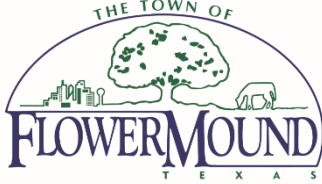


Town Council Regular Meeting and Work Session



March 17, 2025
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

In accordance with section 551.127 of the Texas Government Code (Open Meeting Act) this meeting will be an in-person meeting with either a member of Town Council, staff, or consultant, participating by video conference. The public meeting location will be Flower Mound Town Hall, 2121 Cross Timbers Rd Flower Mound, Texas. The Mayor, as presiding officer of Town Council, and a quorum of the Town Council will be physically present at this location. The location where the Mayor is physically present shall be open to the public during the open portions of the meeting.

Comments regarding any agenda item can be sent to the Town Council by emailing towncouncil@flowermound.gov 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."

1. Pledges - Webelos Cub Scout Pack 392

D. 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

E. ANNOUNCEMENTS

1. Announcements from the mayor and council members

F. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects

3. Organizational Updates
 - a. Employee Service Recognition

G. 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).

H. COORDINATION OF CALENDARS

1. March 20 - Work Session
2. April 7 - Regular Meeting

I. 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 - 3/3 - Consider approval of the minutes from a regular meeting held on March 3, 2025.
2. PSA - Timber Creek Stabilization - Consider approval of a Professional Services Agreement with Freese and Nichols, Inc., for the design phase services associated with the Timber Creek Stabilization at Timber Creek Road project, in the amount of \$99,318.00; and authorization for the Mayor to execute same on behalf of the Town.
3. Fire Hydrant Replacement Services - Consider approval of a utility service proposal with Rey-Mar Construction LLC. for the replacement of fire hydrants, in the amount of \$138,481.28; and authorization for the Mayor to execute same on behalf of the Town.
4. CAC Outdoor Pool Resurfacing Project - Consider approval to purchase materials and installation for the resurfacing of the Community Activity Center's outdoor pool from Petra Chemical Company, utilizing their Buy Board Contract 701-23; in the amount of \$209,430.00.
5. Promoter Line Contract - 2025 Fall Festival - Consider approval of a Professional Services Contract with Promoter Line, Inc., to provide professional event production and planning services for the 2025 Fall Festival, in an amount not-to-exceed \$190,000.00 and authorization for the Mayor to execute same on behalf of the Town.
6. Lease amendment for cellular site - Consider approval of the first lease amendment with Cellco Partnership d/b/a Verizon Wireless for the Tower/Ground lease dated October 16, 2008 for antenna and ground space at the elevated water storage at 3810 Bruton Orand Boulevard, and authorization for the Mayor to execute same on behalf of the Town.

J. REGULAR ITEM(S)

1. 2024 ACFR - Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2024.

2. Green Waste Pilot Program Results - Discuss the results of the 2024 Green Waste Pilot Program and provide staff with direction for the next steps.

K. WORK SESSION ITEM

1. Eden Ranch - Work session discussion on the proposed Eden Ranch development project. Currently associated project numbers are MPA24-0006 and ZPD24-0006.

L. BOARDS/COMMISSIONS

Discuss and consider resignations, appointments, evaluations, reassignments, discipline, or dismissals for the following boards or commissions: Animal Services Board, Capital Improvements Advisory Committee, Community Development Corporation, 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), Tax Increment Reinvestment Zone Number (TIRZ #2), Transportation Commission, and Veterans Liaison Board.

M. CLOSED MEETING

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

1. Consultation with Town Attorney.
 - a. Update regarding proposed Texas legislation.
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, including real property located north of FM 1171 and west of US 377, 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, 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, construction of public improvements, performance related to certain incentive agreements, requests for incentive related proposals to develop real property, 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 14, 2025, at 9:00 a.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

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



March 3, 2025
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

6:00 p.m.

DRAFT MINUTES

A. CALL TO ORDER

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

Cheryl Moore, Mayor
Ann Martin, Mayor Pro Tem
Adam Schiestel, Deputy Mayor Pro Tem
Chris Drew, Councilmember Place 2
Brian Taylor, Councilmember Place 3
Janvier Werner, Councilmember Place 4

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

Theresa Scott, Town Secretary
James W. Childers, Town Manager
Bryn Meredith, Town Attorney
Tommy Dalton, Assistant Town Manager
Tiffany Bruce, Assistant Town Manager/Town Engineer
Lexin Murphy, Director of Development Services
John Zagurski, Chief Financial Officer
Chuck Jennings, Director of Parks and Recreation

B. INVOCATION

Chaplain McNamer gave the invocation.

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

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

Mayor Moore led the pledges.

D. PUBLIC COMMENT

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

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

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

- Speakers are limited to 3 minutes, a tone will sound at 30 seconds left and when time has expired, and times may be adjusted by the mayor
- Speakers must address their comments to the Town Council
- Please state your name and address when speaking

Names listed below don't necessarily reflect the order in which each person spoke and all addresses are located in Flower Mound unless otherwise indicated.

	Speaker name and address	Subject (as written on the form)
1.	Damaris McCalley, 3725 Raintree	Gas pipes
2.	Tyler Radbourne, 7400 Cross Timbers Rd	Eden Ranch - ask for work session
3.	Jimmy Archie, 2800 Lakeside Parkway	Open house for 3111 Sunset
4.	Fred Vincent, 3933 Bordeaux Cir	Environment
5.	Clare Harris, 416 Northwood Dr	Community events
10.	Tim Whisenant, 2300 Olympia	Environmental initiative; Bond initiative

** Indicates person did not wish to speak*

E. ANNOUNCEMENTS

1. Announcements from the mayor and council members
There were no announcements.

F. TOWN MANAGER'S REPORT

1. Capital Improvement Projects
2. Economic Development Projects
3. Organizational Updates
Mr. Childers pointed out that it's the Town's roll to provide the public with factual information regarding the bond program.

G. FUTURE AGENDA ITEM(S)

The Council discussed having a future work session to discuss the proposed plans for the Eden Ranch development, as requested by the applicant (Tyler Radbourne) during public comment.

At least three members of the Council agreed to create a future agenda item for this purpose, with the goal of providing feedback to the applicant.

H. COORDINATION OF CALENDARS

Mayor Moore confirmed that all members of Council plan to be at the following meetings.

1. March 17 - Regular Meeting
2. March 20 - Work Session

I. CONSENT ITEM(S)

ACTION: Adam Schiestel moved to approve Consent items 1-13 as presented in the agenda caption. Ann Martin seconded the motion.

AYES: Ann Martin, Adam Schiestel, Chris Drew, Brian Taylor, Janvier Werner

NAYS: None

ABSTAIN: None

RESULT: 5 : 0

1. Minutes - 2/17 & 2/20 - Consider approval of the minutes from a regular meeting held on February 17, 2025, and a work session held on February 20, 2025.
2. Canceling General Election - Consider approval of an Ordinance of the Town of Flower Mound, Texas canceling the May 3, 2025, General Election and declaring each unopposed candidate elected to Office, and providing an effective date.

ORDINANCE 09-25

AN ORDINANCE OF THE TOWN OF FLOWER MOUND, TEXAS, ACCEPTING THE CERTIFICATE OF UNOPPOSED CANDIDATES FOR THE OFFICES OF MEMBER OF THE COUNCIL, PLACE 1, AND MEMBER OF THE COUNCIL, PLACE 3; CANCELLING THE MAY 3, 2025 GENERAL ELECTION AND DECLARING EACH UNOPPOSED CANDIDATE ELECTED TO OFFICE; PROVIDING FOR POSTING OF NOTICE; AND PROVIDING AN EFFECTIVE DATE.

3. Wood Chipper Purchase - Parks Division - Consider approval of the purchase of a Bandit Intimidator 15 XPC Trailer Mounted Wood/Brush Chipper per Town specifications and vendor quote in the amount of \$59,030.40 utilizing the Sourcewell Cooperative Contract #051119-BAN.
4. Purchase vehicle/equipment (2) - Animal Services - Consider approval of purchasing (2) Animal Services F350 with equipment package as per Town of Flower Mound specifications and vendor estimate from Sam Packs 5 Star Ford and Defender Supply in the amount of \$151,102.14.

5. Purchase vehicle/equipment (5) - Police - Consider approval of the purchase of five (5) new 2025 Ford Utility PPV-Hybrid Police Pursuit Vehicles with Equipment Installed per Town of Flower Mound Specifications and Vendor Quote from Sam Pack's 5 Star Ford and Upfit Equipment/Installation Quotes with Specifications from Defender Supply for Police Services in the amount of \$412,438.00.
6. Purchase K9 vehicle/equipment - Police - Consider approval of the purchase of one (1) new 2025 Chevy Tahoe PPV Police Pursuit Vehicle with Upfit Equipment Installed per Town of Flower Mound Specifications and Vendor Quote from Lake Country Chevrolet with Upfit Police/K9 Equipment/Installation Quotes with Specifications from Defender Supply for Police Services in the amount of \$93,327.70.
7. Purchase vehicle/equipment (3) - Police - Consider approval of the purchase of three (3) new 2025 Ford Utility PPV Hybrid Police Pursuit vehicles with spotlight installed per Town of Flower Mound specifications and vendor quote from Sam Pack's 5 Star Ford in the amount of \$150,428.00.
8. Purchase vehicles (3) - Police SRO's - Consider approval of the purchase of equipment/installation with quotes and specifications from Defender Supply to upfit three (3) new 2025 Ford Utility PPV Hybrid Police Pursuit Vehicles for Police Services for one (1) SRO Supervisor and two (2) new SRO officer vehicles in the amount of \$106,841.21.
9. Purchase Dump Truck (2) - Consider approval of the purchase of two 2026 International 33K lb. GVWR Dump Trucks from Southwest International Trucks in the amount of \$240,461.98 utilizing the BuyBoard Cooperative Contract # 723-23.
10. 2025 US Army Corps of Engineer (USACE) Contract - Consider approval of the 2025 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.
11. Change Order 1 - Oak Street Lift Station and Forcemain Phase IV - Consider approval of Change Order No. 1 for the Oak Street Lift Station and Forcemain Phase IV project, amending the contract with Fort Worth Civil Constructors LLC to provide an increase to the contract in the amount of \$84,069.66.
12. Historical Item Loan - Gibson Grant Log House - Consider approval of a Historical Items Collection Loan for several items at the Gibson Grant Log House; authorizing the Town of Flower Mound to enter into a loan agreement.

13. Historical Items Donation - Consider approval of the donation of several historical items; authorizing the Town of Flower Mound to accept items into their collection.

J. REGULAR ITEM(S)

1. Park Naming Recommendation - Consider approval of the naming of the Veterans Plaza area at Peters Colony Memorial Park as the Douglas A. Brown Veterans Plaza. (The Parks Board recommended approval by a vote of 6 to 0 at the February 6, 2025 meeting.)

Mr. Jennings gave a presentation identifying or noting:

- park background
- master plan rendering
- recommendation

Si Simonson, Veterans Liaison Board Chair, offered remarks regarding Mr. Brown's service.

ACTION:

Ann Martin moved to approve J.1. as presented in the agenda caption, and to include Mr. Brown's title (Chief Warrant Officer Douglas A. Brown Veterans Plaza). Janvier Werner seconded the motion.

AYES:

Ann Martin, Adam Schiestel, Chris Drew, Brian Taylor, Janvier Werner

NAYS:

None

ABSTAIN:

None

RESULT:

5 : 0

2. Proclamation - Doug Brown - Special recognition proclamation to Douglas A. Brown.

Mayor Moore recited and presented Mr. Brown with a Proclamation to coincide with the Veterans Park being named after him.

3. Z25-0001 - Sunrise Circle Lot 24, Block 1 - Public Hearing to consider an ordinance amending the zoning (Z25-0001- Sunrise Circle Lot 24, Block 1) from Interim Holding (IH) uses to Single Family District-10 (SF-10) uses. The property is generally located east of Stonecrest Road and south of Sunrise Circle. (PZ recommended approval by a vote of 6 to 0 at its February 24, 2025, meeting.)

Ms. Murphy gave a presentation identifying or noting:

- general and detailed location
- land use and zoning
- plat

- site photo

Mayor Moore opened the public hearing at 6:48 p.m. No one spoke. Mayor Moore closed the public hearing at 6:48 p.m.

ORDINANCE NO. 10-25

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 .44 ACRES OF LAND BEING ALL OF LOT 24, BLOCK 1 OF THE SUNRISE CIRCLE ESTATES ADDITION, DENTON COUNTY, TEXAS, FROM IH INTERIM HOLDING DISTRICT TO SF-10 SINGLE FAMILY DISTRICT-10 IN ACCORDANCE WITH THE TOWN'S MASTER PLAN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

4. LDR25-0001 - Land Use Update - Public Hearing to consider an ordinance amending the Land Development Regulations (LDR25-0001 - Land Use Update) by amending Chapter 82 "Development Standards," Chapter 90 "Subdivisions," Chapter 98 "Zoning," and Appendix A "Fees," related to clarifying and adding exception provisions for setback and landscaping standards, clarifying lot width and depth standards, adding turnaround standards for gated entry of private subdivisions, amending setback standards within the Campus Commercial and Campus Industrial districts, updating accessory dwelling standards, adding standards for parking lot lights, and updating fees related to land development within the Town. (PZ recommended approval by a vote of 6 to 0 at its February 24, 2025, meeting.)

The Town Council convened into closed session at 6:48 p.m. per 551.071 to discuss this item with the Town Attorney and reconvened into an open meeting at 8:20 p.m. No action taken.

Ms. Murphy gave a presentation identifying or noting:

- General overview - changes in 4 sections
 - Chapter 82 - Dev. Standards

- Chapter 90 - Subdivisions
- Chapter 98 - Zoning
- Appendix A - Fee schedule

and she responded to questions from Council regarding:

- minimum setback widths
- flag lots

Mayor Moore opened the public hearing at 8:36 p.m. No one spoke. Mayor Moore closed the public hearing at 8:36 p.m.

ORDINANCE 11-25

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING CHAPTER 82, "DEVELOPMENT STANDARDS," CHAPTER 90, "SUBDIVISIONS," CHAPTER 98, "ZONING," AND APPENDIX A, "FEE SCHEDULE," OF SUBPART B, "LAND DEVELOPMENT REGULATIONS," OF THE CODE OF ORDINANCES, TOWN OF FLOWER MOUND, TEXAS, BY CLARIFYING AND ADDING EXCEPTION PROVISIONS FOR SETBACK AND LANDSCAPING STANDARDS, CLARIFYING LOT WIDTH AND DEPTH STANDARDS, ADDING TURNAROUND STANDARDS FOR GATED ENTRY OF PRIVATE SUBDIVISIONS, AMENDING SETBACK STANDARDS WITHIN THE CAMPUS COMMERCIAL AND CAMPUS INDUSTRIAL DISTRICTS, UPDATING ACCESSORY DWELLING STANDARDS, ADDING STANDARDS FOR PARKING LOT LIGHTS, AND UPDATING FEES RELATED TO LAND DEVELOPMENT WITHIN THE TOWN; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

ACTION:	Brian Taylor moved to approve J.4. as presented in the agenda caption. Janvier Werner seconded the motion.
AYES:	Ann Martin, Adam Schiestel, Chris Drew, Brian Taylor, Janvier Werner
NAYS:	None
ABSTAIN:	None
RESULT:	5 : 0

K. **BOARDS/COMMISSIONS**

No action taken.

L. **CLOSED MEETING**

Mayor Moore announced that the Town Council is convening into a closed meeting at 8:36 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. Private drainage improvements
 - b. Legal advice regarding the Town's CDBG, SPAN for transportation, and Residential Rehab programs.
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, including real property located north of FM 1171 and west of US 377, 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, 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, construction of public improvements, performance related to certain incentive agreements, requests for incentive related proposals to develop real property, 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.

M. RECONVENE

The Town Council reconvened into an open meeting at 9:56 p.m., to take no action on the above items.

N. ADJOURN

Mayor Moore adjourned the meeting at 9:56 p.m. and all were in favor.

TOWN OF FLOWER MOUND, TEXAS

CHERYL MOORE, MAYOR

ATTEST:

THERESA SCOTT, TOWN SECRETARY



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

DATE: March 17, 2025
FROM: Blake Hummel, Senior Project Engineer
ITEM: **Consider approval of a Professional Services Agreement with Freese and Nichols, Inc., for the design phase services associated with the Timber Creek Stabilization at Timber Creek Road project, in the amount of \$99,318.00; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: This phase of the Timber Creek Stabilization at Timber Creek Road project includes the removal of an existing aerial water main crossing of Timber Creek with associated infrastructure and replacement of approximately 400-linear foot of bored 12-inch water main cased underneath Timber Creek along Timber Creek Road just west of Rollo Court.

A separate proposal for the remaining erosion protection of the Timber Creek Road bridge and creek would be the second phase of this project anticipated to begin design in October when the remaining project funds are obtained.

The scope of the Professional Services Agreement includes the preparation of design survey, design plans, contract specifications and record drawings.

Construction is estimated to begin in Winter 2025.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: The decision not to approve the proposed Professional Services Agreement for design would postpone the design for the realignment of the existing aerial water main crossing Timber Creek. The existing aerial water main crossing has been severely eroded beyond the original abutments and could be significantly damaged if any larger debris hits the water main.

FISCAL IMPACT: \$99,318.00

Proposed Expenditure/(Revenue)
\$99,318.00

Account Number(s):
610-590-98925-6070

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 - Freese and Nichols, Inc.
2. Form 1295 (Internal Use)

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

THE STATE OF TEXAS §
COUNTY OF DENTON §

**PROFESSIONAL SERVICES AGREEMENT WITH
FREESE AND NICHOLS, INC.**

This contract is entered into on this 17th day of March, 2025, 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 **Freese and Nichols, Inc.**, (“hereinafter referred to as “CONSULTANT”) whose address is 101 S. Locust Street, Suite 202, Denton, Texas 76102.

RECITALS

WHEREAS, TOWN desires to obtain professional services from CONSULTANT relative to design and providing construction documents for the Timber Creek Stabilization at Timber Creek Road 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 Timber Creek Stabilization at Timber Creek Road 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 Ninety-Nine Thousand Three Hundred Eighteen No/100 Dollars (\$99,318.00). 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@flowermound.gov

The following policies and coverage shall be required:

1. Worker's Compensation Insurance (as required by law) with the policy endorsed to provide a waiver of subrogation as to TOWN; such policy to provide for Employers' Liability Insurance of not less than \$100,000.00 for

each accident, \$100,000.00 disease-each employee, \$500,000.00 disease-policy limit;

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

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

- B. Each insurance policy to be furnished by CONSULTANT shall include the following conditions by endorsement to the policy
 1. The TOWN shall be named as an additional insured on the Commercial General Liability policy, by using endorsement CG2026 or broader;
 2. The TOWN shall also be named as an additional insured as to all other applicable coverage save and except the Worker's Compensation Insurance and Professional Liability Insurance;
 3. Each policy will require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to TOWN by certified mail to:

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

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

4. The term "Owner" or "TOWN" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of TOWN and the individual members, employees and agents thereof in their official capacities, and/or while acting on behalf of TOWN;
 5. The policy phrase "Other Insurance" shall not apply to TOWN where TOWN is an additional insured on the policy; and
 6. All provisions of the Contract concerning liability, duty and standards of care together with the indemnification provision shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- C. Concerning insurance to be furnished by CONSULTANT, it is a condition precedent to acceptability thereof that:
1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by CONSULTANT. The TOWN's decision(s) thereon shall be final;
 2. All policies are to be written through companies duly approved to transact that class of insurance in the State of Texas; and
 3. All liability policies required herein, save and except Professional Liability Insurance, shall be written with an "occurrence" basis coverage trigger.
- D. CONSULTANT agrees to the following:
1. CONSULTANT hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against TOWN, it being the intention that the insurance policies shall protect all parties to this Contract and be primary coverage for all losses covered by the policies;

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

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

IX. **Right to Inspect Records**

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

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

X. **Successors and Assigns**

TOWN and CONSULTANT each bind themselves and their successors, executors, administrators and assigns to the other party to this Contract and to the successors,

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

XI.

CONSULTANT's Liability

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

XII.

Indemnification

THE PROVISIONS OF THIS SECTION ARE SUBJECT TO THE LIMITATIONS OF TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOVERNMENT CODE SECTION 271.904 WILL STILL NAME TOWN AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY. EXCEPT FOR CLAIMS COVERED BY THE PROFESSIONAL LIABILITY POLICY, CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS TOWN AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS CONTRACT, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION IS THE RESULT IN PART OF TOWN'S NEGLIGENCE OR FAULT, AND CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT TOWN

AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS, INCLUDING PAYMENT OF TOWN'S REASONABLE ATTORNEYS' FEES. IN THE EVENT OF A CLAIM IS BROUGHT AGAINST TOWN, TOWN SHALL HAVE THE RIGHT TO RETAIN LEGAL COUNSEL OF ITS CHOOSING IN DEFENSE OF SUCH A CLAIM, AND SUCH ELECTION SHALL NOT RELIEVE CONTRACTOR OF ITS OBLIGATIONS UNDER THIS SECTION.

FOR CLAIMS COVERED BY THE PROFESSIONAL LIABILITY 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, CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, 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:

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

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

Ashley Carter, P.E.
Freese and Nichols, Inc.
101 S. Locust Street, Suite 202
Denton, Texas 76102
940-215-5441 Telephone
Ashley.carter@freese.com

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

XX.
Applicable Law

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

XXI.
Non-Discrimination

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

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

XXII.
Arbitration

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

XXIII.
No Waiver of Governmental Immunity

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

XXIV.
Severability

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

XXV.
Remedies

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

XXVI.
Entire Agreement

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

XXVII.
Non-Waiver

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

XXVIII.
Headings

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

XXIX.
Venue

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

XXX.
No Third Party Beneficiary

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

[Signature Page to Follow]

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

CONSULTANT:
FREESE & NICHOLS, INC.

THE TOWN OF FLOWER MOUND, TEXAS

By: Nicholas Lester

By: _____

Name: Nicholas Lester

Name: _____

Title: Vice President

Title: _____

Dated: 02/24/2025

Dated: _____

SCOPE OF SERVICES AND RESPONSIBILITIES OF TOWN

PROJECT UNDERSTANDING

Freese and Nichols, Inc. ("FNI") is engaging with the Town of Flower Mound, Texas ("TOWN") to provide professional engineering services for the Timber Creek Stabilization Project. The project will include the design of approximately 400 linear feet of 12" water line to be installed by bore under Timber Creek in order to remove the existing aerial crossing under the Timber Creek Road bridge. The scope includes the following:

- A. Preparing Design Drawings and Specifications for the following sections:
 - Approximately 400 linear feet of 12" water line inside a 20" steel casing and connect back to the existing 12" water line
 - Remove the existing 12" aerial water line crossing
- B. Provide limited Bid Phase Services and Construction Phase Services.
- C. Special Services will include:
 - a. Environmental services
 - b. Topographic survey along proposed water line
 - c. Subsurface utility engineering
 - d. Geotechnical
- D. Deliverables:
 - a. Monthly One Page Reports with Invoice
 - b. 90% Submittal
 - i. Plans, Specifications, and Cost Estimate
 - c. TCEQ Regulatory Submittal
 - d. 100% Submittal
 - i. Plans, Specifications, and Cost Estimate
 - e. Bid Phase Support
 - i. Issued For Construction Plans and Conformed Specifications for execution.
 - f. Construction Phase Support

ARTICLE I

BASIC SERVICES: FNI shall render the following professional services in connection with the development of the Project:

A. PROJECT MANAGEMENT:

1. Attend a project kickoff meeting with the TOWN to discuss the project scope, team, lines of communication and schedule.
2. Manage efforts of internal design team and sub-consultants on the Project and perform Quality Control review of all deliverables.

3. Prepare monthly reporting including status report, recent activities, upcoming activities, action items log, decisions made log, budget updates, schedule updates, and scope changes. Prepare monthly invoices.
- B. DESIGN PHASE: FNI shall provide professional services in this phase as follows:
1. Review existing data including record drawings provided by the TOWN.
 2. Conduct one (1) site visit.
 3. Prepare drawings, specifications, Construction Contract Documents, design and layouts of improvements to be constructed (if surveys are to be furnished, they shall be considered Special Services, pursuant to Article II, or Additional Services, pursuant to Article III).
 4. Submit drawings, specifications, and Construction Contract Documents to the applicable federal, state and/or local agency(s) for approval, where required.
 5. Furnish such information necessary to utility companies whose facilities may be affected, or services may be required for the Project.
 6. Prepare opinion of probable construction cost, at the appropriate level, for each submittal.
 7. Prepare bidder's proposal forms (project quantities) of the improvements to be constructed.
 8. Provide design submittals at 90% and 100% design milestones. Meet with the TOWN for a review workshop at each submittal.
 9. Timber Creek Stabilization Design
 - a. 400 LF of 12" water line at 1:20 scale in AutoCAD
 - b. Remove existing 12" aerial water crossing over Timber Creek
 - c. Engineer's Opinion of Probable Construction Cost (OPCC)
 10. Furnish TOWN three (3) sets of printed copies and one (1) electronic copy (.pdf format) of drawings, specifications, and bid proposals marked "Preliminary" for approval by TOWN, for each design submittal as described above. Upon final approval by TOWN, FNI will provide TOWN one (1) set of reproducible "Final" drawings and one (1) loose set of specifications for reproduction by TOWN.
- C. BID OR NEGOTIATION PHASE: Upon completion of the design services and approval of "Final" drawings and specifications by TOWN, FNI shall provide professional services in this phase as follows:
1. Print three (3) sets of Bid Documents for the TOWN during Bid.
 2. Assist TOWN in the preparation of Conformed Construction Contract Documents for construction contracts. Provide one (1) sets of Conformed Construction Contract Documents which include information from the apparent low bidders bid documents, legal documents, and addenda bound in the documents for execution by the TOWN and construction contractor. Distribute two (2) copies of these documents to the contractor with a notice of award that includes directions for the execution of these documents by the construction contractor. Provide TOWN with the

remaining two (2) copies of these documents for use during construction. Additional sets of documents can be provided as an Additional Service.

- D. **CONSTRUCTION PHASE GENERAL REPRESENTATION:** Upon completion of the bid or negotiation phase services, it is the TOWN's intention to manage the project under construction. FNI's role during construction will be limited to site visits and provided Record Drawings. Additional assistance to the TOWN can be provided as an Additional Service.

In performing these services, it is understood that FNI does not guarantee the Contractor's performance, nor is FNI responsible for the supervision of the Contractor's operation and employees. FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

These services are based on the use of FNI's standard General Conditions for construction projects. Modifications to these services required by use of other general conditions or contract administration procedures are an additional service. If General Conditions other than FNI's standard are used, the TOWN agrees to include provisions in the General Conditions that require Contractor to include FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by Contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the Contractor's indemnification provisions where the TOWN is named as an indemnified party.

1. Prepare Record Drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the Project made during construction. Furnish TOWN one (1) electronic copy (.pdf format) of "Record Drawings" and CAD files.

ARTICLE II

SPECIAL SERVICES: FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

- E. **ENVIRONMENTAL PERMITTING SERVICES:** FNI shall provide the following professional services

1. **Compile Information**

FNI will assemble data such as aerial photos, U.S. Geological Survey (USGS) topographic maps, U.S. Department of Agriculture (USDA) soil information, U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory data, USGS National Hydrography Dataset (NHD) information, and the project area in digital format for the development of field maps and to upload to a Global Positioning System (GPS) unit.

2. **Site Visit**

Once the limits of construction (LOC) have been defined, FNI environmental scientists will conduct a pedestrian survey of the proposed LOC. Potential waters of the U.S. (WOTUS), such as streams, wetlands, or open waterbodies, will be documented, and the boundaries of these

features will be mapped with a GPS capable of sub-meter accuracy. The jurisdictional boundaries of wetlands will be delineated based on the 1987 U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region (Version 2.0). FNI scientists will also assess habitat within the proposed LOC to determine if potential habitat for federally listed threatened or endangered species is present.

3. Permitting Memorandum

FNI environmental scientists will review the plans with the design team and prepare a technical memorandum documenting the results of the site visit and an opinion as to whether or not the project would require authorization under a Nationwide Permit (NWP) for Section 404 of the Clean Water Act. If the project is determined to require authorization under a NWP and a pre-construction notification is required, it can be provided as an additional service. It is FNI's understanding that the project would not disturb more than 5 acres or 5,000 cubic yards of earth and a letter to the Texas Historical Commission is not required. If the project is determined to require a THC letter, it can be provided as an additional service.

4. Project Team Coordination

FNI environmental scientists will coordinate with the project team (TOWN and design team) on the findings of the environmental permitting evaluation and provide environmental input during design to avoid potential PCN triggers or other environmental concerns.

F. DESIGN SURVEY

FNI shall retain and monitor the services of a surveying firm (as a sub-consultant) to perform surveying services for the project. The following survey shall be provided for:

1. Prepare a design topographic survey of the water line. Survey limits for the water line is approximately 430 foot by 300 foot area as shown in Attachment A. Survey will indicate all surface features, spot elevations, sanitary sewer cleanout, right-of-way lines, trees 4" and larger, and orthorectified imagery to be used. Establish horizontal and vertical control, horizontal control will be NAD/83 Texas Coordinate System and NAVD/88 Vertical Datum.
2. Prepare up to one (1) easement document.

G. SUBSURFACE UTILITY ENGINEERING

FNI will subcontract with The Rios Group and manage subsurface utility engineering (SUE) services. SUE work required for this project in general accordance with the recommended practices and procedures described in ASCE Publication CI/ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data). As described in the mentioned ASCE publication, four levels have been established to describe the quality of utility location and attribute information used on plans. The four quality levels are as follows:

1. Quality Level D (QL "D") – Information derived from existing records.
2. Quality Level C (QL "C") – QL "D" information supplemented with information obtained by surveying visible above-ground utility features (i.e. valves, hydrants, meters, manhole covers, etc.).
3. Quality Level B (QL "B") – Two-dimensional (x, y) information obtained through the application and interpretation of non-destructive surface geophysical methods. Also known as "designating" this quality level provides the horizontal position of subsurface utilities within approximately one foot.
4. Quality Level A (QL "A") – Also known as "locating", this quality level provides precise three-dimensional (x, y, z) information at critical locations by exposing specific utilities. Non-destructive vacuum excavation equipment is used to expose the utilities at specific points which are then tied down by survey.

For this project, QL's "B" and "A" SUE, as previously defined, will be provided. The QL "B" will be within the areas shown on the attached exhibits. Overhead utilities, storm drain, and irrigation control wires will not be included.

The QL "A" will consist of up to two (2) test holes, at the existing water line connections as identified by FNI once the QL "B" has been completed.

H. GEOTECHNICAL SERVICES

The geotechnical scope includes geotechnical exploration activities and associated design services for the bored water line. The geotechnical exploration will include geotechnical drilling and sampling, laboratory testing, geotechnical engineering analysis, and reporting. The purpose of the exploration will be to provide anticipated subsurface conditions and geotechnical design parameters for the channel stabilization.

FIELD EXPLORATION

1. Exploration activities will include geotechnical drilling and sampling with a truck-mounted drilling rig at the following locations:
 - a. Two 40-foot deep borings, one boring on each side of Timber Creek.
2. Select and mark 2 boring locations located as stated above. Notify Texas 811 and Town personnel to request location and marking of existing underground utilities prior to the field exploration. Coordinate with the Town to close a portion of the sidewalk near where the drilling is being performed.
3. Subcontract with a drilling contractor to drill the borings and collect samples of the subgrade soils at the selected locations.
 - a. Samples will be collected intermittently using hollow-stem augers and either split-spoon or tube samplers. Rock and rock-like materials will be cored and/or tested in situ using the TxDOT Cone Penetration (TCP) Test or the SPT, as appropriate for the material.

- b. Groundwater observations within the borings will be recorded at the time of drilling and at the completion of drilling and sampling.
- c. At completion, the boreholes will be backfilled with cuttings. If there are not enough cuttings, the boreholes will be backfilled with bentonite chips.

4. Provide an Engineer or Geologist experienced in logging borings to direct the drilling, log the borings, and handle and transport the samples. Visual classification of the subsurface stratigraphy shall be provided per the Unified Soil Classification System (USCS). Engineer or Geologist will observe outcroppings along the creek, creek bank materials, etc. to assist with the exploration.

LABORATORY TESTING

1. Testing shall be performed by a geotechnical testing subcontractor on samples obtained from the borings to determine soil classification of the subsurface materials.
2. The Engineer will select samples for laboratory testing, assign tests, and review the test results.
3. Laboratory tests will be appropriately assigned for the specific subsurface materials encountered during exploration, but are expected to include:
 - a. Atterberg Limits (liquid and plastic)
 - b. Moisture Content
 - c. Percent Passing the No. 200 Sieve
 - d. Sieve Analysis
 - e. Unconfined Compression Testing
 - f. Unconsolidated-Undrained (UU) Triaxial
 - g. Corrosion Testing
 - i. Water-Soluble Chloride
 - ii. Water-Soluble Sulfates
 - iii. pH of Soil
 - iv. Electrical Resistivity – As Received
 - v. Electrical Resistivity – Saturated

GEOTECHNICAL ENGINEERING ANALYSIS AND REPORTING

1. Prepare a Geotechnical Memorandum of the geotechnical exploration to include:
 - a. Appendix with the sample locations, sample/boring logs, laboratory test results, and a key to the symbols used.
 - b. Discussion of subsurface conditions and soil properties indicated by the field and laboratory work, and the implications for design.
 - c. General discussion of expected construction related issues.
 - d. Earthwork-related recommendations for use during development of the plans and specifications.

ARTICLE III

ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services to be performed by FNI, if authorized by TOWN, are described as follows:

- A. Design for bank stabilization of Timber Creek.

- B. Hydraulic and hydrologic modeling for changes to the creek.
- C. Design for 27" sanitary sewer line to be bored under Timber creek.
- D. Clearing of trees, underbrush, etc. to obtain access to the boring locations with a drilling rig.
- E. Traffic control along Timber Creek Rd is not included. The boring locations are expected to be off the road.
- F. Preparation of a pre-construction notification (PCN) to the USACE for Section 404 nationwide permit authorization.
- G. Preparation of a formal written request to the USACE for authorization under a letter of permission (LOP) procedure or a standard individual Section 404 permit application.
- H. Preparation of an Approved Jurisdictional Determination (AJD) or No Permit Required Letter Request from the USACE.
- I. Tree survey and preparation of a permit application for compliance with Town tree ordinance requirements.
- J. Preparation of a National Environmental Policy Act (NEPA) Categorical Exclusion (CE), Environmental Information Document (EID), Environmental Assessment (EA), or an Environmental Impact Statement (EIS).
- K. Application to Texas Commission on Environmental Quality (TCEQ) for individual 401 Water Quality Certification.
- L. Presence/absence surveys for state or federally listed threatened/endangered species.
- M. Preparation of a Biological Assessment for Consultation/Conference with the U. S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act.
- N. Preparation of a Hazardous Waste Regulatory Records Review, a Hazardous Materials Initial Site Assessment (ISA), Phase I, or Phase II Environmental Site Assessment (ESA).
- O. Preparation of a National Pollution Discharge Elimination System (NPDES) Storm Water Pollution Prevention Plan (SWPPP).
- P. Preparation of a coordination letter to the Texas Historical Commission.
- Q. Cultural resources survey by a professional archeologist.
- R. Expert representation at legal proceedings or at contested hearings.
- S. Meetings, field investigations, analysis, or consultation with the USACE or other resource agencies, including respond to public or regulatory agency comments except as specifically noted in this scope of services.
- T. Layouts or the furnishing of construction line and grade surveys.

- U. GIS mapping services or assistance with these services.
- V. Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- W. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Client.
- X. Providing renderings, model, and mock-ups requested by the Client.
- Y. Revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by Client or 2) due to other causes not solely within the control of FNI.
- Z. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- AA. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by Client.
- BB. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- CC. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- DD. Preparing data and reports for assistance to Client in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- EE. Furnishing the services of a Resident Project Representative to act as Client's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by FNI in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, FNI shall endeavor to provide further protection for Client against defects and deficiencies in the work. Furnishing the services of a Resident Project Representative is subject to the provisions of Article I, D and Attachment RPR.

If Client provides personnel to support the activities of the Resident Project Representative who is FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this Agreement before the services of such personnel are begun. It is understood and agreed that such personnel will work under the direction of and be responsible to the Resident Project Representative. Client agrees that whenever FNI informs him in writing that any such personnel provided by the Client are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.

- FF. Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
- GG. Assisting Client in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- HH. Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- II. Assisting Client 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 FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- JJ. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- KK. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- LL. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- MM. Services required to resolve bid protests or to rebid the projects for any reason.
- NN. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- OO. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- PP. Providing services after the completion of the construction phase not specifically listed in Article I.
- QQ. Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the Client.
- RR. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- SS. Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of FNI.

- TT. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- UU. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
- VV. Provide follow-up professional services during Contractor's warranty period.
- WW. Assist Client (TOWN) by responding to questions and interpreting bid documents. Prepare and modify any plans or specifications for the TOWN by issuing addenda as necessary.

ARTICLE IV

TIME OF COMPLETION: FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in:

- 90% Design Submittal: 75 days after survey has been received.
- 100% Design Submittal: 45 days from receipt of 90% Phase comments.
- Bid and Construction Phase: To follow after 100% Design Submittal.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in TOWN or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

ARTICLE V

RESPONSIBILITIES OF TOWN: TOWN shall perform the following in a timely manner so as not to delay the services of FNI:

- A. TOWN recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the TOWN or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the TOWN budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.
- B. Designate in writing a person to act as TOWN's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define TOWN's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to TOWN's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and

- expandability, and any budgetary limitations; and furnish copies of all design and construction standards which TOWN will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
 - E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
 - F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as TOWN deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
 - G. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
 - H. TOWN shall make or arrange to have made all subsurface investigations, including but not limited to borings, test pits, soil resistivity surveys, and other subsurface explorations. TOWN shall also make or arrange to have made the interpretations of data and reports resulting from such investigations. All costs associated with such investigations shall be paid by TOWN.
 - I. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as TOWN may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as TOWN may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as TOWN may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
 - J. If TOWN designates a person to serve in the capacity of Resident Project Representative who is not FNI or FNI's agent or employee, the duties, responsibilities and limitations of authority of such Resident Project Representative(s) will be set forth in an Attachment attached to and made a part of this Agreement before the Construction Phase of the Project begins. Said attachment shall also set forth appropriate modifications of the Construction Phase General Representation services as defined in Attachment SC, Article I, D, together with such adjustment of compensation as appropriate.
 - K. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings and substantial completion inspections and final payment inspections.
 - L. Give prompt written notice to FNI whenever TOWN observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
 - M. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
 - N. Bear all costs incident to compliance with the requirements of this Article V.

ARTICLE VI

DESIGNATED REPRESENTATIVES: FNI and TOWN designate the following representatives:

TOWN's Designated Representative –

Blake Hummel, P.E., C.F.M.
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6301
Blake.Hummel@flowermound.gov

TOWN's Accounting Representative –

Blake Hummel, P.E., C.F.M.
2121 Cross Timbers Road
Flower Mound, Texas 75028
972-874-6301
Blake.Hummel@flowermound.gov

FNI's Designated Representative –

Ashley Carter, P.E.
101 S. Locust Street, Suite 202
Denton, Texas 76102
940-215-5441
Ashley.Carter@freese.com

FNI's Accounting Representative –

Misty Ballard
817-735-7290
Misty.Ballard@freese.com

COMPENSATION

ATTACHMENT CO

Compensation to FNI for Basic Services in Attachment SC shall be the lump sum of Forty Seven Thousand One Hundred Twenty Dollars (\$47,120).

Compensation to FNI for Special Services in Attachment SC shall be computed on the basis of the following Schedule of Charges, but shall not exceed Fifty Two Thousand One Hundred Ninety Seven Dollars (\$52,197).

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

<u>Position</u>	<u>Hourly Rate</u>	
	<u>Min</u>	<u>Max</u>
Professional 1	94	188
Professional 2	126	206
Professional 3	144	314
Professional 4	166	342
Professional 5	245	371
Professional 6	249	461
Construction Manager 1	123	173
Construction Manager 2	126	213
Construction Manager 3	159	213
Construction Manager 4	184	278
Construction Manager 5	220	324
Construction Manager 6	292	386
Construction Representative 1	83	98
Construction Representative 2	98	126
Construction Representative 3	134	202
Construction Representative 4	134	202
CAD Technician/Designer 1	90	130
CAD Technician/Designer 2	108	213
CAD Technician/Designer 3	141	270
Corporate Project Support 1	76	170
Corporate Project Support 2	87	249
Corporate Project Support 3	108	360
Intern / Coop	58	101

Rates for In-House Services and Equipment

<u>Mileage</u>	<u>Bulk Printing and Reproduction</u>		<u>Equipment</u>	
Standard IRS Rates		<u>B&W</u>	<u>Color</u>	
	Small Format (per copy)	\$0.10	\$0.25	Valve Crew Vehicle (hour) \$75
	Large Format (per sq. ft.)			Pressure Data Logger (each) \$500
<u>Technology Charge</u>	Bond	\$0.25	\$0.75	Water Quality Meter (per day) \$100
\$8.50 per hour	Glossy / Mylar	\$0.75	\$1.25	Microscope (each) \$150
	Vinyl / Adhesive	\$1.50	\$2.00	Pressure Recorder (per day) \$1
				Ultrasonic Thickness Gauge (per day) \$275
	Mounting (per sq. ft.)	\$2.00		Coating Inspection Kit (per day) \$275
	Binding (per binding)	\$0.25		Flushing / Cfactor (each) \$500
				Backpack Electrofisher (each) \$1,000
				<u>Survey Grade</u> <u>Standard</u>
				Drone (per day) \$200 \$100
				GPS (per day) \$150 \$50

OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multiplier of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed in-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2024.

360022024

ATTACHMENT B
PROJECT COMPENSATION SCHEDULE / HOURLY RATES (CONT.)

<u>Scope of Services:</u>	<u>Cost</u>
<u>Basic Services:</u>	
A. Project Management	\$ 11,171
B. Design Phase	\$ 32,055
C. Bid Phase	\$ 2,006
D. Construction Phase	\$ 1,889
Basic Services Total (Lump Sum): \$ 47,120	
<u>Special Services:</u>	
E. Environmental Permitting Services	\$ 9,546
F. Design Survey	\$ 9,264
G. Subsurface Utility Engineering	\$ 11,558
H. Geotechnical Services	\$ 21,830
Special Services Total (Not to Exceed): \$ 52,197	
Total Compensation (Not to Exceed): \$ 99,318	

EXHIBIT A

Flower Mound Timber Creek
Project Map

Legend

 Timber Creek



Google Earth

Image © 2024 Airbus

300 ft



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

DATE: March 17, 2025
FROM: Manuel Palacios, Assistant Director of Public Works
ITEM: **Consider approval of a utility service proposal with Rey-Mar Construction LLC. for the replacement of fire hydrants, in the amount of \$138,481.28; and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: Utility staff have identified several fire hydrants within the Timber Creek Development area that are out of service and need to be replaced. These fire hydrants can't be repaired due to obsolete parts. Due to multiple fire hydrants being out of service within a neighborhood, an emergency purchase order was initiated to fast-track the replacement of these fire hydrants. Town staff followed the Town's Emergency Purchase Order Policy that mirrors the State's criteria for an Emergency Purchase.

The Town has an interlocal contract with the Town of Addison for On-Call Water and Sewer Line Services Bid # 22-42. The contractor for this contract is Rey-Mar Construction, LLC. Rey-Mar Construction has performed past emergency projects for the Town. Most recently, an emergency repair to a pressure sanitary sewer line. They have an excellent history with the Town on past projects.

This project is for the replacement of eight fire hydrants including valves. The work and the new fire hydrants are per Town Standards and Specifications. The project includes the removal and replacement of fire hydrants and site restoration.

BOARD REVIEW/CITIZEN FEEDBACK:

ALTERNATIVES: A decision not to approve may hinder fire protection.

FISCAL IMPACT: \$138,481.28

Proposed Expenditure/(Revenue)
\$138,481.28

Account Number(s):
630-960-96004-6170

LEGAL REVIEW: N/A

ATTACHMENTS:

1. FM01225 Fire Hydrants Proposal rev 3

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

2010 E Lancaster Ave
FORT Worth Tx 76103
Date 2/13/2025

REY-MAR CONSTRUCTION LLC

PHONE (817) 535-3451
FAX (817) 535-0153

Reference **PROPOSAL**: FM01225 Remove and replace 8 fire hydrant
Around the Spring Meadow Ln Flower Mound Tx 76028

TO: City of Flower Mound
ATTN: Manuel Palacios

Our scope of work shall include labor and materials as follows:

- Workers comp., liability insurance, & auto insurance
- (0) Addendum acknowledged
- Per Plans Stamped dated – no plans given
- Valid for 30 Days from Date
- Per Town of Addison Water & Sewer Line
Service Contract # 22-42

Actual bid form	Units	Qty	Description	Unit Price	Total
1	EA	1	Mobilization.	\$2,142.00	\$2,142.00
2	EA	8	Remove and replace Mueller Fire Hydrant 6" MJ Shoe by EJ per city specifications, including excavation, backfilling, testing, embedment and other incidentals necessary to complete.	\$11,829.80	\$94,638.40
3	EA	8	Remove and replace 6-inch M&H gate valve, per city specifications, Rey-Mar will replace the valve if the excavation to replace the hydrant is already done.	\$3,367.91	\$26,943.28
4	EA	8	Site Restoration, Item Includes sod restauration and 2 panels concrete sidewalk each.	\$1,521.83	\$12,174.64
5	Days	8	Traffic Control.	\$322.87	\$2,582.96
					\$138,481.28

INCLUSIONS: Are as followed:

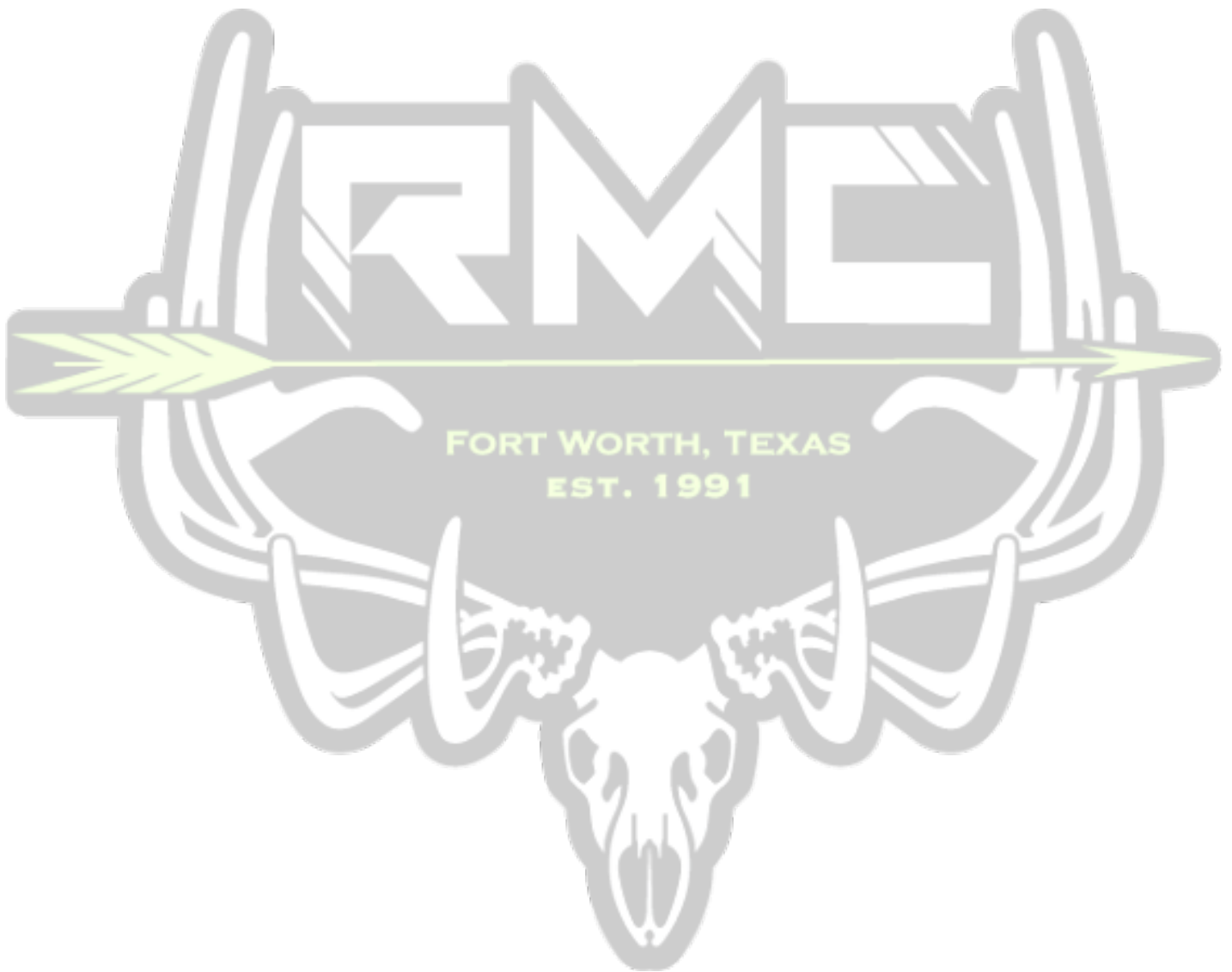
- Insurance
- All above
- Fire Hydrant replacement
- Remove and replace 6 inch gate valve
- Site restauration if is grass or sidewalk

EXCLUSIONS: Are as followed:

- Bonds (Add 2%)
- Sales Taxes (where applicable)

- Permits of any kind
- Material Testing of any kind
- Impact Fees of any kind
- SWP3 / SPW3 Plan
- Survey Layout
- Haul off materials outside of RMC Scope
- Mechanical Protective Coatings

- Third Party Testing (welding)
- Any other items not included in this proposal
- Concrete pads for Fire hydrante





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

DATE: March 17, 2025
FROM: Chuck Jennings, Director of Parks and Recreation
ITEM: **Consider approval to purchase materials and installation for the resurfacing of the Community Activity Center's outdoor pool from Petra Chemical Company, utilizing their Buy Board Contract 701-23; in the amount of \$209,430.00.**

BACKGROUND: At the Community Activity Center, the outdoor pool plaster finish is showing signs of wear and needs to be replastered. Resurfacing is typically required every 7-10 years, and the outdoor pool was last resurfaced in March 2016. Staff have obtained several inspections highlighting the need for the work to be undertaken, with multiple areas of the pool surfacing showing signs of delamination from the substrate, also known as plaster 'pops'.

The project would include the removal of the existing plaster layers, application of a bond coat, acid washing, plastering of the entire pool, caulking expansion joints, re-tiling and crack repair (if needed), and replacing eight VGB-approved drain covers. The work will take between 2–3 weeks to complete and, if approved, is scheduled to start the first week of April.

The funds for this project were approved through the FY24-25 budget process.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$209,430.00

Proposed Expenditure/(Revenue)
\$209,430.00

Account Number(s):
560-110-00000-5110

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Flowermound CAC Outdoor Pool Plaster Project

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



Petra Chemical Company

Town of Flowermound
Community Activity Center
Chuck Jennings

3-6-2025

- **SCOPE OF WORK:**
- Re-Plaster of Outdoor Pool / Quartz Based Colored Plaster Finish
- Project Available Through Texas Buyboard / 701-23
- **PROJECT TOTAL:\$209,430.00**

- **Replaster Outdoor Pool _ Quartz Colored Plaster**
- Customer to Drain Pool and Shut Off All Equipment Prior to start of project
- Enhanced Prep – Removal of existing 2 Layers of plaster / completed with handheld jackhammers with specialized blades to chip away at the plaster, gradually removing it from the pool walls, floor, under and around the play structure, to expose the gunite surface. Removal and Disposal of all material
- Customer to advise contractor whether they choose to remove landing pads underneath slides prior to prep, or have contractor saw cut and chip away around the pads
- Customer to remove webbing from play structure so team may gain access to saw cut, chip and remove plaster under and around the play structure
- Saw Cut and Chisel beneath tile line, around light fixtures and return fittings
- Saw Cut and Chip ALL Racing Lanes and Targets to maintain existing Tile (Potential for some loss of tile – Change Order to be requested based on replacement required (1” tile)
- Removal and Replacement per Code - Step Tile & Bench “Non -Skid” Tile (2 x 2) – Includes Break Line
- Acid Wash surface with muriatic acid to remove oils and surface impurities and neutralize acid salts
- Application of CLI PermaKote Bond Coat
- Protect and/or cover coping, play structure, slide, landing pads, drains, returns, and other surface penetrations form damage and plaster over spray
- Application of Plaster Surface- CLI Quarz/Blue
- Trowel to a smooth finish
- Acid Wash to expose Quartz Finish
- Customer to Start Water to begin filling pool upon completion
- Remove all debris form replaster work and perform general clean up

VGB Compliant Drain Covers

- (2ea.) Custom Drain Frame & Grate / White / Flow Rate 5227 GPM / 24" x 60"
- (2ea.) Custom Drain Frame & Grate / White / Flow Rate 6694 GPM/ 24" x 72"
- (2ea.) Custom Drain Frame & Grate / White / Flow Rate 2293 GPM/ 24" x 36"
- (1ea.) Custom Drain Frame & Grate / White / Flow Rate 825 GPM/ 24" x 24"
- (1ea.) Custom Drain Frame & Grate / White / Flow Rate 3760 GPM/ 24" x 48"
- (15ea.) Custom Main Drain Fastener Set

Quote Includes

- **Crack Repairs** – Up to 300Ft as required / to be determined upon completion of surface demo
- **Cold Joint/Expansion Joint** – remove/replace sealant in Cold Joints of Pool / Replace with Water Resistant Poly Sulfate Sealant / Brand to be determined upon inspection of Cold Joints and availability of material at time of project – Quote includes up to 150 linear ft of replacement – additional footage to be billed at \$22.50 per ft
- Project Mobilization
- Technician Support

- **PROJECT COMMENTS:**

- Any unforeseen repairs or additional work that is identified during project, the customer will be notified immediately of such, and if required DCC will provide additional pricing for approval before such repairs are performed.
- **Customer is responsible for ‘Chemical Start Up’ and Balancing of Water Chemistry – Petra will provide manufacturer specifications and recommendations for ‘Start Up’**
- **Petra may provide Start Up upon request – 3 Days Brush & Balance \$2700.00 + Chemicals Required to Balance Pool per National Plasterers Organization**

- **MAINTENANCE COMMENTS:**

- Customer must provide City water to refill the pool
- Customer must immediately upon completion of the plaster be required to fill the pool and shut off water only after pool is completely full.
- In addition, the customer is also responsible for brushing all new plaster surfaces for 7 consecutive days after pool has been filled, this will prevent a buildup of plaster dust and result in a smoother and cleaner surface.

- **WARRANTY COMMENTS:**
- ***Plaster includes a TWO Year Workmanship Warranty, 5 year manufacturers limited warranty on surface material***, however the customer must maintain water in the pool, regularly brush the pool plaster area and maintain the water chemistry balance in accordance with State, City Pool and Plaster Standards.
- ***TWO Year Workmanship warranty may be voided if customer drains pool during the warranty period.***
- FAILURE for the customer to adhere to plaster standards and guidelines, including proper chemical startup and brushing, maintaining pool water chemistry or by draining the pool will result in the warranty being voided.
- Customer is required to notify Petra in writing at least 10 business days prior to draining the re-plastered pool, during the warranty period.
- ***CLI Quartz Plaster carries 5 Year Manufacturer's Warranty***

Doug Dean
Territory Manager
Petra Chemical Company / PVS DX Inc
ddean@pvschemicals.com



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

DATE: March 17, 2025
FROM: Chuck Jennings, Director of Parks and Recreation
ITEM: **Consider approval of a Professional Services Contract with Promoter Line, Inc., to provide professional event production and planning services for the 2025 Fall Festival, in an amount not-to-exceed \$190,000.00 and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: Due to the size and scope of this new special event, which could host thousands of attendees, staff is requesting the professional services of Promoter Line, Inc. (PLI) to assist in organizing, planning, and operating the festival. PLI was selected by staff due to their long-standing experience with the Town, other municipalities, and the quality of special events produced in the area. PLI has worked with numerous cities including Lewisville, Grapevine, Ft. Worth, Southlake, Mesquite, Bedford and Addison.

PLI has done an excellent job over the last 16 years working with the Town to produce the Wild About Flower Mound Festival (2009 & 2010) and the Independence Fest (2011-2024), at Bakersfield Park. This new fall festival will take place at the Riverwalk over a two-day period in mid-October (10/11-12) and will include live music with regional and local talent, arts and crafts booths, food vendors, a beverage vendor, a children's activity area, a Veterans Village, and a business expo. Parking will be available onsite and within the parking garages located at the Riverwalk. If shuttling is determined to be needed, staff will work with the LISD to secure space at Marcus HS or a nearby campus for shuttle services.

Overall, PLI handles many aspects of organizing and managing the festival as noted in the proposed contract. Town staff will primarily be responsible for obtaining festival sponsorships, holding planning meetings, monitoring the budget, marketing, shuttles, and providing staff during the festival. Promoter Line will be paid in eight monthly installments for their professional services fee of \$35,000 and all budgeted costs as outlined in the contract to produce and manage the two-day festival, which comes to \$155,000. The necessary funds to host the festival were appropriated through the FY24-25 budget process utilizing Hotel Occupancy Tax funds.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: \$190,000

Proposed Expenditure/(Revenue)
\$190,000

Account Number(s):
380-430-34200-5110

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

ATTACHMENTS:

1. Promoter Line Contract - 2025 Fall Fest

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

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into on this 17th day of March 2025, 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 Town Manager or his designee, and **PROMOTER LINE, INC.**, whose address is PO Box 2028, Colleyville, Texas, 76034-2028 (hereinafter referred to as “CONSULTANT”).

WITNESSETH:

WHEREAS, TOWN desires to obtain professional services relative to acting as a Promoter/Producer for the TOWN’s Fall Festival (“Event”), which professional services are hereinafter referred to as “Services”; and

WHEREAS, CONSULTANT is qualified to provide such Services and is willing to undertake such Services for TOWN in exchange for fees hereinafter specified; NOW, THEREFORE,

THAT 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 its profession, both public and private, currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt, timely action. If CONSULTANT is representing that it has special expertise in one or more areas to be utilized in this Contract, then CONSULTANT agrees to perform those special expertise services to the appropriate local, regional or national professional standards.

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 consultants, and that the doctrine of respondeat superior shall not apply between TOWN and CONSULTANT, its officers, agents, employees, Contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between TOWN and CONSULTANT.

II.

Scope of Services

The Services to be performed by CONSULTANT include the Services listed in Exhibit A, attached hereto and incorporated by reference as if written word for word. In the event of discrepancy or conflict between Exhibit A and this Contract, this Contract shall be binding and

control. Deviations from this scope of services or other provisions of this Contract may only be made by written agreement signed by all parties to this Contract.

Consistent with the Services identified in Exhibit A, the TOWN will pay CONSULTANT the amount budgeted for the Event in an amount not to exceed One Hundred Fifty-Five Thousand and 00/100 Dollars (\$155,000.00) for the Event ("Event Funds"). The Event Funds shall be paid on a monthly installment basis with the initial/first payment being made within ten (10) days of the start date as defined in section IV, for \$19,375.00 and thereafter on or about the 1st of each month with final payment to be made in the amount of \$19,375.00 on the first day of the event. CONSULTANT shall use said Event Funds for the Event purposes identified in Exhibit A other than CONSULTANT's Fee, which Fee is provided for in section III. If additional services are requested, CONSULTANT will not initiate work on such additional services until authorized by the Town Manager, in writing, to proceed.

CONSULTANT shall collect any and all monies due and payable to the TOWN for participation in the Event and shall turn such monies over to the TOWN within fourteen (14) days of receipt. All participants shall be required to make their check or money order payable to the TOWN. Further, CONSULTANT shall meet regularly with Town as directed by TOWN to discuss the Event budget and expenses, provide to TOWN updated budget spreadsheets and receipts for all expenses incurred for the Event and paid on behalf of the TOWN, and make such expenditures as are authorized and required for the proper functioning of the Event within the parameters of the funding approved by the TOWN Council for such purpose.

III.

Compensation

For and in consideration of the Services performed hereunder, TOWN agrees to compensate CONSULTANT in a total amount not to exceed Thirty-Five Thousand and no/100 Dollars (\$35,000.00) as CONSULTANT's "Promoter's" or "Producer's" fees ("CONSULTANT'S Fee"). Such CONSULTANT'S Fee shall be paid to CONSULTANT on a monthly installment basis with the initial/first payment being made within ten (10) days of the start date as defined in section IV, for \$4,375.00 and thereafter on or about the 1st of each month with last payment to be made in the amount of \$4,375.00 once the final event invoice has been submitted to the Town no later than 60 days after the event.

The Scope of Services shall be strictly limited. TOWN shall not be required to pay any amount in excess of the original proposed amount unless TOWN shall have approved in writing in advance (prior to the performance of additional work) the payment of additional amounts.

IV.

Term

The term of this Contract shall be twelve (12) months, beginning March 17, 2025, and ending March 16, 2026.

V.

Performance Cancellation

If any Artists' performance which has been booked by CONSULTANT for the Event is prevented or rendered impossible or unfeasible due to illness or accident of the Artist; any act or regulation of any public authority; civil uprising, act of God, labor disputes; interruption, delay, or failure of transportation services; war conditions, terrorist attack or emergencies; interruption of utility services; or any other cause beyond the reasonable control of CONSULTANT, the Artist, or TOWN then neither party to this Contract, nor the Artist, shall have any claim for damages due to the performance cancellation.

VI.

Insurance

CONSULTANT shall 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 it has obtained all the insurance required under the Contract and such insurance has been approved by TOWN; nor shall CONSULTANT allow any subcontractor to commence work on his 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.

1. Workers' Compensation, as required by law, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease - each employee \$500,000 disease - policy limit.
2. Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Medical Payments, Independent Contractor's and Contractual Liability, covering but not limited to the indemnification provisions of this Contract, 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. Automobile Liability Insurance, covering all vehicles to be used in performance of this contract with minimum limits equal to or greater than required by State law.

It is agreed by all parties to this Contract that the insurance required under this Contract shall:

- (a) Provide for thirty (30) days notice of cancellation to TOWN, for nonpayment of premium, material change or any other cause.
- (b) Be written through companies duly authorized to transact that class of insurance in the State of Texas.
- (c) Allow the Town the right to review the insurance requirements of this section during the effective period of the Contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the Town based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONSULTANT.

- (d) Name the Town of Flower Mound and its officer, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- (e) Allow the Town to be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto.
- (f) Notify the Town in the event of any change in coverage and shall give such notices not less than 30 days prior to the change. The notice must be accompanied by a replacement Certificate of Insurance.
- (g) Provide a Certificate of Insurance evidencing the required coverages to:

TOWN OF FLOWER MOUND
Attn. Purchasing Division
2121 Cross Timbers Road
Flower Mound, TX 75028
Fax: 972-874-6478
Email: purchasing@flower-mound.com

VII.

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 during the term of 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.

VIII.

Indemnity

THE CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO WAIVE ALL CLAIMS, RELEASE, INDEMNIFY AND HOLD HARMLESS THE TOWN AND 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 THE CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF THE CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM THE CONSULTANT IS LEGALLY LIABLE, AND THE CONSULTANT WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT THE TOWN FROM AND AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

TO THE EXTENT ALLOWED UNDER TEXAS LAW, THE TOWN DOES HEREBY COVENANT AND CONTRACT TO RELEASE, INDEMNIFY AND HOLD HARMLESS THE CONSULTANT AND ITS OFFICERS, AGENTS, EMPLOYEES AND INVITEES, 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 THE TOWN AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF THE TOWN, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM THE TOWN IS LEGALLY LIABLE, AND THE TOWN WILL, AT ITS OWN COST AND EXPENSE, DEFEND AND PROTECT THE CONSULTANT FROM AND AGAINST ANY AND ALL SUCH CLAIMS AND DEMANDS.

IX.

Default; Termination

A. TOWN reserves the right to terminate this Contract immediately upon breach of any term or provision of this Contract by CONSULTANT. 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 and complete the work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by TOWN shall not be deemed a waiver of any other right or remedy of TOWN.

B. TOWN may terminate without cause with sixty (60) days written notice. CONSULTANT will provide TOWN with all Contract information and return any unpaid funds. CONSULTANT shall cooperate with TOWN to renegotiate with all third parties to recuperate expenses.

X.

Changes

TOWN may, from time to time, require changes in the scope of the 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.

XI.

Conflict 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.

XII.

Mailing Address

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

The Town of Flower Mound
2121 Cross Timbers Road
Flower Mound, Texas 75028
Attn.: Chuck Jennings
Telecopy: 972.874.6471
Telephone: 972.874.6273

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:

Promoter Line, Inc., a Texas corporation
PO Box 2028
Colleyville, Texas 76034-2028
Attn.: Jerry R. Thompson
Phone: 817.312.6101
Federal ID# 75-2976232
Email: jtpresents@promoterline.com

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

XIII.

Successors and Assigns

TOWN and CONSULTANT each binds themselves and their respective successors, executors, administrators and assigns to the other party of this Contract and to the successor, 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.

XIV.

Applicable Law

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

XV.

Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are held for any reason 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.

XVI.

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 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.

XVII.

Entire Agreement

This Contract embodies the complete 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.

XVIII.

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.

XIX.

Headings

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

XX.

Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Denton County, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Denton County, Texas.

XXI.

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. Further, nothing contained in this

Contract is intended to waive nor should it be interpreted as waiving or otherwise deemed to waive the TOWN's sovereign immunity or governmental immunity as it applies to any third person or entity.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their representatives duly authorized on the day and year first written above.

THE TOWN:

THE TOWN OF FLOWER MOUND, TEXAS

By: _____
Cheryl Moore, Mayor

CONSULTANT:

PROMOTER LINE, INC.,
a Texas Corporation

By: _____
Name: Jerry R. Thompson
Title: President

Date Signed: _____

Exhibit “A”

1. Promoter Line, Inc. will work with Town staff in development and design of an Event concept and theme.
2. Promoter Line, Inc. will develop and oversee all existing logistical elements going into Event.
3. Promoter Line, Inc. will hold a series of meetings to begin in April each year and occur monthly until the Event.
4. Promoter Line, Inc. will secure entertainment related items in cooperation with the budget.
5. Promoter Line, Inc. and the designated Town of Flower Mound's “Key” staff will oversee budget preparation. The budget will include, at a minimum, the following:

<u>Services To Be Provided</u>	<u>Projected Budget</u>
Entertainment	\$50,500.00
Catering/Rider for Headliner	\$1,500.00
Décor/scaff	\$1,950.00
ASCAP	\$175.00
BMI	\$175.00
Fence/Golf Carts	\$2,500.00
Forklifts/Light Towers	\$7,400.00
Generators	\$22,500.00
Kid Zone	\$11,200.00
Portalets/Cleaning & Servicing	\$3,850.00
Producer fee	\$35,000.00
Radio Rentals	\$490.00
RV Rental	\$1,500.00
Security/Gate Staff	\$4,000.00
Sound & Lights main stage	\$18,600.00
Spotlights/Stage Barricades	\$560.00
Stage-Main	\$4,500.00
Stagehands	\$7,400.00
Tents/Tables/Chairs	\$9,100.00
Traffic Control	\$2,500.00
Volunteer/Staff Shirts	\$2,200.00
Food/Catering/Supplies	\$2,400.00
Total Expenses:	\$190,000.00

6. Promoter Line, Inc. to manage budget and obtain services in accordance with the budget that is approved by the Town of Flower Mound.
7. Promoter Line, Inc. will secure all arts, crafts, and food vendors.
8. Promoter Line, Inc. will secure all payments and any insurance required from vendors.
9. Prepare and distribute vendor packets to vendors secured by Promoter Line, Inc., in cooperation with Town.
10. Promoter Line, Inc. will oversee all on site sponsor logistics for sponsors secured by the Town of Flower Mound. Promoter Line, Inc. will not be responsible for securing any sponsors for event.
11. Promoter Line, Inc. will secure all purchase/rental items, delivery, and timing of them. Promoter Line, Inc. will compile a list of Town equipment that will be needed and provided by the Town.
12. Promoter Line, Inc. will hire and oversee production items and staffing on all stages.
13. Promoter Line, Inc. will direct and manage overall staffing and placement of staffing for events.
14. Promoter Line, Inc. will advise the Town of Flower Mound as it relates to marketing, advertising, and promotion of the event.
15. Promoter Line, Inc. will manage and execute overall festival accounting, subject to Town of Flower Mound approval of the final budget. Promoter Line, Inc. will oversee and maintain approved budget. This would include making timely payments to all vendors and contractors.
16. Promoter Line, Inc. will oversee and secure talent for entertainment on all stages.
17. Promoter Line, Inc. will develop, implement, and maintain a schedule timeline in coordination with all Town departments.



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

DATE: March 17, 2025
FROM: Mary Huning, Director of Accounting Services
ITEM: **Consider approval of the first lease amendment with Cellco Partnership d/b/a Verizon Wireless for the Tower/Ground lease dated October 16, 2008 for antenna and ground space at the elevated water storage at 3810 Bruton Orand Boulevard, and authorization for the Mayor to execute same on behalf of the Town.**

BACKGROUND: This amendment allows for an extended lease term and reduction of monthly rent. The amended term will become effective March 1, 2026 for an initial extension of five years and automatically extend for four additional terms of five years each, unless Lessee terminates the agreement by giving notice at least 30 days prior to the expiration of the then-current five-year term. The amended rent will be reduced to \$2,500.00 per month from the current \$3,802.19 with a 15% increase every five years.

The trend in our other site leases has been amendments to reduce rent and the new monthly amount is similar to other newer leases. Verizon Wireless has two other lease agreements that are in effect with the Town.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: If rejected, the current lease term will expire May, 2029, with one remaining optional five-year extension to May, 2034.

FISCAL IMPACT: \$0.00 in fiscal year 2024-2025, \$9,115.33 in fiscal year 2025-2026, \$90,108.33 over the five-year term.

Proposed Expenditure/(Revenue)
\$9,115.33 in fiscal year 2025-2026

Account Number(s):
100-4510

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

ATTACHMENTS:

1. 78415_5000377854_First Amendment

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

FIRST AMENDMENT TO TOWER/GROUND LEASE AGREEMENT

This First Amendment to Tower/Ground Lease Agreement (“First Amendment”) is made, and shall be effective, as of the last date of the signatures below (“Effective Date”), between Town of Flower Mound, Texas (“LESSOR”), and Celco Partnership d/b/a Verizon Wireless (“LESSEE”). LESSOR and LESSEE (or their predecessors in interest) entered into that certain Tower/Ground Lease Agreement dated October 16, 2008, as may have been previously amended and/or assigned, (the “Agreement”), pursuant to which LESSEE is leasing or licensing from LESSOR a portion of that certain property located at 3810 Bruton Orand Boulevard, Flower Mound, Denton County, Texas, as more particularly described in the Agreement. LESSOR and LESSEE may be referenced in this First Amendment individually as a “Party” or collectively as the “Parties.”

In consideration of the mutual covenants and promises contained in this First Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to amend the Agreement as follows:

1. Term. Notwithstanding anything contained in the Agreement to the contrary, the Agreement shall expire on February 28, 2026. Commencing on March 1, 2026, the Agreement shall be extended for 5 years (“Initial Extension Term”). The term of the Agreement shall thereafter automatically extend for 4 additional terms of 5 years each (each, an “Additional Extension Term”), unless LESSEE terminates the Agreement by giving LESSOR notice of such termination at least 30 days prior to the expiration of the Initial Extension Term or then-current Additional Extension Term.

2. Rent. Commencing on March 1, 2026, the monthly rent during the Initial Extension Term shall be \$2,500.00 to be paid on the first day of the month in advance to LESSOR or such other person as LESSOR may designate in writing at least 30 days in advance of any rental payment date. Thereafter, commencing on March 1, 2031, monthly rent for each Additional Extension Term shall increase by 15% upon commencement of each Additional Extension Term.

3. Rent Credit. This First Amendment provides for a reduction in rent, effective March 1, 2026. The Parties acknowledge and agree that LESSEE shall be entitled to a credit in the event of any overpayment of rent resulting from said reduction in rent. Such credit shall be applied against LESSEE’s rent due under the Agreement.

4. Notice Address. The notice address for LESSEE in the Agreement is hereby amended as follows:

If to LESSEE: Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, NJ 07921

With a copy to: Basking Ridge Mail Hub
Attn: Legal Intake
One Verizon Way

Basking Ridge, NJ 07920

5. Continued Effect. Except as amended hereby, all of the other terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between any term and provision of the Agreement and this First Amendment, the terms and provisions of this First Amendment shall control. In addition, except as otherwise stated in this First Amendment, all initially capitalized terms shall have the same respective defined meaning stated in the Agreement. All captions are for reference purposes only and shall not be used in the construction or interpretation of this First Amendment.

6. Ratification and Reaffirmation. LESSOR and LESSEE do hereby ratify, reaffirm, adopt, contract for and agree to be, or continue to be, bound by all of the terms and conditions of the above-referenced Agreement. Except as modified by this First Amendment, all of the terms and conditions of the Agreement are incorporated by reference herein as if set forth at length. It is acknowledged and agreed that the execution of this First Amendment by the Parties is not intended to and shall not constitute a release of either Party from any obligation or liability which said Party has to the other pursuant to the Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this First Amendment is effective and entered into as of the date last written below.

LESSOR:

TOWN OF FLOWER MOUND, TEXAS

By: _____

Name: _____

Title: _____

Date: _____

LESSEE:

Cellco Partnership d/b/a Verizon Wireless

By: _____

Name: Edward Maher

Title: AVP - Network Reg/RE

Date: _____



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

DATE: March 17, 2025
FROM: John Zagurski, Chief Financial Officer
ITEM: **Consider approval of the Annual Comprehensive Financial Report (ACFR) for the fiscal year ended September 30, 2024.**

BACKGROUND: Article III, Section 3.13 of the Town Charter requires that an annual independent audit be performed of "the books and accounts of each and every department of the Town." The Town has complied with this requirement, and in the opinion of the auditing firm of Eide Bailly, LLP, the basic financial statements contained within the Annual Comprehensive Financial Report (ACFR) present fairly, in all material respects, the financial position of the Town as of September 30, 2024.

Copies of the Town of Flower Mound's ACFR for the fiscal year ended September 30, 2024, were distributed prior to this meeting, and copies of the reports were placed in the Library for review by the public. There were no significant deficiencies or material weaknesses found during the audit.

The Town Council has adopted financial policies to guide and set goals for the financial administration of the Town. The following table displays the Town's financial policy results for fiscal year 2019-2020 through fiscal year 2023-2024.

<u>Financial Goals</u>	<u>Goal</u>		<u>09/30/2020</u>	<u>09/30/2021</u>	<u>09/30/2022</u>	<u>09/30/2023</u>	<u>09/30/2024</u>
General Fund fund balance	At/Above	20.00%	33.66%	41.17%	47.15%	49.49%	33.33%
Water & Wastewater capital reserve at 60 days maintained	At/Above	16.70%	21.43%	20.79%	26.37%	36.79%	23.16%
Debt Service fund balance	At/Above	4.00%	13.46%	24.12%	18.35%	11.74%	3.30%
Ratio of net debt to AV	At/Below	1.75%	0.65%	0.53%	0.45%	0.35%	0.28%
Ratio of debt service fund expenditures to total general & debt service funds	At/Below	20.00%	15.05%	12.49%	9.43%	7.36%	5.80%

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: N/A
N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

None

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



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

DATE: March 17, 2025
FROM: Shelly Willson, Customer Relations Manager, Matthew Woods, Director of Environmental Services
ITEM: **Discuss the results of the 2024 Green Waste Pilot Program and provide staff with direction for the next steps.**

BACKGROUND: The purpose of this item is to review and discuss the results of the Green Waste Pilot Program conducted in October and November 2024 by Republic Services. The [December 4, 2023, Town Council meeting](#) provides a complete history of green waste discussions.

BOARD REVIEW/CITIZEN FEEDBACK: The Town's Environmental Conservation Commission is in support of a green waste recycling program.

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. 2024 Green Waste Pilot Program Results Presentation Final

DRAFT MOTION: Discuss and provide staff with direction.



2024 Green Waste Pilot Program Results

Jeri Harwell, Municipal Manager

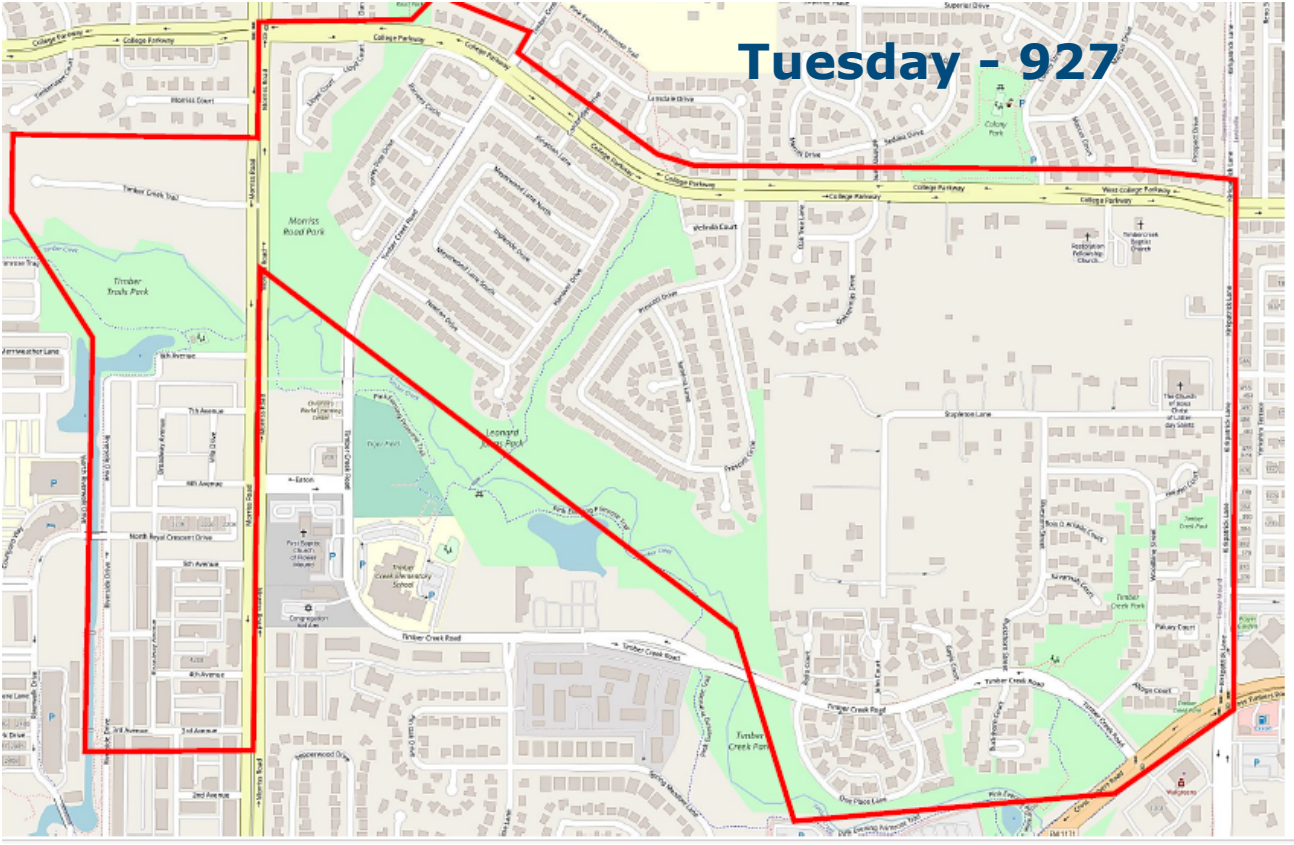
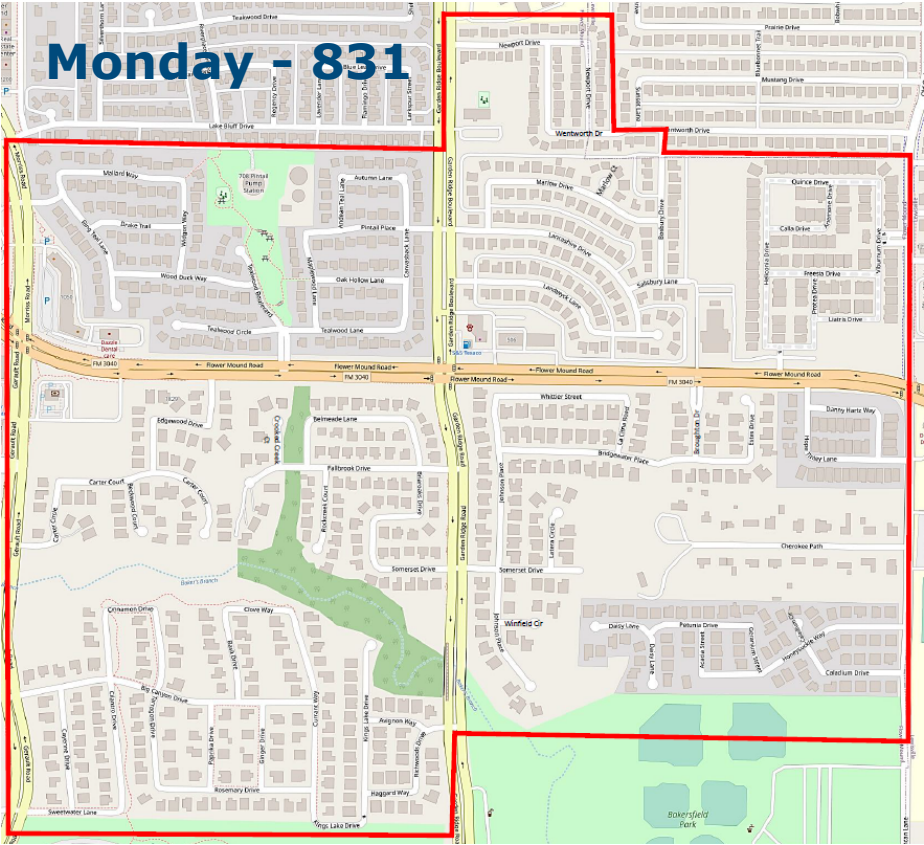
DETAILS ON PILOT PROGRAM

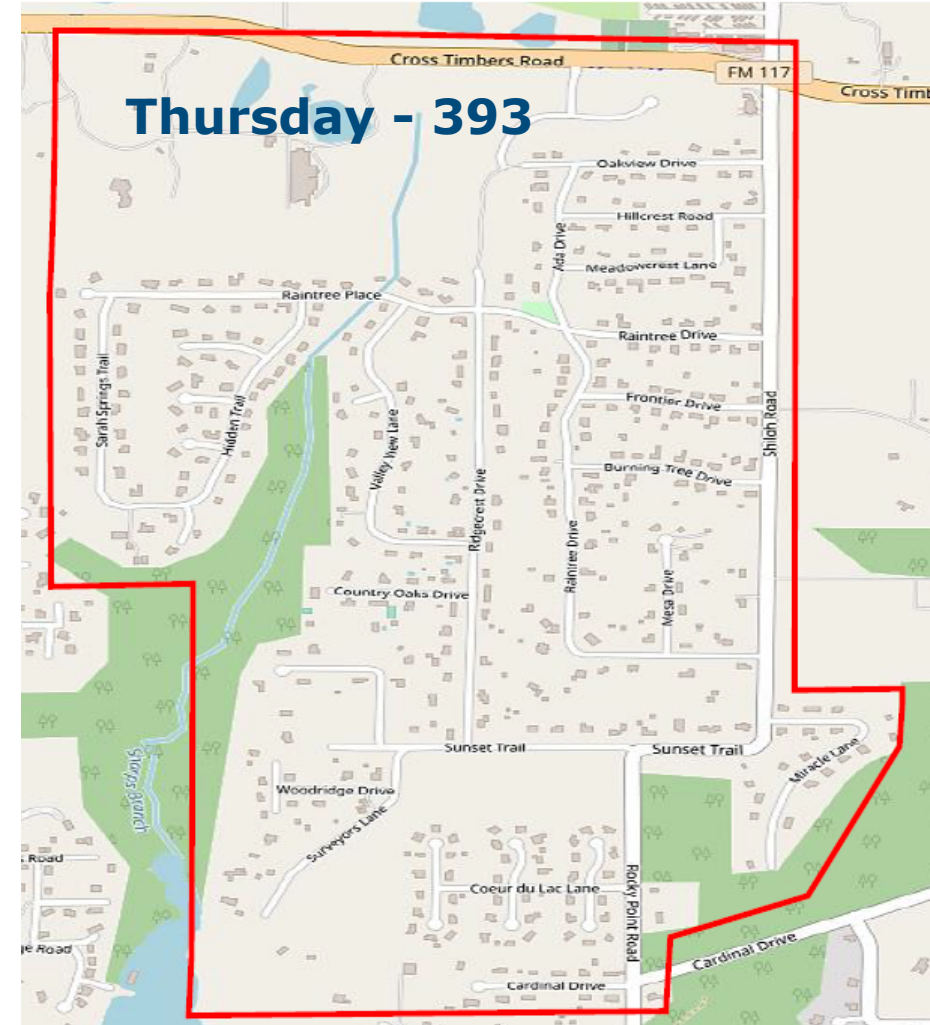
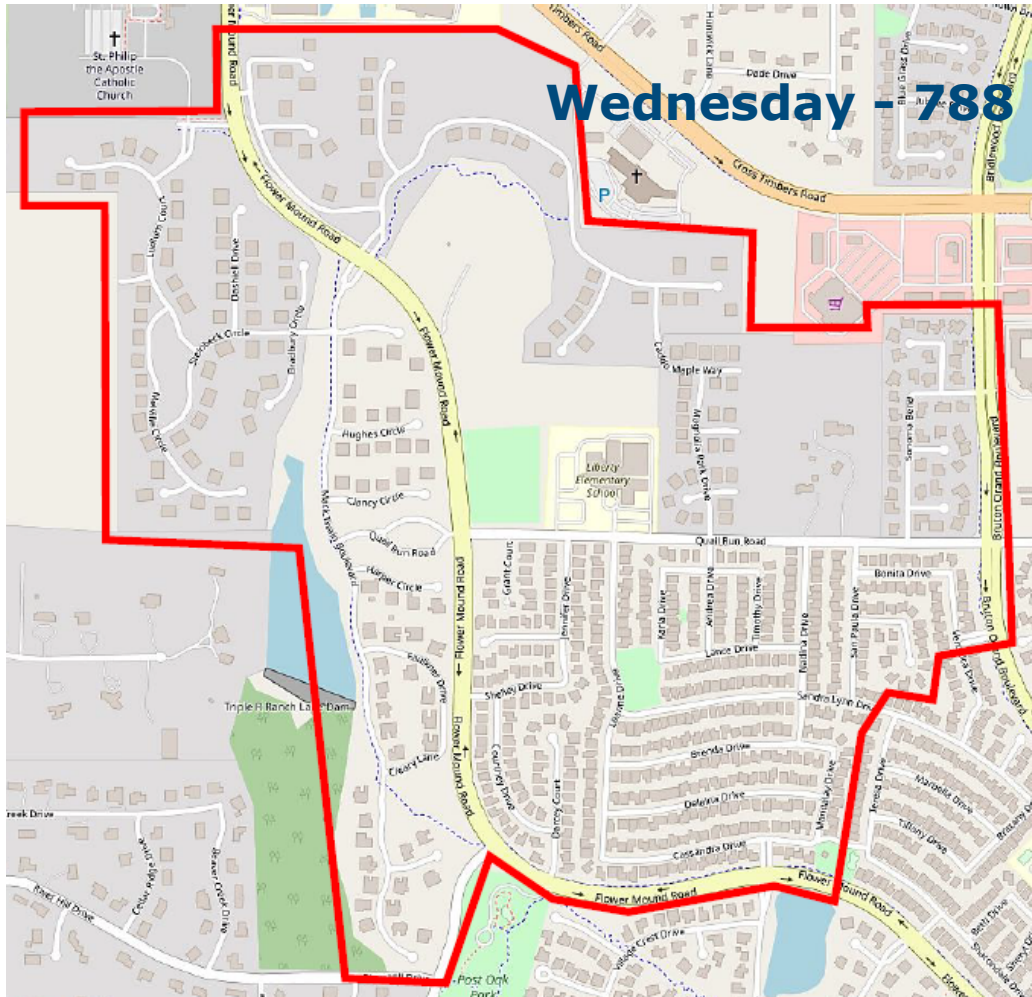
- Routes chosen by Republic/Town Staff
 - One route per service day – this allows for good demographic data
- Time of year recommended by Republic
 - October – November (selected)
 - March - April
- Resident education campaign
 - Letter sent to each resident on routes selected that included:
 - Dates of pilot program
 - Explanation of why the pilot program was being done
 - Instructions on how green waste needed to be packaged for collection, i.e., mulch bags for grass clippings and leaves, cut/bundled/tied brush, where to place brush so not mixed in with bulk
 - Explanation that collection was same day as trash, bulk, and recycle
 - Dedicated email for questions from residents
 - Link to Town website with more information (website was hidden unless user had direct link, as to not confuse residents who were not in the pilot program)
 - Website also included disclaimer that residents were not required to participate; if they chose not to participate, service remained the same as contracted

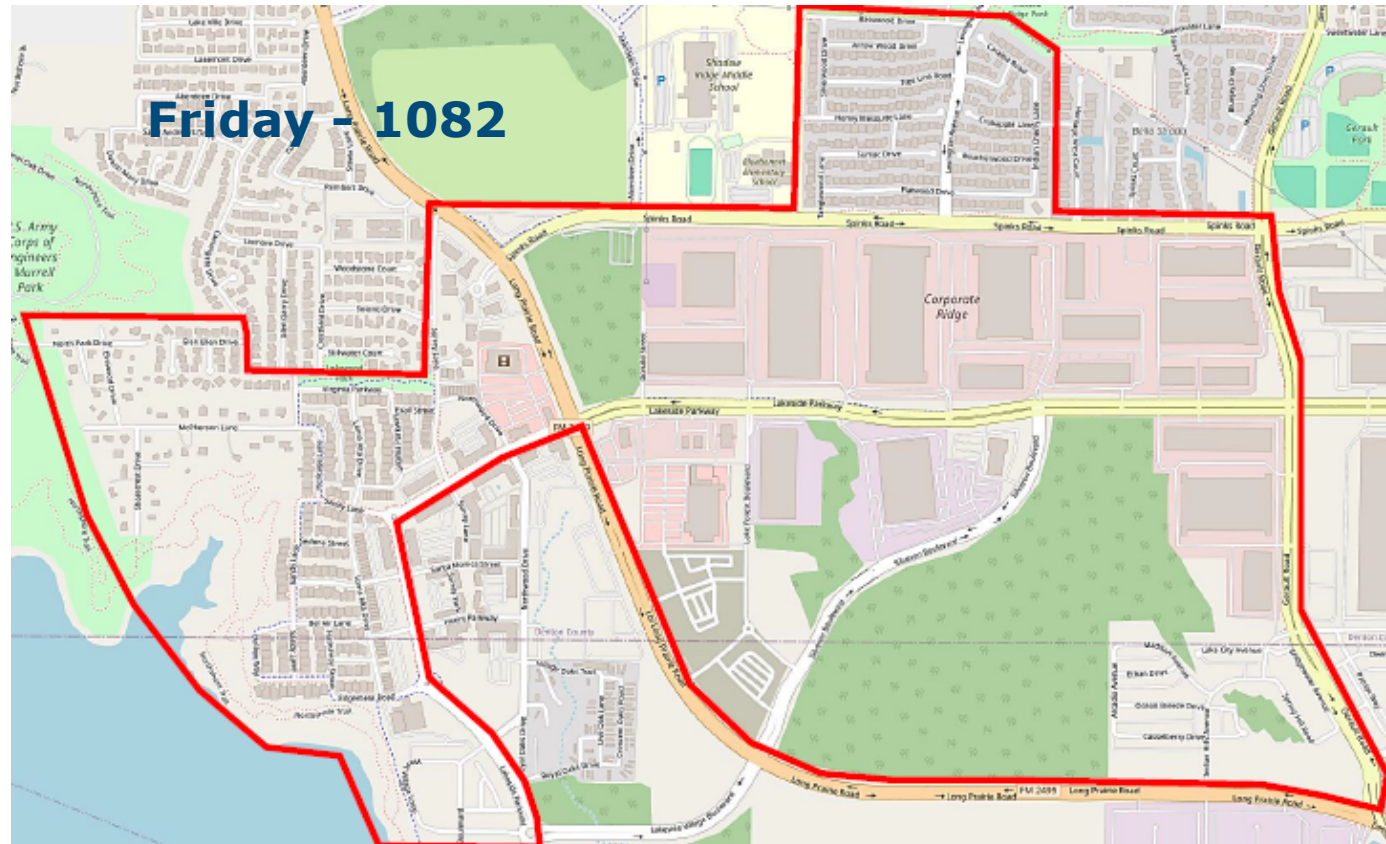
DETAILS ON PILOT PROGRAM

- Tracked tonnage for route/day
 - The material went to Living Earth in Flower Mound and tracked by route each day
- Surveyed residents following program
 - Follow-up questionnaire mailed to all residents in the chosen routes
- Report results back to Staff/ECC/Council

Participating Routes







Mailers to Residents



September 16, 2024

Dear Flower Mound Resident:

Re: Green Waste Pilot Program

In an effort to keep green waste – such as brush, leaves, and grass clippings – out of the landfill, the Town of Flower Mound and Republic Services are conducting a green waste recycling pilot program. Your neighborhood has been selected for the pilot program, which will occur in October and November. After the conclusion of the pilot program, the Town of Flower Mound and Republic Services will use your feedback to determine if this service should be introduced [town-wide](#).

Here's how you can participate in this free pilot program during October and November:

- Green waste will be collected on your regular trash and recycling day. Green waste includes grass, leaves, branches, and similar yard debris.
- Limbs will still need to be bundled.
- All leaves/grass clippings will need to be in mulch bags or will need to be left unbagged in a container that can be emptied into the truck and left at the curb. Any green waste left out for collection in regular trash bags will **not** be recycled and will be taken to the landfill.
 - Mulch bags can be purchased at various retailers, including Home Depot, Lowe's, and Walmart.
- During the pilot program, ALL green waste will need to be separated from any bulk items at the curb in order for a separate truck to collect the green waste and take it to a mulch facility. (Bulk will still be collected with a separate truck and taken to the landfill).



Before the pilot program concludes in November, a survey link will be mailed to you. Your feedback is important as we will use the information provided to present to Flower Mound Town Council and determine if residents would like to see this program implemented as part of their regular trash and recycling service. Participants who complete the survey will be entered into a drawing for a \$100 gift card.

We want to thank you in advance for participating in this pilot program. Your feedback is valuable to both the Town of Flower Mound and Republic Services. If you have any questions, please send them to FMgreenwaste@republicservices.com.

For more information on the green waste pilot program, visit www.flowermound.gov/greenwaste.

Sincerely,

Jeri Harwell

Jeri Harwell
Municipal Services Manager

Green Waste Pilot Program

Thank you for participating in the green waste pilot program. Please scan the QR code below to fill out a survey about the program. Participants in the survey will be entered into a drawing for a \$100 gift card.



©2025 Republic Services, Inc.



551 Huffines Blvd.
Lewisville, TX 75056

Thank you for
participating in the
green waste pilot
program!

Weekly Participation Data

	Monday	Tuesday	Wednesday	Thursday	Friday		Monday	Tuesday	Wednesday	Thursday	Friday
Date		1-Oct	2-Oct	3-Oct	4-Oct	Date	4-Nov	5-Nov	6-Nov	7-Nov	8-Nov
Participating HH's		12	17	9	12	Participating HH's	11	5	10	15	12
Cubic Yards		7	10	5	7	Cubic Yards	7	3	6	9	7
	Monday	Tuesday	Wednesday	Thursday	Friday		Monday	Tuesday	Wednesday	Thursday	Friday
Date	7-Oct	8-Oct	9-Oct	10-Oct	11-Oct	Date	11-Nov	12-Nov	13-Nov	14-Nov	15-Nov
Participating HH's	14	15	10	15	10	Participating HH's	32	25	14	24	15
Cubic Yards	8	9	6	9	6	Cubic Yards	19	15	8	14	9
	Monday	Tuesday	Wednesday	Thursday	Friday		Monday	Tuesday	Wednesday	Thursday	Friday
Date	14-Oct	15-Oct	16-Oct	17-Oct	18-Oct	Date	18-Nov	19-Nov	20-Nov	21-Nov	22-Nov
Participating HH's	35	22	12	12	11	Participating HH's	24	17	12	13	16
Cubic Yards	21	13	7	7	7	Cubic Yards	14	10	7	8	10
	Monday	Tuesday	Wednesday	Thursday	Friday		Monday	Tuesday	Wednesday	Friday	Saturday
Date	21-Oct	22-Oct	23-Oct	24-Oct	18-Oct	Date	25-Nov	26-Nov	27-Nov	29-Nov	30-Nov
Participating HH's	45	25	12	10	16	Participating HH's	14	7	7	13	13
Cubic Yards	27	15	7	6	10	Cubic Yards	8	4	4	8	8
** No change in bulk tonnage for this route during the pilot program.											

SUMMARY OF RESULTS

- **Total # of households in Pilot Areas = 4,021**
- **Total Survey Participants = 138**
- **Total Cubic Yards Collected for October = 187**
- **Total Cubic Yards Collected for November = 178**

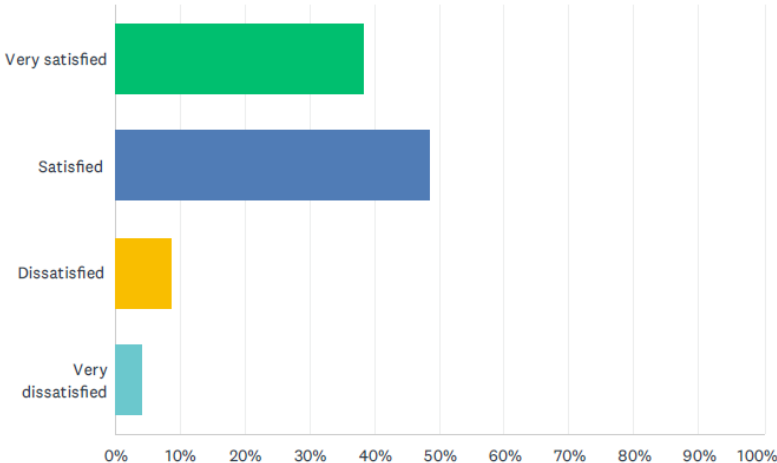
Note: Regular bulk tonnage did not decrease during the pilot program.

Average green waste collected was less than one cubic yard per home.

SURVEY RESULTS

Q1 How would you rate the communication about the green waste pilot program?

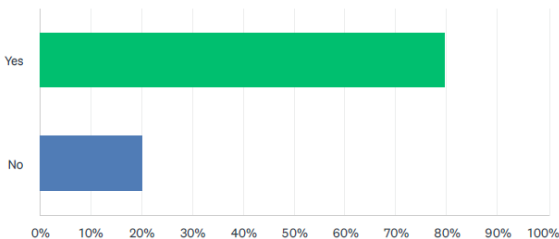
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES
Very satisfied	38.41%53
Satisfied	48.55%67
Dissatisfied	8.70%12
Very dissatisfied	4.35%6
TOTAL	138

Q2 Was the goal of the Green Waste pilot program clearly communicated?

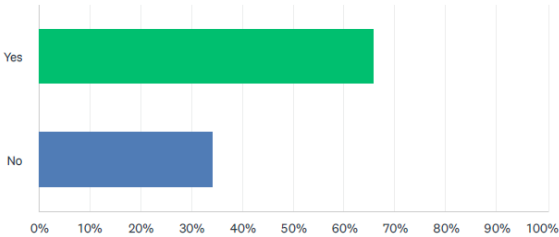
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	79.71%110
No	20.29%28
TOTAL	138

Q3 Prior to the program, did you know yard debris left by the curb was sent to the landfill?

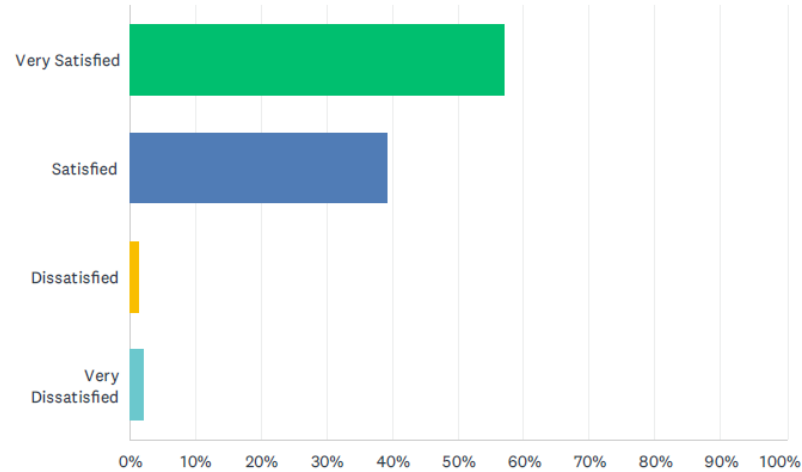
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES
Yes	65.94%91
No	34.06%47
TOTAL	138

Q4 How would you rate the frequency of the pick ups (once per week)?

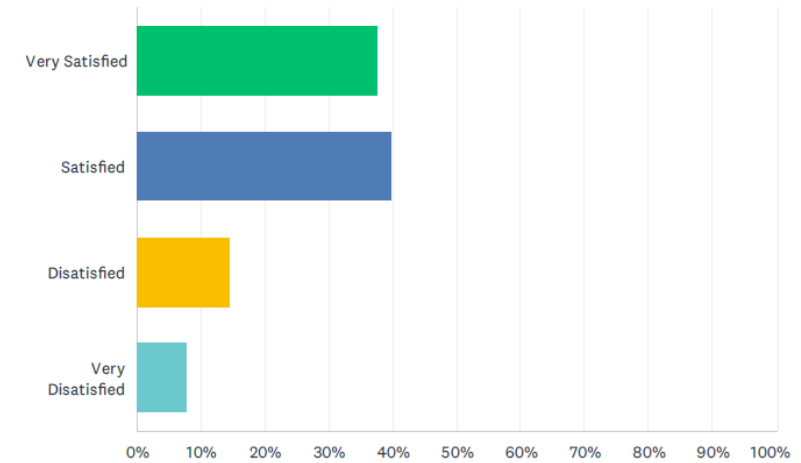
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very Satisfied	57.25%	79
Satisfied	39.13%	54
Dissatisfied	1.45%	2
Very Dissatisfied	2.17%	3
TOTAL		138

Q5 Are you satisfied with the use of mulch bags?

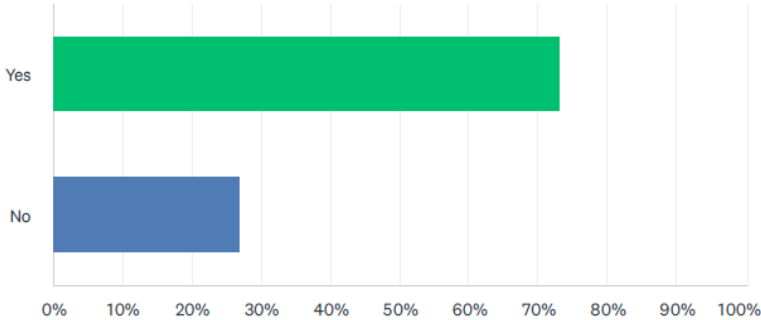
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very Satisfied	37.68%	52
Satisfied	39.86%	55
Dissatisfied	14.49%	20
Very Dissatisfied	7.97%	11
TOTAL		138

Q6 Did you find the mulch bags to be easy to purchase?

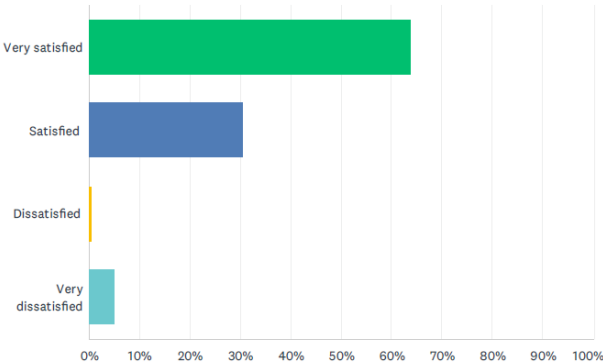
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	73.19%	101
No	26.81%	37
TOTAL		138

Q7 How satisfied are you with green waste being serviced on same day as trash/recycle?

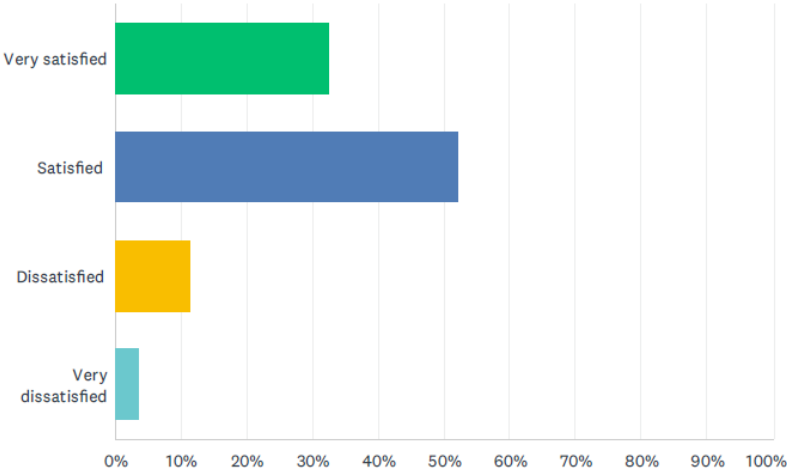
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very satisfied	63.77%	88
Satisfied	30.43%	42
Dissatisfied	0.72%	1
Very dissatisfied	5.07%	7
TOTAL		138

Q8 Are you satisfied with the limit of 4 cubic yards?

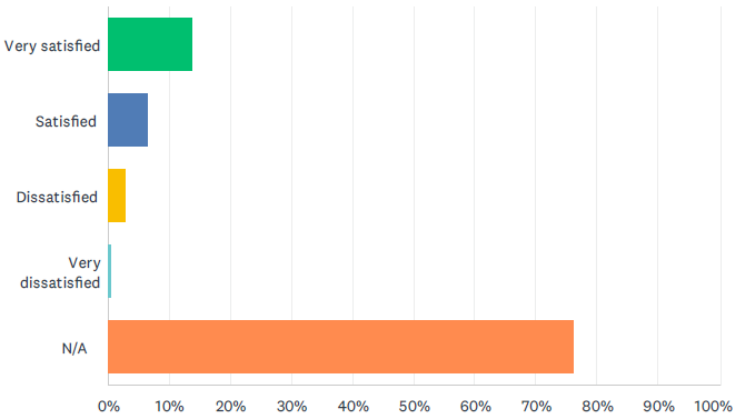
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very satisfied	32.61%	45
Satisfied	52.17%	72
Dissatisfied	11.59%	16
Very dissatisfied	3.62%	5
TOTAL		138

Q9 If you had any questions for Republic Services about the green waste pilot, were you satisfied with the response time to your questions?

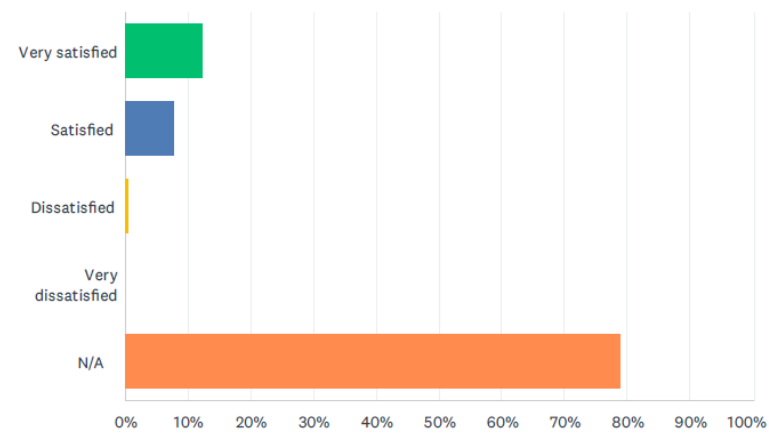
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very satisfied	13.77%	19
Satisfied	6.52%	9
Dissatisfied	2.90%	4
Very dissatisfied	0.72%	1
N/A	76.09%	105
TOTAL		138

Q10 If you had any questions for the Town of Flower Mound about the green waste pilot, were you satisfied with the response time?

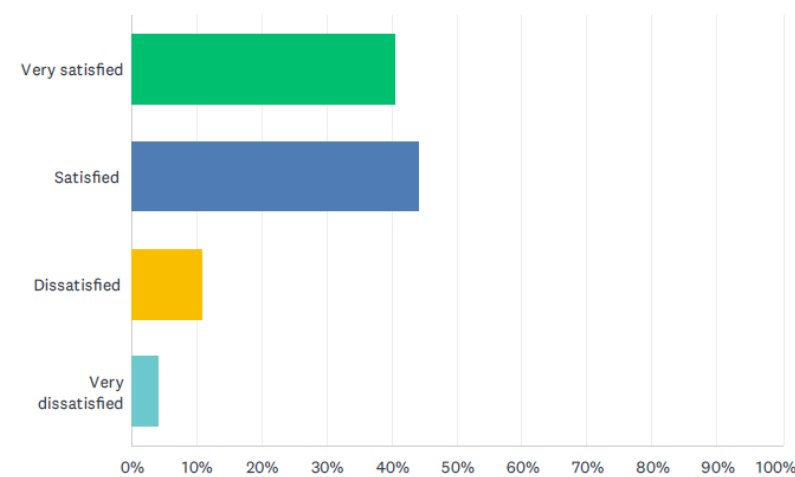
Answered: 138 Skipped: 0



ANSWER CHOICES	RESPONSES	
Very satisfied	12.32%	17
Satisfied	7.97%	11
Dissatisfied	0.72%	1
Very dissatisfied	0.00%	0
N/A	78.99%	109
TOTAL		138

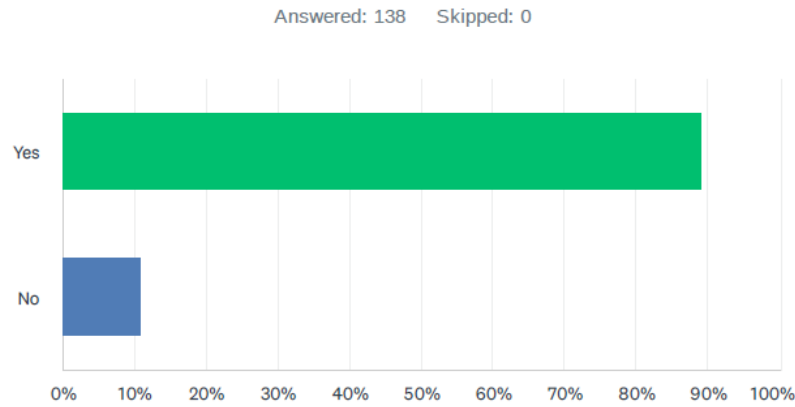
Q11 What is your overall satisfaction level of the green waste pilot?

Answered: 138 Skipped: 0



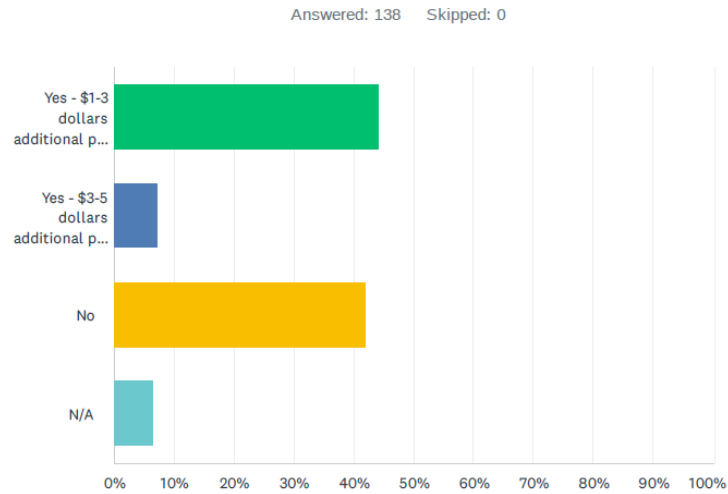
ANSWER CHOICES	RESPONSES	
Very satisfied	40.58%	56
Satisfied	44.20%	61
Dissatisfied	10.87%	15
Very dissatisfied	4.35%	6
TOTAL		138

Q12 Would you like for the Town of Flower Mound to explore adding a green waste program?



ANSWER CHOICES	RESPONSES	
Yes	89.13%	123
No	10.87%	15
TOTAL		138

Q13 If yes, would you be willing to pay for the additional service?



ANSWER CHOICES	RESPONSES	
Yes - \$1-3 dollars additional per month	44.20%	61
Yes - \$3-5 dollars additional per month	7.25%	10
No	42.03%	58
N/A	6.52%	9
TOTAL		138

ITEMS TO CONSIDER

- Town-wide program
 - New trucks
 - Additional employees
 - Additional wear on streets
 - Additional emissions – trucks burn 3 to 4 gallons per hour
 - Town could consider an additional cart for green waste
 - Increase in residential rates - \$3.00 to \$5.00 per month
- Resident behavior changes
 - Leaves and grass clippings will need to be in mulch bags – cost is approximately \$.54 per bag
 - Bundled brush will need to be tied with rope
 - Educate residents on benefits of mulching back into yard
 - Bulk and green waste will need to be separated



Q & A

Thank you for the *partnership*



TOWN COUNCIL AGENDA K.1. WORK SESSION ITEM

DATE: March 17, 2025
FROM: Lexin Murphy, Director of Development Services
ITEM: **Work session discussion on the proposed Eden Ranch development project.**
Currently associated project numbers are MPA24-0006 and ZPD24-0006.

BACKGROUND:

1. ITEM SUMMARY

The Eden Ranch development encompasses approximately 336 acres that is located in the Cross Timbers Conservation Development District (CTCDD) on the north side of 1171, between Red Rock and Shiloh Roads. As currently proposed, the project would require amending the Town's Master Plan to remove a rural collector street and amending the CTCDD Area Plan to change standards relating to fencing and proximity of homes to country roads. There is also a companion Zoning Planned Development application to rezone the properties to a cluster development, with base Agricultural zoning. Lastly, a Tree Removal Permit for at least 20 specimen trees would be needed.

This application will require a future work session with the Planning and Zoning Commission and a public hearing and recommendation from the Planning and Zoning Commission (P&Z), followed by final action by the Town Council.

2. WORK SESSION CRITERIA

With respect to this application, the proposed development meets the following P&Z work session criteria:

- Master Plan Amendment(s)
- Over 20 acres in size
- Requires three or more exceptions, modifications, or waivers.

3. APPLICATION ANALYSIS

As previously noted, the Eden Ranch project area consists of approximately 336 acres of Agricultural (Ag) zoning. To accommodate the development, an MPA would be required to amend the Town's Thoroughfare Plan within the Master Plan by removing the designated East/West Collector between Red Rock and Shiloh Roads. In order to pass SMARTGrowth traffic limitations, if the Collector Street is removed, Shiloh would have to be widened to four lanes for a length of approximately 1,600 feet, starting from 1171. The Transportation Commission recommended approval of this MPA on Feb 11,

2025.

The majority of the project acreage would be developed as a cluster development, which is an allowed use under Ag, provided the development follows the previous cluster guidelines contained within the Master Plan. This guidance included the following text:

“Scenic Corridor Perimeter Fencing Elements

- Views of scenic corridors and vistas should be retained by the limited use of foreground plantings.
- No earthen berm or solid masonry walls will be allowed within this district; however, multi-rail or pipe fencing with stone columns in either white, black, dark green, or an earth-tone color is allowable for new development.

Scenic corridors are present along the following roadways in addition to the roads identified in the Town’s Urban Design Plan within the Cross Timbers Conservation Development District:

1. Skillern Road
2. Scenic Road
3. Shiloh Road
4. Rocky Point Road
5. Red Rock Road
6. High Road
7. FM 1171 at the Cross Timbers Escarpment

Properties adjacent to these roads provide extensive views into the District. Compliance with the SMARTGrowth Analysis could be achieved by conservation or cluster development, placing new houses outside of the view area, or by siting any new lots so the houses face the roadways across conserved open space, with access from a street internal to the development, rather than providing a view from the roadways into backyards or rear alleys.”

Based on the most recently submitted concept plans, the Eden Ranch project would require an MPA to amend the CTCDD text to allow for berms and masonry walls, as well as backyards adjacent to the landscape buffer for Red Rock and Shiloh Roads. The applicant is seeking input as to whether Council would be supportive of this type of MPA before they make application.

The Eden Ranch conceptual plans identify 193 residential lots within the Cluster Development. There are also eight lots identified only as Agricultural Zone Lots. The intent is not clear on these properties, as a number of non-residential uses have been discussed by the applicant at various locations within the development at prior meetings.

The applicant has also proposed to modify the Town’s Home Occupation standards so that there are no limits on the number of employees or patrons that can be associated with them, and no restrictions on the types of uses that can be operated as a home occupation. These modifications would change the designation of the use under the building code to commercial. If that were to occur, the lots could not be considered part of a residential cluster development.

The project will need to receive a recommendation from the Parks Board on parkland dedication and the Environmental Conservation Commission on the TRP and Open Space Management Plan associated with the Cluster Development, prior to the Planning and Zoning Commission work

session. Staff has suggested a work session with the Parks Board may also be appropriate, as there is currently not a consensus on the appropriate location for any parkland dedication.

If, after public hearing, the MPA, ZPD, and TRP requests are approved, the project will still require review and approval of subdivision site plan and record plat applications.

4. REQUESTED EXCEPTIONS AND MODIFICATIONS

The applicant's request for a Planned Development includes various modifications to the development standards:

1. Modification of dimensional standards for Agriculturally zoned property
2. Modification of home occupation standards
3. Modification of Accessory Dwelling standards so that they are allowed in lots as small as $\frac{3}{4}$ of an acre instead of 2 acres
4. Modification of Commercial boarding or rental stables so that they are allowed on lots as small as 1 acre instead of 2 acres
5. Modification of guidelines for keeping animals so that stables, barns, poultry coops or other livestock shelters can be located closer than 50 feet from the property lines, utilizing typical setbacks for the associated zoning district
6. Topographical slope exception for slopes between 5% and 12%

5. ITEMS UNDER DISCUSSION

Currently, the applicant and staff are continuing to work through various components of the request. As such, the following represents the specific areas of entitlements continuing to be discussed:

- The need for an MPA for the CTCDD Area Plan
- How to address view corridors into the property from Scenic and Country Roads
- The uses and associated development standards for proposed Ag lots
- The location of functional farmland and/or orchards within dedicated open space
- Parkland dedication vs. fees in lieu

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: N/A

ATTACHMENTS:

1. Zoning & Aerial Map
2. Planned Development Zoning Package

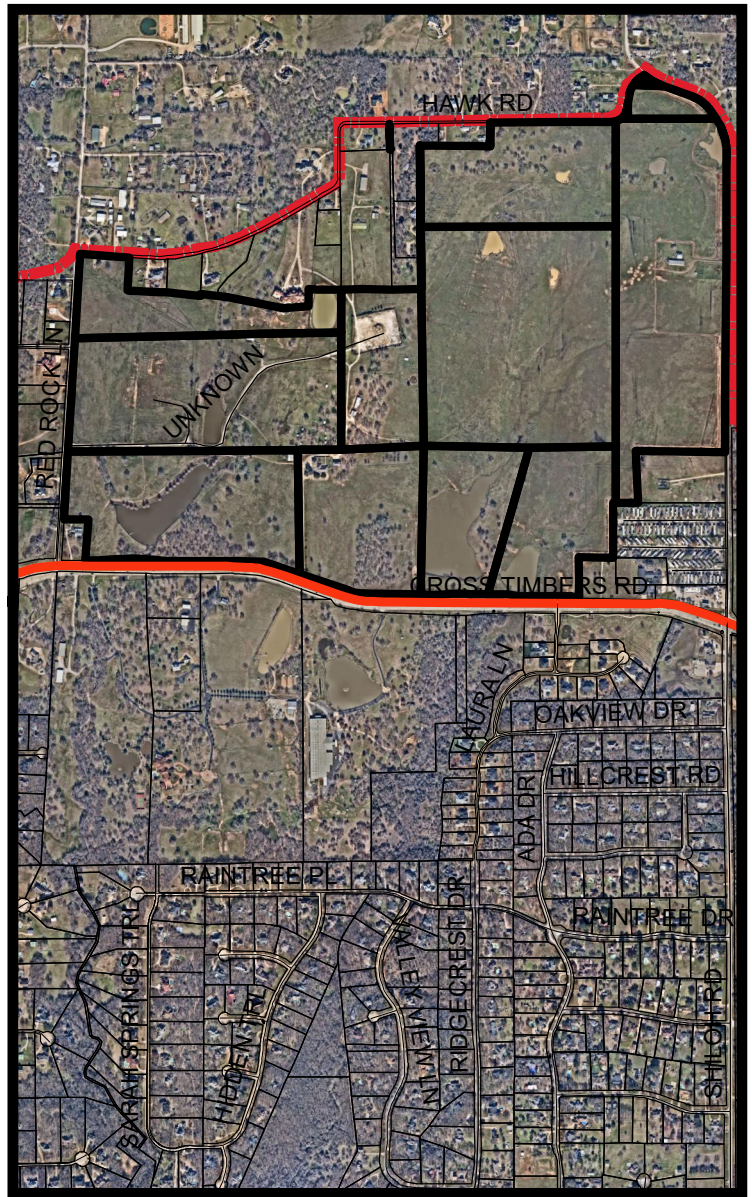
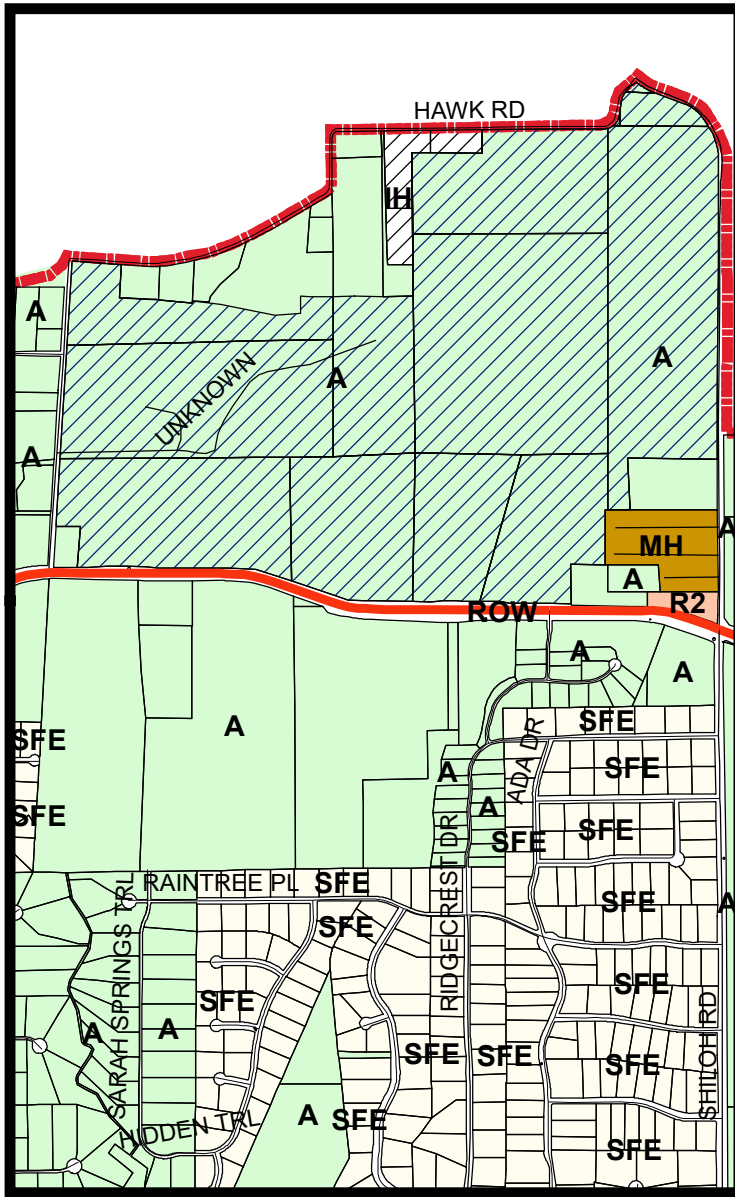
DRAFT MOTION:

No action is required by the Town Council on this item.

Discuss and provide staff with direction.

Vicinity Map

ZPD24-0006: Eden Ranch



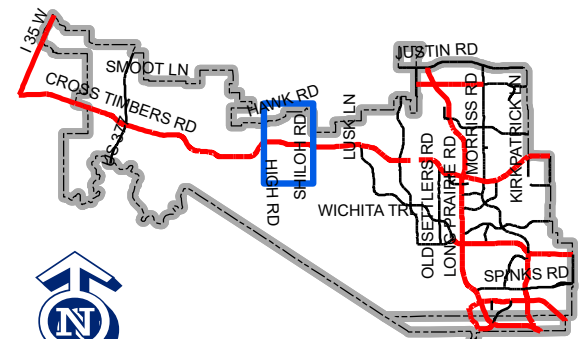
LEGEND

Agriculture
 Interim Holding
 Mobile Home
 Retail 2
 Single Family Estate

— Subject Property

Visit www.fmdevmap.com to learn more about this project.

Visit <https://www.flowermound.gov/notifyme> to sign up for text message and/or email alerts for future projects.



Map Location

0 1,150 2,300 4,600 Feet

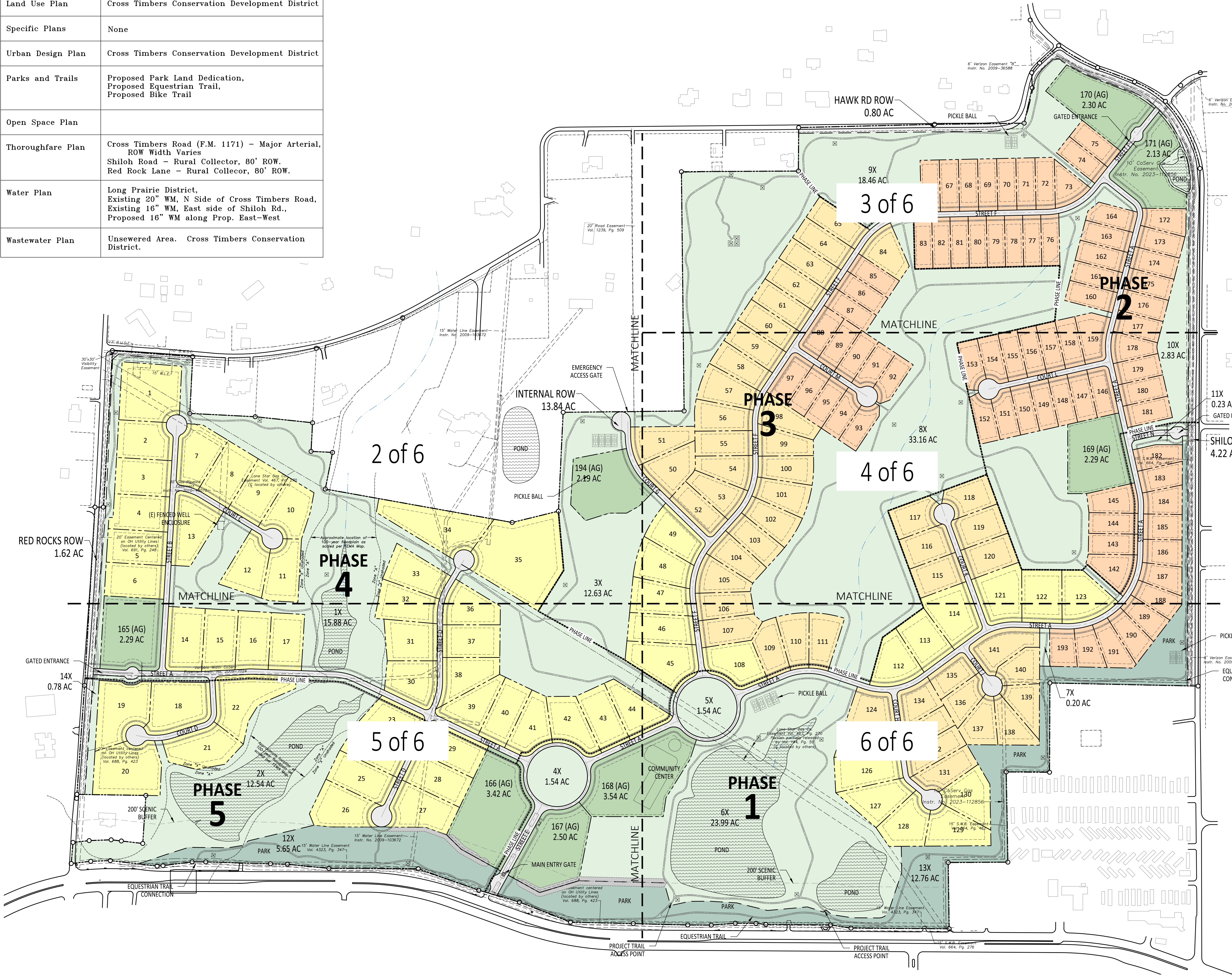
MASTER PLAN FEATURES	
Land Use Plan	Cross Timbers Conservation Development District
Specific Plans	None
Urban Design Plan	Cross Timbers Conservation Development District
Parks and Trails	Proposed Park Land Dedication, Proposed Equestrian Trail, Proposed Bike Trail
Open Space Plan	
Thoroughfare Plan	Cross Timbers Road (F.M. 1171) – Major Arterial, ROW Width Varies Shiloh Road – Rural Collector, 80’ ROW. Red Rock Lane – Rural Collector, 80’ ROW.
Water Plan	Long Prairie District, Existing 20” WM, N Side of Cross Timbers Road, Existing 16” WM, East side of Shiloh Rd., Proposed 16” WM along Prop. East–West
Wastewater Plan	Unsewered Area. Cross Timbers Conservation District.

4

3

2

1



PROJECT DATA TABLE	
GROSS AREA IN CORP CITY LIMITS	334.78 ac.
PROPOSED USE : AGRICULTURE & CLUSTERED RESIDENTIAL	
CURRENT ZONING : AGRICULTURE	

EXTERNAL R.O.W. & APPORTIONS (ACRES)	
SHILOH ROAD	4.22 ac.
RED ROCK LANE	1.62 ac.
HAWK ROAD	0.80 ac.
LOCAL ROAD ROW	13.84 ac.
TOTAL RIGHT OF WAY	20.48 ac.

OPEN SPACE (ACRES)	
POTENTIAL TOWN PARK	18.41 ac.
PRIVATE OPEN SPACE LOTS	123.78 ac.
TOTAL OPEN SPACE	142.19 ac.

LAND USE TABLE	QTY.	DU	ACRES
1 ACRE (MIN.) CLUSTERED RESIDENTIAL	62	62	73.25
3/4 ACRE (MIN.) CLUSTERED RESIDENTIAL	40	40	31.82
1/2 ACRE (MIN.) CLUSTERED RESIDENTIAL	84	84	46.34
2 ACRE (MIN.) AGRICULTURAL	8	7	20.66
POTENTIAL TOWN PARK LOTS	2	---	18.41
PRIVATE OPEN SPACE LOTS	12	---	123.78
TOTALS	208	193	314.26
TOTAL RIGHT OF WAY			20.48
TOTAL SITE AREA			334.74

LAND USE SUMMARY	% OF GROSS	ACRES
CLUSTERED RESIDENTIAL	45.2%	151.41
AGRICULTURAL	6.2%	20.66
OPEN SPACE	42.5%	142.19
ROW	6.1%	20.48
	100.0%	334.74

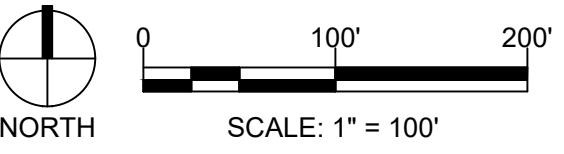
GROSS DENSITY (ACRE PER DWELLING UNIT)	1.73
--	------

ZONE LEGEND

- 2 ACRE (MIN.) AGRICULTURAL
- 1 ACRE (MIN.) CLUSTERED RESIDENTIAL
- 3/4 ACRE (MIN.) CLUSTERED RESIDENTIAL
- 1/2 ACRE (MIN.) CLUSTERED RESIDENTIAL
- OPEN SPACE
- PARK OPEN SPACE
- RIGHT-OF-WAY

PLAN SYMBOLS

- EXISTING TREES
- EXISTING FENCE
- PERMITTED OIL WELLS
- OPEN CABANAS @ TRAILS
- OPEN SPACE TRAILS
- WATER COURSE



EDEN DEVELOPMENT

6050 Long Prairie Rd., Suite 100-32
Flower Mound TX 75028
www.developeden.com

STUDIO 2nd Street
Landscape Architecture & Design
STUDIO 2ND STREET
1124 2nd street, Los Osos, CA 93402
www.studio2ndstreet.com

Ridinger Associates, Inc.
Civil Engineers - Planners

Civil Engineers & Planners
RIDINGER ASSOCIATES
550 S. Edmonds Lane, Suite 101
Lewisville TX 75067 - 972.353.8000

AGRIBURBIA
Master Planning, Program & Design
AGRIBURBIA DESIGN, LLC
PO Box 630, Keenesburg CO 80643
888.458.8554 - www.agriburbia.com

EDEN RANCH

Planned Development

336.04 acres

REVISIONS

1 : ZPD SUBMITTAL	July 8, 2024
2 : ZPD 2nd SUBMITTAL	October 29, 2024

SHEET INFO

LAST PRINTED:	
ISSUE DATE :	October 29, 2024
JOB NO. :	2022-Eden Ranch
DRAWN BY :	JPN
CHECKED BY :	MCR

CONCEPT PLAN

EXHIBIT 'A'

EDEN RANCH
Planned Development
336.04 acres

in the T.J. Payne Survey, Abstract No. 1056, T&P Railroad Co. Survey, Abstract No. 1618, John West Survey, Abstract No. 1414, John West Survey, Abstract No. 1415, H. Campbell, Abstract No. 1462, and the B.B.B. & C.R.R. Survey Abstract No. 152, in the Town of Flower Mound, Denton County, Texas

REVISIONS

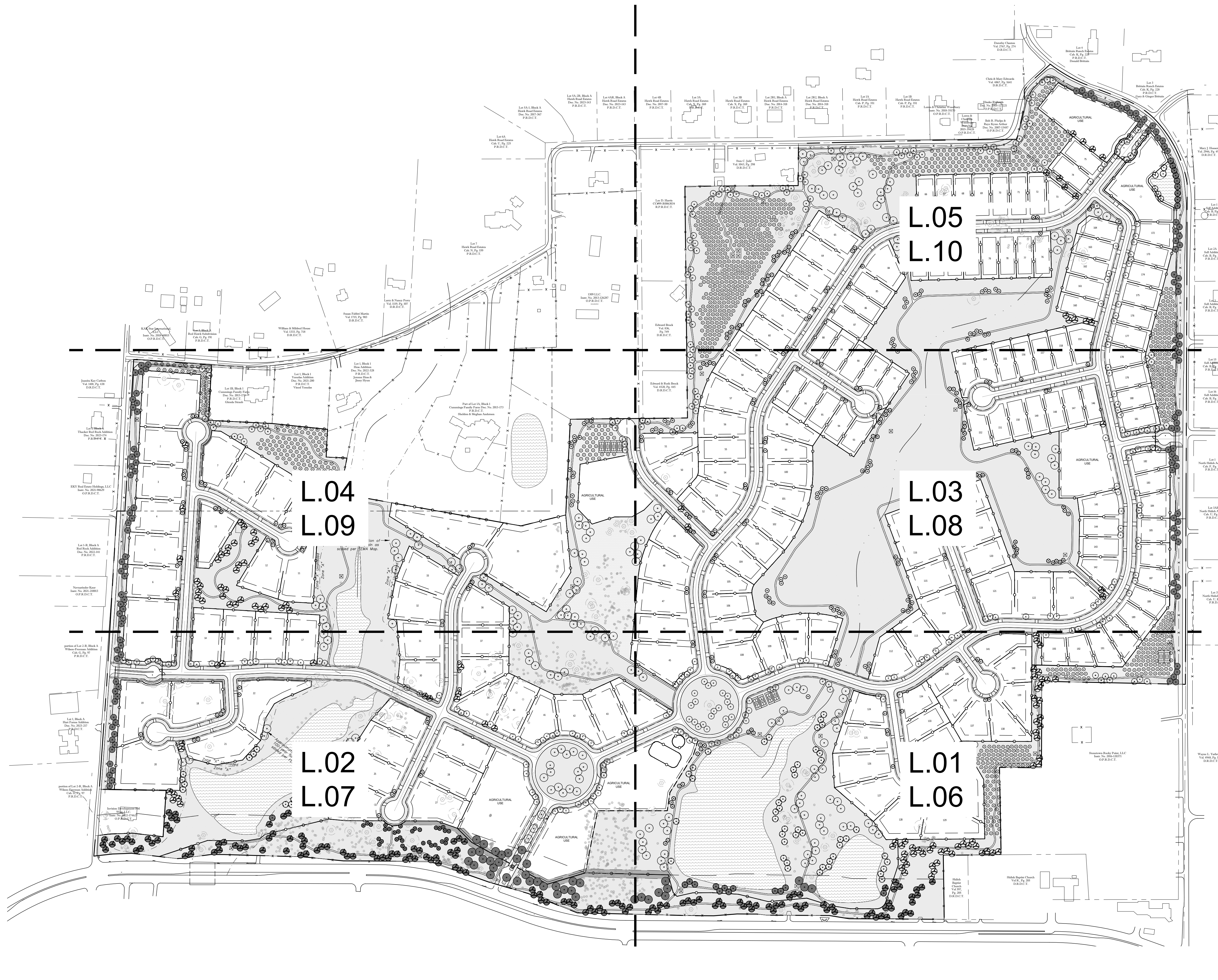
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**LANDSCAPE
MASTER PLAN
EXHIBIT 'C'**

L.00
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0' 250' 500' 750'



SCALE: 1" = 250'-0"





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REVISIONS	
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OPEN SPACE PLAN

EXHIBIT 'B'