

AGENDA FOR THE KERRVILLE CITY COUNCIL MEETING

TUESDAY, JANUARY 23, 2024, 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
JANUARY 23, 2024 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 the Kerrville Fire Department providing 30 years of Emergency Medical Services to the City of Kerrville and surrounding community.
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 Municode, LLC f/k/a Municipal Code Corporation, a division of Civic Plus, annual full-service supplementation subscription for Ordinance codification.
Attachment: [20240109_Contract Municode codification services.pdf](#)
 - 4.B Public "Work for Hire" Art Agreement Between City of Kerrville, Kerrville Convention and Visitors Bureau, and Guardnplanet, LLC.
Attachment: [20240123_Contract Guardnplant Kaleidoscope Artist 011624.pdf](#)

- 4.C Texas Main Street Locally Designated Program 2024 Contract between the Texas Historical Commission and the City of Kerrville.

Attachment: [20240123_Contract Texas Main Street 2024 locally designated program.pdf](#)

- 4.D Ratification of Loop 534 Well, Meadowview Well, and ASR 2 Well Rehabilitations.

Attachments: [20240123_Estimate ASR2- Rehab Line Shaft.pdf](#)

[20240123_Invoice_Moys Loop 534.pdf](#)

[20240123_Invoice_Moys Meadowview.pdf](#)

- 4.E City Council workshop minutes January 09, 2024.

Attachment: [20240123_Minutes CC workshop 1-09-24.pdf](#)

- 4.F City Council meeting minutes January 09, 2024.

Attachment: [20240123_Minutes CC meeting 1-09-24.pdf](#)

END OF CONSENT AGENDA.

5. ORDINANCES, FIRST READING:

- 5.A Ordinance No. 2024-01. An Ordinance ordering a Special Election to be held on May 4, 2024, for the purpose of submitting propositions to the voters for proposed amendments to the City Charter; said Election to be held in conjunction with the City's General Election; establishing early voting times and places; and providing for public review.

Attachment: [20240123_Ord 2024-01 Charter Election 5-4-24.pdf](#)

- 5.B Ordinance No. 2024-02. An Ordinance authorizing the issuance of \$_____ in principal amount of City of Kerrville, Texas Tax Note, Series 2024; securing the payment thereof by authorizing the levy of an annual ad valorem tax; and approving and authorizing the execution of a paying agent/registrar agreement, a purchase letter, and all other instruments and procedures related thereto.

Attachment: [20240123_Ord 2024-02 2024 Tax Note.pdf](#)

6. CONSIDERATION AND POSSIBLE ACTION:

- 6.A Resolution No. 02-2024. A Resolution supporting the application of Freedom's Path Kerrville II Limited Partnership to construct affordable rental housing pursuant to the Low Income Housing Tax Credit program administered by the Texas Department of Housing and Community Affairs.

Attachments: [20240123_Reso 02-2024 Freedoms Path VA.pdf](#)

[20240123_Presentation Freedoms Path.pdf](#)

- 6.B Resolution No. 03-2024. A Resolution authorizing a waiver of various fees associated with the construction of single-family homes for Habitat for Humanity Kerr County, Inc.; said waiver applicable to the construction of three such homes on existing lots.

Attachment: [20240123_Reso 03-2024 Waiver of fees Habitat for Humanity.pdf](#)

- 6.C First Amendment to the Design-Build Contract with Marksmen General Contractors, LLC in the amount of \$225,800 for the Heart of the Hills Heritage Center Project.

Attachment: [20240123_Contract amendment Marksmen General HHC Design Build.pdf](#)

- 6.D Second Amendment to the Design-Build Contract with Thos. S. Byrne, Inc. dba Byrne Construction Services Corporation in the amount of \$6,029,009.00 for the Public Safety Facility Project.

Attachment: [20240123_Contract 2nd amendment Byrne Construction PSF Design Build.pdf](#)

- 6.E Professional Services Agreement with Rock Engineering & Testing Laboratory, Inc. in the amount of \$111,900.00 for the Public Safety Facility Project.

Attachment: [20240123_PSA Rock Engineering PSF with proposal.pdf](#)

- 6.F Professional services agreement for the Texas Department of Transportation for a Transportation Alternatives Set-Aside (TASA) Sidewalk Improvement project.

- 6.G Purchase of two (2) Sutphen G2 custom pumpers from Texas Fire Apparatus through the Buyboard Purchasing Cooperative #651-21, at a price not to exceed \$1,900,000. Attachment: [PA_Sutphen_2 Fire Trucks_011724.pdf](#)

- 6.H Windridge Project Development Agreement, an agreement out of the City's Tax Increment Reinvestment Zone Number Two, and with Lennar Homes of Texas Land and Construction, Ltd., for the Windridge residential subdivision.
Attachments: [20240123_Development_Agreement Windridge 011924 DRAFT.pdf](#)
[20240123_Exhibits Windridge TIRZ 011924.pdf](#)

7. INFORMATION & DISCUSSION:

- 7.A Financial report for month-ended 12-31-2023.

8. BOARD APPOINTMENTS:

- 8.A Consider appointments to the Tax Increment Reinvestment Zone Number Two, City of Kerrville, Texas also called the Windridge TIRZ.

9. **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.*

10. ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION, IF ANY.

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

ADJOURN.



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

SUBJECT: Proclamation recognizing the Kerrville Fire Department providing 30 years of Emergency Medical Services to the City of Kerrville and surrounding community.

AGENDA DATE OF: January 23, 2024

DATE SUBMITTED: November 21, 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:

RECOMMENDED ACTION:

Present proclamation.



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

SUBJECT: Municode, LLC f/k/a Municipal Code Corporation, a division of Civic Plus, annual full-service supplementation subscription for Ordinance codification.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** December 19, 2023

SUBMITTED BY: Shelley McElhannon, City Secretary

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
5,330.00 annually	6,125.00	9,000.00	01-01-2-2300

PAYMENT TO BE MADE TO: Civic Plus

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

The City has been informed as of March 01, 2024, the City's Ordinance codification service with Municode will raise rate 30%. The City currently pays Municode a \$19.44 rate per page, which will increase to \$25.27 rate per page.

The company explains that no price increase has occurred since 2017, and due to the average inflation rate from the past four years that an increase of 30% is needed to deflect surges in production costs.

In 2023, the City paid Municode (for codification services) a total of \$5,174.98.

In 2024, with the 30% increase the total is estimated at \$6,637.47 for the same services.

An addition option offered by Municode is an annual subscription service.

The breakdown is:

\$1,080.00 annual hosting fee.

\$4,250.00 supplement fee, with no limit of supplements

\$5,330.00 Total

Staff recommends the annual subscription service of \$5,330.00, vs the price per page option.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute the contract.

**CivicPlus**

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #:

Q-43741-1

Date:

5/31/2023 10:16 AM

Customer:

KERRVILLE, TEXAS

Product Name	DESCRIPTION	QTY	TOTAL
Full-Service Supplementation Subscription	Full-Service Supplementation Subscription	1.00	USD 4,250.00
Printed Copies and Freight Included – up to [#] copies	Printed Copies and Freight Included	1.00	USD 0.00
Quarterly Print Supplementation Service Included	Print Supplementation will begin with the ordinances received from the municipality on a quarterly basis.	1.00	USD 0.00
Supplement PDF	Supplement PDF	1.00	USD 0.00
Custom Online Code Hosting	Online Code Hosting Subscription	1.00	USD 900.00
Code and Supp Year 1 Annual Fee Discount	Year 1 Online Code proration	1.00	USD -150.00
Annual Recurring Supplement Services - Initial Term		USD 5,000.00	
Annual Recurring Supplement Services - (Subject to Uplift)		USD 5,150.00	

1. This Statement of Work ("SOW") is between Kerrville Texas ("Customer") and CivicPlus, LLC ("CivicPlus"), the acquirer and sole owner of Municode, LLC f/k/a Municipal Code Corporation, and incorporates and is subject to the terms and conditions located at Addendum 1 attached to this SOW.
2. This SOW shall begin on 1/1/2024 ("Effective Date") and all the services provided to Customer listed in the above line items (the "Services") shall align to renew annually on each anniversary of the Effective Date ("Renewal Date"). Unless terminated, Customer shall be invoiced for the Annual Recurring Services on each Renewal Date of each calendar year subject to 5% annual increase. Customer will pay all invoices within 30 days of the date of such invoice.

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW. For CivicPlus Billing Information, please visit <https://www.civicplus.com/verify/>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

By:

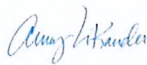
Name:

Title:

Date:

CivicPlus

By:



Name:

Amy Vikander

Title:

Senior Vice President of Customer Success

Date:

Addendum 1

This agreement ("Agreement") is explicitly agreed to by the Customer listed on the Statement of Work. All terms used in this Agreement that are not otherwise defined shall have the definition ascribed to it in the Statement of Work.

1. Scope of Services. The Services provided to Customer under this Agreement are set forth in the CivicPlus Statement of Work signed by the parties (the "SOW"). Customer may purchase additional services for additional cost at any time upon mutual written consent of the Parties, including but not limited to updating the frequency of Supplement updates, additional labor required because of delays, errors or omissions on the part of Customer.

2. Limitations of Services. Annual Recurring Supplement Service does NOT include:

- Additional copies, reprints, binders, and tab orders;
- Documents drafted in InDesign or that contain form-based code requirements, are subject to additional editorial fees;
- Documents that contain: multiple tables, graphics, unique formatting requirements, or any other form-based code requirements;
- Legal work, creation of fee schedules, gender-neutral review/implementation, external linking;
- Codifying complete replacement of complex subject matter such as, but not limited to, Zoning (or equivalent). This work is subject to a one-time editorial conversion fee and an increase in the annual supplement rate and online hosting fee(s). Quote provided upon receipt of material;
- Codifying a newly adopted full Chapter/Title/Appendix. This may be subject to a one-time additional editorial fee and an increase in the annual supplement rate and online hosting fee(s). Material to be reviewed upon receipt;
- Codifying a newly adopted term change legislation. This may be subject to a one-time additional editorial fee. Material to be reviewed upon receipt;
- Adding entirely new material such as but not limited to new Zoning chapters will be covered in your current annual cost. However, the addition will lead to an increase in your annual cost upon your next renewal. We will work with you to provide a revised annual cost.
- The addition of Manuals, Policies, Procedures, Comprehensive Plans, Land Use, Unified Codes, Zoning (or equivalent). Quotation upon request; and
- Online Code hosting and online features, this is listed separately.

For services outside the scope of the Annual Recurring Supplement Services, a per page rate of \$23 will be applied.

3. Each document for processing should be its own individual file, named by its ordinance number. Customer should send in all documents to CivicPlus as MS WORD versions or a convertible PDF version.

4. Term and Termination. This Agreement shall remain in full force and effect for an initial period of one year commencing on the Effective Date ("Initial Term"), at the end of the Initial Term, this Agreement shall automatically renew for additional one-year terms (each a "Renewal Term"). If either Party does not intend to renew this Agreement, they shall provide sixty days prior notice to the end of the then-current term. Either party may terminate this Agreement for cause in the event the other party materially breaches any term of this Agreement and does not substantially cure such breach within thirty days after receiving notice of such breach. A delinquent Customer account remaining past due for longer than 90 days is a material breach by Customer and is grounds for CivicPlus termination.

5. Compensation. Unless otherwise stated in an SOW signed by the Customer, the Customer shall pay CivicPlus for the Services annually at the start of each Renewal Term, within 30 days of the date an invoice is sent.

6. Integration. This Agreement sets forth the entire agreement between and among the parties with respect to the Services. This Agreement supersedes all prior written or oral agreements between the parties or their predecessors-in-interest with respect to all or any part of the subject matter hereof.

7. Limitation of Liability. CivicPlus' liability arising out of or related to this Agreement, or any associated SOW, will not exceed five times the amounts paid by Customer for the Services in the year prior to such claim of liability. In no event will CivicPlus be liable to Customer for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.

8. Ownership. Customer shall own all right, title, and interest in and to the code created under this Agreement. Customer is responsible for providing all necessary and correct documentation, materials and communication in a timely manner in order to enable CivicPlus to perform the Services and acknowledges CivicPlus cannot begin performance of the Services until all necessary documentation, materials and communication is received.

9. Customer acknowledges that any legal analysis provided by CivicPlus is provided to Customer for their use and direction. However, Customer agrees the Services provided for herein do not review legal codes for legal sufficiency, draw legal conclusions, provide legal advice, opinions or recommendations about Customer's legal rights, remedies, defenses, options, selection of forms, or strategies, or apply the law to the facts of any particular situation or establish an attorney-Customer relationship. CivicPlus is not a law firm and may not perform services performed by an attorney, and the Services contemplated herein do not constitute a substitute for the advice or services of an attorney.

10. In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, damage or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

Contact Information

Organization

URL

Street Address

Address 2

City

State

Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays).
Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for
ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact

E-Mail

Phone

Ext.

Fax

Billing Address

Address 2

City

State

Postal Code

Tax ID #

Sales Tax Exempt #

Billing Terms

Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [] or N []

Please list all external sources:

Contract Contact

Email

Phone

Ext.

Fax

Project Contact

Email

Phone

Ext.

Fax



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

SUBJECT: Public "Work for Hire" Art Agreement Between City of Kerrville, Kerrville Convention and Visitors Bureau, and Guardnplanet, LLC.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 4, 2024

SUBMITTED BY: Megan Folkerts, Senior Management Analyst

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	C - Community / Neighborhood Character and Place Making
Guiding Principle	N/A
Action Item	D1.4 - Consider installing iconic artwork in the Downtown

SUMMARY STATEMENT:

In 2022, the City Council approved the creation of the Community Arts Program, to be managed by the Kerrville Convention and Visitors Bureau. One of their annual requirements calls for the installation of an iconic public art piece. The KCVB Board and the Arts Advisory Committee have selected an interactive kaleidoscope installation to fit this criterion for 2024. The KCVB is the facilitator of the purchase and installation, and the City of Kerrville will become the owner once installed. This agreement is necessary to complete this process, and ensure copyrighting is addressed with the artist, and maintenance is accounted for with KCVB.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute this agreement.

ATTACHMENTS:

[20240123_Contract Guardnplant Kaleidoscope Artist 011624.pdf](#)

PUBLIC “WORK FOR HIRE” ART AGREEMENT
Agreement Between City of Kerrville, Kerrville Convention and Visitors
Bureau, and Guardnplanet, LLC

THIS AGREEMENT is entered into this the ____ day of _____, 2024 (“Execution Date”), by and between the City of Kerrville, Texas, a Texas home-rule municipality (“City”), Kerrville Convention and Visitors Bureau, a 501(c)(6) non-profit organization (“Facilitator”), and Guardnplanet LLC, 200 West Kimball Mansfield, Texas 76063-1954 (“Artist”).

1. **PURPOSE:** The purpose of this Agreement is to state the terms and conditions under which Artist shall design an interactive public art piece with a kaleidoscope (“Artwork”) to be funded by Facilitator and installed on City property.

2. **DEFINITIONS**

- A. **Copyrights:** Means the intangible property rights in original works of authorship fixed in any tangible medium of expression, as defined and enforceable under the U.S. Copyright Act of 1976. The Original works of authorship include all categories of artistic work protectable under the copyright laws, including, but not limited to, pictorial, graphic, sculptural, architectural and visual art works.
- B. **Material Object:** Means the tangible visual Artwork created and installed on City’s real property by Artist.
- C. **VARA:** Means the Visual Artists Rights Act of 1990, 17 U.S.C. § 101, et. seq., which confers upon authors of works of visual arts, several types of attribution and integrity rights, including the right to prevent any intentional distortion, mutilation, or other modifications of that work.
- D. **Preliminary Works:** Means all artwork including, but not limited to, concepts, sketches, or other visual presentations or other alternate or preliminary designs and documents developed by the Artist and which form part of the Artwork.
- E. **Artwork:** Means all creative content developed or created by the Artist that form the final Material Object of the work provided by the Artist and accepted by City. Artist acknowledges that the Artwork includes Preliminary Works and the Material Object that are incorporated and made part of the final representation of the Artwork. The Artwork is hereby incorporated by reference and made part of this Agreement as more fully described in Section 7.

3. DESCRIPTION OF SERVICES

3.1 Artist's services hereunder shall include, but shall not be limited to, the following:

- A. Artist shall design an interactive kaleidoscope based upon specifications provided by the City and Facilitator. The Artwork shall be installed along the sidewalk at the northeast corner of the intersection of Washington and Water Streets in Kerrville, Texas ("Site"). The Artist's work must be of high quality, in compliance with generally accepted standards of workmanship, and in conformity with this "Work for Hire" Agreement.
- B. Artist shall work closely and cooperate with the staff of Facilitator and City to fulfill the purposes of this Agreement.
- C. As an expressed condition of this Agreement, Artist shall design the Artwork on a "work for hire" basis so that it can be utilized for display and also for printing on promotional materials. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Artist's performance.
- D. Artist shall be responsible for installing the Artwork at the Site in a manner that the City agrees to in advance.
- E. Artist and Facilitator shall be responsible for any damage to the Artwork that may occur due to fire, explosion, theft, vandalism, flood, power failure, transit or any other cause until Artwork has been delivered and formally accepted by the City through a separate, written acceptance.

3.2 Facilitator's services hereunder shall include, but shall not be limited to, the following:

- A. Facilitator shall be responsible for paying Artist for its Artwork.
- B. Facilitator shall ensure that during the installation of the Artwork, the site is clean and safe from hazards to users of the City sidewalk and roads. Directly upon completion of the Artwork, Facilitator shall remove from the site all equipment and any waste materials not previously disposed of, leaving the site thoroughly clean and ready for the City's inspection.
- C. Facilitator shall be responsible for maintaining the Artwork for the first five (5) years following the date of the City's Letter of Acceptance. Such maintenance shall include, but is not limited to, painting as necessary,

addressing corrosion, ensuring the Artwork moves as intended, and ensuring the kaleidoscope operates as intended.

4. **PERFORMANCE OF SERVICES:** Artist, Facilitator, and their employees, associates or assistants shall perform all the services under the Agreement in a timely, cost effective manner.

5. **TIME OF COMPLETION AND FORMAL ACCEPTANCE**

The Project shall be fully installed and completed by Artist and Facilitator by February 3-4, 2024, unless delays are caused by the City, or by events beyond the control of both parties, at which time completion may be amended. Any extensions of time must be agreed to in writing by all parties. Artist and Facilitator understand that time is of the essence.

Either the Artist or the Facilitator must notify the City when the Artwork is fully installed and complete. No more than thirty (30) days after receiving such notice, the City will provide the Artist a written response, informing the Artist and Facilitator that either (i) the City agrees that the Artwork is fully installed and is complete consistent with the terms of this Agreement and the City formally accepts the Artwork as completed ("Letter of Acceptance"); or (ii) the City does not consider the Artwork to be completed due to unresolved issues or defects that remain, which will be described and must be cured within the time frame the City provides in its written response before the City will issue a Letter of Acceptance.

The Artwork is not finally complete for purposes of this Agreement until the City has issued a Letter of Acceptance ("Final Acceptance."). Once the City has issued a Letter of Acceptance the City will be the sole owner of the Artwork.

6. **CITY REPRESENTATIVE:** The City designates Megan Folkerts, Senior Management Analyst, as its project representative who will make all necessary and proper decisions with reference to the Artwork within the scope of her authority. The Artist and Facilitator must direct all requests for clarification or instruction to the City representative.

7. **DESCRIPTION OF FINAL ARTWORK**

7.1	Title:	Downtown Kaleidoscope
7.2	Size:	No to exceed 11 feet tall
7.3	Category of Work:	Sculptural
7.4	Installation Location:	Northeast Corner of Washington and Water Streets
7.5	Year Artwork Created:	2024
7.6	Artist:	GUARDNPLANET LLC

8. OWNERSHIP AND RIGHTS RELATED TO THE ARTWORK

8.1. Title. Title to the Artwork shall pass to the City upon final acceptance.

8.2 Waiver of Rights Under Visual Artists Rights Act of 1990 (VARA). Artist understands and agrees that, as to his or her rights in the Artwork, the provisions of this Agreement shall supersede the provisions of VARA, as amended, including but not limited to §106A(a) and §113, as to the Artwork, and that execution of this Agreement by Artist shall constitute a waiver by the Artist, as permitted in VARA, as amended, of any and all rights or protections in the Artwork, and any uses of the Artwork whatsoever, set out in or otherwise granted by VARA, as amended, including but not limited to §106A(a) and §113, or otherwise in the nature of “Droit Moral” under which artists claim an interest in their work. The Artist understands that removal of the Artwork from the Site may subject the Artwork to destruction, distortion, mutilation, or other modification.

8.3 Artist’s Remaining Retained Rights in the Artwork. Artist retains: (i) all rights, title and interest in the Artwork including all copyrights, but expressly excluding any rights in the Artwork under VARA, as amended, including but not limited to §106A(a) and §113, or otherwise in the nature of “Droit Moral” under which artists claim a continuing interest in their products and in the maintenance or modification of their products; and (ii) all rights expressly granted in this Agreement. Artist’s waived rights as described above are, insofar as such rights are transferable, assigned to City. In view of the intention that the Artwork in its final dimension shall be unique, Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Artwork, including but not limited to miniatures or jewelry applications, nor shall Artist grant permission to others to do so except with the written permission of City. The restriction for duplication or reproduction shall not apply to the Artist’s use of photographic reproductions of the Artwork in portfolio or in critical and scholarly writings. Artist grants the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, in the sole discretion of City and its assigns, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues, government public access television channel, or other similar publications.

8.4 Notice. All reproductions by City shall contain a credit to the Artist and copyright notice substantially in the following form: Guardnplanet, LLC, 2024 (artist or studio name), date of creation (as determined by City’s final acceptance of the Artwork).

8.5 Credit to City. Artist shall give a credit reading substantially, “an original work owned by the City of Kerrville, Texas and commissioned by the Kerrville

Convention and Visitors Bureau” in any public showing under Artist’s control or reproduction of the Artwork.

8.6 Registration. Artist shall at its expense cause to be registered, with the United State Register of Copyrights, a copyright of the Artwork in the Artist’s name.

9. ARTIST’S RIGHTS

9.1 Maintenance and Repair.

- a. City shall have the right to determine, in its sole discretion when and if maintenance, repairs and restorations to the Artwork will be made, and the City shall work with Facilitator to complete the necessary maintenance.
- b. All repairs and restorations shall be made in accordance with recognized principles of conservation; however, aside from the Facilitator’s duty to maintain the Artwork provided by this Agreement, City will not prevent the Artwork from being destroyed naturally by its exposure to weather and external elements, nor will City conduct any maintenance to prevent the Artwork from deteriorating due to weather and external elements.

9.2 Damage. Subject to 9.4 below, City agrees that it will not intentionally damage, alter, or modify the Artwork without the prior written approval of Artist.

9.3 Notification to Artist. City shall endeavor to notify Artist of any proposed alteration of the Site that would affect the intended character of the Artwork.

9.4 Removal, Relocation, Sale, Donation or Destruction. Nothing in this Agreement shall preclude any right of the City, in its sole discretion, to remove, store, sell, move, or destroy Artwork. If City shall at any time decide to destroy the Artwork, City shall notify Artist of the City’s intention. Artist waives any rights that it might have in connection with the removal or destruction of the Artwork under VARA, as amended, including but not limited to §106A(a) and §113.

9.5 Artist’s Address. Artist shall notify City of changes in its address. The failure to do so, if such failure prevents City from locating Artist, shall be deemed a waiver by Artist of the rights granted to Artist in this Article 9, or otherwise retained by Artist, the exercise of which requires response by Artist. A mailing of notice by City by certified mail with return receipt requested to the address of Artist or of its attorney currently on file with City at the time of such mailing, shall be deemed to be an adequate notification effort by City hereunder.

9.6 Surviving Covenants. The covenants and obligations set forth in this Section shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and City's covenants do attach and run with the Artwork and shall be binding to and until twenty (20) years after the death of the Artist or upon the destruction of the Artwork, whichever occurs first. However, the obligations imposed upon City by Sections 9.1 through 9.4 shall terminate on the death of Artist or upon the destruction of the Artwork, whichever occurs first.

10. TERMINATION OR SUSPENSION OF AGREEMENT

10.1 Termination for Default or Convenience. In addition to City's rights of termination during Work design and fabrication as set out above, City may terminate this Agreement at any time on ten (10) days' notice if Artist's services become unsatisfactory to it or if City decides not to place Artwork on the Site. City may also by written Notice of Default to Artist terminate the whole or part of this Agreement in the event that Artist or any of Artist's officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Artist's business. City may otherwise terminate the Agreement without cause, for its convenience, upon thirty (30) days' notice to Artist. If the Artist's services are terminated, and the City is paying Artist, Artist shall only be entitled to be paid for that portion of the work or services satisfactorily completed at the time of notice of such action. If Facilitator is paying Artist, Facilitator and Artist shall agree among themselves how Artist is to be paid.

10.2 Event of Artist's Default or Incapacity. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by Artist under this Agreement shall at City's sole option become its property, including the right to fabricate or execute the Artwork. In the event of incapacity or death of Artist, such will not be deemed a breach of this Agreement or a default on the part of the Artist. Artist has the right to appoint a successor artist to complete the Artwork in the event of incapacity or death. The successor artist is subject to approval of City at the time of the signing of the contract and shall be bound to complete the Artwork under the same terms, including the budget, herein; however, the successor artist shall be automatically given an extension of sixty (60) days added to the timeline, if any. If City is paying Artist, Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death with remaining payments to be made to the successor artist. If Facilitator is paying Artist, Facilitator shall determine how Artist shall be paid due to incapacity or death. The Artwork shall pass to City and all copyright described under this Agreement shall remain with the original Artist. Artist shall provide a copy of this Agreement to the successor artist, Public Art Agreement

and the successor artist shall provide a written acknowledgment to City of successor artist's agreement to abide by the terms of this Agreement.

In the event of incapacity or death of the Artist, where no successor artist has been appointed or where an appointed successor artist does not complete the Artwork, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by Artist under this Agreement shall at the City's sole option become its property. If the Artwork was at mid-point of fabrication or beyond at time of death or incapacity, and no successor is appointed, City retains the right, at its sole discretion, to select a successor artist to finish the Artwork.

10.3 Suspension. The City's Representative may, in his or her sole discretion, suspend performance of this Agreement by all parties until full compliance by Artist with the insurance requirements set out in Article 11.

11. **INSURANCE:** Artist shall carry or be covered by insurance in the following types and amounts for the duration of this Agreement and furnish copies of policies and all policy endorsements as evidence thereof to City through City's Representative:

- a. To the extent required by Texas Labor Code §406.096, certify to the City that Artist has in effect workers' compensation insurance to cover Artist's employees, if any;
- b. Commercial General Liability Insurance with minimum limits of \$1,000,000 for each occurrence claim, \$10,000 for each personal and advertising injury claim, \$1,000,000 products and completed operations for each occurrence, and \$1,000,000 policy aggregate. The policy must also provide contractual liability coverage for liability assumed under this contract, independent contractor's coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City.
- c. The insurance required by this Agreement must be written by 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. All policies must be written on a "per occurrence basis" and not a "claims made" form.
- d. Artist shall not commence work under this Agreement until it has obtained all required insurance and provided a copy of the insurance policy(ies) and endorsement(s) to the City's Representative. Artist shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy. All policies shall include a clause to the effect that the policies may not be canceled, reduced, restricted, or limited until thirty (30)

calendar days after City has received written notice of such cancellation or change.

In the case of any work sublet, Artist shall require subcontractor(s) and independent contractor(s) working under the direction of Artist or a subcontractor to carry and maintain the same workers compensation and liability insurance required of Artist.

12. INDEMNITY: ARTIST AGREES TO DEFEND, RELEASE, INDEMNIFY, AND SAVE AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM ANY AND ALL CLAIMS, DEMAND, SUITS, LIABILITIES, ACTIONS, CAUSES OF ACTION, OR LEGAL OR EQUITABLE PROCEEDINGS OF ANY KIND OR NATURE, FOR: (A) ANY INFRINGEMENT OF PATENT OR COPYRIGHT ARISING OUT OF THE SERVICES PERFORMED BY ARTIST UNDER THIS AGREEMENT REGARDLESS OF WHETHER OR NOT ARTIST OR CITY HAD KNOWLEDGE OF ANY EXISTING PATENTS OR COPYRIGHTS DURING THE COURSE OF PERFORMANCE OF THIS AGREEMENT; AND (B) PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ARTIST'S AND/OR FACILITATOR'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF ARTIST, FACILITATOR, OR THEIR OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES OR SUBCONSULTANTS, IN THE PERFORMANCE OF THIS AGREEMENT, CONTRACTUAL BREACH OR NEGLIGENCE PROVIDED IN (B) SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH THE ARTIST AND CITY, RESPONSIBILITIES AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS INDEMNITY CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

13. NONDISCRIMINATION: As a condition of this Agreement, Artist and Facilitator will take all necessary actions to insure that, in connection with any work under this Agreement, Artist, Facilitator, their associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance either directly, indirectly or through contractual or other arrangements. In this regard, Artist and Facilitator shall keep,

retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from final Agreement completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Agreement.

14. **AGREEMENT PERSONAL:** This Agreement provides for personal/professional services, involving the skill and creativity of Artist. Therefore, the Artist shall not assign this Agreement, in whole or in part, without the prior written consent of City.

15. **NOTICES:** All notices and communications required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing.

CITY:

City of Kerrville
Dalton Rice
701 Main Street
Kerrville, Texas 78028

ARTIST:

Guardnplanet, LLC
Eddie Phillips, Member
200 W. Kimball Street
Mansfield, Texas 76063-1954

FACILITATOR:

Kerrville Convention and Visitors Bureau (KCVB)
Attn: Katharine Boyette, Community Arts Program Executive Director
2108 Sidney Baker
Kerrville, Texas 78028

16. **INDEPENDENT CONTRACTOR:** In performing services under this Agreement, the relationship between City and Artist and City and Facilitator is that of independent contractor, and the execution of this Agreement does not change the independent status of Artist and Facilitator to City. Artist and Facilitator shall exercise independent judgment in performing their duties under this Agreement and are solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of Artist and Facilitator in the performance of this Agreement shall be construed as making Artist and/or Facilitator the agent(s), servant(s) or

employee(s) of City, or making Artist, Facilitator, or any of their employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, the City provides its employees.

17. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties to this Agreement, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person. It is the express intention of the City and the Artist that any person or entity other than the City or the Artist receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. **VENUE:** The obligations of the parties to this Agreement are performable in Kerr County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Kerr County, Texas or the federal courts for the Western District of Texas.

19. **APPLICABLE LAWS:** This Agreement is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and Federal laws.

20. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

21. **LEGAL CONSTRUCTION:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

22. **EXHIBITS:** The following documents, certain of which are attached hereto, are incorporated herein and made a part of this Agreement:

- a. Exhibit "A" –Photograph of final Artwork (incorporated herein by reference if Artwork is accepted by City)

23. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

24. **CAPTIONS:** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

25. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

26. **ENTIRE AGREEMENT:** The Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except and otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF KERRVILLE

ARTIST

Dalton Rice
City Manager

Eddie Phillips, Member

FACILITATOR


Julie Davis
Position: President/Chief Executive Officer

ATTEST:

Shelley McElhannon
City Secretary

APPROVED AS TO FORM

APPROVED AS TO CONTENT



William L. Tatsch
Assistant City Attorney

Megan Folkerts
Senior Management Analyst



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

SUBJECT: Texas Main Street Locally Designated Program 2024 Contract between the Texas Historical Commission and the City of Kerrville.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 11, 2023

SUBMITTED BY: Megan Folkerts, Senior Management Analyst

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
535.00	535.00	535.00	N/A

PAYMENT TO BE MADE TO: Texas Historical Commission

Kerrville 2050 Item? Yes

Key Priority Area D - Downtown Revitalization

Guiding Principle N/A

Action Item N/A

SUMMARY STATEMENT:

This contract renewal and agreement concerning the Kerrville Main Street Program is entered into between the City of Kerrville and the Texas Historical Commission. The Kerrville Main Street Program is part of a larger program within the Texas Main Street Program, as defined in 13 TAC sec. 19.3(1), wherein the Participant qualifies as a Texas Main Street Small City, as defined in 13 TAC sec. 19.3. The purpose of the Local Program is to assist Participant with the development, revitalization, restoration, and preservation of its historic downtown or commercial neighborhood districts in accordance with the national Main Street Approach. This Agreement shall be governed by Texas Government Code, Section 442.014, and Texas Administrative Code, Title 13, Part 2, Chapter 19. II.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute contract.

ATTACHMENTS:

[*20240123_Contract Texas Main Street 2024 locally designated program.pdf*](#)

TEXAS HISTORICAL COMMISSION

Texas Main Street Locally Designated Program 2024 Contract

I. PARTIES TO THE CONTRACT

This contract and agreement concerning Kerrville Main Street Program (“Agreement”) is entered into between the City of Kerrville (hereinafter referred to as “Participant”) and the Texas Historical Commission (hereinafter referred to as “THC”). Kerrville Main Street Program (hereinafter referred to as “Local Program”) is part of a larger program within the Texas Main Street Program (hereinafter referred to as “TMSP”), as defined in 13 TAC sec. 19.3(1), wherein the Participant qualifies as a Texas Main Street Small City, as defined in 13 TAC sec. 19.3. The purpose of the Local Program is to assist Participant with the development, revitalization, restoration, and preservation of its historic downtown or commercial neighborhood districts in accordance with the national Main Street Approach. This Agreement shall be governed by Texas Government Code, Section 442.014, and Texas Administrative Code, Title 13, Part 2, Chapter 19.

II. NATIONAL MAIN STREET CENTER BRAND AND NETWORK

This Agreement constitutes a designation of Participant as an official Texas Main Street City (as defined in 13 TAC sec. 19.3(2)) and allows the use of the National Main Street Center, Inc. brand, including MAIN STREET AMERICA™ controlled by National Main Street Center, Inc. 53 West Jackson Blvd., Suite 350 Chicago IL 60604. If Participant’s participation in the TMSP ceases, Participant may no longer use the term ‘Main Street’ to describe its local development, restoration, and preservation program; nor utilize or display the trademarks or branding of the National Main Street Center, Inc. The designation as a Texas Main Street City allows for full participation in the TMSP network, which includes eligibility to receive Texas Main Street publications and participate in Texas Main Street networking opportunities. Designated Texas Main Street Cities, such as Participant, shall execute and submit to the TMSP office the National Main Street Center’s Trademark Sublicense Agreement (“TM Sublicense Agreement”), which grants the right to use the registered trademark, logos and brand of National Main Street Center’s membership program - MAIN STREET AMERICA™. Participant hereby agrees to, and shall comply with, all terms and conditions of the TM Sublicense Agreement, which is attached hereto as Exhibit A, and incorporated herein by reference. Additionally, Participant acknowledges and agrees that in the event National Main Street Center develops and/or releases an updated TM Sublicense Agreement (“Updated TM Sublicense Agreement”) during the Term of this Agreement, Participant shall be required to execute, and comply with, the Updated TM Sublicense Agreement or otherwise be subjected to termination pursuant to the terms of VII. (B) below. In the event National Main Street Center develops and/or releases an Updated TM Sublicense Agreement, THC will provide Participant with sixty (60) days’ notice for Participant to consider, prepare and execute an updated Sublicense Agreement. Furthermore, the parties acknowledge and agree that the execution of such Updated TM Sublicense Agreement shall not require amendment of this Agreement and shall become part of this Agreement upon its execution. In the event of conflict between multiple TM Sublicense Agreements, the most recently executed version shall control.

III. RESPONSIBILITIES OF THE PARTICIPANT AND LOCAL PROGRAM

A. Local Program Staffing and Leadership.

In operation of the Local Program, Participant shall employ a full-time paid program manager who will attend at least two professional development segments annually as outlined in subsection B below. A Texas Main Street Urban City (as defined by 13 TAC 19.3(4)) shall additionally employ a full-time assistant program manager who shall also participate in the professional development under subsection B below.

If necessary and subject to TMSP approval, a Texas Main Street Small City may, after the first three years of participating in the TMSP, permit the program manager position to also perform specific economic development, tourism, and other relevant duties while remaining as a full-time paid program manager.

For the purposes of this Agreement, full-time employment means that the program manager works at least forty (40) hours per week dedicated toward the Local Program and downtown revitalization. Employees of the Participant shall be subject to the sole control and direction of the Participant. Participant shall move forward in an efficient manner to fill a program manager vacancy. Participant shall notify the TMSP immediately upon vacancy, identify an interim Local Program contact, and keep TMSP apprised monthly of progress in filling vacancies. Lengthy periods of staff vacancies may demonstrate a failure to adequately staff the program per Stipulation E Probation.

Participant shall establish and maintain a Main Street local advisory board to direct priorities of the program, provide human and fiscal support to program planning and activities, and advocate for the livelihood of the local program. Board will have a chair who is the primary spokesperson for the board and the primary point of contact for program manager. Make-up and duties of this board are to be defined locally by Participant with consultation from local program stakeholders.

B. Professional development.

The program manager will attend at least two professional development opportunities in their entirety, per year, from the list below:

1. Real Places: Preserving Texas History Conference of the THC.
2. TMSP basic training orientation series for new program managers.
3. TMSP annual professional development retreat for all program managers.
4. National Main Street Now Conference.
5. Certification programs of MAIN STREET AMERICA™.
6. Texas Downtown Conference of the Texas Downtown organization.
7. PastForward Conference of the National Trust for Historic Preservation.

With prior THC approval, experienced program managers may request to substitute an equivalent historic preservation, downtown revitalization, or economic development course, for one of the above opportunities. New program managers shall complete the TMSP basic training orientation series within their first three months of employment. If there is an assistant Main Street employee in addition to the program manager/s referenced above, that

person should also attend at least one segment of Main Street professional development annually.

If a replacement program manager is hired during this contract period who has not previously attended TMSP basic training or without significant Main Street knowledge and experience as determined by TMSP, the manager is required to complete one TMSP basic training orientation series. A \$500 training fee shall be charged to Participant for the training series required under these circumstances.

To help ensure an effective Local Program, board members and volunteers are encouraged to attend TMSP educational opportunities or to contact TMSP for on-site training. No training fee is charged for their participation.

C. Commitment.

Participant agrees to carry out their Local Program work according to the Main Street Approach as promulgated by the National Main Street Center and displayed at <https://www.mainstreet.org/mainstreetamerica/theapproach>. Participant agrees to incorporate into their Local Program work, the following Main Street Community Accreditation Standards:

1. Broad-based Community Commitment
2. Leadership & Organizational Capacity
3. Diverse and Sustainable Funding
4. Strategy-Driven Programming
5. Preservation-Based Economic Development
6. Demonstrated Impact & Result

D. Reporting.

To measure progress, Participant shall track reinvestment statistics and quarterly activity in an approved format submitted to the TMSP office by the 10th of the month following the end of each calendar quarter. Even if there has not been reinvestment or activity in a quarter, Participant shall still submit a report noting such. Additionally, Participant shall submit an annual accreditation report that includes an evaluation of the Local Program implementation of the Main Street Community Accreditation Standards outlined in Section III. C. above for the previous calendar year.

E. Probation.

Participant agrees that their Local Program may be placed on probation, which may result in the suspension of TMSP services or possible removal from the TMSP, for any of the following reasons:

1. Failure to submit an annual accreditation report pursuant to Section III. D above;
2. Failure to achieve accreditation objectives more than two (2) consecutive years;
3. Failure to submit activity reports for more than two (2) consecutive quarters;
4. Failure to submit reinvestment reports for more than two (2) consecutive quarters;
5. Failure to adequately staff or fund the program;
6. Failure to abide by this Agreement.

THC shall notify Participant in writing prior to implementing probation in accordance with Texas Administrative Code, Title 13, Part 2, Chapter 19. In the case of probation, Participant will work with the THC's State Coordinator or delegate to overcome any deficiencies. THC may terminate the Local Program's participation in the TMSP if Participant fails to remediate identified deficiencies within a reasonable time. No fees will be refunded in cases of probation and any outstanding fees under this Agreement will remain due. During probationary status, the stipulations called for in sections III and IV of this Agreement may be temporarily altered or suspended upon THC's discretion.

F. National Main Street America™ membership.

Participant shall budget for and maintain membership in the National Main Street Center.

IV. SERVICES TO BE PERFORMED BY TMSP

A. On-site visits and technical expertise.

TMSP services are available to designated Texas Main Street Cities in good standing and will be delivered in accordance with Texas Administrative Code, Title 13, Part 2, Chapter 19 subject to available THC resources. Issues. Services may include, but are not limited to: consultations, trainings, or site visits to address design, organization, promotion, economic vitality, and historic preservation.

B. Assistance Securing a Main Street Manager.

Should a replacement program manager be needed, the TMSP office can assist with elements of the hiring process, including job description examples, job posting options, and interview questions. Upon Participant's request, the TMSP office may assist in the hiring process; however, the responsibility for selection, salary, employment and employee-related legal matters will remain with Participant. Participant is responsible for, and shall hold THC and TMSP harmless from, all acts and omissions of its managers and all of its employees, agents, representatives, contractors and/or subcontractors.

V. GENERAL TERMS AND RESPONSIBILITIES.

A. Confidentiality and Public Information Act.

Notwithstanding any provisions of this Agreement to the contrary, Participant and THC will comply with the Texas Public Information Act, Texas Government Code, Chapter 552, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. THC and Participant agree to notify each other in writing within a reasonable time from receipt of a request for information related to Participant's work under this Agreement. Participant and THC will cooperate in the production of documents responsive to the request. Participant will notify THC within twenty-four (24) hours of receipt of any third-party requests for information that was provided by the State of Texas for use in performing the Agreement. This Agreement and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Subject to the Texas Public Information Act, Participant agrees to maintain the confidentiality of

information received from the State of Texas during the performance of this Agreement, including information which discloses confidential personal information.

B. Dispute Resolution.

The dispute resolution process provided for in Texas Government Code, Chapter 2260, shall be used by THC and Participant to resolve any dispute arising under the Agreement.

If Participant's claim for breach of Agreement cannot be resolved in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Participant shall submit written notice, as required by Chapter 2260, to the individual identified in the Agreement for receipt of notices. Compliance by Participant with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is Participant's sole and exclusive process for seeking a remedy for an alleged breach of Agreement by THC if the parties are unable to resolve their disputes as described above.

Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Agreement by Participant and THC nor any other conduct of any representative of the Participant or THC relating to the Agreement shall be considered a waiver of sovereign immunity to suit by THC or any governmental immunity to which Participant is otherwise entitled under Texas law.

C. Indemnification.

TO THE EXTENT ALLOWABLE BY LAW, PARTICIPANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND THC, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF PARTICIPANT OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT AND THE TM SUBLICENSE AGREEMENT AND/OR UPDATED TM SUBLICENSE AGREEMENT. THE DEFENSE SHALL BE COORDINATED BY PARTICIPANT WITH THE OFFICE OF THE ATTORNEY GENERAL ("OAG") WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PARTICIPANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. PARTICIPANT AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

TO THE EXTENT ALLOWABLE BY LAW, PARTICIPANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS, THC AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY

CLAIMS INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF PARTICIPANT PURSUANT TO THIS AGREEMENT AND/OR UPDATED TM SUBLICENSE AGREEMENT. PARTICIPANT AND THC AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. PARTICIPANT SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY PARTICIPANT WITH THE OAG WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND PARTICIPANT MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG.

D. Independent Contractor.

Participant or Participant's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing goods or services. Participant or Participant's employees, representatives, agents and any subcontractors shall not be employees of THC. Should Participant subcontract any of the services required in this Agreement, Participant expressly understands and acknowledges that in entering into such subcontract(s), THC is in no manner liable to any subcontractor(s) of Participant. In no event shall this provision relieve Participant of the responsibility for ensuring that the services rendered under all subcontracts are rendered in compliance with this Agreement and the TM Sublicense Agreement or Updated TM Sublicense Agreement.

E. Ownership of Intellectual Property.

For the purposes of this Agreement, the term "Work Product" is defined as all reports, analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, knowledge, know-how, ideas, improvements, plans, advice, research, materials, intellectual property or other property developed, produced, or generated in part or in full by THC and/or in cooperation with Participant, in connection with this Agreement. Work Product specifically excludes pre-existing material owned by Participant, or material developed during the Term of this Agreement independently and exclusively by Participant without any THC involvement or contribution, and that does not include or incorporate any Work Product or Work Product components ("Independent Participant Material"). All Work Product generated pursuant to this Agreement is made the exclusive property of THC. All right, title and interest in and to said Work Product shall vest in THC upon creation and shall be deemed to be, and is expressly intended by the parties to be, a work made for hire and made in the course of the services rendered pursuant to this Agreement. To the extent that title to any such Work Product may not, by operation of law, vest in THC, or such Work Product may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to THC. THC shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the Work Product subject matter, and any extensions and renewals thereof.

Furthermore, if and to the extent THC provides Participant any Work Product and/or other property owned by THC ("THC Property") to assist Participant to further the Local Program and the purpose of this Agreement, THC hereby grants Participant, commencing

upon the date that Participant is designated as a Texas Main Street City, a nonexclusive, revocable, worldwide, fully paid, royalty-free, license, for the Term of this Agreement while Participant remains designated as a Texas Main Street City, to reproduce, modify, distribute, publicly perform, publicly display and use the THC Property only to the extent such use is in furtherance of the Local Program. To the extent Participant provides any Independent Participant Material to THC in connection with this Agreement, Participant hereby grants THC, and THC accepts, a nonexclusive, perpetual, irrevocable, worldwide, fully paid, royalty-free license to use, reproduce, copy, modify distribute, publicly perform, publicly display, store, post on the Internet and creative derivative works of such Independent Participant Material, and to sublicense and transfer such Independent Participant Material to third parties to use in accordance with these license terms for THC purposes.

F. State Auditor.

In addition to and without limitation on the other audit provisions of this Agreement, and to the extent applicable, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Participant or any other entity or person receiving funds from the State directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Participant or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Participant or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Participant further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Participant shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Participant and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Participant related to this Agreement.

G. Assignment.

Participant may not assign this Agreement, in whole or in part, and may not assign any right or duty required under it, without the prior written consent of THC. Any attempted assignment in violation of this provision is void and without effect.

VI. CONTRACT AMOUNT

In accordance with Texas Government Code, sec.442.014(d) and 13 TAC sec.19.5(d), Participant shall pay THC a fee in the amount of ** \$535.00 to defray cost of staff time and expenses for services provided under the Local Program. THC shall invoice for the fee and Participant shall tender payment within 60 days.

VII. TERM and TERMINATION

A. Term.

This Agreement begins upon the latest date the Agreement becomes fully executed by individuals who have the authority to bind the party on whose behalf he or she is signing ("Effective Date") and shall expire on December 31, 2024 unless terminated at an earlier date pursuant to subsection B below.

B. Termination.

1. Either party shall have a right to terminate all performances to be rendered under this Agreement by notifying the other party in writing at least ten (10) days in advance of the termination date.
2. In the event Participant refuses or fails to execute any Updated TM Sublicense Agreement pursuant to the terms of Section II. above within sixty (60) days of receipt thereof, THC shall have the right to immediately terminate this Agreement by written notice to the Participant.
3. Upon termination of this Agreement under subsections 1 and 2 above, Participant will no longer be designated as an official Texas Main Street City (as defined in 13 TAC sec. 19.3(2)), and will no longer be allowed the use of any Work Product or THC Property, as defined herein, or the registered trademark, logos and brand of National Main Street Center's membership program MAIN STREET AMERICA™. In such event, Participant agrees to return to THC any Work Product and THC Property in its possession.
4. No funds paid under Section VI. Above shall be refunded in any case of termination.

VIII. CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement shall be in writing and signed by both parties.

IX. APPLICABLE LAW AND VENUE; NO WAIVER; SEVERABILITY

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas.

Nothing in this Agreement shall be construed as a waiver of THC's sovereign immunity or any governmental immunity to which Participant is entitled under Texas law. This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Participant, THC or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to Participant, THC or the State of Texas under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

X. PROHIBITED FOREIGN BUSINESSES

In accordance with Texas Government Code, Chapter 2252, Subchapter F, Participant hereby represents and warrants that it is not a company identified on the lists prepared and maintained under Texas Government Code §§ 806.051 (companies with business operations in Sudan), 807.051 (companies with business operations in Iran), or 2252.153 (companies known to have contracts with or provide supplies or services to a foreign terrorist organization).

Notwithstanding the foregoing, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or to a foreign terrorist organization, is not subject to contract prohibition under this clause. A company claiming such exemption must submit the official copy of the declaration.

XI. FORCE MAJEURE

THC shall not be responsible for performance under this Agreement should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of THC.

Participant shall not be liable to THC for non-performance or delay in performance of a requirement under this Agreement if such non-performance or delay is due to one of the following occurrences, which occurrence must not be preventable through the exercise of reasonable diligence, be beyond the control of Participant, cannot be circumvented through the use of alternate sources, work-around plans, or other means and occur without its fault or negligence: fire; flood; lightning strike; weather damage; earthquake; tornado; hurricane; snow or ice storms; equipment break down; acts of war, terrorism, riots, or civil disorder; strikes and disruption or outage of communications, power, or other utility.

In the event of an occurrence under the above paragraph, Participant will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail, and Participant continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Participant shall immediately notify the THC's State Coordinator by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

XII. NOTICES.

Any notices and/or documents required hereunder shall be deemed to have been duly provided if in writing and delivered personally or by pre-paid guaranteed overnight delivery service, or sent postage prepaid by United States certified mail, return receipt requested. Any such notice shall be effective on the date of delivery if delivered personally, on the next business day following delivery to the guaranteed overnight delivery service if the notice was so delivered and the charges were prepaid, or on the date the recipient signed for the notice if sent by certified mail.

Notices shall be addressed as follows, or at such other address as any party hereto shall notify the other of in writing:

If to THC.:
Texas Historical Commission
P.O. Box 12276
Austin, TX 78711

If to Participant:

THE UNDERSIGNED PARTIES BIND THEMSELVES TO THE FAITHFUL PERFORMANCE OF THIS AGREEMENT.

Authorized Signature
(City Manager, Mayor, or Board Chair)

Date: _____

Signer title: _____

Signer printed name: _____

Signer address: _____

Signer phone: _____

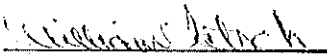
Amy Hammons, State Coordinator
Texas Main Street Program
P.O. Box 12276 Austin, TX 78711
512-463-5758 amy.hammons@thc.texas.gov

Date: _____

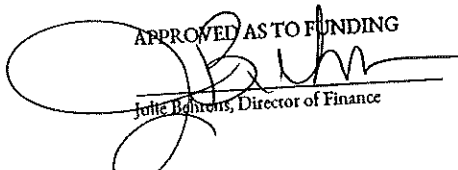
Texas Historical Commission
P.O. Box 12276 Austin, TX 78711
512-463-6100

Date: _____

APPROVED AS TO FORM


William L. Tatsch, Assistant City Attorney

APPROVED AS TO FUNDING


Julie Roberts, Director of Finance

TRADEMARK SUBLICENSE AGREEMENT

This Trademark Sublicense Agreement ("Sublicense Agreement") is entered into between Texas Historical Commission ("**Coordinating Program**") and _____ ("**Sublicensee**"), effective as of the last date written below. For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Background.

A. The National Main Street Center, Inc. ("NMSC") operates a membership program called MAIN STREET AMERICA™. As a part of that program, MAIN STREET AMERICA™ Coordinating Program Membership is available to statewide, regional or citywide organizations that oversee multiple local downtown and neighborhood programs within their service area and work to preserve and revitalize commercial districts. Local Program membership in the MAIN STREET AMERICA™ program is available at the Affiliate or Accredited levels to individual programs or organizations that satisfy the membership eligibility criteria described on the NMSC website (currently located at: <http://www.preservationnation.org/main-street/about-main-street/main-street-america/main-street-america-tier.html#.VmYLY7grLIU>).

B. Organization is a Coordinating Program member of NMSC in good standing and has entered into a Trademark License Agreement with the NMSC which permits to the Coordinating Program the right to sublicense to its Local Programs the use of the NMSC name and trademarks described below.

C. Sublicensee is a Local Program Member in good standing of the MAIN STREET AMERICA™ program at the Affiliate level. Sublicensee is also located within the Coordinating Program's geographic service area. Therefore, Sublicensee has the opportunity to enter into this Trademark License Agreement, which grants certain rights to use the NMSC's name and trademarks, including MAIN STREET AMERICA™ and MAIN STREET®, as described below.

D. The NMSC's parent entity, the National Trust for Historic Preservation ("National Trust"), owns the following registered trademarks, which it has delegated to the NMSC the right to sublicense. NMSC and Coordinating Program have entered into a Trademark Licensing Agreement which grants the Coordinating Program the right to sublicense the following registered trademarks:

Mark	U.S. Registration Number
MAIN STREET	Reg. Nos. 3,365,568 and 2,057,207
NATIONAL MAIN STREET CENTER	Reg. No. 2,013,837

These registered trademarks owned by the National Trust, together with the MAIN STREET AMERICA™ word marks and logos referred to in Section 2.A.1 below, the NATIONAL MAIN STREET CENTER logo referred to in Section 2.A.ii below are referred to herein as the "Trademarks."

E. The Trademarks are well known and recognized by the general public and associated in the public mind with the NMSC and the National Trust. The Coordinating Program and the Sublicensee recognize the mutual benefits that accrue from the Sublicensee's use of the Trademarks in accordance with the terms and conditions of this Sublicense Agreement, including the recognition and credibility brought to the Sublicensee through its use of these Trademarks and the benefit to the Coordinating Program and NMSC from association with high-performing Local Programs.

**National Main Street Center
Local Program Affiliate Member Sublicensing Agreement**

2. Grant of Sub-License.

A. Subject to the terms and conditions of this Sublicense Agreement, the Coordinating Program hereby grants the Sublicensee the non-exclusive right and license to use the Trademarks to identify and promote its participation in the MAIN STREET AMERICA™ program, as well as its relationship and association with the Coordinating Program and NMSC, in connection with the following activities:

- i. **MAIN STREET AMERICA™ word and logo marks.** The Sublicensee's rights to use the MAIN STREET AMERICA™ word mark and the following MAIN STREET AMERICA logo are limited to Sublicensees which are members in good standing at the Affiliate membership level of the MAIN STREET AMERICA™ program:

For use by Local Programs who are Designated Members at the Affiliate Level:



As a Main Street America Affiliate™, INSERT PROGRAM NAME HERE is part of a national network of more than 1,200 neighborhoods and communities who share both a commitment to creating high-quality places and to building stronger communities through preservation-based economic development.

- ii. **NATIONAL MAIN STREET CENTER® word and logo marks.** The Sublicensee's right to use the NATIONAL MAIN STREET CENTER word mark and the following NATIONAL MAIN STREET CENTER logo solely and exclusively to indicate its association with the National Main Street Center:



- iii. **MAIN STREET® word mark.** The Sublicensee's right to use the MAIN STREET trademark is limited to use made to identify Sublicensee and/or its activities, including as part of the name of the Licensee (e.g. "Main Street Iowa"), in connection with commercial district revitalization and related consultation, education, and training.

3. Scope of and Limitations on Use. Use of the Trademarks by the Sublicensee will be subject to the following limitations:

A. Sublicensee must display the Affiliate level MAIN STREET AMERICA membership mark on their website. All uses of the MAIN STREET AMERICA word mark and logo by Sublicensee must follow the specific mark, color, and character usage set forth in the Brand Identity Guidelines attached as Exhibit A, which are incorporated by reference as if fully set forth herein. Sublicensee will not use or develop any different logos or designs (including any symbols or stylized

**National Main Street Center
Local Program Affiliate Member Sublicensing Agreement**

presentations), in connection with the MAIN STREET AMERICA mark or logo. Use of the MAIN STREET AMERICA word mark and logos by Sublicensee is a mandatory condition of membership in the MAIN STREET AMERICA program.

B. The MAIN STREET mark, as part of the name and identity of Sublicensee's organization, programs, and activities, can be used on materials designed to promote the work of Sublicensee (e.g., website, brochures, newsletter, letterhead or other printed promotional materials). The right to use the MAIN STREET mark by the Sublicensee is an optional benefit of membership in the MAIN STREET AMERICA program.

C. All uses of the NATIONAL MAIN STREET CENTER logo by Sublicensee must follow the specific mark, color, and character usage set forth in the Brand Identity Guidelines attached as Exhibit A, which are incorporated by reference as if fully set forth herein. Sublicensee will not use or develop any different logos or designs (including any symbols or stylized presentations) in connection with the NATIONAL MAIN STREET CENTER mark. Use of the NATIONAL MAIN STREET CENTER logo by Sublicensee is an optional benefit of membership in the MAIN STREET AMERICA program.

D. This Sublicense Agreement is subject to the terms, conditions, and limitations of the Trademark License Agreement between NMSC and the Coordinating Program.

E. Sublicensee will not apply to register any of the Trademarks, or any other trademark that incorporates any part of the Trademarks or "National Trust for Historic Preservation." Sublicensee will not state or imply that it owns any such trademarks.

F. The Sublicensee will not use the Trademarks in combination with or in juxtaposition with other trademarks except as may be approved in writing by the NMSC. The Sublicensee will apply and display the ® symbol and the ™ symbol next to or with respect to the Trademarks as directed by the Coordinating Program.

G. Other than as specifically provided herein, Sublicensee is not granted any other rights to use, license or sublicense the Trademarks.

4. Term. This Sublicense Agreement will become effective immediately upon the date of last signature below, and, unless terminated early under Sections 5 or 10, will be effective through December 31, 2024, at which time it may be renewed by mutual written agreement of the parties hereto.

5. Conditions. This Sublicense Agreement between Coordinating Program and Sublicensee is conditioned upon Sublicensee having an active MAIN STREET AMERICA membership at the Affiliate level with NMSC. The requirements of this membership are currently available at: <http://www.preservationnation.org/main-street/about-main-street/main-street-america/main-street-america-tier.html#.VmYLY7grLIU>, and are incorporated herein by reference.

6. Acknowledgment of Ownership. Use of the Trademarks indicates acknowledgment by the Sublicensee of the NMSC's and the National Trust's rights and title to the Trademarks, (i.e. MAIN STREET AMERICA, NATIONAL MAIN STREET CENTER, and MAIN STREET), and that Sublicensee will not at any time do, or permit to be done, any act or thing that will in any way impair the rights of the NMSC or the National Trust. All use of the Trademarks by the Sublicensee will inure to the benefit of the NMSC and the National Trust.

**National Main Street Center
Local Program Affiliate Member Sublicensing Agreement**

7. Good will and promotional value. Sublicensee recognizes and acknowledges the value of good will associated with the Trademarks and agrees that it will not conduct any activity, provide any service, or produce or distribute goods which in any way damages or reflects adversely upon the NMSC or the National Trust.

8. Non-assignment. This Sublicense Agreement is personal to the Sublicensee, and may not be assigned to any other individual, program, organization, or agency. Any attempted assignment will be null and void.

9. Compliance Verification. It is the responsibility of the Sublicensee to verify compliance with the terms of this Sublicense Agreement, and to provide complete and accurate usage reports to the Coordinating Program. If the Coordinating Program or the NMSC has reason to believe that the Sublicensee is in violation of this Sublicense Agreement, the Coordinating Program or NMSC shall have the right to make inquiries with Sublicensee as necessary to determine compliance. In such case, the Sublicensee will cooperate with the Coordinating Program and/or NMSC in its investigation and provide in a timely fashion any and all information that is requested.

10. Termination.

A. Coordinating Program may terminate this Sublicense Agreement if the Sublicensee violates any of the provisions of this Sublicense Agreement or fails to satisfy the membership criteria established by the NMSC for Affiliate Local Programs. Such termination will be effective thirty (30) days after the Coordinating Program sends written notice of such termination to Sublicensee. During this thirty (30) day period, Sublicensee may attempt to cure such violation. If the violation is not cured during this period, the termination will be effective upon the expiration of the thirty (30) day period.

B. This Sublicense Agreement will automatically terminate immediately without any notice required, notwithstanding the above paragraph, if the Coordinating Program or NMSC determines: (i) that sublicensee's actions could negatively affect the goodwill, image, or reputation of the NMSC, the National Trust for Historic Preservation, the Coordinating Program, or any of the Trademarks; (ii) the Sublicensee discontinues all or a significant portion of its business; (iii) the National Trust terminates, revokes, or fails to renew the NMSC's rights to use, license, or sublicense the Trademarks; or (iv) the NMSC terminates, revokes or fails to renew the Coordinating Program's rights to use, license or sublicense the Trademarks.

C. Upon the expiration or early termination of this Agreement, the Sublicensee will discontinue use of the Trademarks and will destroy and delete tangible and electronic documents and files containing any such marks, except for a limited number of copies retained for archival purposes only.

11. Governing Law. This Agreement is entered into in the District of Columbia and will be governed by and construed in accordance with the laws of the District of Columbia, USA, without giving effect to conflict of laws provisions.

12. Annual Report, Notices, Other Communication. Upon request by the Coordinating Program or NMSC, Sublicensee shall submit samples of any materials on which the Trademarks licensed under this agreement were used during the year. Such samples shall be submitted within ten business days of receipt of a written request from the Coordinating Program or NMSC.

**National Main Street Center
Local Program Affiliate Member Sublicensing Agreement**

13. Notices. Any notices which either party is required or may desire to serve upon the other party shall be in writing and may be served either personally or by depositing the same in the mail (first class postage prepaid, certified and return receipt requested) or with a reputable overnight express delivery service (with confirmed delivery, charge prepaid or billed to shipper), addressed to the party to be served as follows, unless a different address is designated in writing by the party to be served. Notice shall also be required to be given by electronic mail on the same date as deposited in the mail. Notice given by mail alone shall not be sufficient.

To Coordinating Program:

Name: Texas Historical Commission
 Address: PO Box 12276
Austin, TX 78711-2276
 Phone: 512-463-5758
 Email: amy.hammons@thc.texas.gov

To Sublicensee:

Name: _____
 Address: _____

 Phone: _____
 Email: _____

14. Successors. This Agreement shall be binding upon, and will inure to the benefit of, the parties and their respective permitted successors and assigns.

15. Modification. No amendment or modification of the terms or conditions of this License Agreement will be valid unless in writing and signed by both parties.

16. Waiver. The failure of either party to partially or fully exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of this Sublicense Agreement. No waiver shall be valid or binding unless in writing and signed by the waiving party.

17. Severability. If any provision of this Sublicense Agreement or the application of any provision hereof to any person or circumstances is held to be void, invalid, or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect and the invalid provision shall be deemed modified to the least degree necessary to remedy such invalidity.

18. Entire Agreement. This Sublicense Agreement is the entire agreement between the parties with respect to the matters referred to herein and it supersedes and replaces all prior and contemporaneous oral and written understandings pertaining to the subject matter hereof.

Coordinating Program

By: _____
 Name, Title

Date: _____

Sublicensee

By: _____
 Name, Title

Date: _____



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

SUBJECT: Ratification of Loop 534 Well, Meadowview Well, and ASR 2 Well Rehabilitations.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 10, 2024

SUBMITTED BY: Stuart Barron, Director of Public Works

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$197,350.94	N/A	N/A	71-7100-5500

PAYMENT TO BE MADE TO: Moy's Water Well Drilling & Services of Texas

Kerrville 2050 Item?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

SUMMARY

The City was required to utilize alternative procurement processes for several projects due to the emergency nature, public health issues, and unforeseen damage involved in both. This is a summary of those procurements. **Meadowview Well:** In August 2023, the Meadowview well quit producing water. The well was pulled in September and it was discovered the column pipe and spider gear/drive shaft were damaged. In October it was decided that the best option would be to move the existing Loop 534 well pump/motor to the Meadowview site and purchase a smaller pump/motor for the Loop 534 well. This was done to minimize the influence the two wells were having on one another. The pump/motor was relocated from Loop 534 to Meadowview and the well was cleared for production in December. Cost for repair \$14,143.59. Again, the "old" Loop 534 well pump/motor was moved to Meadowview site. The scope of work to get the Loop 534 well back in production was approved under emergency conditions due to the public service involved, the necessity to get the well back into production as soon as possible, and the potential impact to the health and safety of the City's residents and water customers. What this meant was that instead of utilizing the City's normal procurement process, City staff immediately procured services and equipment to get this well back into production. The costs included the purchase and installation of new wire, a smaller pump, a motor, and new column pipe. The components were installed and operational in December. Cost for repair: \$101,867.35

ASR 2: During the high water demand period of late summer, ASR II stopped producing water. Moy's Water Well Drilling & Services of Texas was hired to pull the ASR II and determine the problem. Moy's found the column pipe had rusted in two and the pump was hanging from the drive shaft. For the next few weeks the Public Works Dept. evaluated the pros and cons of submersible pumps verses Line Shaft Turbine pumps and the cost of replacing each. PW decided to stay with a Line Shaft Turbine pump. Moy's Water Well Drilling & Services of Texas gave the City a proposal to purchase and install a new pump, 500 feet of 6 inch pipe with new spider gears, and to refurbish the existing discharge head. All work will cost the City \$81,340.00 and should be completed by the end of February. Staff worked together with Moy's Water Well Drilling & Services of Texas to plan and implement the completion of pump/well repair/replacement beginning in August following the pulling of the wells and the diagnostics. The full process took until December to complete the diagnostics, plan, and then determine the total cost for the project with the goal of putting the wells back into service as soon as possible. Due to the emergency nature of the repairs, this project did not go out for bid as a normal public works project would. Chapter 252 of the Texas Local Govt. Code supports this exemption from bidding, based upon the public calamity that requires the immediate appropriation of funds to relieve City residents and customers, to protect the public health or safety, and because of the unforeseen damage. Pursuant to the City's practice, staff is now asking for City Council ratification of these expenditures. Due to the emergency nature, timeline for diagnostics, cost estimates and repair, staff did not have enough information to present these expenditures to Council prior to the expenditures being made. It was necessary to complete these repairs as soon as information and supplies were available. The total cost of unforeseen repairs/replacement of pump is \$197,350.94.

RECOMMENDED ACTION:

Ratify the expense related to well rehabilitation.

ATTACHMENTS:

[*20240123_Estimate ASR2- Rehab Line Shaft.pdf*](#)

[*20240123_Invoice_Moys Loop 534.pdf*](#)

[*20240123_Invoice Moys Meadowview.pdf*](#)

PO Box 837
102256 IH 37
Pleasanton, TX 78064



Moy's Water Well Drilling & Services of Texas

Cell (210) 573-1137
Office (830) 281-2400

To: City of Kerrville Attn: Grant

Estimates are good for 15 Days Date: January 17, 2024

Grant / Stuart,

Good morning. I hope that everyone is doing well. Here are the estimates for both the rehabilitation of the existing line shaft turbine pump and the option of replacing the line shaft with a submersible pump and motor.

Main Yard – ASR 2 –

Conditions of Service

800 GPM @ 450' TDH

Rehabilitate the existing water lube line shaft turbine shaft pump to include:

- 1ea. New Water Lube Line Shaft Turbine Pump
- 500' New 6 inch Black T & C Column Pipe with 1-11/16 inch Shafting, and Brass Drop-In Spiders with Rubber Inserts
- 1ea. Refurbish existing Discharge Head
- 1ea. Reuse existing 150 HP VHS Electric Motor
- 1ea. Labor to Install

Total for Line Shaft Turbine Pump Rehab. \$ 81,340.00

Please call if you have any questions or need any additional information.

Thank you,

Jim Martin
Moy's Water Well Drilling

- Rules regulated by the Texas Department of Licensing and Regulations PO Box 12157, Austin, Texas 78711, (800) 803-9202 or (512) 463-7880
- Prices subject to change, if not accepted within 15 days
- Net due in 30 days
- Any applicable Taxes will be in addition to the above quoted pricing

Moy's Water Well Drilling & Services of Texas, Inc.

PO Box 837
Pleasanton, TX 78064

Office: 830-281-2400

Fax: 830-569-8028

102256 IH 37
Pleasanton, TX 78064

Customer
City of Kerrville Attn: Accounts Payable 701 Main Street Kerrville, Texas 78208

INVOICE

Date	Invoice #
12/12/2023	6153
Job No.	
23-406 Loop 534 Pull 200 Insta...	

Rep	P.O. No.	Terms	Due Date
JAM0		Net 30	1/11/2024

Quantity	Description	U/M	Unit Price	Amount
	Loop 534 Well			
7	11-07-23 Send pump crew and rig to pull customers 200 HP submersible well pump		300.00	2,100.00
7.5	11-08-23 Finish pulling submersible well pump		300.00	2,250.00
8	11-16-23 Send pump crew and rig to brush 8" casing		300.00	2,400.00
7	11-17-23 Finish brushing casing and remove brushing tools		300.00	2,100.00
2	8" Casing Brushes		595.00	1,190.00
9.5	11-20-23 Send pump crew and rig to install new 150 HP submersible pump and motor		300.00	2,850.00
11.5	11-21-23 Finish installing 150 HP submersible pump and motor. Test run. Pump was within parameters and was run to flush		300.00	3,450.00
1	150 HP Franklin submersible electric motor		30,824.00	30,824.00
1	Grundfos #625S1500-7		11,191.00	11,191.00
525	6" X .280w STD A53 BTC Pipe w/ API Couplings Tightened	ft	42.87	22,506.75
2	Simmons #662-SB 6" Ductile Iron Check Valve M x F		1,065.00	2,130.00
520	SCH 20 PVC PIPE for E-Line	ft	0.92	478.40
540	000/3 Double Flat Jacketed Cable (with ground)		32.95	17,793.00

*Sales tax will be charged unless we receive a properly executed resale or exemption certificate.

*Invoices not paid within 15 days of the due date will be subject to a monthly late fee of 1.5%.

*A 3.5% fee will be added to your invoice when using a credit card for payment. Cash, check, and ACH payments are accepted without this fee.

RECEIVED
DEC 14 2023
Accounting

Subtotal

Sales Tax (0.0%)

Total

Payments/Credits

Balance Due

We accept Cash, Check, ACH payments, and all major Credit Cards.

CUSTOMER ACCEPTANCE

x _____ Date _____

THANK YOU FOR YOUR BUSINESS

Please send all payments to:
PO Box 837 Pleasanton, TX 78064

moys@wwstxus.com

Moy's Water Well Drilling & Services of Texas, Inc.

PO Box 837
Pleasanton, TX 78064

Office: 830-281-2400

Fax: 830-569-8028

102256 IH 37
Pleasanton, TX 78064

Customer

City of Kerrville
Attn: Accounts Payable
701 Main Street
Kerrville, Texas 78208

INVOICE

Date	Invoice #
12/12/2023	6153
Job No.	
23-406 Loop 534 Pull 200 Insta...	

Rep	P.O. No.	Terms	Due Date
JAM0		Net 30	1/11/2024

Quantity	Description	U/M	Unit Price	Amount
1	Splice Kit		60.00	60.00
9	2" x 100' Pipe Wrap Tape		30.90	278.10
45	3/4" Stainless Steel Banding Material		1.58704	71.42
28	3/4" Stainless Steel Buckles		1.10	30.80
2	T6750 5 pound container of Better Water Industries 70% Chlorine Tablets		81.94	163.88

RECEIVED
DEC 14 2023
Accounting

*Sales tax will be charged unless we receive a properly executed resale or exemption certificate.

*Invoices not paid within 15 days of the due date will be subject to a monthly late fee of 1.5%.

*A 3.5% fee will be added to your invoice when using a credit card for payment. Cash, check, and ACH payments are accepted without this fee.

Rules Regulated By: The Texas Department of Licensing and Regulations,
P.O. Box 12157, Austin, Texas 78711. 1-800-803-9202, 512-463-7880

Not responsible for any items left past 90 days.

Subtotal \$101,867.35

Sales Tax (0.0%) \$0.00

Total \$101,867.35

Payments/Credits \$0.00

Balance Due \$101,867.35

We accept Cash, Check, ACH payments, and
all major Credit Cards.

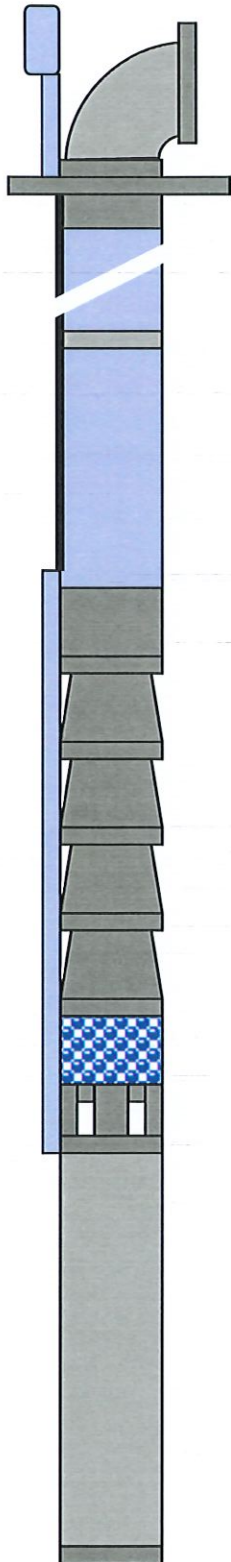
Please send all payments to:
PO Box 837 Pleasanton, TX 78064

moys@wwstxus.com

CUSTOMER ACCEPTANCE

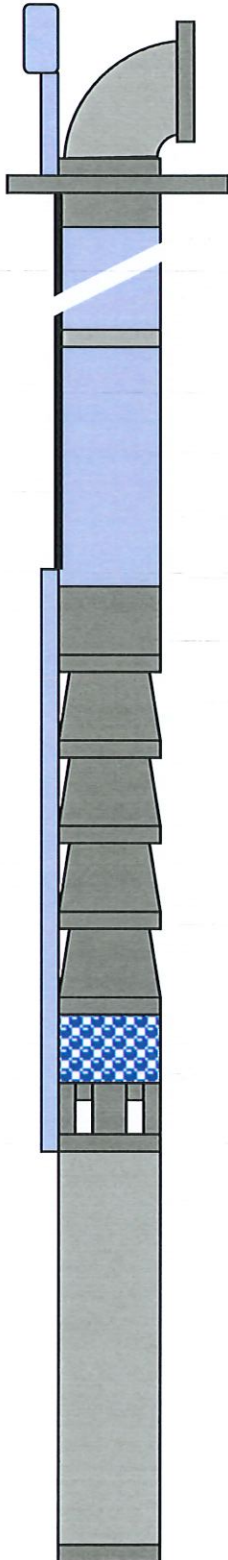
X _____ Date _____
Page 2

THANK YOU FOR YOUR BUSINESS



Submersible Pump Record

Customers Name	City of Kerrville			
Well Number	Loop 534 Well			
Well Data	Casing size	13"	Depth	
	Static level	276'	Pumping level	378'
Control Panel	Manufacturer			
	Fuses brand & size			
	Heater			
	Sub-trol Equip			
Column Assy.	Column size	6"	Depth	525'
	Column length	21'	Num. Jts	25
	Wire size	#000 AWG		
Electric Motor	Manufacturer	Franklin	Size	8"
	S/N number	23K19-17-001428	PH	3
	Hp	150	Volts	460
	AMPS	T1 184	T2 18	T3 183
Pump Assy.	Manufacturer	Grundfos		
	Model	625S1500-7		
	GMP	@ TDH		
	Set Depth	525'	S/N	
Installer	Brandon - RO			
Notes	Low as can go			
Date Installed	11-21-2023			



Submersible Pump Record

Customers Name	City of Kerrville			
Well Number	Loop 534 Well			
Well Data	Casing size	13"	Depth	
	Static level	276'	Pumping level	378'
Control Panel	Manufacturer			
	Fuses brand & size			
	Heater			
	Sub-trol Equip			
Column Assy.	Column size	6"	Depth	525'
	Column length	21'	Num. Jts	25
	Wire size	#000 AWG		
Electric Motor	Manufacturer	Franklin	Size	8"
	S/N number	23K19-17-001428	PH	3
	Hp	150	Volts	460
	AMPS	T1 184	T2 18	T3 183
Pump Assy.	Manufacturer	Grundfos		
	Model	625S1500-7		
	GMP	@ TDH		
	Set Depth	525'	S/N	
Installer	Brandon - RO			
Notes	Low as can go			
Date Installed	11-21-2023			

Moy's Water Well Drilling & Services of Texas, Inc.

PO Box 837
Pleasanton, TX 78064

Office: 830-281-2400

Fax: 830-569-8028

102256 IH 37
Pleasanton, TX 78064

Customer
City of Kerrville Attn: Accounts Payable 701 Main Street Kerrville, Texas 78208

INVOICE

Date	Invoice #
12/12/2023	6151
Job No.	
23-407 Meadowview Install 150 ...	

Rep	P.O. No.	Terms	Due Date
JAM0		Net 30	1/11/2024

Quantity	Description	U/M	Unit Price	Amount
	Meadowview Lane - 200 HP Submersible			
12	11-09-23 Go to Loop 534 Well Site and load onto a trailer all of the pump equipment that was originally installed here and move it over to the Meadowview Lane Site. Set up and run first joint in the well.		300.00	3,600.00
15	11-10-23 Install all of the column pipe (525' of 6") and PVC E-Line Tube. Install the new discharge head and bolt it up to the existing discharge piping. Test run. Pump was within parameters and was run to flush.		300.00	4,500.00
1	Fabricate one custom submersible discharge head		5,100.00	5,100.00
520	SCH 20 PVC PIPE	ft	0.92	478.40
10	2" x 100' Pipe Wrap Tape		30.90	309.00
70	3/4" Stainless Steel Banding Material		1.58704	111.09
41	3/4" Stainless Steel Buckles		1.10	45.10

RECEIVED
DEC 14 2023
Accounting

***Sales tax will be charged unless we receive a properly executed resale or exemption certificate.**

***Invoices not paid within 15 days of the due date will be subject to a monthly late fee of 1.5%.**

***A 3.5% fee will be added to your invoice when using a credit card for payment. Cash, check, and ACH payments are accepted without this fee.**

Rules Regulated By: The Texas Department of Licensing and Regulations,
P.O. Box 12157, Austin, Texas 78711. 1-800-803-9202, 512-463-7880

****Not responsible for any items left past 90 days.****

Subtotal	\$14,143.59
Sales Tax (0.0%)	\$0.00
Total	\$14,143.59
Payments/Credits	\$0.00
Balance Due	\$14,143.59

We accept Cash, Check, ACH payments, and all major Credit Cards.

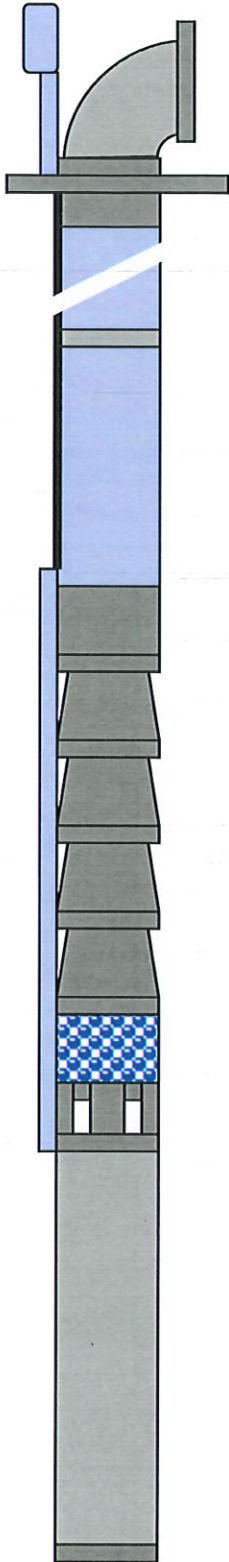
CUSTOMER ACCEPTANCE

x _____ Date _____

THANK YOU FOR YOUR BUSINESS

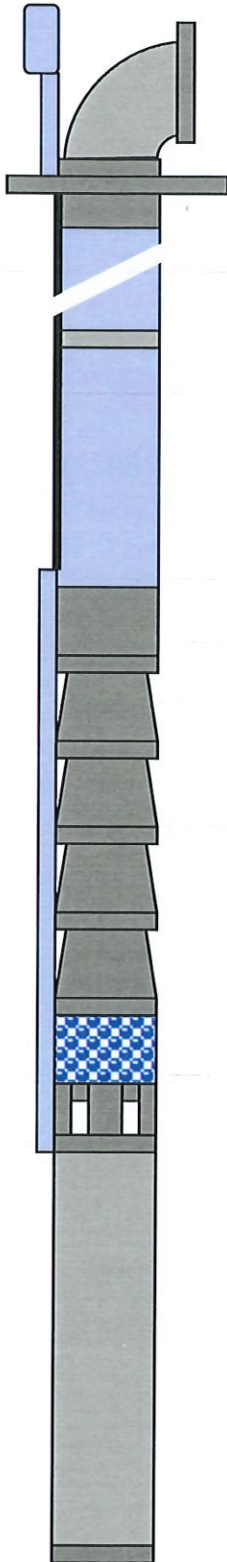
Please send all payments to:
PO Box 837 Pleasanton, TX 78064

moys@wwstxus.com



Submersible Pump Record

Customers Name	City of Kerrville			
Well Number	Meadowview Well			
Well Data	Casing size	12"	Depth	
	Static level	219'	Pumping level	267'
Control Panel	Manufacturer			
	Fuses brand & size			
	Heater			
	Sub-trol Equip			
Column Assy.	Column size	6"	Depth	525'
	Column length	21'	Num. Jts	25
	Wire size	#350 MCM		
Electric Motor	Manufacturer	Grundfos	Size	8"
	S/N number	524839	PH	3
	Hp	200	Volts	460
			RPM	3450
	AMPS	T1	T2	T3
Pump Assy.	Manufacturer	Goulds		
	Model	9 RCLC 5 stage		
	GMP	750	@ TDH	742' TDH
	Set Depth	525'	S/N	
Installer	Brandon - RO			
Notes				
Date Installed	11-10-2023			



Submersible Pump Record

Customers Name	City of Kerrville			
Well Number	Meadowview Well			
Well Data	Casing size	12"	Depth	
	Static level	219'	Pumping level	267'
Control Panel	Manufacturer			
	Fuses brand & size			
	Heater			
	Sub-trol Equip			
Column Assy.	Column size	6"	Depth	525'
	Column length	21'	Num. Jts	25
	Wire size	#350 MCM		
Electric Motor	Manufacturer	Grundfos	Size	8"
	S/N number	524839	PH	3
	Hp	200	Volts	460
			RPM	3450
	AMPS	T1	T2	T3
Pump Assy.	Manufacturer	Goulds		
	Model	9 RCLC 5 stage		
	GMP	750	@ TDH	742' TDH
	Set Depth	525'	S/N	
Installer	Brandon - RO			
Notes				
Date Installed	11-10-2023			



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

SUBJECT: City Council workshop minutes January 09, 2024.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** December 19, 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 January 09, 2024 at 5:00 p.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240123_Minutes CC workshop 1-09-24.pdf](#)

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

**JANUARY 09, 2024 5:00 PM
701 MAIN STREET, KERRVILLE, TEXAS**

CALL TO ORDER: On January 09, 2024 at 5:01 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:

Dalton Rice, City Manager
Mike Hayes, City Attorney
Michael Hornes, Asst City Manager
Kim Meismer, Asst City Manager
Shelley McElhannon, City Secretary

VISITOR(S) PRESENT:

Katie Milton-Jordan, Kerrville Economic Development Corporation
Gil Salinas, Kerrville Economic Development Corporation

1. **PUBLIC COMMENT:** None

2. **DISCUSSION, CONSIDERATION, POSSIBLE ACTION:**

2A. Kerrville Economic Development Corporation quarterly report.

Gil Salinas and Katie Milton-Jordan provided information and responded to questions.

3. **EXECUTIVE SESSION:** Executive Session was not called nor convened.

3A. Economic Development projects update:

- Megaacrete Real Estate, LLC (f/k/a Litecrete Inc.) (551.071, 551.087)

Dalton Rice provided update for Megaacrete in open session.

4. **ACTION ON ITEMS DISCUSSED IN EXECUTIVE SESSION IF ANY:** N/A

ADJOURN. The workshop adjourned at 5:26 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 January 09, 2024.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 9, 2024

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 January 09, 2024 at 6:00 p.m.

RECOMMENDED ACTION:

Approve minutes as presented.

ATTACHMENTS:

[20240123_Minutes CC meeting 1-09-24.pdf](#)

**CITY COUNCIL MINUTES
REGULAR MEETING**

**KERRVILLE, TEXAS
JANUARY 09, 2024 6:00 PM**

On January 09, 2024 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:

Dalton Rice, City Manager
Mike Hayes, City Attorney
Kim Meismer, Asst City Manager
Michael Hornes, Asst City Manager
Shelley McElhannon, City Secretary
Stuart Barron, Executive Director

Julie Behrens, Director of Finance
Stephen Boyd, Asst Fire Chief
Stuart Cunyus, Public Information Officer
Guillermo Garcia, Executive Director
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.

1. ANNOUNCEMENTS OF COMMUNITY INTEREST:

Community announcements provided by Stuart Cunyus and Councilmember Brenda Hughes.

2. PRESENTATION(S):

2A. Commendations for outgoing Board members of the Library Advisory Board, and the Recovery Community Coalition.

Mayor Eychner presented commendations to Megan Bean and Melinda Kay Stewart for the Library Advisory Board, and Joseph Duprie, Thomas Hurt, Joseph Piszczor, and Cynthia Tate for the Recovery Community Coalition. Megan Bean and Joseph Duprie were in attendance.

2B. Life Saving Bar Presentation to Kerrville Police Department Officer David Cordova.

Police Chief Chris McCall presented Officer David Cordova with the Life Saving Bar, and recognized Officer Cordova's service in resuscitating an unresponsive individual.

3. VISITORS FORUM:

The following person(s) spoke:

- Anthony Farmer

4. CONSENT AGENDA:

Shelley McElhannon read Consent Agenda captions into record.

Councilmember Roman Garcia requested to pull item 4A. Councilmember Jeff Harris made a motion to approve Consent Agenda items 4B, 4C, 4D, and 4E, seconded by Councilmember Hughes. The motion passed 5-0.

4B. Resolution No. 01-2024. A Resolution ordering that a General Election be held on May 4, 2024, for the election of Mayor, and two Councilmembers for Place 3 and Place 4; providing details relating to the holding of such election; authorizing the Mayor to enter into an agreement with the Kerr County Elections Officer for the holding of the election; and providing other matters related to the subject.

4C. Purchase of Dump Truck for City's Public Works Department in the amount not to exceed \$150,000.00.

4D. City Council workshop minutes, December 12, 2023.

4E. City Council meeting minutes, December 12, 2023.

END OF CONSENT AGENDA.

4A. Ordinance No. 2023-34, second reading. An Ordinance amending the City's Fiscal Year 2024 (FY 2024) budget to allocate funds to be used for expenses related to the City's preparation for and response to the Total Solar Eclipse event, which will take place April of 2024.

Shelley McElhannon read Ordinance No. 2023-34 caption into record during Consent Agenda caption readings.

Councilmember Garcia made a motion to adopt Ordinance No. 2023-34, seconded by Councilmember Joe Herring, Jr. The motion passed 5-0.

5. CONSIDERATION AND POSSIBLE ACTION:

5A. Review Report from the Charter Review Commission regarding recommendation of amendments to City Charter.

Shelley McElhannon read item 5A caption into record.

Mike Hayes provided information and summarized twenty-six amendments, reviewed propositions A through J, and outlined next steps; and responded to questions.

Summary of recommendations:

1. Amend Section 1.02 replace "competent" with "appropriate"
2. Delete Section 1.03
3. Amend Section 1.05 address legislative changes to state's annexation law
4. Amend Section 1.06 City's authority over disannexation of property, simply language
5. Amend Section 1.08 required notice of damages or injuries
6. Amend Section 2.02 subsection c, as to grammar for clarity
7. Amend Section 2.03 subsection a, increase length of Council to three years
8. Amend Section 2.04 clarification when a Councilmember must forfeit office
9. Amend Section 2.05 subsections a and c, add definition and comma
10. Amend Section 3.04 conduct required of Councilmember
11. Amend Section 4.02 change required vote from plurality to majority
12. Amend Section 4.03 correct punctuation
13. Amend Section 5.10 subsections a and c, add definition and comma
14. Amend Section 6.01 correct punctuation
15. Amend Section 6.02 clarification
16. Amend Section 6.03 (i) provide super-majority of entire Council to approve appointment and removal of City Manager
(ii) remove timing restrictions as to removal
(iii) address gender and grammar

17. Amend Section 6.05 correct punctuation
18. Amend Section 7.01 subsection d, (i) provide super-majority of entire Council to approve appointment and removal of City Attorney
(ii) remove timing restrictions as to removal
19. Amend Section 8.01 subsection c, adjust timing for submission of City Manager's proposed budget to Council
20. Amend Section 8.04 subsection c, typographical error
21. Amend Section 9.02 address gender
22. Delete Article X
23. Delete Article XI
24. Delete Section 12.01
25. Delete Section 12.03
26. Amend Section 12.05 remove obsolete term
27. Amend Section 12.06 subsection a1, correct punctuation

Mayor Eychner requested speakers limit time to three minutes.
The following person(s) spoke:

- Tim Summerlin
- Jaclyn Hall
- Bill Fitch
- Glenn Andrew
- Kim Clarkson
- Barbara Dewell-Ferguson
- John Harrison
- Bud Irving Hart
- Ian Daugherty

Councilmember Garcia made a motion to provide direction to the City Attorney by adopting the proposed amendments to the City Charter with these changes: add a semi-colon on proposed amendment number four after City; to remove proposed amendment number seven regarding the term limits; to remove proposed amendment number nine regarding compensation amount; to remove proposed amendment number eleven regarding a majority vote instead of a plurality vote; to change proposed amendment number twelve, (*I don't know if we are adding or taking away the commas, clarification, my proposal is to strike the two commas*); to strike proposed amendment number sixteen with regarding a four-fifths vote to appoint or remove a City Manager; to strike proposed amendment number eighteen which is to appoint or remove a City Attorney. Mayor Eychner called for a second, with no second. Motion died for lack of second.

Councilmember Garcia made a motion to approve all of them that I don't object with, and then if a Councilmember wants to make a motion to approve all of the ones that I did not include, that way my vote can reflect an opposition on those; so I move to provide direction to the City Attorney to prepare an Ordinance on the proposed amendments for 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27. Mayor Eychner called for a second, with no second. Motion died for lack of second.

Councilmember Herring made a motion to accept the recommendations from the Charter Review Commission in its entirety and let the voters of our Community make those decisions as previous Charter Review Commissions have done, seconded by Councilmember Hughes. Councilmember Garcia clarified "*let the voters decide*", which Councilmember

Herring advised was a side comment. The motion passed 4-1, with Mayor Eychner, Councilmember Harris, Councilmember Herring, and Councilmember Hughes voting in favor, and Councilmember Garcia opposed.

6. **EXECUTIVE SESSION:** Executive Session not called nor convened.

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

8. **ITEM(S) FOR FUTURE AGENDAS:**
Councilmember Garcia – Pending agenda list.

Dalton Rice provided closing remarks to City Council.

ADJOURN. The meeting adjourned at 7:33 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: Ordinance No. 2024-01. An Ordinance ordering a Special Election to be held on May 4, 2024, for the purpose of submitting propositions to the voters for proposed amendments to the City Charter; said Election to be held in conjunction with the City's General Election; establishing early voting times and places; and providing for public review.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:**

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:

RECOMMENDED ACTION:

Approve Ordinance No. 2024-01 on first reading.

Last year, City Council established a Charter Review Commission ("CRC") in accordance with Section 12.06 of the Kerrville City Charter ("Charter"). Thereafter, Council appointed members to the CRC and charged it with reviewing the Charter. The CRC completed its review of the Charter and submitted its **Report of the 2023 Kerrville Charter Review Commission** ("Report") at a Council meeting held on December 12, 2023. At a meeting held on January 9, 2024, Council expressed a desire to move forward with calling a special election at the next uniform election date, which occurs on May 4, 2024, for the purpose of allowing City voters to vote on the proposed amendments.

This is the first reading of Ordinance No. 2024-01, which will order a special election for a vote on amendments to the Charter.

**CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2024-01**

AN ORDINANCE ORDERING A SPECIAL ELECTION TO BE HELD ON MAY 4, 2024, FOR THE PURPOSE OF SUBMITTING PROPOSITIONS TO VOTERS FOR PROPOSED AMENDMENTS TO THE CITY CHARTER; SAID ELECTION TO BE HELD IN CONJUNCTION WITH THE CITY'S GENERAL ELECTION; ESTABLISHING VOTING TIMES AND PLACES; AND PROVIDING FOR PUBLIC REVIEW

WHEREAS, Section 12.06 of the Charter of the City of Kerrville, Texas ("Charter"), requires City Council to appoint a Charter Review Commission ("CRC") every five years for the purpose of reviewing the Charter; and

WHEREAS, in August 2023, City Council created the CRC, appointed its members, and charged it with reviewing and proposing amendments to the Charter; and

WHEREAS, the CRC held seven meetings, all of which were open to the public and one that included a public hearing; and

WHEREAS, the CRC prepared and presented its written report to Council in a public meeting, said report titled *Report of the 2023 Kerrville Charter Review Commission* ("Report"), which specified proposed Charter amendments to City Council; and

WHEREAS, Council listened to a presentation from the Chair of the CRC regarding the Report and then reviewed the proposed amendments and the rationale for such amendments as found within the Report; and

WHEREAS, after considering the Report Council believes that Kerrville voters, in accordance with Section 9.004 of the Texas Local Government Code, should vote on the amendments as specified by the Report, in the form of propositions, at the next uniform election date to be held on May 4, 2024; and

WHEREAS, during the time leading up to the May 4, 2024, election, Council believes it necessary to make the amendments available for public review on the City's website, in the office of the City Secretary, and at the Butt-Holdsworth Memorial Library; and

WHEREAS, City Council finds it in the public interest to order a special election to be held in conjunction with next uniform election date on May 4, 2024, for a vote of the electors as to proposed amendments to the Charter;

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

SECTION ONE. City Council accepts the *Report of the 2023 Kerrville Charter Review Commission*.

SECTION TWO. Council orders that a special election be held by the City of Kerrville, Texas ("City") on May 4, 2024. This election will be held in conjunction with the City's general election on same date for the election of Mayor and Councilmember Places 3 and 4. As part of the election, ballot propositions will be submitted to the qualified voters of the City for proposed amendments to the Charter, in accordance with applicable provisions of the City Charter and State law.

SECTION THREE. Should the voters approve the amendment to increase the term of each Councilmember from two years to three years (*see* Measure D, an amendment to Section 2.03, below), the person elected mayor following the May 4, 2024 election shall begin serving a three-year term. The remaining places for each councilmember will begin serving three-year terms at the next respective elections.

SECTION FOUR. The following measures, with blue, underlined language being additions (added) to the Charter and strike-through language being deletions (~~deleted~~) from the Charter, shall be submitted to the qualified voters of the City at the election in the form of the propositions as provided for in Section Five, below, and in accordance with Section 9.004 of the Texas Local Government Code and other applicable laws:

MEASURE A

Section 1.02. Enumerated Powers not Exclusive.

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but, in addition, to the powers enumerated therein or implied thereby, or appropriate to the exercise of such powers, it is intended that the City of Kerrville shall have, and may exercise, all powers of local self-government, provided by the Constitution and laws of the State of Texas, as it is ~~competent~~ appropriate for this Charter to specifically enumerate. All powers of the City, whether expressed or implied, shall be exercised in the manner prescribed by this Charter, or if not prescribed therein, then in the manner provided by ordinance or resolution of the Council.

Section 1.06. ~~Deannexation~~ Disannexation.

City Council ~~Whenever there exists within the corporate limits of the City of Kerrville any territory not suitable or necessary for City purposes, the Council may, upon a petition signed by a majority of the qualified voters residing in such territory, if the same be inhabited, or without any such petition if the same be uninhabited,~~ by ordinance duly passed by a majority vote of all the Councilmembers, may ~~discontinue~~ any said territory as a part of ~~said~~the City; ~~said the petition and~~ ordinance shall specify accurately the metes and bounds of the territory ~~sought~~ to be eliminated from the City and shall contain a plat designating such territory so that the same can be definitely ascertained; and when ~~said the~~ ordinance has been duly passed, the same shall be entered upon the minutes and records of ~~said the~~ City, and from and after the entry of such ordinance, ~~said the~~ territory shall cease to be a part of ~~said the~~ City, but ~~said the~~ territory shall still be liable for its pro rata share of any debts incurred while ~~said the~~ area was a part of ~~said the~~ City.

Section 2.02. Qualifications for Councilmembers. ...

- c. Shall be a resident of the City for at least twelve (12) consecutive months preceding the election day; provided, however, that any person who shall have been a resident for a period of not less than twelve (12) consecutive months immediately preceding the election of any territory not formerly within the corporate limits of the City, but which ~~is~~ has been annexed under the provision of this charter, shall be eligible for said office; ...
-

Section 3.04. Council Rules.

The Council shall be the judge of the election and qualifications of its members, and in such cases, shall have the power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the Council in any such case shall be subject to review by the courts. The Council shall determine its own rules and order of business and keep a ~~journal~~ record of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly ~~behavior~~ conduct where such conduct occurs at a meeting or event involving the Council; and by vote of not less than a majority of all its members, expel from a meeting a member for disorderly conduct for the violation of its rules; but no member shall be expelled from a meeting unless notified of the charge against him and given an opportunity to be heard in his own defense. As used in this section, the definition of "disorderly conduct" has the meaning defined by the Texas Penal Code.

Section 4.03. - Application for Candidacy.

Any person, who lawfully qualifies and is a registered voter, may file an application for election for a Place on the City Council. ...

Section 5.10. Result of Recall Election.

- a. If a majority of the votes cast at a recall election shall be “No”, that is against the recall of the Councilmember named on the ballot, the Councilmember shall continue in office for the remainder of his/her unexpired term, subject to recall as provided herein. If a majority of the votes cast at such election be “Yes”, that is for the recall of the Councilmember named on the ballot, the Councilmember shall, regardless of any technical defects in the recall petition, be deemed removed from office upon passing of the resolution canvassing the election, and the vacancy shall be filled in accordance with Section 2.04 above. As used in this section, “technical defects” shall mean an inadvertent or scrivener’s error in the preparation or filing of the petition. ...
 - c. A Councilmember who is recalled is not eligible for appointment to Council in the period between the recall vote and the next election or, qualified for placement on the ballot for the immediately ensuing election.
-

Section 6.01. City Manager.

The Council shall appoint an officer whose title shall be City Manager and who shall be chief executive and the head of the administrative branch of the City government. By written notice to City Council, the City Manager shall designate, a qualified City executive to exercise the powers and perform the duties of city manager during periods of his or her temporary absence or disability. ...

Section 12.02. Personal Financial Interest.

The City Council, as well as officers and employees of the City, shall comply with state law regarding personal, financial, or conflicting interests, including Chapter 171 of the Texas Local Government Code.

Section 12.05. Power of the City to Enforce Ordinances.

The City may enforce its ordinances by fines not exceeding limits established by state statutes, and may also provide by ordinance for the commutation of such fines by labor ~~in a work house or~~ on any public work or place in the City, but no ordinance shall provide a lesser penalty than is prescribed for a like offense by the laws of the state. Provisions may also be made by ordinance for the collections of fines imposed and executions issued in civil cases.

Section 12.06. Review of Charter; Charter Review Commission. ...

1. Consider the operation of the City government under the Charter and determine whether any Charter sections require revision. To this end, at least one public hearing shall be held, and the Commission shall have the power to compel the attendance of any officer or employee of the City and to require the submission of any of the City records which it may deem necessary to the conduct of such hearing.

MEASURE B

~~Section 1.03. Provisions Relating to Assignment, Execution, and Garnishment.~~

~~The property, real and personal, belonging to the City shall not be liable to be sold or appropriated under any writ of execution or cost bill. The funds belonging to the City, in the hands of any person, firm or corporation, shall not be liable to garnishment; nor shall the City be liable to garnishment on account of any debt it may owe or funds or property it may have on hand or owing to any person. Neither the City nor any of its officers or agents shall be required to answer any such writ of garnishment on any account whatever. The City shall not be obligated to recognize any assignment of wages or funds by its employees, agents, or contractors.~~

Section 1.05. Annexation of Territory.

Subject to state law, ~~The~~ City Council may by ordinance annex territory lying adjacent to the City, with ~~or without~~ the consent of the inhabitants in such territory, or owners thereof, ~~not inconsistent with the Constitution and Statutes of the State of~~

~~Texas or the United States of America.~~ City Council may unilaterally annex territory but only in accordance with state law.

~~ARTICLE X. CONDEMNATION AND SPECIAL ASSESSMENTS~~

~~Section 10.01. Power of Condemnation and Special Assessments.~~

~~The City Council shall have the power, not inconsistent with state laws, as amended from time to time, to acquire property by condemnation and to provide payment of all or part of the costs of public improvements by levying and collecting of special assessments upon properties specially benefited.~~

~~Section 10.02. Procedures for Condemnation and Assessing.~~

~~The City Council, through the passing of ordinances as may be required, shall formulate the procedures for condemnation and for assessing and collecting special assessments.~~

~~ARTICLE XI. PUBLIC UTILITIES~~

~~Section 11.01. Franchises Powers of the City Council.~~

~~The City Council shall have power by ordinance to grant, amend, renew, and extend all franchises, and to regulate all public utilities of every character within the City of Kerrville, and for such purposes is granted full power. No public utility franchise shall be transferred except upon the approval of the City Council expressed by ordinance; and copies of all transfers and mortgages or other documents affecting the title or use of public utilities shall be filed with the City Manager within ten (10) days after the execution thereof. Such franchise shall not be transferred indirectly through the acquisition of the capital stock of the grantee company by another corporation, except through the approval by City Council and the filing of all documents relating to the purchase of such stock, including the corporation affiliations of the purchasing company.~~

~~Section 11.02. Term and Plan of Purchase.~~

~~Any public utility franchise may be terminated by ordinance at specified intervals of not more than five (5) years after the beginning of operation, whenever the City shall determine to acquire by condemnation or otherwise the property of such utility necessarily used in or conveniently useful for the operation thereof within the City~~

~~limits. The method of determining the price to be paid for the public utility property shall be fixed in the ordinance granting the franchise.~~

~~Section 11.03. Right of Regulation.~~

~~All grants, renewals, extensions, or amendments of public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the City:~~

- ~~a. To repeal the same by ordinance at any time for misuse or nonuse, or for failure to begin construction within the time prescribed or otherwise to comply with the terms prescribed.~~
- ~~b. To require proper and adequate extension of plan and service, and the maintenance of the plant and fixtures at the highest practicable standard of efficiency.~~
- ~~c. To establish reasonable standards of service and quality of service and quality of products and prevent unjust discrimination in service or rates.~~
- ~~d. To prescribe the form of accounts and at any time to examine and audit the accounts and other records of any such utility and to require annual and other reports by each such public utility provided, that if a public service commission or any other authority shall be given the power by law to prescribe the forms of accounts for public utilities throughout the state or throughout any district of which the City is a part, the forms so prescribed shall be controlling so far as they go, but the Council may prescribe other and more detailed forms for the utilities within its jurisdiction.~~
- ~~e. To impose such other regulations as may be conducive to the safety, welfare, and accommodation of the public.~~

~~Section 11.04. Consent of Property Owners.~~

~~The consent of abutting and adjacent property owners shall not be required for the construction, extension, maintenance or operation of any public utility, but any property owner shall be entitled to recover from the owner of such public utility the actual amount of damages to such property on account thereof less any benefits received therefrom, provided suit is commenced within two (2) years after the project is completed.~~

~~Section 11.05. Revocable Permits.~~

~~Permits revocable at the will of the Council for such minor or temporary public utility privileges as may be specified by general ordinance may be granted and revoked by the Council from time to time in accordance with the terms and conditions to be prescribed thereby; and such permits shall not be deemed to be franchises as the term~~

~~is used in this Charter. Such general ordinance, however, shall be subject to the same procedure as an ordinance granting a franchise and shall not be passed as an emergency measure.~~

~~Section 11.06. Extensions.~~

~~All extensions of public utilities within the City limits shall become a part of the aggregate property of the public utility, shall be operated as such, and shall be subject to all obligations and reserved rights contained in this Charter and in any original grant hereafter made. The right to use and maintain any extension shall terminate with the original grant and shall be terminable as provided in Section 13.03. In case of an extension of a public utility operated under a franchise hereafter granted, such right shall be terminable at the same time and under the same conditions as the original grant.~~

~~Section 11.07. Other Conditions.~~

~~Every public utility franchise hereafter granted shall be held subject to all the terms and conditions contained in the various sections of this article, whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, except as specifically stated, the discretion of the Council or the electors of the City in imposing terms and conditions in connection with any franchise grant.~~

~~Section 11.08. Franchise Records.~~

~~Every public utility and every owner of a public utility franchise shall file with the City, as maybe prescribed by ordinance, certified copies of all franchises owned or claimed, or under which such utility is operated. The City shall compile and maintain a public record of utility franchises and of all public utility fixtures in the streets of the City.~~

~~Section 11.09. Accounts of Municipally Owned Utilities.~~

~~Accounts shall be kept for each public utility owned or operated by the City and the City Council shall publish annually notice of the availability of reports and independent audits concerning such accounts, and shall display the entirety of such reports and audits on the City's website, at its library, and in the office of the City Secretary.~~

~~Section 12.01. Publicity of Records.~~

~~All records of the City, except those protected by executive sessions, or state and federal statutes, shall be open to inspection by any person during the regular posted office hours of the City Hall and in accordance with the Texas Public Information Act.~~

~~Section 12.03. Official Bonds.~~

~~The Director of Finance, and such other officers or employees as the Council may by general ordinance require so to do, shall give bond in such amount and with such surety as may be approved by the Council. The premiums on such bonds may be paid by the City.~~

MEASURE C

Section 1.08 Notice of Damage or Injury Required.

- a. The City of Kerrville shall never be liable for any personal injury, whether resulting in death or not, unless the person injured or someone in his or her behalf, or in the event the injury results in death, the person or persons who may have a cause or action under the law by reason of such death or injury, shall file a notice in writing with the City Manager within ninety (90) days after same has been received, stating specifically in such notice when, where and how the exact injury occurred and the full extent thereof, together with the amount of damages claimed or asserted. These notice requirements do not apply if the City has actual notice that death has occurred or that the claimant has received some injury. Further, should the claimant provide good cause for failure to comply with the notice requirements then these notice requirements shall not apply.
- b. The City Kerrville shall never be liable for any claim for damage or injury to personal property unless the person whose personal property has been injured or damaged or someone in his or her behalf, shall file a claim in writing with the City Manager within ninety (90) days after said damage or injury has occurred and the full extent thereof, and the amount of damage sustained. The City shall never be liable for any claim for damage or injury to real property caused by the negligent act or omission of its officers, servants, agents, or employees, unless the person whose real property has been injured or damaged or someone in his or her behalf, files a claim in writing with the City Manager within ninety (90) days after said damage or injury has occurred, stating specifically when, where and how the injury or damage occurred and the amount of damage claimed. These notice requirements do not apply if the City has actual notice that the claimant's property has been damaged. Further,

should the claimant provide good cause for failure to comply with the notice requirements then these notice requirements shall not apply.

MEASURE D

Section 2.03. Term of Office.

- a. The members of the City Council shall hold their offices for a term of ~~two~~ three years and until their successors have been elected and duly qualified in accordance with this Charter. Five Councilmembers will be elected at large, two in one year for Places One and Two; ~~and the following year, three~~ two will be elected for Places Three, ~~and~~ Four the next year; and the ~~and~~ Mayor, ~~respectively~~ will be elected the next year. ...

Section 2.04. Vacancies. ...

- d. Vacancies in the City Council, including a vacancy resulting from a recall election, shall be filled by the Council ~~for the remainder of the unexpired term. The Council shall appoint a qualified elector to fill a vacancy within forty-five (45) days after such vacancy occurs, as determined by state law. For purposes of this section and the Charter, a "qualified elector" or "qualified voter" means a "registered voter" in accordance with state law.~~ In the event of a vacancy in the City Council, if there are 365 days or more remaining on the term of the vacated City Council office, the City Council shall call a special election to fill such vacancy. If there are less than 365 days remaining in the term of the vacant City Council office, the City Council may, by majority vote of the remaining Councilmembers, at its discretion, leave the office vacant, appoint a new Councilmember, including a Mayor, to fill such vacancy, or call a special election to fill such vacancy.

Section 4.02. - Election of Councilmembers by ~~Plurality~~ Majority; places.

There will be five places: One, Two, Three, Four, and Mayor. At the regular municipal election, the voters may vote for one candidate for each place listed on the ballot. The candidate for each place listed on the ballot who receives ~~the greatest number of votes~~ a majority vote for that place cast in such election shall be declared elected; ~~and in case of a tie vote, by lot.~~

MEASURE E

Section 2.04. Vacancies.

- a. The office of a Councilmember shall become vacant upon his or her death, resignation, forfeiture of office, or removal from office by any manner authorized by law.
- b. A Councilmember shall forfeit his or her office if he or she:
 - 1. ceases to possess the required qualifications for election to office;
 - 2. is convicted of a felony; or
 - 3. ceases to be a resident of the City.
- c. Every forfeiture shall be declared and enforced by the City Council. ...

MEASURE F

Section 2.05. Compensation for Councilmembers.

Councilmembers shall serve without an established salary; however, Councilmembers, not including the Mayor, they will be are authorized to receive ~~the sum of \$25.00~~ \$250.00 per month; and the Mayor is authorized to receive \$500.00 per month. ~~for each Council meeting in which they attend to off-set~~ Such expenses are intended to offset the “out-of-pocket” expenses incurred. ~~The expense fees and~~ are not to be construed as being a salary, ~~but an authorized allowance for each regular meeting.~~ Councilmembers may be reimbursed for ~~other~~ reasonable expenses directly associated with their service to the City, subject to controls established by the Council.

MEASURE G

Section 3.04. - Council Rules.

The Council shall be the judge of the election and qualifications of its members, and in such cases, shall have the power to subpoena witnesses and compel the production of all pertinent books, records, and papers; but the decision of the Council in any such case shall be subject to review by the courts. The Council shall determine its own rules and order of business and keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and by vote of not less than a majority of all its members, expel from a meeting a member for disorderly conduct for the violation of its rules; but no member

shall be expelled from a meeting unless notified of the charge against him or her and given an opportunity to be heard in his or her own defense.

Section 6.02. Qualifications.

The City Manager shall be chosen by the Council solely on the basis of his or her executive and administrative qualifications with special reference to ~~his~~ actual experience in, or his or her knowledge of, accepted practice in respect to the duties of ~~his~~ the office as hereinafter outlined. At the time of his or her appointment, he or she need not be a resident of the City or state, but during his or her tenure of office ~~he~~ shall reside within the City. No person elected to membership on the Council shall, subsequent to such election, be eligible for appointment as City Manager until one year has elapsed following the expiration of the term for which he or she was elected.

Section 6.03. Term and Removal.

The City Manager shall hold ~~his~~ office subject to the provisions set forth below, at the will and pleasure of the City Council. A majority of the members of the City Council may remove the City Manager, except that no City Manager who has been in the service of the City for more than one year prior to a regular City election shall be removed within sixty (60) days subsequent to such election except by a four-fifths vote of the members of the City Council. If removed at any time after ~~he has~~ having served six months, the City Manager may demand a hearing at a public meeting of the City Council prior to the date on which his or her final removal shall take effect, but pending and during such hearing the City Council may suspend him or her from office. The action of the City Council in suspending or removing the City Manager shall be final, since it is the intention of this Charter to vest all authority and fix all responsibility for any such suspension or removal wholly in the City Council.

Section 6.05. Council not to Interfere in Appointments or Removals.

Neither the Council nor any of its committees or members shall direct or request the appointment of any person to, or ~~his~~ removal from, office by the City Manager or any of his or her subordinates; or, except as is or may be otherwise provided under the terms of this Charter, in any manner take part in the appointment or removal of officers and employees in the administrative service of the City. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the Manager, and neither the Council nor any member thereof shall give orders to any subordinate of the City Manager either publicly or privately. Any violation of the provisions of this section by a member of the Council shall subject

him or her to whatever discipline the remaining members of the Council may under the terms of Section 3.04 see fit to impose ~~upon him~~.

Section 9.02. Municipal Court Judge.

... The Judge, or anyone acting in his or her place, shall receive such compensation as may be determined by the City Council.

MEASURE H

Section 6.03. Term and Removal.

The City Manager shall hold his office subject to the provisions set forth below, at the will and pleasure of the City Council. ~~A majority of the members of the City Council may remove the City Manager, except that no City Manager who has been in the service of the City for more than one year prior to a regular City election shall be removed within sixty (60) days subsequent to such election except by a four-fifths vote of the members of the City Council.~~ The City Manager shall be appointed upon the affirmative vote of four-fifths (4/5) majority vote of the entire City Council. Similarly, the City Manager may be removed at the discretion of the City Council by an affirmative vote of four-fifths (4/5) majority vote of the entire City Council. If removed at any time after he has served six months, the City Manager may demand a hearing at a public meeting of the City Council prior to the date on which his final removal shall take effect, but pending and during such hearing the City Council may suspend him from office. The action of the City Council in suspending or removing the City Manager shall be final, since it is the intention of this Charter to vest all authority and fix all responsibility for any such suspension or removal wholly in the City Council.

MEASURE I

Section 7.01. City Attorney-Qualifications.

- ... d. ~~City Council may not remove a City Attorney who has been in the service of the City for more than one year prior to a regular City election within sixty (60) days subsequent to such election except by a four-fifths vote of the members of City Council.~~ The City Attorney shall be appointed upon the affirmative vote of four-fifths (4/5) majority vote of the entire City Council. Similarly, the City Attorney may be removed at the discretion of the City Council by an affirmative vote of four-fifths (4/5) majority vote of the entire City Council.

MEASURE J

Section 8.01. Development and Submission of City Budget and Budget Message.

- ... c. *Submission.* On or before the ~~31st day of July~~ 2nd Monday of August of each year, the City Manager shall submit to the City Council and City Secretary a proposed budget for the ensuing fiscal year and an accompanying budget message. The full text of the proposed budget and message shall be made available for public review in the office of the City Secretary, at the City's library, and prominently linked on the City's website.

SECTION FIVE. The ballots for the City election must comply with the Texas Election Code and shall have the measures described in Section Four, above, stated as propositions as follows:

Measure A shall be placed on the ballot in the form of the following Proposition:

PROPOSITION A

Amendments to the City Charter providing clarity as to meaning and intent and eliminating inconsistencies.

FOR _____ AGAINST _____

Measure B shall be placed on the ballot in the form of the following Proposition:

PROPOSITION B

Amendments to the City Charter revising and deleting provisions which are redundant of or inconsistent with State law.

FOR _____ AGAINST _____

Measure C shall be placed on the ballot in the form of the following Proposition:

PROPOSITION C

Amendment to the City Charter creating a requirement for persons injured because of the City's action or inaction to give the City notice of their claim within 90 days of the incident.

FOR _____ AGAINST _____

Measure D shall be placed on the ballot in the form of the following Proposition:

PROPOSITION D

Amendments to the City Charter increasing the term of office from two to three years for each councilmember and the mayor.

FOR _____ AGAINST _____

Measure E shall be placed on the ballot in the form of the following Proposition:

PROPOSITION E

Amendments to the City Charter providing under what circumstances a councilmember vacates his or her office.

FOR _____ AGAINST _____

Measure F shall be placed on the ballot in the form of the following Proposition:

PROPOSITION F

Amendment to the City Charter revising the amounts paid to councilmembers and the mayor and changing payment to be monthly rather than per meeting.

FOR _____ AGAINST _____

Measure G shall be placed on the ballot in the form of the following Proposition:

PROPOSITION G

Amendments to the City Charter creating gender neutrality.

FOR_____ AGAINST_____

Measure H shall be placed on the ballot in the form of the following Proposition:

PROPOSITION H

Amendments to the City Charter requiring the appointment and termination of the City Manager to be by a four-fifths (4/5's) vote of the entire City Council.

FOR_____ AGAINST_____

Measure I shall be placed on the ballot in the form of the following Proposition:

PROPOSITION I

Amendments to the City Charter requiring the appointment and termination of the City Attorney to be by a four-fifths (4/5's) vote of the entire City Council.

FOR_____ AGAINST_____

Measure J shall be placed on the ballot in the form of the following Proposition:

PROPOSITION J

Amendment to the City Charter increasing the time for the City Manager to submit a proposed budget to Council.

FOR_____ AGAINST_____

SECTION SIX. The voting location for both the early voting period and Election Day will be at the Kathleen C. Cailloux City Center of the Performing Arts, 910 Main Street, Kerrville, Texas 78028.

SECTION SEVEN. On Election Day, Saturday, May 4, 2024, the polls shall remain open from 7:00 AM to 7:00 PM. Early voting shall will occur as follows: April 22, 23, 24, and 26, 2024, from 8:00 AM to 6:00 PM; April 25, 2024, from 8:00 AM to 5:00 PM; and April 29 and 30, from 8:00 AM to 6:00 PM.

SECTION EIGHT. To afford the public with opportunities to review the proposed Charter amendments, the City Secretary shall be responsible for placing the proposed amendments on the City's website and making copies of the amendments available for public review in the office of the City Secretary and at the Butt-Holdsworth Memorial Library. In addition, the City shall publish notice of the amendments in accordance with Section 9.004(c) of the Texas Local Government Code.

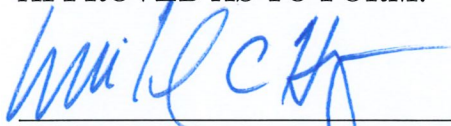
PASSED AND APPROVED ON FIRST READING, this the ____ day of _____, A.D. 2024.

PASSED AND APPROVED ON SECOND AND FINAL READING, this the ____ day of _____, A.D. 2024.

Judy Eychner, Mayor

APPROVED AS TO FORM:

ATTEST:



Michael C. Hayes, City Attorney

Shelley McElhannon, City Secretary



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

SUBJECT: Ordinance No. 2024-02. An Ordinance authorizing the issuance of \$_____ in principal amount of City of Kerrville, Texas Tax Note, Series 2024; securing the payment thereof by authorizing the levy of an annual ad valorem tax; and approving and authorizing the execution of a paying agent/registrar agreement, a purchase letter, and all other instruments and procedures related thereto.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** November 29, 2023

SUBMITTED BY: Julie Behrens , Director of Finance

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	F - Public Facilities and Services
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

On October 10, 2023, staff presented information about the City's long-range replacement plan for Fire Trucks as well as funding options for the 2 trucks that are currently up for replacement. Council directed staff to move forward with the issuance of tax notes for the purchase of these 2 trucks. Staff worked with the City's Financial Advisor, Hilltop Securities, and Bond Counsel, McCall, Parkhurst, & Horton, to draft terms for issuance. On December 13, 2023, term options were distributed to potential funders, including local financial institutions. Proposals (bids & terms) received by the deadline of January 16, 2024, will be reviewed by staff and Hilltop Securities on January 19, 2023, and make recommendation to City Council. With Council approval by adoption of Ordinance No. 2024-02, staff will proceed with private placement issuance of tax notes and funds will be received on February 21, 2024. This ordinance only requires one reading.

RECOMMENDED ACTION:

Approve Ordinance No. 2024-02 on first and only reading, and authorize staff to complete issuance of tax notes, as described by the ordinance.

ORDINANCE NO. 2024-__

**ORDINANCE AUTHORIZING THE ISSUANCE OF \$_____ IN
PRINCIPAL AMOUNT OF *CITY OF KERRVILLE, TEXAS TAX NOTE,
SERIES 2024*; SECURING THE PAYMENT THEREOF BY
AUTHORIZING THE LEVY OF AN ANNUAL AD VALOREM TAX; AND
APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING
AGENT/REGISTRAR AGREEMENT, A PURCHASE LETTER, AND ALL
OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO**

DATE OF APPROVAL: _____, 2024

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ORDINANCE NO. 2024-__

ORDINANCE AUTHORIZING THE ISSUANCE OF \$_____ IN PRINCIPAL AMOUNT OF CITY OF KERRVILLE, TEXAS TAX NOTE, SERIES 2024; SECURING THE PAYMENT THEREOF BY AUTHORIZING THE LEVY OF AN ANNUAL AD VALOREM TAX; AND APPROVING AND AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, A PURCHASE LETTER, AND ALL OTHER INSTRUMENTS AND PROCEDURES RELATED THERETO

STATE OF TEXAS
COUNTY OF KERR
CITY OF KERRVILLE

§
§
§

WHEREAS, the CITY OF KERRVILLE, TEXAS (the "*City*") in Kerr County, Texas, is a political subdivision of the State of Texas operating as a home rule municipality under the Constitution and laws of the State of Texas and its City Charter, which was initially approved by the qualified voters of the City on February 24, 1942, and was most recently amended by the qualified voters of the City on November 5, 2019; and

WHEREAS, the City Council of the City hereby determines that it is necessary and desirable to purchase vehicles and equipment for the fire department (collectively, the "*Projects*"); and

WHEREAS, pursuant to Chapter 1431, Texas Government Code, as amended (the "*Act*"), the City Council of the City is authorized and empowered to issue anticipation notes to pay contractual obligations incurred or to be incurred (i) for the construction of any public work, and (ii) for the purchase of materials, supplies, equipment, machinery, buildings, lands and rights-of-way for the City's authorized needs and purposes; and

WHEREAS, in accordance with the provisions of the Act, the City Council hereby finds and determines that an anticipation note should be issued and sold at this time to finance the Projects; and

WHEREAS, the City Council of the City deems it appropriate to adopt this Ordinance and issue the Note herein authorized as permitted by the Act; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code;

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

SECTION 1. AMOUNT AND PURPOSE OF THE NOTE. The Note of the City is hereby authorized to be issued and delivered in the aggregate principal amount of \$_____ **FOR THE PURPOSE OF (I) ACQUIRING VEHICLES AND EQUIPMENT FOR THE FIRE DEPARTMENT, AND (II) FUNDING CERTAIN EXPENSES AND COSTS OF ISSUANCE ASSOCIATED WITH THE NOTES.**

SECTION 2. DESIGNATION, DATE, DENOMINATIONS, NUMBERS, AND MATURITY OF NOTE. (a) Each note issued pursuant to this Ordinance shall be designated **CITY OF KERRVILLE, TEXAS TAX NOTE, SERIES 2024**, and initially there shall be issued, sold, and delivered hereunder one fully registered note, without interest coupons, dated February 1, 2024, in the denomination and principal amount of \$_____, numbered R-1, with any note issued in replacement thereof being in the denomination and principal amount hereinafter stated and numbered consecutively from R-2 upward, payable in installments to the registered owner thereof, or to the registered assignee of said note (in each case, the "**Registered Owner**").

(b) Principal of the Note shall mature and be payable in installments on the dates and in the principal installment amounts and shall bear interest at the per annum rate set forth in the following schedule:

PAYMENT DATE	PRINCIPAL AMOUNT (\$)	INTEREST RATE (%)
-------------------------	----------------------------------	------------------------------

The term "**Note**" as used in this Ordinance shall mean and include collectively the note initially issued and delivered pursuant to this Ordinance, as well as all other substitute notes and replacement notes issued pursuant hereto.

SECTION 3. INTEREST. The Note shall bear interest from the dates specified in the FORM OF NOTE set forth in this Ordinance to date of maturity at the respective rate per annum for each principal installment set forth above. Said interest shall be payable in the manner provided and on the dates stated in the FORM OF NOTE set forth in this Ordinance. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

SECTION 4. CHARACTERISTICS OF THE NOTE.

(a) Registration and Transfer; Authentication. The City shall keep or cause to be kept at the designated corporate trust or commercial banking office of _____ (currently located in _____) (the "**Paying Agent/Registrar**") books or records for the registration of the transfer of the Note (the "**Registration Books**"), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such registrations of transfers under such reasonable regulations as the City and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such registrations and transfers as herein provided within three days of presentation in due and proper form. The Paying Agent/Registrar shall obtain and record in the Registration Books the address of the Registered Owner of the Note to which

payments with respect to the Note shall be mailed, as herein provided; but it shall be the duty of the Registered Owner to notify the Paying Agent/Registrar in writing of the address to which payments shall be mailed, and such interest payments shall not be mailed unless such notice has been given. The City shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. The City shall pay the Paying Agent/Registrar's standard or customary fees and charges for making such registration, transfer and delivery of a substitute Note. Registration of assignment and transfer of the Note shall be made in the manner provided and with the effect stated in the FORM OF NOTE set forth in this Ordinance. Each substitute Note shall bear a letter and/or number to distinguish it from each other Note.

Except as provided in Section 5(c) hereof, an authorized representative of the Paying Agent/Registrar shall, before the delivery of any such Note, date and manually sign said Note, and no such Note shall be deemed to be issued or outstanding unless such Note is so executed. The Paying Agent/Registrar promptly shall cancel the paid Note or a Note surrendered for transfer. No additional ordinances, orders or resolutions need be passed or adopted by the governing body of the City or any other body or person so as to accomplish the foregoing, and the Paying Agent/Registrar shall provide for the printing, execution and delivery of the substitute Note in the manner prescribed herein. Pursuant to Subchapter D, Chapter 1201, Texas Government Code, the duty of transfer of the Note as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of said Note, the transferred Note shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Note which initially was issued and delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts.

(b) Payment of Note and Interest. The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Note, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Note, and of all transfers of the Note, and all replacements of the Note, as provided in this Ordinance. However, in the event of a nonpayment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "***Special Record Date***") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of the Registered Owner appearing on the Registration Books at the close of business on the fifteenth business day next preceding the date of mailing of such notice.

(c) In General. The Note (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Note to be payable only to the Registered Owner thereof, (ii) may be transferred and assigned, (iii) shall have the characteristics, (iv) shall be signed, sealed, executed and authenticated, (v) the principal of and interest on the Note shall be payable, and (vi) shall be administered, and the Paying Agent/Registrar and the City shall have certain duties and responsibilities with respect to the Note, all as provided, and in the manner and to the effect as required or indicated, in the FORM OF NOTE set forth in this Ordinance. The Note

initially issued and delivered pursuant to this Ordinance is not required to be, and shall not be, authenticated by the Paying Agent/Registrar, but on each substitute Note issued in transfer or replacement for any Note issued under this Ordinance the Paying Agent/Registrar shall execute the PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE, in the form set forth in the FORM OF NOTE.

(d) *Substitute Paying Agent/Registrar.* The City covenants with the registered Owner of the Note that at all times while the Note is outstanding the City will provide a competent and legally qualified bank, trust company, financial institution or other agency to act as and perform the services of Paying Agent/Registrar for the Note under this Ordinance, and that the Paying Agent/Registrar will be one entity. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 40 days written notice to the Paying Agent/Registrar, to be effective not later than 30 days prior to the next principal or interest payment date after such notice. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that promptly it will appoint a competent and legally qualified bank, trust company, financial institution, or other agency to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Note, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to the Registered Owner of the Note, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to the Paying Agent/Registrar.

(e) On the closing date, one Initial Note representing the entire principal amount of the Note, payable in stated installments to the initial purchaser identified in Section 12 hereof, executed by manual or facsimile signature of the Mayor and City Secretary of the City, approved by the Attorney General of Texas, and registered and manually signed by the Comptroller of Public Accounts of the State of Texas, will be delivered to the initial purchaser or its designee. The Paying Agent/Registrar shall insert the date of delivery and deliver the Note to the initial purchaser.

SECTION 5. FORM OF NOTE. The form of the Note, including the form of Paying Agent/Registrar's Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Note initially issued and delivered pursuant to this Ordinance, shall be, respectively, substantially as follows, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance.

(a) Form of Note.

NO. R-__

PRINCIPAL AMOUNT

\$_____

**UNITED STATES OF AMERICA
STATE OF TEXAS
COUNTY OF KERR
CITY OF KERRVILLE, TEXAS TAX NOTE, SERIES 2024**

<u>Interest Rate</u>	<u>Delivery Date</u>	<u>Maturity Date</u>
As shown below	February 21, 2024	As shown below

REGISTERED OWNER:

PRINCIPAL AMOUNT:

THE CITY OF KERRVILLE, TEXAS (the "*City*"), being a political subdivision and a home-rule municipality of the State of Texas, for value received, hereby promises to pay, from the sources described herein, to the Registered Owner specified above, or registered assign (the "*Registered Owner*"), the principal amount from time to time unpaid and to pay interest thereon from the date of delivery of this Note as specified above, at the respective rates per annum set forth in the table below, calculated on the basis of a 360-day year of twelve 30-day months. The principal of this Note shall mature and be paid in installments on the dates and in the amounts set forth in the table below:

PAYMENT DATE	PRINCIPAL AMOUNT (\$)	INTEREST RATE (%)
-------------------------	----------------------------------	------------------------------

THE PRINCIPAL OF AND INTEREST ON THIS NOTE are payable in lawful money of the United States of America, without exchange or collection charges. The City shall pay interest on the unpaid principal installments of this Note on February 15, 2025, and on each February 15 and August 15 thereafter to the date of maturity thereof. The last principal installment of this Note, together with accrued interest thereon to the maturity date thereof, shall be paid to the Registered Owner hereof upon presentation and surrender of this Note at maturity at the designated office of _____, which is the "*Paying Agent/Registrar*" for this Note. The payment of all other principal installments of and interest on this Note shall be made by the Paying Agent/Registrar to the Registered Owner hereof on each principal and interest payment date by check or draft, dated as of such principal and interest payment date, drawn by the Paying Agent/Registrar on, and payable solely from, funds of the City required by the ordinance authorizing the issuance of this Note (the "*Ordinance*") to be on deposit with the Paying Agent/Registrar for such purpose as hereinafter provided; and such check or draft shall be sent by the Paying Agent/Registrar by United States mail, first-class postage prepaid, on each such interest

payment date, to the Registered Owner hereof, at its address as it appeared on the last business day of the month next preceding each such date (the "**Record Date**") on the Registration Books kept by the Paying Agent/Registrar, as hereinafter described. In addition, principal and interest may be paid by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Registered Owner.

ANY ACCRUED INTEREST due at maturity as provided herein shall be paid to the Registered Owner upon presentation and surrender of this Note for payment at the designated office of the Paying Agent/Registrar. The City covenants with the Registered Owner of this Note that on or before each principal payment date and interest payment date for this Note it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Note, when due.

IF THE DATE FOR THE PAYMENT of the principal of or interest on this Note shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the designated office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS NOTE, DATED AS OF _____, IS AUTHORIZED and issued in accordance with the Constitution and laws of the State of Texas in the principal amount of \$_____ **FOR THE PURPOSE (I) ACQUIRING VEHICLES AND EQUIPMENT FOR THE FIRE DEPARTMENT, AND (II) FUNDING CERTAIN EXPENSES AND COSTS OF ISSUANCE ASSOCIATED WITH THE NOTES.**

[THE PRINCIPAL INSTALLMENTS OF THIS NOTE ARE NOT SUBJECT TO REDEMPTION PRIOR TO STATED MATURITY.] or [ON FEBRUARY 15, 2029, OR ON ANY DATE THEREAFTER, THE UNPAID PRINCIPAL INSTALLMENTS OF THIS NOTE COMING DUE ON AND AFTER FEBRUARY 15, 2030 MAY BE REDEEMED PRIOR TO THEIR SCHEDULED PAYMENT DATES, AT THE OPTION OF THE CITY, WITH FUNDS DERIVED FROM ANY AVAILABLE AND LAWFUL SOURCE, AS A WHOLE OR IN PART, AT A REDEMPTION PRICE EQUAL TO THE PRINCIPAL AMOUNT TO BE REDEEMED, PLUS ACCRUED INTEREST THEREON TO THE DATE OF REDEMPTION. THE CITY SHALL GIVE WRITTEN NOTICE OF ITS DIRECTION TO REDEEM THE PRINCIPAL INSTALLMENTS OF THIS NOTE TO THE PAYING AGENT/REGISTRAR AND THE HOLDER OF THIS NOTE BY UNITED STATES MAIL, FIRST-CLASS POSTAGE PREPAID, NO LATER THAN 30 DAYS PRIOR TO THE REDEMPTION DATE.

UPON THE PAYMENT OF THE OUTSTANDING principal balance of this Note, the Paying Agent/Registrar shall note in the Registration Books the amount of such payment, the date said payment was made and the remaining unpaid principal balance of this Note.

THIS NOTE IS ISSUED AS A FULLY REGISTERED NOTE, without interest coupons, in the denomination of the principal amount thereof. As provided in the Ordinance, this Note

may, at the request of the Registered Owner or the assignee hereof, be assigned or transferred for a like aggregate principal amount of a fully registered Note in the denomination of the principal amount hereof, without interest coupons, payable to the Registered Owner or assignees as the case may be, having the same denomination, upon surrender of this Note to the Paying Agent/Registrar for cancellation, all in accordance with the form and procedures set forth in the Ordinance. Among other requirements for such assignment and transfer, this Note must be presented and surrendered to the Paying Agent/Registrar, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Note. The form of Assignment printed or endorsed on this Note may be executed by the Registered Owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Note by the Registered Owner. The Paying Agent/Registrar's reasonable standard or customary fees and charges for assigning, transferring or exchanging any Note will be paid by the City. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment or transfer, as a condition precedent to the exercise of such privilege. The Paying Agent/Registrar shall not be required to make any such transfer during the period commencing with the close of business on any Record Date and ending with the opening of business on the next following principal or interest payment date.

IN THE EVENT ANY PAYING AGENT/REGISTRAR FOR THE NOTE IS CHANGED by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and cause written notice thereof to be mailed to the Registered Owner of the Note.

IT IS HEREBY CERTIFIED, RECITED, AND COVENANTED that this Note has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Note have been performed, existed, and been done in accordance with law; that this Note is a general obligation of the City, issued on the full faith and credit thereof; and that ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Note, as such interest comes due, and as such principal matures, have been levied and ordered to be levied against all taxable property in the City, and have been pledged for such payment within the limits provided by law.

THE CITY ALSO HAS RESERVED THE RIGHT to amend the Note Ordinance as provided therein, and under some (but not all) circumstances amendments thereto must be approved by the Registered Owner of the Note.

BY BECOMING THE REGISTERED OWNER OF THIS NOTE, the Registered Owner thereby acknowledges all of the terms and provisions of the Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Ordinance is duly recorded and available for inspection in the official minutes and records of the governing body of the City, and agrees that the terms and provisions of this Note and the Ordinance constitute a contract between each Registered Owner hereof and the City.

IN WITNESS WHEREOF, the City has caused this Note to be signed with the facsimile signature of the Mayor of the City and countersigned with the facsimile signature of the City Secretary of the City, and has caused the official seal of the City Council of the City to be duly impressed, or placed in facsimile, on this Note.

(facsimile signature)
City Secretary
City of Kerrville, Texas

(facsimile signature)
Mayor
City of Kerrville , Texas

(CITY SEAL)

(b) Form of Paying Agent/Registrar's Authentication Certificate.

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

(To be executed if this Note is not accompanied by an executed Registration Certificate
of the Comptroller of Public Accounts of the State of Texas)

It is hereby certified that this Note has been issued under the provisions of the Ordinance described in the text of this Note; and that this Note has been issued in replacement of, or transferred for, a Note of a Series which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated:

Paying Agent/Registrar

By: _____
Authorized Representative

(c) Form of Assignment.

ASSIGNMENT
(Please print or type clearly)

For value received, the undersigned hereby sells, assigns and transfers _____

Transferee's Social Security or Taxpayer Identification
Number: _____

Transferee's name and address, including zip code: _____

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints

_____, attorney, to register the transfer of
the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

NOTICE: Signature(s) must be guaranteed by an
eligible guarantor institution participating in a
securities transfer association recognized signature
guarantee program.

NOTICE: The signature above must correspond with
the name of the Registered Owner as it appears upon
the front of this Note in every particular, without
alteration or enlargement or any change whatsoever.

(d) Form of Registration Certificate of the Comptroller of Public Accounts:

COMPTROLLER'S REGISTRATION CERTIFICATE: REGISTER NO.

I hereby certify that this Note has been examined, certified as to validity, and approved by
the Attorney General of the State of Texas, and that this Note has been registered by the
Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this _____.

Comptroller of Public Accounts
of the State of Texas

(COMPTROLLER'S SEAL)

SECTION 6. INTEREST AND SINKING FUND; TAX LEVY; SECURITY INTEREST. (a) Interest and Sinking Fund; Tax Levy. A special Interest and Sinking Fund (the "***Interest and Sinking Fund***") is hereby created solely for the benefit of the Note, and the Interest and Sinking Fund shall be established and maintained by the City at an official depository bank of the City for so long as the Note or interest thereon are outstanding and unpaid. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Note. Until expended for the purposes set forth in Section 1 hereof, the proceeds derived from the sale of the Note shall be held as further security for the timely payment of the principal and interest on the Note. All ad valorem taxes levied and collected for and on account of the Note and all accrued interest and premium on the Note received by the City from the initial purchaser of the Note, if any, shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while the Note or interest thereon are outstanding and unpaid, the City shall compute and ascertain a rate and amount of ad valorem tax which will be sufficient, together with other moneys deposited to the credit of the Interest and Sinking Fund, to raise and produce the money required to pay the interest on the Note as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal installment of the Note as such principal installment matures (but never less than 2% of the original principal amount of the Note as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection. Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property in the City for each year while the Note or interest thereon are outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the aforesaid Interest and Sinking Fund. Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Note, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limits provided by law.

(b) Security Interest. Chapter 1208, Texas Government Code, applies to the issuance of the Note and the pledge of the ad valorem taxes granted by the City under Section 6(a) of this Ordinance, and is therefore valid, effective, and perfected. If Texas law is amended at any time while the Note is outstanding and unpaid such that the pledge of the ad valorem taxes granted by the City under Section 6(a) of this Ordinance is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Registered Owner of the Note the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code, and enable a filing to perfect the security interest in said pledge to occur.

SECTION 7. CONSTRUCTION FUND. There is hereby created and established in the depository of the City, a fund to be called the *City of Kerrville, Texas Tax Note (Series 2024) Construction Fund* (herein called the "***Construction Fund***"). Proceeds from the sale and delivery of the Note (other than proceeds representing accrued interest on the Note and any premium on the Note that is not used by the City to pay costs of issuance in accordance with the provisions of Section 1201.042(d), Texas Government Code, as amended, which shall be deposited in the Interest and Sinking Fund) shall be deposited in the Construction Fund. Money in the Construction Fund shall be subject to disbursements by the City for payment of all costs incurred

in carrying out the purpose for which the Note is issued, including but not limited to costs for construction, engineering, architecture, financing, financial consultants and legal services related to the project being financed with proceeds of the Note and the issuance of the Note. All funds remaining on deposit in the Construction Fund upon completion of the projects being financed with the proceeds from the Note, if any, shall be transferred to the Interest and Sinking Fund.

SECTION 8. INVESTMENTS. Funds on deposit in the Interest and Sinking Fund and the Construction Fund shall be secured by the depository bank of the City in the manner and to the extent required by law to secure other public funds of the City and may be invested from time to time in any investment authorized by applicable law, including but not limited to the Public Funds Investment Act (Chapter 2256, Texas Government Code), and the City's investment policy adopted in accordance with the provisions of the Public Funds Investment Act; provided, however, that investments purchased for and held in the Interest and Sinking Fund shall have a final maturity no later than the next principal or interest payment date for which such funds are required, and investments purchased for and held in the Construction Fund shall have a final maturity of not later than the date the City reasonably expects the funds from such investments will be required to pay costs of the projects for which the Note was issued. Income and profits from such investments shall be deposited in the respective Fund which holds such investments; however, any such income and profits from investments in the Construction Fund may be withdrawn by the City and deposited in the Interest and Sinking Fund to pay all or a portion of the interest next coming due on the Note.

SECTION 9. DEFEASANCE OF NOTE. (a) The Note and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "*Defeased Note*") within the meaning of this Ordinance, except to the extent provided in subsection (d) of this Section, when payment of the principal of such Note, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "*Future Escrow Agreement*") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the Authority with the Paying Agent/Registrar for the payment of its services until the Defeased Note shall have become due and payable. Thereafter, the City will have no further responsibility with respect to amounts available to the Paying Agent/Registrar for the payment of such Defeased Note, including any insufficiency therein caused by the failure of the escrow agent under such Future Escrow Agreement to receive payment when due on the Defeasance Securities. At such time that the Note shall be deemed to be a Defeased Note hereunder, as aforesaid, such Note and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes or revenues herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the Authority be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying

Agent/Registrar that is not required for the payment of the Note and interest thereon, with respect to which such money has been so deposited, shall be turned over to the Authority, or deposited as directed in writing by the Authority. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of the Defeased Note may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) of this Section. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Note, with respect to which such money has been so deposited, shall be remitted to the Authority or deposited as directed in writing by the Authority.

(c) The term "***Defeasance Securities***" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a City, municipality, or other political subdivision of a state that have been refunded and that, on the date on the date the governing body of the Authority adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable state law that may be used to defease obligations such as the Note.

(d) Until the Defeased Note shall have become due and payable, the Paying Agent/Registrar shall perform the services of Paying Agent/Registrar for the Defeased Note the same as if they had not been defeased, and the Authority shall make proper arrangements to provide and pay for such services as required by this Ordinance.

SECTION 10. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED NOTE.

(a) Replacement Note. In the event the Note is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new Note of the same principal installment amounts, maturity dates and interest rates as the damaged, mutilated, lost, stolen, or destroyed Note, in replacement for such Note in the manner hereinafter provided.

(b) Application for Replacement Note. Application for replacement of a damaged, mutilated, lost, stolen, or destroyed Note shall be made by the Registered Owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Note, the Registered Owner applying for a replacement Note shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Note, the Registered Owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Note, as the case may be. In every case of

damage or mutilation of a Note, the Registered Owner shall surrender to the Paying Agent/Registrar for cancellation the Note so damaged or mutilated.

(c) No Default Occurred. Notwithstanding the foregoing provisions of this Section, in the event any such Note shall have matured, and no default has occurred which is then continuing in the payment of the principal of or interest on the Note, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Note) instead of issuing a replacement Note, provided security or indemnity is furnished as above provided in this Section.

(d) Charge for Issuing Replacement Note. Prior to the issuance of any replacement Note, the Paying Agent/Registrar shall charge the Registered Owner of such Note with all legal, printing, and other expenses in connection therewith. Every replacement Note issued pursuant to the provisions of this Section by virtue of the fact that any Note is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Note shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance.

(e) Authority for Issuing Replacement Note. In accordance with Chapter 1206, Texas Government Code, this Section of this Ordinance shall constitute authority for the issuance of any such replacement Note without necessity of further action by the governing body of the City or any other body or person, and the duty of the replacement of such Note is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Note in the form and manner and with the effect, as provided in Section 4(a) of this Ordinance for a Note issued in exchange for another Note.

SECTION 11. CUSTODY, APPROVAL, AND REGISTRATION OF NOTE; BOND COUNSEL'S OPINION, INSURANCE, AND CUSIP NUMBERS. The Mayor of the City, on behalf of the City, is hereby authorized to have control of the Note initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Note pending its delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Note said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Note, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such Certificate. The approving legal opinion of the City's Bond Counsel and the assigned CUSIP numbers, if any, may, at the option of the City, be printed on the Note issued and delivered under this Ordinance, but neither shall have any legal effect, and shall be solely for the convenience and information of the Registered Owner of the Note. In addition, if municipal bond insurance is obtained, the Note may bear an appropriate legend as provided by the insurer.

SECTION 12. COVENANTS REGARDING TAX EXEMPTION OF INTEREST ON THE NOTE. (a) Covenants. The City covenants to take any action necessary to assure, or refrain from any action which would adversely affect, the treatment of the Note as an obligation described in section 103 of the Internal Revenue Code of 1986, as amended (the "*Code*"), the

interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(1) to take any action to assure that no more than 10 percent of the proceeds of the Note or the projects financed therewith (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds or the projects financed therewith are so used, such amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Note, in contravention of section 141(b)(2) of the Code;

(2) to take any action to assure that in the event that the "private business use" described in subsection (1) hereof exceeds 5 percent of the proceeds of the Note or the projects financed therewith (less amounts deposited into a reserve fund, if any) then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(3) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the proceeds of the Note (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(4) to refrain from taking any action which would otherwise result in the Note being treated as a "private activity bond" within the meaning of section 141(b) of the Code;

(5) to refrain from taking any action that would result in the Note being "federally guaranteed" within the meaning of section 149(b) of the Code;

(6) to refrain from using any portion of the proceeds of the Note, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Note, other than investment property acquired with --

(A) proceeds of the Note invested for a reasonable temporary period of three (3) years or less or, in the case of a refunding bond, for a period of 90 days or less, until such proceeds are needed for the purpose for which the Note is issued,

(B) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(C) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Note;

(7) to otherwise restrict the use of the proceeds of the Note or amounts treated as proceeds of the Note, as may be necessary, so that the Note does not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage);

(8) to refrain from using the proceeds of the Note or proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Note in contravention of the requirements of section 149(d) of the Code (relating to advance refundings); and

(9) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Note) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Note has been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

(b) Rebate Fund. In order to facilitate compliance with the above covenant (9), a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

(c) Proceeds. The City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Note. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Note, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Note under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Note, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Note under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor, the City Manager, the Assistant City Manager and the Director of Finance of the City to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the City, which may be permitted by the Code as are consistent with the purpose for the issuance of the Note.

(d) Allocation of, and Limitation on, Expenditures for the Projects. The City covenants to account for the expenditure of sale proceeds and investment earnings to be used for the purposes described in Section 1 of this Ordinance (the "**Projects**") on its books and records in accordance with the requirements of the Internal Revenue Code. The City recognizes that in order

for the proceeds to be considered used for the reimbursement of costs, the proceeds must be allocated to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Projects are completed; but in no event later than three years after the date on which the original expenditure is paid. The foregoing notwithstanding, the City recognizes that in order for proceeds to be expended under the Internal Revenue Code, the sale proceeds or investment earnings must be expended no more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Note, or (2) the date the Note is retired. The City agrees to obtain the advice of nationally-recognized bond counsel if such expenditure fails to comply with the foregoing to assure that such expenditure will not adversely affect the tax-exempt status of the Note. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(e) Disposition of Projects. The City covenants that the property constituting the Projects will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless any action taken in connection with such disposition will not adversely affect the tax-exempt status of the Note. For purpose of the foregoing, the City may rely on an opinion of nationally-recognized bond counsel that the action taken in connection with such sale or other disposition will not adversely affect the tax-exempt status of the Note. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

(f) Written Procedures. Unless superseded by another action of the City, to ensure compliance with the covenants contained herein regarding private business use, remedial actions, arbitrage and rebate, the City Council hereby adopts and establishes the instructions attached hereto as Exhibit B as the City's written procedures.

(g) Reimbursement. This Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the Treasury Regulations.

SECTION 13. SALE OF NOTE; USE OF PROCEEDS. The Note is hereby initially sold and shall be delivered to _____ (the "**Purchaser**"), located in _____, for cash for the par value thereof and no accrued interest, pursuant to a *Purchase Letter*, in substantially the form attached hereto as *Exhibit C*, which the Mayor and Mayor Pro Tem are each hereby authorized to accept, approve all changes, and execute on behalf of the City. In satisfaction of Section 1201.022(a)(3), Texas Government Code the City Council hereby determines that the final terms of the Note as set forth in this Ordinance are in the City's best interests. The Note initially shall be registered in the name of _____.

SECTION 14. NO RULE 15c2-12 UNDERTAKING; ANNUAL FINANCIAL STATEMENTS. The City has not made an undertaking in accordance with Rule 15c2-12 of the Securities and Exchange Commission (the "**Rule**") in connection with the issuance of the Note inasmuch as the Purchaser is not acting as an "underwriter in a primary offering of municipal

securities" within the meaning of the Rule. The City is not, therefore, obligated pursuant to the Rule to provide any on-going disclosure relating to the City or the Note; however, so long as the Purchaser or its assignee is the sole Registered Owner of the Note, unless waived by the Purchaser, the City shall provide the following to the Purchaser:

(a) Audited financial statements, to be provided within six months after the close of each City fiscal year ending on and after September 30, 2022, and

(b) Such other financial information regarding the City as the Purchaser shall reasonably request.

SECTION 15. FURTHER PROCEDURES. The Mayor, Mayor Pro-Tem, City Manager, Assistant City Manager, Director of Finance, and City Secretary of the City and all other officers, employees, and agents of the City and each of them, are each hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance and the Note. In addition, prior to the initial delivery of the Note, the Mayor, City Manager, Assistant City Manager, Director of Finance, City Secretary, and the City's Bond Counsel are hereby authorized and directed to approve any technical changes or correction to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance, (ii) obtain a rating from any of the national bond rating agencies, if any rating is obtained, or satisfy any requirements of the provider of a municipal bond insurance policy, if any, or (iii) obtain the approval of the Note by the Attorney General of the State of Texas. Bond Counsel is further authorized to institute any bond validation suit under Chapter 1205, as amended, Texas Government Code (or any successor statute thereto) related to the Note while the Note is outstanding and unpaid. In case any officer whose signature shall appear on any Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 16. ORDINANCE A CONTRACT; AMENDMENTS. This Ordinance shall constitute a contract with the Registered Owner of the Note, binding on the City and its successors and assigns, and shall not be amended or repealed by the City as long as any Note remains outstanding except as permitted in this Section. The City may, without the consent of or notice to the Registered Owner (other than the Purchaser as long as the Purchaser is a Registered Owner, in which case the City must receive the Purchaser's prior written consent to), amend, change, or modify this Ordinance as may be required (i) by the provisions hereof, (ii) for the purpose of curing any ambiguity, inconsistency, or formal defect or omission herein, or (iii) in connection with any other change which is not to the prejudice of the Registered Owner. The City may, with the written consent of the Registered Owner of the Note, amend, change, modify, or rescind any provisions of this Ordinance not otherwise permitted to be amended in accordance with the preceding sentence. Whenever the City shall desire to make any amendment or addition to or rescission of this Ordinance requiring consent of the Registered Owner, the City shall cause

notice of the amendment, addition, or rescission to be sent by first class mail, postage prepaid, to the Registered Owner at the respective addresses shown on the Registration Books. Whenever at any time within one year after the date of the giving of such notice, the City shall receive an instrument or instruments in writing executed by the Registered Owner of the Note requiring the consent of the Registered Owner, which instrument or instruments shall refer to the proposed amendment, addition, or rescission described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City may adopt such amendment, addition, or rescission in substantially such form, except as herein provided. No Registered Owner may thereafter object to the adoption of such amendment, addition, or rescission, or to any of the provisions thereof, and such amendment, addition, or rescission shall be fully effective for all purposes.

SECTION 17. DEFAULTS AND REMEDIES. In addition to all the rights and remedies provided by the laws of the State of Texas, it is specifically covenanted and agreed particularly that in the event the City (i) defaults in the payment of the principal, premium, if any, or interest on the Note, (ii) defaults in the deposits and credits required to be made to the Interest and Sinking Fund, or (iii) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Ordinance and the continuation thereof for 30 days after the City has received written notice of such defaults, the Registered Owner of the Note shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition or obligation prescribed in this Ordinance.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedy herein provided shall be cumulative of all other existing remedies, and the specification of such remedy shall not be deemed to be exclusive.

SECTION 18. INTERESTED PARTIES. Nothing in this Ordinance expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City and the Registered Owner of the Note, any right, remedy or claim under or by reason of this Ordinance or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Ordinance contained by and on behalf of the City shall be for the sole and exclusive benefit of the City and the Registered Owner of the Note.

SECTION 19. INCORPORATION OF RECITALS. The City hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporates such recitals as a part of this Ordinance.

SECTION 20. SEVERABILITY. The provisions of this Ordinance are severable and if any provision or the applicability thereof to any person or circumstance is ever held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 21. EFFECTIVE DATE. Pursuant to the provisions of Section 1201.028, Texas Government Code, this Ordinance shall become effective immediately upon adoption by the City Council.

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***PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
KERRVILLE, TEXAS AT A REGULAR MEETING ON THE 23RD DAY OF JANUARY, 2024,
AT WHICH MEETING A QUORUM WAS PRESENT.***

Mayor
City of Kerrville, Texas

ATTEST:

City Secretary
City of Kerrville, Texas

(Seal)

** ** ** ** **

EXHIBIT A

FORM OF PAYING AGENT/REGISTRAR AGREEMENT

The Paying Agent/Registrar Agreement is omitted at this point as it appears in executed form elsewhere in this Transcript of Proceedings.

EXHIBIT B

WRITTEN PROCEDURES RELATING TO CONTINUING COMPLIANCE WITH FEDERAL TAX COVENANTS

A. Arbitrage. With respect to the investment and expenditure of the proceeds of the Certificates, the City's chief financial officer (the "**Responsible Person**"), which is currently the Director of Finance will:

- (i) instruct the appropriate person or persons that the construction, renovation or acquisition of the facilities must proceed with due diligence and that binding contracts for the expenditure of at least 5% of the proceeds of the Note will be entered into within six (6) months of the date of delivery of the Note (the "**Issue Date**");
- (ii) monitor that at least 85% of the proceeds of the Note to be used for the construction, renovation or acquisition of any facilities are expended within three (3) years of the Issue Date;
- (iii) restrict the yield of the investments to the yield on the Note after three (3) years of the Issue Date;
- (iv) monitor all amounts deposited into a sinking fund or funds (e.g., the Interest and Sinking Fund), to assure that the maximum amount invested at a yield higher than the yield on the Note does not exceed an amount equal to the debt service on the Note in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Note for the immediately preceding 12-month period;
- (v) ensure that no more than 50% of the proceeds of the Note are invested in an investment with a guaranteed yield for 4 years or more;
- (vi) maintain any official action of the District (such as a reimbursement resolution) stating its intent to reimburse with the proceeds of the Note any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities;
- (vii) ensure that the applicable information return (e.g., IRS Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and
- (viii) assure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (A) at least every 5 years after the Issue Date and (B) within 30 days after the date the Note is retired.

B. Private Business Use. With respect to the use of the facilities financed or refinanced with the proceeds of the Note the Responsible Person will:

- (i) monitor the date on which the facilities are substantially complete and available to be used for the purpose intended;
- (ii) monitor whether, at any time the Note is outstanding, any person, other than the District, the employees of the District, the agents of the District or members of the general public has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;
- (iii) monitor whether, at any time the Note is outstanding, any person, other than the District, the employees of the District, the agents of the District or members of the general public has a right to use the output of the facilities (e.g., water, gas, electricity);
- (iv) monitor whether, at any time the Note is outstanding, any person, other than the District, the employees of the District, the agents of the District or members of the general public has a right to use the facilities to conduct or to direct the conduct of research;
- (v) determine whether, at any time the Note is outstanding, any person, other than the District, has a naming right for the facilities or any other contractual right granting an intangible benefit;
- (vi) determine whether, at any time the Note is outstanding, the facilities are sold or otherwise disposed of; and
- (vii) take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the Ordinance related to the public use of the facilities.

C. Record Retention. The Responsible Person will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the Note and the use of the facilities financed or refinanced thereby for a period ending three (3) years after the complete extinguishment of the Note. If any portion of the Note is refunded with the proceeds of another series of tax-exempt obligations, such records shall be maintained until the three (3) years after the refunding obligations are completely extinguished. Such records can be maintained in paper or electronic format.

D. Responsible Person. The Responsible Person shall receive appropriate training regarding the District's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed or refinanced with the proceeds of the Note. The foregoing notwithstanding, the Responsible Person is authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

EXHIBIT C

FORM OF PURCHASE LETTER

*The Purchase Letter is omitted at this point as it appears
in executed form elsewhere in this Transcript of Proceedings.*



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

SUBJECT: Resolution No. 02-2024. A Resolution supporting the application of Freedom's Path Kerrville II Limited Partnership to construct affordable rental housing pursuant to the Low Income Housing Tax Credit program administered by the Texas Department of Housing and Community Affairs.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 2, 2024

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	H3.3 - Seek to attract senior living options for individuals requiring varying levels of assistance and care

SUMMARY STATEMENT:

Freedom's Path Kerrville II Limited Partnership intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for the 2024 Competitive 9% Housing Tax Credits for the construction of Freedom's Path at Kerrville II. This second phase to the existing Freedom's Path Kerrville is proposed to include up to 40 affordable rental supportive housing units for low-income, senior and disabled veterans. The term "Supportive Housing" is defined by TDHCA as "a housing, including Housing Units and Group Quarters, that has a supportive environment and includes a planned service component." The proposed project will be located at 3602 Memorial Boulevard, Kerrville, Texas. This Resolution is in standard form as required by TDHCA. The Applicant's presentation regarding this project is attached for reference.

RECOMMENDED ACTION:

Approve Resolution No. 02-2024.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 02-2024**

**A RESOLUTION SUPPORTING THE APPLICATION OF
FREEDOM'S PATH KERRVILLE II LIMITED PARTNERSHIP
TO CONSTRUCT AFFORDABLE RENTAL HOUSING
PURSUANT TO THE LOW INCOME HOUSING TAX CREDIT
PROGRAM ADMINISTERED BY THE TEXAS DEPARTMENT OF
HOUSING AND COMMUNITY AFFAIRS**

WHEREAS, Freedom's Path Kerrville II Limited Partnership has proposed a development for affordable rental housing at 3602 Memorial Boulevard, Kerrville, Texas, named Freedom's Path at Kerrville II; and,

WHEREAS, Freedom's Path Kerrville II Limited Partnership has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2024 Competitive 9% Housing Tax Credits for Freedom's Path at Kerrville II; and

WHEREAS, to be competitive, Freedom's Path at Kerrville II tax credit application requires a commitment of a financial contribution to the project by the City of Kerrville in an amount of at least \$250.00 as a loan, grant, or reduced fees; and

WHEREAS, City Council finds it in the public interest to support efforts by the private development sector to construct decent affordable housing in Kerrville;

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

SECTION ONE. The City of Kerrville, Texas, acting through its City Council, hereby confirms that it supports the proposed Freedom's Path at Kerrville II, 3602 Memorial Boulevard, Kerrville, TX, Application #24-094 and that this formal action has been taken to put on record the opinion expressed by the City of Kerrville, Texas on January 23, 2024.

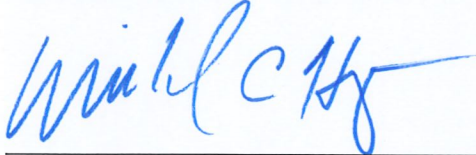
SECTION TWO. In accordance with 10 Texas Administrative Code §11.9(d)(2), City Council hereby commits to an in-kind contribution to the project referenced in Section One, above, in the form of an in-kind contribution such as a fee waiver, grant, or contribution of other value for the benefit of the project. Should the project be approved, City Council will formalize such action pursuant to the future adoption of a resolution.

SECTION THREE. For and on behalf of the City Council, the City Manager is hereby authorized, empowered, and directed to certify this Resolution to the Texas Department of Housing and Community Affairs.

PASSED AND APPROVED ON this the ____ day of _____, A.D., 2024.

Judy Eychner, Mayor

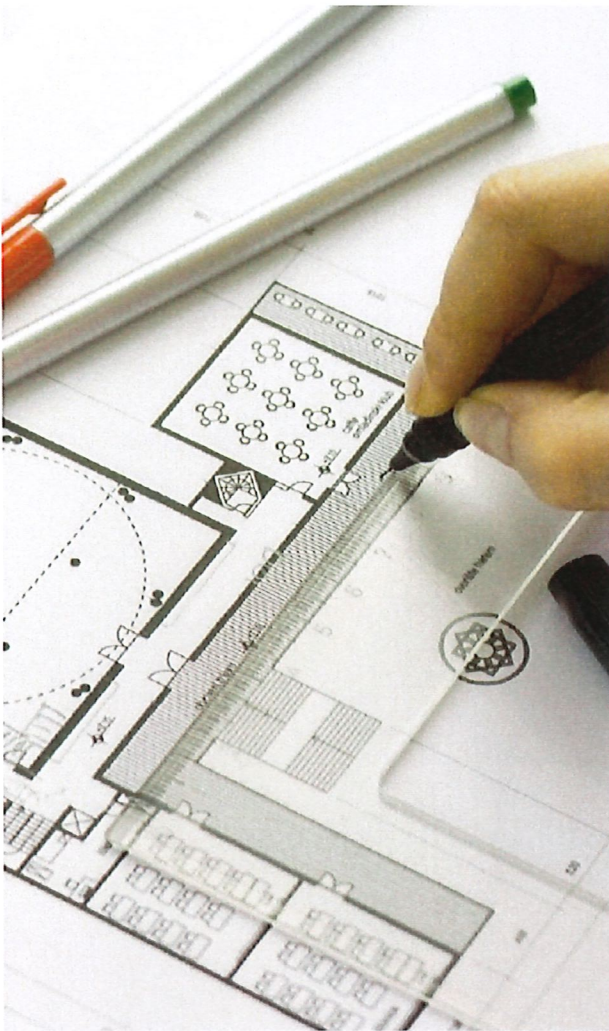
APPROVED AS TO FORM:



Michael C. Hayes, City Attorney

ATTEST:

Shelley McElhannon, City Secretary



Arx Advantage Presents Freedom's Path Kerrville II

Robbye Meyer, Principal
Justin Meyer, Principal, Development Specialist
Mark Meyer, Principal, Development Analyst



Freedom's Path Kerrville II

Freedom's Path Texas, Inc. was formed in 2016 as a 501c3 not-for-profit corporation by local Veterans in Kerrville, Texas. Its purposes are primarily two-fold: 1) to provide services and support to local Veterans, especially those with critical life needs with focused attention to the housing and services of Veterans at the Freedom's Path at Kerrville development on the Kerrville VAMC campus; and 2) to be the catalyst and managing general partner for the development of a phase II development of housing on the Kerrville VAMC campus for Veterans.

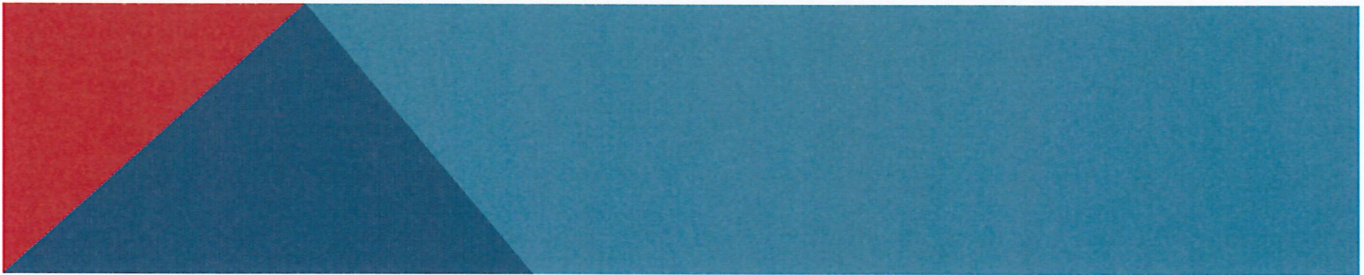
The organization has provided referrals to the first Freedom's Path development, assisted new residents with move-in assistance and once at Freedom's Path has provided ongoing programs and supports for the residents. Additionally, the organization has continued to be an advocate for Veteran support in the Kerrville/Kerr County community, has interfaced with the VAMC to ensure access and availability of Veterans to the VAMC, and now, is the primary driver behind the development of Freedom's Path at Kerrville, Phase II.



ARX ADVANTAGE OVERVIEW

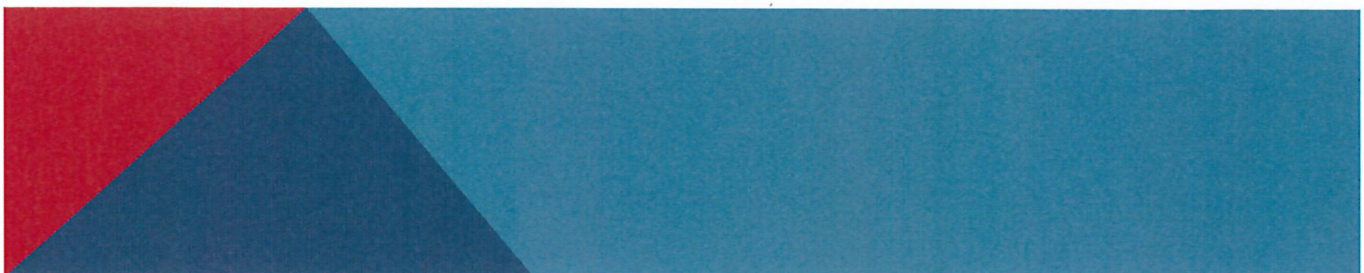
Arx Advantage Consulting, the development consulting group, has over thirty years of finance, real estate, housing programs and asset management experience. Robbye Meyer, principal and owner, is the former director of multifamily finance for the Texas Department of Housing and Community Affairs. Justin Meyer, principal, directs development logistics and planning. Mark Meyer, principal, oversees development strategic analysis.

Arx Advantage is a comprehensive real estate development consulting firm. The vision of Arx is to assist in the development of affordable housing through the use of public and private funding resources and to assist in providing opportunities for the people who eventually live in the homes created by helping provide them with the resources they need to better their lives.



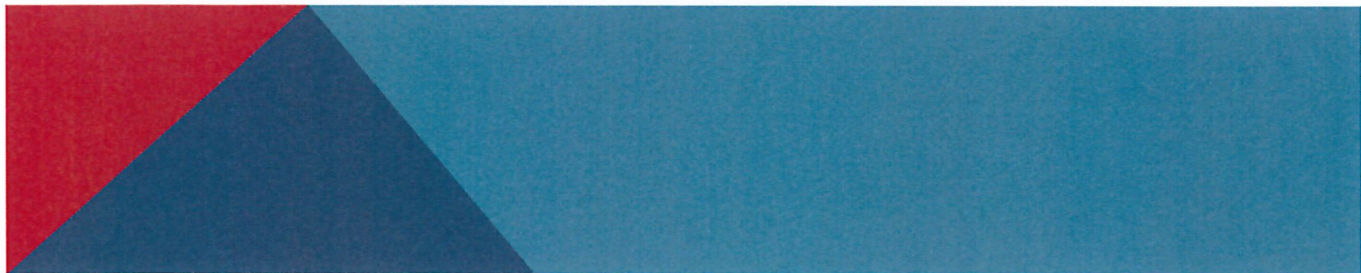
TAX CREDIT PROGRAM OVERVIEW

- IRS Program originated through 1986 tax plan
- Program administered through State agencies – TDHCA
- Investor receives dollar-for-dollar income tax reduction
- Investor dollars contribute equity in the financing structure to reduce the amount of mortgage debt on the property
- Lower debt allows owner to charge below market rents



A decorative graphic at the bottom of the page consisting of a red triangle on the left and a blue triangle on the right, meeting at a diagonal line.

1 -office/cummmunity building



PROPOSED AMENITIES

- Energy Star Microwave
- Energy Star Dishwasher
- Energy Star Refrigerator with Icemaker
- Energy Star Windows with Low E Glass
- Garbage Disposal
- Energy Star Ceiling Fans
- Energy Star Lighting
- Oven/Range
- Bathroom Exhaust Fans
- Laundry Facilities
- Window blinds & coverings
- High-Speed Internet



Covered Entries
Energy Star HVAC
R-14+ Wall Insulation
R-39+ Ceiling Insulation
30-Year Shingles

Complete scope of rehabilitation may change during development process)

TIMELINE

January 5, 2024 – Submitted Pre-Application

The application is currently in first place

March 1, 2024 – Submission of Full Application

July 2024 – Awards Announced

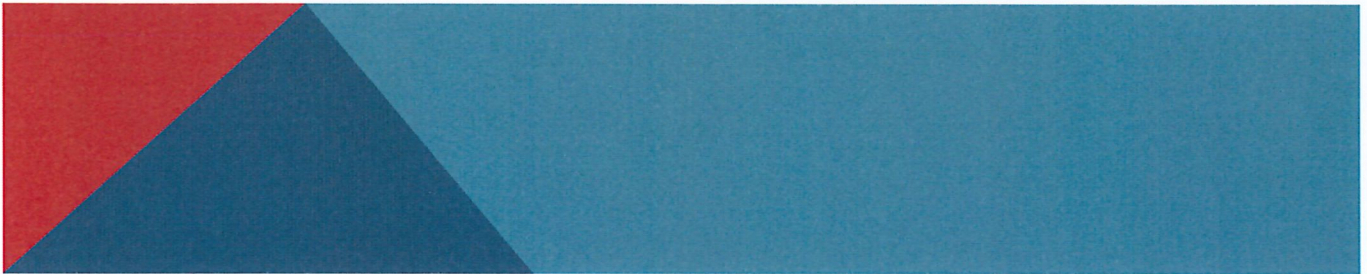
March 2025– Close on Development

April 2025 – Begin Construction.

(Proposed timeline may change during development process)

ASSISTANCE NEEDED FROM THE CITY

1. Resolution of Support from the City Council
(needs to be submitted with application on
March 1, 2024)
2. A waiver or reduction of fees for the
Development in an amount of at least
\$250.00 (also needs to be submitted with
application on March 1, 2024)





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

SUBJECT: Resolution No. 03-2024. A Resolution authorizing a waiver of various fees associated with the construction of single-family homes for Habitat for Humanity Kerr County, Inc.; said waiver applicable to the construction of three such homes on existing lots.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 15, 2024

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	H1.3 - Explore financial incentives and/or infrastructure funding for developers of residential subdivisions supporting new single family homes under \$200,000

SUMMARY STATEMENT:

Habitat for Humanity Kerr County continues to construct affordable homes for Kerrville families. They are currently working on some infill lots within the community. As the need for affordable housing continues to grow, Habitat has been able to provide homes through community support, including in-kind support and waiver of fees from the City of Kerrville. Similarly to their previous subdivision, the Maud Jennings neighborhood, Habitat Kerr County is requesting a waiver for the following fees:

Parkland Dedication;
Building, Electrical, Plumbing, and Mechanical Fees;
and Platting and re-platting fees.

This waiver would be for three Habitat single-family homes on existing infill lots.

RECOMMENDED ACTION:

Approve Resolution No. 03-2024.

**CITY OF KERRVILLE, TEXAS
RESOLUTION NO. 03-2024**

**A RESOLUTION AUTHORIZING A WAIVER OF VARIOUS FEES
ASSOCIATED WITH THE CONSTRUCTION OF SINGLE FAMILY
HOMES FOR HABITAT FOR HUMANITY KERR COUNTY, INC.;
SAID WAIVER APPLICABLE TO THE CONSTRUCTION OF
THREE SUCH HOMES ON EXISTING LOTS**

WHEREAS, the work of Habitat for Humanity Kerr County, Inc. ("Habitat-Kerr County") benefits the citizens of Kerrville by providing a means of increasing affordable housing within the City of Kerrville; and

WHEREAS, Habitat-Kerr County intends to construct additional single family homes within the City on properties (lots) it currently owns; and

WHEREAS, Habitat-Kerr County has requested that the City waive the payment of various fees related to the development of the lots and construction of the homes; and

WHEREAS, City Council finds that increasing the inventory of affordable housing in the City, encouraging in-fill development on property which for-profit home builders generally find unprofitable, and encouraging new construction in areas of the City where neighborhood revitalization is needed, all serve a public purpose, and as such, it is in the public interest to waive the fees specified below which would result from Habitat-Kerr County's construction of the homes specified above;

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

SECTION ONE. Subject to Sections Two and Three, below, the payment of the following fees are waived for Habitat-Kerr County for its construction of single family homes on three properties (lots) that it currently owns:

- a. Parkland Dedication Fee;
- b. Building, Electrical, Plumbing, and Mechanical Fees; and
- c. Platting and replatting fee.

SECTION TWO. The waiver of fees described in Section One, above, applies only to applications filed by Habitat-Kerr County.

SECTION THREE. The waiver of the various fees listed in Section One, above, is not to be construed and does not waive any requirements for obtaining the various permits and inspections required by the Code of Ordinances of the City of Kerrville,

Texas, or any other applicable federal, state, or local law or regulation, nor is it to be construed as granting any waivers or variances to the subdivision regulations of the City of Kerrville.

**PASSED AND APPROVED ON this the _____ day of _____,
A.D., 2024.**

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: First Amendment to the Design-Build Contract with Marksmen General Contractors, LLC in the amount of \$225,800 for the Heart of the Hills Heritage Center Project.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** November 30, 2023

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$225,800	\$	\$	Project #15-22002

PAYMENT TO BE MADE TO: Marksmen General Contractors, LLC

Kerrville 2050 Item?	Yes
Key Priority Area	D - Downtown Revitalization
Guiding Principle	N/A
Action Item	D1.6 - Support new anchors in the Downtown, such as the A. C. Schreiner Mansion or the Arcadia, to increase public and visitor traffic

SUMMARY STATEMENT:

After completion of phase 1 of the design process for the renovations to the A.C. Schreiner mansion, we are now prepared to move to phase II of the design. This phase will take us to 100% construction drawings. Attached you will find the amendment to the contract outlining the remaining preconstruction services Marksmen will provide to the City of Kerrville. Once the amendment is executed, it should be roughly 4 months to get to 100% construction drawings.

RECOMMENDED ACTION:

Authorize City Manager to finalize design-build contract amendment for the Heart of the Hills Heritage Center Project.

ATTACHMENTS:

[*20240123_Contract amendment Marksmen General HHHC Design Build.pdf*](#)

AIA[®] Document A141[™] – 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141[™]–2014, Standard Form of Agreement Between Owner and Design-Builder dated the **07** day of **March** in the year **2023** (the “Agreement”)
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

City of Kerrville – Design-Build Services, A.C. Schreiner House and Grounds
529 Water St., Kerrville, TX 78028

THE OWNER:

(Name, legal status and address)

The City of Kerrville, Texas
City Hall, 701 Main Street
Kerrville, Texas 78028
Phone (830) 257-8000

THE DESIGN-BUILDER:

(Name, legal status and address)

Marksmen General Contractors, LLC
24165 IH-10 W, Ste. 217 PMB 744
San Antonio, TX 78257
Phone (210) 858-3125

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder hereby amend the Agreement as follows.

WHEREAS, the Owner seeks to renovate the A.C. Schreiner House and Grounds (“Project”); and

WHEREAS, the Agreement allows for design milestones and the Design-Builder has completed Phase 1A of the design phase and is prepared to move forward to Phase 1B of the design phase, as described in the Agreement; and

WHEREAS, Phase 1B includes 60%, 90%, and 100% design; and

WHEREAS, the Agreement allows the Design-Builder to implement Phase 1B upon written agreement of the Parties:

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

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TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

☒ [X] Stipulated Sum, in accordance with Section A.1.2 below

☐ [« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

☐ [« »] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be two hundred, twenty five thousand, eight hundred dollars and xx/100 (\$ 225,800), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

See Attachment A

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

« » N/A

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« » N/A

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « » (\$ « »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

« » N/A

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

« » N/A

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

« » N/A

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« » N/A

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 5 percent (5 %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 5 percent (5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum

- fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;
 - .5 Subtract the aggregate of previous payments made by the Owner;
 - .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
 - .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than September 5, 2025 from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Attachment A			

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

NA

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
NA		

Other identifying information:

AN

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

none

.2 Contingencies

See Attachment A

§ A.3.1.6 Design-Builder's assumptions and clarifications:

« »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:

(Identify name, title and contact information.)

.1 Superintendent

N/A

.2 Project Manager

Eric Stirn, Director of Preconstruction Services

EricS@marksmenGC.com

.3 Others

Zach Tschirhart, Project Executive

ZachT@MarksmenGC.com

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:

(List name, discipline, address and other information.)

Architect

Fisher Heck Architects

915 S St. Mary's St.

San Antonio, TX 78205

March Johnson, Principal

mjohnson@fisherheck.com

(210) 299-1500

MEP Consultant

ESA Engineering

110 NW Loop 410 Ste. 810

San Antonio, TX 78213

Stephen Mitchell, PE

Stephen@esaengineers.net

(210) 342-3483

Structural Consultant

Alpha Consulting Engineers, Inc.

8023 Vantage Drive, Ste. 1101

San Antonio, TX 78230

Thomas Hamer, PE

Thomas@alphaconsultingengineers.com

(210) 227-3647

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)

§ **A.5.1.1.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ **A.5.1.1.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ **A.5.1.1.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ **A.5.1.2 Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ **A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ **A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ **A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ **A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ **A.5.1.4.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ **A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ **A.5.1.4.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ **A.5.1.4.4** Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ **A.5.1.4.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ **A.5.1.5 Miscellaneous Costs**

§ **A.5.1.5.1** Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ **A.5.1.5.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ **A.5.1.5.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ **A.5.1.5.4** Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ **A.5.1.5.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ **A.5.1.5.6** With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ **A.5.1.5.7** Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ **A.5.1.5.8** With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ **A.5.1.5.9** With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ **A.5.1.5.10** That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ **A.5.1.6 Other Costs and Emergencies**

§ **A.5.1.6.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ **A.5.1.6.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ **A.5.1.6.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ **A.5.1.7 Related Party Transactions**

§ **A.5.1.7.1** For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ **A.5.1.7.2** If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the

identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be

permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

Dalton Rice, City Manager

(Printed name and title)

DESIGN-BUILDER *(Signature)*

Mark Baublitz, CEO President

(Printed name and title)

PHASE II DESIGN & PRE-CONSTRUCTION PROPOSAL

SCOPE	FIRM	AMOUNT
Architectural Programming, Coordination, Design, Etc.	Fisher Heck Architects	\$ 99,000
M.E.P. Coordination, Design, Etc.	Skye MEP	\$ 48,000
Structural Coordination, Design, Etc.	Alpha Consulting Engineers	\$ 11,000
IT/AV Coordination, Design, Etc.	2 Post Technology, LLC	\$ 12,000
Civil Engineering, Surveying, Coordination, Design, Etc.	Wellborn Engineers & Surveying	\$ 7,000
Preconstruction Services	Marksman General Contractors	\$ 28,000
SUB-TOTAL		\$ 205,000
Design Contingency (If Needed)		
Consultant Reimbursables (Meetings, Document Reproduction, Etc.)	To Be Determined	\$ 10,000
Additional Consultants / Design Changes	To Be Determined	\$ 10,800
Contingency Total		\$ 20,800
PHASE 2 DESIGN & PRECONSTRUCTION TOTAL		\$ 225,800

PHASE 2 DESIGN & PRECONSTRUCTION PROPOSAL QUALIFICATIONS

- Additional Consultants or Design Changes contingency only to be used after discussion between the Design-Build Team & the Owner & the Owner has issued written approval to proceed.
- Consultant Reimbursables will be billed on an as needed basis.
- We have included (3) meetings with the City of Kerrville. If additional meetings are required (Virtual or in person) they will be billed at a rate of \$1,200 per meeting.

PHASE 2 DESIGN & PRECONSTRUCTION DELIVERABLES

Architectural Drawing Checklist

60% Design-Design Development

- Code Analysis—Finalized, indicating building classifications, occupancy, interpretations, and special requirements. Accessible routes shall be identified that meet TAS requirements.
- Index, Symbols, and General Information: Refine index of drawings, drawing symbols, and abbreviations.
- Site Plan – Demolition—Refinement indicating extent of demolition.
- New Construction Site Plan – Refinement to illustrate building, parking lot layout, site features, adjacent structures, and access to site. Relationship of all proposed work to existing site and/or building features illustrated and notated.
- Demolition Floor Plan – Refinement indicating, room titles and numbers, and updated notations.



- Refinement of New Construction Floor Plans indicating developed dimensions, room titles and numbers, door swings, furniture layouts, equipment layout, and fire-rated walls.
- Reflected Ceiling Plans—Refinement indicating lighting and special ceiling features.
- Roof Plans – Refinement of indicating overall dimensions and slopes. Exterior elevations indicating all openings, dimensions, special features, etc.
- Exterior Elevations—Features illustrated in enlarged plans, elevations, and details as needed to convey design.
- Building Sections – Refinement including extent of insulation and room titles and numbers.
- Wall Sections – Develop wall sections for each material and construction condition.
- Interior or exterior features illustrated in enlarged plans, elevations, and details as needed to convey design.
- Door schedule, finish schedule, and partition types to be developed.
- Specifications written to match the scope of work.
- Finish material selections finalized.

90% Design–Construction Documents

- Code Analysis—Finalized, indicating building classifications, occupancy, interpretations, and special requirements. Accessible routes shall be identified that meet TAS requirements.
- Index, Symbols, and General Information: Refine index of drawings, drawing symbols, and abbreviations.
- Site Plan – Demolition—Refinement indicating extent of demolition.
- New Construction Site Plan – Refinement to illustrate building, parking lot layout, site features, adjacent structures, and access to site. Relationship of all proposed work to existing site and/or building features illustrated and notated.
- Demolition Floor Plan – Refinement indicating, room titles and numbers, and updated notations.
- Floor Plan—New Construction—Develop dimensions, and refine as needed.
- Reflected Ceiling Plans—Refinement indicating lighting and special ceiling features.
- Ceiling Details – Include special conditions.
- Roof Plans – Refinement of indicating overall dimensions and slopes. Exterior elevations indicating all openings, dimensions, special features, etc.
- Exterior Elevations—Refine as needed to convey design.
- Building Sections – Refinement including extent of insulation and room titles and numbers.
- Wall Sections – Refine wall sections.
- Plan Details – Include special conditions.
- Section Details – Include details for special conditions.
- Refine Door schedule, finish schedule to include all approved finishes, and partition types to be finalized.
- Door and Window Details – Include special conditions.
- Millwork Sections – Include special conditions.
- Specifications written to match the scope of work.



Structural Drawing Checklist

60% Design–Design Development

- Structural Notes: Refinement of special inspections requirements, outline specifications, and finalized code analysis.
- Structural Foundation Design: Develop dimensions for new construction and coordinate accuracy with architectural drawings.
- Structural Framing System: Sized roof framing members, developed dimensions of new construction, indicating column spacing, column sizes, beam sizes, and floor framing.
- Building sections showing floor elevations and typical sectional details.
- Structural design for special features.
- Calculations for live loads of floor, roof, wind, impact, vibration and other special requirements.

90% Design–Construction Documents

- Structural Notes: Refinement of special inspections requirements, outline specifications, and finalized code analysis.
- Structural Foundation Design: Refine dimensions for new construction and coordinate accuracy with architectural drawings.
- Structural Framing System: Refine framing as required.
- Building sections showing floor elevations and typical sectional details.
- Refine all special features.

MEP Drawing Checklist

60% Design–Design Development

- MEP Site Plan – Demolition – Refine existing and demolished utilities and site requirements. Include property line, easements, scale, graphic scale, and north arrow.
- MEP Site Plan – New Construction–Refine existing and proposed utilities, underground and overhead with sizes, valves, boxes, cleanouts, access ways, and manholes indicated.
- Floor Plan – Mechanical Demolition–Refine demolition of equipment layout.
- Floor Plan – Electrical Demolition–Refine electrical and data rooms, and demolition of existing equipment, conduit, and devices. Include scale, graphic scale, and north arrow.
- Floor Plan – Plumbing Demolition–Refine demolition of existing equipment, fixtures, and piping layout. Include scale, graphic scale, and north arrow.
- Floor Plan – Mechanical New Construction – Refine HVAC equipment (air handlers, pumps, compressors, etc. shown to scale with clearances indicated including coil pull space for A/C units, medium pressure ductwork shown in double line format, placement of single/dual terminal units, and thermostats. Show major taps, splits, and duct sizes.
- Mechanical Schedules–Refine equipment schedules for air handling units, condensers, and air devices, and include exhaust fans, and other required equipment schedules.
- Power Plan – Refine power plans identifying circuits.
- Lighting Plan – Refine lighting and identify circuits.
- Riser Diagram: Rough, one-line or riser diagram.
- Schedules: Typical capacities and sizes with preliminary equipment and lighting schedules, and load analysis. Provide panel schedules.



- Floor Plan – Plumbing New Construction—At a scale consistent with, and coordinated with the architectural floor plans, refine plumbing fixtures, and add floor and roof drains, including special devices, soil, waste and vent piping and main supply taps and piping sized.
- Plumbing Schedules—Refined equipment schedules indicating proposed flow rates, capacities, selections.
- Plumbing Riser Diagrams – Showing all fixtures and piping.
- Specifications included on Drawings to match the scope of work.

90% Design–Construction Documents

- MEP Site Plan – Demolition – Refine existing and demolished utilities and site requirements. Include property line, easements, scale, graphic scale, and north arrow.
- MEP Site Plan – New Construction—Refine existing and proposed utilities, underground and overhead with sizes, valves, boxes, cleanouts, access ways, and manholes indicated.
- Floor Plan – Mechanical Demolition—Refine demolition of equipment layout.
- Floor Plan – Electrical Demolition—Refine electrical and data rooms, and demolition of existing equipment, conduit, and devices. Include scale, graphic scale, and north arrow.
- Floor Plan – Plumbing Demolition—Refine demolition of existing equipment, fixtures, and piping layout. Include scale, graphic scale, and north arrow.
- Floor Plan – Mechanical New Construction – Refine HVAC equipment (air handlers, pumps, compressors, etc. shown to scale with clearances indicated including coil pull space for A/C units, medium pressure ductwork shown in double line format, placement of single/dual terminal units, and thermostats. Show major taps, splits, and duct sizes.
- Mechanical Schedules—Refine equipment schedules for air handling units, condensers, and air devices, and include exhaust fans, and other required equipment schedules.
- Power Plan – Refine power plans identifying circuits.
- Lighting Plan – Refine lighting and identify circuits.
- Riser Diagram: Rough, one-line or riser diagram.
- Schedules: Typical capacities and sizes with preliminary equipment and lighting schedules, and load analysis. Provide panel schedules.
- Floor Plan – Plumbing New Construction—At a scale consistent with, and coordinated with the architectural floor plans, refine plumbing fixtures, and add floor and roof drains, including special devices, soil, waste and vent piping and main supply taps and piping sized.
- Plumbing Schedules—Refined equipment schedules indicating proposed flow rates, capacities, selections.
- Plumbing Riser Diagrams – Showing all fixtures and piping.
- Specifications included on Drawings to match the scope of work.



IT/AV Drawing Checklist

60% Design–Design Development

- General Notes–Refine notes related to both conduit and cabling.
- Floor Plan–IT/Data–Refine data and telephone outlet locations, providing sizing and path of conduit from IT/Data room, scale and graphic scale.
- IT Details Provide rack elevations and details.
- Specifications included on Drawings to match the scope of work.

90% Design–Construction Documents

- General Notes–Refine notes related to both conduit and cabling.
- Floor Plan–IT/Data–Refine data and telephone outlet locations, providing sizing and path of conduit from IT/Data room, scale and graphic scale.
- IT Details Refine rack elevations and details.
- Specifications included on Drawings to match the scope of work.

Civil Drawing Checklist

60% Design–Design Development

- Site Survey of Existing Conditions.
- Existing Conditions and Demolition Plan–Refine existing and demolished utilities and site requirements. Include property line, easements, scale, graphic scale, and north arrow.
- New Construction Site Plan – Refine drawings as needed for new buildings, additions, and renovations, parking lot layout, site features, pedestrian paving, adjacent structures, new fire hydrants, and access to site. Relationship of all proposed work to existing site and/or building features illustrated. Include scale, graphic scale, and north arrow.
- Grading Plan – For disturbed areas only (New ADA sidewalk, Utility tie-ins, etc.)
- Utility Plan – Identify all new and proposed utilities related to fire, sewer, and domestic water lines.
- Specifications included on Drawings to match the scope of work.

90% Design–Construction Documents

- Existing Conditions and Demolition Plan–Refine existing and demolished utilities and site requirements. Include property line, easements, scale, graphic scale, and north arrow.
- New Construction Site Plan–Refine drawings as needed for new buildings, additions, and renovations, parking lot layout, site features, pedestrian paving, adjacent structures, new fire hydrants, and access to site. Relationship of all proposed work to existing site and/or building features illustrated. Include scale, graphic scale, and north arrow.
- Grading and Drainage Plan – Refine and finalize drainage with grading spot elevations. Refine single line stormwater utility piping and grates.
- Utility Plan – Refine all new utilities related to fire, stormwater, and domestic water lines.
- Specifications included on Drawings to match the scope of work.



Misc. Deliverables Checklist

- Meeting Agendas & Minutes – MGC to coordinate and issue all meeting agendas & minutes.
- Budget & Cost Management – MGC to issue budgets & cost management solutions to align scope of work to budget. This also includes contingency updates & allocation throughout the remaining design process. A budget update will be completed at the end of 60% Design (Design Development) & a GMP will be completed at the end of 90% Design (Construction Documents)
- Schedule–MGC to issue a master schedule for Preconstruction / Design phase as well as Construction.
- Constructability Review & Feasibility–MGC to continue working alongside consultants to ensure constructability & feasibility of the project.
- Quality Management & Design Review–MGC to continue working with consultants and owners to ensure quality throughout the design & construction.





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

SUBJECT: Second Amendment to the Design-Build Contract with Thos. S. Byrne, Inc. dba Byrne Construction Services Corporation in the amount of \$6,029,009.00 for the Public Safety Facility Project.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 10, 2024

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$6,029,009.00	\$41,442,165.21	\$45,000,000.00	Project #70-22005

PAYMENT TO BE MADE TO: Thos. S. Byrne, Inc.

Kerrville 2050 Item? Yes

Key Priority Area F - Public Facilities and Services

Guiding Principle N/A

Action Item F2.4 - Consider bond funding for a new public safety building/complex

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.

The Byrne Construction team has progressed to the design development phase of the process and as a part of that, we are now at a point to begin some long lead items. Byrne has issued requests for bids on Early Work Package #2 (EWP-2) consisting of building foundations and below grade utilities, structural steel fabrication and erection, and HVAC roof top unit procurement. In order to maintain the overall project schedule and delivery, staff recommends authorizing Amendment #2 to the Design-Build contract with Byrne Construction Services in the amount of \$6,029,009.00.

RECOMMENDED ACTION:

Authorize City Manager to finalize design-build contract amendment for the Public Safety Facility Project.

AIA[®] Document A141[®] – 2014 Exhibit A

Design-Build Amendment No. 2

Early Work Package No. 2

This Design-Build Amendment No. 2 (the “Amendment”) is incorporated into and amends the accompanying AIA Document A141TM–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 16th day of May in the year 2023 (the “Agreement”) (In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

City of Kerrville Public Safety Facility
365 Clearwater Paseo Dr.
Kerrville, Texas 78028

THE OWNER:

(Name, legal status and address)

The City of Kerrville
City Hall, 701 Main Street
Kerrville, Texas 78028

THE DESIGN-BUILDER:

(Name, legal status and address)

Thos. S. Byrne, Inc., dba Byrne Construction Services
5851 Sebastian Place
San Antonio, Texas 78249

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder hereby amend the Agreement as follows.

WHEREAS, the Owner seeks to construct the City of Kerrville Public Safety Facility Project (“Project”); and

WHEREAS, the Agreement allows for Early Work Packages for a portion of Work that the Parties agree should be performed prior to the establishment of a Guaranteed Maximum Price for the Project; and

WHEREAS, the Agreement allows for Early Work Packages to facilitate the early preparation of the Site, purchase long lead time materials and equipment, and otherwise accelerate certain portions of the Work in advance of The Design-Build Amendment between the Owner and Design-Builder regarding the Guaranteed Maximum Price for the entire Work; and

WHEREAS, the Agreement allows the Design-Builder to implement Early Work Packages upon the written agreement of the Parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein the parties agree as follows:

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TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance pursuant to this Amendment and its Cost Summary (**Attachment A**). The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

- ☒ Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

Design-Builder's Fee shall be 2.95% of the Cost of the Work

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee (the "Guaranteed Maximum Price") is guaranteed by the Design-Builder not to exceed six million, twenty-nine thousand, nine dollars (\$ 6,029,009.00), subject to additions and deductions for changes in the Work as authorized in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

See **Attachment A**, which is attached and incorporated herein by reference.

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

None

§ A.1.4.3.4 Unit Prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
None		

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Attachment C

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of

that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of **five percent (5%)**. The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of **five percent (5%)** from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed under this Amendment and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than **May 5, 2025**, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

NA

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

See Attachment C

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

See Attachment D

Section

Title

Date

Pages

§ A.3.1.3 The Drawings:

NA

Number

Title

Date

§ A.3.1.4 The Sustainability Plan, if any: NA

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Attachment C to the Agreement.)

Title

Date

Pages

NA

Other identifying information:

NA

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

None

.2 Contingencies

See Attachment A

§ A.3.1.6 Design-Builder's assumptions and clarifications:

See Attachment C

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

None

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

Reference A.3.1.2

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

Brandon Foster

.2 Project Manager

Josh Holcomb

.3 Others

**Construction Manager – Keith Bender
Senior Project Coordinator – Dennise Pedroza
Operations Manager – Michael McCall
General Superintendent – Israel Perez**

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

**Beaty Palmer – Architect
110 Broadway Suite 600
San Antonio, TX 78205**

**Lopez Salas – Interior Architect
237 W. Travis St., Suite 201
San Antonio. Texas 78205**

**BVG4 – Interior Architect
6301 Gaston Avenue - West Tower. Suite 1310
Dallas. Texas 75214**

**Cleary Zimmerman Engineers – Mechanical and Electrical Engineers
1344 S. Flores, Suite 101
San Antonio. Texas 78204**

**Matkin-Hoover – Civil Engineer
8 Spencer Road. Suite 100
Boerne, Texas 78006**

Datum Engineers– Structural Engineer
311 Sixth Street
San Antonio. Texas 78215

Combs – Security and Audio-Visual
17806 IH-10W, Suite 300
San Antonio. Texas 78257

TLC – Technology & 911 Dispatch Consulting
1255 Corporate Dr., Suite 100
Irving, Texas 75038

Rialto – Landscape Architect
2425 Broadway
San Antonio. Texas 78215

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
NA			

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term “related party” includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

Dalton Rice, City Manager

(Printed name and title)

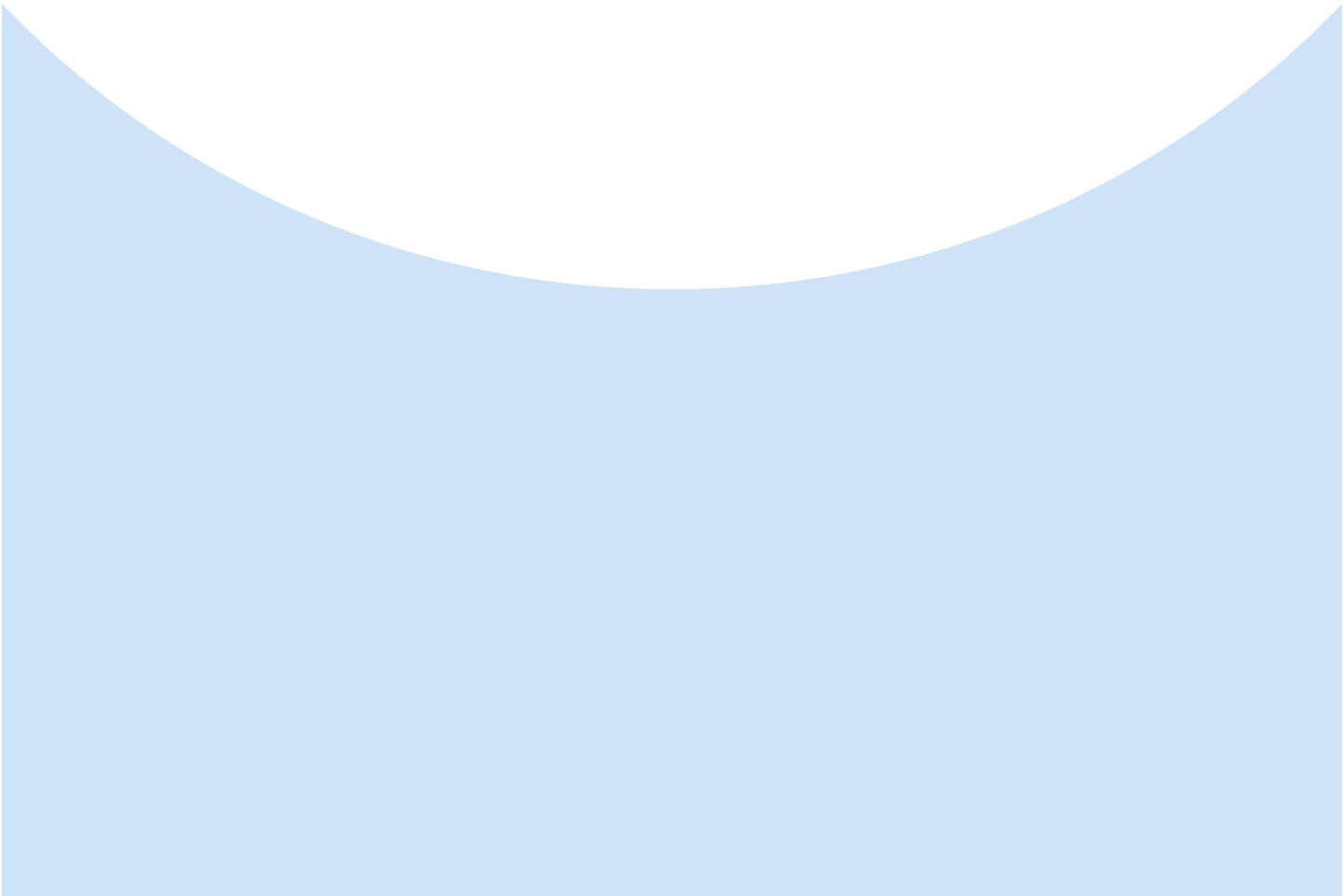
DESIGN-BUILDER *(Signature)*

Tony Battle, President

(Printed name and title)



Cost Summary



Cost Estimate Summary Sheet

Kerrville Public Safety Facility

Early Release Package 02 [EWP-02]

Date: December 22, 2023

65,971 sqft

Bid Package #	Bid Package Description		Early Release Package 02 Total	Cost/SF	Notes
033000	Concrete		\$ 2,188,678	\$ 33.18	
033000	Storage Building - Concrete Slab		\$ 56,060	\$ 0.85	Alt. 1 breakout.
051000	Structural Steel Fabrication		\$ 868,510	\$ 13.17	
051000	Structural Steel Erection		\$ 597,369	\$ 9.06	
220000	Plumbing - Underground		\$ 327,451	\$ 4.96	Alt. 1 breakout.
220000	Storage Building - Plumbing		\$ 2,000	\$ 0.03	Alt. 1 breakout.
230000	HVAC - RTU Procurement		\$ 690,562	\$ 10.47	
260000	Electrical Underground		\$ 885,898	\$ 13.43	
260000	Storage Building - Electrical Underground		\$ 12,691	\$ 0.19	Alt. 1 U.G. breakout.
310000	Storage Building - Earthwork		\$ 40,580	\$ 0.62	Alt. 1 U.G. breakout.
313116	Termite Treatment		\$ 14,359	\$ 0.22	
330000	Storage Building - Site Utilities		\$ 1,521	\$ 0.02	Alt. 1 breakout.
Cost of Work Subtotal			\$ 5,685,679	\$ 86.18	
Contractor Contingency		3.00%	\$ 170,570	\$ 2.59	
Building Permit			Excluded		Exempt Public Entity
Construction Costs Subtotal			\$ 5,856,250	\$ 88.77	
CGL & Umbrella Insurance			in GC's		
Professional Liability			in GC's		
Builder's Risk			in GC's		
Payment & Performance Bond			in GC's		
Construction Costs & Insurance Subtotal			\$ 5,856,250	\$ 88.77	
General Conditions & General Requirements			\$ -	\$ -	in EWP-01
Subtotal			\$ 5,856,250	\$ 88.77	
Design Builders Fee		2.95%	\$ 172,759	\$ 2.62	
Construction Contract Administration Fee			\$ -	\$ -	in EWP-01
Project SubTotal			\$ 6,029,009	\$ 91.39	



Balance to Finish Summary



Balance to Finish

Kerrville Public Safety Facility

EWP 01, EWP 02 & Balance to Finishes - Combined Total

Date: December 22, 2023

65,971 sqft

Bid Package #	Bid Package Description	Early Work Packages 01	Early Work Packages 02	Balance to Finish	CombinedTotal	Cost/SF	Notes
010020	Temporary Construction	\$ 125,150	\$ -	\$ -	\$ 125,150	\$ 1.90	
021000	BIM Coordination & Clash Detection	\$ 75,000	\$ -	\$ -	\$ 75,000	\$ 1.14	
017400	Final Cleaning	\$ -	\$ -	\$ -	\$ -	\$ -	
023000	Demolition	\$ -	\$ -	\$ -	\$ -	\$ -	
033000	Concrete	\$ -	\$ 2,188,678	\$ -	\$ 2,188,678	\$ -	
033000	Alt. 1 Storage Building - Concrete Slab	\$ -	\$ 56,060	\$ -	\$ 56,060	\$ -	
036500	Polished & Stained Concrete	\$ -	\$ -	\$ -	\$ -	\$ -	
044000	Masonry	\$ -	\$ -	\$ 403,965	\$ 403,965	\$ -	
051000	Structural Steel Fabrication	\$ -	\$ 868,510	\$ -	\$ 868,510	\$ -	
051000	Structural Steel Erection	\$ -	\$ 597,369	\$ -	\$ 597,369	\$ -	
055000	Misc. and Decorative Metals	\$ -	\$ -	\$ 50,000	\$ 50,000	\$ -	
061000	Rough Carpentry	\$ -	\$ -	\$ 88,678	\$ 88,678	\$ -	
062000	Architectural Woodwork	\$ -	\$ -	\$ 691,225	\$ 691,225	\$ -	
071000	Waterproofing & Sealants	\$ -	\$ -	\$ 182,875	\$ 182,875	\$ -	
072400	Lath & Plaster	\$ -	\$ -	\$ -	\$ -	\$ -	None - Excluded
072500	Spray Insulation	\$ -	\$ -	\$ -	\$ -	\$ -	None - Excluded
074100	Roofing	\$ -	\$ -	\$ 1,327,709	\$ 1,327,709	\$ -	
074200	Metal Wall Panels & Soffits	\$ -	\$ -	\$ -	\$ -	\$ -	
079000	Fireproofing	\$ -	\$ -	\$ -	\$ -	\$ -	
081000	Doors, Frames & Hardware	\$ -	\$ -	\$ 1,051,086	\$ 1,051,086	\$ -	
083300	Overhead Doors	\$ -	\$ -	\$ 25,180	\$ 25,180	\$ -	
084000	Glass & Glazing	\$ -	\$ -	\$ 1,143,305	\$ 1,143,305	\$ -	
086000	Skylights	\$ -	\$ -	\$ -	\$ -	\$ -	
089100	Louvers	\$ -	\$ -	\$ -	\$ -	\$ -	
092100	Drywall & Acoustical	\$ -	\$ -	\$ 2,922,718	\$ 2,922,718	\$ -	
093000	Tile	\$ -	\$ -	\$ 439,216	\$ 439,216	\$ -	
096200	Rubber Athletic Flooring	\$ -	\$ -	\$ 14,038	\$ 14,038	\$ -	
096400	Access Flooring	\$ -	\$ -	\$ 42,300	\$ 42,300	\$ -	
096500	Carpet Tile, Resilient & Rubber Base	\$ -	\$ -	\$ 328,843	\$ 328,843	\$ -	
096600	Resinous Flooring & Cove Base	\$ -	\$ -	\$ -	\$ -	\$ -	None - Excluded
099100	Painting	\$ -	\$ -	\$ 801,987	\$ 801,987	\$ -	
100000	Specialties	\$ -	\$ -	\$ 154,500	\$ 154,500	\$ -	
101200	Lockers	\$ -	\$ -	\$ 243,075	\$ 243,075	\$ -	
101400	Exterior and Interior Signage	\$ -	\$ -	\$ 151,786	\$ 151,786	\$ -	
100000	Operable Partitions	\$ -	\$ -	\$ 53,172	\$ 53,172	\$ -	
107300	Covered Parking	\$ -	\$ -	\$ -	\$ -	\$ -	Add Alternate #02
107300	Covered Outdoor Seating	\$ -	\$ -	\$ 85,855	\$ 85,855	\$ -	
109300	Roof Top Mechanical Screen	\$ -	\$ -	\$ -	\$ -	\$ -	None - Excluded
114300	Residential Appliances - Installation Only	\$ -	\$ -	\$ 7,200	\$ 7,200	\$ -	Furnished by FF&E
122000	Window Treatment	\$ -	\$ -	\$ 46,000	\$ 46,000	\$ -	
210000	Fire Protection	\$ -	\$ -	\$ 379,072	\$ 379,072	\$ -	
220000	Plumbing	\$ -	\$ 327,451	\$ 1,554,103	\$ 1,881,554	\$ -	
220000	Plumbing Slab Rough in	\$ -	\$ 2,000	\$ -	\$ 2,000	\$ -	
230000	HVAC	\$ -	\$ -	\$ 2,644,624	\$ 2,644,624	\$ -	
230000	HVAC - RTU Release	\$ -	\$ 690,562	\$ -	\$ 690,562	\$ -	
260000	Electrical	\$ -	\$ -	\$ 2,795,747	\$ 2,795,747	\$ -	
260000	Electrical Equipment - Gear & Generator	\$ 846,724	\$ -	\$ -	\$ 846,724	\$ 12.83	
260000	Electrical Slab Rough in and Site Underground	\$ -	\$ 885,898	\$ -	\$ 885,898	\$ -	
260000	Storage Building - Electrical Slab Rough in	\$ -	\$ 12,691	\$ -	\$ 12,691	\$ -	
270000	Structured Cabling	\$ -	\$ -	\$ 502,502	\$ 502,502	\$ -	
272000	ERRC (DAS) System	\$ -	\$ -	\$ -	\$ -	\$ -	None - Excluded
274000	Audio / Video Systems	\$ -	\$ -	\$ 915,966	\$ 915,966	\$ -	
280000	Intercom System	\$ -	\$ -	\$ 112,238	\$ 112,238	\$ -	
280000	Security & Access Control	\$ -	\$ -	\$ 668,397	\$ 668,397	\$ -	
283100	Fire Alarm	\$ -	\$ -	\$ 111,510	\$ 111,510	\$ -	
310000	Earthwork	\$ 1,549,429	\$ -	\$ -	\$ 1,549,429	\$ 23.49	
310000	Storage Building - Earthwork	\$ -	\$ 40,580	\$ -	\$ 40,580	\$ -	
312500	Pavement Markings	\$ -	\$ -	\$ 30,775	\$ 30,775	\$ -	
310001	Enabling	\$ 75,003	\$ -	\$ -	\$ 75,003	\$ 1.14	
310000	Asphalt Paving	\$ 188,689	\$ -	\$ -	\$ 188,689	\$ 2.86	
313116	Termite Treatment	\$ -	\$ 14,359	\$ -	\$ 14,359	\$ -	
321410	Fencing & Gates	\$ -	\$ -	\$ 320,688	\$ 320,688	\$ -	
323000	Site Improvements	\$ -	\$ -	\$ -	\$ -	\$ -	Furnished by FF&E
324000	Unit Pavers	\$ -	\$ -	\$ -	\$ -	\$ -	Add Alternate #07
329000	Landscape & Irrigation	\$ -	\$ -	\$ 478,562	\$ 478,562	\$ -	
330000	Site Utilities	\$ 681,514	\$ -	\$ -	\$ 681,514	\$ 10.33	
330000	Storage Building - Site Utilities	\$ -	\$ 1,521	\$ -	\$ 1,521	\$ -	
Cost of Work Subtotal		\$ 3,541,509	\$ 5,685,679	\$ 20,768,897	\$ 29,996,085	\$ 53.68	
	Design Completion Factor 0.00%	\$ -	\$ -	1.00%	\$ 207,689	\$ 207,689	\$ -
	Market Volatility Contingency 0.00%	\$ -	\$ -	0.25%	\$ 51,922	\$ 51,922	\$ -
	Contractor Contingency 3.00%	\$ 106,245	\$ 170,570	3.00%	\$ 623,067	\$ 899,883	\$ 1.61
	Building Permit	Excluded	Excluded	Excluded	Excluded	Excluded	Exempt Public Entity
Construction Costs Subtotal		\$ 3,647,754	\$ 5,856,250	\$ 21,651,575	\$ 31,155,579	\$ 55.29	
	CGL & Umbrella Insurance	In GC's	In GC's	In GC's	In GC's		
	Professional Liability	In GC's	In GC's	In GC's	In GC's		
	Builder's Risk	In GC's	In GC's	In GC's	In GC's		
	Payment & Performance Bond	In GC's	In GC's	In GC's	In GC's		
Construction Costs & Insurance Subtotal		\$ 3,647,754	\$ 5,856,250	\$ 21,651,575	\$ 31,155,579	\$ 55.29	
General Conditions & General Requirements		\$ 2,581,813	\$ -	\$ -	\$ 2,581,813	\$ 39.14	

Balance to Finish

Kerrville Public Safety Facility

EWP 01, EWP 02 & Balance to Finishes - Combined Total

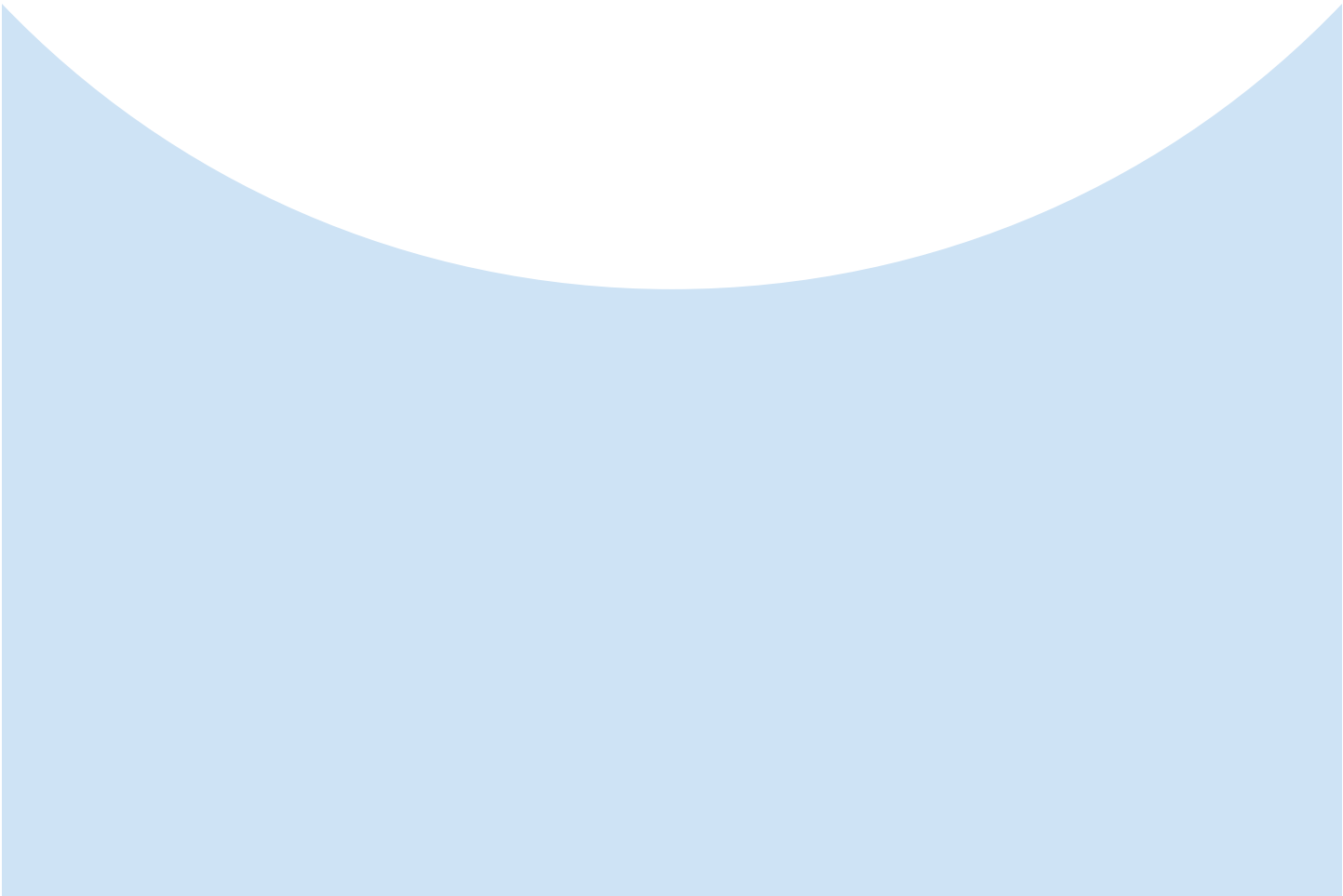
Date: December 22, 2023

65,971 sqft

Bid Package #	Bid Package Description		Early Work Packages 01		Early Work Packages 02		Balance to Finish	CombinedTotal	Cost/SF	Notes
	Subtotal		\$ 6,229,567		\$ 5,856,250		\$ 21,651,575	\$ 33,737,392	\$ 94.43	
	Design Builders Fee	2.95%	\$ 183,772	2.95%	\$ 172,759	2.95%	\$ 638,721	\$ 995,252	\$ 2.79	
	Preconstruction Fee		\$ 55,000		\$ -		\$ -	\$ 55,000		
	Design Services Fee		\$ 2,943,928		\$ -		\$ -	\$ 2,943,928		
	Construction Contract Administration Fee		\$ 613,082		\$ -		\$ -	\$ 613,082		
	911 Dispatch Consulting		\$ 29,300		\$ -		\$ -	\$ 29,300		
	911 Workstation FFE Services		\$ 18,000		\$ -		\$ -	\$ 18,000		
	Landscape Architect - LID Design		\$ 6,500		\$ -		\$ -	\$ 6,500		
	Basic FFE Services		\$ 140,000		\$ -		\$ -	\$ 140,000		
	Project SubTotal		\$ 10,219,149		\$ 6,029,009		\$ 22,290,296	\$ 38,538,454	\$ 154.90	



Qualifications



Qualifications & Clarifications

Kerrville Public Safety Facility

Early Work Package 02

Date: December 22, 2023

General Conditions:	
1	A Contractor's Construction Contingency of 3.00% is included in this estimate, and is intended for construction use only. Owner contingency is excluded from this estimate.
2	A Design Build fee of 2.95% is included on the cost summary, and is based upon the total construction cost.
3	Builders Risk Insurance is included, and based upon the total cost.
4	CGL & Umbrella Insurance is included, and based upon the total cost.
5	Payment and Performance bonds for Byrne have been included on the cost summary, and are based upon the total cost.
6	All costs associated with approvals, easements, assessments, fees, deposits, charges, permits, studies, impact fees, tap fees, services fees, or similar, required by any governing agency to include County, City, State, or Federal entities, in addition to any and all utility entities are specifically excluded.
7	Building permit cost is excluded.
8	Testing Lab services for materials, mock-ups, or delegated engineering components are to be provided by the Owner, and are excluded.
9	Testing of building components for water or air intrusion is not included and is to be provided by the Owner.
10	Commissioning Agent and Services are to be provided by the Owner. This can be included by Byrne for an additional fee, upon request.
11	The General Conditions included in this estimate are based upon approximately 17 months to substantial completion. Overall project completion is 18 months. These are also based upon the general conditions description provided with RFP.
12	Includes trucks, fuel, tolls, and maintenance related to the Byrne personnel assigned to this project. Truck / Auto Allowance is inclusive of vehicle costs, insurance, fuel and maintenance.
13	All costs for mobile phones is inclusive of mobile data management.
14	All initial and final survey's and plats required by the City are by the Owner.
15	All electrical costs associated with construction is included.
16	All water costs associated with construction is included.
17	Includes cost for a Jobsite Trailer rental, including hook-ups and dismantling, for the use of Freese & Nichols as well as the City of Kerrville staff.
18	Includes a \$10,000 Allowance to be used for the Ground Breaking Ceremony
19	This budget is to be reviewed as a whole; not as individual line items.
Temporary Construction Cost of Work Items:	
1	Sales tax is excluded.
2	All furnishings, fixtures, and equipment are excluded from this budget, unless specifically noted in the budget detail.
3	All hazardous or contaminated material and soil testing, remediation, investigation, and abatement is excluded.
4	Site is assumed to be free of any contaminants, unencumbered, and ready to begin excavation work.
5	CM excludes responsibility for compliance and/or viability of point selections with regard to the design components or specifications. CM will perform due diligence with respect to the CM's specified scope of work in obtaining a LEED certifiable building.
6	BIM coordination and clash detection is included for structure and M/E/P during design and construction.
7	LEED management of onsite waste and documentation of LEED compliances is excluded.

Qualifications & Clarifications

Kerrville Public Safety Facility

Early Work Package 02

Date: December 22, 2023

8	All costs associated with temporary fencing and gates is included.
General Comment:	
1	This estimate is schematic, and based upon limited information available. Quantities and selections of materials and components are gathered or assumed per interpretation of the available documents. The quantities and selections may vary as the project is further developed by the design team.
2	Material and Labor Shortages – If serious or unusual price escalation, or material and/or labor shortages are experienced due to causes beyond the Contractor's control following the execution of this Contract, and to the extent such escalation and/or shortages increase the cost of construction or cause the Contractor to incur delays to the critical path that cannot be avoided despite the exercise of reasonable professional diligence, Contractor shall provide Owner with notice of such shortages and their potential cost and/or schedule impact and a change order shall issue to adjust the Contract Sum and Contract Time accordingly.
Division 3 - Concrete:	
1	Furnish and install all materials, labor and equipment necessary for completion of structural excavation, backfill, compaction, formwork, reinforcing steel, concrete materials and placing and finishing for the concrete package, including site paving, building foundation and tilt walls.
2	Slab tolerances are not to exceed Ff30/FI20.
3	Includes casting beds for 50% of Tilt wall panels, to include demo and haul off.
4	Footings and retaining wall where indicated on civil site plans.
5	Furnish and install Styrofoam and topping slab at elevated slabs where indicated.
6	Paving, sidewalks and curbs and islands at slabs on grade and at paving are included.
7	Vapor Barrier is based on 10 mil poly per specificaitons.
8	Form liner finish for Tilt wall panels is included per Arch. DD elevations.
9	Includes concrete bases at (11) light poles.
10	Includes concrete sub slab at (12) Lueders benches, per 7/A2.3.
11	Monument Sign footing included for sign indicated on 9/A2.3 & 8/A2.3 as an allowance of \$5,500.
12	Concrete pads at gate operators are included.
13	Allowance of \$16,160 for housekeeping pads included.
14	Concrete encased beams at Sally Port included in base bid per A2.01C as an allowance of \$10,000.
15	Includes concrete filled pipe bollards where indicated on site.
16	Sandblasting and integral color concrete at 4" site sidewalks at Entry Courtyard (per note 5 on A2.1) is included. Only includes Courtyard / Entry.
17	Installation of embeds in concrete formwork.
18	Fence footings not included in this package, to be procured with fencing subcontractor.
19	Flagpole bases not included in this package, to be procured with flagpole subcontractor.
26	Alternate #1A includes Storage Building Tilt Walls panels, and is excluded in the base bid. The construction of the 5" slab-on-grade and grade beams at the Storage Buidling is included in this Early Work Package #2. The foundation would be ready for the PEMB or tilt wall construction at the Storage Building.
27	Alternate #3 includes Sally Port Tilt Walls panels, and is excluded in this base bid. The construction of the 5" slab-on-grade and grade beams at the Sally Port are included in this Early Work Package #2.
Division 5 - Metals:	
1	Structural steel, indlucing columns, beams, joists, girders, embeds at Tilt Walls and metal decking is included for fabrication and erection.

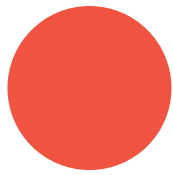
Qualifications & Clarifications

Kerrville Public Safety Facility

Early Work Package 02

Date: December 22, 2023

2	Includes erection of the concrete tilt-wall panels.
3	81 tons of Joists with 739 squares of 1.5" metal deck is included.
4	Per Structural Steel Note #19 on S1.02 an allowance for 2 tons is included as \$16,000.
5	(1) Dumpster gate and frame is included as an allowance of \$3,500.
6	Includes hot dip galvanizing of all structural steel items and connections permanently exposed to the weather.
7	Furnish and install steel columns, framing and decking indicated at canopies, freestanding and attached to the building. Includes steel cable tie-backs as indicated.
8	Furnish and install steel supports for mechanical roof top equipment.
9	Furnish anchor bolts, steel items embedded in concrete.
10	Provide surface preparation and shop coating of steel.
11	Tilt wall brace rental is included as an allowance of \$50,000.
12	An allowance of 2 tons is included for relief angles at masonry of \$12,000 for fabrication and erection.
13	Miscellaneous metals, railings, decorative metals etc. are not included in this package. To be procured in a future package.
Division 13 - Special Construction:	
	PEMB at storage building is excluded in base bid. Alternate #1B includes a Mueller PEMB storage building with roof and wall insulation.
Division 23 - Plumbing & HVAC	
1	Building underground plumbing rough-in for is included for sanitary sewer, storm drainage, and domestic water.
2	Furnishing AAON RTU units is included. Labor to install is not included, and will be procured in a future package.
Division 26 - Electrical:	
1	Site underground and building underground electrical rough-in is included. This includes required underground pathways for site lighting, site security, power, AV, and communications. Includes the in-slab floor boxes.
Division 31 - Earthwork:	
1	Building pad at Storage Building is included with a 5' overbuild. A 4.5' thick Building Pad is included to achieve a 1" PVR per Geotechnical Report and Supplement #1 from Rock Engineering.
Division 33 - Utilities:	
1	3" Water line to Storage Building per CU101 is included.



Document Log



Contract Documents List

Kerrville Public Safety Facility
ERP-2 Structural Scopes

Date: 12/5/2023

Sheet	Original Date	Sheet Name
BID PACKAGE MANUAL		
Bid Package Manual	12/05/23	Invitation to Bid
Bid Package Manual	12/05/23	Instructions to Bidders
Bid Package Manual	12/05/23	Summary of Work
Bid Package Manual	12/05/23	Bid Package List
Bid Package Manual	12/05/23	Sample Subcontract Agreement
Bid Package Manual	12/05/23	Supplemental Subcontract Conditions
Bid Package Manual	12/05/23	Exhibit A – Contract Documents
Bid Package Manual	12/05/23	Exhibit B – Subcontractor Safety Responsibilities
Bid Package Manual	12/05/23	Exhibit C – Safety Policy for Drugs, Alcohol, and Other Prohibited Articles
Bid Package Manual	12/05/23	Exhibit D – Project Schedule
Bid Package Manual	12/05/23	Subcontractor's Payment Bond Form
Bid Package Manual	12/05/23	Subcontractor's Performance Bond Form
Bid Package Manual	12/05/23	Applications & Certificate for Payment Form
Bid Package Manual	12/05/23	Schedule of Values Form
Bid Package Manual	12/05/23	Final Payment Release
Bid Package Manual	12/05/23	Subcontractor Daily Report Form
Bid Package Manual	12/05/23	Job Hazard Analysis (JHA) Form
Bid Package Manual	12/05/23	Warranty Form
Bid Package Manual	12/05/23	TWCC Form 83
Bid Package Manual	12/05/23	Sample ACORD Certificate of Insurance
Bid Package Manual	12/05/23	Exhibit E - Bid Package Forms (for each trade)
SPECIFICATIONS		
014529	11/03/23	Testing Laboratory Services
031000	11/03/23	Concrete Forming and Accessories
032000	11/03/23	Concrete Reinforcing and Embedded Metal Assemblies
033000	11/03/23	Cast-In-Place Concrete
034713	11/03/23	Precast Tilt-up
051200	11/03/23	Structural Steel Framing
052100	11/03/23	Steel Joist Framing
053123	11/03/23	Steel Roof Decking
220100	11/03/23	Special Conditions for All Plumbing Work
220500	11/03/23	Basic Plumbing Materials and Methods
221116	11/03/23	Domestic Water Piping
221119	11/03/23	Domestic Water Piping Specialties
221316	11/03/23	Sanitary Waste and Vent Piping
221319	11/03/23	Drain Piping Specialties
225160	11/03/23	Storm Drainage Piping
230310	11/03/23	Variable Frequency Drive
230782	11/03/23	Packaged Rooftop Variable Volume (VAV) Units
260015	11/03/23	General Conditions for All Electrical Work
260050	11/03/23	Basic Electrical Materials and Methods
260519	11/03/23	Conductors and Cables
260526	11/03/23	Grounding and Bonding
260533	11/03/23	Raceways and Boxes
260553	11/03/23	Electrical Identification
261310	11/03/23	Pull and Junction Boxes
261320	11/03/23	Floor Boxes
262200	11/03/23	Dry-Type Transformers

Contract Documents List

Kerrville Public Safety Facility ERP-2 Structural Scopes

Date: 12/5/2023

Sheet	Original	Sheet Name
262416	11/03/23	Panelboards
262310	11/03/23	Packaged Engine Generators - Diesel
262413	11/03/23	Switchboards
262416	11/03/23	Panelboards
262816	11/03/23	Disconnect Switches and Circuit Breakers
263353	11/03/23	Uninterruptible Power System and Maintenance Bypass Switch
263610	11/03/23	Bypass Transfer Switches
264750	11/03/23	Overcurrent Protection System
Drawings		
S1.01	11/03/23	TYPICAL ABBR., SYMBOLS AND PLAN NOTES
S1.02	11/03/23	GENERAL NOTES
S1.03	11/03/23	WIND UPLIFT PLAN
S2.01	11/03/23	FOUNDATION PLAN - OVERALL
S2.01a	11/03/23	FOUNDATION PLAN - COURT
S2.01b	11/03/23	FOUNDATION PLAN - NORTH PARTIAL
S2.01c	11/03/23	FOUNDATION PLAN - SOUTH PARTIAL
S2.02	11/03/23	ROOF FRAMING PLAN - OVERALL
S2.02a	11/03/23	ROOF FRAMING PLAN - COURT
S2.02b	11/03/23	ROOF FRAMING PLAN - NORTH
S2.02c	11/03/23	ROOF FRAMING PLAN - SOUTH
S2.03	11/03/23	HIGH ROOF FRAMING PLANS
S2.10	11/03/23	STORAGE BUILDING
S2.11	11/03/23	ALTERNATE 3 FRAMING PLAN
S2.20	11/03/23	SITE STRUCTURES
S2.30	11/14/23	PARTIAL PLANS
S3.00	11/03/23	TYPICAL SLAB-ON-GRADE DETAILS
S3.01	11/03/23	CONCRETE GRADE BEAM DETAILS
S3.02	11/03/23	TYPICAL MASONRY DETAILS
S3.10	11/03/23	CONCRETE SECTIONS
S4.00	11/03/23	SIMPLE BEAM CONNECTION DETAILS
S4.01	11/03/23	TUBE COLUMN SCHEDULE AND DETAILS
S4.02	11/03/23	JOIST GIRDER DETAILS
S4.03	11/03/23	TYPICAL K ROOF JOIST DETAILS
S4.04	11/03/23	TYPICAL ROOF JOIST DETAILS
S4.10	11/03/23	FRAMING SECTIONS
S4.11	11/03/23	FRAMING SECTIONS
S4.30	11/03/23	NORTH ENTRY ROOF
S4.40	11/03/23	GYM ROOF
S5.00	11/03/23	TILT WALL CONCRETE DETAILS
S5.11	11/03/23	PANEL ELEVATIONS
S5.12	11/03/23	PANEL ELEVATIONS
S5.13	11/03/23	PANEL ELEVATIONS
S5.14	11/03/23	PANEL ELEVATIONS
S5.15	11/03/23	PANEL ELEVATIONS
M300	11/03/23	MECHANICAL SCHEDULES
E000	11/03/23	ELECTRICAL SYMBOLS AND ABBREVIATIONS
E001	11/03/23	ELECTRICAL NOTES
E010	11/03/23	ELECTRICAL SITE PLAN
E211	11/03/23	ELECTRICAL POWER PLAN - COURT AND STORAGE
E212	11/03/23	ELECTRICAL POWER PLAN - NORTH

Contract Documents List

Kerrville Public Safety Facility
ERP-2 Structural Scopes

Date: 12/5/2023

Sheet	Original	Sheet Name
E213	11/03/23	ELECTRICAL POWER PLAN - SOUTH
E401	11/03/23	ONE-LINE DIAGRAM
E501	11/03/23	PANEL SCHEDULES
E502	11/03/23	PANEL SCHEDULES
E503	11/03/23	ELECTRICAL SCHEDULES
E601	11/03/23	ELECTRICAL DETAILS
P000	11/03/23	PLUMBING SYMBOLS & ABBREVIATIONS
P010	11/03/23	PLUMBING SITE SYMBOLS
P100	11/03/23	PLUMBING UNDERFLOOR PLAN - OVERALL
P101	11/03/23	PLUMBING UNDERFLOOR PLAN - COURT AREA
P102	11/03/23	PLUMBING UNDERFLOOR PLAN NORTH
P103	11/03/23	PLUMBING UNDERFLOOR SOUTH
P201	11/03/23	PLUMBING ENLARGED UNDERFLOOR PLANS
P501	11/03/23	PLUMBING DETAILS
TS0.0	11/03/23	SECURITY SYMBOLS & LEGENDS
TS1.1	11/03/23	SECURITY SITE PLAN
TS1.2	11/03/23	SECURITY SITE PLAN - ALTERNATE
TS4.0	11/03/23	SECURITY TYPICAL DETAILS
TS5.0	11/03/23	SECURITY SCHEDULES
T001	11/03/23	TECHNOLOGY SYMBOLS, LEGENDS, NOTES, AND INDEX
T010	11/03/23	VOICE DATA SITE PLAN
Addendum #1B - Below Grade MEP, Mechanical Equip., Structural Revisions		
S2.01	11/21/23	FOUNDATION PLAN - OVERALL
S2.01a	11/21/23	FOUNDATION PLAN - COURT
S2.01b	11/21/23	FOUNDATION PLAN - NORTH PARTIAL
S2.01c	11/21/23	FOUNDATION PLAN - SOUTH PARTIAL
S2.30	11/21/23	PARTIAL PLANS
S3.00	11/21/23	TYPICAL SLAB-ON-GRADE DETAILS



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

SUBJECT: Professional Services Agreement with Rock Engineering & Testing Laboratory, Inc. in the amount of \$111,900.00 for the Public Safety Facility Project.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 11, 2024

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$111,900.00	\$41,442,165.21	\$45,000,000.00	Project #70-22005

PAYMENT TO BE MADE TO: Rock Engineering & Testing Laboratory, LLC

Kerrville 2050 Item? Yes

Key Priority Area F - Public Facilities and Services

Guiding Principle N/A

Action Item F2.4 - Consider bond funding for a new public safety building/complex

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. Proposals were received from Design-Build teams and a Design-Build contract was finalized with Byrne Construction Services in May 2023.

The Byrne team has progressed through the design development phase of the process and is nearing commencement of construction activities requiring material testing for the project. The construction activities to be completed by Byrne Construction Services will have quality control testing performed by Rock Engineering & Testing Laboratory, LLC to ensure compliance with City project specifications. The scope for Rock Engineering & Testing Laboratory, LLC to be performed on the project will consist of compaction testing for the site and special weld inspections in addition to concrete testing for foundation placement, precast concrete walls, new curb and gutters, and sidewalks.

RECOMMENDED ACTION:

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

PROFESSIONAL SERVICES AGREEMENT
[FIRM: Rock Engineering & Testing Laboratory, LLC | PROJECT-
SERVICES: Construction Materials Testing - Public Safety Facility]

THIS AGREEMENT is entered into the ____ day of _____, 2024 ("Effective Date"), by and between the **CITY OF KERRVILLE, TEXAS ("CITY")** and **ROCK ENGINEERING & TESTING LABORATORY, LLC, ("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 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. Reports produced by CONSULTANT ("Test Results") 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 Test Results 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 materials to CONSULTANT for testing, as reasonably necessary for the completion of the Services.

C. CITY shall review the Test Results and shall notify CONSULTANT of any defect in the Services or Test Results 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.

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 the rates specified in that schedule unless additional services are requested by CITY.

V. AGREEMENT TERM

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. CONSULTANT shall submit all Test Results to CITY. If necessary, all Test Results must be professionally sealed as required by law or by CITY.

B. CONSULTANT shall deliver the Test Results, together with any necessary supporting documents, to CITY. 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 Test Results, 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. Workers Compensation Insurance: in an amount meeting statutory requirements of the State of Texas on all CONSULTANT's employees carrying out the Services.

B. Automobile Liability Insurance: with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 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. Professional Liability Errors and Omissions Insurance: with limits of liability not less than \$1,000,000 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. 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. Acceptance of any Test Results 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 Test Results and work; nor shall such approval be deemed to be an assumption of such responsibility by CITY for any defect in the Test Results, 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, 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, including by assigning the work to others. 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.

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:

Rock Engineering & Testing Laboratory, LLC
10856 Vandale St.
San Antonio, Texas 78216
210-495-8000

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 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
ROCK ENGINEERING & TESTING
LABORATORY, LLC

BY: _____
NAME: Dalton Rice
TITLE: City Manager

BY: _____
NAME: Kyle D. Hammock, P.E.,
TITLE: Vice President- San Antonio

ATTEST:

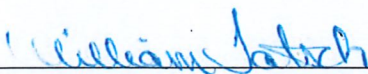
APPROVED AS TO FUNDING:

Shelley McElhannon, City Secretary

Julie Behrens, Director of Finance

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



William Tatsch, Asst. City Attorney

Stuart Barron, Executive Director of
Public Works and Engineering



- GEOTECHNICAL ENGINEERING
- CONSTRUCTION MATERIALS ENGINEERING & TESTING
- SOILS • ASPHALT • CONCRETE

January 11, 2024

City of Kerrville
200 Sidney Baker
Kerrville, Texas 78028

Attention: Kyle Burow, P.E., CFM

**SUBJECT: PROPOSAL TO PERFORM CONSTRUCTION MATERIALS TESTING PROPOSED
KERRVILLE PUBLIC SAFETY FACILITY
CLEARWATER PASEO AT RIO MONTE DRIVE
KERRVILLE, TEXAS
ROCK Proposal Number: SCP122723AR1**

Dear Mr. Burow,

Introduction

Rock Engineering and Testing Laboratory, LLC (ROCK) is pleased to provide this proposal to perform the Construction Materials Testing for the proposed Kerrville Public Safety Facility to be constructed at Clearwater Paseo & Rio Monte Drive in Kerrville, Texas. This proposal contains our unit rates and an estimated budget for testing and inspections.

Unit Rates

The type of construction materials field and laboratory tests and inspections that may be performed, and the associated unit fees are as follows:

- Atterberg Limits/Plasticity Index - \$75.00 each
- Standard Proctor - \$225.00 each
- Modified Proctor - \$250.00 each
- Sieve Analysis/Gradation - \$75.00 each
- Minus #200 Sieve - \$45.00 each
- In-Place Density - \$45.00 each (Min. of 3 Per Trip)
- 3"x6" Grout Prisms, Compressive Strength - \$60.00 each (Set of 4 typical)
- 4"x8" Concrete Cylinders, Compressive Strength - \$60.00 each (Set of 5 typical)
- Engineering Technician - \$60.00 per hour (observations and standby time)
- Certified Weld Inspector - \$125.00 per hour (weld and bolt special inspections)
- Professional Engineer - \$150.00 per hour (project management & report review)
- Trip Charge - \$150.00 per trip
- Project Setup Fee - \$100.00 lump sum

ROCK ENGINEERING & TESTING LABORATORY, LLC (TBPE FIRM NO. 2101)
10856 Vandale St. • San Antonio, Texas 78216
OFFICE: (210) 495-8000 • FAX: (210) 495-8015 • www.rocktesting.com

A minimum of 3 compaction tests will be billed each time this service is requested, and the compaction test fee includes the technician time, equipment, and reporting. The fee for concrete test cylinders and grout prisms includes the technician time up to 1-hour onsite, sampling equipment, casting, curing, and testing the specimens, and reporting the test results. One hour of technician time will be billed for on-site soil sampling. Overtime work before 8 a.m. and after 5 p.m. and weekend time will be billed at a rate of \$60.00 an hour in addition to the testing fee. Professional Engineer, for requested inspections and site meetings, will be billed at a minimum rate of 2-hours. Certified Weld Inspector, for requested weld and bolt inspections, will be billed at a minimum rate of 4-hours. The transportation charge includes the technician travel time and all vehicle charges.

Estimated Budget

Based on the project information provided to ROCK, the project will include construction of a new safety facility building and a new storage building. Both buildings will be supported by a slab on grade foundation and will be constructed using exterior precast concrete walls and structural steel roof framing. The construction of the building pads will consist of removing approximately 6 to 7-feet of existing soils, and placement of approximately 8.5-feet of select fill. In addition, asphalt paving, water line, storm drain, concrete approaches, courtyard areas, a dumpster enclosure and steel frame canopies will also be constructed. ROCK estimates the following quantities of testing for the project:

- Atterberg Limits = 10 each (subgrades/general fill, select fill & base)
- Standard Proctor = 10 each (subgrades/general fill, select fill & base)
- Modified Proctor = 10 each (select fill & base)
- Sieve Analysis = 10 each (general fill, select fill & base)
- Minus #200 Sieve = 10 each (subgrades/general fill)
- Compaction Test = 550 each (building pad subgrade/select fill, utility lines backfill & paving subgrade/general fill/base/Type D HMA)
- 3"x6" Grout Prisms = 4 each (1 set) (CMU wall fill dumpster enclosure)
- 4"x8" Concrete Cylinders = 400 each (80 sets) (courtyard, approach, canopy footings, precast walls & building slab/footings)
- Technician = 345 hours (proof-roll, soil bearing, rebar, & site observations)
- Technician OT = 80 hours (early concrete placements)
- Certified Weld Inspector = 80 hours (weld and bolt inspections)
- Professional Engineer = 18 hours (soil and concrete inspections, report review & letters)
- Transportation Charge = 130 each

Using the applicable unit rates, the estimated testing and inspections budget is on the order of \$111,900.00. The estimated fee does not include any retests, standby time, concrete curb or sidewalk testing. It should be noted that early morning concrete placements will include the overtime hourly rate billing. This line item is difficult to estimate without a concrete placement schedule. The final fee will be dependent on the actual number of tests and inspections performed, and number of trips made to the site.

January 11, 2024
City of Kerrville
ROCK Proposal No.: SCP122723AR1

KERRVILLE PUBLIC SAFETY FACILITY
Clearwater Paseo at Rio Monte Drive
Kerrville, Texas

Limitations

Services provided by ROCK under this Agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. In addition, and notwithstanding any other provisions of this Agreement, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless ROCK, his or her officers, directors, employees, agents and sub-consultants from and against all damage, liability or cost, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with this project or the performance by any of the above named parties of the services under this Agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of ROCK.

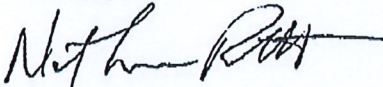
The Parties to this agreement agree that if any claim is made that ROCK failed to comply with any term of this agreement or that it failed to perform its work and/or duties under this agreement properly, the client, upon proof that there was some failure to comply or some mistake in the performance of the work, shall not be entitled to recover any sum greater than the amount paid by the client to ROCK for the services performed by ROCK.

Either the Client or ROCK may terminate this Agreement at any time with or without cause upon giving the other party 10-calendar days prior written notice. The Client shall within 10 calendar days of termination pay ROCK for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

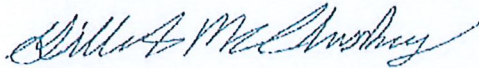
Closing

ROCK looks forward to providing the construction materials testing and inspections during the construction phase of this project. Copies of the construction materials testing reports will be delivered to the client via the email address provided by the client to ROCK on the distribution list below. A hard copy of the construction materials testing reports will be available through the mail only if explicitly requested by the client. If there are any questions, or if we can be of assistance, please contact our office.

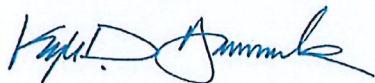
Sincerely,



Nathan Ruckstuhl, P.E.
Project Engineer / CMT Project Manager.



Gilbert McCluskey, E.I.T.
Project Manager



Kyle D. Hammock, P.E.
Vice President - San Antonio

ACCEPTED AND APPROVED

By: _____

Date: _____

Terms: due upon receipt of invoice

January 11, 2024
City of Kerrville
ROCK Proposal No.: SCP122723AR1

KERRVILLE PUBLIC SAFETY FACILITY
Clearwater Paseo at Rio Monte Drive
Kerrville, Texas

Project Information Sheet

1. Project Manager _____
2. Telephone No. _____ Email address _____
3. Your Project No. _____ Purchase Order No. _____
4. Permit No. _____ Permit Date _____
5. Report Distribution (electronically):
 - () Company: _____
Attn: _____
Email: _____
 - () Company: _____
Attn: _____
Email: _____
 - () Company: _____
Attn: _____
Email: _____
5. Invoicing Address: _____

Attn: _____
6. Site Contact: _____ Telephone No.: _____
Email: _____



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

SUBJECT: Professional services agreement for the Texas Department of Transportation for a Transportation Alternatives Set-Aside (TASA) Sidewalk Improvement project.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 11, 2024

SUBMITTED BY: Kyle Burow, Director Engineering

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
N/A	\$241,362.00	\$343,816.00	Project #70-21004

PAYMENT TO BE MADE TO: N/A

Kerrville 2050 Item?	Yes
Key Priority Area	M - Mobility / Transportation
Guiding Principle	N/A
Action Item	M1.4 - Explore a variety of options, including bonds, to fund the construction of needed transportation improvements

SUMMARY STATEMENT:

The City of Kerrville ("City") has received funding from the Texas Department of Transportation for a Transportation Alternatives Set-Aside Program (TASA) for the construction of sidewalks along Cully Drive, Hill Country Drive, and Wesley Drive and solicited requests for qualifications (RFQ) from qualified engineering firms to provide planning, engineering, surveying, geotechnical, bidding and construction phase services. The proposed improvements will improve the safety and mobility of pedestrians while enhancing the connectivity of on- and off-system roadways within the area and providing access to key destinations such as the US Post Office, Peterson Regional Medical Center, HEB, Louise Hays Park, River Hills Mall, Texas Department of Fish & Wildlife, and Texas Department of Public Services.

Request for Qualifications (RFQ) for design services for the project were issued on December 20, 2023 and four submissions were received on January 12, 2024. Per Local Government Code requirements, the selection committee evaluated responses based on the criteria identified in the RFQ and request City Council's approval of the committee's rankings. The Committee's rankings will be presented at the City Council meeting, Tuesday, January 23, 2024.

Following City Council's approval of the rankings, the next step will involve negotiations for a professional services agreement and staff is requesting the authorization from City Council to

proceed. If negotiations fail with the highest ranked proposer, staff will cease negotiations in writing and proceed to the next highest qualified proposer until negotiations for an agreement have been finalized.

RECOMMENDED ACTION:

Authorize the City Manager to negotiate and execute the professional services agreement for Texas Department of Transportation for a Transportation Alternatives Set-Aside (TASA) Sidewalk Improvement project.



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

SUBJECT: Purchase of two (2) Sutphen G2 custom pumpers from Texas Fire Apparatus through the Buyboard Purchasing Cooperative #651-21, at a price not to exceed \$1,900,000.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 16, 2024

SUBMITTED BY: Eric Maloney, Fire Chief

EXHIBITS:

Expenditure Required:	Remaining Budget Balance in Account:	Amount Budgeted:	Account Number:
\$1,900,000	\$2,000,000	\$1,900,000	N/A

PAYMENT TO BE MADE TO: Texas Fire Apparatus

Kerrville 2050 Item?	Yes
Key Priority Area	F - Public Facilities and Services
Guiding Principle	N/A
Action Item	F2.1 - Devote the necessary resources (funding, equipment) to ensure quality fire, police and EMS services

SUMMARY STATEMENT:

City Staff is requesting authorization from the City Council to execute Purchase Agreement for Sutphen Fire Apparatus for the purchase of two (2) Sutphen G2 custom pumpers. Buyboard contract #651-21 was awarded to Sutphen Corporation through their certified dealer, Texas Fire Apparatus LLC. By contracting through Buyboard, we will be able to purchase these apparatus using their bid price. Such agreements are allowable under under State law.

Two (2) Sutphen G2 custom pumpers at \$950,000 per pumper; \$1,900,000 total.

The City's Fire Apparatus Replacement plan recommends the replacement of two (2) fire pumpers in FY24 with an anticipated delivery time of 42-44 months.

RECOMMENDED ACTION:

Authorize the City Manager to finalize and execute the Purchase Agreement.

ATTACHMENTS:

[*PA_Sutphen_2 Fire Trucks_011724.pdf*](#)



PURCHASE AGREEMENT FOR SUTPHEN FIRE APPARTUS

THIS AGREEMENT, made and entered into this ___ Day of _____ By and between Texas Fire Apparatus LLC, hereby called "Dealer", Sutphen Corporation hereby called "Sutphen" and
City of Kerrville, Texas _____ hereby called "Purchaser" in accordance to
the Texas Buy Board Contract #651-21 _____.

WITNESS:

1. PURCHASE: Purchaser here agrees to buy, and Texas Fire Apparatus hereby agrees to Sell, and Sutphen hereby Sutphen agrees to furnish to Purchaser the apparatus and equipment according to the proposal attached hereto and made a part hereof, and the Dealer deliver the same as hereinafter provided.

Changes to the National Fire Protection Association (NFPA) 1900, Environmental Protection Agency (EPA), or changes legislated by Federal, State, or Local Governments or changes in part availability or vendor relationships that impact the cost to manufacture the truck may incur additional charges which shall be borne by the purchaser. These may include but are not limited to changes that affect the major vendors of the fire apparatus industry such as pump manufacturers, seat manufacturers, electrical power supplies (generators) and powertrain (engine & transmission). Sutphen and the Dealer shall provide written notice to the Purchaser as soon as it reasonably believes any provision may be invoked. Sutphen and the Dealer shall provide, upon written request, documentation of such changes and increases.

2. PAYMENT: Purchaser agrees to pay for said apparatus and the equipment purchase price of

2 Sutphen G2 Pumpers for \$950,000 each for a Total of One Million Nine Hundred Thousand Dollars and no cents (\$1,900,000.00)

payable in full upon final inspection at the factory per Sutphen Proposal Terms and Conditions. Should payment be delayed, the Dealer and Sutphen reserves the right to charge interest at the rate of one and a half percent (1.5%) per month, beginning on the day after payment is due.

3. DELIVERY: The apparatus and equipment being purchased hereunder shall be delivered to Purchaser at 701 Main St Kerrville, TX 78028, within approximately 40-42 months after the receipt and acceptance of this agreement at the Dealer and Sutphen's office, provided that such delivery date shall automatically be extended for delays due to strikes, failure to obtain materials or other causes beyond Sutphen's control. If such delay occurs, Sutphen and the Dealer shall give notice of the delay to Purchaser. Purchaser shall not be entitled to any discount or reduction in price for such delay and Sutphen and the Dealer shall not be liable for any damages (compensatory, incidental, consequential, or otherwise) related to such delay.

4. MANUFACTURER'S CERTIFICATE OF ORIGIN: Delivery, payment and transfer of the Manufacturer's Certificate of Origin (MCO) shall take place at Sutphen during final inspection, and upon payment in full in accordance with the terms of this Agreement. Sutphen and/or the Dealer reserves the right to withhold delivery of the MCO until payment in full is received. If Purchaser requires any third party equipment mounting, the apparatus shall be moved to the third party facility by the Dealer or Purchaser for such mounting. Such third party work shall not delay or offset payment to Sutphen.



5. SUTPHEN WARRANTIES: Sutphen warrants to Purchaser that all the goods and services furnished hereunder will conform in all respects to the terms of this order, including any applicable change orders, drawings, specifications, or standards incorporated herein, and/or defects in materials, workmanship, and free from such defects in design. In addition, Sutphen warrants that the goods and services are suitable for and will perform in accordance with the purposes for which they were intended, for a period of one year from the Warranty Registration Date, unless an extended warranty is purchased.

6. TESTING SHORTAGES: The apparatus shall be tested pre NFPA #1901 at Sutphen's manufacturing facility. Purchaser agrees that the apparatus and equipment being purchased hereunder will not be driven or used in any manner until it is paid for in full. In the event there are shortages or omissions with the apparatus at the time of completion, Purchaser may withhold a sum equivalent to the price of any such shortages as determined by Sutphen.

7. DEFAULT: In the case of any default in payment hereunder or in the payment on any notes, negotiable paper, obligations or other instruments issued by Purchaser, Sutphen may take full possession of the apparatus and equipment or of the piece or pieces upon which default has been made, and any payments that have been made theretofore shall be applied as rent in full for the use of apparatus and equipment up to the date of taking possession by Sutphen.

8. PURCHASER WARRANTIES: With the signing of this agreement, Purchaser warrants that if it has the full power and legal authority to enter into this agreement and guarantees that funds for its purchase are available or in the process of collection.

9. ACCEPTANCE: This agreement shall not be binding until it is signed and approved by an officer of Texas Fire Apparatus LLC representing Sutphen Corporation in accordance with the Texas Department of Motor Vehicle Dealer License as a Franchise Dealer.

10. TAXES ETC.: The purchase price provided for herein does not include any federal, state or local sales tax, duties, imposts, revenues, excise or other taxes which may hereafter be imposed by governmental authority or otherwise and which are made applicable to the apparatus or equipment covered by the agreement. In the event that any such taxes are subsequently imposed and become applicable, the purchase price herein shall be increased by the amount of such taxes and such sum shall be immediately paid by Purchaser to the Dealer. To the extent applicable, the prices and deliveries set forth herein are subject to the Defense Production Act.

11. INSURANCE: Sutphen shall provide insurance insuring the apparatus and equipment against loss by fire, theft or collision and insuring against property damage and personal injury through the three (3) day delivery period.

12. TERMINATION: After the execution of this agreement, Purchaser shall have no right to terminate the Agreement. Sutphen may, in its absolute and sole discretion, accept Purchaser's request to terminate the Agreement. In the event that Sutphen accepts the Purchaser's request to terminate the Agreement, Sutphen and/or the Dealer may charge a cancellation fee. The following charge schedule based on costs incurred as may be applied, at Sutphen's sole discretion: (a) 10% after order is accepted by Sutphen (b) 30% of the Purchase Price after Production is commenced. The aforementioned charges will also be applied by the Dealer, unless the Dealer determines to waive the charges to the Purchaser. The Dealer



has no authority to waive charges incurred by the Purchaser and owed to Sutphen. The cancellation fee may increase accordingly as costs are incurred as the order progresses through engineering into manufacturing.

13. GENERAL: This agreement and the Dealer proposal provided herein take precedence over all previous negotiations, oral or written, and no representations or warranties are applicable except as specifically contained in this agreement or in the Dealer proposal attached hereto. No alteration, modification, amendment or change of this Agreement shall be binding unless executed in writing by the parties. No waiver of any of the provisions of this Agreement shall be deemed a waiver of any other provision, whether similar, nor shall any waiver constitute a continuing waiver. This Agreement shall be governed and controlled as to interpretation, enforcement, validity, construction, effect and in all other respects by the laws, statutes, and decisions of the State of Ohio. Exclusive jurisdiction and venue for any litigation at all related to this Agreement, directly or indirectly, based upon contract, tort, or other theory of law, shall lie in the Henderson County District Courts, Athens, Texas, and the parties hereto consent and submit to the general jurisdiction of this court. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by Texas Fire Apparatus LLC representing Sutphen in accordance with TDMV Franchise Dealership License, Purchaser, their successors, and assigns. Sutphen has full rights to enforce said Agreement in accordance with License as the manufacture. Final payment shall be paid at time of inspection at the Sutphen facility, and or prior to any third-party work/add ons. If no such postproduction work is to be completed, then payment can be made upon delivery to final destination.

14. GOVERNS: This agreement shall be governed and controlled as to interpretation, enforcement, validity, construction, effect, and in all other respects by the laws, statutes and decisions of the State of Texas, or for Sutphen, the State of Ohio. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by Sutphen, the Dealer, Purchaser, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed and attested by its duly authorized Texas Fire Apparatus LLC representatives in accordance with TDMV Franchise Dealership License, which in turn will immediately send the agreement to Sutphen Corporations offices for processing.

Signature Page Attached.

ADDENDUM TO SUTPHEN PURCHASE AGREEMENT

Prohibition on Contracts with Companies Boycotting Israel. Texas Fire Apparatus LLC, hereby known as "Dealer" verifies the following per Section 2271.002, Texas Government Code:

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

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

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

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

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

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

D. 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, Dealer 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.



Purchaser:

Signature

Printed Name

Title

Date

Texas Fire Apparatus, LLC:

Signature

Amber Krisher

Printed Name

Owner/CFO

Title

01/17/2024

Date

Sutphen Corporation:

Signature

Printed Name

Title

Date

APPROVED AS TO FORM

William L. Tatsch, Assistant City Attorney



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

SUBJECT: Windridge Project Development Agreement, an agreement out of the City's Tax Increment Reinvestment Zone Number Two, and with Lennar Homes of Texas Land and Construction, Ltd., for the Windridge residential subdivision.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 17, 2024

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	H1.2 - Research potential funding mechanisms for the development of workforce housing, defined as 80% to 120% of area median household income

SUMMARY STATEMENT:

In response to a petition submitted to the City in August 2023 at the request of Lennar Homes, City Council adopted on second reading on November 14, 2023 and effective as of January 1, 2024 (the "TIF Zone Ordinance"), created Tax Increment Reinvestment Zone Number Two Kerrville, Texas (the "Windridge TIRZ" or "TIRZ"). The neighborhood to be developed within the TIRZ by Lennar is to be comprised of roughly 100 acres and a minimum of four hundred ninety (490) single family residential homes. The project is located along Loop 534, north of Olympic Drive, and adjacent to Peterson Middle School. The attached Development Agreement outlines the requirements for both Lennar and the City of Kerrville.

Some of the highlights within the agreement are as follows:

- The cost to construct the Public Improvements required for development of the Property is estimated to be \$32,803,576.00, which amount is eligible for reimbursement

from funds deposited into the TIRZ #2 Fund.

- The maximum reimbursement allowed within the development agreement is \$27,803,576.
- Reimbursements will be paid once a year based on available tax increment
- The tax increment created by this development, and only this development, allotted to reimburse these improvements is 60% of the Operations and Maintenance tax.
- The term of the agreement is for 30 years.

RECOMMENDED ACTION:

Approve the Development Agreement between the The City of Kerrville and Lennar Homes of Texas Land and Construction, Ltd.

ATTACHMENTS:

[*20240123_Development_Agreement Windridge 011924 DRAFT.pdf*](#)

[*20240123_Exhibits Windridge TIRZ 011924.pdf*](#)

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WINDRIDGE PROJECT DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into by and between the **City of Kerrville, Texas**, a Texas home-rule city in Kerr County, Texas (the “City”); the **Board of Directors for Tax Increment Reinvestment Zone Number Two, City of Kerrville, Texas** (the “Board”); and **Lennar Homes of Texas Land and Construction, Ltd.**, a Texas limited partnership (the “Developer”); whom together may be referred as the “Parties” or individually as “Party”.

RECITALS

WHEREAS, in response to a petition submitted to the City in August 2023 by Schreiner University, City Council, pursuant to Ordinance No. 2023-30, as adopted on second reading on November 14, 2023 and effective as of January 1, 2024 (the “TIF Zone Ordinance”), created Tax Increment Reinvestment Zone Number Two Kerrville, Texas (the “Windridge TIRZ” or “TIRZ”) encompassing within its boundaries the “Property” or “Project Site” (as defined below) in accordance with the Tax Increment Financing Act, Texas Tax Code, Chapter 311 (the “Act”); and

WHEREAS, City Council, by adopting the TIF Zone Ordinance and creating the Windridge TIRZ, seeks to actively promote development and redevelopment which may not have occurred through private investment in the reasonably foreseeable future; and

WHEREAS, the TIF Zone Ordinance established the Board, authorized the Board to exercise limited rights, powers, and duties as provided to such boards under the Act, approved the *Windridge TIRZ Preliminary Project and Finance Plan*, and established a tax increment fund for the TIRZ (the “TIRZ #2 Fund”); and

WHEREAS, City Council and the Board recognize the importance of their continued role in development activities, and, by entering into this Agreement, intend to actively participate in funding a project that both facilitates City’s economic goals and enhances property values within the TIRZ; and

WHEREAS, the neighborhood to be developed within the TIRZ by Developer, as successor in interest to the Property, is to be comprised of a minimum of four hundred ninety (490) single family residential homes; and

WHEREAS, the cost to construct the Public Improvements (hereinafter defined) required for development of the Property is estimated to be \$32,803,576.00, which amount is eligible for reimbursement from funds deposited into the TIRZ #2 Fund; and

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WHEREAS, in accordance with Section 311.010(b) of the Act, the Board is authorized to enter into agreements to fund Project Costs (hereinafter defined) from the TIRZ #2 Fund that benefit the TIRZ; and

WHEREAS, on _____, 2024, the Board adopted Resolution _____ authorizing the execution of this Agreement to provide reimbursement for Project Costs; and

WHEREAS, on January 23, 2024, City approved the execution of this Agreement, pending and conditioned upon Board approval of the Agreement following City Council approval;

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, the Parties severally and collectively agree, and by the execution hereof are bound, to the performance and accomplishment of tasks hereinafter described.

ARTICLE I. AGREEMENT PURPOSE

Developer shall undertake the Project (hereinafter defined) which is anticipated to benefit City, enhance the value of all the taxable real property in the TIRZ, and promote economic development, which would not otherwise occur solely through private investment in the reasonably foreseeable future.

ARTICLE II. TERM

The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of: (i) the date Developer receives the “Maximum Reimbursement Amount” (hereinafter defined); (ii) the date this Agreement is terminated as provided in Article XI (iii) the date of the termination of the Zone (hereinafter defined) pursuant to its initial creation (Ord. No. 2023-30), which is thirty (30) years from the effective date of such creation, and more specifically December 31, 2053.

ARTICLE III. DEFINITIONS

- 3.1 **Annual Payment Date** – means a date up to ninety (90) days after October 1 of each calendar year during the term of this Agreement and where the City has received Contract Progress Payment Requests (“CPPR”), whether one or more, prior to October 1.
- 3.2 **Agreement, City, Board, and Developer** – shall have the meaning specified in the preamble of this Agreement.

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- 3.3 **Act** – means the Tax Increment Financing Act, Texas Tax Code Chapter 311, as may be amended from time to time.
- 3.4 **Administrative Costs** – means the reasonable costs incurred directly and/or indirectly by City for the administration of the TIRZ.
- 3.5 **Adversarial Proceedings** – means any cause of action involving this Agreement filed by Developer against City, Board, and/or any Taxing Unit in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternate Dispute Resolution proceedings, including arbitration.
- 3.6 **Available Tax Increment** – is the amount of property taxes levied and assessed by the Taxing Units on the Captured Appraised Value of real property taxable within the TIRZ, contributed by each Taxing Unit to the TIRZ #2 Fund, and distributed in accordance with the order of priority of payment of the TIRZ. As specified herein, City agrees that its contribution to the TIRZ #2 Fund shall be sixty percent (60%) of the maintenance and operations portion of its then current ad valorem tax assessed and collected against the Property.
- 3.7 **Captured Appraised Value** – means the total ad valorem taxable value of all real property taxable by a Taxing Unit and located in the TIRZ for the year less the Tax Increment Base of the Taxing Unit.
- 3.8 **City Council** – means the City Council of the City of Kerrville, Texas.
- 3.9 **City Manager** – means the City’s City Manager or designee.
- 3.10 **City Tax Increment** – means the total amount of City property taxes deposited in the Tax Increment Fund in accordance with the TIF Zone Ordinance.
- 3.11 **Commencement of Construction** – means the submittal of an application to the City for a subdivision plat for at least one unit or portion of the Project or, the submittal of an application to the City for similar associated permits necessary for the progress and completion of the Project.
- 3.12 **Construction Schedule** – means a specific timetable for constructing the Project, which Developer shall cause Commencement of Construction at the Project Site as stated in Section 5.1 and shall use commercially reasonable efforts to cause the completion of the Project, subject to Force Majeure and any applicable provision of this Agreement, provided that Commencement of

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Construction does not, nor is intended to, create an obligation for the Developer to complete construction of the Project.

- 3.13 **Contract Progress Payment Request (“CPPR”)** – means the request form prepared and submitted by Developer for reimbursement due to Developer pursuant to the requirements of this Agreement and the CPPR Form, attached hereto as **Exhibit A**.
- 3.14 **Development Regulations** – means the Zoning Code, the Subdivision Code, and all other ordinances, regulations, building codes, policies, specifications, and standards enacted or adopted by City relating to the development and use of real property located within City’s corporate limits and/or City’s extraterritorial jurisdiction; the construction and/or installation of public utilities and/or other public improvements; and the construction of buildings and/or other structures, whether public or private.
- 3.15 **Dwelling Unit** – means a single-family detached dwelling, as such phrase is defined in the City’s Zoning Code, constructed on a lot.
- 3.16 **Effective Date** – means the date this Agreement bears the signatures of authorized representatives of all the Parties, whether appearing on the same document or in identical counterparts as provided in Section 28.3.
- 3.17 **Force Majeure** – means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, City and/or Kerr County closures, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes affecting the area of the Zone that results in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstances are similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than thirty (30)

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days after the last day of the month of the occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

- 3.18 **Maximum Reimbursement Amount** – means the cumulative CPPR payments in the amount of **Twenty-Seven Million Eight Hundred Three Thousand Five Hundred Seventy-Six Dollars And No/100 Cents (\$27,803,576.00)**.
- 3.19 **Participation Agreement** – means an agreement between a taxing unit (other than the City) that levies taxes on the real property in the Zone that enters an agreement with the City for payment of all or a part of the tax increment produced by such taxing unit for contribution of tax increment funds for the Zone.
- 3.20 **Person** – means an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- 3.21 **Project** – has the meaning found in Section 5.1 of this Agreement.
- 3.22 **Project and Financing Plan** – means the project and financing plan for the TIRZ as approved and amended by Board and the City Council from time to time.
- 3.23 **Project Costs or Eligible Costs** – means the costs that are incurred and paid by Developer for the design and construction of the Public Infrastructure and shall have the meaning as defined in Section 311.002 of the Act for “Project Costs” as of the Effective Date, including but not limited to hard construction costs, engineering fees, permitting fees, testing fees.
- 3.24 **Project Site or Property** – means that certain 100.36-acre real property generally located along Loop 534, north of Olympic Dr., and adjacent to Peterson Middle School in the City of Kerrville, Texas, as more fully described in the metes and bounds attached hereto and incorporated into this Agreement **Exhibit B**.
- 3.25 **Public Infrastructure** – means a street, water, wastewater, drainage (storm water), sidewalks, park facilities, utilities, and other improvements that is a part of one or more of the public facilities systems or listed in the Plan.

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- 3.26 **Related Agreement** – means that Economic Development Grant Agreement between Developer and the City of Kerrville, Texas, Economic Improvement Corporation and any other agreement by and between the City and/or the Board and/or the Texas Economic Improvement Corporation, and Developer or any of Developer affiliates with respect to the Project.
- 3.27 **Services** – means water and wastewater utility services provided by the City for purposes of serving the Project.
- 3.28 **Tax Increment** – means the total amount of property taxes assessed and collected by the Taxing Units for the year on the Captured Appraised Value of real property taxable by the Taxing Units and located in the Zone.
- 3.29 **Tax Increment Base** – means the total appraised value of all real property taxable by a Taxing Unit for the year in which the Zone was designated (*i.e.*, 2023).
- 3.30 **TIRZ #2 Fund or Tax Increment Fund** – means the fund into which the Tax Increment is deposited in accordance with the TIF Zone Ordinance.
- 3.31 **Taxing Unit** – means City and any other political subdivision that taxes real property within the TIRZ and enters a Participation Agreement with City to contribute Tax Increment to the Tax Increment Fund.
- 3.32 **TIRZ or Zone** – means Tax Increment Reinvestment Zone Number Two, City of Kerrville, Texas, also known as the Windridge TIRZ.
- 3.33 **Workforce Housing** – means a newly constructed Dwelling Unit with a sales price within the Home Ownership Value Limits for households between 80% and 120% of the Area Median Family Income (“AMFI”) within Kerr County, Texas, as annually established by the Texas Department of Housing and Community Affairs (“TDHCA”) HOME Program (Title 10, Texas Government Code, Chapter 2306), or its successor program, which is purchased from the original builder of the Dwelling Unit by a Person. If the AMFI ceases to be published by TDHCA or its successors, the Parties agree to substitute a reasonable standard for the AMFI.

Singular and Plural: Words used in the singular, where the content so permits, also include the plural and vice versa, unless otherwise specified.

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ARTICLE IV. REPRESENTATIONS

- 4.1 CITY'S AUTHORITY. City represents that it is a home rule municipality located in Kerr County, Texas, and has authority to carry out the obligations contemplated by this Agreement.
- 4.2 BOARD'S AUTHORITY. The Board represents that the Windridge TIRZ, as established pursuant to the TIF Zone Ordinance, has the authority, through the Presiding Officer's affixed signature to this Agreement, to carry out the functions and operations contemplated by this Agreement.
- 4.3 DEVELOPER'S AUTHORITY. Developer represents that it has the right to enter into this Agreement and perform the requirements set forth herein. Developer's performance shall be lawful and shall not violate any applicable judgment, order, or regulation nor result in the creation of any claim against the City or Board for money or performance, any lien, charge, encumbrance, or security interest upon any asset of City or Board, except that this Agreement shall constitute a claim against the TIRZ #2 Fund only from Available Tax Increment to the extent provided herein. Developer shall have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital.
- 4.4 NO BONDS. Neither City nor Board will issue any bonds to cover any costs directly or indirectly related to Developer's improvement of the Windridge TIRZ under this Agreement.
- 4.5 REASONABLE EFFORTS. Each Party to this Agreement shall cooperate and make reasonable efforts to expedite the subject matter hereof and acknowledge that successful performance of this Agreement requires their continued cooperation.
- 4.6 CONSENTS. Each Party to this Agreement represents that the execution, delivery, and performance of this Agreement requires no consent or approval of any person that has not been obtained.
- 4.7 DUTY TO COMPLETE PUBLIC INFRASTRUCTURE. Each Party understands and agrees that Developer shall ensure the successful completion of all Public Infrastructure that it commences or causes to commence at no additional cost to City and/or the TIRZ in accordance with the terms of this Agreement. This Section 4.7 is not intended to create a duty to commence nor complete all Public Infrastructure within the TIRZ. Toward that end, Developer is subject to the City's Subdivision Code (Ch. 82, City's Code of Ordinances) and per that code,

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Developer must submit security for its full completion of the Public Infrastructure.

- 4.8 NOT EFFECTIVE UNTIL EXECUTION OF INTERLOCAL AGREEMENTS. Each Party understands and agrees that certain provisions or requirements of this Agreement may additionally be subject to the execution of certain Interlocal Agreements for the Project that may be executed between City and one or more Taxing Units). To the extent such Interlocal Agreements are necessary, the provisions of this Agreement related to such Interlocal Agreements shall not be binding on the Parties until such Interlocal Agreements have been fully executed.
- 4.9 DEVELOPER BEARS THE RISK. Developer understands and agrees that any expenditure made by Developer in anticipation of reimbursement of TIRZ #2 Funds shall not be, nor shall be construed to be, the financial obligations of City, Board, and/or the Windridge TIRZ. Developer bears all risks associated with reimbursement, including, but not limited to incorrect estimates of tax increment, changes in tax rates or tax collections, changes in law or interpretations thereof, changes in market or economic conditions impacting the Project, changes in interest rates or capital markets, changes in Development Regulations, changes in City policies, and unanticipated effects covered under the legal doctrine of Force Majeure. Any expenditure made by Developer in anticipation of reimbursement from the TIRZ #2 Fund shall never be an obligation of City's general funds but are only obligations of City and/or the Board to reimburse for eligible Project costs from TIRZ #2 Fund to the extent of the availability of TIRZ #2 Funds for reimbursement of qualified eligible Project costs subject to limitations herein.
- 4.10 RIGHT TO ASSIGN PAYMENT. Developer may not assign this Agreement in whole or part without the prior written consent of City and Board; provided, however, Developer may collaterally assign the payments to be made to Developer to a lender providing financing for Developer for the construction of the Project but subject to the requirements and limitations of this Agreement. Notwithstanding the forgoing, City and/or Board shall not be required to make any payments due herein to Developer to any third party and that CPPR reimbursement payments herein shall be made only to Developer, unless otherwise agreed to in writing by the Parties.

ARTICLE V. THE PROJECT

- 5.1 PROJECT. The Project is a planned residential development which will contain a minimum of four hundred ninety (490) Dwelling Units designed and constructed in accordance with Developer's Watermill and Belmar Collections

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set forth in **Exhibit C**, attached hereto and incorporated herein by reference, or of a similar size and quality of home, and that complies with the Development Regulations. Subject to delays relating to events of Force Majeure, Developer shall cause Commencement of Construction of the Project and/or the Public Infrastructure to occur not later than ninety (90) days after the Effective Date. Developer shall develop and sell Dwelling Units within the Development in accordance with the following:

- a. *Sales Pricing.* Developer shall develop lots and sell Dwelling Units within the Property at sales prices in accordance with affordability standards set forth herein for Workforce Housing. The applicable standards are those established by the Texas Department of Housing and Community Affairs (TDHCA), with the net sales price of the Dwelling Units being affordable to homebuyers earning between 80 percent and 120 percent of the area median family income (“AMFI”) within Kerr County, Texas. As an example, for 2023, the AMFI is \$84,600 for Kerr County and the upper threshold for workforce housing within the TDHCA HOME Program is \$275,000. “Net sales price” means that any incentives or closing cost assistance that Developer pays on behalf of a homebuyer will be credited to the sales price of the Dwelling Unit for purposes of this section. Based upon TDHCA regulations, the sales price of each Dwelling Unit may not exceed \$275,000 (“Maximum Sales Price”). For purposes of this Agreement, the AMFI and Maximum Sales Price of Dwelling Units shall be adjusted from time to time, but in no circumstance shall the Maximum Sales Price decrease.
- b. *Applicability of Pricing.* The Maximum Sales Price is only applicable to the initial sale of the Dwelling Unit.
- c. *Increase in Maximum Sales Price.* Where the relevant AMFI threshold is increased or construction costs increase beyond the reasonable control of the Developer prior to completion and sale of the final Dwelling Unit within the Development; and, Developer believes that the Maximum Sales Price needs to be increased due to significant increases in the cost of construction materials beyond Developer’s reasonable control; for example, where an increase in lumber prices or similar costs of materials occurs requires Developer to increase the Maximum Sales Price by at least 2.9%, Developer shall provide the City Manager with specific documentation, including without limitation specific third party cost data or invoices, to justify such increase of the Maximum Sales Price for approval. Consideration and possible approval by the City Manager shall occur within 30 days after the City Manager’s receipt of such

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documentation. Any such increase may only occur once per year (365 days). In addition, the Maximum Sales Price of a completed Dwelling Unit and lot shall be adjusted annually to reflect the then current AMFI and shall be effective with respect to contracts for the sale of lots with completed Dwelling Units entered after the effective date of any such adjustments; provided that such adjustment of the Maximum Sales Price does not constitute a decrease.

- d. *Vehicular Access.* Developer shall design and thereafter construct each driveway that serves a Dwelling Unit to be at least sixteen (16) feet wide. In addition, Developer shall design and thereafter ensure that at least 50% of the Dwelling Units include garages to be at least twenty (20) feet wide. Developer's design and construction of the parking spaces and garages shall comply with the Development Regulations. Developer shall work with City to address and alleviate potential parking concerns within the Project through establishing restrictive covenants to prohibit and/or limit on-street parking, such restrictions to be enforced by a homeowners' association.
- e. *Open Space.* Developer shall comply with Chapter 74, Article III of City Code of Ordinances relating to the dedication of land for park and open space uses and payment of a fee to City in lieu of such dedication.
- f. *Lighting.* Developer shall take all reasonable steps to protect the community from unnecessary light pollution in accordance with the "dark sky" standards.

- 5.2 REIMBURSEMENT. The reimbursement from TIRZ #2 Funds by City is subject to availability and priority of payment and is not intended to necessarily reimburse all costs incurred in connection with the Project or expenses incurred by Developer for performance of its obligations under this Agreement or with respect to all other obligations required by City pursuant to the Development Regulations. Neither City nor the Board can guarantee that Available Tax Increment shall completely reimburse Developer. The TIRZ #2 Fund is the sole source of reimbursement to Developer for construction of the Public Infrastructure Total reimbursement to Developer from the TIRZ #2 Fund will not exceed the Maximum Reimbursement Amount, Developer is eligible for reimbursement of Project Costs for Public Infrastructure in accordance with this Agreement. When the Public Infrastructure has both private and public benefits, only that portion dedicated to the public may be reimbursed by the City.

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5.3 TAX INCREMENT FUND PRIORITIES.

- a. The funds deposited in the Tax Increment Fund from the Zone shall only be used for the following and applied in the following order of priority:
 - (i) the reasonable administrative costs of the Zone;
 - (ii) Reimbursement Payments to Developer.
- b. The use of Tax Increment contributed by any Taxing Unit other than City shall be subject to any rules, regulations, restrictions, and limitations set forth in the respective Participation Agreement for such Taxing Unit.

ARTICLE VI. DUTIES AND OBLIGATIONS OF DEVELOPER

- 6.1 DISCRETIONARY PROGRAM. Developer agrees that the TIRZ #2 Fund administered by City is a discretionary program and that City and the Board have no obligation to extend tax increment financing to Developer, except as provided herein. Developer agrees that it has no vested rights under any regulations, ordinances, or laws, and waives any claim to be exempt from applicable provisions of the current and future City Charter, City Code, City Ordinances, and state or federal laws and regulations.
- 6.2 COMPLIANCE. Developer, for itself and its officers, and employees, agrees (and shall cause its consultants and contractors to agree) to exercise supervision over the construction of the Public Infrastructure associated with the Project. Developer shall retain overall responsibility for the Project. Developer shall comply (and shall cause its consultants, contractors, and subcontractors to comply) with all applicable provisions of the City Charter, the City Code, and all applicable federal, state, and local laws. Developer shall cooperate with City and the Board in providing all necessary information in order to assist City in determining Developer's compliance with this Agreement.
- 6.3 SUBMISSION OF PERMIT APPLICATIONS. Developer shall make, or cause to be made, application for any necessary permits and approvals that are customarily required by City and any applicable governmental authorities to be issued for the construction of the Project (and Public Infrastructure). Developer shall be responsible for the payment of all fees for all permits charged or imposed by the city or any other governmental agency related to the design and construction of the Project and such fees or charges are not an eligible Project costs subject to reimbursement herein.

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- 6.4 COMPLIANCE. Developer shall comply and cause its contractors to comply with all local and state laws and regulations regarding the design and construction of the Project in accordance with the approved plans and specifications, including, but not limited to, any applicable requirement relating to payment, performance, and maintenance bonds.
- 6.5 PAYMENT AND PERFORMANCE BONDS. Developer shall cause its general contractor(s) to obtain payment and performance bonds to ensure completion of the Public Infrastructure pursuant to Chapter 2253, Texas Government Code, as amended, which, in addition to being in favor of Developer shall name the City as co-beneficiary or co-obligee of the bonds for all phases of the construction of the Public Infrastructure on the Project Site, and which shall allow enforcement of such bonds by the City. Said bonds for each phase shall be in an amount sufficient to cover the entire contract cost of the construction and completion of the Public Infrastructure portions of the Project. Developer shall submit copies of the payment and performance bonds to the City.
- 6.6 SUPERVISION OF CONSTRUCTION. Developer retains overall responsibility for the Project and the Project Site; subject to this retention, Developer may delegate supervision duties over the construction of all Public Infrastructure and all other construction activities at the Project Site and cause said construction to be performed, at a minimum, in accordance with all legal requirements detailed in Section 6.2 above and also including Prevailing Wage, Chapter 2258 of the Texas Government Code, and its development applications approved by City, notwithstanding any other provision of this Agreement.
- 6.7 PAYMENT OF APPLICABLE FEES. Developer is responsible for paying all applicable permit fees and licenses which have not been lawfully waived to City and all other governmental agencies in relation to construction of the Project.
- 6.8 PUBLIC INFRASTRUCTURE MAINTENANCE. At its own expense, Developer shall maintain or cause to be maintained all Public Infrastructure paid for in whole or in part, from public funds, without regard to whether the work is done under public supervision or direction, until dedication to and acceptance by City and for one (1) year after completion. Upon acceptance of a street or drainage improvement for maintenance by City, Developer shall deliver to City a one (1) year extended warranty bond or maintenance bond naming City as the obligee. The cost of repair, replacement, reconstruction, and maintenance for defects discovered during the first year after completion disclosed to Developer by City within a reasonable period of time, but no more than thirty (30) days from the time of discovery, shall be paid by Developer or the bond company and shall not be reimbursed from the TIRZ #2 Fund. After the expiration of the one (1)

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year extended warranty bond, the cost of the repair, replacement, reconstruction, and maintenance of Public Infrastructure dedicated to City shall be the sole responsibility of City. In addition:

- a. Developer, its officers, agents, employees, and contractors will not interfere with reasonable use of any of the Public Infrastructure by the general public, except for drainage retention improvements. In accordance with the Construction Schedule, Developer shall, without cost to City, dedicate (or grant a public easement) and cause the owner thereof to dedicate or grant, by plat or separate instrument in a form reasonably acceptable to City, the right-of-way and/or easements necessary for the construction, repair and maintenance of the Public infrastructure. The dedication of right-of-way and City's acceptance of Public Infrastructure shall follow the normal City process and procedures for such.
- a. The requirements of this Agreement cannot be waived or modified in any way by an engineer, employee, or City official or its subordinate agency with responsibility for inspecting or certifying Public Infrastructure. The actions of City, its employees and/or its agents do not work as an estoppel against City under this Agreement or the Development Regulations.

6.9 PROJECT SITE INSPECTION. Developer shall allow City, the Board and their representatives reasonable access to the Project Site owned or controlled by Developer for inspections during and upon completion of construction of portions of the Project, and access to documents and records considered necessary to assess the Project and Developer's compliance with this Agreement. The City Manager, or designee shall be provided with a right of entry onto the Project Site to conduct random walk-through inspections of the Project's Development subject to all security and Project Site safety requirements.

6.10 REQUESTS FOR REIMBURSEMENT.

- a. Subject to Developer's continued satisfaction of all terms and conditions of this Agreement, including the obligation of Developer to repay the CPPR Payments pursuant to Article XI, City agrees to provide annual CPPR Payments to Developer for completed components of the Public Infrastructure. The City will make such payments solely from the Tax Increment subject to the TIRZ priorities set forth in Section 5.3, and in an amount not to exceed the Maximum Reimbursement Amount.

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Developer may submit a CPPR to the City at any time and may submit more than one prior to any payment from City.

- b. The amount of each annual CPPR Payment shall be the amount of the Eligible Costs for Public Infrastructure that have not been paid to Developer after consideration and deduction of the Tax Increment Fund Priorities set forth in Section 5.3, above, not to exceed the Maximum Reimbursement Amount and subject to the limitations set forth herein. If there are insufficient Tax Increment Funds for an annual CPPR Payment, the unreimbursed Public Infrastructure Eligible Costs are carried forward, without interest, to succeeding Annual Payment dates until reimbursement has been made in full or termination of this Agreement, whichever occurs first.
- c. The Parties agree that the CPPR payments shall be paid solely from Tax Increment from the Property and only to the extent that funds are available in the TIRZ #2 Fund from the Tax Increment from the Zone during the term of this Agreement.
- d. Nothing in this Agreement shall be construed to obligate City and/or the Board to provide CPPR payments from any other source of funds or to otherwise require City and/or Board to pay Developer for Eligible Costs if there are insufficient funds in the TIRZ #2 Fund or if the Zone terminates prior to Developer being reimbursed in full for the Eligible Costs. Upon the termination of this Agreement or the expiration of the term of this Agreement, any Eligible Costs that remain un-reimbursed or that remain unpaid due to (i) lack of availability of TIRZ #2 Funds, or (ii) the failure of Developer to satisfy any precondition of CPPR payment under this Agreement, shall no longer be considered obligations of the Zone, and any obligation of City and/or the Board to pay the CPPR payments to Developer shall automatically expire and terminate on such date.
- e. Notwithstanding anything to the contrary, in the event that Developer submits a CPPR at least sixty (60) days prior to the termination of the TIRZ and there are still funds available in the TIRZ #2 Fund, the TIRZ #2 Fund and Board will survive beyond termination of the TIRZ only to the extent needed in order to consider and approve issuance of reimbursement from all qualifying outstanding CPPR requests. To effectuate this action, the City shall amend its TIF Zone Ordinance as necessary.

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6.11 THIRD PARTY OWNERSHIP. No third-party purchaser of any portion of the Property or improvements constructed thereon shall be deemed an assignee under this Agreement or be entitled to receive any CPPR Payments directly from City and/or Board hereunder. In the absence of any approved and executed assignment that provides otherwise, CPPR Payments to Developer shall be calculated based on Tax Increment received by City regardless of property ownership.

6.12 TAX PROTEST.

- a. If Developer, any owner, or lessee of any real property and/or improvements within the Zone (collectively the “Protest Property”) timely and properly protest or contest (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Protest Property, or any portion thereof, with the applicable appraisal district (or its successor) (“Tax Protest”) the obligation of City and/or Board to provide the CPPR Payments from the Tax Increment Fund from Zone with respect to such Protest Property or portion thereof, for such tax year shall be abated with regard to the amount of ad valorem taxes that are in dispute (based on the amount or portion of Taxable Value of the Protest Property in dispute) until a final determination has been made of such Tax Protest. In the event of a Tax Protest, City shall send written notice to Developer of the amount of ad valorem taxes that are in dispute (based on the amount or portion of taxable value of the Protest Property in dispute or the entire amount if the contested amount is unknown to City). However, in the event a Tax Protest results in a final determination that changes the appraised value and/or the Taxable Value of the Protest Property, or the amount of ad valorem taxes assessed and due for the Protest Property, or portion thereof, after a CPPR Payment has been paid, which includes Tax Increment for such Protest Property for such tax year, the Tax Increment Fund applicable to such Protest Property will be adjusted accordingly and the CPPR payment with respect to such tax year shall be recomputed (increased or decreased, as the case may be) and the amount of any overpayment or underpayment shall reduce or increase the amount of the following year’s CPPR Payment. If there are no further CPPR Payments due under this Agreement and Tax Increment with respect to such Protest Property is reduced Developer shall, within thirty (30) days after written demand from City, reimburse City for such over payment of any such CPPR Payment.
- b. If City determines that the amount of a CPPR Payment was less than the correct amount to which Developer was entitled (together with such

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records, reports and other information necessary to support such determination), City shall pay such underpayment to Developer within thirty (30) days of such determination. If City determines that the amount of a CPPR Payment was greater than the correct amount to which Developer was entitled (together with such records, reports and other information necessary to support such determination) Developer shall pay such overpayment to City within thirty (30) days after receipt of written notification from City of such overpayment.

ARTICLE VII. DUTIES AND OBLIGATIONS OF CITY AND BOARD

- 7.1 COORDINATION OF BOARD MEETINGS. City and Board agree that a) all meetings of the Board as well as all administrative functions shall be coordinated and facilitated by the City; and b) all notices for meetings of the Board shall be drafted and posted by the City Manager or designee, in accordance with state law. The City's TIF authority also extends to control of the Board Agenda in conjunction with any established City policies.
- 7.2 ELIGIBLE PROJECT COSTS. Following receipt by the City of a CPPR, the Board shall consider for approval Developer's request(s) for reimbursement of eligible Project Costs incurred by Developer in the course of constructing the Project. Project Costs shall be eligible for reimbursement only if approved by the Board and incurred in the performance of, and in compliance with, this Agreement and with all applicable laws. Following Board approval, CPPR shall be reviewed by City for final approval and issuance of reimbursement pursuant to this Agreement.
- 7.3 UTILITY AVAILABILITY. Developer has requested that City provide adequate water and wastewater service (Utility Services") to the Project, which City has agreed to do in accordance with an agreement negotiated between the Parties pursuant to Texas Local Government Code §43.0672. City recognizes and affirms that such Utility Services shall be provided at the capacity required for the Project, provided (i) City's commitment to such capacity is conditioned upon Developer submitting a completed utility master plan to City and (ii) Developer causing the Commencement of Construction of approved on-site utility infrastructure to tie into City's existing utility systems, without the need for upgrades to City's existing utility system, not later than three (3) years after the Effective Date. Notwithstanding the foregoing condition, the commitment for Utility Services shall be for a term ending on the fifteenth (15) anniversary of the Effective Date, which term shall be automatically extended for one additional term of five (5) years if Developer has caused the completion of construction of at least 248 single family homes within the Project Site prior to the expiration of the initial fifteen (15) year period.

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ARTICLE VIII. COMPENSATION TO DEVELOPER

- 8.1 CPPR APPROVAL. Upon completion of portions of Public Infrastructure related to the Project, and as those improvements are specified in the Plan, Developer may submit to City a completed CPPR. The City Manager shall process each completed CPPR without unreasonable delay and prepare for the Board to meet and review such CPPR. Should there be discrepancies in the CPPR, or if more information is required, Developer will have thirty (30) days upon receipt of notice from City and/or the Board to correct any discrepancy or submit additional requested information. Failure to timely submit the additional information requested by City and/or Board may result in the delay of Developer's requested reimbursement.
- 8.2 INVALID PAYMENTS. If any payment to Developer is held invalid, ineligible, illegal, or unenforceable under applicable federal, state, or local laws, then and in that event, Developer shall repay such payment in full to City for deposit into the TIRZ #2 Fund.

ARTICLE IX. INSURANCE

- 9.1 INSURANCE. Developer at its sole cost and expense, shall obtain and maintain in full force and effect during the term of this Agreement, (or shall cause the Contractor during construction of the Public Infrastructure) the following policies of insurance and coverage:
- a. Commercial General Liability Policy covering bodily injury, death and property damage, including the property of a director, officer, employee or agent of City or Board, insuring against all claims, demands or actions relating to the work and services provided pursuant to this Agreement with minimum limits on a per occurrence of not less than One Million Dollars (\$1,000,000) combined single limit and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage. This policy shall be primary to any policy or policies carried by or available to City.
 - b. Workers' Compensation/Employer's Liability Insurance Policy in full accordance with the statutory requirements of the State of Texas and shall include bodily injury, occupational illness or disease coverage with minimum Employer's Liability limits of not less than \$500,000/\$500,000/\$500,000.
 - c. Automobile Liability Insurance Policy covering all operations of Developer and its Contractor pursuant to this Agreement involving the use of motor vehicles, including all owned, non-owned and hired vehicles

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with minimum limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury, death and property damage liability.

- d. Excess Liability Insurance Policy with a limit of not less than Five Million Dollars (\$5,000,000). Such insurance shall be in excess of the commercial general liability insurance, business auto liability insurance and employer's liability insurance. This insurance will apply as primary insurance with respect to any other insurance or self-insurance programs maintained by City and shall be provided on a "following form basis". Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the Contractor's completed work, including its sub-contractor(s), consultants and employees.
- e. Property/Builders Risk Insurance Policy with "all-risk" coverage covering all buildings and other improvements located or being constructed on the Property against loss or damage from perils covered by an all risk or special form policy in amounts not less than one hundred (100%) percent of the full insurable value of the buildings and other improvements to be constructed or included in the Property to include the interest of City.
- f. Professional Liability Insurance (if applicable) with limit of not less than Two Million Dollars (\$2,000,000) for all negligent acts, errors and omissions by Developer's engineers and architects that arise out of the performance of this Agreement.
- g. The Commercial General Liability, Worker's Compensation, Business Auto and Excess Liability insurance required pursuant to this Agreement shall be endorsed to provide for waivers of all rights of subrogation against City.
- h. Except for the Worker's Compensation Insurance and any Professional Liability Insurance, all insurance required pursuant to this Agreement shall include and name the officials, employees, or agents of City as additional insureds using Additional Insured Endorsements that provide the most comprehensive coverage to the officials, employees, or agents of City under Texas law including products/completed operations. The Additional Insured status for the officials, employees, or agents of City shall remain in force and effect for a minimum of two (2) years following abandonment or completion of the work and services provided pursuant to this Agreement.

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- i. Certificates of Insurance and policy endorsements in a form reasonably satisfactory to City shall be delivered to City prior to any work under this Agreement, to include grading, construction relevant to the Public Infrastructure, or vertical construction and thereafter updated annually for a minimum of two (2) years following termination of this Agreement, abandonment or completion of the work. All required policies shall be endorsed to provide City with thirty (30) days advance notice of cancellation or material change in coverage. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, Developer shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance. On every date of renewal of the required insurance policies, Developer shall deliver to City (and cause the Contractor to deliver to City) a Certificate of Insurance and policy endorsements to be issued evidencing the required insurance herein. In addition, Developer shall, within fifteen (15) days after written request, provide City with Certificates of Insurance and policy endorsements for the insurance required herein (which request may include copies of such policies). The failure to provide valid Certificates of Insurance and policy endorsements shall be deemed a breach of this Agreement following City's adherence to Section 11.3. All policies and endorsements shall remain in effect for not less than two (2) years after the completion of the Project.
- j. All policies of insurance required to be obtained by Developer and its Contractor pursuant to this Agreement shall be maintained with insurance carriers that are reasonably satisfactory to City and lawfully authorized to issue insurance in the State of Texas for the types and amounts of insurance required herein. All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A-VII" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by City. All insurance coverage required herein shall be evidenced by a certificate of insurance and policy endorsements submitted by Developer's and its Contractor's insurer.

ARTICLE X. WORKERS COMPENSATION INSURANCE COVERAGE

- 10.1 APPLICABILITY. This Article is applicable only to construction of Public Infrastructure, the costs for which the Developer is seeking reimbursement from City and the Board, and is not intended to apply to the private improvements made by the Developer.

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10.2 DEFINITIONS.

- a. *Certificate of coverage (“certificate”)* - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a phase of the Project for the duration of the project.
 - b. *Duration of the project* - includes the time from the beginning of the work on the Project until the Developer's/person's work on the Project has been completed and accepted by the City.
 - c. *Persons providing services on the Project (“subcontractor” in §406.096 of the Texas Labor Code)* - includes all persons or entities performing all or part of the services the Developer has undertaken to perform on the Project, regardless of whether that person contracted directly with the Developer and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. “Services” does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- 10.3 Developer must provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer, if any, providing services on the Project, for the duration of the Project.
- 10.4 Developer must provide a certificate of coverage to the City prior to being awarded the contract.
- 10.5 If the coverage period shown on the Developer’s current certificate of coverage ends during the duration of the phase of the Project, Developer must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- 10.6 Developer shall obtain from each contractor or subcontractor providing services on a project, and shall provide to the City:

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- a. a certificate of coverage, prior to that contractor or subcontractor beginning work on the Project, so City will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - b. no later than seven (7) days after receipt by Developer, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the phase of the Project.
- 10.7 Developer will retain all required certificates of coverage for the duration of the Project, and for one (1) year thereafter.
- 10.8 Developer will notify the City in writing by certified mail or personal delivery, within fifteen (15) days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- 10.9 Developer will post on the Project Site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 10.10 Developer will contractually require each person with whom it contracts to provide services on a Project, to:
- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the applicable phase of the Project;
 - b. provide to the Developer, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the applicable phase of the Project;
 - c. provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable phase of the Project;

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- d. obtain from each other person with whom it contracts, and provide to the Developer:
 - (i) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the applicable phase of the Project;
 - e. retain all required certificates of coverage on file for the duration of the applicable phase of the Project and for one year thereafter;
 - f. notify the City in writing by certified mail or personal delivery, within ten (10) business days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - g. perform as required by Paragraphs a-f above with the certificates of coverage to be provided to the person for whom they are providing services.
- 10.11 By signing this Agreement or providing or causing to be provided a certificate of coverage, Developer represents that all its employees to provide services on the Project will be covered by workers' compensation coverage for the duration of the applicable Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self Insurance Regulation. Providing false or misleading information may subject Developer to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 10.12 Developer's failure to comply with any of these provisions is a breach of this Agreement and entitles the City and/or Board to declare the Agreement void and exercise all legal remedies if the Developer does not cure the breach within thirty (30) days after receipt of notice of breach from the City without necessity of the ninety (90) day cure period as set forth in Section 11.3.2 of this Agreement.

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ARTICLE XI. TERMINATION AND RECAPTURE

- 11.1 TERMINATION. For purposes of this Agreement, termination means the expiration of the term, as provided by Article II. In addition, this Agreement may be terminated in the following manners: (1) Termination without cause pursuant to Section 11.2, (2) Termination for cause pursuant to Section 11.3, and (3) Termination by law pursuant to Section 11.4.
- 11.2 TERMINATION WITHOUT CAUSE. This Agreement may be terminated by mutual consent and a written agreement of the Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, any proposed payment of outstanding reimbursements due, any pay-back plan of disbursed funds, and the proposed effective date of such termination.
- 11.3 TERMINATION FOR CAUSE/DEFAULT. Upon written notice, which must be provided in accordance with Article XVII. Notice of this Agreement, City and/or Board shall have the right to terminate this Agreement for cause, in whole or in part, if Developer fails to: (1) comply with any material term or condition of this Agreement, which shall be deemed a default (provided for the purposes of this Section 11.3, a deviation of five percent (5%) or less in the number of homes stated in Section 5.1 of this Agreement shall not be a breach); and (2) fails to cure such default in accordance with the requirements set forth in this Article. Pursuant to this Section 11.3, termination by City and the Board shall be subject to the following:
- 11.3.1 NOTICE OF DEFAULT. After sending a written notice of default, the City and Board will not distribute TIRZ #2 Funds to Developer until the default is cured.
- 11.3.2 CURE. Upon receiving the notice of default resulting from a breach of this Agreement, Developer shall cure the default not later than ninety (90) days from the date of delivery of such notice (the "Cure Period"). In the case of a default which Developer submits cannot with due diligence be cured within the required Cure Period, the City Manager shall decide, within his or her sole and reasonable discretion, whether to approve or not approve an extension of the Cure Period for a period that is reasonably necessary to allow Developer to cure such default. Thereafter, Developer shall commence to cure such default and thereafter diligently pursue such cure such that the default is cured before the expiration of the Cure Period, as extended. If there are no reasonable means to cure the default, the notice of default shall include the a detailed description

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of the default and the basis for such default being incurable, in which case said notice of default may serve as notice of termination.

- 11.3.3 FAILURE TO CURE. If Developer fails to cure any default of this Agreement within the Cure Period (as extended, if applicable), City and/or Board may, upon issuance to Developer of a written notice of termination, terminate this Agreement in whole or in part. Such notification shall include the reasons for such termination, the effective date of such termination; and, in the case of partial termination, the portion of the Agreement to be terminated.
- 11.3.4 REMEDIES UPON DEFAULT. The Parties shall have the right to seek any remedy in law to which they may be entitled, in addition to termination and repayment of funds, excluding the remedy of specific performance, if a Party defaults under the terms of this Agreement and fails to cure such default within any applicable Cure Period. City and/or Board shall have the right to recapture disbursed funds associated directly with such default, in accordance with Section 11.5, below, and Developer shall repay all such disbursed funds.
- 11.4 TERMINATION BY LAW. If any applicable state or federal law or regulation is enacted or promulgated which prohibits the performance of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 11.5 RECAPTURE. Only in the event of a termination pursuant to Section 11.3 for cause, City and/or Board, shall have the right to recapture all disbursed funds, as set forth herein, made under this Agreement and Developer shall repay disbursed funds as requested by City and/or the Board in the said notice of termination not later than sixty (60) days after the effective date of termination.
- 11.6 CLOSE-OUT. Regardless of how this Agreement is terminated, Developer shall effect an orderly transfer to City or its designee, at no additional cost to City, copies of all completed or partially completed documents, records, or reports, produced as a result of or pertaining to this Agreement, regardless of storage medium, if so requested by City; alternatively, all such documents, records, and reports shall be retained by Developer in accordance with Article XIV of this Agreement. Reimbursements due to Developer, at the time of termination, will be conditioned upon delivery of all documents, records, or reports, if requested by City. Not later than ninety (90) days after the effective date of completion, or termination or expiration of this Agreement, Developer shall submit to City and/or Board all requests for reimbursements in accordance

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with Section 6.12 above through the effective date of termination. Failure by Developer to submit requests for reimbursements within said ninety (90) days shall constitute a Waiver by Developer of any right or claim to collect Available Tax Increment that Developer may be otherwise eligible for pursuant to this Agreement.

ARTICLE XII. INDEMNIFICATION

- 12.1 DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, CITY (AND CITY'S ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), AND BOARD (AND THE OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES OF BOARD)(COLLECTIVELY, THE INDEMNIFIED PARTIES), INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON ANY ONE OR MORE OF THE INDEMNIFIED PARTIES, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR, OR SUBCONTRACTOR OF DEVELOPER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE INDEMNIFIED PARTIES UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF ANY ONE OR MORE OF THE INDEMNIFIED PARTIES, UNDER THIS AGREEMENT.**
- 12.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY DEVELOPER TO INDEMNIFY, PROTECT, AND HOLD HARMLESS THE INDEMNIFIED**

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FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE; PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF ANY ONE OR MORE OF THE INDEMNIFIED PARTIES IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF ANY ONE OR MORE OF THE INDEMNIFIED PARTIES IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. DEVELOPER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE INDEMNIFIED PARTIES AND IN THE NAME OF THE APPLICABLE INDEMNIFIED PARTIES ANY CLAIM OR LITIGATION BROUGHT AGAINST ONE OR MORE OF THE INDEMNIFIED PARTIES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

ARTICLE XIII. LIABILITY

- 13.1 DEVELOPER. As among City, the Board, any Taxing Unit, and Developer, Developer shall be solely responsible for compensation payable to any employee, contractor, or subcontractor of the Developer, and none of Developer's employees, contractors, or subcontractors will be deemed to be employees, agents, contractors, or subcontractors of City, Board, or any Taxing Unit as a result of the Agreement.
- 13.2 CITY AND BOARD. To the extent permitted by Texas law, no director, officer, employee or agent of City, Board, or any other Taxing Unit shall be personally responsible for any liability arising under or growing out of this Agreement.

ARTICLE XIV. RECORDS

- 14.1 RECORDS; AUDIT. Developer shall (and cause its contractors to) keep and maintain all documents, papers, accounting records, financial statements, receipts, invoices, and other documentation relating to the Project Costs incurred by Developer for the Public Infrastructure and the reimbursement of Project Costs for a period of two (2) years following the termination of this Agreement (and then transferred for retention to the City at no cost to the City upon written request). Upon not less than 48-hours prior written notice by City and/or Board, Developer shall provide access to City and/or Board, or persons or entities designated by such Parties, during normal business hours for the purpose of making audits, examinations, excerpts, and transcriptions access to such records at a location designated by Developer within Kerr County, Texas. This Section shall survive the termination of this Agreement.

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- 14.2 DISCREPANCIES. Should City or any Taxing Unit discover errors in the internal controls or in the record keeping associated with the Project, Developer shall be notified of such errors and the Parties shall consult on what steps may be necessary to correct such discrepancies within a reasonable period of time, not to exceed sixty (60) days after discovery. The City and Board shall be informed in writing of the action taken to correct such discrepancies.
- 14.3 OVERCHARGES. If it is determined as a result of such audit that Developer has been reimbursed for the cost of the Public Infrastructure in an amount in excess of what Developer actually paid, then such overcharges shall be immediately returned to City and the Board for deposit in the TIRZ #2 Fund and become due and payable with interest at the maximum legal rate under applicable law from the date City paid such overcharges. In addition, if the audit determines the requested reimbursement payments that for which payment was made are more than two (2) percent of the actual Project Costs incurred by Developer, then Developer shall pay the cost of such audit in addition to refunding such exceed reimbursement payments as provided in the prior sentence.

ARTICLE XV. ASSIGNMENT

- 15.1 ASSIGNMENT BY CITY. City and/or Board may assign this Agreement without prior consent of Developer upon thirty (30) days prior written notice to Developer.
- 15.2 ASSIGNMENT BY DEVELOPER. Developer may not assign this Agreement in whole or in part without the prior written consent of City and Board. Notwithstanding the foregoing: (i) Developer or any permitted assignee of Developer shall have the right to grant a security interest in this Agreement by collaterally assigning all of Developer's (or permitted assignee's) rights under this Agreement to Developer's lender as security for a loan for the Project or the applicable portion thereof. At no time shall City and/or Board be required to make any payments under this Agreement to any party other than Developer or a party to whom this Agreement has been fully assigned and has agreed in writing to assume all liabilities and obligations of Developer as set forth in this Agreement; and (ii) Developer may assign this Agreement in whole or in part to a qualified purchaser of the entire Property upon the thirty (30) days prior written notice to City and Board and upon the written approval of City and Board evidenced by a resolution of each such Party provided such assignee expressly assumes the obligations of the Developer under this Agreement in writing in a form approved by the City and the Board.

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ARTICLE XVI. NOTICE

All notices, demands, consents, approvals and other communications (each, a “Notice”) which are required or desired to be given by any Party to the other Parties under this Agreement shall be in writing and shall be (a) hand delivered, (b) sent by U.S. registered or certified mail, postage prepaid, return receipt requested, (c) sent by reputable overnight courier service, or (d) transmitted by email, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by Notice to the other. Notices shall be deemed given when delivered, if delivered by hand, by U.S. mail or by overnight courier, or, if sent by email, upon the earlier of when receipt of such email is acknowledged by the recipient by email or when a copy of such email is received by the recipient pursuant to one of the methods described in (a), (b) or (c) above. Rejection or other refusal by the addressee to accept a Notice or the inability to deliver the Notice because of a changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. Notice addresses for the Parties are as follows:

If to City:

City of Kerrville
Attn: City Manager
Kerrville City Hall
701 Main Street
Kerrville, Texas 78028

If to the Board:

City of Kerrville Windridge TIRZ Board
Attn: Director of Finance
Kerrville City Hall
701 Main Street
Kerrville, Texas 78028

If to Developer:

Lennar Homes of Texas
Attn: Clifton Karam
100 NE Loop 410, Ste. 1155
San Antonio, Texas 78216

ARTICLE XVII. INDEPENDENT CONTRACTORS

- 17.1 NO AGENCY. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties. It is understood and agreed by the Parties that Developer, City, and Board, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third

DRAFT 1/19/24

parties in connection with these actions. All Parties expressly agree that in performing their obligations pursuant to this Agreement, City, Board, and Developer at no time shall be acting as agents for any of the other Parties that all consultants or contractors engaged by the Board and/or Developer respectively shall be independent contractors of the Board and/or the Developer.

- 17.2 NO AUTHORITY. The Parties further understand and agree that no Party has authority to bind any other Party or to hold out to third parties that it has the authority to bind the other Parties.

ARTICLE XVIII. TAXES

Developer shall pay, on or before the respective due dates, to the appropriate collecting authority all applicable Federal, State, and local taxes and fees which are now or may be levied upon the Project Site owned by Developer, Developer or upon Developer's business conducted on the Project Site or upon any of Developer's property used in connection therewith, including employment taxes. Developer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Developer.

ARTICLE XIX. CHANGES AND AMENDMENTS

- 19.1 AMENDMENT. This Agreement may be amended only by the mutual written agreement of the Parties.
- 19.2 CONSTRUCTION SCHEDULE. Notwithstanding the above, any Construction Schedule may be amended, as evidenced by written approval of the City Manager. If an amendment to any Construction Schedule will result in a material change to this Agreement, then such amendment shall comply with the requirements of Section 19.1 above. For the purposes of Sections 19.1 and 19.2, the Parties agree that one or more extensions of construction timeframes set forth in any Construction Schedule that, cumulative, are less than twelve (12) months shall not be deemed a material change to this Agreement. No change under this Section 19.2 may result in an increase in the maximum contribution of City or any other Taxing Unit of their respective Tax Increments into the TIRZ #2 Fund. Developer may rely on the determination of the City Manager whether a change in the Construction Schedule would result in a material change to the overall Project requirements.
- 19.3 AUTOMATIC INCORPORATION OF LAWS. Changes in local, state, and federal rules, regulations, or laws applicable to the Parties' obligations under this Agreement may occur during the term of this Agreement, which changes shall be automatically incorporated into this Agreement without written amendment

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to this Agreement and shall become a part as of the effective date of the change in rule, regulation or law. Notwithstanding the foregoing, nothing contained herein shall be deemed to be a waiver by Developer of any right by Developer to assert or seek any vested rights pursuant to any applicable statute, law or regulation.

ARTICLE XX. SEVERABILITY

If any clause or provision of this Agreement is held invalid, illegal, or unenforceable under present or future federal, state or local laws, then said clause or provision shall not affect any other clause or provision, and the remainder of this Agreement shall be construed as if such clause or provision was never contained herein. It is also the intent of the Parties that in lieu of each invalid, illegal, or unenforceable provision, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XXI. LITIGATION EXPENSES

- 21.1 During the term of this Agreement, if Developer files or pursues an adversarial proceeding regarding this Agreement against City, the Taxing Units and /or the Board, without first engaging in good faith mediation of the dispute, then all access to funding provided hereunder shall be withheld and Developer will be ineligible for consideration to receive any future tax increment funding while any adversarial proceedings remain unresolved.
- 21.2 Under no circumstances will the Available Tax Increment received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against City, the Taxing Units, the Board or any other public entity. Nothing contained in this Article shall effect or otherwise affect the indemnity provisions contained in Article XII.

ARTICLE XXII. LEGAL AUTHORITY

Each person executing this Agreement on behalf of the respective Party, represents, warrants, assures, and guarantees that such person has full legal authority to execute this Agreement on behalf of such Party, and to bind such Party to all the terms, conditions, provisions, and obligations of this Agreement.

ARTICLE XXIII. VENUE AND GOVERNING LAW

- 23.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO CONFLICT OF LAW RULES.

DRAFT 1/19/24

23.2 Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in a state district court of Kerr County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

ARTICLE XXIV. PARTIES' REPRESENTATIONS

This Agreement has been jointly negotiated by City, Board, and Developer and shall not be construed against a Party because that Party may have primarily assumed responsibility for the drafting of this Agreement.

ARTICLE XXV. CAPTIONS

All captions used in this Agreement are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

ARTICLE XXVI. LICENSES/CERTIFICATIONS

Developer warrants and certifies that, to its knowledge, any person providing services hereunder has the requisite training, license, and/or certification to provide said services and meets the competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXVII. ENTIRE AGREEMENT

27.1 NO CONTRADICTIONS. This written Agreement embodies the final and entire Agreement among the Parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties.

27.2 INCORPORATION OF EXHIBITS. Each Exhibit referenced below shall be incorporated herein for all purposes as an essential part of this Agreement, which governs the rights and duties of the Parties pursuant to this Agreement, except that if there is a conflict between an Exhibit and a provision of this Agreement, the provision of this Agreement shall prevail over the Exhibit.

EXHIBIT A: Contract Progress Payment Request (CPPR) Form
EXHIBIT B: Property Description
EXHIBIT C: Developer's Watermill and Belmar Collections

27.3 COUNTERPARTS. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

DRAFT 1/19/24

27.4 EMPLOYMENT OF UNDOCUMENTED WORKERS. During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Developer shall repay the amount of the reimbursements paid to the Developer herein and any other funds received by Developer from City and/or Board as of the date of such violation within 120 days after the date Developer is notified by City and/or Board of such violation, plus interest at the rate of 4% compounded annually from the date of violation until paid. Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom Developer contracts.

27.5 SURVIVAL OF COVENANTS. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period following the termination of this Agreement shall survive termination.

27.6 BOYCOTT ISRAEL; BOYCOTT ENERGY COMPANIES; AND PROHIBITION OF DISCRIMINATION AGAINST FIREARM ENTITIES AND FIREARM TRADE ASSOCIATIONS.

- a. Developer verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- b. Developer verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.
- c. Developer verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- d. This section does not apply if Developer is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Developer has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

27.7 CONDITIONS PRECEDENT. This Agreement is subject to, and the obligations of the Parties are expressly conditioned upon the City adopting an ordinance approving the Project and Financing Plan.

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IN WITNESS THEREOF, the Parties have caused this instrument to be signed on the date of each signature below.

(Signatures begin on following page)

DRAFT 1/19/24

CITY OF KERRVILLE,
a Texas Home Rule Municipality

BOARD OF DIRECTORS
Windridge TIRZ #2

Dalton Rice, City Manager

Presiding Officer

Date

Date

**LENNAR HOMES OF TEXAS LAND
CONSTRUCTION, LTD.**
a Texas limited partnership

Clifton Karam
Vice President Land Acquisition

Date

APPROVED AS TO FORM:

Michael C. Hayes, City Attorney

EXHIBIT A

CITY OF KERRVILLE
CONTRACT PROGRESS PAYMENT REQUEST (CPPR)
FORM AND REQUIREMENTS

Prior to submitting an invoice to request reimbursement, the developer must submit to the City of Kerrville (the “City”):

- All approved Master Development Plans (MDPs), recorded plats, City approved construction plans and inspections.
- Copies of the payment and performance bond in accordance with the executed Development Agreement.
- Letters of acceptance from City departments or other agencies certifying the public infrastructure was constructed and accepted in accordance with all applicable rules, regulations, and codes.

When submitting an invoice for reimbursement, a summary page (refer to Sample Packet, page 2) must accompany all invoices to include: (a) related project name; (b) invoice number; (c) period covered by invoices and phase covered by invoices. Invoices must be submitted in the categories listed in the approved Final Finance Plan Sources and Uses page. The Sources and Uses page is broken down into phases and categories on a forecasted maximum allowable cost.

Each category should have their own separate summary page (refer to Sample Packet, page 2) itemizing invoices, submitted in each appropriate category. The summary page will need to include maximum allowable cost, actual invoice amount, Plat or MDP number (if applicable) and method payment. This maximum allowable cost is the forecasted amount that was projected for each category in the phase.

A receipt and/or cancelled check must accompany each invoice to qualify for reimbursement. The invoice must refer to the related project. The dates and amount on invoices must coincide with receipt or cancelled checks. The invoice total must calculate correctly and tie to the summary page.

Each column is defined below: (refer to Sample Packet, page 2)

- Column A is the category from the Sources and Uses page for projected expenses.
- Column B is the forecasted maximum allowable cost per the Final Finance Plan.
- Column C is the actual developer’s expense and invoice number.
- Column D is the amount of prior requests.
- Column E is the balance column. The balance is the difference between the projected expenses and the actual developer’s expenses. The balance column will be used for internal tracking purposes only.

All invoice Payments must be accompanied by:

- Receipt or Cancelled Check
- Must Reference the Project

(SAMPLE) Reimbursement for TIRZ Expenses

PROJECT NAME: TIRZ NAME			PERIOD COVERED BY THIS INVOICE: DATE – DATE		
INVOICE #			PHASES COVERED BY THIS INVOICE: PHASE X		

	A	B	C	D	E
Section	Activity	Maximum Allowable from Finance Plan	Invoice Number and Amount	Prior Requests	**Balance
1	Example Cost 1	Max Finance Plan Example	Invoice for Example Cost 1	0	Remaining Balance (B1 – A1)
2	Example Cost 2	Max Finance Plan Example	Invoice for Example Cost 2	0	Remaining Balance (B2 – A2)
3	Example Cost 3	Max Finance Plan Example	Invoice for Example Cost 3	0	Remaining Balance (B3 – A3)
4	Example Cost 4	Max Finance Plan Example	Invoice for Example Cost 4	0	Remaining Balance (B4 – A4)
5	Example Cost 5	Max Finance Plan Example	Invoice for Example Cost 5	0	Remaining Balance (B5 – A5)

**The Balance Column is used for internal tracking purposes only.

Certification

I certify that to the best of my knowledge and belief the data above and supporting documentation attached are correct and that all outlays were made in accordance with the terms of the Development Agreement, plats, & construction plans; and the payment due has not been previously reimbursed.

Name: _____
 Signature: _____
 Title: _____
 Date: _____

EXHIBIT
B

Windridge Property Description



has joined Colliers Engineering & Design
TBPE FIRM #9513 / TBPLS 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°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°36'09" E**, a distance of **19.48 feet** to a calculated point
2. **N 44°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°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°25'38"**, and a chord which bears **N 19°24'26" E**, a distance of **549.32 feet** to a to a calculated point;
3. **N 50°37'15" E**, a distance of **393.59 feet** to a calculated point;
4. **N 39°22'45" W**, a distance of **270.00 feet** to a calculated point;
5. **N 50°37'15" E**, a distance of **394.41 feet** to a calculated point;
6. **N 39°22'45" W**, a distance of **736.25 feet** to a calculated point;
7. **N 27°41'31" E**, a distance of **587.96 feet** to a calculated point;
8. **N 17°57'41" E**, a distance of **60.00 feet** to a calculated point;
9. **S 71°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;

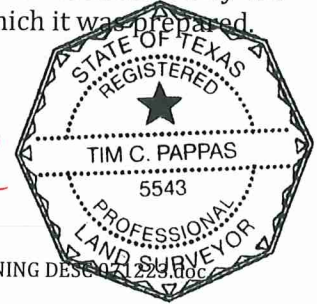
THENCE: along and with the northerly right-of-way of Olympic Drive, with the arc of said non-tangent curve to the **left** a distance of **425.20 feet**, having a radius of **640.00 feet**, a delta angle of **038°03'58"**, and a chord which bears **S 64°09'25" W**, a distance of **417.43 feet** to the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

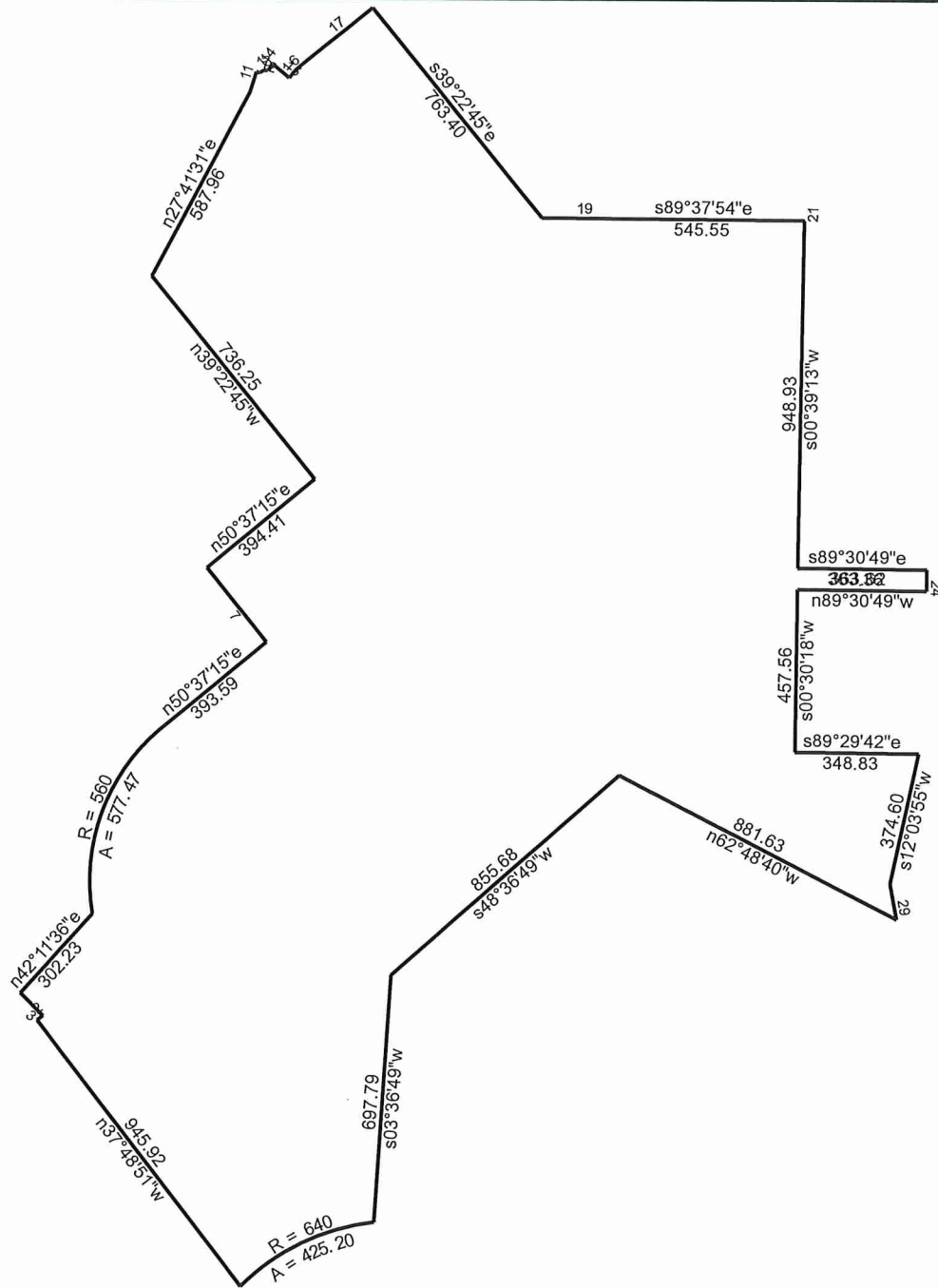
survey prepared by CED Surveying. Bearings are based on NAD83 Texas State Plane South Central Zone.

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 DES

1 AUG
2023



8/1/2023

Scale: 1 inch= 515 feet

File: 100.3158 AC.ndp

Jeb 20-118

Tract 1: 100.3158 Acres, Closure: s40.0544w 0.03 ft. (1/446603), Perimeter=12219 ft.

01 n37.4851w 945.92 ✓	20 s89.3754e 545.55 ✓
02 n53.3609e 19.48 ✓	21 s01.4123w 30.15 ✓
03 n44.4014w 90.44 ✓	22 s00.3913w 948.93 ✓
04 n42.1136e 302.23 ✓	23 s89.3049e 363.36 ✓
05 Rt, r=560.00, arc=577.47, chord=n19.2426e 549.32 ✓	24 s00.0002e 60.00 ✓
06 n50.3715e 393.59 ✓	25 n89.3049w 363.62 ✓
07 n39.2245w 270.00 ✓	26 s00.3018w 457.56 ✓
08 n50.3715e 394.41 ✓	27 s89.2942e 348.83 ✓
09 n39.2245w 736.25 ✓	28 s12.0355w 374.60 ✓
10 n27.4131e 587.96 ✓	29 s10.1605e 102.58 ✓
11 n17.5741e 60.00 ✓	30 n62.4840w 881.63 ✓
12 s71.2116e 10.27 ✓	31 s48.3649w 855.68 ✓
13 Rt, r=20.33, arc=25.39, chord=n72.5152e 23.77 ✓	32 s03.3649w 697.79 ✓
14 n37.5552e 23.00 ✓	33 Lt, r=640.00, arc=425.20, chord=s64.0925w 417.42
15 s50.3211e 60.00 ✓	
16 Rt, r=370.00, arc=46.21, chord=n43.0228e 46.18 ✓	
17 n50.4602e 260.73 ✓	
18 s39.2245e 763.40 ✓	
19 s89.3754e 196.74 ✓	

Fullerton

Watermill collection

1,217 sq ft · Plan 3410

1-story

3 beds · 2 baths · 2 car garage

EXHIBIT
C



Fullerton A



Fullerton B



Fullerton C



Fullerton D

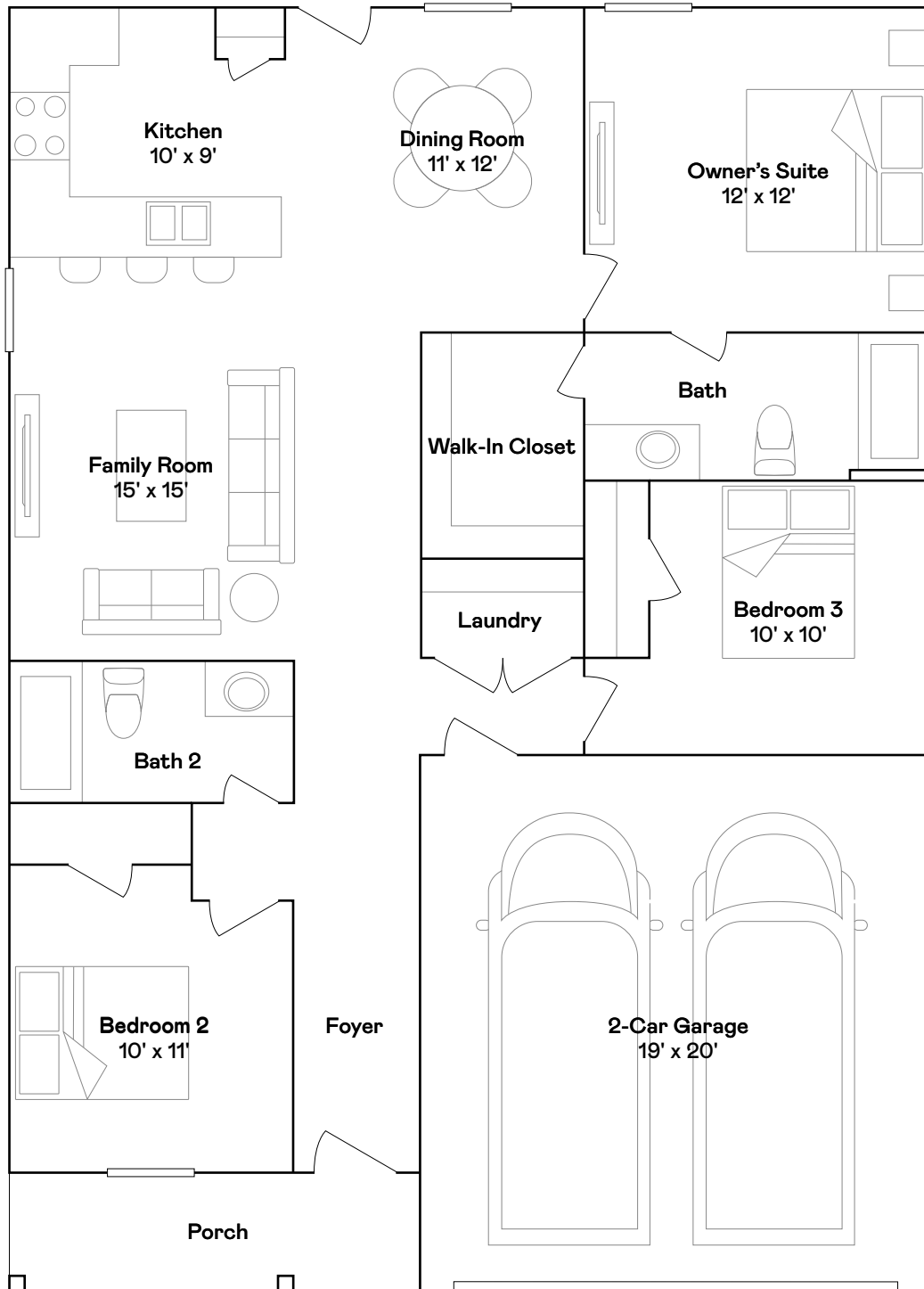
Fullerton

Watermill collection

1,217 sq ft · Plan 3410

1-story

3 beds · 2 baths · 2 car garage



Starts 05.30.22
210-393-8095 | Lennar.com

LENNAR

Features, amenities, floor plans, elevations, and designs vary and are subject to changes or substitution without notice. Items shown are artist's renderings and may contain options that are not standard on all models or not included in the purchase price. Availability may vary. Sq. ft./acreage/dimensions is estimated; actual sq. ft./acreage/dimensions will differ. Garage/bay sizes may vary from home to home and may not accommodate all vehicles. This is not an offer in states where prior registration is required. Void where prohibited by law. Copyright © 2022 Lennar Corporation. Lennar, the Lennar logo are U.S. registered service marks or service marks of Lennar Corporation and/or its subsidiaries. 08/22



Gannes

Watermill collection

1,474 sq ft · Plan 3420

1-story

3 beds · 2 baths · 2 car garage



Gannes A



Gannes B



Gannes C



Gannes D

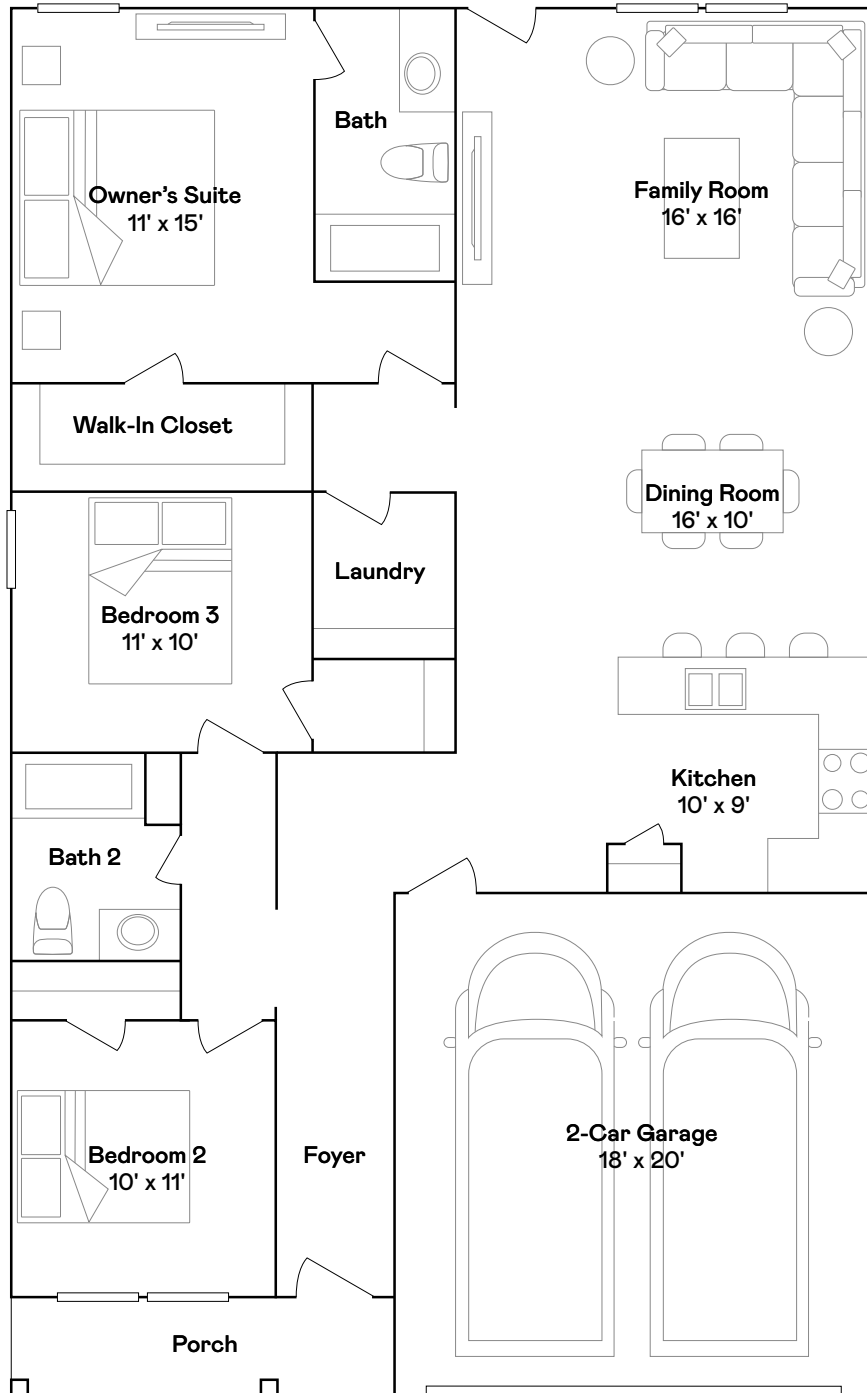
Gannes

Watermill collection

1,474 sq ft · Plan 3420

1-story

3 beds · 2 baths · 2 car garage



Starts 05.30.22
210-393-8095 | Lennar.com

LENNAR

Features, amenities, floor plans, elevations, and designs vary and are subject to changes or substitution without notice. Items shown are artist's renderings and may contain options that are not standard on all models or not included in the purchase price. Availability may vary. Sq. ft./acreage/dimensions is estimated; actual sq. ft./acreage/dimensions will differ. Garage/bay sizes may vary from home to home and may not accommodate all vehicles. This is not an offer in states where prior registration is required. Void where prohibited by law. Copyright © 2022 Lennar Corporation. Lennar, the Lennar logo are U.S. registered service marks or service marks of Lennar Corporation and/or its subsidiaries. 08/22



Nettleton

Watermill collection

1,667sq ft · Plan 3430

1-story

4 beds · 2 baths · 2 car garage



Nettleton A



Nettleton B



Nettleton C



Nettleton D

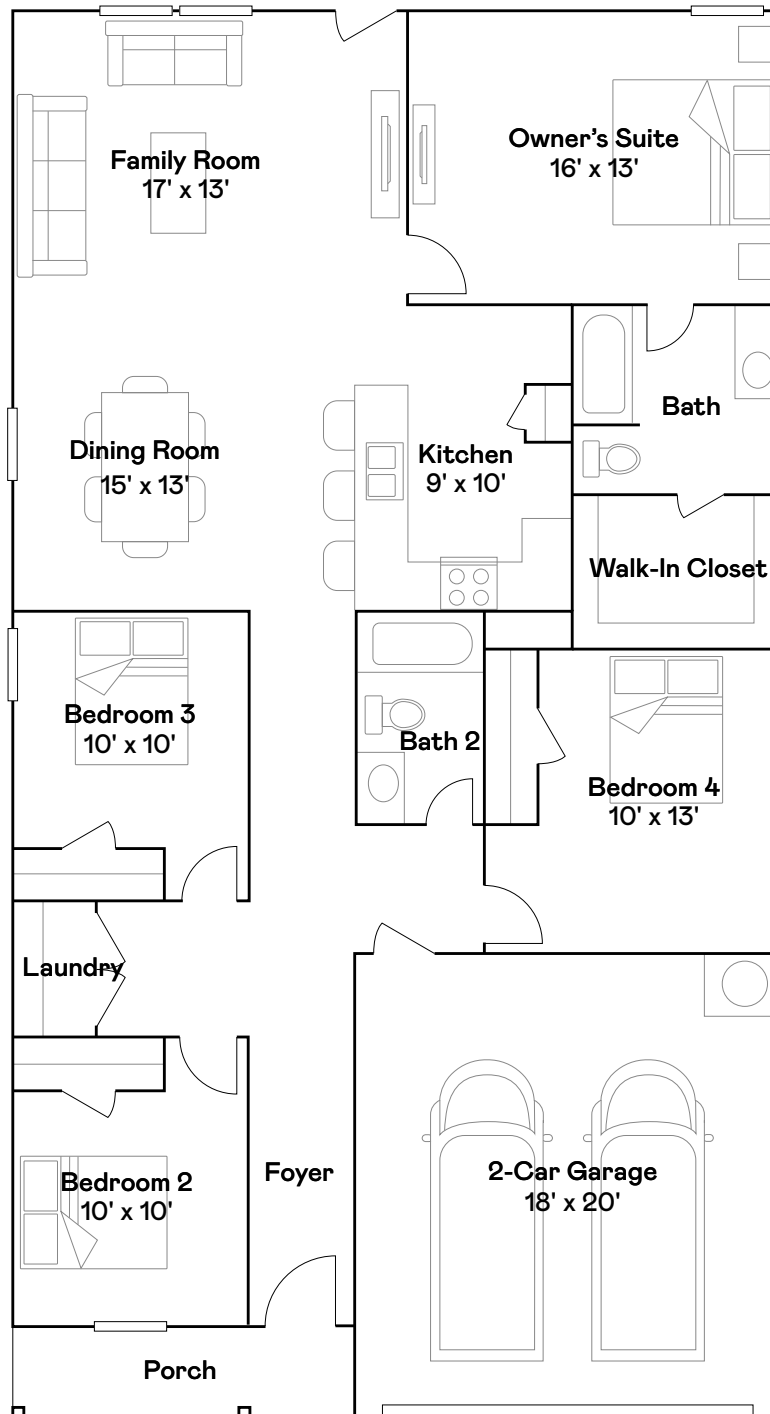
Nettleton

Watermill collection

1,667sq ft · Plan 3430

1-story

4 beds · 2 baths · 2 car garage



Starts 05.30.22
210-393-8095 | Lennar.com

LENNAR

Features, amenities, floor plans, elevations, and designs vary and are subject to changes or substitution without notice. Items shown are artist's renderings and may contain options that are not standard on all models or not included in the purchase price. Availability may vary. Sq. ft./acreage/dimensions is estimated; actual sq. ft./acreage/dimensions will differ. Garage/bay sizes may vary from home to home and may not accommodate all vehicles. This is not an offer in states where prior registration is required. Void where prohibited by law. Copyright © 2022 Lennar Corporation. Lennar, the Lennar logo are U.S. registered service marks or service marks of Lennar Corporation and/or its subsidiaries. 08/22



Selsey

Watermill collection

1,874 sq ft · plan 3440

2-story

4 beds · 2.5 baths · 2 car garage

Loft



Selsey A



Selsey B



Selsey C



Selsey D

Selsey

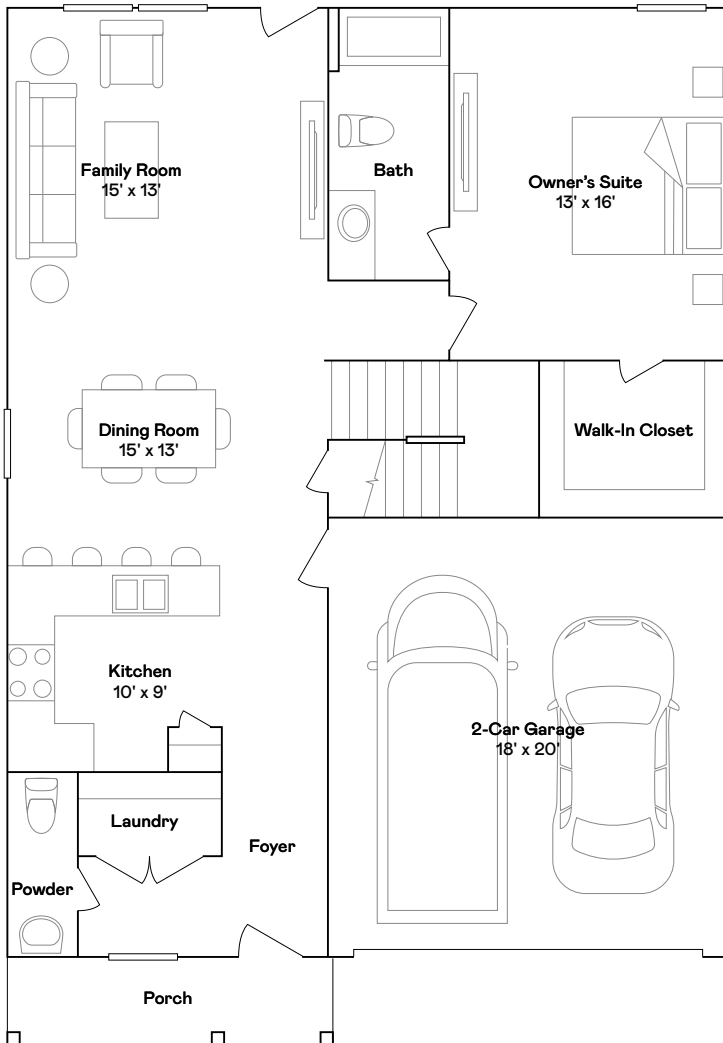
Watermill collection

1,874 sq ft · plan 3440

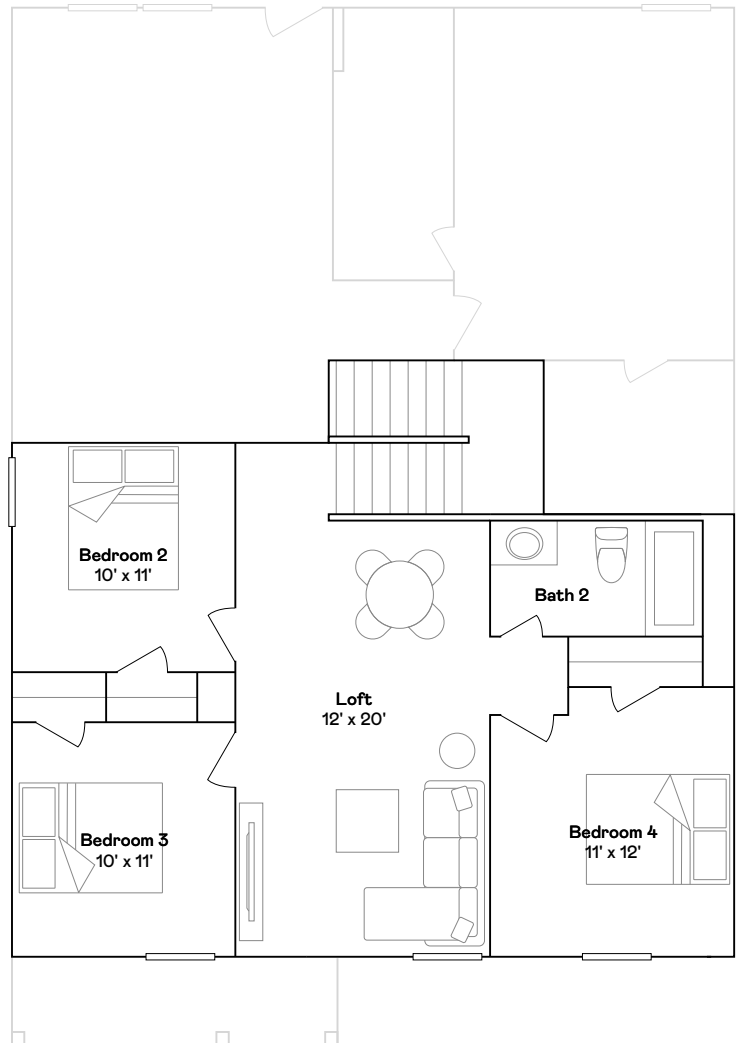
2-story

4 beds · 2.5 baths · 2 car garage

Loft



First Floor



Second Floor

Starts 05.30.22
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Pitney

Belmar Collection

1,300 Sq ft · Plan 2420

1 story

3 beds · 2 baths · 2 car garage



Pitney A



Pitney B



Pitney C



Pitney D

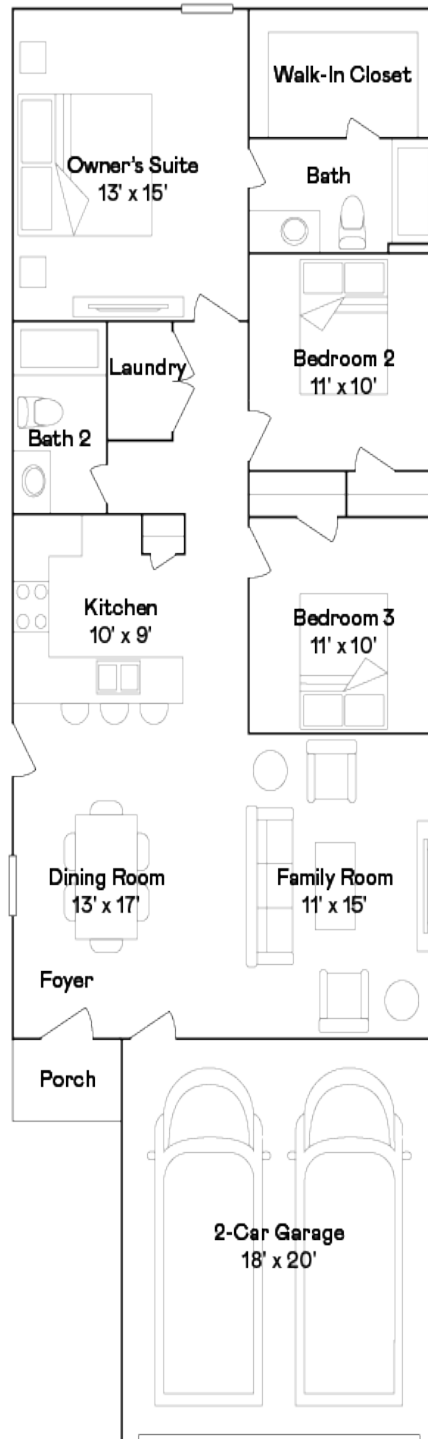
Pitney

Belmar Collection

1,300 Sq ft · Plan 2420

1 story

3 beds · 2 baths · 2 car garage



Starts 02.28.22
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Trenton

Belmar Collection

1,492 Sq ft · Plan 2430

1 story

4 beds · 2 baths · 2 car garage



Trenton A



Trenton B



Trenton C



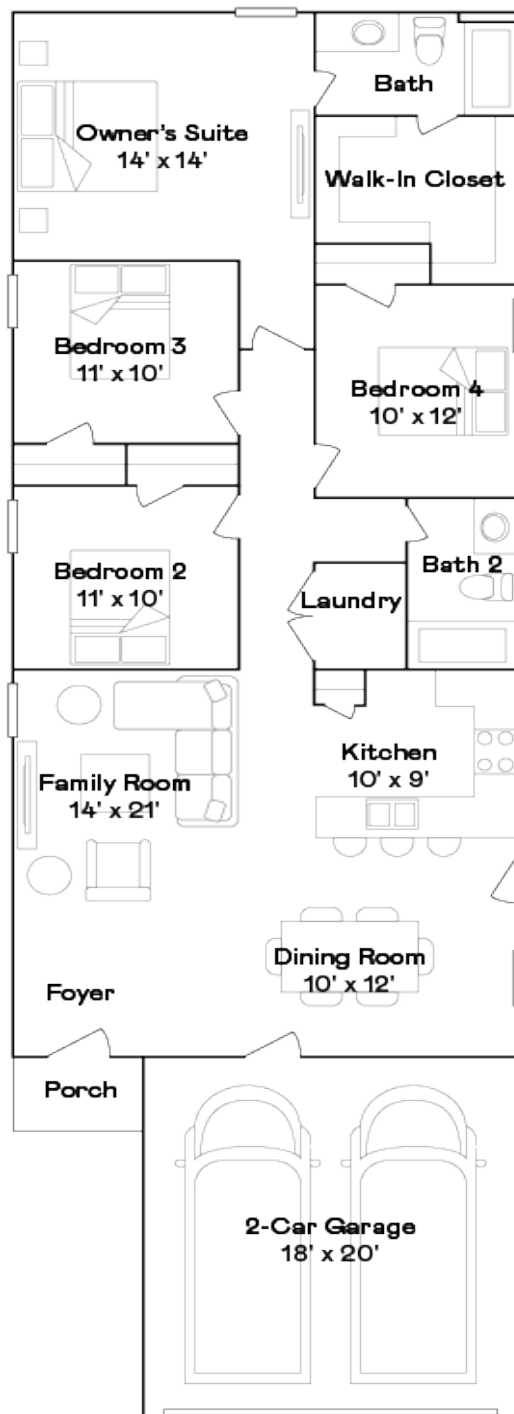
Trenton D

Trenton
Belmar Collection

1,492 Sq ft · Plan 2430

1 story

4 beds · 2 baths · 2 car garage



Starts 02.28.22
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**TO BE CONSIDERED BY THE CITY
COUNCIL
CITY OF KERRVILLE, TEXAS**

SUBJECT: Financial report for month-ended 12-31-2023.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 15, 2024

SUBMITTED BY: Julie Behrens , Director of Finance

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:

Financial report for month-ended 12-31-2023.

RECOMMENDED ACTION:

No action.



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

SUBJECT: Consider appointments to the Tax Increment Reinvestment Zone Number Two, City of Kerrville, Texas also called the Windridge TIRZ.

AGENDA DATE OF: January 23, 2024 **DATE SUBMITTED:** January 19, 2024

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?	No
Key Priority Area	N/A
Guiding Principle	N/A
Action Item	N/A

SUMMARY STATEMENT:

Ordinance No. 2023-30 created the Windridge TIRZ. Section seven of the ordinance says that "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."

Lennar has submitted five (5) names for consideration and they are as follows:

1. Clifton Karam, Lennar Homes
2. Richard Mott, Lennar Homes
3. Josh Scates, Lennar Homes
4. Travis Elseth, Colliers Engineering & Design
5. Taylor Haag with Lennar Homes

Section 311.009(b), Tx. Tax Code, outlines the remaining two positions. Those board positions are held by the State Senator and State Representative in whose district the zone is located, except that either may designate another individual to serve in the members place at the pleasure of the member. Currently the State Senator for District 24 is Senator Pete Flores and the State Representative for District 53 is Representative Andrew Murr.

RECOMMENDED ACTION:

Approve recommended appointments to the Tax Increment Reinvestment Zone Number Two, City of Kerrville, Texas also called the Windridge TIRZ.