

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, OCTOBER 10, 2023, 6:00 P.M.

CITY HALL COUNCIL CHAMBERS

701 MAIN STREET, KERRVILLE, TEXAS

The Community Vision

Kerrville will be a vibrant, welcoming and inclusive community that:

- *Respects and protects the natural environment that surrounds it;*
- *Seeks to attract economic growth and development;*
- *Provides opportunities for prosperity, personal enrichment and intellectual growth for people of all ages; and*
- *Does so while preserving the small-town charm, heritage, arts and culture of the community.*



Kerrville2050



CITY COUNCIL MEETING AGENDA
OCTOBER 10, 2023 6:00 PM
CITY HALL, 701 MAIN STREET, KERRVILLE, TEXAS



Council Meeting Procedures, City Council and City Staff Safety,
And Citizen Participation Guidelines

Citizens may view and hear City Council meetings on Spectrum Channel 2 or by live-streaming via the City's website (www.kerrvilletx.gov). City Council meetings are recorded and the recordings are posted on the City's website.

Citizens wishing to speak during a meeting shall submit a completed "speaker request form" to the City Secretary before the item is introduced, but are encouraged to submit the form before the meeting begin. Each speaker is limited to four minutes.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property.

Thank you for your participation!

CALL TO ORDER: *By Mayor Judy Eychner*

INVOCATION AND PLEDGE OF ALLEGIANCE: *Led by Councilmember Joe Herring, Jr.*

1. ANNOUNCEMENTS OF COMMUNITY INTEREST: Announcement of items of community interest, including expressions of thanks, congratulations, or condolences; information regarding holiday schedules; honorary recognitions of city officials, employees, or other citizens; reminders about upcoming events sponsored by the city or other entity that is scheduled to be attended by city officials or employees; and announcements involving imminent threats to the public health and safety of the city. No action will be taken.

2. PRESENTATIONS:

2.A Proclamation recognizing October 2023 as Fire Prevention Month.
2.B Proclamation recognizing Mini Mart 50th Anniversary.

3. VISITORS/CITIZENS FORUM: Any citizen with business not scheduled on the agenda may speak to the City Council. Prior to speaking, each speaker must fill out the speaker request form and give it to the City Secretary. The speaker request form must be submitted to the City Secretary before the item is called or read into record. City Council may not discuss or take any action on an item but may place the issue on a future agenda. Each speaker is limited to four minutes.

4. CONSENT AGENDA: These items are considered routine and can be approved in one motion unless a Councilmember asks for separate consideration of an item. It is recommended that the City Council approve the following items which will grant the Mayor or City Manager the authority to take all actions necessary for each approval:

4.A Resolution No. 28-2023. A Resolution canceling the regular meetings of the City Council scheduled for November 28, 2023 and December 26, 2023.

Attachment: 20231010_Reso 28-2023 Cancel 2nd CC meeting Nov-Dec.pdf

4.B Amendment to the Professional Services Agreement with Freese & Nichols, Inc. for the Public Safety Facility Design-Build Advisor Services in the amount of \$640,888.00.

Attachments: 20231010_Amendment PSA FNI PSFDesign-Build.pdf

20231010_Contract 2022-77 FNI PSFDesign-Build.pdf

4.C Professional Services Agreement with Utility Engineering Group, PLLC for the Wastewater Lift Station Rehabilitations project in the amount of \$64,620.00.

Attachment: 20231010_PSA Utility Eng Group - Lift Stations Rehab.pdf

4.D City Council workshop minutes, September 26, 2023.

Attachment: 20231010_Minutes CC workshop 9-16-23 4pm.pdf

4.E City Council meeting minutes, September 26, 2023.

Attachment: 20231010_Minutes CC meeting 9-26-23 6pm.pdf

END OF CONSENT AGENDA.

5. PUBLIC HEARINGS AND RESOLUTIONS:

5.A Resolution No. 33-2023. A Resolution granting a Conditional Use Permit to authorize an Independent Living Facility for Seniors on property generally located adjacent to Memorial Boulevard (SH 27) and between its intersection with Meeker Road and Laurel Street; comprising an approximate 0.53 acres and more commonly known as 2916 Memorial Blvd; said property is located within a Light Commercial Zoning District (C-2); and making said permit subject to certain conditions and restrictions.

Attachment: 20231010_Reso 33-2023 CUP 2916 Memorial Blvd.pdf

6. PUBLIC HEARING AND ORDINANCES, FIRST READING:

6.A Ordinance No. 2023-29. An Ordinance annexing an approximate 214.1-acre tract of land, which includes an adjacent right-of-way existing as a portion of Olympic Drive, all of which is out of the Samuel Wallace Survey No. 114, Abstract No. 348, and Samuel Wallace Survey No. 113, Abstract No. 347, into the corporate limits of the City of Kerrville, Texas; such property being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and generally located adjacent to Loop 534 and north of Olympic Drive; further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning both for the property annexed and a contiguous tract of land located adjacent to Loop 534, and providing other matters relating to the subject.

Attachment: 20231010_Ord 2023-29 Annex-Zone 2945 Loop 534.pdf

6.B Ordinance No. 2023-30. An Ordinance of the City Council of the City of Kerrville, Texas, designating the Windridge Tax Increment Reinvestment Zone (TIRZ), a petition-initiated TIRZ to be named Tax Increment Reinvestment Zone Number Two, Windridge, City of Kerrville, Texas, pursuant to Chapter 311, Texas Tax Code; and generally located north of Olympic Drive and on an approximate 100.36 acre tract of undeveloped property; describing the boundaries of the Zone; creating a Board of Directors for the Zone; establishing a Tax Increment fund for the Zone; containing a findings related to the creation of the Zone; providing a date for the termination of the Zone; providing that the Zone take effect immediately upon passage of the Ordinance; providing a severability clause; and providing an effective date.

Attachment: 20231010_Ord 2023-30 Windridge TIRZ2.pdf

7. ORDINANCES, FIRST READING:

7.A Ordinance No. 2023-27. An Ordinance amending Chapter 58, Article III of the City's Code of Ordinances, titled "Smoking in Enclosed Public Places and Places of Employment"; to clarify various sections; revise regulations in accordance with State Law, to include the definition of a "Minor"; and to change defenses to affirmative defenses; ordering publication; and providing other matters related to the subject.

Attachment: 20231010_Ord 2023-27 Smoking Ord revision.pdf

8. ORDINANCES, SECOND READING:

8.A Ordinance No. 2023-24, second reading. An Ordinance amending in part Ordinance No. 99-18, as amended by adopting revised rate schedules for residential services, and distributed

generation rider; containing a cumulative clause; containing a severability clause; and establishing an effective date.

Attachment: [20231010_Ord 2023-24 KPUB rate schedules 2nd reading.pdf](#)

9.

9.A CONSIDERATION AND POSSIBLE ACTION:

Resolution No. 32-2023. A Resolution authorizing the City Manager to contract with a Real Estate Broker for the sale of real property located at 505 Center Point Drive E, such property described as Lot 1 Oak View Estates, a Subdivision out of the Benjamin B. Peck Survey No. 51, Abstract No. 266, and consisting of approximately 17.68 acres.

Attachment: [20231010_Reso 32-2023 Real Estate Broker 505 CenterPoint.pdf](#)

9.B

Resolution No. 34-2023. A Resolution nominating a candidate(s) to Kerr Central Appraisal District Board of Directors. (This item is eligible for Executive Session 551.074.)

Attachments: [20231010_Reso 34-2023 KCAD Board nominations.pdf](#)

[20231010_Requirements KCAD Board eligibility.pdf](#)

9.C

Resolution No. 35-2023. A Resolution creating an Ad Hoc Animal Regulations Review Committee.

Attachment: [20231010_Reso 35-2023 Animal Reg Review Cmte.pdf](#)

10.

INFORMATION & DISCUSSION:

10.A Solar Eclipse update.

11.

EXECUTIVE SESSION: *City Council may, as permitted by law, adjourn into executive session at any time to discuss any matter listed above if they meet the qualifications in Sections 551.071 (consultation with attorney), 551.072 (deliberation regarding real property), 551.073 (deliberation regarding gifts), 551.074 (personnel/officers), 551.076 (deliberation regarding security devices), and 551.087 (deliberation regarding economic development negotiations) of Chapter 551 of the Texas Government Code. City Council also reserves the right to meet in executive session on the following issue(s):*

11.A

Resolution No. 34-2023. A Resolution nominating a candidate(s) to Kerr Central Appraisal District Board of Directors. (551.074)

12.

ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.

13.

ITEMS FOR FUTURE AGENDAS: *City Council may suggest items or topics for future agendas.*

ADJOURN.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Proclamation recognizing October 2023 as Fire Prevention Month.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** August 17, 2023

SUBMITTED BY: Judy Eychner, Mayor

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Proclamation recognizing October 2023 as Fire Prevention Month in the City of Kerrville.

RECOMMENDED ACTION:

Present proclamation.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Proclamation recognizing Mini Mart 50th Anniversary.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 6, 2023

SUBMITTED BY: Judy Eychner, Mayor

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Proclamation recognizing and honoring Mini Mart.

RECOMMENDED ACTION:

Present proclamation.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution No. 28-2023. A Resolution canceling the regular meetings of the City Council scheduled for November 28, 2023 and December 26, 2023.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** August 17, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Section 2-31 of the Code of Ordinances (Ordinance No. 2007-04) for the City of Kerrville provides that City Council meetings are to be held the second and fourth Tuesdays of each month, and that City Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate.

Historically, the second meeting in November and December have often been cancelled due to Thanksgiving and Christmas holidays. A Resolution has been utilized for flexibility purposed.

RECOMMENDED ACTION:

Approve Resolution No. 28-2023.

ATTACHMENTS:

[20231010_Reso 28-2023 Cancel 2nd CC meeting Nov-Dec.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 28-2023**

**A RESOLUTION CANCELING THE REGULAR MEETINGS OF
THE CITY COUNCIL SCHEDULED FOR NOVEMBER 28, 2023
AND DECEMBER 26, 2023**

WHEREAS, Section 2-31 of the Code of Ordinances for the City of Kerrville provides that City Council meetings are to be held the second and fourth Tuesdays of each month; and

WHEREAS, Section 2-31 also provides the City Council may, by majority vote at a regular meeting, change the days or times of meetings as circumstances may necessitate;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

The regular meetings of the City Council scheduled for November 28, 2023 (Tuesday after Thanksgiving Holiday), and December 26, 2023 (Tuesday after Christmas Holiday) are hereby canceled.

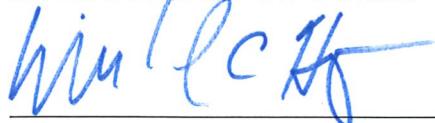
PASSED AND APPROVED ON this the _____ day of _____ A.D., 2023.

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney



TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT: Amendment to the Professional Services Agreement with Freese & Nichols, Inc. for the Public Safety Facility Design-Build Advisor Services in the amount of \$640,888.00.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 29, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$640,888.00	\$42,684,650.55	\$45,000,000.00	70-7000-5100, Project #70-22005

PAYMENT TO BE MADE TO: Freese & Nichols, Inc.

Kerrville 2050 Item? Yes

Key Priority Area F - Public Facilities and Services

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

In May 2022, the citizens of Kerrville approved the issuance of bonds through a general election for a new Public Safety Facility. The property at the corner of Rio Monte Drive and Clearwater Paseo was later purchased and City Council authorized the Design-Build method for the construction of the building and appurtenances. Request for Qualifications (RFQ) for Design Build Services on the City's Public Safety Facility were issued on September 20, 2022 and eight (8) submissions were received in October 2022. The Committee's shortlisting of five recommended finalist was approved in the November 2022 City Council meeting to proceed to the Request for Proposals (RFP) phase of the selection process. Proposals from the short-listed Design-Build teams were received in February 2023 and a Design-Build contract negotiated and finalized with Byrne Construction Services (Thos. S. Byrne, Inc.) in May 2023. Throughout the Design-Build team procurement process, Council authorized a contract agreement with Freese & Nichols, Inc. to serve as the Owner's Representative through the preconstruction phase of the project with the understanding any additional services for construction management, inspection services, etc. would need future Council action.

The Design Build team has progressed through the initial programming and schematic phases of the project and the City is looking for assistance on the upcoming construction

phase of the project. Staff is recommending to continue utilizing the services provided by Freese & Nichols staff through the construction phase as the owner's representative familiar with Design Build projects. The Construction Management Services include, but not limited to, cost, schedule, and document management, discipline specific inspections, and management of Third Party reviewers and certified commissioning agents further identified as Task D of the original contract. Additionally, to avoid a conflict of interest for the Design Build team, staff requested a quote from Freese & Nichols to serve as the Commissioning Agent for the project. This would include the oversight of the design, installation, and testing of the buildings components such as HVAC control systems, electrical systems, fire alarm systems, etc. required to be performed by a certified Commissioning Agent to ensure the building meets the design and operational requirements established for the project.

The recommended amendment would include "Task D – Construction Management Services" (\$575,000) identified in the original contract as well as the Commissioning Services proposal (\$65,888) for a total contract amendment of \$640,888.

RECOMMENDED ACTION:

Authorize the City Manager to execute the professional services amendment.

ATTACHMENTS:

[20231010_Amendment PSA FNI PSFDesign-Build.pdf](#)
[20231010_Contract 2022-77 FNI PSFDesign-Build.pdf](#)

DRAFT

AMENDMENT TO A
PROFESSIONAL SERVICES AGREEMENT
FIRM: Freese and Nichols, Inc. | PROJECT-SERVICES: Public Safety Facility –
Design-Build Advisor Services
ORIGINAL CONTRACT #2022-77

THIS AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT (“Amendment”) is entered into the _____ day of _____, 2023 (“Effective Date”), by and between the **CITY OF KERRVILLE, TEXAS** (“CITY”) and **FREESE AND NICHOLS, INC.** (“CONSULTANT”), and at times, collectively referred to herein as “parties.”

WHEREAS, CITY previously hired CONSULTANT to perform certain work and services as set forth in the Professional Services Agreement (the “Agreement”) entered into between the parties on or about July 28, 2022; and

WHEREAS, CITY now requires additional work, which the CONSULTANT has agreed to perform for additional consideration, as specified in the document attached as **Exhibit A**;

NOW, THEREFORE, the parties agree as follows:

I. AMENDED SCOPE OF WORK

The “CONSULTANT’S SERVICES” described in Section I. of the Agreement is amended to include the additional services set forth in the proposal attached hereto as **Exhibit A** and incorporated herein by reference.

II. PAYMENT

In addition to the compensation set forth in the Agreement, CITY shall pay Consultant the additional fees set forth in Exhibit A hereto for the amended scope of work as provided for in Section I., above.

III. AMENDMENT SUBJECT TO AGREEMENT

This Amendment is subject to the provisions and conditions set forth in the Agreement. Except as amended here, the Agreement remains in full force and effect.

DRAFT

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

CITY
THE CITY OF KERRVILLE

NAME: Dalton Rice
TITLE: City Manager

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:

William Tatsch, Assistant City Attorney

CONSULTANT
FREESE AND NICHOLS, INC.

NAME:
TITLE:

APPROVED AS TO FUNDING:

Julie Behrens, Director of Finance

APPROVED AS TO CONTENT

Stuart Barron, Executive Director of
Public Works and Engineering

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DRAFT

EXHIBIT "A"
City of Kerrville
Public Safety Facility Project – Commissioning (Cx) Services

EXHIBIT A

PROJECT UNDERSTANDING

Freese and Nichols, Inc. (FNI) understands that the City of Kerrville (the City) is seeking professional services to serve as a Commissioning Agent (CxA) for its Public Safety Facility Project.

The project involves the design and construction of a 69,000+ square foot facility that will serve as a home for various municipal services, including a municipal court, police administration and related space, fire administration and related space, as well as the construction of a new parking lot with associated site improvements.

FNI is currently providing Design-Build Advisor services (under a separate contract) to the City throughout the project's the design, bidding, and preconstruction phases. Some commissioning (Cx) tasks outlined in this proposal overlap with the Design-Build Advisor services and will be excluded. Refer to below sections for details.

SCOPE OF WORK – BASIC SERVICES

The following systems and assemblies will be commissioned:

1. HVAC control system
2. All heating, ventilating, and air conditioning (HVAC) systems and equipment
3. Electrical, including surge protection systems and lighting control system
4. Plumbing systems and equipment
5. Access control systems
6. Digital utility sub-meters
7. Fire alarm systems
8. Fire suppression systems

Task A: Design, Biding, and Construction Phases

1. Develop Cx specifications
2. Develop Cx plan
3. Organize and attend Cx kick-off meeting (in-person)
4. Communication and coordination for any Cx related tasks
5. Develop controls integration plan and conduct the integration meeting
6. Setup project in web-based software Cx Alloy
7. Organize all Cx related files, reports, and issues log in Cx Alloy throughout the entire construction phase
8. Review Testing, Adjust, and Balancing (TAB) report and provide feedback

9. Develop pre-functional checklists for all commissioned equipment
10. Equipment installation inspection (total 2 visits)
11. Develop functional testing procedures
12. Witness functional test executions and document results (total 2 visits)
13. Attend system start-ups (total 1 visit)
14. Provide system manual and final Cx report including incorporating the Owner's Project Requirements (OPR) and Basis of Design (BOD) into the report

Task B: Post Construction Phase

1. Periodic communication and coordination with the City, Architecture/Engineering firm, and General Contractor
2. Maintain action items and Issues Log
3. Provide off-season testing of HVAC system (total 2 visits) and provide testing results to the City's Representative
4. Project close-out

SCOPE OF WORK - SPECIAL SERVICES

1. Cx related project management tasks including general administration and communication
2. Develop quality management plan
3. Review requests for information and other contractor submittals
4. Shop drawing reviews
5. Coordinate schedule with General Contractor
6. Attend Owner's training and presentation, and O&M manual review

EXCLUSIONS AND ASSUMPTIONS

1. Building Envelope Commissioning is not part of this scope
2. Review of Design Deliverables and attending design review meetings are not part of this scope (these were included in Design-Build Advisor services)
3. Attending pre-bid meeting, review of meeting notes, and answering pre-bid questions are not part of this scope (these were included in Design-Build Advisor services)
4. Review of OPR and BOD is not part of this scope (this was included in Design-Build Advisor services). FNI will incorporate these documents into the final Cx report as part of the basic services in this proposal
5. Witnessing TAB process is not part of this scope. FNI will review the TAB report as part of the basic services in this proposal
6. All Cx related records, reports, system manual, and documents will be provided in electronic version in PDF format
7. For all Cx related site visits and field activities during construction phase, one of FNI's Cx team members and the Program Manager of Design-Build Advisor services will attend
8. For all Cx related site visits and field activities during the post construction phase, only FNI's Cx team member(s) will attend

TIME OF COMPLETION

FNI is authorized to commence work upon execution of the agreement and agrees to complete Commissioning Authority services listed in accordance with the project schedule.

If the Client should take longer for the review and return of comments than the period set according to schedule, FNI's time of performance shall be extended by the same number of calendar days, without additional cost to the Client. Delays in the project schedule due to normal project progression will be accommodated by FNI.

COMPENSATION

FNI proposes to provide the Commissioning services as described herein for a lump sum fee of Eighty One Thousand, One Hundred and Sixty-one Dollars (\$81,161). The following is a breakdown of the fee by phase.

Basic Services	Fees
Design, Biding, and Construction Phases:	\$53,092.00
Post Construction Phase:	\$12,796.00
Fee for Basic Commissioning Services:	\$65,888.00
Special Services	
Design, Biding, and Construction Phases:	\$15,273
Post Construction Phase:	\$0.00
Fee for Special Commissioning Services:	\$15,273
Total Fee for Commissioning Services:	\$81,161

If FNI sees the Scope of Services changing so that additional services are required, FNI will notify the CLIENT for the CLIENT's approval before proceeding. Additional services shall be computed based on effort required for additional tasks.

TERMS AND CONDITIONS OF AGREEMENT

We appreciate this opportunity to submit this proposal. If additional information or clarification is desired, please do not hesitate to contact us. If you are in agreement with the services described above and wish for us to proceed with this assignment, please initiate contract.

Yours very truly,

FREESE AND NICHOLS, INC.



Vimal Nair, P.E.
Principal/Vice President

PROFESSIONAL SERVICES AGREEMENT
[FIRM: Freese and Nichols, Inc. | PROJECT-SERVICES:
Public Safety Facility – Design-Build Advisor Services]

THIS AGREEMENT is entered into the 28 day of July, 2022 ("Effective Date"), by and between the CITY OF KERRVILLE, TEXAS ("CITY") and FREESE AND NICHOLS, INC., ("CONSULTANT") and at times, collectively referred to herein as "parties."

WHEREAS, CITY hires CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Exhibit A**, attached hereto and incorporated herein, toward completion of the Project; and

WHEREAS, CONSULTANT agrees to perform said work and services as specified under Article I of this Agreement;

NOW, THEREFORE, the parties agree as follows:

I. CONSULTANT'S SERVICES

CITY hereby engages the Services of CONSULTANT, and CONSULTANT hereby accepts such engagement, to serve as an independent contractor and as owner's representative and to perform the following Services in accordance with the terms and conditions set forth herein. CITY shall have no right to control the details, manner or means by which CONSULTANT accomplishes the results of the Services performed hereunder. However, the City Manager or his designee, shall have the right to prioritize the Services of CONSULTANT in consultation with CONSULTANT, and CONSULTANT agrees that its Services shall maintain the overall Construction Program schedule agreed to by the Parties. The CONSULTANT's Services shall include, but shall not be limited to, the duties as set forth in CONSULTANT's Scope of Services, which is attached hereto and incorporated herein by reference as **Exhibit A**, duties reasonably incidental to those set forth in **Exhibit A**, and other duties agreed to by the Parties in writing (collectively the "Services"). To the extent of any conflict between the terms of this Agreement and **Exhibit A**, the terms of this Agreement will prevail.

II. CONSULTANT'S RESPONSIBILITIES

A. CONSULTANT, upon its review of a general description of the Project provided by CITY, has prepared and provided to CITY the specific Services required to complete the Project, which is attached as **Exhibit A**.

B. CONSULTANT shall use skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional

standards of care and the orderly progress of the Project. CONSULTANT shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws and with those of any other entity having jurisdiction over the Project. In addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the Project and CITY. CONSULTANT shall not change the designated representative without the City's prior written approval, which may not be unreasonably withheld.

III. CITY'S RESPONSIBILITIES

- A. CITY has provided CONSULTANT with a general description of the Project.
- B. CITY shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.
- E. CITY designates Kyle Burow, Director of Engineering, who can be contacted at (830) 258-1410, as its representative authorized to act on its behalf with respect to the Project.

IV. PAYMENT

CITY shall compensate CONSULTANT for the Services in the amount and manner described and set forth in the Payment Schedule, attached hereto and incorporated herein as Exhibit A. The amount will not exceed **\$300,000.00** for Basic Services. Any Supplemental Services will be made subject to an amendment hereto should the City request or approve such Supplemental Services.

V. TIME FOR PERFORMANCE

- A. CONSULTANT shall commence its work immediately upon the parties' execution of this Agreement and proceed diligently with said work, except for delays beyond the reasonable control of CONSULTANT. The Agreement will terminate upon CONSULTANT's completion and City's acceptance of Services, unless sooner terminated as provided herein.

VI. DOCUMENTS

A. The Parties acknowledge that the CONSULTANT may prepare various documents or other instruments of service as part of its performance of the Services (the "Documents") and that following termination of this Agreement, the CITY will be permitted to retain copies, including reproducible copies, of the Documents for information and reference in connection with the CITY's use of the improvements, the construction of which CONSULTANT is being retained to design and manage. The Documents may also be used by the CITY and others for the completion of the construction, provided however, that following any termination of this Agreement, the CONSULTANT is not responsible for, nor able to influence, the subsequent implementation of the construction, and CONSULTANT is relieved of any liability as a result of such subsequent use of the Documents except for liability arising from the CONSULTANT's gross negligence, willful misconduct or failure to perform the Services in accordance with the Agreement prior to termination.

VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this Agreement, will be made on the basis of the Services reasonably determined by CITY to be satisfactorily performed as of the date of suspension or termination.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

VIII. INSURANCE

CONSULTANT shall procure and maintain the following insurance throughout the Term of this Agreement with a non-assessable insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies: (1) Comprehensive Commercial General Liability, including coverage for personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate; (2) Automobile Liability and truck liability coverage with a minimum combined single limit of liability of One Million Dollars (\$1,000,000.00); (3) Workers' Compensation coverage that meets or exceeds legal requirements; (4) Professional Liability coverage with minimum limits of One Million Dollars

(\$1,000,000.00) per occurrence and in the aggregate. The insurance policies shall be endorsed to name the CITY as an additional insured, and CONSULTANT shall provide the CITY with copies of valid, active insurance policies and the relevant endorsements that cover the entire Term of this Agreement.

IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE

A. CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS AND EMPLOYEES, HEREINAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE(S)", FROM AND AGAINST LOSSES, LIABILITY, OR DAMAGE OF ANY CHARACTER AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY FEES INCIDENTAL TO THE DEFENSE OF SUCH LOSSES, DAMAGES, OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM OF CONSULTANT, ITS OFFICERS, EMPLOYEES, OR ANYONE ELSE UNDER CONSULTANT'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF THE SERVICES, OR FROM CONDITIONS CREATED BY THE NEGLIGENT PERFORMANCE OR NON-PERFORMANCE OF SAID WORK. THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT AND SHALL NOT BE LIMITED BY CONSULTANT'S INSURANCE OBLIGATIONS CONTAINED IN THIS AGREEMENT.

B. Acceptance and approval of any work by CITY neither constitutes nor may be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their Services.

X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

CONSULTANT agrees that it is an independent contractor and not an agent of CITY. CONSULTANT further agrees that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records and/or making reports or payments of Unemployment Compensation taxes or contributions. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.**

XI. INDEMNIFICATION FOR PERFORMANCE

CONSULTANT SHALL DEFEND AND INDEMNIFY INDEMNITEES AGAINST AND HOLD CITY AND THE PREMISES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THE SERVICES.

XII. DEFAULT OF CONSULTANT

In the event CONSULTANT fails to comply or becomes unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY that CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may complete the services in any manner deemed proper by CITY, and CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services, but in no event shall such expenses exceed 125% of the Contract Price. CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the help necessary to remedy the situation, at the expense of CONSULTANT.

XIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a professional service contract for the services of CONSULTANT, and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written

consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement, which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that City has no responsibility to provide CONSULTANT or its employees with any benefits associated with employee status. CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Exhibit(s). The following exhibit(s) is attached to this Agreement and is included herein for all purposes:

Exhibit A Scope of Services

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or his designee, has the authority

to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Freese and Nichols, Inc.
9601 McAllister Freeway, Suite 1008
San Antonio, Texas 78216

K. Prohibition on Contracts with Companies Boycotting Israel. CONSULTANT hereby verifies the following per Section 2271.002, Texas Government Code:

1. CONSULTANT does not boycott Israel; and
2. CONSULTANT will not boycott Israel during the term of the Agreement.

L. Prohibition Against Business with Iran, Sudan, or Foreign Terrorist Organization. CONSULTANT warrants, covenants, and represents that CONSULTANT is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

M. Prohibition on Contracts with Companies Boycotting Energy Companies. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not boycott energy companies; and
2. CONSULTANT will not boycott energy companies during the term of the Agreement.

N. Written Verification as to Firearm Entities. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
2. CONSULTANT will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

O. Prohibition on Contracts with Companies Related to Certain Countries. Where this Agreement pertains to "critical infrastructure", as defined by Section 2274.0101, Texas Government Code, CONSULTANT verifies (1) that it is not owned by or the majority of stock or other ownership interest of the company is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or other designated countries; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or other designated countries; or (2) headquartered in China, Iran, North Korea, Russia, or other designated countries.

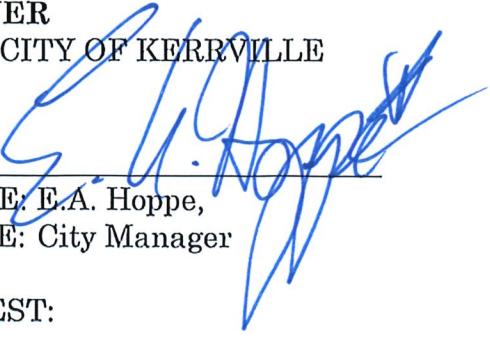
P. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Within thirty (30) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Commercial Mediation Rules published by the American Arbitration Association. In the event that the dispute has not been resolved within thirty (30) days following mediation, or such longer period as the parties may agree, either party may initiate formal proceedings against the other party.

Q. Consequential Damages Waiver. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER CONSULTANT NOR CITY NOR EITHER PARTY'S SUPPLIERS, AGENTS, OFFICERS, OR DIRECTORS SHALL HAVE ANY LIABILITY REGARDLESS OF THE THEORY OF RECOVERY, INCLUDING BREACH OF CONTRACT OR NEGLIGENCE, TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, COST OR EXPENSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, WHETHER ACTUAL OR ANTICIPATED, LOSS OF USE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOSS OF OR DAMAGE TO DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS. THIS WAIVER OF CONSEQUENTIAL DAMAGES IS MADE REGARDLESS OF WHETHER (I) EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) SUCH DAMAGES MAY BE FORESEEABLE.

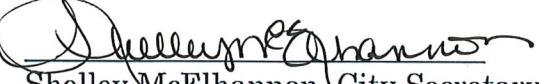
R. Limitation of Liability. Notwithstanding any other provision of this Agreement, CITY agrees to limit CONSULTANT's liability to CITY and to all persons having contractual relationships with CITY to the total fee or compensation received by CONSULTANT for the work under which the liability arises.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

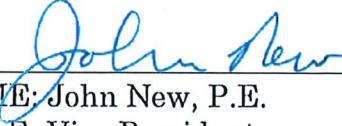
OWNER
THE CITY OF KERRVILLE

BY: 
NAME: E.A. Hoppe,
TITLE: City Manager

ATTEST:


Shelley McElhannon, City Secretary

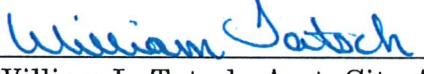
CONSULTANT
FREESE AND NICHOLS, INC.

BY: 
NAME: John New, P.E.
TITLE: Vice-President

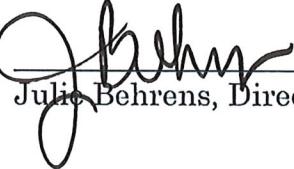
APPROVED AS TO CONTENT:


Stuart Barron, Executive Director of
Public Works and Engineering

APPROVED AS TO FORM:


William L. Tatsch, Asst. City Attorney

APPROVED AS TO FUNDING:


Julie Behrens, Director of Finance

TM Legg INGENIERING Contracts NPSA Contract AFNL_FSF Design Build Advisor_062222.dct

EXHIBIT "A"
City of Kerrville
Public Safety Facility Project – Design-Build Advisor Services

Project Understanding

Freese and Nichols, Inc. (FNI) understands that the City of Kerrville (City) is seeking professional services for performing as a Design-Build Advisor to the City on its Public Safety Facility Project. The Project will consist of a new 69,000+ SF building that will house a municipal court, police administration and related space, fire administration and related space, and a new parking lot with associated site improvements. The City intends to utilize the Progressive Design-Build Project Delivery method, in accordance with Texas Government Code 2269, to secure the services of a qualified Design-Build (DB) Team to deliver the described facility.

Texas Government Code 2269.305 states that a governmental entity (municipality) shall designate an architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project. FNI will provide these services to the City throughout the project including during the procurement, preconstruction and construction phases.

Scope of Services

Task A: Project Management

A1. Administration

Perform general administration duties for the project, including attendance at meetings, general communication and correspondence, office administration, and monthly invoicing.

A2. Project Kickoff Meeting

Meet with the City to review the scope, project team, and schedule.

A3. Communication

- A. Support the DB Team with the establishment of a communication plan.
- B. Attend periodic meetings to exchange information regarding the progress of the project.
- C. Review and provide input on agendas prior to the meetings, attend meetings, and review the meeting minutes for completeness and accuracy.
- D. Submit monthly project progress reports.

A4. Schedule

Review master summary schedule, on a monthly basis, developed by DB Team that will provide an executive level bar chart, tracking project progress throughout the project.

A5. Budget

Review a projected spend plan and cash flow curve, on a monthly basis, developed by DB Team that will provide an executive level overview of the financial status throughout the project.

A6. Quality Control

Review the quality assurance/quality control ("QA/QC") program provided by the DB Team.

A7. Progress Reports

Provide monthly Project progress reports and submit invoices on or before the 25th day of each month for the previous month's effort.

A8. Project Controls

Monitor Project integration, scope, schedule, cost, quality, staff resources, communications, risk analysis, Project Management Information System, and overall project management provided by the DB Team.

Task B: Procurement Services

B1. Design-Build Justification Memorandum

Meet with the City Staff to discuss and justify the merits of the Design-Build Project Delivery Method when compared to other project delivery methods. FNI will meet with the City Council to discuss these merits and address questions raised by Council. FNI will support the City Staff as needed with the Staff's preparation of the DB justification memo.

B2. Council Resolution

Support City Staff as needed in the preparation of a Council Resolution to submit to Council for official approval to allow the use of the Design-Build Project Delivery Method.

B3. Design-Build Request for Qualifications (RFQ)

- A. Prepare a draft Request for Qualifications for Design-Build services for the project.
- B. RFQ will be based on and include the conceptual project scope information prepared by Randall Scott Architects under a separate agreement with the City.
- C. Prepare a design criteria package to be included in the RFQ that provides more detailed information about the project gathered from FNI meeting with the various facility user groups within the City. This information will include but not necessarily be limited to:
 1. Legal description of the site and metes and bounds survey (if available) of the site provided by the City (survey services not included in FNI scope)
 2. Applicable codes, ordinances and Authorities having Jurisdiction
 3. Site development requirements (drainage/detention, landscaping/irrigation, impervious cover, fencing/screening, lighting, security, etc.)
 4. Existing utility locations (water, sewer, electrical, gas, etc.)
 5. Vehicle access and parking requirements
 6. Available geological and geotechnical information about the site (geotechnical services not included in FNI scope)
 7. Interior space requirements (elaboration of block floor plan developed by Randall Scott, Inc.)
 8. Façade and other exterior feature requirements (materials, roofing, etc.)
 9. Special material and equipment requirements (Security systems, AV, Sally Port and holding cells, court amenities, etc.)
 10. Material quality standards
 11. Schedule and budget estimate
 12. QA/QC requirements

B4. Design-Build Request for Proposals (RFP)

- A. Prepare a draft Request for Proposals for those firms/teams that are shortlisted after review of the Statements of Qualifications.
- B. Review DB proposals and facilitate City Staff review, evaluation, scoring and ranking of the DB Teams and will provide a draft composite score for review by the City.
- C. Should interviews be desired by the City, FNI will assist in preparing for and conducting these interviews. FNI will add interview scoring into the overall scoring and provide a final ranking of the DB Teams.
- D. Assist in the preparation and negotiations of the DB agreement between the City and the highest ranked DB Team.

Task C: Pre-Construction Services

C1. Design-Build Agreement

Assist the City in the development of the Design-Build agreement to be executed by the Design-Builder and the City.

C2. Pre-Construction Meeting

Assist the City in the preparation for and conducting of a pre-construction meeting with the Design-Build team, City staff, and other stakeholders.

C3. Stakeholder Coordination

Support the DB Team in obtaining permits and coordinating design elements with stakeholders.

C4. Guaranteed Maximum Price (GMP) Development

Monitor the development of the GMP and review for overall compliance to the contract documents, overall project objectives, cost, schedule and quality.

C5. Bid Package Review

Review the bid packages and procurement schedule provided by the DB Team for compliance with project scope.

C6. Document Control

Periodically review the web based PMIS system provided and managed by the DB Team.

C7. Review of Opinion of Probable Cost

Review the OPCC prepared by the DB Team at the SD, DD and CD deliverables.

C8. Review of Design Deliverables

Review design documents prepared by the DB Team at the SD, DD and CD deliverables (total of 3 reviews).

Task D: Construction Management Services (Supplemental Services)

Support the City during construction by administering the construction contract, acting as liaison between the City and the DB Team, and providing other construction management duties described in this section as necessary to facilitate construction of the project by the DB Team.

Multiple FNI staff will be involved in the various tasks described in this section. For budgeting purposes, the following estimate of effort has been included based on a projected construction period of 78 weeks (18 months):

- Contract Administration – Average 32 hours per week (inclusive of effort listed below)
 - Bi-weekly Meetings/Site Visits – 40 total visits
 - Submittal Review – 100 total submittals (not all submittals will require review)
 - Special Inspections – 40 total inspection visits
 - Commissioning/Closeout – 10 total visits

D1. Construction Site Visits and Progress Meetings

Make periodic site visits and attend bi-weekly construction progress meetings with the entire project team and other parties as appropriate throughout the project.

D2. Construction Quality

Periodically observe the work to determine if the work is proceeding in accordance with the contract documents. FNI will review documents submitted by the DB Team including test reports, equipment installation reports, commissioning reports, and other documents required by the contract documents.

D3. Document Control

Review an electronic project management information system provided by the DB Team. FNI will review monthly reports prepared by the DB Team to monitor the status of all submittals in the review process.

D4. Submittal Review

Perform a cursory review of submittals (ie. shop drawings, RFIs, etc.) and facilitate reviews of submittals by the City when applicable. These reviews are intended to be cursory in nature to verify submittal contents are in general conformance with the construction documents. Note that it is the DB Team's responsibility to prepare and verify that submittal contents strictly conform to the construction documents. The DB Team must identify all components and accessories in the submittal necessary for a complete assembly that will be installed in accordance with all applicable codes and regulations, and that will have the aesthetic and operational characteristics that meets the overall intent of the form and function of the facility.

D5. Schedule Management

Review the baseline and the monthly construction progress schedules submitted by the DB Team.

D6. Cost Management

Review the schedule of values and payment requests prepared by the DB Team. Review the monthly cash flow projections provided by the DB Team. Verify quantities of work in place, review the payment requests and supporting documentation, and provide the City its opinion of alignment between the payment requested and the actual work completed, and a recommendation for payment as appropriate.

D7. Issue Management

Periodically review the Issues Log developed by DB Team and facilitate the resolution of any issue that requires City input or involvement. If necessary, provide an interpretation of the drawings and specifications when questions arise concerning the meaning or intent as it pertains to City defined items.

D8. Change Management

Review the procedures for administering changes to the construction contract developed by the DB Team. Review the documentation of requested contract modifications and subsequent change order documents for approved changes and have them executed appropriately.

D9. Discipline Specific Inspection

Perform inspections of parts of the project at appropriate stages of construction (ie. HVAC system, electrical systems, etc.)

D10. Project Commissioning and Completion

Observe start-up and commissioning of the facility and all the building systems planned and conducted by the DB Team.

When the DB Team requests that substantial completion be granted for the Project (or applicable portions thereof), FNI will conduct a review of the Project with the City to determine conformance or non-conformance with the Project design and construction documents. FNI will prepare a list of deficiencies to be corrected by the DB Team before substantial completion is granted and any partial release or reduction of retainage is approved.

Conduct a final review of the Project with the City for conformance with all the Project documents. FNI will confirm work is complete and in accordance with the Project documents prior to recommending final payment.

Assist the City in obtaining warranties, spare parts, operation and maintenance manuals, as-built drawings, and facility keys from the DB Team. FNI will review and confirm that the DB Team has submitted all required documents to the City prior to recommending the final payment.

Assist the City in the preparation of a Substantial Completion Checklist to ensure that all AHI's (Authorities Having Jurisdiction) have approved the facility for a Certificate of Occupancy.

D11. Material Transfer

Facilitate the transfer and acceptance of City furnished equipment or materials. Facilitate the transfer and acceptance of any DB Team furnished spare parts, materials, keys, etc.

D12. Record Drawings

Review as-built drawings provided by the DB Team and verify that they accurately reflect the actual project components and conditions.

D13. Deliverables

Submit site visit reports, monthly summary reports, and other correspondence as outlined in other sections of this scope of work.

Limitations of Authority of Owner Representative

- A. FNI will not authorize any deviation from the contract documents or substitution of materials or equipment (including "or-equal" items) without authorization from the City.
- B. FNI will not undertake any of the responsibilities of the DB Team.
- C. FNI does not guarantee the DB Team's performance.

Contract No. 2022-77

- D. FNI will not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences, or procedures of construction unless such advice or directions are specifically required by the contract documents.
- E. FNI will not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the work or any activities or operations of the City or the DB Team.

Task E: Construction Inspection Services (Supplemental Services)

FNI will support the City during construction by providing on-site construction inspection services. FNI inspector will communicate with the FNI Construction Manager and the City on regular basis and will provide daily observation of the ongoing construction to verify that the work is being completed in general conformance to the construction contract documents.

Inspection services can be provided on a full-time or part-time basis so the following estimate of effort has been included for the inspection duties described in this Section which are necessary to provide observation of ongoing construction by the DB Team.

For budgeting purposes, the following estimate of effort for 3 options has been included based on a projected construction period of 78 weeks (18 months):

- Option 1 - Full-time on-site inspection – 40 hours (5 days) per week
- Option 2 - Part-time on-site inspection – 24 hours (3 days) per week
- Option 3 - Part-time on-site inspection – 16 hours (2 days) per week

Each option includes 1 hour of travel time per day

E1. Meetings

Attend on site bi-weekly and other project-related meetings providing input on construction progress and resolution of outstanding issues.

E2. Liaison

- A. Serve as City's on-site liaison with the DB Team, working principally through superintendent to address field issues and assist in understanding the intent of Contract Documents.
- B. Assist in obtaining from City additional details or information, when required for proper execution of the Work.

E3. Submittals

Review submittals to verify provision and installation of materials and equipment conform to approved submittals.

E4. Review of Work, Rejection of Defective Work, Inspections and Tests

- A. Conduct observations of the Work in progress to determine if the Work is in general proceeding in accordance with the Contract Documents.
- B. Report to Superintendent any Work that will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be

made. Advise the CM and the City that the work should be corrected or rejected, or should be uncovered for observation, or requires special testing and inspection prior to approval.

- C. Verify that tests, equipment and systems start-up and operating and maintenance training are conducted in the presence of appropriate personnel, and the DB Team maintains adequate records thereof; and observe, record and report to CM appropriate details relative to the test procedures and start-ups.
- D. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and include in daily reports.

E5. Interpretations of Contract Documents

Study DB Team's requests for clarifications and interpretations of the Contract Documents and report to CM and City with recommendations. Coordinate response with DB Team.

E6. Requests for Revisions

Consider CM DB Team's suggestions for revisions to the Contract Documents and report to CM and City with recommendations. Coordinate response with DB Team.

E7. Records

Maintain electronic files for correspondence, meeting minutes, shop drawings and samples, changes, clarifications, interpretations, progress reports, test reports, commissioning reports, and all other project related documentation. Certain information such as samples may be kept on site in hard copy format.

E8. Reports

Provide daily reports documenting progress of the work. Reports will include specific information about weather, number and type of crews on site, equipment in and not in operation on site, equipment and material deliveries, visitor names and discussion topics, construction materials testing performed, meetings, special inspections, issues, nonconforming work, photographs, and other information that illustrates construction related activities at the site.

E9. Accidents

Report accidents immediately to the CM and the City.

E10. Progress Schedules

Review monthly progress schedules and provide input on overall accuracy, issues with potential schedule impact, recovery of slippage as applicable, and other issues or concerns.

E11. Payment Requests

Review monthly applications for payment for compliance with the established procedure for their submission and forward with recommendations to CM for processing and recommendation of payment to the City. Verify percentage of completion and/or quantities of payment line items with Superintendent.

E12. Construction Materials Testing Coordination

Coordinate and monitor quality assurance construction materials testing activities with testing firm contracted directly with the City.

E13. Operations and Maintenance Manuals

Verify that certificates, operations and maintenance manuals and other data required to for equipment, assemblies, systems and other items furnished by DB Team are applicable to the items actually installed and in accordance with the Contract Documents.

E14. Completion

- A. Conduct inspections in the company of the CM and the City and prepare list of observed items requiring completion or correction prior to substantial completion and again prior to final completion. Verify that DB Team addresses list satisfactorily prior to issue of Certificate of Substantial Completion, and prior recommending City consider Final Acceptance and make final payment.
- B. Verify with DB Team that inspections are performed as required by laws or regulations, ordinances, codes or order applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.

E15. Deliverables

Submit daily construction observation reports and other correspondence as needed.

Schedule

FNI is authorized to commence work on the Project upon execution of this AGREEMENT and agrees to complete the services in accordance with the following schedule:

Services	Duration
Procurement Services	May 2022 - October 2022
Pre-Construction Services	November 2022 – April 2023
Construction Services	May 2023 – October 2024

If FNI's services are delayed through no fault of FNI, FNI will 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 City or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc.

Compensation

Compensation to FNI for the Basic Services will be the lump sum amount of \$300,000. Task D under supplemental services would be lump sum if the City authorizes these services. Task E under supplemental services would be based on an hourly rate with a not to exceed amount listed for each of the three options if the City authorizes the services of one of these options. If FNI sees the Scope of Services changing so that additional services are needed FNI will notify City for City's written approval before proceeding.

Basic Services

Task A – Project Management	Included in Tasks below
Task B – Procurement Services	\$100,000
<u>Task C – Preconstruction Services</u>	<u>\$200,000</u>
Total Basic Services (Lump Sum)	\$300,000

Supplemental Services

Task D – Construction Management Services	\$575,000
Task E Option 1 – Full-Time Inspection Services (40hrs/wk)	\$500,000
Task E Option 2 – Part-time Inspection Services (32hrs/wk)	\$400,000
Task E Option 3 – Part-Time Inspection Services (24hrs/wk)	\$300,000

Additional Services

1. Furnishing design, regulatory/stakeholder coordination, construction management, construction administration, full-time Resident Representation, and/or construction materials testing services.
2. Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this proposal.
3. Geotechnical and Construction Materials Testing services.
4. Survey services.
5. Any other services not specifically identified in the basic services.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Professional Services Agreement with Utility Engineering Group, PLLC for the Wastewater Lift Station Rehabilitations project in the amount of \$64,620.00.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 29, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$64,620.00	\$964,600.00	\$964,600.00	71-7100-5600, Project #71-24001

PAYMENT TO BE MADE TO: Utility Engineering Group, PLLC

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

In January 2023, City Council authorized steps to begin the issuance of Revenue Bonds in an amount not to exceed \$12.5 million to be utilized in assisting the City's replacement, reconstruction, and upgrading of existing water and wastewater infrastructure. Some of the higher priority projects presented to City Council for the Wastewater Collection System were the rehabilitation of the Airport and Broadway lift stations due to severe corrosion and deterioration of the components within the wet wells. The scope of this project will address wet well piping corrosion issues caused by raw sewer gas exposure at the Broadway lift station and the Airport lift station as well as pump, electrical, and SCADA component replacement at the Airport lift station. The City and consultant will investigate the use of alternate piping materials including stainless steel and HDPE for longer life in the system components contained within the high exposure areas. Additionally, City staff, the Consultant, and equipment vendors will design a wet well aeration system to try and reduce the amount of H2S gas development at the Airport lift station.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute the professional services agreement.

ATTACHMENTS:

[20231010_PSA Utility Eng Group - Lift Stations Rehab.pdf](#)

PROFESSIONAL SERVICES AGREEMENT
[FIRM: Utility Engineering Group, PLLC | PROJECT-SERVICES:
Kerrville Lift Stations Rehabilitations Project Design Services]

THIS AGREEMENT is entered into the _____ day of _____, 2023 (“Effective Date”), by and between the CITY OF KERRVILLE, TEXAS (“CITY”) and UTILITY ENGINEERING GROUP, PLLC. (“CONSULTANT”), and at times, collectively referred to herein as “parties.”

WHEREAS, CITY hires CONSULTANT to perform certain work and services set forth in Scope of Services, marked **Exhibit A**, and attached hereto and incorporated herein; and

WHEREAS, CONSULTANT agrees to perform said work and services as specified under Article I of this Agreement;

NOW, THEREFORE, the parties agree as follows:

I. CONSULTANT'S SERVICES

CONSULTANT shall perform and pay for all labor, tools, materials, equipment, supplies, transportation, and management necessary to perform all services set forth in **Exhibit A** and all other professional services reasonably inferable from **Exhibit A** and necessary for complete performance of CONSULTANT's obligations under this Agreement, collectively referred to herein as “Services.” CITY may, at any time, stop CONSULTANT from performing the Services upon giving CONSULTANT written notice. To the extent of any conflict between the terms of this Agreement and **Exhibit A**, the terms of this Agreement will prevail. CONSULTANT shall diligently pursue completion of its Services, provide CITY with periodic updates as to its review of each assignment, and promptly inform CITY of any anticipated delay.

II. CONSULTANT'S RESPONSIBILITIES

A. CONSULTANT, upon its review of a general description of the work requested by CITY, has prepared and provided to CITY the specific Services required, which is attached as **Exhibit A**.

B. CONSULTANT shall use its best efforts, skill, judgment, and abilities in performing the Services in an expeditious and timely manner consistent with the applicable professional standards of care and the orderly progress of the Services. CONSULTANT shall at all times provide sufficient personnel to accomplish the Services in a timely manner. CONSULTANT shall manage the Services and coordinate other professional services as necessary for the complete performance of

CONSULTANT's obligations under this Agreement. CONSULTANT shall periodically report the status of the Services to CITY as is appropriate to keep CITY informed as to the status of the work.

C. CONSULTANT shall perform the Services in compliance with all applicable federal, state, and municipal laws and any other entity having jurisdiction over the Services. In addition, CONSULTANT shall perform the Services in a manner consistent with generally accepted standards for its profession.

D. Plans, drawings, specifications, and/or other reports produced by CONSULTANT (collectively referred to herein as "Design Documents") pursuant to the Services must be reasonably accurate and free from material errors or omissions. CONSULTANT shall promptly correct any known or discovered error, omission, or other defect in the Design Documents without any additional cost or expense to CITY and notify CITY of same.

E. CONSULTANT shall designate a representative primarily responsible for its performance of the Services. The designated representative shall act on behalf of CONSULTANT with respect to all phases of the Services and shall be available as required for the benefit of the CITY. CONSULTANT shall not change the designated representative without prior written approval of CITY, which approval may not be unreasonably withheld.

III. CITY'S RESPONSIBILITIES

A. CITY has provided CONSULTANT with a description of the Services.

B. CITY shall furnish surveys, geotechnical reports, or other special investigations or tests, including structural, mechanical, and chemical, if CITY possesses any, as requested by the CONSULTANT and as reasonably necessary for the completion of the Services.

C. CITY shall review the Design Documents and shall notify CONSULTANT of any design fault or defect in the Services or Design Documents of which CITY becomes aware.

D. CITY shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Services.

E. CITY designates Kyle Burow, Director of Engineering, who may be reached at (830) 258-1410, as its representative authorized to act on its behalf with respect to the Services. CITY may, upon notice to CONSULTANT, change such designation at any time.

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IV. PAYMENT

CITY shall compensate CONSULTANT for the Services in the amount and manner described and set forth in the Rate Schedule, attached hereto and incorporated herein as **Exhibit A**. The amount of payment shall not exceed \$64,620.00 unless additional services are requested by CITY.

V. AGREEMENT TERM

This Agreement shall begin on the Effective Date and end on completion of the project as detailed in the Scope of Services attached hereto and incorporated herein as **Exhibit A**, unless terminated earlier in accordance with VII, below.

VI. DOCUMENTS

- A. CONSULTANT shall submit all Design Documents to CITY for approval. All Design Documents must be professionally sealed as required by law or by CITY.
- B. CONSULTANT shall deliver the Design Documents, together with any necessary supporting documents, to CITY, and CITY has unlimited rights, for the benefit of CITY, in all Design Documents, including the right to use same on any other work of CITY without additional cost to CITY. If CITY uses the Design Documents on any work of CITY other than that specified in the Services, then under those circumstances and only to the extent allowed by law, CONSULTANT, its officers, agents, servants, and employees will not be liable for damages or claims arising from any inaccuracy or any use of the Design Documents with respect to such other work, except where CONSULTANT participates in such other work.
- C. CONSULTANT grants CITY a royalty-free, perpetual license and right, to survive the termination of this Agreement, to all Design Documents that CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. This license includes CITY's right to use and reproduce these documents as necessary. Further, CONSULTANT acknowledges that CITY is subject to Chapter 552 of the Government Code, commonly known as the "Texas Public Information Act," and hereby waives and releases the CITY from any claims against CITY for providing copies of the Design Documents in compliance with that Act. CONSULTANT shall immediately furnish originals of all Design Documents to CITY.
- D. CONSULTANT shall ensure that all text documents supplied to CITY as provided herein are fully compatible with MS Word and that all drawings are fully compatible with Adobe PDF format.

VII. TERMINATION

A. CITY or CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the other party. In the event suspension or termination is without cause, CITY's payment to CONSULTANT, in accordance with this Agreement, will be made on the basis of the Services reasonably determined by CITY to be satisfactorily performed as of the date of suspension or termination. In addition, CITY's payment is subject to the CONSULTANT's delivery of all documents and reports reasonably required by CITY, to include Design Documents, invoices, statements, and accounts.

B. Should CITY require a modification to this Agreement, and in the event CITY and CONSULTANT fail to agree upon such modification, either CITY or CONSULTANT have the option of terminating this Agreement. Thereafter, CITY shall pay CONSULTANT in accordance with this Agreement for the Services mutually agreed upon by CITY and CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

C. This Agreement is subject to the CITY's appropriation of funds within the budget year for which they are paid. Any payment made by CITY to CONSULTANT must be made solely from the annual budgeting and appropriations of CITY. In the event that CITY does not appropriate funds in any fiscal year, CITY will thereafter have the right to terminate this Agreement, to be effective at the end of CITY's then existing fiscal year (September 30). CITY shall provide notice of its decision on or before August 1 of any year.

VIII. INSURANCE

CONSULTANT shall provide and maintain in full force and effect during the term of this Agreement the following types of insurance and liability coverage:

A. Worker's Compensation Insurance: to the extent required by Texas Labor Code §406.096, CONSULTANT certifies to the CITY, by executing this contract, that Contractor has in effect workers' compensation insurance to cover Contractor's employees in an amount meeting statutory requirements of the State of Texas.

B. Automobile Liability Insurance: with either a combined limit of at least \$1,000,000.00 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000.00 for bodily injury per person per occurrence and \$1,000,000.00 for property damage per occurrence. Coverage must include all owned, hired, and non-owned motor vehicles used in the performance of this Agreement by CONSULTANT or its employees.

C. General Liability Insurance: on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage and for Bodily Injury and Property Damage, no less than \$1,000,000.00. At a minimum, coverage for Premises, Operations, Products, and Completed Operations shall be \$2,000,000.00. This coverage must protect the public or any person from injury or property damages sustained by reason of CONSULTANT or its employees providing the Services. The general aggregate must be no less than \$2,000,000.00.

D. Professional Liability Errors and Omissions Insurance: with limits of liability not less than \$1,000,000.00 per occurrence covering all work performed by CONSULTANT, its employees, subcontractors, or independent contractors. If this coverage may only be obtained on a "claims made" basis, coverage must remain in effect for at least two years after final payment with CONSULTANT continuing to furnish the CITY insurance policies and applicable endorsements.

E. Subcontractor: in the case of any work sublet, CONSULTANT shall require subcontractor and independent contractors working under the direction of either CONSULTANT or a subcontractor to carry and maintain the same workers compensation and liability insurance required of CONSULTANT.

F. Qualifying Insurance: the insurance required by this Agreement must be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies. Except as addressed above, all policies must be written on a "per occurrence basis" and not a "claims made" form.

IX. INDEMNIFICATION FOR INJURY AND PERFORMANCE

A. CONSULTANT shall protect, indemnify, and hold harmless CITY, its officers, agents, servants, and employees, hereinafter individually and collectively referred to as "Indemnitee(s)," from and against suits, actions, claims, losses, liability, or damage of any character and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages, or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of CONSULTANT, its officers, employees, servants, agents, or subcontractors, or anyone else under CONSULTANT's direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of the Services, or from conditions created by the performance or non-performance of said work. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, CONSULTANT shall indemnify Indemnitee(s) as provided herein on

a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

B. CONSULTANT is not responsible for the actions of the CITY's contractor to perform the construction of the improvements covered under this Agreement.

C. Acceptance and approval of any work or final plans by CITY neither constitutes nor may be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawings, and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Design Documents, or CONSULTANT's employees, contractor, agents, and consultants.

X. INDEMNIFICATION FOR UNEMPLOYMENT COMPENSATION

CONSULTANT agrees that it is an independent contractor and not an agent of CITY and that CONSULTANT is subject, as an employer, to all applicable Unemployment Compensation Statutes, so as to relieve CITY of any responsibility or liability from treating CONSULTANT's employees as employees of CITY for the purpose of keeping records or making reports or payments of Unemployment Compensation taxes or contributions. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS AND REIMBURSE IT FOR ANY EXPENSES OR LIABILITY INCURRED UNDER SAID STATUTES IN CONNECTION WITH EMPLOYEES OF CONSULTANT.**

XI. INDEMNIFICATION FOR PERFORMANCE

CONSULTANT SHALL DEFEND AND INDEMNIFY INDEMNITEES AGAINST AND HOLD CITY AND THE PREMISES HARMLESS FROM ANY AND ALL CLAIMS, SUITS, OR LIENS BASED UPON OR ALLEGED TO BE BASED UPON THE NON-PAYMENT OF LABOR, TOOLS, MATERIALS, EQUIPMENT, SUPPLIES, TRANSPORTATION, AND MANAGEMENT COSTS INCURRED BY CONSULTANT IN PERFORMING THE SERVICES.

XII. DEFAULT OF CONSULTANT

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with this Agreement as to the quality or character of the Services or time of performance, and the failure is not corrected within ten (10) days after written notice from CITY to CONSULTANT, CITY may, at its sole discretion, without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. Payment for work satisfactorily completed will equal actual costs, including reasonable salaries and travel expenses of CONSULTANT to and from meetings called by CITY at which CONSULTANT is required to attend, but shall not include any loss of profit of CONSULTANT. In the event of such termination, CITY may complete the services in any manner deemed proper by CITY, either by the use of its own forces or by assigning the work to others. In either event, CONSULTANT is liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services, and CITY may deduct the costs CITY incurs out of such monies as may be due or that may thereafter become due to CONSULTANT under this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies, and/or help necessary to remedy the situation, at the expense of CONSULTANT.

XIII. MISCELLANEOUS PROVISIONS

A. Entire Agreement. This Agreement supersedes all prior agreements, written or oral, between CITY and CONSULTANT and constitutes the entire and integrated Agreement and understanding between the parties with respect to the subject matter of the Agreement. This Agreement may only be amended by a written instrument signed by both parties.

B. Assignment. This Agreement is a personal service contract for the services of CONSULTANT, and CONSULTANT's interest in this Agreement, duties hereunder, and/or fees due may not be assigned or delegated to a third party without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT will be considered an assignment.

C. Adjustment in Services. CONSULTANT shall not make any claims for extra services, additional services, or changes in the Services without a written agreement with CITY prior to the performance of such services.

D. Applicable Law. This Agreement must be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas without giving effect to principles of conflict of law. Venue will occur in Kerr County, Texas.

E. Waiver. A delay or omission by either party in exercising any right or power under the Agreement may not be construed as a waiver of that right or power. A waiver by either party of any term or condition of the Agreement may not be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of

the Agreement. Further, neither CITY's review, approval, or acceptance of, nor payment for any of the Services may be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, that determination may not affect any other provision of this Agreement, which will be interpreted as if the invalid or unenforceable provision had not been included.

G. Independent Contractor. CONSULTANT agrees that CONSULTANT is engaged as an independent contractor and that CITY has no responsibility to provide CONSULTANT or its employees with any benefits associated with employee status. CONSULTANT shall neither hold itself out as nor claim to be an officer, partner, employee, or agent of CITY.

H. Attachments. The following Attachment(s) is attached to this Agreement and is included herein for all purposes:

Exhibit A – Scope of Services / Compensation Schedule

I. Execution Becomes Effective. This Agreement is effective as of the Effective Date.

J. Notices and Authority. CONSULTANT shall send all notices required under this Agreement to the City Manager at City Hall, 701 Main Street, Kerrville, TX 78028. CONSULTANT agrees that only the City Manager, or designee (pursuant to III.E., above), has the authority to represent CITY or bind CITY under this Agreement. CITY shall send all notices required under this Agreement to the CONSULTANT at:

Utility Engineering Group, PLLC
191 North Union Avenue
New Braunfels, Texas 78130

K. Prohibition on contracts with companies boycotting Israel. CONSULTANT hereby verifies the following per Section 2271.002, Texas Government Code:

1. CONSULTANT does not boycott Israel; and
2. CONSULTANT will not boycott Israel during the term of the Agreement.

L. Prohibition against business with Iran, Sudan or foreign terrorist organization. CONSULTANT warrants, covenants, and represents that CONSULTANT is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

M. Prohibition on Contracts with Companies Boycotting Energy Companies. CONSULTANT hereby verifies the following per Section 2276.002, Texas Government Code:

1. CONSULTANT does not boycott energy companies; and
2. CONSULTANT will not boycott energy companies during the term of the Agreement.

N. Written Verification as to Firearm Entities. CONSULTANT hereby verifies the following per Section 2274.002, Texas Government Code:

1. CONSULTANT does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
2. CONSULTANT will not discriminate against a firearm entity or firearm trade association during the term of the Agreement.

O. Prohibition on Contracts with Companies Related to Certain Countries. Where this Agreement pertains to “critical infrastructure”, as defined by Section 2274.0101, Texas Government Code, CONSULTANT verifies (1) that it is not owned by or the majority of stock or other ownership interest of the company is not held or controlled by: (a) individuals who are citizens of China, Iran, North Korea, Russia, or other designated countries; or (b) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or other designated countries; or (2) headquartered in China, Iran, North Korea, Russia, or other designated countries.

P. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Within thirty (30) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Commercial Mediation Rules published by the American Arbitration Association. In the event that the dispute has not been resolved within thirty (30) days following mediation, or such longer period as the parties may agree, either party may initiate formal proceedings against the other party.

Q. Consequential Damages Waiver. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER CONSULTANT NOR CITY NOR EITHER PARTY'S SUPPLIERS, AGENTS, OFFICERS, OR DIRECTORS SHALL

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HAVE ANY LIABILITY REGARDLESS OF THE THEORY OF RECOVERY, INCLUDING BREACH OF CONTRACT OR NEGLIGENCE, TO THE OTHER PARTY OR ANY OTHER PERSON OR ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, COST OR EXPENSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR PROFIT, WHETHER ACTUAL OR ANTICIPATED, LOSS OF USE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOSS OF OR DAMAGE TO DATA OR OTHER COMMERCIAL OR ECONOMIC LOSS. THIS WAIVER OF CONSEQUENTIAL DAMAGES IS MADE REGARDLESS OF WHETHER (I) EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) SUCH DAMAGES MAY BE FORESEEABLE.

R. Limitation of Liability. Notwithstanding any other provision of this Agreement, CITY agrees to limit CONSULTANT's liability to CITY and to all persons having contractual relationships with CITY to the total fee or compensation received by CONSULTANT for the work under which the liability arises.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

OWNER
THE CITY OF KERRVILLE

CONSULTANT
UTILITY ENGINEERING GROUP, PLLC

BY: _____
NAME: Dalton Rice
TITLE: City Manager

BY: _____
NAME: David Kneuper, P.E.
TITLE: Partner

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FUNDING:

Julie Behrens, Director of Finance

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APPROVED AS TO FORM:

William Tatsch, Asst. City Attorney

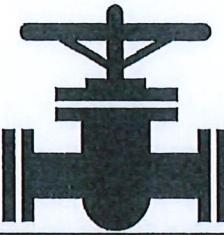
APPROVED AS TO CONTENT:

Stuart Barron, Director for Public Works
&Engineering

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EXHIBIT A



UTILITY ENGINEERING GROUP

September 27, 2023

Mr. Kyle Burrow, P.E., CFM
Director of Engineering
City of Kerrville
200 Sidney Baker
Kerrville Texas 78028

**Re: City of Kerrville – Lift Station Rehabilitations Project
Proposal for Professional Engineering Services
Scope of Services – Exhibit “A”**

Dear Mr. Burrow,

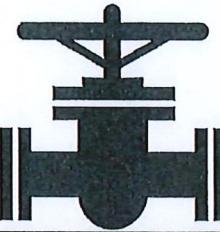
We appreciate your request for this proposal for Professional Engineering Services for the City of Kerrville Lift Stations Rehabilitations Project. Based on our site visit conducted on July 31, 2023, and subsequent email discussion, Utility Engineering Group (UEG) understands the project's scope to include rehabilitation design services for two (2) lift stations owned and operated by the City, the Broadway lift station and the Airport lift station.

Generally, the proposed repairs will address wet well piping corrosion issues caused by raw sewer gas exposure at the Broadway lift station and the Airport lift station as well as pump, electrical, and SCADA component replacement at the Airport lift station. For both stations, UEG will investigate the use of alternate piping materials including stainless steel and HDPE. Additionally, UEG will work with City staff and equipment vendors to design a wet well aeration system to try and reduce the amount of H2S gas development at the Airport lift station.

Design Plans & Specifications

- Prepare one (1) set of lift station rehabilitation design plans and specifications based on Texas Commission on Environmental Quality (TCEQ), and City of Kerrville design criteria for two (2) lift stations;
- Scope includes up to three (3) design/review meetings at the 30%, 60%, and 90% design submittals with the City of Kerrville;
- Coordinate existing condition surveys of the Airport lift station site. Survey of the Broadway lift station site is included as an additional service under the Exclusions and Assumptions section. Existing condition survey will include topography, trees, immediate upstream manhole elevations, and site improvements.
- Coordinate electrical/SCADA design plans and specifications for the Airport lift station; and
- UEG will submit the plans to City of Kerrville for review, addressing comments as necessary.

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UTILITY ENGINEERING GROUP

Bid Phase:

- Prepare a final opinion of probable construction cost prior to bidding;
- Prepare the final bid documents, plans, and specifications;
- Assist the City with project bid advertisement and bidding coordination through Civcast;
- Assist with the project pre-bid meeting;
- Respond to any pre-bid questions through Civcast;
- Assist the City with the project bid-opening, providing a recommendation letter to the City; and
- Assist the City in obtaining executed contract documents.

Construction Administration Phase:

- Attend the project pre-construction meeting;
- UEG has included one (1) site visit per month during construction of the project (4 total);
- UEG will review relevant construction submittals, test reports, request-for-information (RFI), maintain and RFI log, change orders, and pay requests as required;
- UEG will perform necessary design revisions during construction as requested by the City or required by unforeseen conditions. The revisions will be considered an additional service and performed on an hourly basis based on the attached hourly rate schedule;
- Conduct a final inspection, provide a final punch list, and a substantial completion letter; and
- Supply as-built record drawings and project close-out documentation to the City.

Exclusions and Assumptions

- The existing conditions survey of the Broadway lift station site is not included with the base scope of services for this project. If required, an existing conditions survey for the lift station site can be included as an additional service for **\$3,500.00**.
- Any required project easements or real property interest will be provided by others and not included in this scope of services;
- Geotechnical design recommendations are not included in this scope of services;
- No construction survey or staking services are included in this scope of services;
- Lift station bypass plans will be required to be provided by the contractor during construction and have not been included in this scope of services;
- Environmental planning or review is not included in this scope of services;
- UEG will not be responsible for any permit and application fees, impact fees, platting, feasibility studies or TCEQ reports related to the project;
- No decorative fencing, landscaping, drainage or water quality/detention design is included in this scope of work;
- Attendance at meetings, limited to those listed above; and
- UEG will not be responsible for any downstream collection, transmission, or treatment facility analysis.

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UTILITY ENGINEERING GROUP

Utility Engineering Group proposes to provide the above listed base scope of services for the lump sum fee of **\$64,620.00** for the City of Kerrville Lift Station Rehabilitations Project. Utility Engineering Group will invoice the project monthly, based on percentage of completion.

Upon your review and approval of this Proposal for Professional Engineering Services for City of Kerrville Lift Station Rehabilitations Project, please provide a signed copy of this proposal request to our office via email or mail. Utility Engineering Group sincerely appreciates this opportunity; if you have any questions, please do not hesitate to contact us directly.

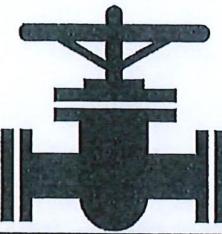
Regards,

David Kneuper, P.E.
Utility Engineering Group, PLLC
Project Manager – Partner
Cell: (512) 699-8607
Office: (830) 214-0521
davidk@uegpros.com

Attachments:

- Utility Engineering Group Hourly Rate Schedule

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UTILITY ENGINEERING GROUP

SCHEDULE A

**STANDARD CONDITIONS
FOR
ENGINEERING SERVICES**

1. The proposal, if not accepted and executed as an agreement, is valid for a period of 60 days, after which the Engineer/Surveyor (herein after "Engineer") reserves the right to review and revise the fees and other terms specified herein;
2. The proposal, if executed by both parties, will serve as a Contract for the proposed professional services;
3. The individual executing this Contract, if acting on behalf of a partnership, corporation, or funding agency, represents that he/she has the authority to do so, and to bind the entity to this agreement;
4. This Contract is not assignable except with the prior written consent of the Engineer and no assignment shall relieve the undersigned of any obligations under this Contract;
5. The undersigned agrees to pay the Engineer for work performed in accord with the terms of this Contract, without regard to the success of the project. Payment to the Engineer is expressly not conditioned upon the undersigned receiving any payment from third parties who are not a party to this Contract, such as other property owners, developers, or funding agencies;
6. The Engineer will prepare plans in accordance with all known local, County, State and other applicable regulations and ordinances, but he cannot guarantee passage or approval of any plans;
7. The Engineer must have the right to work as efficiently as possible and the Client will assist him in this effort;
8. Work outside of the agreement shall be done on an agreed upon compensation basis, as extra work;
9. Invoices will be rendered monthly and based on time and materials with Net 30 terms for payment;
10. The client is responsible for all government application and permit fees, and third party consultant fees;
11. It is agreed that no discount shall be allowed for prepayment. A service charge of 1-1/2% per month shall be added to all invoices unpaid beyond 30 days from the invoice date;
12. The Engineer shall have the right to stop all work under the Contract if payment is not received within 30 calendar days from the date the Client receives the invoice;
13. The Client agrees to defend and indemnify the Engineer against any action at law instituted by anyone against the Engineer related to or by reason of his rendering of service pursuant to this Agreement unless and until a Court of competent jurisdiction finds that the Engineer has acted outside the scope of his duties and/or acted contrary to law and is liable for damages;
14. The engineering plans will be designed in accordance with the ordinances and regulations of the governing authorities. Should the owner request changes to the plans before or after submission to the authorities, or if the owner has directed Utility Engineering Group to incorporate items on the plans which require design waivers or variances that are not approved by the governing authorities, then the additional services for revisions will be performed upon receiving written authorization to proceed from the owner, and the additional work will be billed in accordance with our standard Rates/Fees; and
15. Revisions - Upon submittal of plans to the appropriate reviewing agencies required by the application, the Engineer will correct errors and/ or omissions which are required by the reviewing agency without additional compensation and as part of this contract. However, requests for revisions or additional information and/or documents that fall beyond the scope of the original submission and the understanding of the Engineer will give rise to an adjustment of the fees under this Contract. Upon receipt of the reviewing official's report, the Engineer and the Client shall jointly agree on which revisions fall in which category, and a budget for said additional work shall be established.

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UTILITY ENGINEERING GROUP

HOURLY RATE SCHEDULE

January 2023

POSITION	HOURLY RATE
PRINCIPAL- Registered Professional Engineer	\$185.00
PROJECT MANAGER – Registered Professional Engineer	\$155.00
GRADUATE ENGINEER/ENGINEER-IN-TRAINING	\$100.00
DESIGN TECHNICIAN	\$85.00
DRAFTSMAN – CAD Operator	\$75.00
ADMINISTRATIVE	\$55.00
NON - LABOR EXPENSES	Cost Plus 10%
SUB-CONSULTANTS	Cost Plus 10%



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: City Council workshop minutes, September 26, 2023.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** August 17, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council workshop minutes held September 26, 2023 at 4:00 p.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20231010_Minutes CC workshop 9-16-23 4pm.pdf*](#)

**CITY COUNCIL WORKSHOP MINUTES
CITY HALL COUNCIL CHAMBERS**

**SEPTEMBER 26, 2023 4:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On September 26, 2023 at 4:00 p.m., the City Council workshop was called to order by Mayor Judy Eychner at City Hall Council Chambers, 701 Main Street.

COUNCILMEMBERS PRESENT:

Judy Eychner, Mayor
Roman Garcia, Council Place 1
Jeff Harris, Council Place 2
Joe Herring Jr, Council Place 3
Brenda Hughes, Council Place 4/Mayor Pro Tem

COUNCILMEMBERS ABSENT:

None

CITY STAFF PRESENT:

Kim Meismer, Interim City Manager
Michael Hornes, Asst City Manager
Mike Hayes, City Attorney
Shelley McElhannon, City Secretary
Stuart Barron, Executive Director
Julie Behrens, Director of Finance

Kyle Burow, Director Engineering
Guillermo Garcia, Executive Director
Yesenia Luna, Municipal Court Coordinator
Eric Maloney, Fire Chief
Chris McCall, Police Chief

VISITOR(S) PRESENT:

Tony Battle, Byrne Design
Josh Holton, Byrne Design
Michael McCall, Byre Design

Joel Kokomor, Freese and Nichols
Terry Palmer, Beaty Palmer Architects
Tara Bushnoe, UGRA

1. PUBLIC COMMENT: None.

2. DISCUSSION, CONSIDERATION, POSSIBLE ACTION:

2A. Public Safety Facility update.

Michael Hornes introduced the item, and Tony Battle, Michael Hornes, and Chief McCall provided information and responded to questions.

Mayor Eychner made a motion to convene Executive Session under 551.071 (consultation with attorney) and 551.087 (deliberation regarding economic development negotiations), seconded by Councilmember Joe Herring, Jr. The motion passed 5-0. At 4:27 p.m., the open workshop recessed and Council convened into closed Executive Session.

3. EXECUTIVE SESSION:

3A. Economic Development projects update: Litecrete Inc, Windridge (Lennar Homes of Texas Land and Construction, LTD) (551.071, 551.087).

At 5:00 p.m., the closed Executive Session adjourned and the open workshop reconvened. No action taken during Executive Session.

4. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY: None

ADJOURN. The workshop adjourned at 5:00 p.m.

APPROVED BY COUNCIL: _____

ATTEST:

Judy Eychner, Mayor

Shelley McElhannon, City Secretary



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: City Council meeting minutes, September 26, 2023.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** August 17, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

City Council meeting minutes held September 26, 2023 at 6:00 p.m., City Hall.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[*20231010_Minutes CC meeting 9-26-23 6pm.pdf*](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
SEPTEMBER 26, 2023 6:00 PM**

On September 26, 2023 at 6:00 p.m., Mayor Judy Eychner called the Kerrville City Council meeting to order in City Hall Council Chambers, 701 Main Street. Mayor Eychner provided the invocation and led the Pledge of Allegiance.

COUNCILMEMBERS PRESENT:

Judy Eychner, Mayor
Roman Garcia, Councilmember Place 1
Jeff Harris, Councilmember Place 2
Joe Herring, Jr., Councilmember Place 3
Brenda Hughes, Councilmember Place 4

COUNCILMEMBER ABSENT:

None

CITY EXECUTIVE STAFF:

Kim Meismer, Interim City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Shelley McElhannon, City Secretary
Stuart Barron, Exec Director PW & Eng
Julie Behrens, Director Finance

Jacob Bogusch, Finance Compliance Coord
Stuart Cunyus, Public Information Officer
Guillermo Garcia, Exec Director Innovation
Eric Maloney, Fire Chief
Chris McCall, Police Chief
Drew Paxton, Director of Planning/Zoning

VISITORS PRESENT: A list of the citizen speakers present during the meeting is on file in the City Secretary's Office for the required retention period.

Mike Wittler, CEO and GM Kerrville Public Utility Board

Amy Dozier, CFO Kerrville Public Utility Board

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Announcements of Community Interest provided by Stuart Cunyus.

2. PRESENTATION(S):

2A. Kerrville Kindness Award: Back to School Community Partners.

Mayor Eychner presented the Kerrville Kindness Award to the Back to School Community Partners represented by ambassadors from the Light on the Hill, The KROC Center, Eyes on Me Barber School, and the Historic Downtown Business Alliance.

2B. Proclamation recognizing October 2023 as Hill Country Dark Sky month.

Mayor Eychner presented a proclamation recognizing October 2023 as Hill Country Dark Sky month received by Bill Rector, Bruce Barton, and Layng Guerriero.

2C. Proclamation recognizing October 5, 2023 as the City of Kerrville World Teachers' Day.

Mayor Eychner presented a proclamation recognizing October 5, 2023 as the City of Kerrville World Teachers' Day received by KISD Elementary Campus Teacher of the Year 2022-2023 Kenna Bush, Art Teacher Tally Elementary; the Region 20 Secondary Principal of the Year 2022-2023 Shelby Balser, Principal Tivy High School; and KISD Superintendent Brent Ringo.

Mayor Eychner announced speakers will have two minutes to speak during the visitors forum.

3. VISITORS FORUM:

The following person(s) spoke:

- Michael Sigerman
- Louis Amestoy
- George Baroody
- Barbara Dewell Ferguson

4. CONSENT AGENDA:

Citizen George Baroody submitted a speaker request form to speak on item 4A. Councilmember Brenda Hughes made a motion to approve items 4B and 4C, seconded by Councilmember Joe Herring, Jr. The motion passed 5-0.

4B. City Council workshop minutes, September 12, 2023.

4C. City Council meeting minutes, September 12, 2023.

END OF CONSENT AGENDA.

4A. City of Kerrville Funding Agreement with Kerr Economic Development Corporation (KEDC).

The following person(s) spoke:

- George Baroody

Michael Hornes and Julie Behrens provided information and responded to questions.

Councilmember Hughes made a motion to approve item 4C as presented, seconded by Councilmember Herring. The motion passed 4-1 with Mayor Eychner, Councilmember Jeff Harris, Councilmember Herring, and Councilmember Hughes voting in favor, and Councilmember Roman Garcia opposed.

5. ORDINANCES, FIRST READING:

5A. Ordinance No. 2023-24. An Ordinance amending in part Ordinance No. 99-18, as amended by adopting revised rate schedules for residential services, and distributed generation rider; containing a cumulative clause; containing a severability clause; and establishing an effective date.

Shelley McElhannon read Ordinance No. 2023-24 caption into record.

Amy Dozier provided information and responded to questions.

Councilmember Garcia made a motion to adopt Ordinance No. 2023-24 on first reading, seconded by Councilmember Hughes. The motion passed 5-0.

6. ORDINANCES, SECOND READING:

6A. Ordinance No. 2023-22, second reading. An Ordinance changing the zoning of a property known as 202 Mack Hollimon Drive, consisting of Lot 1, Block 1, of the Oak Hollow Estates Addition, and within the City of Kerrville, Kerr County, Texas; from a Single-Family Residential Zoning District (R-1) to a Neighborhood Commercial Zoning District (C-1); and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-22 caption into record.

Councilmember Hughes made a motion to approve Ordinance No. 2023-22, seconded by Councilmember Herring. The motion passed 5-0.

6B. Ordinance No. 2023-25, second reading. An Ordinance adopting the annual budget for the City of Kerrville, Texas, Fiscal Year 2024; providing appropriations for each City

department and fund; containing a cumulative clause; and containing a savings and severability clause.

Shelley McElhannon read Ordinance No. 2023-25 caption into record.

Councilmember Herring made a motion to approve Ordinance No. 2023-25 to adopt the City's budget for Fiscal Year 2024 on second reading, seconded by Councilmember Harris. The motion passed 4-1 with Mayor Eychner, Councilmember Harris, Councilmember Herring, and Councilmember Hughes voting in favor, and Councilmember Garcia opposed.

Roll call vote:	In Favor	Opposed
Mayor Judy Eychner	<u>X</u>	_____
Councilmember Roman Garcia	_____	<u>X</u>
Councilmember Jeff Harris	<u>X</u>	_____
Councilmember Joe Herring, Jr.	<u>X</u>	_____
Councilmember Brenda Hughes	<u>X</u>	_____

Councilmember Herring made a motion ratifying vote to adopt the budget that will require raising more revenue from property taxes than the previous fiscal year, seconded by Councilmember Hughes. The motion was approved 5-0.

6C. Ordinance No. 2023-26, second reading. An Ordinance levying an Ad Valorem (Property) Tax for the use and support of the Municipal Government for the City of Kerrville, Texas, for Fiscal Year 2024; apportioning each levy for specific purposes; and providing when taxes shall become due and when same shall become delinquent if not paid.

Shelley McElhannon read Ordinance No. 2023-26 caption into record.

Councilmember Hughes made a motion to approve Ordinance No. 2023-26 that the property tax rate be increased by the adoption of a tax rate of \$0.5595, which is effectively a 2.98% percent increase in the tax rate, seconded by Councilmember Harris. The motion passed 5-0.

Roll call vote:	In Favor	Opposed
Mayor Judy Eychner	<u>X</u>	_____
Councilmember Roman Garcia	<u>X</u>	_____
Councilmember Jeff Harris	<u>X</u>	_____
Councilmember Joe Herring, Jr.	<u>X</u>	_____
Councilmember Brenda Hughes	<u>X</u>	_____

6D. Ordinance No. 2023-28, second reading. An Ordinance amending Chapter 26 "Building and Building Regulations" of the Code of Ordinances, City of Kerrville, Texas, by adding a new Article XI "Grading and Filling", to create regulations, including a permit requirement, for any activity associated with the disturbance of land under specified conditions; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; and providing other matters relating to the subject.

Shelley McElhannon read Ordinance No. 2023-28 caption into record.

Councilmember Herring made a motion to approve Ordinance No. 2023-28 on second reading, seconded by Councilmember Harris. The motion passed 5-0.

7. BOARD APPOINTMENTS:

7A. Appointments to the Senior Services Advisory Committee.

Councilmember Herring moved to appoint Tammy Amerson-Wilson, Irving Hart, Gretchen Rye, Paige Sumner, and Lynette Wedig, seconded by Councilmember Harris. The motion was approved 5-0.

7B. Appointments to the Tax Increment Reinvestment Zone #1. (This item eligible for Executive Session 551.074).

Mayor Eychner made a motion to reappoint Fred Gamble, Katherine Howard, and Bruce Stracke, seconded by Councilmember Herring. The motion passed 5-0.

7C. Appointments to the Zoning Board of Adjustment. (This item eligible for Executive Session 551.074).

Councilmember Hughes moved to reappoint Michael Killeen, seconded by Mayor Eychner. This motion was approved 5-0.

8. EXECUTIVE SESSION: Executive Session not called nor convened.

8A. Deliberation of competitive matters regarding wholesale market activities of the Kerrville Public Utility Board (KPUB), to include supply agreements, hedging and Electric Reliability Council of Texas (ERCOT). (551.086)

8B. Appointments to the Tax Increment Reinvestment Zone #1. (551.074)

8C. Appointments to the Zoning Board of Adjustment (551.074)

9. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY. N/A

10. ITEM(S) FOR FUTURE AGENDAS:

- Councilmember Hughes – appoint an Animal Ordinance Committee, seconded by Councilmember Herring. Consensus to add item to future agenda 4-1, with Mayor Eychner, Councilmember Harris, Councilmember Herring, and Councilmember Hughes in favor, and Councilmember Garcia opposed.
- Councilmember Garcia – request to consider obtaining Council meeting agenda information sooner than the Friday before a Tuesday Council meeting. Mayor Eychner called for a second Council sponsor, with no second forthcoming.
- Councilmember Herring – acknowledged and thanked Kim Meismer for serving as Interim City Manager.

ADJOURN. The meeting adjourned at 7:16 p.m.

APPROVED BY COUNCIL: _____

APPROVED:

ATTEST:

Judy Eychner, Mayor

Shelley McElhannon, City Secretary



TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT: Resolution No. 33-2023. A Resolution granting a Conditional Use Permit to authorize an Independent Living Facility for Seniors on property generally located adjacent to Memorial Boulevard (SH 27) and between its intersection with Meeker Road and Laurel Street; comprising an approximate 0.53 acres and more commonly known as 2916 Memorial Blvd; said property is located within a Light Commercial Zoning District (C-2); and making said permit subject to certain conditions and restrictions.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 15, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area H - Housing

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Proposal: A resolution to allow a Conditional Use Permit for an Independent Living Facility for Seniors on 0.53 acres of land out of Wallace Survey No. 112, Abstract No. 360; and more commonly known as 2916 Memorial Blvd, Kerrville, TX 78028. (Case No. PZ-2023-8)

A similar resolution was previously approved by the Planning & Zoning Commission (Case PZ-2022-61). The site plan has changed and the original CUP has expired. The applicant is requesting approval of the new site plan and CUP. The new site plan is showing an increase in unit count from seven to nine units. The new site plan has been reviewed by Planning, Building and Fire and appears to meet code requirements. Any final details will be resolved during the building permit process.

Procedural Requirements: 21 letters were mailed on 8/24/2023 to adjacent property owners. The public notice was published in the Kerrville Daily Times on 8/17/2023. An

informational sign regarding the public hearing was posted on the property on 8/25/2023. At the time of drafting this Agenda Bill, no comments had been received.

Staff Analysis and Recommendation

Consistency with the Kerrville 2050 Comprehensive Plan: The subject property and surrounding area are designated Transitional Residential (TR), the primary land use being small lot, single-family detached homes, patio homes, townhomes, duplexes, condominiums and apartments. Since the underlying zoning is not changing and the proposed housing type meets the primary land use definition, the request is consistent with the Kerrville 2050 Comprehensive Plan.

Adjacent Zoning and Land Uses:

Subject Property

Current Zoning: C-2 Light Commercial

Existing Land Use: Office building

Direction: **North, South, West, East**

Current Zoning: C-2, Light Commercial

Existing Land Uses: Various commercial businesses

Thoroughfare Plan: The subject property is located on a primary arterial.

Traffic Impact: No traffic impact is anticipated.

Parking: Independent Senior Living Facility does not have a specific parking requirement within the zoning code. Staff recommends a condition for the CUP to use the multi-family parking ratio. The proposed site plan includes the required off-street parking.

Recommendation: Because the Conditional Use Permit request is consistent with the Kerrville 2050 Comprehensive Plan and does not change the existing zoning district, staff recommends approval with consideration and inclusion of the following proposed conditions:

Independent Living Facility for Seniors – Conditions of Approval

1. **Site Plan:** The development and use of the Property shall conform to the site plan.
2. **Minimum Parking:** The project shall provide parking consistent with the parking requirements for a multi-family development, Section 60-104 Table 2, #40.
3. **CUP Expiration:** The timeline for the CUP expiration does not begin until the City is out of Stage 4 Water Conservation Measures.

On September 7th, the Planning and Zoning Commission recommended approval of the case with a unanimous vote.

RECOMMENDED ACTION:

Approve Resolution No. 33-2023.

ATTACHMENTS:

[20231010_Reso 33-2023 CUP 2916 Memorial Blvd.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 33-2023**

**A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO
AUTHORIZE AN INDEPENDENT LIVING FACILITY FOR
SENIORS ON PROPERTY GENERALLY LOCATED ADJACENT
TO MEMORIAL BOULEVARD (SH 27) AND BETWEEN ITS
INTERSECTION WITH MEEKER ROAD AND LAUREL STREET;
COMPRISING AN APPROXIMATE 0.53 ACRES AND MORE
COMMONLY KNOWN AS 2916 MEMORIAL BOULEVARD; SAID
PROPERTY IS LOCATED WITHIN A LIGHT COMMERCIAL
ZONING DISTRICT (C-2); AND MAKING SAID PERMIT
SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS**

WHEREAS, the owner of the property depicted in the location map and site plan in **Exhibit A** (the “Property”), being attached hereto and made a part hereof for all purposes, is requesting approval of a Conditional Use Permit (“CUP”) to allow the Property located within a Light Commercial Zoning District (C-2) to be used for an independent living facility for seniors; and

WHEREAS, an independent living facility for seniors requires the granting of a CUP where such use is proposed within a Light Commercial Zoning District (C-2); and

WHEREAS, the City Planning and Zoning Commission (the “Commission”), in compliance with state law and the Zoning Code of the City of Kerrville, Texas (Chapter 60, Code of Ordinances) (“Zoning Code”), and in particular, the procedures for obtaining a CUP; having given the requisite notices by United States mail, publication, and otherwise; and after holding a public hearing and affording a full and fair hearing to all property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, has recommended that City Council grant the CUP applied for and referenced herein, subject to the special conditions and restrictions set out hereinafter and applied to the Property; and

WHEREAS, City Council, in compliance with state law and the Zoning Code, and likewise having given the requisite notices and holding a public hearing on October 10, 2023, finds that the health, safety, and general welfare will be best served by the granting of the CUP as recommended by the Commission and referenced herein on the Property;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

SECTION ONE. A Conditional Use Permit is granted to permit the Property described as follows, and located within a Light Commercial Zoning District (C-2), to

be developed and used for a living facility for seniors, and such use is subject to the provisions of this Resolution and other City ordinances and regulations:

Legal Description: Being property lying and being situated within the City of Kerrville, Kerr County, Texas, and being approximately 0.53 acres out of the Wallace Survey No. 112, Abstract No. 360; and being depicted on the location map and site plan at **Exhibit A**.

Address: 2916 Memorial Blvd. (State Hwy. 27), Kerrville, TX 78028.

SECTION TWO. In addition to the development and use regulations currently applicable to the Property, development and use of the Property is subject to the following additional conditions:

A. Site Plan: The development and use of the Property shall conform to the site plan attached as **Exhibit A**.

B. Parking: The Property shall comply with the multifamily parking standards found within Article XII of the Zoning Code.

SECTION THREE. This Resolution and CUP granted herein is subject to termination in accordance with the Zoning Code.

SECTION FOUR. City Council finds and determines that its adoption of this Resolution promotes the health, safety, and general welfare of the public and is a proper valid exercise of the City's police powers.

SECTION FIVE. If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

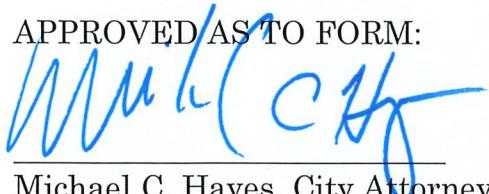
SECTION SIX. This Resolution is effective upon adoption.

SECTION SEVEN. Resolution No. 82-2022, as adopted by City Council on December 13, 2022, has previously terminated pursuant to Section 60-90 of the Zoning Code and the failure to commence use.

PASSED AND APPROVED ON this the _____ day of _____, A.D., 2023.

Judy Eychner, Mayor

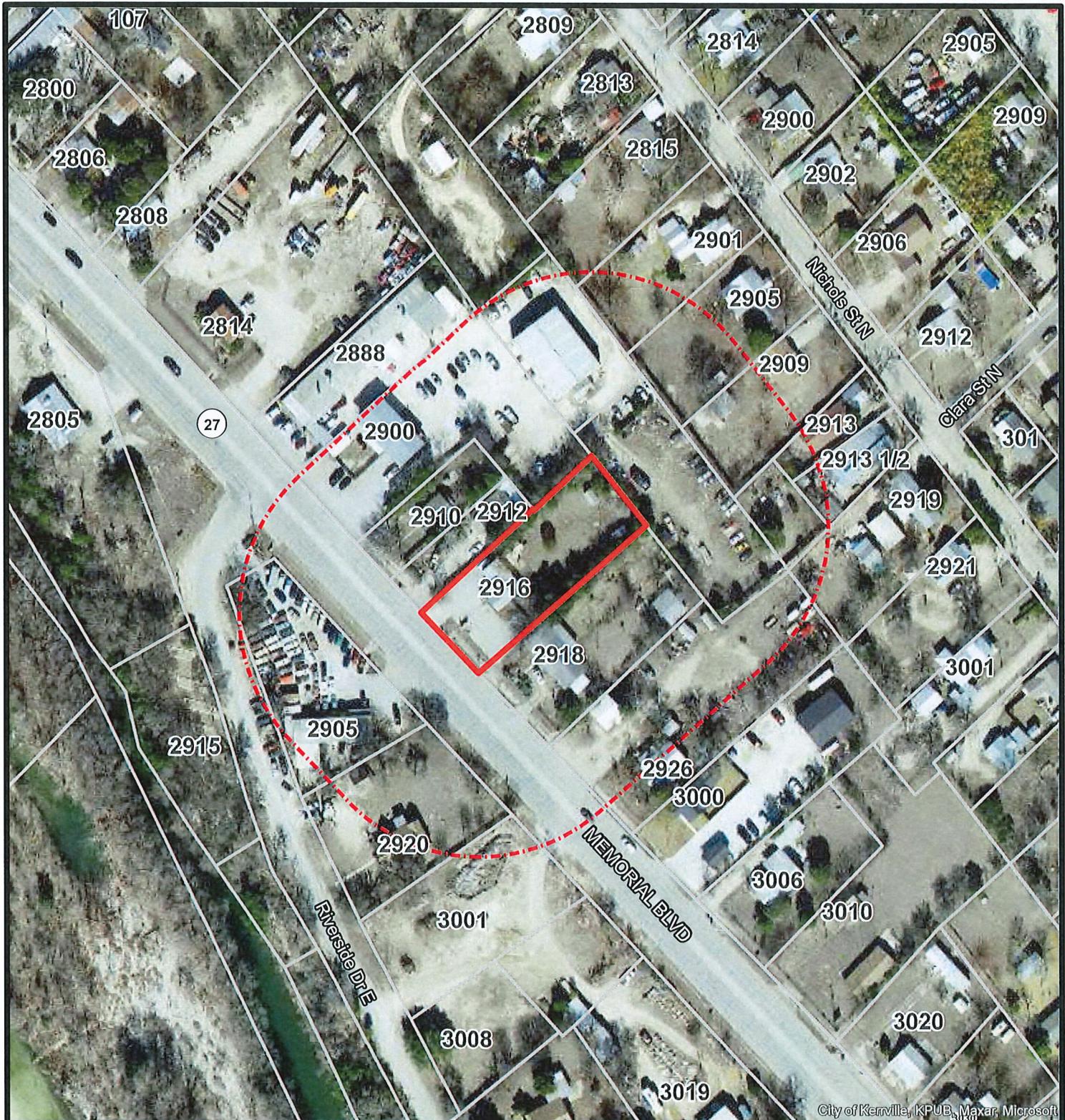
APPROVED AS TO FORM:

A blue ink signature of Michael C. Hayes, consisting of stylized, flowing lines that form the letters 'M', 'C', and 'H'.

Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



Location Map

PZ-2023-8

Location:

2916 Memorial Blvd

Legend

- Subject Properties
- 200 Feet Notification Area



0 50 100 200

Scale In Feet

08/07/2023



TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT: Ordinance No. 2023-29. An Ordinance annexing an approximate 214.1-acre tract of land, which includes an adjacent right-of-way existing as a portion of Olympic Drive, all of which is out of the Samuel Wallace Survey No. 114, Abstract No. 348, and Samuel Wallace Survey No. 113, Abstract No. 347, into the corporate limits of the City of Kerrville, Texas; such property being located within Kerr County, Texas, and the extraterritorial jurisdiction of the City of Kerrville, Texas; and generally located adjacent to Loop 534 and north of Olympic Drive; further describing the property to be annexed; adopting a service plan for the property annexed; and establishing the zoning both for the property annexed and a contiguous tract of land located adjacent to Loop 534, and providing other matters relating to the subject.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** June 30, 2023

SUBMITTED BY: Drew Paxton, Planning Director

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area H - Housing

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

An Ordinance to annex into the City of Kerrville's incorporated limits a 214.1 acre tract of land situated in the Samuel Wallace Survey Number 114, Abstract No. 348, and Samuel Wallace Survey Number 113, Abstract No. 347, Kerr County, Texas, including a segment of Olympic Drive right-of-way, with a zoning classification of Agriculture (AG), Planned Development District (PDD), and General Commercial (C-3); and more commonly known as 2945 Loop 534. (Case No. PZ-2023-6)

Procedural Requirements: The City, in accordance with state law, mailed 44 letters on 5/18/2023 to adjacent property owners. The City published a similar notice in the Kerrville Daily Times on 5/11/2023. Signs were also posted on the property in accordance with current zoning code.

Staff Analysis and Recommendation:

Consistency with the Kerrville 2050 Comprehensive Plan: The property is within the Strategic Catalyst Area No. 8 which is the area that “surrounds Loop 534 and is largely undeveloped. In the future it will likely serve as a link to Tivy High School.” (Kerrville 2050, 2018) Since the adoption of the Kerrville 2050 Comprehensive Plan, Hal Peterson Middle School has been constructed to the south of this property and has expanded the anchor that KISD facilities serve in the area. The SCA 8 focuses on both residential and commercial for the area and the community. This request for annexation and Residential Planned Development and commercial is consistent with the Future Land Use Plan of the Kerrville 2050 Plan.

Adjacent Zoning and Land Uses:

Subject Property

Current Zoning: None.

Existing Land Uses: Vacant

Direction: North

Current Zoning: R-1

Existing Land Uses: Residential and vacant land.

Direction: West

Current Zoning: R-1 and R-2

Existing Land Uses: Residential.

Direction: South

Current Zoning: PI and R-2

Existing Land Uses: Hal Peterson Middle School and residential.

Direction: East

Current Zoning: AG and PI

Existing Land Uses: Loop 534 and church property and vacant land (across Loop 534)

Thoroughfare Plan: There should be no impact to the thoroughfare plan as these developments are anticipated within the Thoroughfare Plan, adjacent to the Loop 534 (major arterial) and Olympic Drive (collector).

Traffic Impact: With much of the development fronting Loop 534 and the request for Planned Development District zoning, the Traffic Impact Analysis was required as a part of

the application. The TIA summary is attached. Any improvements necessary for the build out of the development are required to be built/installed at the development's expense.

Parking: To be determined, per project, at the time of the building permit.

Recommendation: Based on the consistency with the Kerrville 2050 Comprehensive Plan, staff recommends the case for approval.

The Planning and Zoning Commission recommend a lower percentage of the 25' lots. The motion was to limit the 25 foot wide lots to 40% of the lot total and approve the balance of the project as proposed; the motion carried 4-0.

Lennar has since updated their concept plan and removed all 25' lots. The current plan has a combination of 35' and 45' lots.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-29 on first reading.

ATTACHMENTS:

[*20231010_Ord 2023-29 Annex-Zone 2945 Loop 534.pdf*](#)

D R A F T 10/4/23

CITY OF KERRVILLE, TEXAS ORDINANCE NO. 2023-29

AN ORDINANCE ANNEXING AN APPROXIMATE 214.1 ACRE TRACT OF LAND, WHICH INCLUDES AN ADJACENT RIGHT-OF-WAY EXISTING AS A PORTION OF OLYMPIC DRIVE, ALL OF WHICH IS OUT OF THE SAMUEL WALLACE SURVEY NO. 114, ABSTRACT NO. 348, AND SAMUEL WALLACE SURVEY NO. 113, ABSTRACT NO. 347, INTO THE CORPORATE LIMITS OF THE CITY OF KERRVILLE, TEXAS; SUCH PROPERTY BEING LOCATED WITHIN KERR COUNTY, TEXAS, AND THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF KERRVILLE, TEXAS; AND GENERALLY LOCATED ADJACENT TO LOOP 534 AND NORTH OF OLYMPIC DRIVE; FURTHER DESCRIBING THE PROPERTY TO BE ANNEXED; ADOPTING A SERVICE PLAN FOR THE PROPERTY ANNEXED; AND ESTABLISHING THE ZONING BOTH FOR THE PROPERTY ANNEXED AND A CONTIGUOUS TRACT OF LAND LOCATED ADJACENT TO LOOP 534; AND PROVIDING OTHER MATTERS RELATING TO THE SUBJECT

WHEREAS, an owner of land has requested annexation of its land by the City of Kerrville, Texas (“City”), pursuant to Local Government Code Section 43.0671; and

WHEREAS, Section 1.05 of the City’s Charter authorizes City Council to annex territory lying adjacent to the City, not inconsistent with the Constitution and Statutes of the State of Texas or the United States of America; and

WHEREAS, the land to be annexed makes up a total of approximately 214.1 acres, as more specifically described below, and includes a portion of existing public right-of-way (Olympic Drive), all of which is collectively referred to herein as “Property 1”, which is more specifically described and depicted in **Exhibit A**; and

WHEREAS, Property 1 presently lies within the extraterritorial jurisdiction of the City and adjacent to the City’s limits; and

WHEREAS, in conjunction with the approval of this Ordinance, City Council also approves a service agreement for Property 1 in accordance with Section 43.0672 of the Texas Local Government Code; and

WHEREAS, Section 60-37 of the City's Zoning Code (Chapter 60, City's Code of Ordinances) (referred to herein as "Zoning Code") creates procedures for the initial zoning of newly annexed areas; and

WHEREAS, the owner of Property 1 owns an undeveloped tract of land contiguous to Property 1 but within the City's corporate boundaries, said property which is more specifically described and depicted in **Exhibit B**, which is collectively referred to herein as "Property 2"; and

WHEREAS, Property 2, consisting of approximately acres, is currently zoned as both an Agricultural District (AG) and Public and Institutional District (PI); and

WHEREAS, the owner of Property 2 seeks to rezone this property and to use a portion of it in conjunction with Property 1 for residential use as further described; with the remaining portion being rezoned as a General Commercial District (C-3); and

WHEREAS, the owner and applicant for zoning and rezoning seeks for the City to create a Planned Development (Zoning) District ("PDD") for the residential portion of its property, which consists of approximately 100.36 acres and includes portions of both Property 1 and Property 2; and

WHEREAS, per the Zoning Code, a PDD is a zoning category that allows the use of unique and innovative land use and design techniques to further the City's development goals; and

WHEREAS, a PDD allows an applicant to, in part, utilize flexible design techniques that take into account the use of adjacent properties, the needs of future occupants and users of the planned development and the emergence of new development trends, such as tiny homes; to promote the efficient use of land and public facilities and services; and, to further the vision of the City's Comprehensive Plan (Kerrville 2050); and

WHEREAS, a PDD is intended to ensure compliance with good zoning practices while allowing specific desirable departures from the strict provisions of current zoning classifications; and

WHEREAS, having provided all required public notices, held all required public hearings at which persons with an interest in the matter were provided an opportunity to be heard, and complying with other requirements in Section 43.0673 of the Texas Local Government Code, City Council finds it to be in the public interest to adopt this Ordinance annexing Property 1, to

approve a service agreement as required by state law, to establish zoning regulations for Property 1, and to rezone Property 2 in accordance with Chapter 211, Texas Local Government Code and Chapter 60 of the City's Code of Ordinances;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. FINDINGS. City Council finds and declares the facts and recitations contained in the preamble of this Ordinance true and correct.

SECTION TWO. PETITION FOR ANNEXATION. The petition for annexation concerning Property 1 is attached as **Exhibit C**, said petition, which triggered the process specified in Subchapter C-3, Chapter 43, Texas Local Government Code, authorizing the City's annexation of Property 1.

SECTION THREE. ANNEXATION. Property 1 is annexed and incorporated into the corporate limits of the City of Kerrville, Texas, for all legal purposes. Property 1 is made up of one tract consisting of approximate 214.1 acres, which includes an existing portion of public right-of-way known as Olympic Drive, all of which is more specifically described in **Exhibit A**.

SECTION FOUR. AMENDMENT TO CITY BOUNDARY. City Council authorizes and directs the City Manager to amend the City's official boundary map in accordance with this annexation.

SECTION FIVE. AGREEMENT REGARDING SERVICES. Pursuant to Section 43.0672 of the Texas Local Government Code, the City has negotiated and hereby enters into a Service Agreement (the "Agreement") with the owner of land for the provision of services in the area. The Agreement is attached to this Ordinance as **Exhibit D**. Upon annexation of Property 1, the City shall provide Property 1 with the municipal services set forth in the Agreement pursuant to the schedule set forth therein, such services making up the City's full municipal services. The City shall have no obligation to provide services to Property 1 not listed in the Agreement.

SECTION SIX. ZONING OF PROPERTY 1; REZONING OF PROPERTY 2. Upon the adoption of this Ordinance, and in accordance with Section 60-37 of the City's Zoning Code, Chapter 60, City's Code of Ordinances ("Zoning Code"), Property 1 will be zoned and Property 2 will be rezoned as follows:

A. Planned Development District (100.36 acres). Phases IA, IB, IC, IIA, IIB, IIIC as depicted on the Concept Plan, which is attached as **Exhibit E** (“Residential Areas”) and which includes a portion of Property 2, shall be used for single-family detached dwelling purposes and in accordance with a single-family residential zoning district (“R-1 District”) pursuant to the Zoning Code. However, the following area regulations (area, width, and setbacks) apply and supersede those found within the Zoning Code applicable to single-family dwellings within an R-1 District:

SINGLE-FAMILY DWELLING	
Characteristic	Requirement
Minimum Lot Size	3,850 SF
Minimum Lot Width	35 Feet
Minimum Lot Depth	110 Feet
Minimum Front Setback	20 Feet
Minimum Side Setback	5 Feet
Minimum Rear Setback	10 Feet

B. General Commercial Zoning District (C-3) (29.33 acres). Commercial Areas I and II as depicted on the Concept Plan, which is attached as **Exhibit E** and consists of the remaining portion of Property 2, is rezoned as a General Commercial District (C-3) and thus, subject to those purposes, uses, and other regulations found within Section 60-51(c) of the Zoning Code.

C. Agricultural (AG) Zoning District (101.19 acres). The Agriculture Area as depicted on the Concept Plan, which is attached as **Exhibit E**, and consists in its entirety as part of Property 1, is zoned as an agricultural zoning district (AG) and thus, subject to those purposes, uses, and other regulations found within Section 60-52(f) of the Zoning Code.

D. Prohibited Uses. Any uses not specifically allowed pursuant to Sections A through C above are prohibited.

E. Concept Plan. The development and use of Property 1 and Property 2 shall be substantially in accordance with the Concept Plan attached as **Exhibit E**, hereafter referred to as the “Concept Plan”. Minor

modifications to streets, alignment of buildings, building areas and footprints, and open spaces may be made at the time of Preliminary or Final Plat approval so long as the general alignment of streets, building areas, and lot layouts are substantially maintained and the location and boundaries of the lots are not altered.

SECTION SEVEN. AMENDMENT TO ZONING MAP. The Zoning Code and the *Official Zoning Map* are amended as provided in Section Six, above.

SECTION EIGHT. PLATTING; DEVELOPMENT REGULATIONS. The development of Property 1 and Property 2 is subject to the City's Subdivision Regulations and all other applicable development regulations.

SECTION NINE. CUMULATIVE CLAUSE. The provisions of this Ordinance are to be cumulative of all Ordinances or parts of Ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION TEN. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Kerrville, Texas, hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION ELEVEN. PENALTY. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Article 1-1-7 of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

SECTION TWELVE. PUBLICATION OF ORDINANCE. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Secretary is hereby authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION THIRTEEN. POST ANNEXATION ACTIONS. The City Manager or designee shall provide a certified copy of this Ordinance to the Texas Secretary of State, Kerr County, and Kerr Central Appraisal District and any other entity as may be required.

PASSED AND APPROVED ON FIRST READING, this the _____ day of _____ A.D., 2023.

PASSED AND APPROVED ON SECOND READING, this the _____ day of _____ A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary

EXHIBIT A

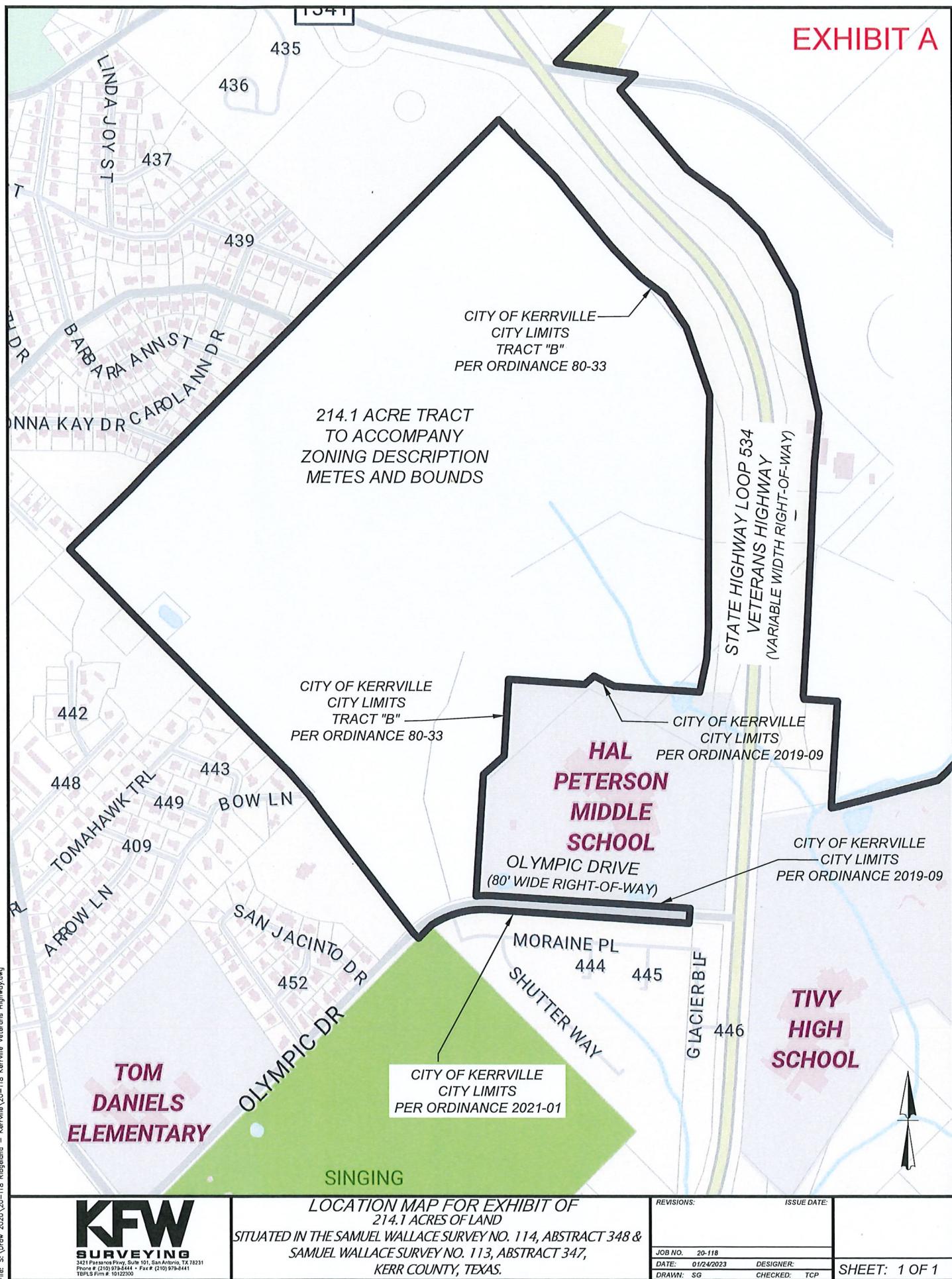
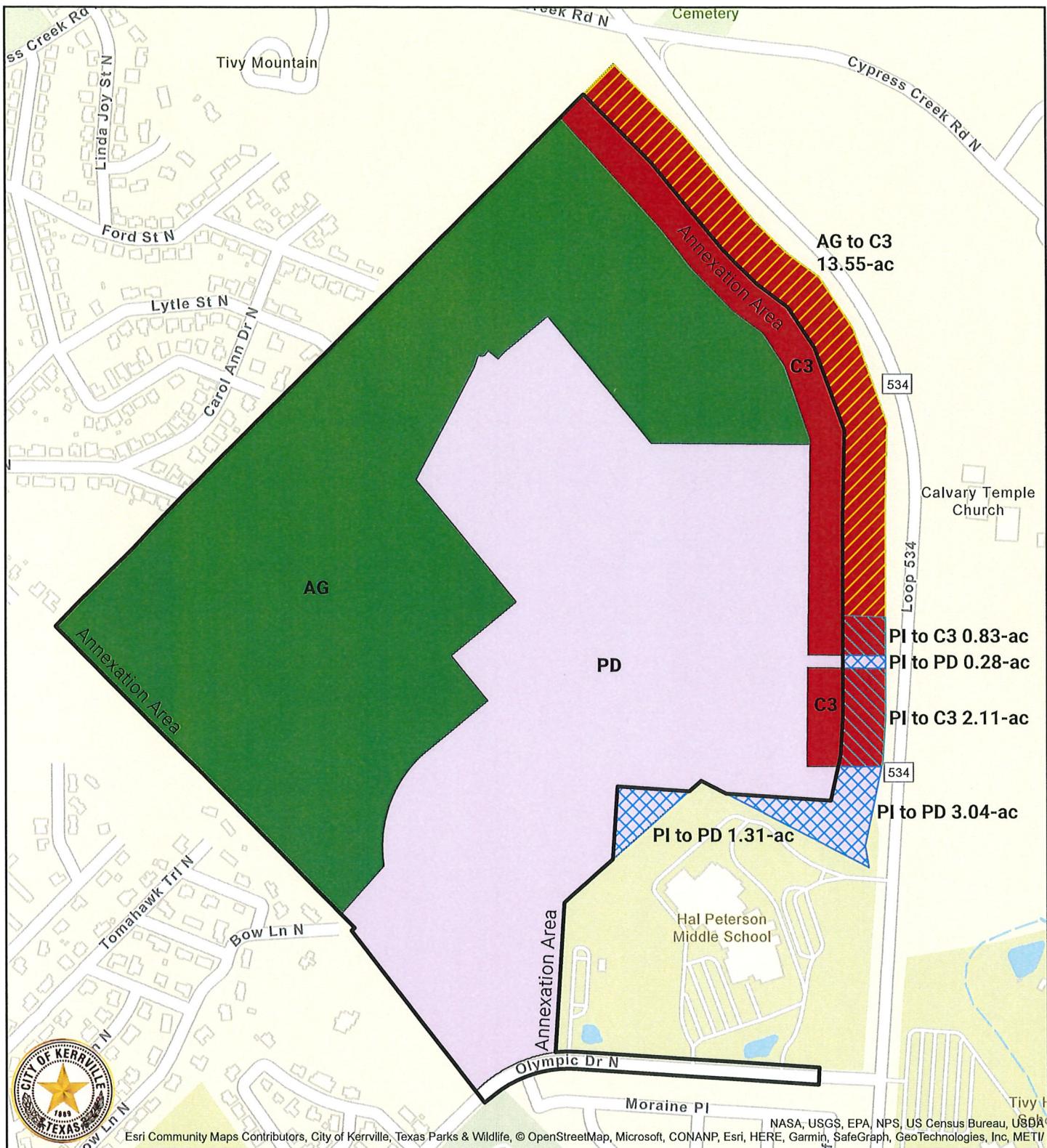


EXHIBIT B



C3 Zoning
 Existing PI to PD
 Annexation Area
 AG Zoning
 Existing AG to C3
 PD Zoning
 Existing PI to C3



0 500 1,000
US Feet

10/06/2023 08:37 AM

joyoung

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes.
It does not represent an on-the-ground survey and represents only approximate relative locations.



has joined **Colliers Engineering & Design**
TOPE FIRM #9513 / TBPLS FIRM #101223-00

ZONING DESCRIPTION FOR A 214.1 ACRE TRACT

A **214.1 acre** tract of land situated in the Samuel Wallace Survey Number 114, Abstract No. 348, and Samuel Wallace Survey Number 113, Abstract No. 347, Kerr County, Texas, and being a portion of that called 184.304 acre tract of land described as TRACT 1 and as conveyed to Schreiner University and recorded July 12, 2004 in Volume 1369, Page 551, in the Official Public Records of Kerr County, Texas (O.P.R.), and also being a portion of that called 711 acre tract of land as conveyed to Schreiner Institute and recorded November 16, 1943 in Volume 71, Page 573 in the Deed Records of Kerr County, Texas (D.R.), and also being all of that called 1.325 acre tract of land, as conveyed to City of Kerrville and recorded in Volume 123, Page 103 (D.R.), said 214.1 acre tract being more particularly described by metes and bounds as follows:

BEGINNING in the southerly right-of-way line of Olympic Drive (80' wide R.O.W. as dedicated in Volume 1077, Page 339 in the O.P.R.), being the northerly line of that called 100.00 acre tract of land as described as Tract No. 2 in Ordinance No. 70-3 and for the most southwesterly corner of the tract described herein;

THENCE: over and across Olympic Drive and along and with the southwesterly line of said 184.304 acre tract, the following five (5) courses:

1. **N 37°48'51" W**, a distance of **1013.92 feet**;
2. **N 53°36'09" E**, a distance of **19.48 feet** to the easterly corner of College Cove Addition Subdivision, as recorded in Volume 2, Page 93 of the Plat Records of said county (P.R.);
3. **N 44°40'14" W**, a distance of **919.38 feet** to the easterly corner of that called 8.3 acre tract of land, as recorded in Document Number 13-07299, O.P.R.;
4. **N 45°12'33" W**, a distance of **285.83 feet** to the southerly corner of said 1.325 acre tract of land, as recorded in Volume 123, Page 103 (D.R.);
5. **N 45°04'01" W**, along and with the southwesterly line of said 1.325 acre tract, a distance of **774.72 feet** to the northwesterly corner of said 1.325 acre tract, for the northeasterly corner of said 8.3 acre tract and to a point in the southeasterly right-of-way line of Travis Street, an apparent thirty (30) foot right-of-way and for the most westerly corner of said 184.304 acre tract;

THENCE: along and with the northwesterly line of said 184.304 acre tract, the following seven (7) courses:

1. **N 44°09'30" E**, a distance of **141.29 feet**;
2. **N 45°38'06" E**, a distance of **361.09 feet** to a point in the southeasterly line of that called 4.982 acre tract of land, as recorded in Document Number 20-07006 (O.P.R.);
3. **N 43°21'35" E**, a distance of **174.53 feet** to the southerly corner of Virgil Merrel 3rd Addition, as recorded in Volume 3, Page 16 (P.R.);
4. **N 43°45'09" E**, a distance of **206.40 feet** to an easterly terminus of Donna Kay Drive;

5. N 45°15'54" E, a distance of 267.23 feet to a point in the southeasterly line of Virgil Merrel 5th Addition, as recorded in Volume 3, Page 59 (P.R.);
6. N 45°24'39" E, a distance of 1131.99 feet to a southerly corner of that called 23.81 acre tract of land, as recorded in Volume 1837, Page 204 (O.P.R.);
7. N 45°08'52" E, a distance of 1218.57 feet to a point in the existing City Limits, and also the westerly line of that called approximately 256.67 acre tract of land as described as Tract "B" in Ordinance No. 80-33, and also being a two hundred (200) foot offset of the southwesterly right-of-way line of State Highway Loop 534, a variable width right-of-way, for the northerly corner of the tract described herein;

THENCE: along and with the existing City Limits and westerly lines of said Tract "B", being the two hundred (200) offset line of the southwesterly right-of-way line of said State Highway Loop 534 and over and across said 184.304 acre tract and said 711 acre tract, the following eleven (11) courses:

1. S 45°07'13" E, a distance of 443.83 feet;
2. S 39°25'33" E, a distance of 535.52 feet;
3. S 45°18'03" E, a distance of 224.65 feet;
4. S 53°27'54" E, a distance of 173.12 feet;
5. S 33°23'56" E, a distance of 225.38 feet;
6. S 19°53'02" E, a distance of 407.39 feet;
7. S 01°09'25" W, a distance of 402.74 feet;
8. S 00°00'53" W, a distance of 927.62 feet;
9. S 03°36'23" W, a distance of 179.09 feet;
10. S 12°03'55" W, a distance of 219.20 feet;
11. N 86°13'27" W, a distance of 490.22 feet to a point in a northerly line of that called 35.05 acre tract as described in Document No. 19-00623 in the O.P.R. and also in Ordinance No. 2019-09;

THENCE: continuing over and across said 711 acre tract and along and with the existing City Limits and the northerly line of said 35.05 acre tract and said Ordinance No. 2019-09, the following two (2) courses:

1. N 62°48'15" W, a distance of 131.09 feet;
2. S 48°37'16" W, a distance of 73.49 feet to a point in the northerly line of said Ordinance No. 80-33;

THENCE: continuing over and across said 711 acre tract, and along and with the northerly and westerly lines of said Ordinance No. 80-33, the following two (2) courses:

1. N 86°13'27" W, a distance of 337.66 feet;
2. S 03°46'33" W, a distance of 338.06 feet to a point in the northwesterly line of said 35.05 acre tract;

THENCE: along and with the northwesterly, westerly and southerly lines of said 35.05 acre tract and also said Ordinance No. 2019-09, the following two (2) courses:

1. S 48°25'49" W, a distance of 304.51 feet;
2. S 03°37'26" W, a distance of 696.17 feet to the beginning of a non-tangent curve in the northerly right-of-way line of Olympic Drive;

THENCE: along and with the northerly right-of-way line of said Olympic Drive, and the southerly lines of said 35.05 acre tract and also said Ordinance No. 2019-09, the following two (2) courses:

1. the arc of said non-tangent curve to the **right** a distance of **101.35 feet**, having a radius of **640.00 feet**, a delta angle of **009°04'24"**, and a chord which bears **N 89°06'32" E**, a distance of **101.24 feet**;
2. **S 86°21'23" E**, a distance of **1137.06 feet** to a point in the westerly line of said Ordinance No. 80-33;

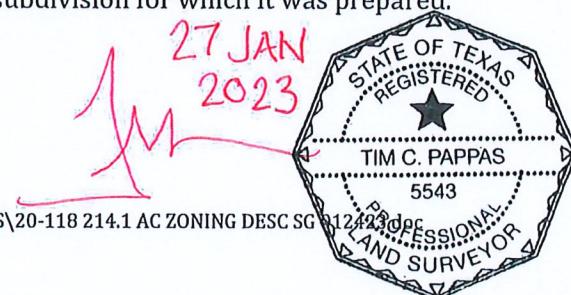
THENCE: S 03°02'30" W, over and across Olympic Drive, and along and with the westerly line of said Ordinance No. 80-33, a distance of **80.00 feet** to a point in the southerly right-of-way line of Olympic Drive, and the northerly line of the Ridgeland Subdivision, as recorded in File No. 23-00253 (O.P.R.), and also the northerly line of Ordinance No. 2021-01;

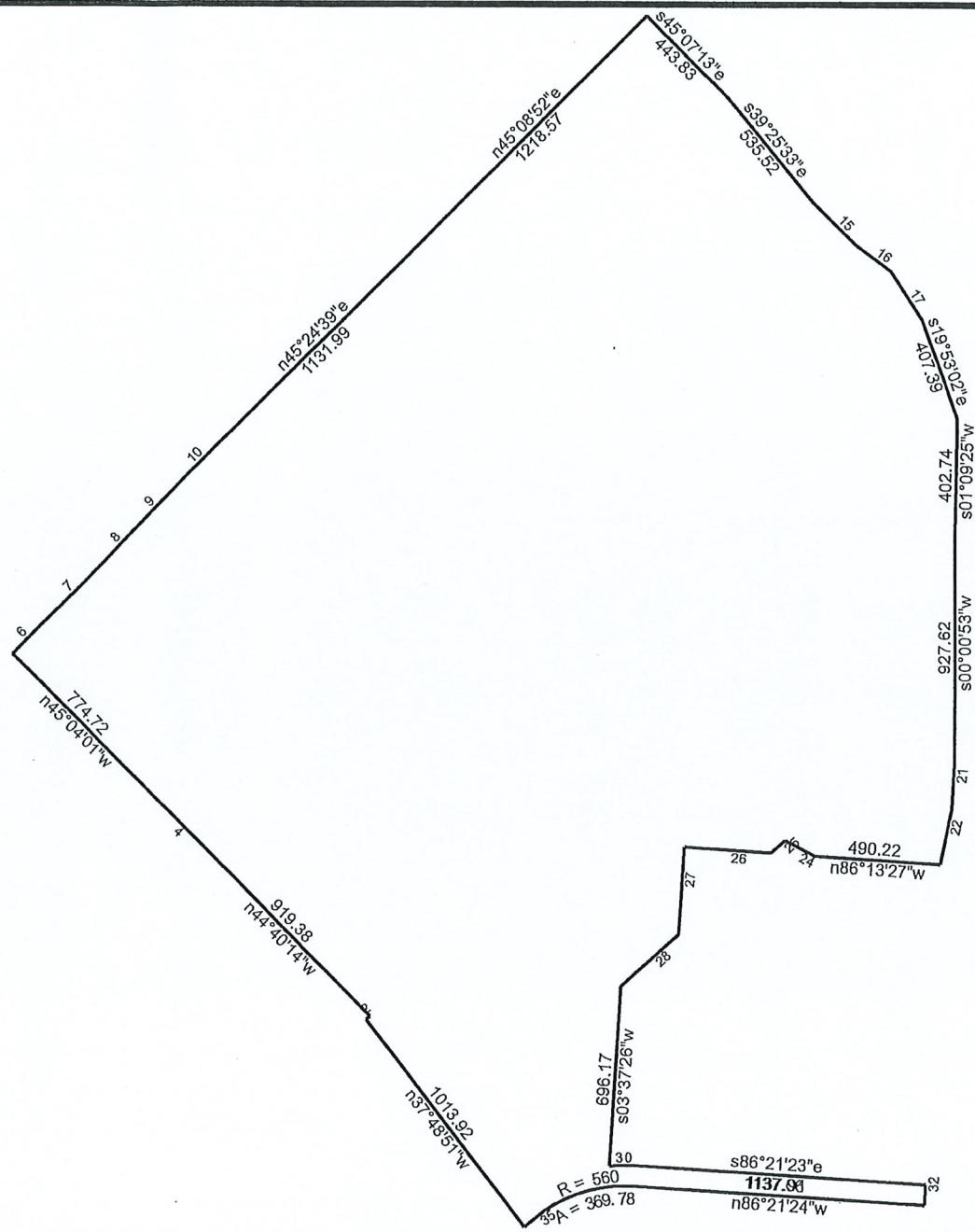
THENCE: along and with the southerly right-of-way line of Olympic Drive and the northerly line of Ridgeland Subdivision and also said Ordinance No. 2021-01, the following three (3) courses:

1. **N 86°21'24" W**, a distance of **1137.91 feet** to the beginning of a curve;
2. along said curve to the **left** a distance of **369.78 feet**, having a radius of **560.00 feet**, a delta angle of **037°50'00"**, and a chord which bears **S 74°43'45" W**, a distance of **363.10 feet**;
3. **S 52°06'19" W**, a distance of **101.22 feet** to the **POINT OF BEGINNING** and containing **214.1 acres**, more or less, in Kerr County, Texas, and being described in accordance with a survey prepared by KFW Surveying. Bearings are based on NAD83 Texas State Plane South Central Zone.

NOTE: This document was prepared under 22 TAC §663.21, and reflects the results of an on the ground survey performed by KFW Engineers and Surveying, but is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Job No.: 20-118
Prepared by: KFW Surveying
Date: January 24, 2023
File: S:\Draw 2020\20-118 Kerrville Veterans Highway\DOCS\20-118 214.1 AC ZONING DESC SG 012423.dwg





Scale: 1 inch= 670 feet

File: 214.1 AC ZONING.ndp

1/27/2023

Tract 1: 214.0678 Acres, Closure: s27.0944w 0.04 ft. (1/383318), Perimeter=15551 ft.

01 n37.4851w 1013.92
 02 n53.3609e 19.48
 03 n44.4014w 919.38
 04 n45.1233w 285.83
 05 n45.0401w 774.72
 06 n44.0930e 141.29
 07 n45.3806e 361.09
 08 n43.2135e 174.53
 09 n43.4509e 206.40
 10 n45.1554e 267.23
 11 n45.2439e 1131.99
 12 n45.0852e 1218.57
 13 s45.0713e 443.83
 14 s39.2533e 535.52
 15 s45.1803e 224.65
 16 s53.2754e 173.12
 17 s33.2356e 225.38
 18 s19.5302e 407.39
 19 s01.0925w 402.74
 20 s00.0053w 927.62
 21 s03.3623w 179.09
 22 s12.0355w 219.20
 23 n86.1327w 490.22
 24 n62.4815w 131.09
 25 s48.3716w 73.49
 26 n86.1327w 337.66
 27 s03.4633w 338.06
 28 s48.2549w 304.51
 29 s03.3726w 696.17
 30 Rt, r=640.00, delta=009.0424, arc=101.35, chord=n89.0632e 101.24
 31 s86.2123e 1137.06
 32 s03.0230w 80
 33 n86.2124w 1137.91
 34 Lt, r=560.00, delta=037.5000, arc=369.78, chord=s74.4345w 363.10
 35 s52.0619w 101.22

PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

TO THE MAYOR OF THE GOVERNING BODY OF KERRVILLE, TEXAS:

The undersigned owners of the hereinafter described tract of land, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby petition your honorable Body to extend the present city limits so as to include as part of the City of Kerrville, Texas, the following described territory, to wit:

A 214.1 acre tract of land situated in the Samuel Wallace Survey Number 114, Abstract No. 348, and Samuel Wallace Survey Number 113, Abstract No. 347, Kerr County, Texas, and being a portion of that called 184.304 acre tract of land described as TRACT 1 and as conveyed to Schreiner University and recorded July 12, 2004 in Volume 1369, Page 551, in the Official Public Records of Kerr County, Texas (O.P.R), and also being all of that called 1.325 acre tract of land, as conveyed to City of Kerrville and recorded in Volume 123, Page 103 (D.R.).

We certify that the above described tract of land is contiguous and adjacent to the City of Kerrville, Texas, and that this petition is signed and duly acknowledged by each and every person having an interest in said land.

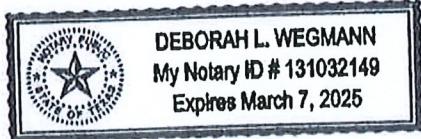
Signed: *Lucien Costley*

THE STATE OF TEXAS

COUNTY OF Kerr

BEFORE ME, the undersigned authority, on this day personally appeared Lucien Costley, _____, and _____, known to me to be the persons whose names are subscribed to the foregoing instrument and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 8th day of May, 2023.



Deborah L Wegmann
Notary Public in and for
Kerr County, Texas.

D R A F T 8/28/23

EXHIBIT D

SERVICES AGREEMENT

This Services Agreement (the "Agreement") is entered into between the **CITY OF KERRVILLE, TX**, a Texas Home-Rule Municipal Corporation (the "City") and **LENNAR HOMES OF TEXAS LAND AND CONSTRUCTION, LTD**, a Texas limited partnership, acting herein by and through U.S. Home Corporation, a Delaware Corporation, its general partner, (the "Owner(s)"). City and Owner are collectively referred to as the Parties.

WHEREAS, pursuant to a lawfully submitted petition for annexation from Owner, City intends to institute annexation proceedings for a tract(s) of land described more fully hereinafter (referred to herein as the "Subject Property"); and,

WHEREAS, *Section 43.0672 of the Tex. Loc. Gov't Code* requires a written agreement for the provision of services in the area first be entered into between City and Owner of the Subject Property; and,

WHEREAS, City and Owner agree each will benefit from the City's development restrictions and zoning requirements, as well as other municipal services provided by City which are good and valuable consideration for the Owner to request annexation and for the Parties to enter into this Agreement for City to provide the listed services upon annexation and in accordance with this Agreement; and,

WHEREAS, it is found that the statutory requirements have been satisfied and City is authorized by *Chapter 43, Tex. Loc. Gov't. Code*, to annex the Subject Property into the City;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

Section 1. Property Description. The legal description of the Subject Property is as set forth in **Exhibit A**, attached hereto and incorporated herein.

Section 2. Services. City will provide the services listed and specified in **Exhibit B**, attached hereto and incorporated herein, for the Subject Property on the effective date of annexation of the Subject Property.

Section 3. Owner's Obligations. Owner shall not file for approval a subdivision plat, site plan, or related development document with City for the Subject Property or portion thereof; or construct, or allow to be constructed, any building or structure on the Subject Property or portion thereof until City has approved and adopted the ordinance annexing such property.

Section 4. Term. The term of this Agreement (the "Term") is ten (10) years from the Effective Date.

Section 5. Vested Rights Claims. This Agreement is not a permit for the purposes of Chapter 245, Texas Local Government Code.

Section 6. Authorization. All parties and officers signing this Agreement warrant to be duly authorized to execute this Agreement.

Section 7. Covenant Running with the Land. This Agreement shall run with the Subject Property, and this Agreement may be recorded in the Official Public Records of Kerr County, Texas. Owner and City acknowledge and agree that this Agreement is binding upon City and Owner and their respective successors, executors, heirs, and assigns, as applicable, for the term of this Agreement.

Section 8. Severability. If any provision of this Agreement is held by a court of competent and final jurisdiction to be invalid or unenforceable for any reason, then the remainder of the Agreement shall be deemed to be valid and enforceable as if the invalid portion had not been included.

Section 9. Amendment and Modifications. This Agreement may be amended or modified only in a written instrument that is executed by both City and Owner after it has been authorized by the City Council.

Section 10. Gender, Number, and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

Section 11. Governmental Immunity; Defenses. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either City or Owner, including governmental immunity, nor to create any legal rights or claims on behalf of any third party.

Section 12. Enforcement; Waiver. This Agreement may be enforced by Owner or the City by any proceeding at law or in equity. Failure to do so shall not be deemed a waiver to enforce the provisions of this Agreement thereafter.

Section 13. Effect of Future Laws. No subsequent change in the law regarding annexation shall affect the enforceability of this Agreement.

Section 14. Venue and Applicable Law. Venue for this Agreement shall be in Kerr County, Texas. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

Section 15. Counterparts. This Agreement may be separately executed in individual counterparts and, upon execution, shall constitute one and same instrument.

Section 16. Effective Date. This Agreement shall be in full force and effect as of the date of approval of this Agreement by the City Council, from and after its execution by the parties.

Section 17. Sections to Survive Termination. This Agreement shall survive its termination to the extent necessary for the implementation of the provisions related to water service to the Subject Property by the City.

EXECUTED this ____ day of _____, 2023.

LENNAR HOMES OF TEXAS
LAND AND CONSTRUCTION, LTD

BY: U.S. Home Corporation, a
Delaware Corporation, its general
partner.

BY: _____
NAME: _____
TITLE: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____, 2023, by _____, the _____, of Lennar Homes of Texas Land and Construction, LTD.

Notary Public, State of Texas

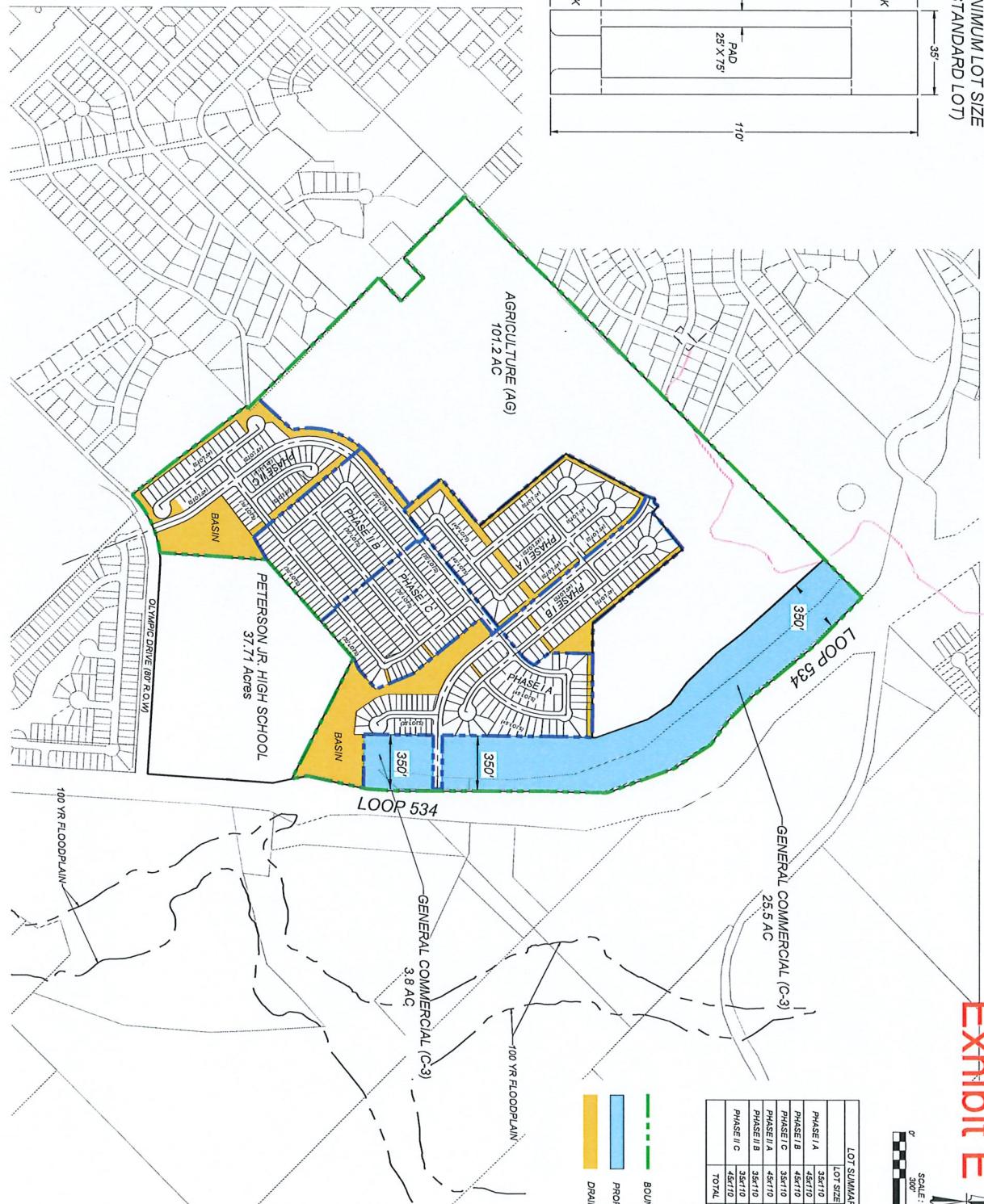


Exhibit E

LOT SUMMARY TABLE			
	LOT #	LOT SIZE #	ACREAGE
PHASE I A	350110	20	22.47
PHASE I B	450110	50	10.94
PHASE II A	350110	103	13.13
PHASE II B	450110	98	19.13
PHASE II C	350110	33	14.70
TOTAL	511100	323	18.87
			100.33 ACRE

PROPOSED COMMERCIAL
DRAINAGE
BOUNDARY

*KERRVILLE LOOP 534 TRACT
KERRVILLE, TEXAS
ACREAGE LAYOUT EXHIBIT*

1 OF 1

KFW
ENGINEERS + SURVEYING
3421 Fairmont Plaza, Suite 200, San Antonio, TX 78231
Phone: (210) 973-6444 • Fax: (210) 973-6441
TEPE Firm # 9513 • TEPLS Firm # 15122300



TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT: Ordinance No. 2023-30. An Ordinance of the City Council of the City of Kerrville, Texas, designating the Windridge Tax Increment Reinvestment Zone (TIRZ), a petition-initiated TIRZ to be named Tax Increment Reinvestment Zone Number Two, Windridge, City of Kerrville, Texas, pursuant to Chapter 311, Texas Tax Code; and generally located north of Olympic Drive and on an approximate 100.36 acre tract of undeveloped property; describing the boundaries of the Zone; creating a Board of Directors for the Zone; establishing a Tax Increment fund for the Zone; containing a findings related to the creation of the Zone; providing a date for the termination of the Zone; providing that the Zone take effect immediately upon passage of the Ordinance; providing a severability clause; and providing an effective date.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 20, 2023

SUBMITTED BY: Michael Hornes, Assistant City Manager

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area H - Housing

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Consider the advisability of the creation of a Tax Increment Reinvestment Zone Number Two (TIRZ-2), City of Kerrville, Texas, within the City for tax increment financing purposes pursuant to Chapter 311, Texas Tax Code.

This TIRZ-2 will be located within the boundaries of the City and generally located north of Olympic Drive and on property adjacent to Peterson Middle School.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-30 on first reading.

ATTACHMENTS:

[20231010_Ord 2023-30 Windridge TIRZ2.pdf](#)

DRAFT 10/4/23

CITY OF KERRVILLE, TEXAS ORDINANCE NO. 2023-30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS, DESIGNATING THE **WINDRIDGE** TAX INCREMENT REINVESTMENT ZONE (TIRZ), A PETITION-INITIATED TIRZ TO BE NAMED TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, WINDRIDGE, CITY OF KERRVILLE, TEXAS, PURSUANT TO CHAPTER 311, TEXAS TAX CODE; AND GENERALLY LOCATED NORTH OF OLYMPIC DRIVE AND ON AN APPROXIMATE 100.36 ACRE TRACT OF UNDEVELOPED PROPERTY; DESCRIBING THE BOUNDARIES OF THE ZONE; CREATING A BOARD OF DIRECTORS FOR THE ZONE; ESTABLISHING A TAX INCREMENT FUND FOR THE ZONE; CONTAINING FINDINGS RELATED TO THE CREATION OF THE ZONE; PROVIDING A DATE FOR THE TERMINATION OF THE ZONE; PROVIDING THAT THE ZONE TAKE EFFECT IMMEDIATELY UPON PASSAGE OF THE ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Kerrville, Texas (the "City"), pursuant to Chapter 311 of the Texas Tax Code as amended (known as the Tax Increment Financing Act and herein referred to as the "Act"), may designate a geographic area within the City as a tax increment reinvestment zone ("TIRZ") if the area satisfies the requirements of the Act; and

WHEREAS, the City has previously created a TIRZ, known as Reinvestment Zone Number One, City of Kerrville, TX, that generally includes a portion of the City's downtown area; and

WHEREAS, the Act provides that the governing body of a municipality by ordinance may designate a noncontiguous geographic area that is in the corporate limits of the municipality to be a reinvestment zone if the governing body determines that development or redevelopment would not occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, in July 2023, Schreiner University ("SU"), as property owner, but on behalf of Lennar Homes of Texas Land and Construction, Ltd. ("Lennar") a private, for profit company to whom SU is under contract to sell the property, petitioned the City pursuant to the provisions of Chapter 311, Texas Tax Code (see **Exhibit A**), to establish within the City a Tax Increment Reinvestment Zone

(“TIRZ”) generally located north of Olympic Drive and on an approximate 100.36 acre tract of undeveloped property adjacent to Peterson Middle School, and within Kerrville, Texas, herein referred to as the “Property”; and

WHEREAS, the name of the TIRZ will be the Reinvestment Zone Number Two, City of Kerrville, TX, (“Windridge TIRZ”); and

WHEREAS, City Council desires to promote the development of the Property, which is more specifically described in **Exhibits B and C** of this Ordinance, through the creation of the Windridge TIRZ, as a new reinvestment zone as authorized by and in accordance with the Act; and

WHEREAS, pursuant to and as required by the Act, the City has prepared a *Preliminary Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number Two, City of Kerrville*, attached as **Exhibit D** (hereinafter referred to as the “*Preliminary Project and Finance Plan*”) for the Windridge TIRZ to be located on the Property; and

WHEREAS, notice of the public hearing on the creation of Windridge TIRZ was published in a newspaper having general circulation in the City on September 30, 2023, which date is before the seventh (7th) day before the public hearing, held on October 10, 2023; and

WHEREAS, at the public hearing on October 10, 2023, interested persons were allowed to speak for or against the creation of the Windridge TIRZ, its boundaries, and the concept of tax increment financing; the public hearing was held in accordance with Section 311.003(c) of the Act; and

WHEREAS, evidence was received and presented at the public hearing on October 10, 2023, and in favor of the creation of the Windridge TIRZ; and

WHEREAS, after all comments and evidence, both written and oral, were received by City Council, the public hearing was closed on October 10, 2023; and

WHEREAS, the City has taken all actions required to create the Windridge TIRZ including taking all actions required by the home-rule Charter of the City, the Act, the Texas Open Meetings Act (defined herein), and all other laws applicable to the creation of the Windridge TIRZ; and

WHEREAS, the Property that comprises the Windridge TIRZ is predominantly open or undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, substantially impairs or arrests the sound growth of the City; and

WHEREAS, SU, who submitted the petition to the governing body of the City of Kerrville, Texas, as authorized by the Act, constitutes at least 50 percent of the appraised value of the Property according to the most recent certified appraisal roll for Kerr County, Texas; and

WHEREAS, the residential neighborhood to be developed on the Property and within the Windridge TIRZ, to be owned and developed by Lennar, will be known as the Windridge Project and will be a residential community consisting of approximately 500 to 550 mixed-income, single family homes as well as providing a community trail and open space; and

WHEREAS, City staff has examined the proposal for the Windridge Project as submitted by Lennar for the City's creation of the Windridge TIRZ and found that there is a demonstrated need for development and revitalization of the project area that would significantly benefit from a dedicated TIRZ, enhance the value of the real property in the zone and be of general benefit to the City; and

WHEREAS, the Preliminary Reinvestment Zone Financing Plan for the proposed Windridge TIRZ is for an approximate 27-year term with the City as a participating taxing entity; and

WHEREAS, the City desires to approve the payment of 75% of available City incremental ad valorem taxes generated from new improvements in the TIRZ into the Tax Increment Fund; and

WHEREAS, the proposed Windridge TIRZ designation does not financially obligate the City; and

WHEREAS, any future developer recognizes that there is no guarantee that the value of the property in the proposed Windridge TIRZ will increase, that any increases in value are dependent upon many factors which are not within the City's control, and that there is no guarantee of any tax increment, as that term is defined in the Act; and

WHEREAS, the proposed Windridge TIRZ is statutorily eligible to be designated in accordance with the Act and shall take effect immediately upon passage of this Ordinance upon its 2nd reading and terminate on October 11, 2050; and

WHEREAS, City Council shall appoint the board for the Windridge TIRZ, the names of such members as submitted by Lennar; and

WHEREAS, following creation, the board shall consider the approval of the Preliminary Project and Finance Plan, the term of the Windridge TIRZ, and to designate the Windridge TIRZ; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, TEXAS:

SECTION ONE. RECITALS INCORPORATED. The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct.

SECTION TWO. FINDINGS. City Council, after conducting the above described hearing and having heard the evidence and testimony presented at the hearing, has made the following findings and determinations based on the evidence and testimony presented to it:

- (a) That the public hearing on creation of the proposed reinvestment zone has been properly called, held, and conducted and that notice of such hearing has been published as required by law; and
- (b) That the creation of the proposed reinvestment zone with boundaries as described and depicted in **Exhibits A and B** will result in benefits to the City, its residents and property owners, in general, and to the property, residents, and property owners within the reinvestment zone; and
- (c) That the proposed reinvestment zone, as defined in **Exhibits A and B**, meets the criteria for the creation of a reinvestment zone set forth in the Act in that:
 - 1. It is a geographic area located wholly within the City limits of the City; and
 - 2. City Council further finds and declares that the proposed reinvestment zone meets the criteria and requirements of Section 311.005 of the Act, which include that property within the zone is predominantly open and undeveloped and, because of obsolete platting, deterioration of structures or site improvements, or other factors, and substantially impairs or arrests the sound growth of the City; and
 - 3) is in an area described in a petition requesting that the area be designated as a reinvestment zone, if the petition is submitted to the governing body of the municipality or county by the owners of property constituting at least 50 percent of the appraised value of the property in the area

according to the most recent certified appraisal roll for the county in which the area is located.

- (d) The total appraised value of all taxable real property in the proposed reinvestment zone according to the most recent appraisal rolls of the City, together with the total appraised value of taxable real property in all other existing reinvestment zones within the City, if any, according to the most recent appraisal rolls of the City, does not exceed 50 percent of the current total appraised value of taxable real property within the City and in the industrial districts created by the City, if any; and
- (e) The improvements in the proposed reinvestment zone will significantly enhance the value of all taxable real property in the proposed reinvestment zone and will be of general benefit to the City; and
- (f) The development or redevelopment of the property within the proposed reinvestment zone will not occur solely through private investment in the reasonable foreseeable future.

SECTION THREE. DESIGNATION AND NAME OF THE ZONE.

Pursuant to the authority of, and in accordance with the requirements of the Act, City Council hereby designates the area described and depicted in **Exhibits A** and **B** hereto as a tax increment reinvestment zone. The name assigned to the zone for identification is “Reinvestment Zone Number Two, City of Kerrville, Texas” (Windridge TIRZ #2), hereinafter referred to as the “Zone”.

SECTION FOUR. REIMBURSEMENT OF EXPENSES. The Public Infrastructure Improvements and related capital costs for the Windridge Project is privately funded and eligible expenses will be reimbursed by the Tax Increment Reinvestment Zone (TIRZ) and will not impact the City’s General fund.

SECTION FIVE. FUNDING. Funding for projects through the Windridge TIRZ #2 will be subject to future City Council approval for the duration of this designation. The future taxes collected on the captured taxable value of parcels within the newly designated Windridge TIRZ will be deposited in Fund Windridge TIRZ #2 to be used for eligible expenses within the TIRZ boundary.

SECTION SIX. APPROVAL OF ALLOCATIONS. The financial allocations in this Ordinance are subject to approval by the City Manager or designee. The City Manager or designee may correct allocations to specific accounts as necessary to carry out the purposes of this Ordinance.

SECTION SEVEN. BOARD OF DIRECTORS. A board of directors for the Zone (“Board”) is hereby created. The Board shall consist of seven (7) members.

Lennar may select each of the Board members and following submission of their names to City Council, Council shall appoint Lennar's selections to the Board. Each Board member shall be eligible to serve under the Act. The number of directors on the Board shall not exceed seven (7). The Board shall make recommendations to City Council concerning the administration, management, and operation of the Zone. The Board shall prepare and adopt a project plan and a reinvestment zone financing plan for the Zone and submit such plans to City Council for its approval. The Board shall perform all duties imposed upon it by Chapter 311 of the Texas Tax Code and all other applicable laws. Notwithstanding anything to the contrary herein, the Board, pursuant to Section 311.010 of the Act, is not authorized to (i) issues bonds; (ii) impose taxes or fees; (iii) exercise the power of eminent domain; or (iv) give final approval to the Zone's project plan and financing plan.

SECTION EIGHT. DURATION OF THE ZONE. The Zone shall take effect immediately upon the passage and approval of this Ordinance, consistent with Section 311.004(a)(3) of the Act, and termination of the Zone shall occur upon any of the following: (i) on September 11, 2050; (ii) at an earlier time designated by subsequent ordinance; (iii) at such time, subsequent to the issuance of tax increment bonds, if any, that all project costs, tax increment bonds, notes, and other obligations of the Zone, and the interest thereon, have been paid in full, in accordance with Section 311.017 of the Act.

SECTION NINE. TAX INCREMENT BASE AND TAX INCREMENT. A tax increment fund for the Zone (the "TIF Fund") is hereby established. The TIF Fund may be divided into additional accounts and sub-accounts authorized by resolution or ordinance of City Council. The TIF Fund shall consist of (i) the percentage of the tax increment, as defined by Section 311.012(a) of the Act, that each taxing unit which levies real property taxes in the Zone, other than the City, has elected to dedicate to the TIF Fund under an agreement with the City authorized by Section 311.013(f) of the Act, plus (ii) one-hundred percent (100%) of the City's available portion of the tax increment, as defined by section 311.012(a) of the Act, subject to any binding agreement executed at any time by the City that pledges a portion of such tax increment or an amount of other legally available funds whose calculation is based on receipt of any portion of such tax increment. The TIF Fund shall be maintained in an account at the depository bank of the City and shall be secured in the manner prescribed by law for Texas cities. In addition, all revenues from (i) the sale of any obligations hereafter issued by the City and secured in whole or in part from the tax increments; (ii) the sale of any property acquired as part of a tax increment financing plan adopted by the Board; and (iii) other revenues dedicated to and used in the Zone shall be deposited into the TIF Fund. Prior to the termination of the Zone, money shall be disbursed from the Tax Increment Fund only to pay project costs, as defined by the Texas Tax Code, for the Zone, to satisfy the claims of holders of tax increments bonds or notes issued for the Zone, or to pay

obligations incurred pursuant to agreements entered into to implement the project plan and reinvestment zone financing plan and achieve their purpose pursuant to Section 311.010(b) of the Act.

SECTION TEN. TAX INCREMENT FUND FOR TIRZ NUMBER TWO.

There is hereby created and established a "Tax Increment Fund Number Two" for the Zone which may be divided into such subaccounts as may be authorized by subsequent ordinance, into which all tax increments of the City, as such increments are described in the final project plan and reinvestment zone financing plan and may include administration costs, less any of the amounts not required to be paid into the Tax Increment Fund Number Two pursuant to the Act, are to be deposited. The Tax Increment Fund Number Two and any subaccounts are to be maintained in an account at the affiliated depository bank of the City and shall be secured in the manner prescribed by law for funds of Texas cities. In addition, all revenues to be dedicated to and used in the Zone shall be deposited into such fund or subaccount from which money will be disbursed to pay project costs, plus interest, for the Zone.

SECTION ELEVEN. FINANCIAL IMPACT OF TIRZ NUMBER TWO.

This action designates a Tax Increment Reinvestment Zone, however does not, in any way, financially obligate the City. The assumptions of the anticipated costs and revenues are outlined in the Preliminary Finance Plan, as referenced in Section Twelve. The City will be financially obliged upon the approval by City Council of Final Project and Finance Plans and upon execution of related Development Agreements, Interlocal Agreements, or other legal documents.

SECTION TWELVE. APPROVAL OF PRELIMINARY FINANCE PLAN FOR TIRZ NUMBER TWO. In accordance with the Act, City staff has prepared, and City Council hereby finds that the plan is economically feasible, and approves, the Preliminary Finance Plan, which is attached as **Exhibit C**.

SECTION THIRTEEN. SEVERABILITY CLAUSE. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION FOURTEEN. OPEN MEETINGS. It is hereby found, determined, and declared that sufficient written notice of the date, hour, place, and subject of the meetings of City Council at which this Ordinance was adopted was posted at a place convenient and readily accessible at all times to the general public

at the City Hall of the City for the time required by law preceding its meeting, as required by Chapter 551 of the Texas Government Code, and that the meetings were open to the public as required by law at all times during which this Ordinance and the subject matter hereof has been discussed, considered and formally acted upon. City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

SECTION FIFTEEN. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its adoption and publication in accordance with and as provided by law and the City Charter.

PASSED AND APPROVED ON FIRST READING, this _____ day of _____, 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this _____ day of _____, 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:

Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary

EXHIBIT A
PETITION

EXHIBIT A

PETITION REQUESTING ANNEXATION BY AREA LANDOWNERS

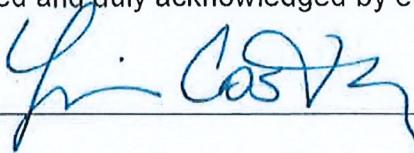
TO THE MAYOR OF THE GOVERNING BODY OF KERRVILLE, TEXAS:

The undersigned owners of the hereinafter described tract of land, which is vacant and without residents, or on which fewer than three qualified voters reside, hereby petition your honorable Body to extend the present city limits so as to include as part of the City of Kerrville, Texas, the following described territory, to wit:

A 214.1 acre tract of land situated in the Samuel Wallace Survey Number 114, Abstract No. 348, and Samuel Wallace Survey Number 113, Abstract No. 347, Kerr County, Texas, and being a portion of that called 184.304 acre tract of land described as TRACT 1 and as conveyed to Schreiner University and recorded July 12, 2004 in Volume 1369, Page 551, in the Official Public Records of Kerr County, Texas (O.P.R), and also being all of that called 1.325 acre tract of land, as conveyed to City of Kerrville and recorded in Volume 123, Page 103 (D.R.).

We certify that the above described tract of land is contiguous and adjacent to the City of Kerrville, Texas, and that this petition is signed and duly acknowledged by each and every person having an interest in said land.

Signed:

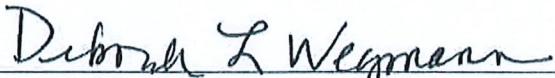


THE STATE OF TEXAS

COUNTY OF Kerr

BEFORE ME, the undersigned authority, on this day personally appeared Lucien Costley, _____, known to me to be the persons whose names are subscribed to the foregoing instrument and each acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 8th day of May, 2023.


Deborah L. Wegmann
Notary Public in and for
Kerr County, Texas.

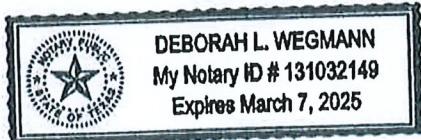


EXHIBIT B
BOUNDARY DESCRIPTION



EXHIBIT B

has joined **Colliers Engineering & Design**
TOPE FIRM #9513 / TDPLS FIRM #101223-00

ZONING DESCRIPTION FOR A 100.36 ACRE TRACT

A **100.36 acre** tract of land situated in the Samuel Wallace Survey Number 114, Abstract No. 348, and Samuel Wallace Survey Number 113, Abstract No. 347, Kerr County, Texas, and being a portion of that called 184.304 acre tract of land described as TRACT 1 and as conveyed to Schreiner University and recorded July 12, 2004 in Volume 1369, Page 551, in the Official Public Records of Kerr County, Texas (O.P.R.), and also being a portion of that called 711 acre tract of land as conveyed to Schreiner Institute and recorded November 16, 1943 in Volume 71, Page 573 in the Deed Records of Kerr County, Texas (D.R.) said 100.36 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a found $\frac{1}{2}$ " iron rod in the northerly right-of-way line of Olympic Drive (80' wide right-of-way) as dedicated in Volume 1077, Page 339 in the O.P.R.), for a southeasterly corner of that called 8.89 acre tract conveyed to S. Hendricks and Sharon McClure Revocable Living Trust and recorded in Document Number 17-02066, and for the most southwesterly corner of the tract described herein;

THENCE: N $37^{\circ}48'51''$ W, along and with the northeasterly line of said 8.89 acre tract and the southwesterly line of said TRACT 1, a distance of **945.92 feet** to a found $\frac{1}{2}$ " iron rod for the southeasterly corner of College Cove Addition Subdivision as recorded in Volume 2, Page 93, Plat Records of Kerr County, Texas (P.R.), for the most northerly corner of said 8.89 acre tract;

THENCE: along and with the northeasterly line of said College Cove Addition and the southwesterly line of said TRACT 1, the following two (2) courses:

1. N $53^{\circ}36'09''$ E, a distance of **19.48 feet** to a calculated point
2. N $44^{\circ}40'14''$ W, a distance of **90.44 feet** to a calculated point for the most westerly corner of the tract herein described,

THENCE: over and across said TRACT 1 and said 711 acre tract, the following twenty (20) courses:

1. N $42^{\circ}11'36''$ E, a distance of **302.23 feet** to a calculated point;
2. the arc of said non-tangent curve to the **right** a distance of **577.47 feet**, having a radius of **560.00 feet**, a delta angle of **062 $^{\circ}25'38''$** , and a chord which bears N $19^{\circ}24'26''$ E, a distance of **549.32 feet** to a to a calculated point;
3. N $50^{\circ}37'15''$ E, a distance of **393.59 feet** to a calculated point;
4. N $39^{\circ}22'45''$ W, a distance of **270.00 feet** to a calculated point;
5. N $50^{\circ}37'15''$ E, a distance of **394.41 feet** to a calculated point;
6. N $39^{\circ}22'45''$ W, a distance of **736.25 feet** to a calculated point;
7. N $27^{\circ}41'31''$ E, a distance of **587.96 feet** to a calculated point;
8. N $17^{\circ}57'41''$ E, a distance of **60.00 feet** to a calculated point;
9. S $71^{\circ}21'16''$ E, a distance of **10.27 feet** to a calculated point;

10. the arc of said non-tangent curve to the **right** a distance of **25.39 feet**, having a radius of **20.33 feet**, a delta angle of **071°33'45"**, and a chord which bears **N 72°51'52" E**, a distance of **23.77 feet** to a calculated point;
11. **N 37°55'52" E**, a distance of **23.00 feet** to a calculated point;
12. **S 50°32'11" E**, a distance of **60.00 feet** to a calculated point;
13. the arc of said non-tangent curve to the **right** a distance of **46.21 feet**, having a radius of **370.00 feet**, a delta angle of **007°09'19"**, and a chord which bears **N 43°02'28" E**, a distance of **46.18 feet** to a calculated point;
14. **N 50°46'02" E**, a distance of **260.73 feet** to a calculated point;
15. **S 39°22'45" E**, a distance of **763.40 feet** to a calculated point;
16. **S 89°37'54" E**, a distance of **196.74 feet** to a calculated point;
17. **S 89°37'54" E**, a distance of **545.55 feet** to a calculated point for the most easterly corner of the tract herein described;
18. **S 01°41'23" W**, a distance of **30.15 feet** to a calculated point;
19. **S 00°39'13" W**, a distance of **948.93 feet** to a calculated point;
20. **S 89°30'49" E**, a distance of **363.36 feet** to a calculated point in the northwesterly right-of-way of State Highway Loop 534;

THENCE: S 00°00'02" E along and with the northwesterly right-of-way of State Highway Loop 534, a distance of **60.00 feet** to a calculated point;

THENCE: over and across said 711 acre tract, the following three (3) courses:

1. **N 89°30'49" W**, a distance of **363.62 feet** to a calculated point;
2. **S 00°30'18" W**, a distance of **457.56 feet** to a calculated point;
3. **S 89°29'42" E**, a distance of **348.83 feet** to a calculated point in the northwesterly right-of-way of State Highway Loop 534;

THENCE: along and with the northwesterly right-of-way of State Highway Loop 534, the following (2) courses:

1. **S 12°03'55" W**, a distance of **374.60 feet** to a found TXDOT Type I monument;
2. **S 10°16'05" E**, a distance of **102.58 feet** to a found iron rod for a northeasterly corner of that called 35.05 acre tract of land as conveyed to Kerrville Independent School District and recorded January 25, 2019 in Document No. 19-00623 in the O.P.R.;

THENCE: along and with the northerly lines of said 35.05 acre tract, the following three (3) courses:

1. **N 62°48'40" W**, a distance of **881.63 feet** to a found **½" iron rod**;
2. **S 48°36'49" W**, a distance of **855.68 feet** to a found **½" iron rod**;
3. **S 03°36'49" W**, a distance of **697.79 feet** to a TXDOT Type II monument found in the northerly right-of-way of Olympic Drive and for the beginning of a non-tangent curve;

THENCE: along and with the northerly right-of-way of Olympic Drive, with the arc of said non-tangent curve to the **left** a distance of **425.20 feet**, having a radius of **640.00 feet**, a delta angle of **038°03'58"**, and a chord which bears **S 64°09'25" W**, a distance of **417.43 feet** to the **POINT OF BEGINNING** and containing **100.36 acres** more or less, and being described in accordance with a

survey prepared by CED Surveying. Bearings are based on NAD83 Texas State Plane South Central Zone.

NOTE: This document was prepared under 22 TAC §663.21, and reflects the results of an on the ground survey performed by CED Engineers and Surveying, but is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

Job No.: 20-118
Prepared by: KFW Surveying
Date: July 31, 2023
File: S:\Draw 2020\20-118 Kerrville Veterans Highway\DOCS\20-118 100.36 AC ZONING DESC 07/22/2023

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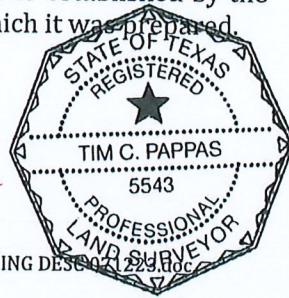


EXHIBIT C
BOUNDARY MAP

Exhibit C

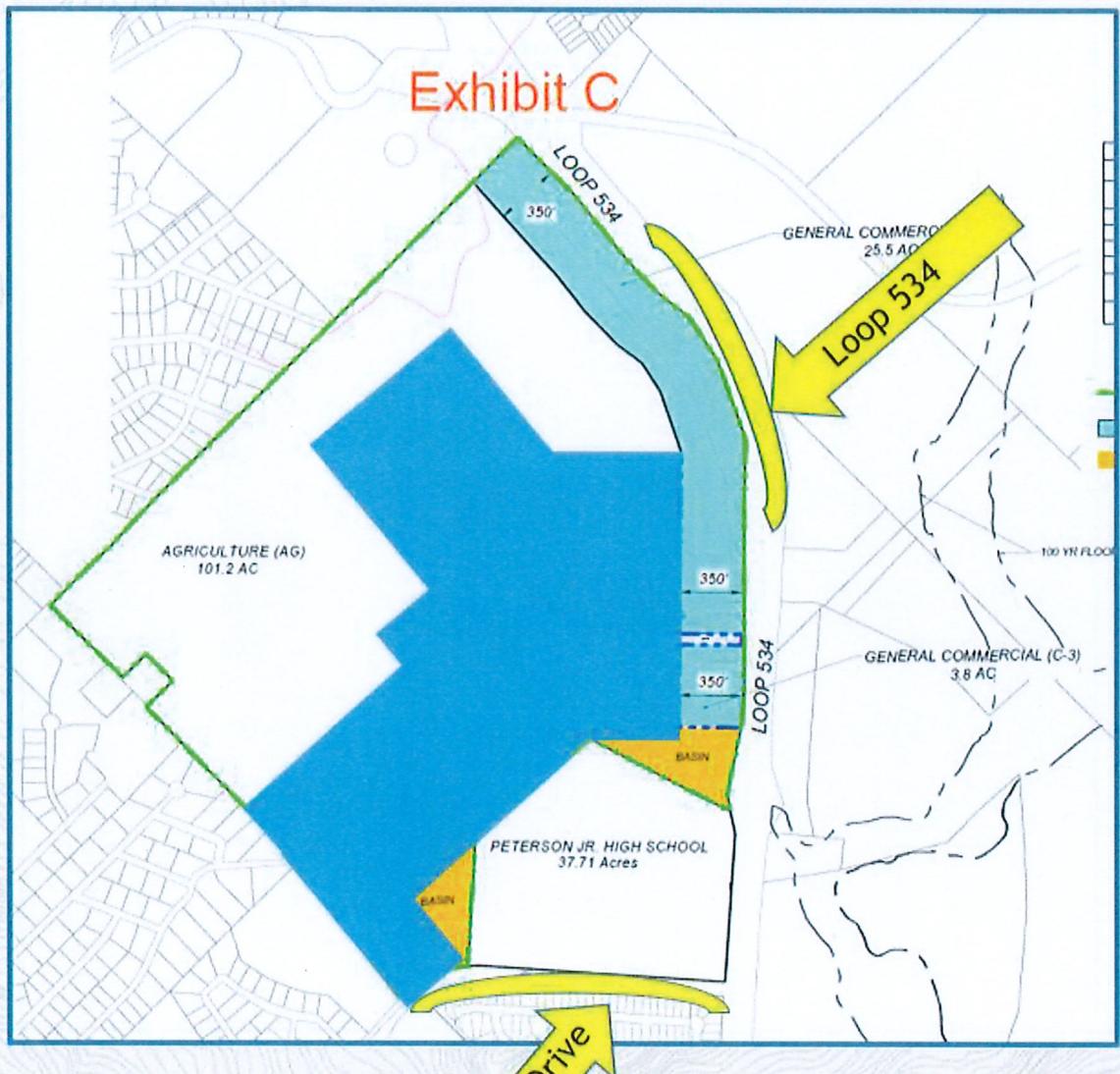


EXHIBIT D
PRELIMINARY PROJECT PLAN AND FINANCE PLAN



Preliminary Project and Finance Plan
Tax Increment Reinvestment Zone #2
City of Kerrville, Texas

OVERVIEW

- TIRZ Concept
- TIRZ Creation Process
- Proposed TIRZ #2
- Next Steps
- Questions

TAX INCREMENT REINVESTMENT ZONES (TIRZ)

- Tax Increment Financing (TIF) is a tool that incentivizes economic development within a Tax Increment Reinvestment Zone (TIRZ).
- Governed by Tax Code, Chapter 311
- Approximately 313 TIRZs have been created in the state of Texas
- Cities, alone or in partnership with other taxing units, can use this tool to pay for improvements in a zone so it will attract new development, facilitate investment, and bring excitement and energy to a designated area.

TAX INCREMENT REINVESTMENT ZONES (TIRZ)

- Taxing entities contribute ad valorem taxes received from incremental value increases on property within the TIRZ.
- A TIRZ can pay for:
 - cost of public works;
 - public improvements;
 - economic development programs (including public-private partnerships for attainable housing; or
 - other projects benefiting the zone

TIRZ INCREMENT

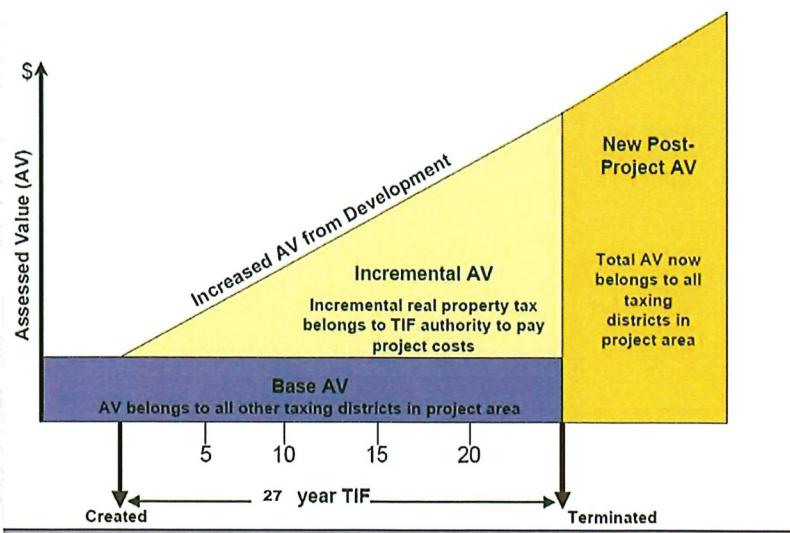
Two ways to create new tax increment:

1. New construction/investment; and/or
2. Annual appreciation of real property (i.e. "organic growth")



TAX INCREMENT REINVESTMENT ZONES (TIRZ)

TIF Assessed Value (AV) Over Project Life



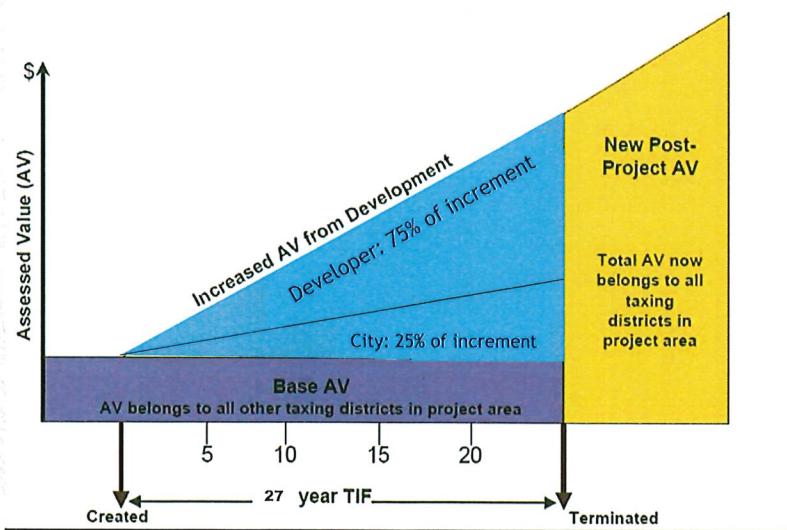
Taxing entity retained percentages are negotiated and can vary depending on purpose of TIRZ

TIRZ CREATION

- Chapter 311 outlines the various procedures for creating and amending a TIF. Two main documents:
 1. Creation of ordinance; and
 2. TIF Project and Financing Plan
- Ordinance establishes four key elements:
 - Boundary;
 - Term;
 - TIF Board; and
 - Preliminary Project and Financing Plan
- Upon TIF creation the Final Project and Financing Plan is approved by the TIF Board and then the City Council by separate ordinance

PROPOSED DISTRIBUTION TIRZ #2

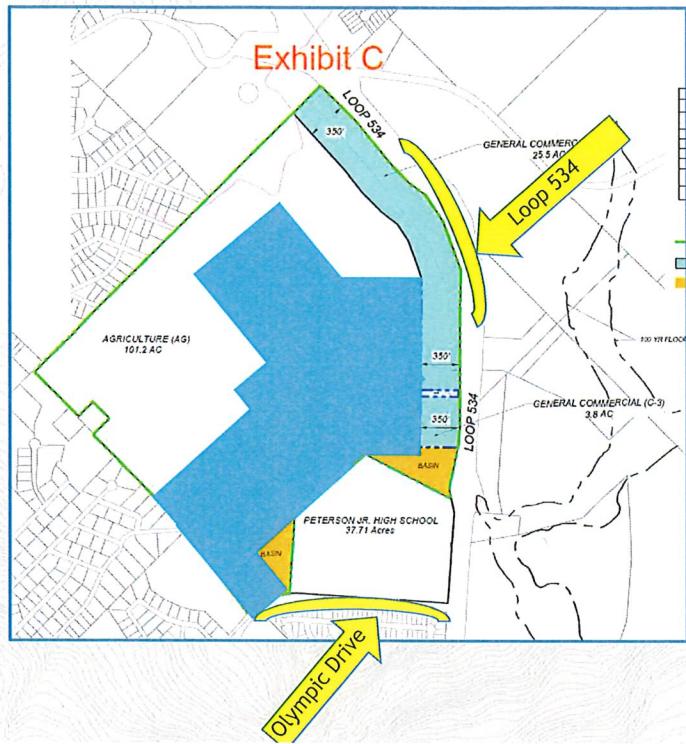
TIF Assessed Value (AV) Over Project Life



Taxing entity retained percentages are negotiated and can vary depending on purpose of TIRZ

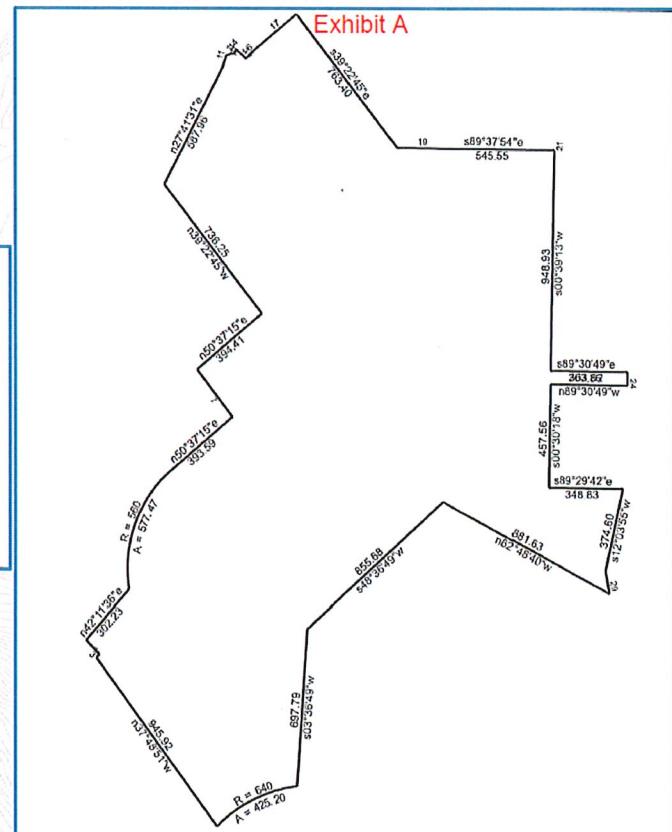
TIRZ #2 - OVERVIEW

- The goal of Tax Increment Reinvestment Zone #2 (TIRZ #2) is to partially reimburse developer for infrastructure costs related to a new housing development. Development will be heavily focused on the construction of affordable housing.
- Includes approximately 100 acres located north of Olympic Drive
- Base Year - Tax Year 2023 (after annexation value)
- 27 year term
- City participation 75%



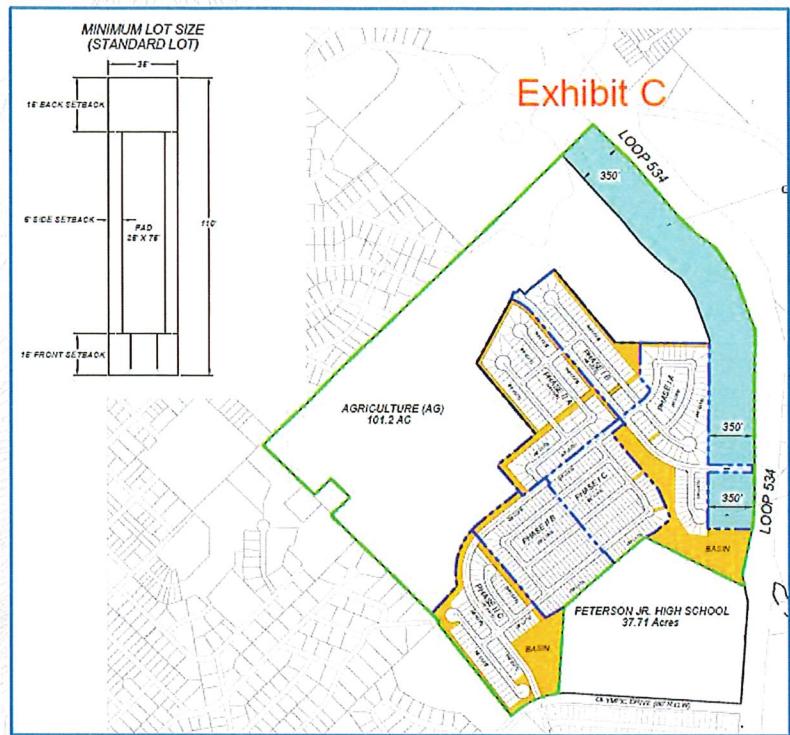
TIRZ #2 - BOUNDARIES

Tract 1: 100.3158 Acres, Closure: s40.054w 0.03 ft. (1/14/6603), Perimeter=12219 ft.
01 n37.4851w 945.92 ✓
02 n53.3609w 19.48 ✓
03 n14.4014w 90.44 ✓
04 n42.1136e 302.23 ✓
05 R1, r=50.00, arc=577.47, chord=n19.2426e 549.32 ✓
06 n50.3715e 393.59 ✓
07 n39.2245w 270.00 ✓
08 n50.3715e 394.41 ✓
09 n39.2245w 738.25 ✓
10 n22.4131e 597.98 ✓
11 n17.5741e 60.03 ✓
12 g1.2116s 10.27 ✓
13 R1, r=20.33, arc=25.39, chord=n72.5152e 23.77 ✓
14 n37.5552w 23.00 ✓
15 s50.3211w 0.00 ✓
16 R1, r=370.00, arc=45.21, chord=n43.0225e 46.18 ✓
17 n50.4602e 269.73 ✓
18 n39.2245e 763.40 ✓
19 s89.3754e 196.74 ✓



TIRZ #2 - PROPOSED DEVELOPMENT

- TIRZ #2 will promote the creation of attainable housing in alignment with the Kerrville 2050 Comprehensive Plan
- Lennar Homes is committed to the construction of 500 single family residences
 - Minimum lot size 35'
 - Majority of homes not to exceed pricing limits set by HUD and TDHCA
 - Current limit in Kerr County \$275,000



TIRZ #2 - PRELIMINARY FINANCING PLAN



City of Kerrville TIRZ

75% of TIRZ tax collections to Developer / 25% of TIRZ tax collections to City

Scenario	Scenario Description	Estimated Base Home Value ^[1]	Home value to Assessed Value ^[2]	Annual Assessed Valuation Growth ^[4]	Projected Cumulative Revenues in 2052		Incremental Difference Over Base	
					Developer (75%)	City (25%)	Developer	City
1	Base Case ^[1]	\$285,000	95%	1%	\$12,238,098	\$4,079,366	\$0	\$0
2	Base Case with no exemptions applied to home value	\$285,000	100%	1%	\$12,882,209	\$4,294,070	\$644,110	\$214,703
3	Base Case with Annual AV Growth increased to 3%	\$285,000	95%	3%	\$15,608,568	\$5,202,856	\$3,370,470	\$1,123,490
4	Base Case with Increased Estimated Base Home Value	\$313,500	95%	1%	\$13,461,908	\$4,487,303	\$1,223,810	\$407,937

(1) Assumes the tax rate remains constant throughout the life of the TIRZ. Assumes a total of 550 homes built over 8 years with 72 built per year.

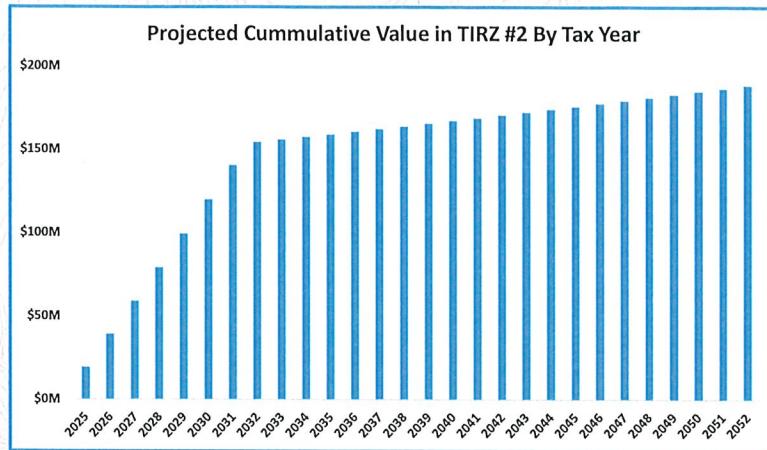
(2) Estimated average base selling price of Lennar homes built within the TIRZ.

(3) Represents the percentage of home value not subject to exemptions such as the Over 65 and Disabled Veterans, which reduce the taxable value of properties.

(4) Represents the annual growth rate of the taxable assessed valuation within the TIRZ.

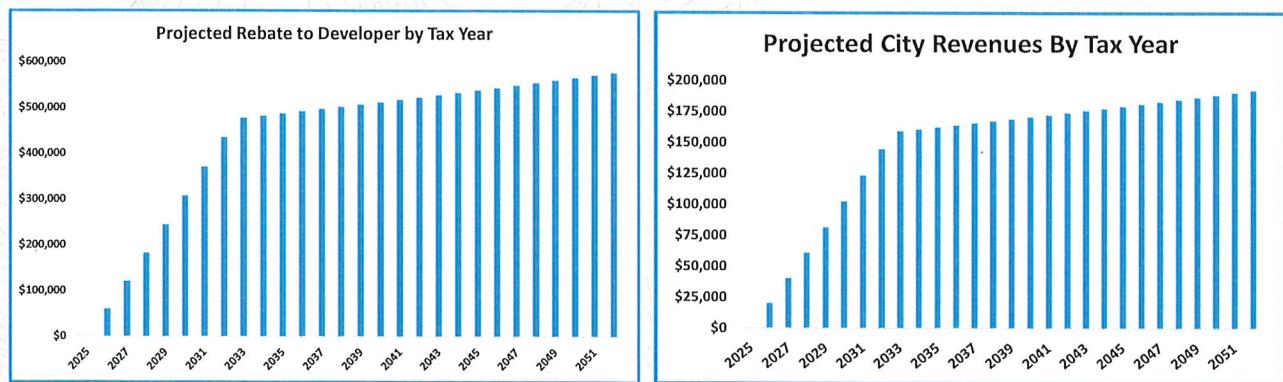
PRELIMINARY / SUBJECT TO CHANGE - For discussion purposes only.

TIRZ #2 - PRELIMINARY FINANCING PLAN



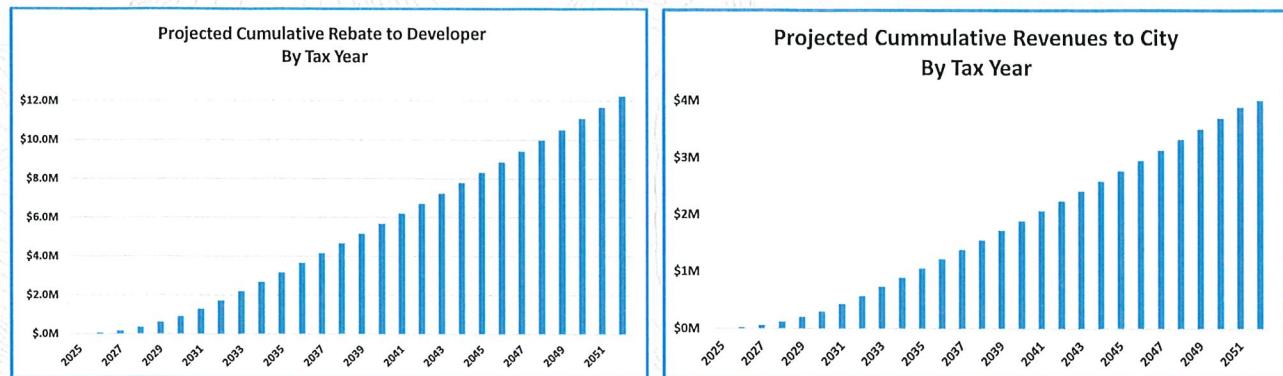
- Assumptions:
 - Tax Year 2023 (FY2024) is base year
 - Property annexed in FY2024
 - Property value (undeveloped) will not be included in the TIRZ rebate
 - Actual housing development will be included in TIRZ increment (from KCAD roll)

TIRZ #2 - PRELIMINARY FINANCING PLAN



- Assumptions:
 - Infrastructure in FY2024 & FY2025
 - Construction of homes FY2025 & FY2026
 - First housing units on tax roll FY2026
 - Full development by FY3032-FY3033
 - Increase to developer after build out will increase only due to growth in value
 - Rebate projected to begin FY2026 at \$60K and end FY2053 at \$577K
 - Cumulative rebate projected to total \$12.3M

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TIRZ #2 - PRELIMINARY FINANCING PLAN

FYE 9/30	City M&O Tax Rate					Cumulative Projected Revenues
	Taxable Assessed Valuation ⁽¹⁾	Growth Rate	Incremental Growth in Assessed Value	\$0.418500 75% Proj Revs ⁽²⁾	Total Projected	
2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	19,494,000	1.000%	19,494,000	60,269	60,269	60,269
2027	39,182,940	101.000%	19,688,940	121,141	121,141	181,410
2028	59,068,769	50.751%	19,885,829	182,621	182,621	364,031
2029	79,153,457	34.002%	20,084,688	244,716	244,716	608,747
2030	99,438,992	25.628%	20,285,535	307,432	307,432	916,179
2031	119,927,382	20.604%	20,488,390	370,776	370,776	1,286,955
2032	140,620,655	17.255%	20,693,274	434,752	434,752	1,721,708
2033	154,481,362	9.857%	13,860,707	477,605	477,605	2,199,313
2034	158,026,176	1.000%	1,544,814	482,381	482,381	2,681,694
2035	157,556,437	1.000%	1,560,262	487,205	487,205	3,168,899
2036	159,162,302	1.000%	1,575,864	492,077	492,077	3,660,976
2037	160,753,925	1.000%	1,591,623	496,998	496,998	4,157,974
2038	162,361,464	1.000%	1,607,539	501,968	501,968	4,659,942
2039	163,985,079	1.000%	1,623,615	506,988	506,988	5,166,930
2040	165,624,929	1.000%	1,639,851	512,057	512,057	5,678,987
2041	167,281,179	1.000%	1,656,249	517,178	517,178	6,196,165
2042	168,953,990	1.000%	1,672,812	522,350	522,350	6,718,515
2043	170,643,530	1.000%	1,689,540	527,573	527,573	7,246,088
2044	172,349,966	1.000%	1,706,435	532,849	532,849	7,778,937
2045	174,073,465	1.000%	1,723,500	538,177	538,177	8,317,115
2046	175,814,200	1.000%	1,740,735	543,559	543,559	8,860,674
2047	177,572,342	1.000%	1,758,142	548,995	548,995	9,409,669
2048	179,348,055	1.000%	1,775,723	554,485	554,485	9,964,153
2049	181,141,546	1.000%	1,793,481	560,030	560,030	10,524,183
2050	182,952,962	1.000%	1,811,415	565,630	565,630	11,089,813
2051	184,782,491	1.000%	1,829,530	571,286	571,286	11,661,099
2052	186,630,316	1.000%	1,847,825	576,999	576,999	12,238,098

FYE 9/30	City M&O Tax Rate					Cumulative Projected Revenues
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2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	19,494,000	1.000%	19,494,000	20,090	20,090	20,090
2027	39,182,940	101.000%	19,688,940	40,380	40,380	60,470
2028	59,068,769	50.751%	19,885,829	60,874	60,874	121,344
2029	79,153,457	34.002%	20,084,688	81,572	81,572	202,916
2030	99,438,992	25.628%	20,285,535	102,477	102,477	305,393
2031	119,927,382	20.604%	20,488,390	123,592	123,592	428,985
2032	140,620,655	17.255%	20,693,274	144,917	144,917	573,903
2033	154,481,362	9.857%	13,860,707	159,202	159,202	733,104
2034	158,026,176	1.000%	1,544,814	160,794	160,794	893,898
2035	157,556,437	1.000%	1,560,262	162,402	162,402	1,056,300
2036	159,162,302	1.000%	1,575,864	164,026	164,026	1,220,325
2037	160,753,925	1.000%	1,591,623	165,666	165,666	1,385,991
2038	162,361,464	1.000%	1,607,539	167,323	167,323	1,553,314
2039	163,985,079	1.000%	1,623,615	168,996	168,996	1,722,310
2040	165,624,929	1.000%	1,639,851	170,686	170,686	1,892,996
2041	167,281,179	1.000%	1,656,249	172,393	172,393	2,065,388
2042	168,953,990	1.000%	1,672,812	174,117	174,117	2,239,505
2043	170,643,530	1.000%	1,689,540	175,858	175,858	2,415,363
2044	172,349,966	1.000%	1,706,435	177,616	177,616	2,592,979
2045	174,073,465	1.000%	1,723,500	179,392	179,392	2,772,372
2046	175,814,200	1.000%	1,740,735	181,186	181,186	2,953,558
2047	177,572,342	1.000%	1,758,142	182,998	182,998	3,136,556
2048	179,348,055	1.000%	1,775,723	184,828	184,828	3,321,384
2049	181,141,546	1.000%	1,793,481	186,677	186,677	3,508,061
2050	182,952,962	1.000%	1,811,415	188,543	188,543	3,696,604
2051	184,782,491	1.000%	1,829,530	190,429	190,429	3,887,033
2052	186,630,316	1.000%	1,847,825	192,333	192,333	4,079,366

Footnotes:

(1) Taxable Assessed Values Provided by Developer.
 (2) Does not calculate Impact of No New Tax Revenues.
 (3) Estimated Collection Rate at: 98.5%

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 (2) Does not calculate Impact of No New Tax Revenues.
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NEXT STEPS FOR CREATION

- City Council Consider Creation Ordinance
 - First Reading and Public Hearing (October 10th)
 - Second Reading (October 26th)
- Creation ordinance establishes four key elements:
 - Boundary;
 - Term;
 - City Participation
 - TIF Board; and
 - Preliminary Project and Financing Plan
- Upon TIF creation the Final Project and Financing Plan is approved by the TIF Board and then the City Council by separate ordinance called the Project and Financing Plan Ordinance.

QUESTIONS



TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT: Ordinance No. 2023-27. An Ordinance amending Chapter 58, Article III of the City's Code of Ordinances, titled "Smoking in Enclosed Public Places and Places of Employment"; to clarify various sections; revise regulations in accordance with State Law, to include the definition of a "Minor"; and to change defenses to affirmative defenses; ordering publication; and providing other matters related to the subject.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 28, 2023

SUBMITTED BY: Guillermo Garcia

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Over the last several months, staff has worked through a review of the City's existing smoking regulations, which are found in Ch. 58, Art. III of the City's Code of Ordinances (the "Regulations"). Staff identified several sections within the Regulations for amendment, which are before you now. Those amendments may be summarized as follows:

- Per state law, the City needs to change the age of legal smoking. The Texas Legislature increased this age to 21.
- Based upon some enforcement issues and confusion, the City should add a definition for "bingo halls". Bingo halls in operation prior to the City's adoption of the regulations in September 2001 are exempted from the smoking prohibition. Staff has needed to work through the question of What is a bingo hall on several occasions.
- The City Attorney's office is recommending that the City change several defenses to violations of the Regulations to affirmative defenses instead. What this means is that a person cited for a particular provision under the Regulations, who argues a defense to the charge should be applied, will now have the burden to prove that defense during

trial. Without this, the burden is on the prosecutor to do this during the initial stage of the trial, even where a defense may not exist or even be argued.

- The City Attorney's office is recommending that the City remove expired language within the Regulations.
- The City Attorney's office is recommending that the City add new statutory exclusions for minors who are in the military, purchase tobacco products as part of their employment or participate in governmental inspections.
- Per other regulations, the City Attorney's office is recommending that the Regulations identify the City Manager or designee as the person who may enforce the Regulations.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-27 on first reading.

ATTACHMENTS:

[*20231010_Ord 2023-27 Smoking Ord revision.pdf*](#)

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-27

AN ORDINANCE AMENDING CHAPTER 58, ARTICLE III OF THE CITY'S CODE OF ORDINANCES, TITLED "SMOKING IN ENCLOSED PUBLIC PLACES AND PLACES OF EMPLOYMENT"; TO CLARIFY VARIOUS SECTIONS; REVISE REGULATIONS IN ACCORDANCE WITH STATE LAW, TO INCLUDE THE DEFINITION OF A "MINOR"; AND TO CHANGE DEFENSES TO AFFIRMATIVE DEFENSES; ORDERING PUBLICATION; AND PROVIDING OTHER MATTERS RELATED TO THE SUBJECT

WHEREAS, the City of Kerrville is a home-rule city acting under its home-rule Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution; and,

WHEREAS, it is recognized throughout the country that smoking is injurious to the health of both smokers as well as persons who are in the presence of those who are smoking, including at workplaces and other locations where the public gathers, such as in restaurants, grocery stores, hospitals, schools, and retail establishments; and,

WHEREAS, the City Council enacted Ordinance 2001-16 on September 19, 2001, which regulated smoking in public places; and

WHEREAS, Ordinance 2001-16 was codified into Chapter 58 "Health and Safety Code", Article III "Smoking in Enclosed Public Places and Places of Employment" of the City's Code of Ordinances ("Code"); and

WHEREAS, City Council desires to amend Chapter 58, Article III of the Code to clarify various sections, to include definitions, and to align the City's regulations with changes to state law; and

WHEREAS, the City Council finds that in order to promote the public health, safety, and welfare of the City and its citizens, it is in the best interest of the City and its citizens to amend the Chapter 58, Article III of the Code of Ordinances as set forth below;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Chapter 58, Article III, of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding the language that is underlined (added)

and deleting the language that is stricken (~~deleted~~) to the sections as follows:

“CHAPTER 58 HEALTH & SANITATION
ARTICLE III. SMOKING IN ENCLOSED PUBLIC PLACES AND PLACES
OF EMPLOYMENT; USE OF ELECTRONIC VAPING DEVICES

Sec. 58-61. Purpose.

The purpose of this article is to protect the public health and welfare by prohibiting smoking in certain public places and places of employment.

Sec. 58-62. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means an establishment in which more than 50 percent of the annual gross sales is derived from the sale of alcoholic beverages for on-premises consumption.

Bingo hall means an establishment that is used as a bingo hall at least one day a week and that is regulated pursuant to the Bingo Enabling Act found within Chapter 2001 of the Texas Occupations Code.

Business means any sole proprietorship, partnership, joint venture, corporation, or other business entity, including establishments where goods or services are sold as well as entities where professional services are delivered or sold.

Downtown streets means all or a part of any of those streets located within the “Central City” “Downtown Arts and Culture” zoning district, as amended, pursuant to the city's zoning ordinance, and in general, those streets including and east of Francisco Lemos, including and north of Water Street, including and west of Tivy Street, and including and south of Barnett Street.

Electronic vaping device means any electronically or battery powered device that uses an atomizer or similar device allowing users to inhale nicotine vapor or any other vapor to simulate the smoking of tobacco or other substances, to include electronic cigarettes (e-cigarettes), electronic pipes (e-pipes), electronic cigars (e-cigars) and any other type of electronic nicotine delivery system or any part thereof.

Employee means any person who is employed by any employer in the consideration for monetary compensation or profit.

Employer means any person, partnership, corporation, governmental entity, or nonprofit entity, who employs the services of one or more employees.

Enclosed area means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows, exclusive of door or passageways, which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid.

Large public gathering means an outdoor assembly of 100 or more persons that may reasonably be expected to continue for two hours or more.

Liquid nicotine means any liquid product composed either in whole or in part of pure nicotine and propylene glycol and/or any other substance and manufactured for use with an electronic vaping device.

Minor means any person under the age of **1821** years of age.

Place of employment means any enclosed area under the control of an employer where employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a place of employment unless it is used for adult day care, paid child care for unrelated children, or health care facility.

Private membership club means an association of people that:

- (1) Grants membership to an applicant after submission of a written application to the club for determination of eligibility and/or approval;
- (2) Owns, leases, or rents a building, or a space in a building of such extent and character as is suitable and adequate for the club's membership and their guests; and
- (3) Collects annual membership fees, dues, or other income from its members that defrays a substantial portion of the operating expenses of the club.

Public place means any enclosed area to which the public is invited or to which the public is permitted. A private residence is not a public place.

Restaurant means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers food for sale to the public, guests, or employees, except that the term "restaurant" shall not include a "bar" as defined in this section.

Retail store means any establishment the primary purpose of which is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, or articles for use or consumption off-premises.

Retail tobacco store means a retail store utilized primarily for the sale of tobacco products, electronic vaping devices, liquid nicotine, and accessories and in which the sale of other products is merely incidental.

Retailer means a person who engages in the practice of selling electronic vaping devices, liquid nicotine, or tobacco products to consumers.

Separate ventilation means a separate heating, ventilation, and air conditioning (HVAC) system such that air coming from the room is exhausted directly to the outside and not circulated within the building or mixed with the general dilution ventilation for the building and that creates a negative pressure away from the door

into the room sufficient to substantially prevent the flow of smoke or smoke odors from a designated smoking area to other areas of the building.

Service line means any line in which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smokes and smoking mean the possessing, carrying, or holding of a lighted cigar, cigarette, pipe, or any other lighted smoking equipment or device that contains any tobacco product; ~~and/or~~ the lighting of or setting on fire, emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind; and/or the use of an electronic vaping device and/or liquid nicotine.

Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

See. 58-63. Application of article to city-owned facilities.

~~All enclosed facilities owned by the city shall be subject to the provisions of this article.~~

See. 58-64. Prohibition of smoking within city parks.

~~No person shall smoke or use an electronic vaping device within any city park and recreation area, as defined within chapter 74 of this Code.~~

See. 58-65. Prohibition of smoking on or along downtown streets during large public gatherings.

~~No person shall smoke on or adjacent to downtown streets, which includes the public sidewalk, during large public gatherings.~~

Sec. 58-663. Prohibition of smoking in certain public places.

(a) ~~Except for public places not regulated in accordance with section 58-69 or where smoking is otherwise permitted in designated smoking areas in compliance with section 58-71, A person commits an offense in violation of this Article if he/she smokes in any of the following public places: no person shall smoke in any enclosed public place within the city, including but not limited to the following places:~~

- (1) Elevators.
- (2) Restrooms, lobbies, reception areas, hallways, and any other common-use areas.
- (3) Buses, taxicabs, and other means of public transit under the authority of the city, and ticket, boarding, and waiting areas of public transit depots.

- (4) Service lines.
- (5) Retail stores.
- (6) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public.
- (7) Restaurants.
- (8) Bars.
- (9) Private membership clubs.
- (10) ~~Public~~a Areas of aquariums, galleries, libraries, and museums ~~when~~ open to the public.
- (11) Any public theatre, or any facility ~~which~~that is primarily used for exhibiting any motion picture, stage or dramatic production, lecture, musical recital or other similar performance, or any auditorium, stage, dressing room, fly or property room belonging to any such place, except performers, when smoking is part of a stage production.
- (12) Sports arenas and convention halls, including bowling facilities.
- (13) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
- (14) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
- (15) Polling places.
- (16) City buildings; City parks, as defined within chapter 74 of this Code; or any portion thereof owned or leased by the City and used for City purposes;
- (17) Any establishment or facility, or any portion thereof that has been designated as nonsmoking by the owner, operator, manager, or other person who controls the establishment or facility.
- (18) Downtown streets, which includes the adjacent public sidewalks, during large public gatherings.

(b) It shall be an affirmative defense to a violation of this section that the signs required to be posted in section 58-~~7067~~ are~~were~~ not posted at the location where the offense occurred.

Sec. 58-674. Prohibition of smoking in places of employment.

- (a) *Applicability of section.* This section shall be applicable only to employers who employ three or more employees who are not related to the employer. For purpose of this section, an employee is related to an employer if the employee is related within the third degree of consanguinity or the third degree of affinity as determined in accordance with [V.T.C.A., Chapter 573 of the Texas Government Code](#)~~eh. 573~~.
- (b) *Smoking limited to designated area.* No person shall smoke in a place of employment except in a room with separate ventilation that has been designated as a smoking room by the employer.
- (c) *Designation of entire workplace prohibited; exception.* An employer is prohibited from designating an entire place of employment as a smoking area unless all employees smoke.
- (d) *Smoking policy required.* Not later than 90 days after the effective date of the ordinance from which this article is derived, each employer having an enclosed place of employment located within the city shall adopt, implement, make known, and maintain a written smoking policy that contains at least the following:
 - (1) A provision indicating that smoking is prohibited in the place of employment or that smoking is prohibited in the place of employment except in the designated smoking area;
 - (2) A provision indicating to whom within the place of employment complaints or questions regarding compliance with the employer's policy may be directed; and
 - (3) A section that reads "Questions regarding the City of Kerrville's ordinance regulating smoking in this place of employment or complaints regarding alleged violations of such ordinance may be directed to the City of Kerrville Health Department, 701 Main Street, Kerrville, Texas 78028, phone (830) 257-8000."
- (e) *Written copy provided.* All employers shall post a written copy of the smoking policy in a conspicuous place within the place of employment.

Sec. 58-685. Smoking near entrances prohibited.

No person shall knowingly or intentionally smoke within 20 feet of any entrance of an enclosed area where smoking is prohibited. It shall be an [affirmative](#) defense to the violation of this section that:

- (1) The person smoking within the area regulated by this section immediately extinguished the smoking materials upon entering the area without continuing to smoke; and
- (2) The signs required to be posted in accordance with subsections 58-7067(a) and (b) were not posted.

Sec. 58-696. Locations ~~W~~here smoking is not prohibited.

~~Notwithstanding any other provision of this article to the contrary, s~~Smoking shall not be prohibited in the following areas:

- (1) Private residences, except when used as a child care, adult day care, or health care facility.
- (2) Hotel and motel rooms rented to guests.
- (3) Retail tobacco stores.
- (4) An enclosed area within a public place where a private social event is then taking place and the event is under the control of the sponsor of the event and not the owner or operator of the public place.
- (5) Nursing home facilities and other assisted living facilities.
- (6) Buildings specifically designated as bingo halls prior to the adoption of the ordinance from which this section is derived.
- (7) Churches, synagogues, mosques, and other places of worship, along with their associated buildings.
- (8) Designated smoking areas:
 - a. Within places of employment as authorized by section 58-674; and
 - b. Within restaurants as authorized by section 58-7168.
- (9) Any building while it is being operated as a bingo hall on the days bingo is played in the building.

Sec. 58-7067. Posting of signs.

The owner, operator, manager or other person having control of an enclosed public place must conspicuously post the following signs at the following locations:

- (1) At the public and employee entrances to public places where smoking is prohibited in the entire public place, signs that state "NO SMOKING PERMITTED IN THIS BUILDING" or language substantially similar thereto which indicates smoking is prohibited within the public place, which signs may include, but not be limited to "No Smoking" signs of the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- (2) At the public and employee entrances to public places in which are located designated smoking areas authorized by this article, signs that read "NO SMOKING EXCEPT IN DESIGNATED SMOKING AREAS" or substantially similar language.

- (3) At entrances to designated smoking areas within a restaurant, signs that state "SMOKING PERMITTED IN THIS AREA" or substantially similar language.

Sec. 58-7168. Designation of smoking areas in restaurants.

- (a) *Designated areas described.* The owner or manager of a restaurant may designate a smoking area in the restaurant that complies with the following:
 - (1) Such designated smoking area must be located in a separately ventilated totally enclosed area of the restaurant;
 - (2) The total of all designated smoking areas may not exceed 30 percent of the seating area of the restaurant;
 - (3) The designated smoking area cannot be located in such a manner that requires patrons to travel through the smoking area to reach a nonsmoking area, cashier, or restroom; and
 - (4) The designated smoking area must contain ashtrays, containers, or other facilities for extinguishing smoking materials.
- (b) *Unenclosed smoking areas.* Notwithstanding subsection (a) of this section, an owner or manager of a restaurant operating on November 1, 2001, that allows smoking in public areas that do not comply with subsection (a) of this section may continue to allow smoking in such restaurants in designated smoking areas until November 1, 2004, without complying with subsection (a)(1) of this section but only subject to the following:
 - (1) The total of all designated smoking areas may not exceed 30 percent of the seating area of the restaurant;
 - (2) The designated smoking area cannot be located in such a manner that requires patrons to travel through the smoking area to reach a nonsmoking area, cashier, or restrooms;
 - (3) The designated smoking area must contain ashtrays, containers, or other facilities for extinguishing smoking materials;
 - (4) The designated smoking area may not be located within five feet of the entrance, customer waiting area, or a nonsmoking area of the restaurant;
 - (5) The designated smoking area must be located in an area where air is not drawn or blown into or across nonsmoking areas;
 - (6) In addition to the signs required by section 58-70(2), a sign not less than nine inches tall by 15 inches wide must be posted at each public entrance to the restaurant that states "WARNING DESIGNATED SMOKING AREAS ARE NOT ENCLOSED. CUSTOMERS MAY BE SUBJECT TO SECOND HAND TOBACCO SMOKE."

Sec. 58-~~72~~69. Removal of ashtrays.

All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of such area. It shall be an affirmative defense to a violation of this section that:

- (1) The ashtray or other smoking paraphernalia constitutes inventory for sale for off-premises use; or
- (2) The ashtray is located within the area exterior to the entrance to the place where smoking is otherwise prohibited for the purpose of allowing people to extinguish smoking materials prior to entering such place.

Sec. 58-~~73~~70. Enforcement.

- (a) ~~City department of development services~~City Manager to enforce. Enforcement of this article shall be implemented by ~~the department of development services~~the City Manager or designee.
- (b) *Filing citizen complaints.* Any citizen who desires to register a complaint under this article may do so with the city health officer.

Sec. 58-~~74~~71. Violations and penalties.

- (a) *Failure to comply with article.* It shall be unlawful for any person ~~who owns, manages, operates, or otherwise controls the use of a public place or place of employment subject to regulation under this article~~ to intentionally or knowingly fail to comply with the requirements of this article ~~regarding the posting of signs, placement of ashtrays or other suitable containers, the adoption of smoking policies for places of employment, and/or the designation of smoking areas~~.
- (b) *Fines to be assessed.* A person convicted of a violation of any provision of this article shall be required to pay a fine of not less than \$100.00 or more than \$~~500~~2,000.00.

Sec. 58-~~75~~72. Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable federal, state, or local laws, ordinances, or regulations.

Sec. 58-~~76~~73. Right to establish own policy.

This article shall not be construed as:

- (1) Prohibiting any owner, operator, manager, or other person who controls any establishment or facility to declare the entire establishment or facility as a nonsmoking establishment;

- (2) Require any owner, operator, manager, employer, or other person who controls any establishment or facility to establish designated smoking areas; or
- (3) Preempting any owner, operator, manager, employer, or other person who controls any establishment or facility from taking any lawful action to enforce the policies and procedures established for such establishment or facility relating to smoking.

Sec. 58-774. Sale or provision of electronic vaping devices and/or liquid nicotine to a minor.

- (a) It is unlawful and a person or retailer commits an offense if the person sells, provides, or causes to be sold or provided an electronic vaping device and/or liquid nicotine to a minor.
- (b) ~~If the offense under this section occurs in connection with a sale of an electronic vaping device and/or liquid nicotine at a business by an employee of the business, the employee who committed the offense is subject to prosecution.~~
- (c) This section is intended to apply strict liability to sellers and providers of electronic vaping devices and/or liquid nicotine. A culpable mental state is not required to prove a violation of this section.
- (d) It is an affirmative defense to prosecution under this section that the person to whom the electronic vaping device and/or liquid nicotine was sold or provided presented to the person who sold or provided the electronic vaping device and/or liquid nicotine an apparently valid Texas driver's license or identification card, issued by the department of public safety and containing a physical description consistent with the person's appearance that purported to establish the person was 18 years of age or older.

Sec. 58-785. Purchase of electronic vaping device and/or liquid nicotine by a minor.

- (a) It is unlawful and a person commits an offense if he is a minor and intentionally or knowingly purchases or attempts to purchase an electronic vaping device and/or liquid nicotine within the incorporated limits of the city.
- (b) It is unlawful and a person commits an offense if he or she is a minor and the minor (1) falsely states to any person engaged in the business of selling electronic vaping devices and/or liquid nicotine within the incorporated limits of the city that the minor person is not a minor or (2) presents to any person engaged in the business of selling electronic vaping devices and or liquid nicotine within the incorporated limits of the city any document that purports to establish that the minor is not a minor.

- (c) It is not a violation of this section if the minor purchases an electronic vaping device and/or liquid nicotine while under the direction and supervision of a police officer in the process of enforcing any provision of this article.
- (d) It is not a violation of this section if the minor was at least 18 years of age and presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.
- (e) It is not a violation of this section if the minor can show they purchased the cigarette, electronic vaping device, or tobacco product in the presence of an employer, if the possession or receipt is part of their duties as an employee.
- (f) It is not a violation of this section if the minor was participating in an inspection or test for seller compliance in accordance with Section 161.088 of the Texas Health and Safety Code.

Sec. 58-796. Possession of electronic vaping devices and/or liquid nicotine by a minor.

- (a) It is unlawful and a person commits an offense if he is a minor as defined under this article and intentionally or knowingly possesses an electronic vaping device and/or liquid nicotine within the incorporated limits of the city.
- (b) It is an affirmative defense to prosecution under this section that the minor's parent or legal guardian consented to the possession of the electronic vaping device and/or liquid nicotine by the minor and such possession was either in the residence of the minor's parent or legal guardian or in the presence of the minor's parent or legal guardian.
- (c) It is an affirmative defense to prosecution under this section that the minor possessed an electronic vaping device and/or liquid nicotine as an employee of a commercial establishment that sells or distributes electronic vaping devices and/or liquid nicotine pursuant to a requirement by the minor's employer that the minor possessed electronic vaping device and/or liquid nicotine in the performance of the minor's duties as an employee of the commercial establishment.
- (d) It is not a violation of this section if the minor possesses the electronic vaping device and/or liquid nicotine while under the direction and supervision of a peace officer in the process of enforcing any provision of this article.”

SECTION TWO. The City Secretary is authorized and directed to submit this amendment to the publisher of the City's Code of Ordinances and the publisher is authorized to amend the Code to reflect the adopted amendments, to correct any typographical errors, and to index, format, number, and letter the paragraphs to the existing Code, as appropriate.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding will not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Kerrville, Texas, declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SIX. The penalty for violation of this Ordinance shall be in accordance with the general penalty provisions contained in Section 1-7, or its successor section, of the Code of Ordinances of the City of Kerrville, Texas, which provides for a fine not exceeding TWO THOUSAND DOLLARS (\$2,000.00).

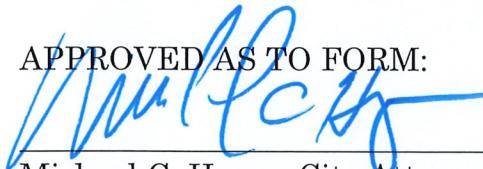
SECTION SEVEN. This Ordinance will become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the _____ day of _____, A.D., 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of _____, 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



TO BE CONSIDERED BY THE CITY COUNCIL CITY OF KERRVILLE, TEXAS

SUBJECT: Ordinance No. 2023-24, second reading. An Ordinance amending in part Ordinance No. 99-18, as amended by adopting revised rate schedules for residential services, and distributed generation rider; containing a cumulative clause; containing a severability clause; and establishing an effective date.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 29, 2023

SUBMITTED BY: Mike Hayes, City Attorney

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

In 2017, the Kerrville Public Utility Board (KPUB) contracted with Utility Financial Solutions (UFS) to perform a rate study that included a cost of service analysis and rate design recommendations. The study recommended two rate changes, one in Fiscal Year 2019 (FY2019) and a second in FY2021. Ordinance 2018-22 for the first rate change was passed by City Council in October 2018. The second rate change originally scheduled for FY2021 has not been implemented. KPUB is requesting implementation of the recommended second rate change in November 2023.

KPUB's residential rate is made up of 3 components that will change as follows:

1. Customer charge: increasing from \$10.25 to \$15.25 per month
2. Distribution charge: decreasing from \$0.0193 to \$0.0168 per kWh
3. Power Supply charge: decreasing from \$0.07295 per kWh to \$0.07045 per kWh

An industry standard is to show rates in terms of a monthly bill for a residential customer that uses 1,000 kWh per month. That customer's KPUB bill will actually remain the same at \$102.50 both before and after this rate change.

The change to the customer charge and to the distribution charge are in accordance with the rate study recommendation. If there were no changes to the power supply charge, the changes in those two categories would equate to a 2% increase in KPUB's revenue.

However, KPUB plans to lower the power supply portion of the charge in November. KPUB does not generate its own electricity. Instead, we purchase it from diverse power suppliers. Because power supply costs are volatile, our rate structure is designed for KPUB to pass along actual power supply costs to customers through a portion of the power supply rate called the power cost adjustment factor (PCAF). The formula for this factor is specified in KPUB's tariff, but the exact amount varies with energy prices. Energy prices, especially the price of natural gas, have fallen over the past year. Accordingly, KPUB is adjusting the power cost adjustment downward in November 2023. This portion of the rate change does not require approval from City Council.

KPUB's residential rate of \$102.50 per 1,000 kWh of electricity is the lowest of twelve area utilities and aligns with our mission of providing reliable, high-quality utility service at the lowest responsible price.

On September 20, 2023, the KPUB Board passed Resolution 23-14 approving the proposed rate changes.

On September 26, 2023, City Council unanimously approved Ordinance No. 2023-24 first reading. This is the second reading and there have been no changes since the first reading.

RECOMMENDED ACTION:

Approve Ordinance No. 2023-24, second reading.

ATTACHMENTS:

[20231010_Ord 2023-24 KPUB rate schedules 2nd reading.pdf](#)

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-24**

AN ORDINANCE AMENDING IN PART ORDINANCE NO. 99-18, AS AMENDED, BY ADOPTING REVISED RATE SCHEDULES FOR RESIDENTIAL SERVICES, AND DISTRIBUTED GENERATION RIDER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Kerrville, Texas, owns an electric system and manages and operates its system through its duly appointed board of trustees, the Kerrville Public Utility Board (“KPUB”), a body created pursuant to Texas law (Tex. Rev. Civ. Stat. Ann. art 1115, as amended) and Resolution No. 87-106; and

WHEREAS, KPUB, pursuant to the authority granted under Resolution No. 87-106, recently reviewed the current schedule of rates and charges for electric service and determined that various rates and charges should be adjusted to reflect current conditions and to maintain its service and bond obligations; and

WHEREAS, prior to making its recommendations, KPUB considered the report on the electric revenue requirements, cost of service, and rate design prepared by the independent consulting firm of Utility Financial Solutions (“UFS”), which was previously retained by KPUB to perform a Cost of Services Study; and

WHEREAS, City Council finds that the current schedule of electric rates and charges should be adjusted as recommended by UFS and KPUB to provide for the continued preservation of the public health, safety, and welfare of the people through the provision of energy services to the community;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Ordinance No. 99-18, as amended, and as it applies to various rates and charges applicable to electric service provided by the electric system owned by the City of Kerrville and managed and operated on the City’s behalf by the Kerrville Public Utility Board is amended as follows:

- A.** The revised Residential Rate Tariff, Residential Service Rate Schedule—RS, and Distributed Generation Rider DG, attached to this Ordinance as **Exhibit A** and incorporated herein by reference, are hereby adopted and are applicable to all residential customers of the City’s electric system managed and controlled by the Kerrville Public Utility Board, effective November 1, 2023.

SECTION TWO. Except as specifically amended by Section One above as to rates and charges, Ordinance No. 99-18, as amended, remains in full force and effect.

SECTION THREE. The provisions of this Ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconditional or invalid.

SECTION FIVE. This Ordinance shall become effective from and after the date of final passage on second reading.

PASSED AND APPROVED ON FIRST READING, this the 26 day of September, 2023.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the _____ day of October, 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:


Michael C. Hayes, City Attorney

ATTEST:


Shelley McElhannon, City Secretary

EXHIBIT A

RESIDENTIAL SERVICE RATE SCHEDULE - RS

APPLICATION

Applicable throughout the service area for all electric service supplied at one point of delivery and measured through one meter required exclusively for domestic purposes by individual (single family) private residents, individually metered apartment units and farm homes.

Not applicable to businesses, licensed boarding or rooming houses, camps, fraternity or sorority houses advertised as such, educational institutions, churches or facilities, or apartment houses, whose units are not individually metered, including the common facility requirements of residence also used for business purposes, evidenced by any form of advertising, including separate white page telephone listing, which will be served under the appropriate commercial service rate schedule. Not applicable to shared, standby, or resale service.

CHARACTER OF SERVICE

Service under this rate schedule shall be alternating current, 60 Hertz, single phase, at the customer's option of standard available voltages. KPUB may, at its option, provide three-phase service when individual motors rated at 7.5 horsepower or larger are connected.

MONTHLY RATE

CHARGE		AMOUNT
CUSTOMER CHARGE: Meter, Meter Reading, and Billing Charge		\$15.25
DISTRIBUTION	All kWh	\$0.01680 per kWh
POWER SUPPLY	All kWh	\$0.04060 per kWh

Plus an amount calculated in accordance with Rider PCAF.

Plus any taxes, assessments, or surcharges imposed by any governmental authority, which are assessed on the basis of revenues from electric service or volume of electricity purchased or sold.

MINIMUM CHARGE

The monthly minimum charge shall be the sum of the "Customer Charge" and all applicable rate adjustments.

PAYMENT

Bills are due when rendered and become past due if not paid within sixteen (16) days thereafter. Past due bills shall be assessed a one time penalty charge of 5% of the unpaid amount. Upon proof of age of over 60 years the penalty for past due bills shall be waived.

RESOLUTION NO. 23-14

A RESOLUTION OF THE KERRVILLE PUBLIC UTILITY BOARD APPROVING THE REVISION OF THE ELECTRIC RATES CHARGED BY KPUB TO ITS RESIDENTIAL CUSTOMERS AND FORWARDING THE PROPOSED RESIDENTIAL TARIFF TO THE CITY OF KERRVILLE FOR ACTION AND APPROVAL BY THE CITY COUNCIL.

WHEREAS, in 2017, the KPUB staff recommended and the Board approved the hiring of the firm Utility Financial Solutions (UFS) to perform a Cost of Service Study; and

WHEREAS, on January 24, 2018, Mrs. Dawn Lund of UFS presented the company's Draft Cost of Service Study and Rate Design Reports to the Board with her recommended changes; and

WHEREAS, on August 28, 2018, KPUB Staff presented the Final Cost of Service Study and Rate Design Reports from UFS recommending two rate changes, one in Fiscal Year 2019 and a second in Fiscal Year 2021; and

WHEREAS, the KPUB Board approved resolution 18-12 revising residential rates according to the first stage of the rate design plan on August 28, 2018; and

WHEREAS, the Kerrville City Council approved Ordinance 2018-22 revising residential rates according to the first stage of the rate design plan on October 9, 2018; and

WHEREAS, the second stage of the rate design plan recommended for Fiscal Year 2021 has not yet been implemented; now, therefore,

BE IT RESOLVED BY THE KERRVILLE PUBLIC UTILITY BOARD THAT:

Section 1. The above recitals are true and correct.

Section 2. The Board approves the revised Residential Rate Tariff, and Distributed Generation Rider DG, attached hereto as Exhibit "A", as recommended by UFS and Staff, and the General Manager is authorized to forward the revised residential rate tariff described herein to the Kerrville City Council for its consideration and action.

PASSED, APPROVED AND ADOPTED on this 20th day of September, 2023

ATTEST:

Mark Cowden, Chairman

Bill Thomas, Secretary

Kerrville Public Utility Board

2021 Rate Design

Residential

Current Rate		Customer Charge	Distribution All KWh's	Power Supply All KWh's	<i>Calc by Utility Formula</i>	
					Estimated PCAF	
Winter Rate	Meter Charge	\$ 3.75	\$ 0.0193	\$ 0.0406	\$	0.02024
Summer	Meter Reading Charge	\$ 1.25	\$ 0.0193	\$ 0.0406	\$	0.02024
	Billing Charge	\$ 5.25				
	Total	\$ 10.25				

Proposed Rate		Customer Charge	Distribution All KWh's	Power Supply All KWh's	<i>Calc by Utility Formula</i>	
					Estimated PCAF	
Winter Rate	Meter Charge	\$ 3.75	\$ 0.0168	\$ 0.0406	\$	0.02024
Summer	Meter Reading Charge	\$ 1.25	\$ 0.0168	\$ 0.0406	\$	0.02024
	Billing, Services, CS, Dist	\$ 10.25				
	Total	\$ 15.25				

Cost of Service 14.88

Total Without Contract Rates

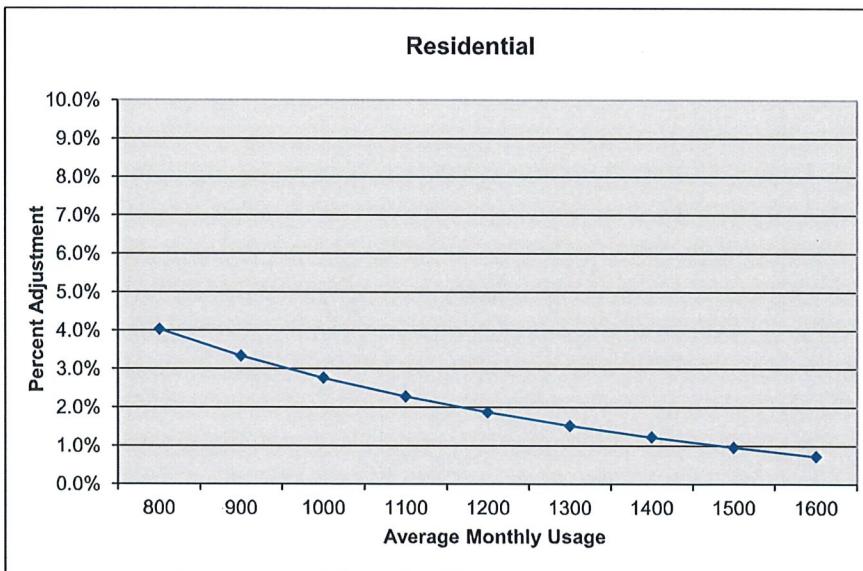
Estimated Change in Revenues

Current Revenues	19,795,879
Proposed Revenues	20,199,169

Percentage Change	2.0%
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Residential Dollar Impacts

Usage	Dollar	Usage	Dollar
800	\$ 3.00	1300	1.75
900	2.75	1400	1.50
1000	2.50	1500	1.25
1100	2.25	1600	1.00
1200	2.00		



CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 99- 18

AN ORDINANCE REPEALING ORDINANCE NO. 87-57 AND ORDINANCE NO. 89-26, AS AMENDED; ADOPTING A NEW SCHEDULE OF RATES AND CHARGES AND SERVICE RULES AND REGULATIONS FOR ELECTRIC SERVICE ADMINISTERED BY THE KERRVILLE PUBLIC UTILITY BOARD; AUTHORIZING THE KERRVILLE PUBLIC UTILITY BOARD TO ESTABLISH RATES, TERMS AND CONDITIONS FOR COMMERCIAL AND LARGE COMMERCIAL CLASS ELECTRIC CUSTOMERS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE; AND ORDERING PUBLICATION.

WHEREAS, the City of Kerrville, Texas, owns an electric system and manages and operates its system through its duly appointed board of trustees, the Kerrville Public Utility Board, a body created pursuant to Tex. Rev. Civ. Stat. Ann. art. 1115; and

WHEREAS, the Kerrville Public Utility Board has reviewed the current schedule of rates and charges and Service Rules and Regulations and has determined that the rates and charges should be adjusted and the Service Rules and Regulations amended to reflect current conditions and to maintain its obligations under City of Kerrville Ordinance No. 87-45, approved December 10, 1987, and has submitted its requirements to the City Council; and

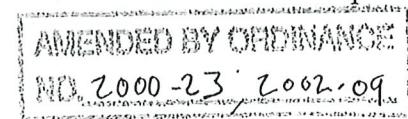
WHEREAS, in making its recommendations, the board considered the reports on the electric revenue requirements, cost of service, and rate design prepared by the independent consulting firm of Resource Management International and the Kerrville Public Utility Board, as well as applicable rate making standards and policy service considerations; and

WHEREAS, the City Council hereby finds that the current schedule of electric rates and charges should be adjusted and the Service Rules and Regulations be amended as recommended by the Kerrville Public Utility Board to provide for the continued preservation of the public health, safety and welfare of the people;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. Ordinance No. 87-57 and Ordinance No. 89-26, as amended, establishing a schedule of rates and charges applicable to electric service provided by the electric system owned by the City of Kerrville and managed and operated on the City's behalf by the Kerrville Public Utility Board are hereby in all things repealed, effective upon the date the last electric meters are read for which billings will be mailed in December 1999.

SECTION TWO. The Tariffs for Electric Service and Service Rules and Regulations, attached to this Ordinance as Exhibit "A" and incorporated herein by reference, are hereby in all



Approved by City Council
Date: October 12, 1999
Volume 34 Page 288

things adopted and are applicable to all customers of the City's electric system managed and controlled by the Kerrville Public Utility board, effective for all bills for electric service mailed on or after January 1, 2000.

SECTION THREE. Commencing January 1, 2000, the Kerrville Public Utility Board is authorized to establish rates, terms and conditions for electric service furnished by the Kerrville Public Utility Board to Commercial and Large Commercial customer classifications.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

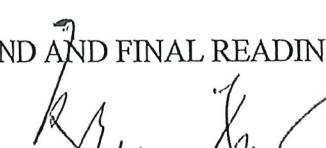
SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Kerrville, Texas, hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. This Ordinance shall become effective from and after the date of final passage on second reading.

SECTION SEVEN. In accordance with Section 3.07 of the City Charter and Texas Local Government Code §52.013(a), the City Clerk is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

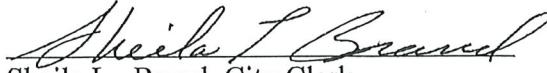
PASSED AND APPROVED ON FIRST READING, this the 28 day of Sept., 1999.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the 12 day of October, 1999.



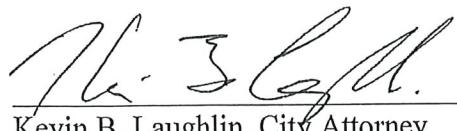
Ben R. Low, Mayor

ATTEST:



Sheila L. Brand, City Clerk

APPROVED AS TO FORM:



Kevin B. Laughlin, City Attorney

\Attorney2\l\WPDOCS\Public Service\ORD\Electric Rates 1999.wpd



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution No. 32-2023. A Resolution authorizing the City Manager to contract with a Real Estate Broker for the sale of real property located at 505 Center Point Drive E, such property described as Lot 1 Oak View Estates, a Subdivision out of the Benjamin B. Peck Survey No. 51, Abstract No. 266, and consisting of approximately 17.68 acres.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 19, 2023

SUBMITTED BY: Guillermo Garcia

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$0	\$0	\$0	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? Yes

Key Priority Area C - Community / Neighborhood Character and Place Making

Guiding Principle N/A

Action Item C2.8 - Identify vacant lots and develop incentives/abatements for infill development where adequate utilities exist

SUMMARY STATEMENT:

The property located at 505 Center Point Dr. Center Point, TX 78010 legally known as Lot 1, Oak View Estates, a Subdivision out of the Benjamin B. Peck Survey No. 51, Abstract no. 266, consisting of approximately 17.68 acres was acquired by the City of Kerrville on March 13, 1978. The property has previously served as a location for a Localizer antenna for the Kerrville - Kerr County Airport. The Localizer antenna is in disrepair and no longer in use.

The City Manager has determined that this real estate property is no longer needed by the City of Kerrville. In accordance with Section 253.014 of the Local Government Code and the City of Kerrville Real Estate Policy, the City Manager shall seek approval from the City Council for the disposition of the property.

RECOMMENDED ACTION:

Approve Resolution No. 32-2023.

ATTACHMENTS:

[20231010_Reso 32-2023 Real Estate Broker 505 CenterPoint.pdf](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 32-2023**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO CONTRACT WITH A REAL ESTATE BROKER FOR THE SALE OF REAL PROPERTY LOCATED AT 505 CENTER POINT DRIVE E, SUCH PROPERTY DESCRIBED AS LOT 1, OAK VIEW ESTATES, A SUBDIVISION OUT OF THE BENJAMIN B. PECK SURVEY NO. 51, ABSTRACT NO. 266, AND CONSISTING OF APPROXIMATELY 17.68 ACRES

WHEREAS, the City of Kerrville, Texas, owns real property at 505 Center Point Drive E, Kerr County, Texas (the "Property"); and

WHEREAS, the City has owned the Property since 1978, and acquired the Property to accommodate use by the Federal Aviation Administration ("FAA") for its purposes in placing and operating equipment at the site for aviation services supporting the Kerrville-Kerr County Airport; and

WHEREAS, the FAA notified the City of its intent to no longer use the Property and to terminate its lease with the City for its use; and

WHEREAS, City staff have identified the Property as a candidate for sale by the City under the procedures listed in Section 253.014 of the Texas Local Government Code ("Section 253.014"); and

WHEREAS, Section 253.014 authorizes a city to sell city-owned property by contracting with a broker, provided that the property is listed with a multiple-listing service for at least 30 days and that the property is sold to the buyer who submits the highest cash offer; and

WHEREAS, City Council finds it to be in the public interest to authorize the sale of the Property pursuant to Section 253.014;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

City Council authorizes the City Manager to contract with a licensed real estate broker to sell the real property owned by the City and located at 505 Center Point Drive E. The property is more specifically described as follows:

Being Lot 1, Oak View Estates, a subdivision out of the Benjamin B. Peck Survey No. 51, Abstract No. 266, recorded in Volume 4, Page 85, Plat Records, Kerr

*County, Texas, consisting of approximately 17.68 acres,
and being depicted at **Exhibit A**.*

A sale shall comply with state law regarding competitive bidding by being performed under Section 253.014 of the Texas Local Government Code. Council may determine, on or after the thirtieth (30th) day after the Property is listed, to sell the tract to a ready, willing, and able buyer who submits the highest cash offer, in which event the Council may approve a fee to such broker.

**PASSED AND APPROVED ON this the _____ day of _____,
A.D., 2023.**

Judy Eychner, Mayor

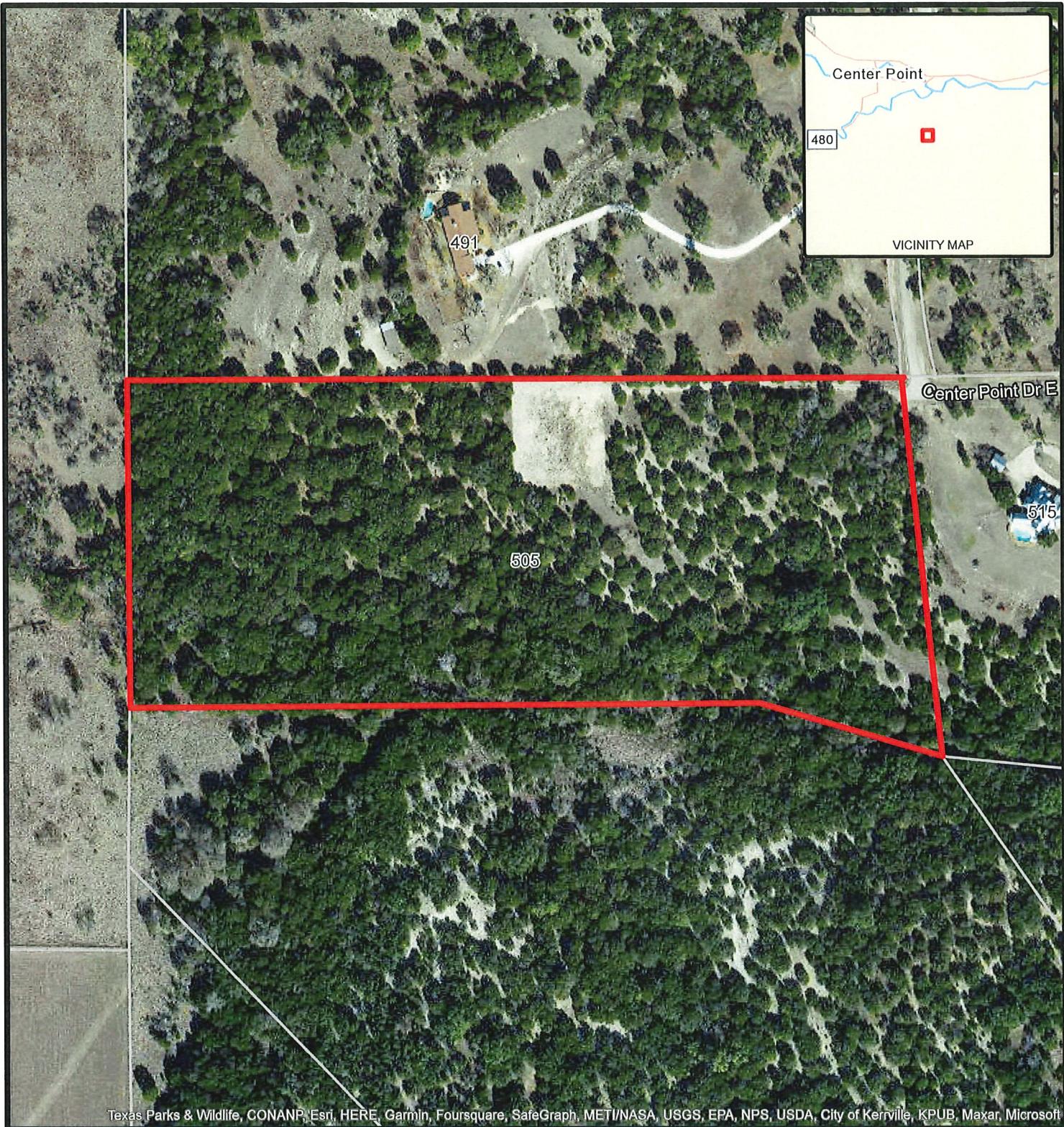
APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



Location Map

Location:
505 Center Point Dr E

Legend

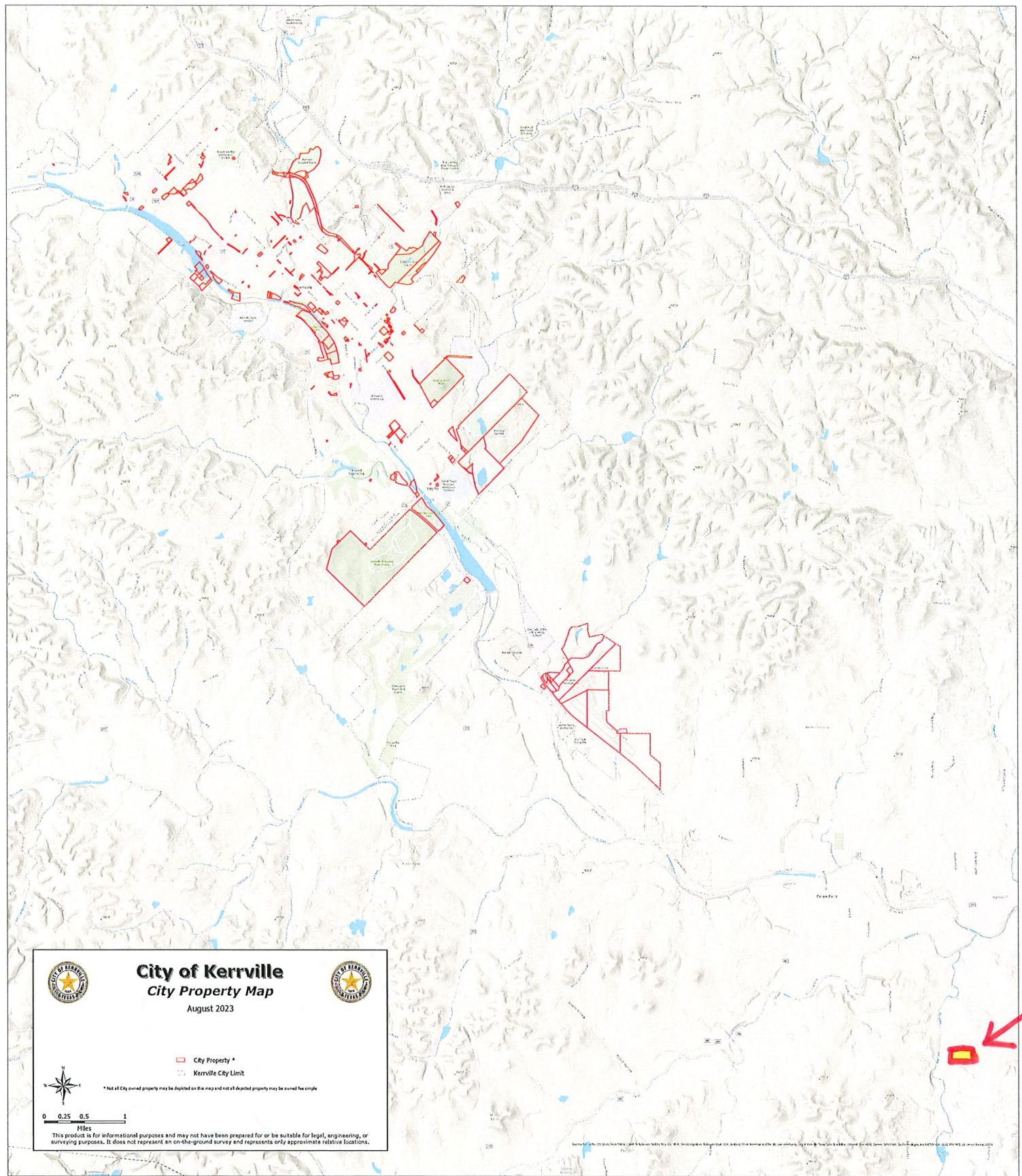
■ Subject Properties



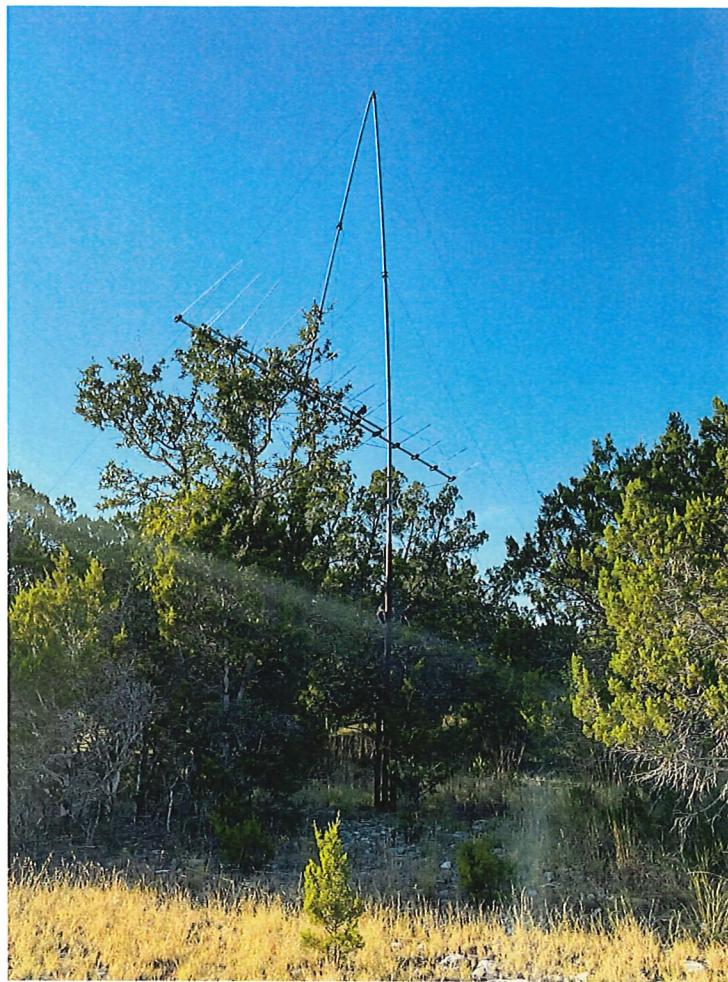
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0 50 100 200 300

Scale In Feet









**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution No. 34-2023. A Resolution nominating a candidate(s) to Kerr Central Appraisal District Board of Directors. (This item is eligible for Executive Session 551.074.)

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** October 3, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

The Kerr Central Appraisal District (KCAD) has requested nominations for the Board of Director 2024-2025 term from the City of Kerrville. The City Council may nominate up to five (5) people by resolution or letter. The deadline for taxing entities to submit nominees is October 15, 2023.

Eligibility requirements for appointment to the Board of Directors are attached.

Once nominations are received, KCAD will mail each participating entity a ballot. Ballots will be due by December 15, 2023. Directors for the 2024-2025 term will be announced by December 31, 2023.

The calculated votes for each of the voting entities are as follows:

Entity	Votes
City of Ingram	26
City of Kerrville	749
Kerr County	1230

Center Point ISD	195
Comfort ISD	145
Divide ISD	40
Harper ISD	34
Hunt ISD	276
Ingram ISD	440
Kerrville ISD	1857
Medina ISD	8

Current Board members are Carter Cain, Chair; Patrick Freedle, member; Eric Lantz, Secretary; Larry Priour, member; Jeff Talarico, member; Bob Reeves, Vice-Chair and a non-voting member.

Patrick Freedle does not wish to be reappointed to another term.

Mayor Eychner is Committee liaison.

This item eligible for discussion in executive session 551.074.

RECOMMENDED ACTION:

Approve Resolution No. 34-2023, and nominate candidate(s).

ATTACHMENTS:

[*20231010_Reso 34-2023 KCAD Board nominations.pdf*](#)

[*20231010_Requirements KCAD Board eligibility.pdf*](#)

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 34-2023**

**A RESOLUTION NOMINATING A CANDIDATE(S) TO KERR
CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS**

WHEREAS, the City of Kerrville, Texas, as a member of the Kerr Central Appraisal District, has the right to submit nominations for the District's Board of Directors; and

WHEREAS, the City Council of the City of Kerrville, Texas, finds it to be in the public interest to submit a name(s) for nomination;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

In accordance with Section 6.03 of the Texas Tax Code, City Council hereby submits the following name(s) for consideration for election to the Kerr Central Appraisal District Board of Directors for the term beginning January 1, 2024:

**PASSED AND APPROVED ON this the _____ day of _____,
A.D., 2023.**

Judy Eychner, Mayor

ATTEST:

Shelley McElhannon, City Secretary

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

Eligibility Requirements

To be eligible to serve on a board of directors, an individual must be a resident of the CAD and must have resided in the CAD for at least two years immediately preceding the date of taking office. This residency requirement does not apply to a county TAC serving as a nonvoting director. An employee of a taxing unit that participates in the CAD is not eligible to serve on the board of directors, unless that individual also is a member of the governing body of the taxing unit or an elected official of a taxing unit. Membership on the governing body of a taxing unit does not make an otherwise eligible individual ineligible to serve on the board of directors.

Owing delinquent property taxes disqualifies a person from serving on the CAD board of directors. The person is ineligible if he or she owns property on which delinquent property taxes have been owed for more than 60 days after the date the person knew or should have known of the delinquency. This disqualification does not apply if the person is paying the delinquent taxes and any penalties and interest under an installment payment agreement or has deferred or abated a suit to collect the delinquent taxes. A person who has appraised property for compensation for use in proceedings, represented property owners for compensation in proceedings in the CAD or was a CAD employee at any time within the preceding three years is ineligible to serve on the board of directors.

A person is ineligible to serve on the board of directors if the individual is related within the second degree of consanguinity (blood) or affinity (marriage) to the following: • an appraiser who appraises property for use in a proceeding under the Tax Code; or • a person who represents property owners for compensation in proceedings under the Tax Code in the CAD. A director who continues to hold office knowing he or she is related in this manner to the above named persons commits a Class B misdemeanor offense. An individual is not eligible to be appointed to or to serve on the board of directors if an individual has a substantial interest in a business entity that is party to a contract or the individual is a party to a contract with the CAD. This prohibition also applies to contracts with a taxing unit that participates in the CAD if the contract relates to the performance of an activity governed by the Tax Code. A CAD may not enter into a contract with a board member or with a business entity in which a board member has a substantial interest. A taxing unit may not enter into a contract relating to the performance of an activity governed by the Tax Code with a board member in which the taxing unit participates or with a business entity in which a board member has a substantial interest. An individual has substantial interest in a business entity if: • the combined ownership of the director and the director's spouse is at least 10 percent of the voting stock or shares of the business entity; or • the director or director's spouse is a partner, limited partner or officer of the business entity.



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Resolution No. 35-2023. A Resolution creating an Ad Hoc Animal Regulations Review Committee.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 29, 2023

SUBMITTED BY: Mike Hayes, City Attorney

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

The City has not conducted a comprehensive review of Chapter 18 or revised these regulations in several years, which is necessary in part based upon changes in state laws.

City Council believes it to be in the public interest to create an ad hoc animal Regulations Review Committee to consider issues and report findings, conclusions, and proposals to Council.

The Committee should seek input from other governmental and community organizations which have authority over or an interest in the control, care, and keeping of animals within the City.

RECOMMENDED ACTION:

Approve Resolution No. 35-2023, and appoint members.

ATTACHMENTS:

[*20231010_Reso 35-2023 Animal Reg Review Cmte.pdf*](#)

CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 35-2023

A RESOLUTION CREATING AN *AD HOC ANIMAL REGULATIONS REVIEW COMMITTEE*

WHEREAS, the City of Kerrville, Texas, regulates the control, care, and keeping of animals within the City's limits; and

WHEREAS, such regulations are found within Chapter 18 "Animals" of the City's Code of Ordinances ("Chapter 18"); and

WHEREAS, the City has not conducted a comprehensive review of Chapter 18 or revised these regulations in several years, which is necessary in part based upon changes in state laws; and

WHEREAS, the *ad hoc* Animal Regulations Review Committee will act in an advisory capacity to City Council; and

WHEREAS, City Council believes it to be in the public interest to create an *ad hoc* Animal Regulations Review Committee to consider these issues and report its findings, conclusions, and proposals to Council;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:

SECTION ONE. City Council creates the *ad hoc* Animal Regulations Review Committee (the "Committee") to review and consider recommendations as to its findings, conclusions, and amendments to Chapter 18 and any other regulations and policies of the City with respect to the City's regulations for the control, care, and keeping of animals.

SECTION TWO. The Committee will be made up of the following individuals:

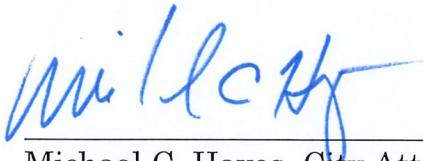
- a) _____
- b) _____
- c) _____
- d) _____
- e) _____

The Committee should seek input from other governmental and community organizations which have authority over or an interest in the control, care, and keeping of animals within the City.

PASSED AND APPROVED ON this ____ day of _____, A.D., 2023.

Judy Eychner, Mayor

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Solar Eclipse update.

AGENDA DATE OF: October 10, 2023 **DATE SUBMITTED:** September 29, 2023

SUBMITTED BY: Eric Maloney, Fire Chief

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	N/A	N/A	N/A

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item? No

Key Priority Area N/A

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

Discuss the Emergency Management planning for the October 14, 2023 Annular Eclipse and the April 8, 2024 Total Eclipse.

RECOMMENDED ACTION:

Emergency Management planning update.