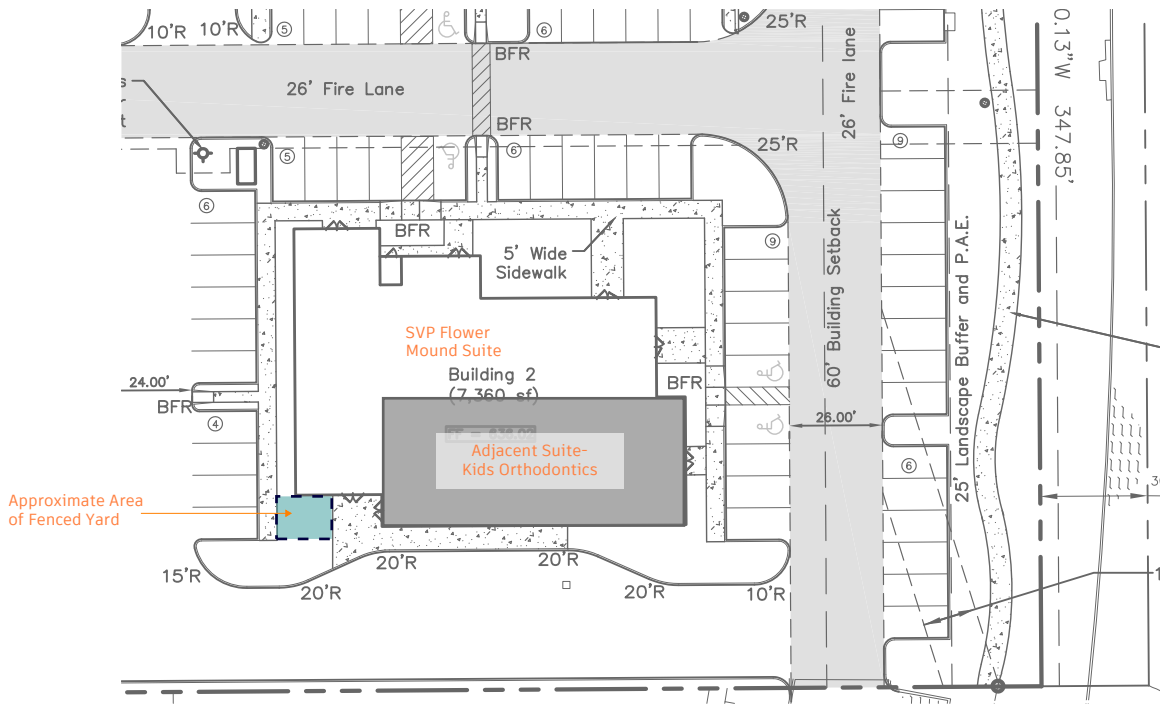
CROSS ENGINEERING CONSULTANTS		
131 S. Tennessee St. McKinney, Texas 75069 972.562.4409 Texas P.E. Firm No. F-3935		
Drawn By:	Checked By:	Scale:
C.E.C.I.	C.E.C.I.	1" = 40'

SITE PLAN
PRAIRIE PLAZA PHASE 2
LOT 1, BLOCK A, PRAIRIE PLAZA
DB Constructors, Inc.
Town of Flower Mound, Texas

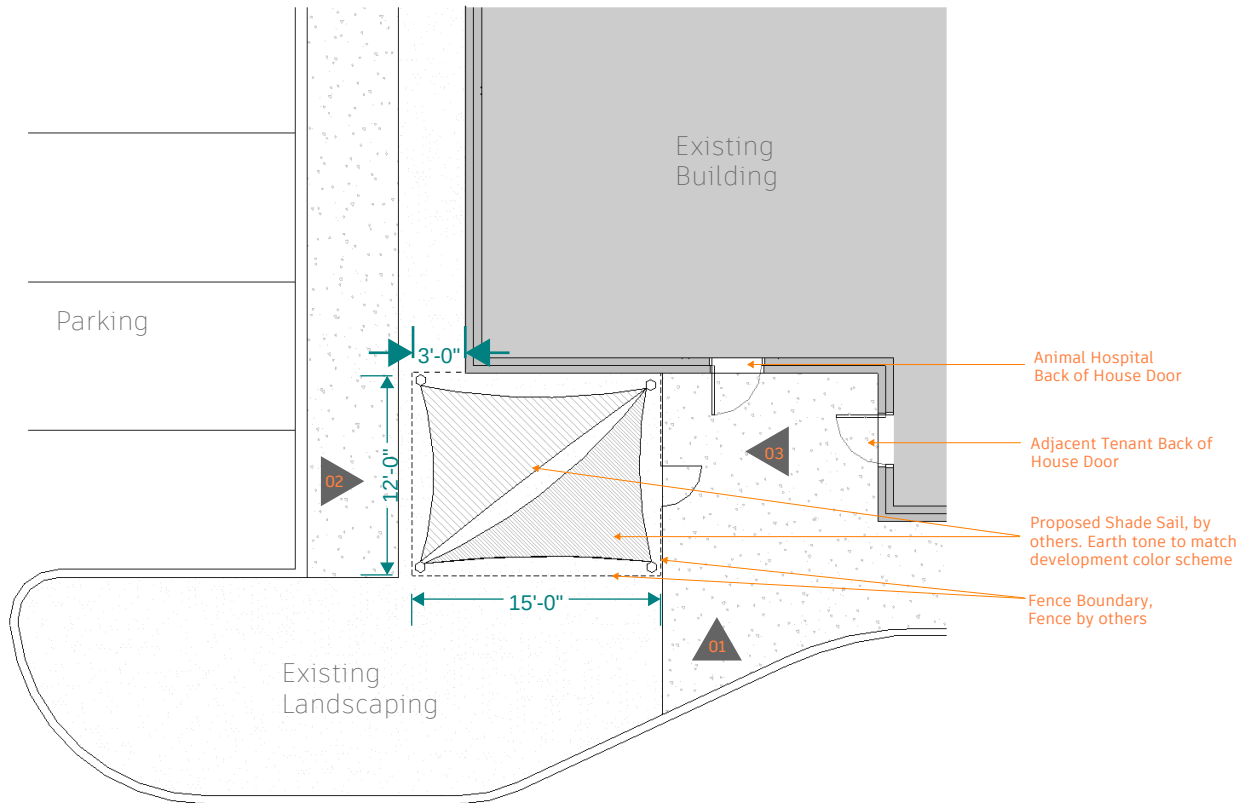
Sheet No.
SP
Project No.
16047

Proposed Yard Enclosure Exhibit A

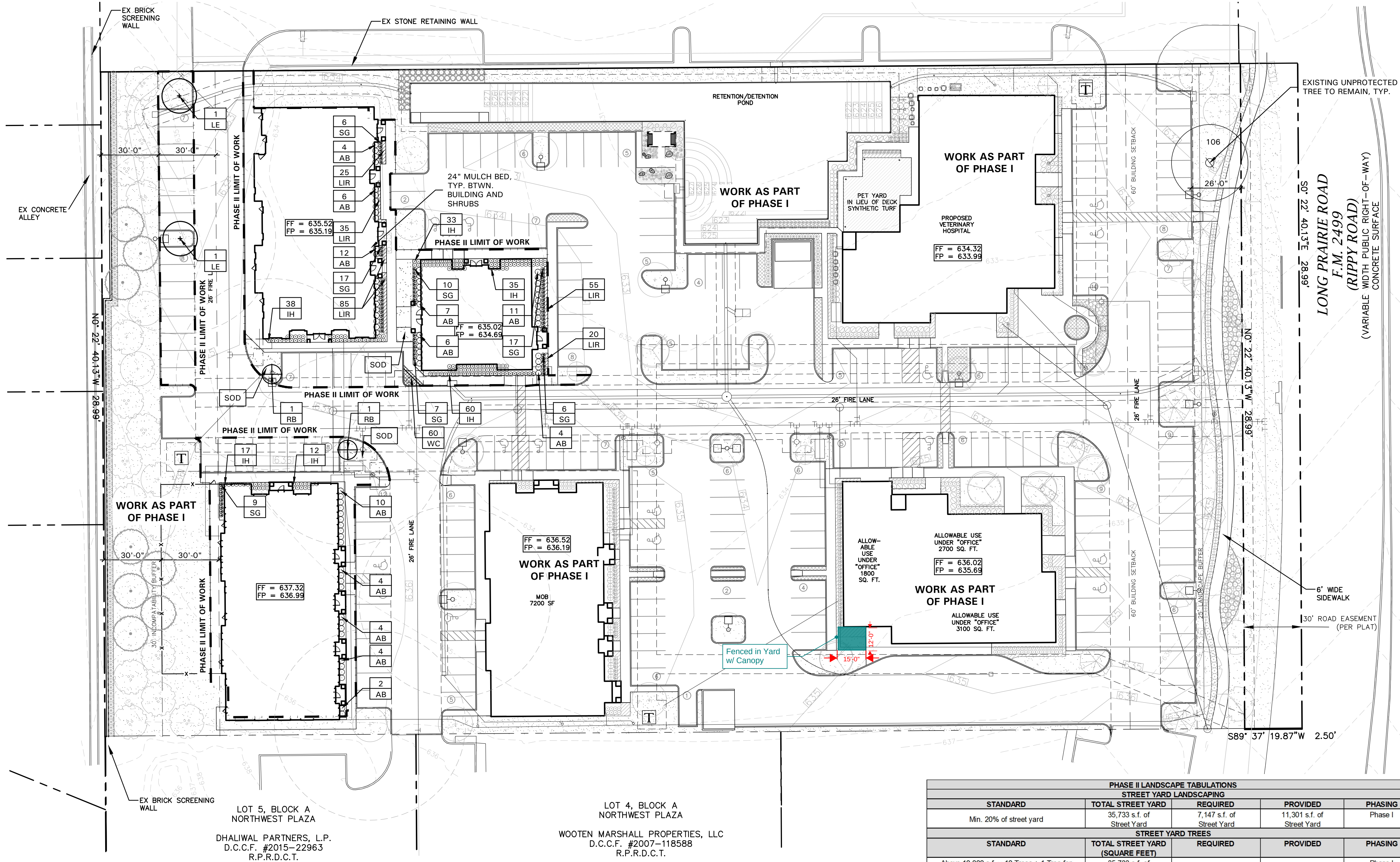
SVP Flower Mound
3901 LONG PRAIRIE ROAD, FLOWER MOUND, TX 75028



N N.T.S.
Site Plan



N N.T.S.
Enlarged Yard Plan



PLANT LIST - PHASE II

SYMBOL	BOTANICAL NAME	COMMON NAME	QTY.	SIZE	REMARKS
LE	<i>Ulmus parvifolia</i> 'Sempervirens'	Lacebark Elm	2	3" cal.	container grown, 12' ht., 4' spread, 4' branching ht., matching
RB	<i>Cercis canadensis</i> 'Oklahoma'	Oklahoma Redbud	2	3" cal.	container grown, 8' ht., 4' spread min.
AB	<i>Abelia grandiflora</i> 'Edward Goucher'	Dwarf Abelia 'Edward Gouchi'	73	5 gal.	container full, 24" spread, 36" o.c.
IH	<i>Raphiolepis indica</i> 'Clara'	Indian Hawthorne 'Clara'	128	5 gal.	container full, 20" spread, 24" o.c.
LIR	<i>Liriope muscari</i> 'Big Blue'	Liriope 'Big Blue'	215	4" pots	container full top of container, 12" o.c.
SG	<i>Salvia greggii</i> 'Red'	Salvia Greggii 'Red'	49	5 gal.	container full, 20" spread 24" o.c.
WC	<i>Euonymus fortunei</i> 'Coloratus'	Wintercreeper	40	4" pots	container (3) 12" runners min., 12" o.c.
SOD	<i>Cynodon dactylon</i>	Common Bermudagrass			refer to notes

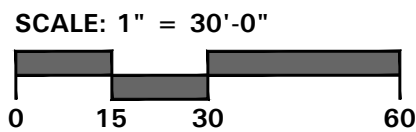
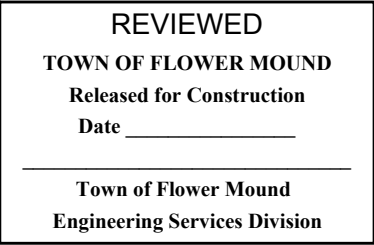
NOTE: ALL TREES SHALL HAVE STRAIGHT TRUNKS AND BE MATCHING WITHIN VARIETIES.
PLANT LIST IS AN AID TO BIDDERS ONLY. CONTRACTOR SHALL VERIFY ALL QUANTITIES ON PLAN.
ALL HEIGHTS AND SPREADS ARE MINIMUMS. ALL PLANT MATERIAL SHALL MEET OR EXCEED REMARKS AS INDICATED.

The Following Plat/Graphic
Case Number **ASP23-0004**
Was Administratively Approved
On Date **03/14/2023**



PHASE II LANDSCAPE TABULATIONS				
STREET YARD LANDSCAPING				
STANDARD	TOTAL STREET YARD	REQUIRED	PROVIDED	PHASING
Min. 20% of street yard	35,733 s.f. of Street Yard	7,147 s.f. of Street Yard	11,301 s.f. of Street Yard	Phase I
STREET YARD TREES				
STANDARD	TOTAL STREET YARD (SQUARE FEET)	REQUIRED	PROVIDED	PHASING
Above 10,000 s.f. = 10 Trees + 1 Tree for every 2,500 s.f. over 10,000 s.f.	35,733 s.f. of Street Yard	20 Trees (3" cal.)	19 Trees (3" cal.) 7 Trees (30 gal.)	Phase I
STREET BUFFER LANDSCAPING				
STANDARD		REQUIRED BUFFER WIDTH	PROVIDED	PHASING
FM 2499		25 ft.	25 ft.	Phase I
STREET BUFFER TREES				
STANDARD	STREET FRONTAGE (LINEAR FEET)	REQUIRED	PROVIDED	PHASING
1 per 30 l.f.	FM 2499 = 348 l.f.	12 Trees (3" cal.)	10 Trees (3" cal.) 6 Trees (30 gal.)	Phase I
PARKING AREA LANDSCAPING				
STANDARD	# OF PARK SPACES	REQUIRED	PROVIDED	PHASING
90 s.f. per 12 spaces	202 Parking Spaces	1,515 s.f.	8,507s.f.	Updated with Phase II
PARKING AREA TREES				
STANDARD	# OF PARK SPACES	REQUIRED	PROVIDED	PHASING
1 per 10 parking spaces ** All parking spaces to be located within 50 ft. of Parking lot tree. *** 30% of the required parking lot trees can be small trees.	202 parking spaces	21 trees (3" cal.)	24 trees (3" cal.) 7 trees (30 gal.)	Updated with Phase II
PARKING AREA SCREENING				
STANDARD		Landscape berm or screening shrubs 3' ht. Screen	PROVIDED	PHASING
All head parking to be screened from street view			Screening shrubs (3' ht.)	Phase I
COMPATABILITY BUFFER LANDSCAPING				
STANDARD	Square Footage	REQUIRED	PROVIDED	PHASING
30 ft. Compatibility Buffer Along West Res. Adj.	Not Applicable	30 ft.	30 ft.	Phase I
One Shade Tree per 400 s.f. of Comp. Buffer	10,435 s.f.	26 Trees (3" cal.)	26 Trees	Phase I
Min. 6' Masonry Wall	Not Applicable	6 ft.	6 ft. masonry wall	Phase I
Understory Screening Plants	Not Applicable	6' Screening Shrubs	6' Screening Shrubs	Phase I
60 ft. Compatibility Buffer Setback	Not Applicable	60 ft.	60 ft.	Phase I

NOTE: ANY TOWN IRRIGATION WITHIN THE R.O.W. THAT MAY BE DAMAGED DURING CONSTRUCTION IS THE CONTRACTOR'S RESPONSIBILITY TO REPAIR PRIOR TO ACCEPTANCE OF THE SITE AND/OR C/O



LANDSCAPE NOTES

- CONTRACTOR SHALL VERIFY ALL EXISTING AND PROPOSED SITE ELEMENTS AND NOTIFY LANDSCAPE ARCHITECT OF ANY DISCREPANCIES. SURVEY DATA OF EXISTING CONDITIONS WAS SUPPLIED BY OTHERS.
- CONTRACTOR SHALL LOCATE ALL EXISTING UNDERGROUND UTILITIES AND NOTIFY LANDSCAPE ARCHITECT OF ANY CONFLICTS. CONTRACTOR SHALL EXERCISE CAUTION WHEN WORKING IN THE VICINITY OF UNDERGROUND UTILITIES.
- CONTRACTOR SHALL PROVIDE A MINIMUM 2% SLOPE AWAY FROM ALL STRUCTURES.
- CONTRACTOR SHALL FINE GRADE AREAS TO ACHIEVE FINAL CONTOURS AS INDICATED. LEAVE AREAS TO RECEIVE TOPSOIL 3" BELOW FINAL FINISHED GRADE IN PLANTING AREAS AND 1" BELOW FINAL FINISHED GRADE IN LAWN AREAS.
- ALL PLANTING BEDS AND LAWN AREAS SHALL BE SEPARATED BY STEEL EDGING. NO STEEL EDGING SHALL BE INSTALLED ADJACENT TO BUILDINGS, WALKS, OR CURBS. CUT STEEL EDGING AT 45 DEGREE ANGLE WHERE IT INTERSECTS WALKS AND CURBS.
- TOP OF MULCH SHALL BE 1/2" MINIMUM BELOW THE TOP OF WALKS AND CURBS.
- ALL LAWN AREAS SHALL BE SOLID SOD BERMUDAGRASS, UNLESS OTHERWISE NOTED ON THE DRAWINGS.
- ALL REQUIRED LANDSCAPE AREAS SHALL BE PROVIDED WITH AN AUTOMATIC UNDERGROUND IRRIGATION SYSTEM WITH RAIN AND FREEZE SENSORS AND EVAPOTRANSPIRATION (ET) WEATHER-BASED CONTROLLERS AND SAID IRRIGATION SYSTEM SHALL BE DESIGNED BY A QUALIFIED PROFESSIONAL AND INSTALLED BY A LICENSED IRRIGATOR.
- CONTRACTOR SHALL PROVIDE BID PROPOSAL LISTING UNIT PRICES FOR ALL MATERIAL PROVIDED.
- CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL REQUIRED LANDSCAPE AND IRRIGATION PERMITS.

MAINTENANCE NOTES

- THE OWNER, TENANT AND THEIR AGENT, IF ANY, SHALL BE JOINTLY AND SEVERALLY RESPONSIBLE FOR THE MAINTENANCE OF ALL LANDSCAPE.
- ALL LANDSCAPE SHALL BE MAINTAINED IN A NEAT AND ORDERLY MANNER AT ALL TIMES. THIS SHALL INCLUDE MOWING, EDGING, PRUNING, FERTILIZING, WATERING, WEEDING AND OTHER SUCH ACTIVITIES COMMON TO LANDSCAPE MAINTENANCE.
- ALL LANDSCAPE AREAS SHALL BE KEPT FREE OF TRASH, LITTER, WEEDS AND OTHER SUCH MATERIAL OR PLANTS NOT PART OF THIS PLAN.
- ALL PLANT MATERIAL SHALL BE MAINTAINED IN A HEALTHY AND GROWING CONDITION AS IS APPROPRIATE FOR THE SEASON OF THE YEAR.
- ALL PLANT MATERIAL WHICH DIES SHALL BE REPLACED WITH PLANT MATERIAL OF EQUAL OR BETTER VALUE.
- CONTRACTOR SHALL PROVIDE SEPARATE BID PROPOSAL FOR ONE YEAR'S MAINTENANCE TO BEGIN AFTER FINAL ACCEPTANCE.

GENERAL LAWN NOTES

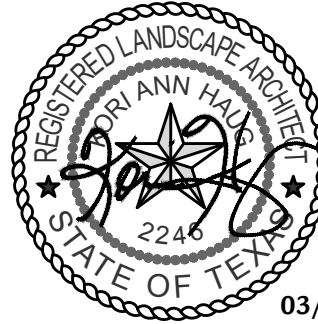
- CONTRACTOR SHALL COORDINATE OPERATIONS AND AVAILABILITY OF EXISTING TOPSOIL WITH ON-SITE CONSTRUCTION MANAGER.
- CONTRACTOR SHALL LEAVE LAWN AREAS 1" BELOW FINAL FINISHED GRADE PRIOR TO TOPSOIL INSTALLATION.
- CONTRACTOR SHALL FINE GRADE AREAS TO ACHIEVE FINAL CONTOURS AS INDICATED ON CIVIL PLANS. ADJUST CONTOURS TO ACHIEVE POSITIVE DRAINAGE AWAY FROM BUILDINGS. PROVIDE UNIFORM ROUNDING AT TOP AND BOTTOM OF SLOPES AND OTHER BREAKS IN GRADE. CORRECT IRREGULARITIES AND AREAS WHERE WATER MAY STAND.
- ALL LAWN AREAS SHALL BE FINE GRADED, IRRIGATION TRENCHES COMPLETELY SETTLED AND FINISH GRADE APPROVED BY THE OWNER'S CONSTRUCTION MANAGER OR LANDSCAPE ARCHITECT PRIOR TO LAWN INSTALLATION.
- CONTRACTOR SHALL REMOVE ALL ROCKS 3/4" DIAMETER AND LARGER, DIRT CLODS, STICKS, CONCRETE SPOILS, ETC. PRIOR TO PLACING TOPSOIL AND LAWN INSTALLATION.
- CONTRACTOR SHALL MAINTAIN ALL LAWN AREAS UNTIL FINAL ACCEPTANCE. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO: MOWING, WATERING, WEEDING, CULTIVATING, CLEANING AND REPLACING DEAD OR BARE AREAS TO KEEP PLANTS IN A VIGOROUS, HEALTHY CONDITION.
- CONTRACTOR SHALL GUARANTEE ESTABLISHMENT OF ACCEPTABLE TURF AREA AND SHALL PROVIDE REPLACEMENT FROM LOCAL SUPPLY IF NECESSARY.

SOLID SOD NOTES

- PLANT SOD BY HAND TO COVER INDICATED AREAS COMPLETELY. ENSURE EDGES OF SOD ARE TOUCHING. TOP DRESS JOINTS BY HAND WITH TOPSOIL TO FILL VOIDS.
- ROLL GRASS AREAS TO ACHIEVE A SMOOTH, EVEN SURFACE. FREE FROM UNNATURAL UNDULATIONS.
- WATER SOD THOROUGHLY AS SOD OPERATION PROGRESSES.
- IF INSTALLATION OCCURS BETWEEN SEPTEMBER 1 AND MARCH 1, OVER SEED BERMUDAGRASS SOD WITH WINTER RYEGRASS, AT A RATE OF FOUR (4) POUNDS PER ONE THOUSAND (1000) SQUARE FEET.



4245 North Central Expy
Suite 501
Dallas, Texas 75205
214.865.7192 office



03/06/23

3901 Long
Prairie Road
Phase 2
PRAIRIE PLAZA
Flower Mound, Texas

Project Number: 16055
Issue Date: 04.03.19
Drawn By: NAY
Checked By: KAH

Revisions	No.	Date:	Detail:
	1.	10/08/19	Town Comments
	2.	06/01/20	Coordination
	3.	07/08/20	Town Comments
	4.	09/25/20	Town Comments
	5.	12/02/21	Town Comments
	6.	02/07/23	Coordination
	7.	03/06/23	Town Comments

Sheet Title:

LANDSCAPE
PLAN

Sheet Number:

L1.01



MATTHEW J. PETERSON, AIA
ARCHITECT / d/b constructors, inc.
2400 GREAT SOUTHWEST PARKWAY
FT. WORTH, TEXAS 76106
817 626-7500

STATUS:
ISSUE FOR PERMIT : 22 MAY 2020
PERMIT COMMENTS : 21 SEPT 2020
TENANT MODS : 30 JUNE 2021
ASP (WINDOW ADD) : 26 JULY 2021

The Following Plat/Graphic
Case Number ASP21-0060
Was Administratively Approved
On Date 08/04/2021

EXTERIOR FINISH MATERIAL SCHEDULE

MATERIAL	MANUFACTURER	PRODUCT NO.	DESCRIPTION
ROOF	GAF	Timberline : Weathered Wood	Asphalt Shingles
ROOF	Mueller	AP Panel : Galvalume	Metal accent Roofs
TRIM / FASCIA	James Hardie & Co.	Hardie Trim Boards : Khaki Brown	Pre-finished trim and fascia
BRICK	ACME	Texas Heritage Modular	Brick
STONE	Texas Stone Designs	Hickory Stack Stone	Manufactured Stone
SIDING / PANEL	James Hardie & Co.	Hardie Siding / Panel : Khaki Brown	Siding & Panel (dormers)
WINDOWS	YKK	Storefront Oil Rubbed Bronze	Storefront w/Low-E Tint
ENTRY DOORS	Adooring Designs	S-1021 Square	Iron Entry Doors
EGRESS DOORS	TruDoor	Insulated Hollow Metal Door : Khaki Brown	Rear Egress Doors

Owner / GC retains the right to match an equivalent manufacturer to that which is listed above

ELEVATIONS : MATERIAL CALCULATIONS TABLE
BUILDING 2
REVISED 08-Jul-20 26-Jul-21

	NORTH*	SOUTH*	EAST*	WEST*
TOTAL FAÇADE SQUARE FOOTAGE :	1817	2134	1733	1180
FACED SQUARE FOOTAGE (EXCLUSIVE OF DOORS/WINDOWS)	1070	1818	1179	829
DOORS AND WINDOWS SQ. FT.	747	316	554	351
PRIMARY MASONRY TOTALS (%)	80.19%	81.74%	100.00%	96.62%
BRICK SQ. FT.	616	1018	911	524.5
STONE SQ. FT.	242	468	268	276.5
SECONDARY MASONRY TOTALS (%)	19.81%	18.26%	0.00%	3.38%
FIBERCEMENT (AKA HARDIPLANK) SQ. FT.	212	332	0	28

*All numbers within the column are in square feet (SQ. FT.), U.N.O.



Shade Sail, by others. Earth tone to match development color scheme

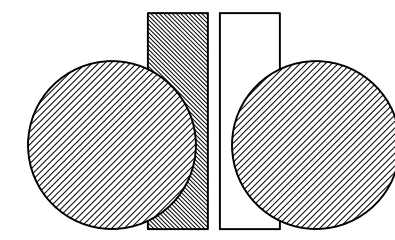
BUILDING 2
3901 LONG PRAIRIE ROAD
FLOWER MOUND, TX

Shade Structure, by others
Powder Coated Aluminum Picket Fence, by others



View from main street

Awning at front entry, by others. To match original design intent of existing building awnings



d/b constructors inc.
DESIGN-BUILD CONTRACTOR
2400 GREAT SOUTHWEST PARKWAY
FORT WORTH, TEXAS 76106
817 626-7500
817 626-4305 FAX

SHELL RETAIL & OFFICE
for
PRAIRIE PLAZA

LONG PRAIRIE ROAD
FLOWER MOUND, TX

Drawing Number

A-201

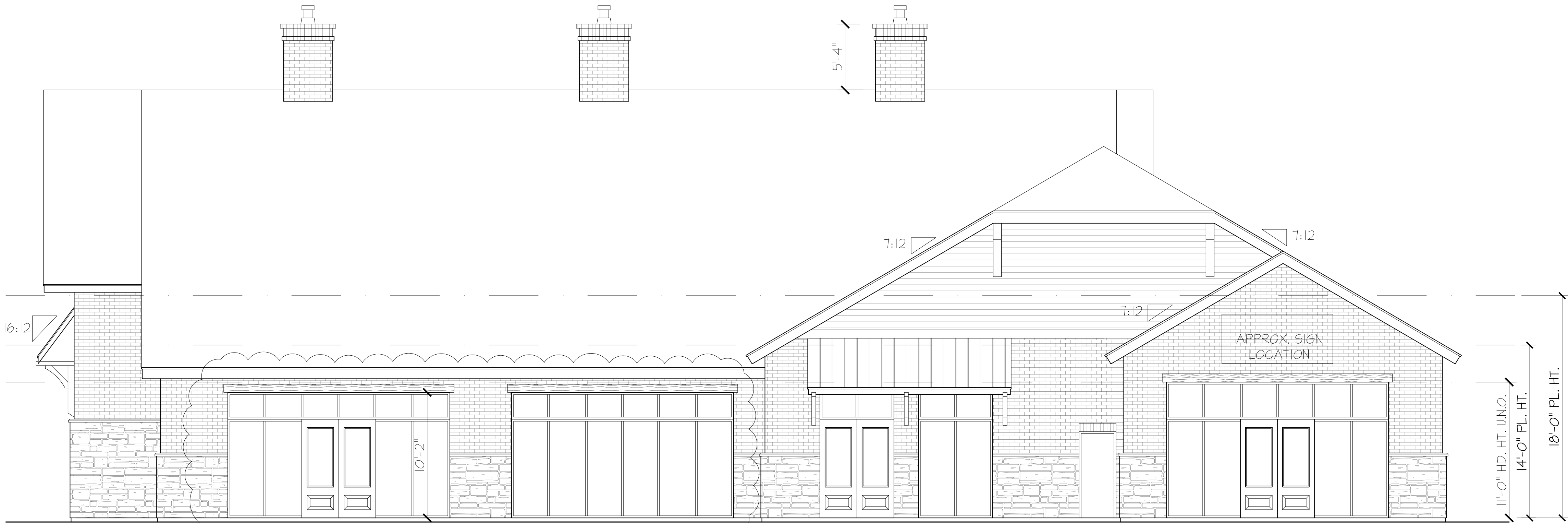
The Following Plat/Graphic
Case Number ASP21-0060
Was Administratively Approved
On Date 08/04/2021



MATTHEW J. PETERSON, AIA
ARCHITECT / d/b constructors, inc.
2400 GREAT SOUTHWEST PARKWAY
FORT WORTH, TEXAS 76106
817 626-1300

STATUS:
ISSUE FOR PERMIT : 22 MAY 2020
PERMIT COMMENTS : 21 SEPT 2020
TENANT MODS : 30 JUNE 2021
ASP (WINDOW ADD) : 26 JULY 2021

BUILDING 2
3901 LONG PRAIRIE ROAD
FLOWER MOUND, TX



CHANGE FROM P&Z
APPROVED PLANS,
WINDOWS WERE LOWERED
TO 10'-2" HEAD HEIGHT TO
ACCOMMODATE REQUIRED
STRUCTURAL MEMBERS

2 NORTH ELEVATION

SCALE: 3/16" = 1'-0"

EXTERIOR FINISH MATERIAL SCHEDULE

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ROOF	Mueller	AP Panel : Galvalume	Metal accent Roofs
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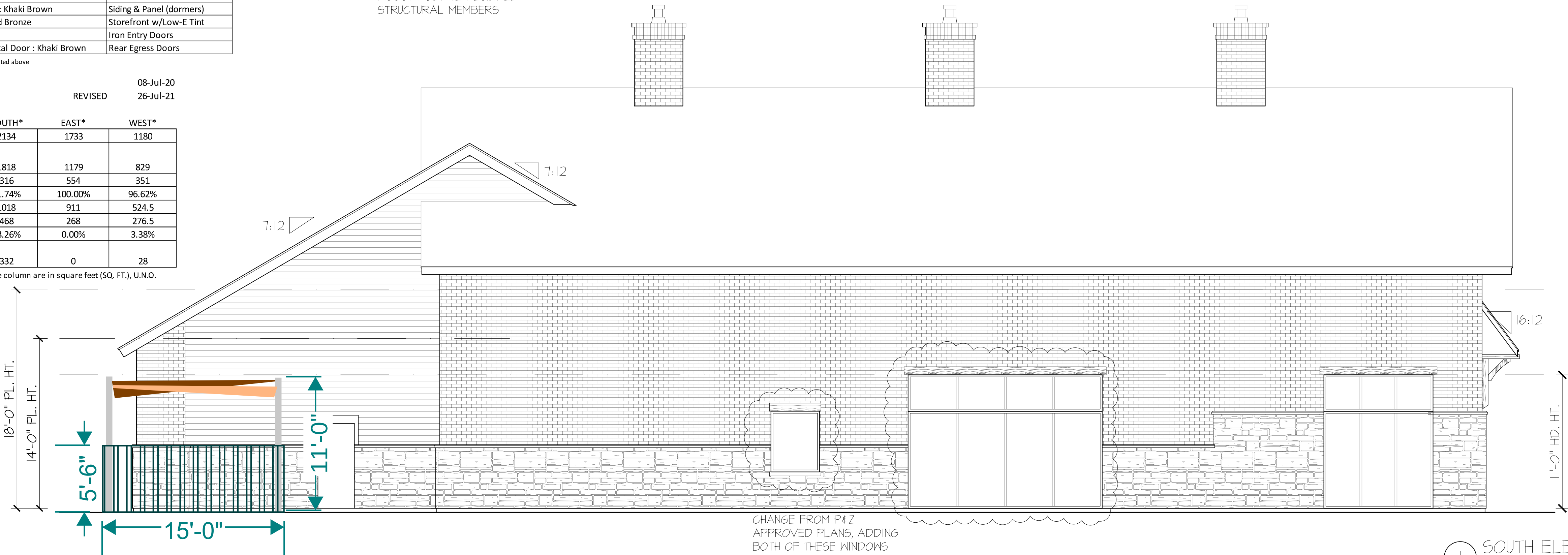
Owner / GC retains the right to match an equivalent manufacturer to that which is listed above

ELEVATIONS : MATERIAL CALCULATIONS TABLE
BUILDING 2

08-Jul-20
REVISED 26-Jul-21

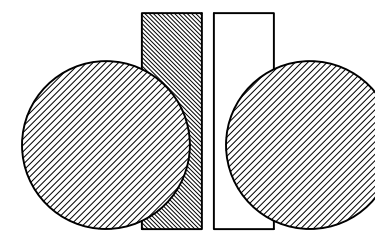
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FIBERCEMENT (AKA HARDIPLANK) SQ. FT.	212	332	0	28

*All numbers within the column are in square feet (SQ. FT.), U.N.O.



1 SOUTH ELEVATION

SCALE: 3/16" = 1'-0"



d/b constructors inc.
DESIGN-BUILD CONTRACTOR
2400 GREAT SOUTHWEST PARKWAY
FORT WORTH, TEXAS 76106
817 626-1300
817 626-4305 FAX

SHELL RETAIL & OFFICE

for

PRAIRIE PLAZA

LONG PRAIRIE ROAD
FLOWER MOUND, TX

Drawing Number

A-202



TOWN COUNCIL AGENDA L.2. REGULAR ITEM(S)

DATE: March 4, 2024
FROM: Matthew Hotelling, Assistant Director of Public Works/Transportation
ITEM: **Public Hearing to consider a request for a Master Plan Amendment (MPA23-0008 - Scenic Drive) to amend Section 7.0, Thoroughfare Plan, to consider a request to keep Scenic Drive as a Rural Collector street as shown on the Town's Thoroughfare Plan or consider an amendment to the classification of Scenic Drive. (Planning and Zoning recommended approval to keep the existing classification by a vote of 6 to 0 at its February 26, 2024, meeting. Transportation Commission recommended approval to keep the existing classification by a vote of 6 to 0 at its December 12, 2023, meeting.)**

BACKGROUND: The Town Council asked staff to look at Scenic Drive to see if there is a possibility of reducing the cross-section or changing the Master Thoroughfare Plan to reduce the cross-section of Scenic Drive. The understanding is that the goal was to see if having a smaller cross-section could save trees and preserve the rural scenic nature of this area of town.

This application was presented to the Transportation Commission (TRC) on December 12, 2023. The TRC meeting can be viewed at: [Dec 12, 2023 Transportation Commission](#). The TRC Agenda packet can be viewed at: [TRC Scenic Drive Agenda Item](#).

This application was presented to the Planning and Zoning Commission (P&Z) on February 26, 2024. The P&Z meeting can be viewed at: [Feb 26, 2024, Planning and Zoning meeting](#). The P&Z Agenda packet can be viewed at: [P&Z Scenic Drive Agenda Packet](#).

Currently, there is a proposed development to the west of Scenic Drive. As part of that request, a traffic impact analysis (TIA) was conducted. As part of that TIA, a section was devoted to the review of the Thoroughfare Plan. An excerpt from that TIA is part of the TRC packet. The result of the TIA regarding the thoroughfare plan assessment for Scenic Drive was to keep the Rural Collector classification.

TRC/P&Z were given the options of keeping the standard cross-section of Scenic Drive or creating a modified cross-section of the Rural Collector with smaller bike and travel lanes. Discussion was held regarding whether the roadway was required to be centered in the right of way (ROW) in order to save trees or reduce the amount of drainage area needed. Those are items that can be addressed during the design of the roadway. Similar to how Wichita Trail has large bar ditches in some locations and smaller bar ditches in others.

The potential modification to Scenic Drive was to reduce the travel lanes from 12 foot lanes to 10 foot lanes and reduce the bike lane from a 5 foot lane to a 4 foot lane. This reduction saves 6 feet of pavement. The positives are narrower lanes can help control speeds. Narrower lanes, however, have the disadvantage of having less space to maneuver in the case of an emergency. Having narrower bike lanes will, in general, make the bicyclist more uncomfortable, but having some separation is better than no separation. For Scenic Drive from Kensington Court to the south, there

are equestrians that ride this section of Scenic Drive that would benefit from having a wider pavement to be further away from the travel lanes. If the design allows for a reduction in the amount of bar ditch required, it will give the Rural Collector more of a Local Residential Estate feel while still maintaining the connectivity of the thoroughfare street. Currently, there are no plans for the construction of widening Scenic Drive south of the two northern 90 degree bends.

TRC/P&Z expressed concerns about the volume of trailers and cyclists that use this section of Scenic Drive, as well as the narrowness of the road with a reduced cross-section.

BOARD REVIEW/CITIZEN FEEDBACK: In 2016, the TRC recommended denial of that request to change Scenic Drive. In 2023, TRC recommended keeping the cross-section as the status quo in the design standards without modification. The reason for the recommendation is the small lanes and the number of trailers along this stretch of Scenic Drive would be as uncomfortable as the roadway is today. TRC discussed concerns about the sharp 90 degree bends with the smaller cross-sections. No citizens spoke at the TRC meeting.

P&Z recommended keeping the existing cross-section as the status quo in the design standards without modification at its February 26, 2024, meeting. P&Z discussed large trailers, especially horse trailers, and the safety of bicyclists as reasons for keeping the cross-section. It was mentioned that there is a much better feeling of safety on the cross-section of Wichita Trail, which is the design standard for a Rural Collector. A discussion was held about cyclists riding in the middle of the roadway in order to be seen on Scenic Drive, whereas on Wichita Trail the bike lane provides the ability to ride out of the traffic lanes. No citizens spoke at the P&Z meeting.

ALTERNATIVES: Keep Scenic Drive as is; create a modified Rural Collector cross-section; or change the classification.

FISCAL IMPACT: None

LEGAL REVIEW: No Legal Review as no ordinance was drafted for this item. If a modification to the Thoroughfare Plan is chosen, a future Consent item with an ordinance based on the approved language by Council will be written and reviewed by the Legal Department.

ATTACHMENTS:

1. Thoroughfare Plan - 02-05-2024

DRAFT MOTION: Move to keep Scenic Drive as the existing Rural Collector cross-section.

**TOWN OF FLOWER MOUND
THOROUGHFARE PLAN**



0 1,500 3,000 6,000
Scale in Feet

KimleyHorn

February 5, 2024

Functional Street Classifications

- Roundabout
- Diamond Interchange
- Grade Separation
- Major Arterial
- Greenway Urban Arterial
- Greenway Rural Arterial
- Urban Minor Arterial w/Bike Lane
- Urban Minor Arterial w/On-Street Parking
- Urban Minor Arterial
- Urban Minor Arterial Undivided
- Urban Collector
- Rural Collector
- Service Road
- MU - Arterial
- MU - Collector
- MU - Couplet
- MU - Dam Road

