



**MEETING AGENDA
City Council
REGULAR SESSION CITY COUNCIL
May 28, 2019**

**HAL BALDWIN MUNICIPAL COMPLEX COUNCIL CHAMBERS
1400 SCHERTZ PARKWAY BUILDING #4
SCHERTZ, TEXAS 78154**

CITY OF SCHERTZ CORE VALUES

Do the right thing

Do the best you can

Treat others the way you want to be treated

Work cooperatively as a team

**AGENDA
TUESDAY, MAY 28, 2019 at 6:00 p.m.**

**Opening Prayer and Pledges of Allegiance to the Flags of the United States and State of Texas.
(Mayor Pro-Tem Heyward)**

Employee Recognition

- Introduction of Mr. Charles Kelm, new Assistant City Manager.

Presentations

- Presentation by the EMS Department regarding Cardiac Arrest Survivors.
- Proclamation recognizing National EMS Week.

City Events and Announcements

- Announcements of upcoming City Events (B. James/S. Gonzalez)
- Announcements and recognitions by the City Manager (M. Browne)
- Announcements and recognitions by the Mayor (M. Carpenter)

Hearing of Residents

This time is set aside for any person who wishes to address the City Council. Each person should fill out the speaker's register prior to the meeting. Presentations should be limited to no more than 3 minutes.

All remarks shall be addressed to the Council as a body, and not to any individual member thereof. Any person making personal, impertinent, or slanderous remarks while addressing the Council may be requested to leave the meeting.

Discussion by the Council of any item not on the agenda shall be limited to statements of specific factual

information given in response to any inquiry, a recitation of existing policy in response to an inquiry, and/or a proposal to place the item on a future agenda. The presiding officer, during the Hearing of Residents portion of the agenda, will call on those persons who have signed up to speak in the order they have registered.

Consent Agenda Items

The Consent Agenda is considered self-explanatory and will be enacted by the Council with one motion. There will be no separate discussion of these items unless they are removed from the Consent Agenda upon the request of the Mayor or a Councilmember.

1. **Minutes** – Consideration and/or action regarding the approval of the minutes for the meeting of May 14, 2019. (B. Dennis)
2. **Resolution No. 19-R-63** — Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a contract with The Ovid Bell Press for the *Schertz Magazine* Printing Contract. (M. Browne/S. Gonzalez/L. Klepper)
3. **Resolution No. 19-R-65** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, approving and authorizing a Water Easement Agreement with Schertz R1, LLC, on Lot 3, Block 1, Schertz 3009 Subdivision II, and other matters in connection therewith. (B. James/K. Woodlee)
4. **Resolution 19-R-64** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing the City Manager to enter into an Interlocal Agreement with the City of Cibolo regarding cost sharing for improvements to Wiederstein Road. (B. James)

Discussion and Action Items

5. **Resolution No. 19-R-66** -Consideration and/or action approving a Resolution amending the building permit fees to comply with House Bill (HB) 852 and updating the City of Schertz fee schedule for FY 2018-19. (B.James/L. Wood)

Roll Call Vote Confirmation

Workshop

6. Discussion and update on the Employee Engagement Survey (S. Gonzalez/L. Cox)

Closed Session

7. City Council will meet in Closed Session under Sections 551.071 and 551.072, to seek the advice of its attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Act, and to deliberate the purchase, exchange, lease, or value of real property, to wit: certain water and wastewater rights and associated real property rights and available options.

Reconvene into Regular Session

7A. Take any action based on discussions held in closed session under Agenda Item 7A.

Roll Call Vote Confirmation

Requests and Announcements

- Announcements by the City Manager.
- Requests by Mayor and Councilmembers that items be placed on a future City Council agenda.
- Announcements by Mayor and Councilmembers
 - City and community events attended and to be attended
 - City Council Committee and Liaison Assignments (see assignments below)
 - Continuing education events attended and to be attended
 - Recognition of actions by City employees
 - Recognition of actions by community volunteers

Information available in City Council Packets - **NO DISCUSSION TO OCCUR**

8. 2019 Hal Baldwin Scholarship Update (S. Gonzalez)

Adjournment

CERTIFICATION

I, BRENDA DENNIS, CITY SECRETARY OF THE CITY OF SCHERTZ, TEXAS, DO HEREBY CERTIFY THAT THE ABOVE AGENDA WAS PREPARED AND POSTED ON THE OFFICIAL BULLETIN BOARDS ON THIS THE 24th DAY OF May 2019 AT 5:30 P.M., WHICH IS A PLACE READILY ACCESSIBLE TO THE PUBLIC AT ALL TIMES AND THAT SAID NOTICE WAS POSTED IN ACCORDANCE WITH CHAPTER 551, TEXAS GOVERNMENT CODE.

BRENDA DENNIS

I CERTIFY THAT THE ATTACHED NOTICE AND AGENDA OF ITEMS TO BE CONSIDERED BY THE CITY COUNCIL WAS REMOVED BY ME FROM THE OFFICIAL BULLETIN BOARD ON ____ DAY OF _____, 2019. TITLE: _____

This facility is accessible in accordance with the Americans with Disabilities Act. Handicapped parking spaces are available. If you require special assistance or have a request for sign interpretative services or other services, please call 210-619-1030.

The City Council for the City of Schertz reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Open Meetings Act.

Closed Sessions Authorized: This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Closed Session portion of the agenda constitutes a

written interpretation of Texas Government Code Chapter 551 by legal counsel for the governmental body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

COUNCIL COMMITTEE AND LIAISON ASSIGNMENTS

Mayor Carpenter Main Street Committee	Councilmember Scagliola – Place 5 Interview Committee for Boards and Commissions - Alternate Hal Baldwin Scholarship Committee Schertz-Seguin Local Government Corporation Cibolo Valley Local Government Corporation - Alternate
Councilmember Davis– Place 1 Audit Committee Schertz Housing Authority Board Interview Committee for Boards and Commissions Main Street Committee – Chair TIRZ II Board	Councilmember Gutierrez – Place 2 Audit Committee Investment Advisory Committee Interview Committee for Boards and Commissions
Councilmember Larson – Place 3 Main Street Committee – Vice Chair	Councilmember Edwards – Place 4 Interview Committee for Boards and Commissions Cibolo Valley Local Government Corporation Main Street Committee
Councilmember Heyward – Place 6 Schertz Animal Services Advisory Commission Investment Advisory Committee	Councilmember Brown – Place 7 Audit Committee Schertz-Seguin Local Government Corporation - Alternate

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019
Department: City Secretary
Subject: Minutes – Consideration and/or action regarding the approval of the minutes for the meeting of May 14, 2019. (B. Dennis)

BACKGROUND

The City Council held a Regular City Council meeting on May 14, 2019 and a Special meeting on May 21, 2019.

FISCAL IMPACT

None

RECOMMENDATION

Staff recommends Council approve the minutes of the regular meeting of May 14, 2019 and minutes of the special meeting of May 21, 2019.

Attachments

05/14/2019 minutes

MINUTES
REGULAR MEETING
May 14, 2019

A Regular Meeting was held by the Schertz City Council of the City of Schertz, Texas, on May 14, 2019, at 6:00 p.m. in the Hal Baldwin Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas. The following members present to-wit:

Mayor Pro-Tem Allison Heyward
Councilmember Ralph Gutierrez
Councilmember Cedric Edwards
Councilmember Tim Brown

Councilmember Mark Davis
Councilmember Scott Larson
Councilmember David Scagliola

Staff Present:
Assistant City Manager Brian James
Deputy City Secretary Gayle Wilkinson
Assistant to the City Manager Sarah Gonzalez

City Manager Dr. Mark Browne
City Attorney Daniel Santee
Assistant City Manager Charles Kelm

Mayor Carpenter was absent.

Call to Order City Council Regular Session

Mayor Pro-Tem Heyward called the regular meeting to order at 6:02 p.m.

Opening Prayer and Pledges of Allegiance to the Flags of the United States and State of Texas. (Councilmember Scagliola)

Councilmember Scagliola provided the opening prayer followed by the Pledges of Allegiance to the Flags of the United States and State of Texas.

Presentations

- Introduction of the FY 2019-20 Schertz Sweetheart Court Ambassadors. (B. James/L. Shrum/M. Spence)

Mayor Pro-Tem Heyward recognized Events Manager Mary Spence who introduced the FY 2019-20 Schertz Sweetheart Court Ambassadors:

Megan Morales, **Miss Schertz**
Kylyn Gillespie, **Miss Jubilee**
Sarah Vazquez, **Miss Friendly City**
Olivia Coats, **Miss Sunshine**

Miss Schertz Megan Morales spoke about her experience serving on the Sweetheart Court. She is sponsoring a 2.5K walk for the benefit of the Boys and Girls Club of America.

- Presentation of the Fiesta Flambeau Association Award. (B. James/L. Shrum/M. Spence)

Mayor Pro-Tem Heyward recognized Events Manager Mary Spence who elaborated with a Power Point of the event highlighting the Fiesta Medal and float. She presented the city with the third-place plaque awarded for the best out of town float and introduced Facilities Services Supervisor Joe Villarreal to speak about the award-winning float. Joe recognized Facilities Services Technician's Albert Orosco and Chris Mayorga for their hard work on the float and presented them with framed pictures of the float.

Proclamations

- Proclamation recognizing Police Week. (Mayor/M. Hansen)

Mayor Pro-Tem Heyward read and presented the proclamation recognizing Police Week to Police Chief Michael Hansen. Several Police Officers were present for the reading of the proclamation.

City Events and Announcements

- Announcements of upcoming City Events (B. James/S. Gonzalez)

Assistant City Manager Brian James announced:

Friday, May 17

Ribbon Cutting-Brazilian Top Team Schertz 1:00 pm

1420 Schertz Parkway, Suite 100

Martial Arts School/Brazilian Jiu Jitsu Academy with world class black belt instructors and offering classes for ages 3 and up.

Light refreshments will be served

Tuesday, May 21

Council on the Go 6:30 pm

Laura Ingalls Wilder Intermediate, 806 Savannah Drive

Thursday, May 23

EMS Annual Awards Banquet 6:00 pm

Civic Center

Lunch following memorial service

Friday, May 24

"Max" Float and Flick - Movies in the Park 7:00 pm

Pickrell Park Pool

Movie begins at sundown. Pool capacity is limited.

Sunday, May 26

EMS Open House 11:00 am-4:00 pm

Community Center

Open to the public-teaching CPR in 10 minutes, ambulance and AMBUS demo

Monday, May 27

City Offices Closed in Observance of Memorial Day

Tuesday, May 28

City Council Meeting 6:00 pm

Council Chambers

- Announcements and recognitions by the City Manager (M. Browne)

City Manager Dr. Browne announced:

Gave a brief recognition/welcome of our new Assistant City Manager Charles Kelm.

- Announcements and recognitions by the Mayor (M. Carpenter)

None at this time.

Hearing of Residents

Mayor Pro-Tem Heyward recognized the following who spoke:

- Mark Roberts – 4300 Spanish Oak spoke giving a timeline in reference to his development on FM 1103. He expressed his concern on the time and difficulty it takes to obtain permitting.

Consent Agenda Items

Mayor Pro-Tem Heyward read the following consent agenda items:

1. **Minutes** – Consideration and/or action regarding the approval of the minutes of the regular meeting of May 7, 2019. (B. Dennis/G. Wilkinson)
2. **Resolution No. 19-R-56** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing the City Manager to enter in an agreement with My House of Design for Graphic Design Services. (M. Browne/S. Gonzalez/L. Klepper)

The following was read into record:

RESOLUTION NO. 19-R-56

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MY HOUSE OF DESIGN FOR GRAPHIC DESIGN SERVICES AND OTHER MATTERS IN CONNECTION THEREWITH

Mayor Pro-Tem Heyward called for a vote.

Mayor Pro-Tem Heyward recognized Councilmember Brown who moved seconded by Councilmember Gutierrez approve the consent agenda items 1 and 2. **The vote was unanimous with Mayor Pro-Tem Heyward, Councilmembers Davis, Gutierrez, Larson, Edwards, Scagliola and Brown voting yes and no one voting no. Motion passed.**

Discussion and Action Items

3. **Resolution No. 19-R-60** - Consideration and/or action approving a Resolution by the City Council appointing Norton Rose Fulbright US LLP as Bond Counsel; delegating the authority to the Mayor or the City Manager of the City to execute certain documents relating to the engagement of Norton Rose Fulbright US LLP; and other matters in connection therewith. (M. Browne/J. Walters)

The following was read into record:

RESOLUTION NO. 19-R-60

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY TO ENGAGE NORTON ROSE FULBRIGHT US LLP AS BOND COUNSEL, AND OTHER MATTERS IN CONNECTION THEREWITH

Mayor Pro-Tem Heyward recognized Finance Director James Walters who introduced this item.

Mayor Pro-Tem Heyward recognized Councilmember Edwards who moved that the City Council approve the Engagement Agreement for Bond Counsel Services seconded by Councilmember Brown. **The vote was unanimous with Mayor Pro-Tem Heyward, Councilmembers Davis, Gutierrez, Larson, Edwards, Scagliola and Brown voting yes and no one voting no. Motion passed.**

4. **Resolution No. 19-R-61** - Consideration and/or action approving Resolution by the City Council of the City of Schertz Texas authorizing and approving publication of Notice of Intention to issue Certificates of Obligation; complying with the requirements contained in Securities and Exchange Commission Rule 15c2-12; and providing an effective date. (M. Browne/J. Walters/M. McLiney/A. Friedman)

The following was read into record:

RESOLUTION NO. 19-R-61

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AND APPROVING PUBLICATION OF NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION; COMPLYING WITH THE REQUIREMENTS CONTAINED IN SECURITIES AND EXCHANGE COMMISSION RULE 15c2-12; AND PROVIDING AN EFFECTIVE DATE

Mayor Pro-Tem Heyward recognized Finance Director James Walters who introduced this item with a Power Point presentation and answered questions from Council along with the appropriate staff and representative/partner of Norton Rose Fulbright US LLP Jeff Kuhn.

Mayor Pro-Tem Heyward recognized Councilmember Edwards who moved to adopt a Notice of Intention Resolution seconded by Councilmember Gutierrez. **The vote was unanimous with Mayor Pro-Tem Heyward, Councilmembers Davis, Gutierrez, Larson, Edwards, Scagliola and Brown voting yes and no one voting no. Motion passed.**

Roll Call Vote Confirmation

Mayor Pro-Tem Heyward recognized Deputy City Secretary Gayle Wilkinson who provided the roll call votes for items 1-4.

Requests and Announcements

- Announcements by the City Manager.

Dr. Browne complimented the Police Memorial Ceremony and thanked the Police Department for their work on the ceremony.

- Requests by Pro-Tem Mayor and Councilmembers that items be placed on a future City Council agenda.

Councilmember Scagliola suggested having a discussion with the stakeholders/shareholders to discuss the closing of the GBRA plant.

- Announcements by Mayor and Councilmembers
 - City and community events attended and to be attended
 - City Council Committee and Liaison Assignments (see assignments below)
 - Continuing education events attended and to be attended
 - Recognition of actions by City employees
 - Recognition of actions by community volunteers

Mayor Pro-Tem Heyward attended the following events:

- The ribbon cutting for the South Texas Radiology Imaging Center (STRIC)
- Webinar regarding Legislative updates
- NEP Luncheon
- Served at the Purse Bingo for the Children's Advocacy Center
- Read the proclamation for Police Memorial Ceremony

Councilmember Davis attended the following events:

- The meeting for the Schertz Housing Authority

Councilmember Gutierrez attended the following events:

- The ribbon cutting for the South Texas Radiology Imaging Center (STRIC)
- The Manufacturers Expo at the Freeman Coliseum
- Webinar regarding Legislative updates
- NEP Luncheon
- Served at the Purse Bingo for the Children's Advocacy Center
- Read the proclamation for Nursing Home Week at the Silver Tree Rehab Center
- The Employee Health Expo
- The Police Memorial Ceremony

Councilmember Edwards attended the following events:

- The proclamation for Nursing Home Week at the Silver Tree Rehab Center

Councilmember Scagliola attended the following events:

- Served at the Purse Bingo for the Children's Advocacy Center
- The proclamation for Nursing Home Week at the Silver Tree Rehab Center
- The Police Memorial Ceremony

Councilmember Brown

- "A lot of Dittos"

Adjournment

As there was no further business, Mayor Pro-Tem Heyward adjourned the meeting at 6:52 p.m.

Allison Heyward, Mayor Pro-Tem

ATTEST:

Gayle Wilkinson, Deputy City Secretary

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019
Department: Public Affairs
Subject: Resolution No. 19-R-63 — Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing a contract with The Ovid Bell Press for the *Schertz Magazine* Printing Contract. (M. Browne/S. Gonzalez/L. Klepper)

BACKGROUND

Created in 2008, Schertz Magazine is a monthly popular lifestyle/entertainment/community events publication wholly owned and operated by the City of Schertz and produced internally by the Schertz Public Affairs Department. It serves as the primary dissemination source for government information.

The current printing agreement with The Ovid Bell Press for Schertz Magazine printing services expires on September 30, 2019. In order to secure a new agreement for magazine printing a formal procurement (RFP) for printing services was published on April 23, 2019 with a closing date of May 17, 2019. A total of two firms submitted bids and City staff from Public Affairs and the City Manager's Office evaluated the bids. The bids were scored on several criteria to include the firm's qualifications, abilities, and references, the quality of proposed services, the responsiveness of the proposal and the overall price. After evaluation, the scores were compiled and The Ovid Bell Press was the highest scoring firm with a proposed price of \$7,814.29 per issue or \$93,771.48 annually.

City staff believes that The Ovid Bell Press offers the best qualified proposal based on the evaluation criteria and recommends City Council authorize the City Manager to enter into a contract with The Ovid Bell Press for Schertz Magazine printing services. Staff is only seeking to contract for Schertz Magazine print services as this firm specializes in catalog publication printing. For smaller print jobs City staff will continue to seek informal quotes and award the project to the lowest bidder.

GOAL

The City desires to enter into an agreement with The Ovid Bell Press for the printing and mailing of Schertz Magazine. Scope of work will include proper printing and assembly of monthly editions of Schertz Magazine.

COMMUNITY BENEFIT

Staff can continue to communicate the City's message(s) to Schertz residents through Schertz Magazine, the City's largest and most successful communication tool.

SUMMARY OF RECOMMENDED ACTION

Staff recommends Council approval of Resolution 19-R-63 authorizing the City Manager to enter into a three-year agreement with the option to renew for two (2) additional terms of one (1) year each with The Ovid Bell Press for Schertz Magazine printing services.

FISCAL IMPACT

Cumulative expenditures under this agreement shall not exceed \$281,314.44 during the three-year term for Schertz Magazine printing services. Maximum expenditures during each of the fiscal years shall not exceed \$93,771.48 unless otherwise negotiated and approved by City Council. This is an increase on current printing costs of approximately \$6,771.48 annually.

Funds have been budgeted and approved for monthly printing of Schertz Magazine. The project will be paid for from the Public Affairs budget.

RECOMMENDATION

Staff recommends Council approval of Resolution 19-R-63

Attachments

Resolution 19-R-63

Magazine Printing Services - Summary

Ovid Bell Agreement

RESOLUTION NO. 19-R-63

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A CONTRACT WITH THE OVID BELL PRESS FOR THE SCHERTZ MAGAZINE PRINTING CONTRACT AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Public Affairs Department is charged with the responsibility of maintaining City publications such as *Schertz Magazine*; and

WHEREAS, in order to fulfill its responsibility as set forth above, the City has identified a need for printing services; and

WHEREAS, bids were received through the sealed bidding process and The Ovid Bell Press was the highest rated firm based on the evaluation criteria and is the best overall value for the City, with an annual not to exceed amount of \$93,771.48;

WHEREAS, The City staff of the City of Schertz (the "City") has recommended that the City accept the bid proposal from The Ovid Bell Press for printing services; and

WHEREAS, the City Council has determined that it is in the best interest of the City to contract with The Ovid Bell Press pursuant to the recommendation made by Public Affairs Staff.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the contract with The Ovid Bell Press for printing services in substantially the form set forth on Attachment A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 28th day of May, 2019

CITY OF SCHERTZ, TEXAS

Michael R Carpenter, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

ATTACHMENT A
SERVICE AGREEMENT

BID/RFP#		2019-015		
Project Name:		Magazine Printing Services		
Firm Name	Location	Bid Price Annually	Score	Ranking
Mittera Group	Denver, CO	\$219,648.00	55.05	2.00
Ovid Bell Press	Fulton, MO	\$93,771.48	85.00	1.00

CITY OF SCHERTZ

SERVICE AGREEMENT

THE STATE OF TEXAS §
 §
GUADALUPE COUNTY §

This Service Agreement (“Agreement”) is made and entered by and between the City of Schertz, Texas, (the “City”) a Texas municipality, and Ovid Bell Press, Inc. (“Contractor”).

Section 1. Duration

This Agreement shall become effective upon the date of the final signature affixed hereto and shall remain in effect until September 30, 2022 with the option to renew for two (2) additional terms of one (1) year each unless terminated as provided for in this Agreement.

Section 2. Scope of Work

- (A) Contractor shall perform the Work as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”.
- (B) The Quality of Work provided under this Agreement shall be of the level of quality performed by Contractors regularly rendering this type of service.
- (C) The Contractor shall perform its Work for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- (D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent Contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation

- (A) The Contractor shall be paid in the manner set forth in Exhibit “A” and as provided herein.
- (B) *Billing Period.* The Contractor may submit an invoice for payment upon completion of the described tasks. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue payments shall be calculated in accordance with the Prompt Payment Act.
- (C) *Reimbursable Expenses.* Any and all reimbursable expenses related to the Project shall be included in the scope of Work (Exhibit A) and accounted for in the total contract amount.

Section 4. Time of Completion

The prompt completion of the Work under the Scope of Work relates is critical to the City. Unnecessary delays in providing Work under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination.

Section 5. Insurance

In the event the Contractor, its employees, agents or subcontractors enter premises occupied by or under the control of the City in the performance of this Agreement, the Contractor agrees that it will maintain general and automobile liability in reasonable limits covering the obligations set forth in this Agreement, and will maintain workers compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing this Agreement on premises occupied by or under the control of the City. Upon request by City, Contractor shall furnish Certificate of Insurance for, but not limited to, Commercial General Liability, Commercial Auto Liability, and Workers Compensation.

Section 6. Miscellaneous Provisions

- (A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.
- (B) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.
- (C) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.
- (D) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the Work performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

- (E) *Force Majeure*. If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.
- (F) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Work, this Agreement shall govern. The Scope of Work is intended to detail the technical scope of Work, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 7. Termination

(A) This Agreement may be terminated:

- (1) By the mutual agreement and consent of both Contractor and City;
 - (2) By either party, upon the failure of the other party to fulfill its obligations as set forth in either this Agreement or a Scope of Work issued under this Agreement;
 - (3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the Work contemplated by this Agreement in a timely or satisfactory manner;
 - (4) By the City, at will and without cause upon not less than five (5) days written notice to the Contractor.
- (B) If the City terminates this Agreement pursuant to subsection 7(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those Work that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination not the fault of the Contractor, the Contractor shall be compensated for

all basic, special, and additional Work actually performed prior to termination, together with any reimbursable expenses then due.

Section 8. Indemnification

CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE CITY OF SCHERTZ, TEXAS AND ALL OF ITS PRESENT, FUTURE AND FORMER AGENTS, EMPLOYEES, OFFICIALS AND REPRESENTATIVES HARMLESS IN THEIR OFFICIAL, INDIVIDUAL AND REPRESENTATIVE CAPACITIES FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, JUDGMENTS, LIENS AND EXPENSES (INCLUDING ATTORNEY'S FEES, WHETHER CONTRACTUAL OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY), COSTS AND DAMAGES (WHETHER COMMON LAW OR STATUTORY, AND WHETHER ACTUAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL), OF ANY CONCEIVABLE CHARACTER, FOR INJURIES TO PERSONS (INCLUDING DEATH) OR TO PROPERTY (BOTH REAL AND PERSONAL) CREATED BY, ARISING FROM OR IN ANY MANNER RELATING TO THE WORK OR GOODS PERFORMED OR PROVIDED BY CONTRACTOR EXPRESSLY INCLUDING THOSE ARISING THROUGH STRICT LIABILITY OR UNDER THE CONSTITUTIONS OF THE UNITED STATES.

Section 9. Notices

Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 10. No Assignment

Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 11. Severability

If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 12. Waiver

Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 13. Governing Law; Venue

This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Guadalupe County, Texas such that exclusive venue for any action arising out of this Agreement shall be in Guadalupe County, Texas.

Section 14. Paragraph Headings; Construction

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 15. Binding Effect

Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 16. Gender

Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 17. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 18. Exhibits

All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 19. Entire Agreement

It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

Section 20. Relationship of Parties

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or

of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 21. Right To Audit

City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

Section 22. Dispute Resolution

In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

Section 23. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire

Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code.

Certificate of Interested Parties

Effective January 1, 2016, pursuant to House Bill 1295 passed by the 84th Texas Legislature (Section 2252.908, Texas Government Code, as amended) and formal rules released by the Texas Ethics Commission (TEC), all contracts with private business entities requiring approval by the Schertz City Council will require the on-line completion of Form 1295 "Certificate of Interested Parties." Form 1295 is also required for any and all contract amendments, extensions or renewals. Contractors are required to complete and file electronically with the Texas Ethics Commission using the online filing application.

Please visit the State of Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and <https://www.ethics.state.tx.us/tec/1295-Info.htm> for more information.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS C MISDEMEANOR.

[The remainder of this page is intentionally left blank.]

EXECUTED on this the _____ day of _____, 2019.

CITY:

CONTRACTOR:

By: _____

Name: Dr. Mark Browne

Title: City Manager

By: _____

Name: _____

Title: _____

ADDRESS FOR NOTICE:

CITY:

CONTRACTOR:

City of Schertz
Attn: Mark Browne, City Manager
1400 Schertz Parkway
Schertz, Texas 78154

Ovid Bell Press, Inc.
PO Box 370
Fulton, MO 65251
800-835-8919

Exhibit A

SCOPE OF WORK

Project

The Contractor shall provide printing services for the City's monthly publication, *Schertz Magazine*. The City produces twelve (12) issues a year in monthly increments.

The Contractor will be responsible for the following duties and services:

1. Printing and assembling 16,000 copies of *Schertz Magazine* on a monthly basis.
2. Magazine must be printed and assembled using flat 11x17, finished 8.5x11 stock.
3. Magazine is 48 pages self-cover.
4. The Cover Stock shall be 80# Silk Cover-4/4 with Satin Varnish or specified equivalent commodity stock held by printer.
5. Text Pages Stock shall be 80# silk text-4/4 with Satin Varnish or specified equivalent commodity stock held by printer.
6. The magazine must be saddle stitched and trimmed to size.
7. The magazine must be Web Press or Sheet Fed.
8. Ability to print the publication within 5 days of upload from the City. Guaranteed ship/delivery to post office on the 5th day. Unless delivery is made to post office in Texas, additional days will be needed for transit.
9. Must be able to provide mail prep/inkjet services.

Price

Price per Magazine \$0.488 each

Price per Month \$7,814.29

Price per Year \$93,771.48

Sample Invoice

16,000 copies -

SCHERTZ TALES

48 pages self-cover (8-1/2 x 10-7/8)

Add'l M

Prepress:

48 Auto processing (proof online)	204.00	
24 Plates	324.00	

Printing:

2 16-page signature 4/4	938.60	23.60
1 16-page signature 4/4 + gloss or dull UV coating	863.70	18.50

Bindery:

16,000 Saddle stitch 1-4 pockets	230.45	10.15
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Addressing/Mailing:

14,576 Addressing publication, 10,000 copies and above	172.88	10.30
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USPS List Processing:

14,576 Processing mail list, up to 19,999 addresses	243.64	15.00
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Miscellaneous:

16 Cartons	20.00	
1 Palleting	25.00	
Walk Sequence	82.50	

Paper consumption:

8,673.15 #'s 80-pound #3 Gloss 35" Roll @		
54.30 cwt. (MCC 100175)	4,709.52	236.48

ESTIMATE

\$7,814.29	\$314.03
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Estimated shipping for 1,424 copies from 65251 to 78154 via Estes LTL is \$179.00.

Shipping estimates have no guarantee and do not include any additional services unless otherwise noted.

Digitally printed color proofs are available for an additional \$10.20 per page or \$35.70 per 8-page flat.

O-Mag, a digital edition of your magazine, is available for \$4.25 per page.

Less than 1/4" binding lip on inserts will result in a 20% increase on the Saddle Stitch per thousand cost.

The above price reflects an embedded 3% cash discount. Customers who make credit card payments are to forfeit the embedded 3% cash discount.

NOTE: Since paper is sold at price prevailing at time of shipment, there may be adjustments from time to time based on the paper's actual invoice cost. Additional charges may apply depending on the specifications of the job. Actual production is contingent upon available press time and approved credit arrangements.

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019

Department: Engineering

Subject: Resolution No. 19-R-65 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, approving and authorizing a Water Easement Agreement with Schertz R1, LLC, on Lot 3, Block 1, Schertz 3009 Subdivision II, and other matters in connection therewith. (B. James/K. Woodlee)

BACKGROUND

As part of the development of Lot 3, Block 1, Schertz 3009 Subdivision II (aka Stone Valley Plaza), a public fire hydrant assembly has been installed within the property boundary. Schertz R1, LLC, is providing a Water Easement through which the City of Schertz can access the facilities for operation and maintenance purposes.

GOAL

The goal of Resolution 19-R-65 is to accept and authorize the Water Easement from Schertz R1, LLC.

COMMUNITY BENEFIT

Ensuring properly designed, constructed, and maintained public water facilities for fire protection meets a core service need in keeping with the Strategic Plan of the City.

SUMMARY OF RECOMMENDED ACTION

Staff recommends Council approve Resolution 19-R-65, approving and authorizing execution of the Water Easement Agreement with Schertz R1, LLC.

FISCAL IMPACT

There is no direct fiscal impact from this Resolution.

RECOMMENDATION

Staff recommends Council approve Resolution 19-R-65.

Attachments

Resolution 19-R-65

Exhibit A Water Easement Agreement

RESOLUTION NO. 19-R-65

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, APPROVING AND AUTHORIZING A WATER EASEMENT AGREEMENT WITH SCHERTZ R1, LLC, ON LOT 3, BLOCK 1 OF THE SCHERTZ 3009 SUBDIVISION II, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the “City”) has recommended that the City enter into an agreement for a Waterline Easement with Schertz R1, LLC (the “Grantor”), in the form attached hereto as Exhibit A (the “Agreement”); and

WHEREAS, the City needs the Waterline Easement in connection with the construction, operation, and maintenance of a water main including a fire hydrant, situated on Lot 3, Block 1, Schertz 3009 Subdivision II located on FM 3009; and

WHEREAS, the City Council has determined that it is in the best interest of the City to accept the Waterline Easement in accordance with the terms of the Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to execute and deliver the Agreement with the Grantor in substantially the form set forth on Exhibit A and to accept the Waterline Easement in accordance with the terms of the Agreement.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 28th day of May, 2019.

CITY OF SCHERTZ, TEXAS

Michael R. Carpenter, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A
WATER EASEMENT AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WATER EASEMENT AGREEMENT

THE STATE OF TEXAS §

§

COUNTY OF GUADALUPE §

GRANT OF EASEMENT:

SCHERTZ R1, LLC, 15010 Lakefair Drive, Richmond, Fort Bend County, Texas 77406 ("Grantor"), for the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, does hereby grant, sell and convey unto **THE CITY OF SCHERTZ, TEXAS**, a Texas home-rule city, with offices located at 1400 Schertz Parkway, Schertz, Texas 78154 ("Grantee"), an easement and right-of-way ("Easement") upon and across the property of Grantor which is more particularly described on **Exhibit "A"**, attached hereto and incorporated herein by reference ("Easement Tract"),

TO HAVE AND TO HOLD the same perpetually to Grantee and its successors and assigns, together with the rights, and privileges and on the terms and conditions set forth below; and Grantor, subject to the Exceptions, to Warranty, does hereby covenant and agree to WARRANT AND FOREVER DEFEND title to the Easement herein granted, unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Definitions.* For the purposes of this grant of Easement certain terms shall have the meanings that follow:
 - (a) "Holder" shall mean Grantee and Grantee's heirs, successors and assigns who at any time own any interest in the conveyance is subject to the terms of this agreement.
 - (b) "Public Utility" shall mean water facilities.
2. *Character of Easement.* The Easement granted herein is "in gross," in that there is no "Benefitted Property." Nevertheless, the Easement rights herein granted shall pass to Grantee's successors and assigns, subject to all of the Terms hereof. The

Easement rights of use granted herein are nonexclusive and irrevocable. The Easement is for the benefit of Holder.

3. *Purpose of Easement.* The Easement shall be used for public utility purposes, including placement, construction, installation, replacement, repair, maintenance, relocation, removal, and operation of public utility facilities and related appurtenances, or making connections thereto. The Easement shall also be used for the purpose of providing access for the operation, repair, maintenance, replacement and expansion of the public utility facilities and related appurtenances.
4. *Term.* Easement shall be in perpetuity unless relinquished or abandoned by ordinance or resolution by Grantee.
5. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantor and Grantor's heirs, successors, and assigns retain the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not (i) interfere with the use of the Easement Property by Holder for the Easement Purpose, nor (ii) may Grantor construct any building, structure or obstruction on the Easement Property. The right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement. Written approval of Holder must be obtained prior to any use or improvement of Easement Property.
6. *Secondary Easement.* Holder has the right (the "Secondary Easement") to use the surface of the 20-foot wide area adjacent to the Easement Property, to assist in the initial installation and as may be reasonably necessary to maintain, repair, and replace the Facilities within the Easement Property of the Facilities within the Easement Property. However, Holder must promptly restore the area of the Temporary Construction Easement to its previous physical condition if changed by use of the rights granted by this Secondary Easement.
7. *Improvement and Maintenance of Easement Property.* Subject to the provisions of Section 8., immediately below, improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property. Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences or other encroachments within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities. Holder will also replace to their original condition any landscaping, driveways or parking areas that were in existence prior to the granting of the Easement Property and are damaged in connection with the work.

8. *Maintenance of Surface Easement Property/Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the obligation to maintain the surface of the Easement Property, including the obligation to regularly mow or cut back vegetation and to keep the surface of the Easement Property free of litter, debris, or trash. Any permitted improvement made by Grantor must comply with applicable ordinances, development codes and engineering guidelines of the City of Schertz, and must not conflict with use of the easement for its intended purpose as described herein.
9. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.
10. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.
11. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
12. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.
13. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.
14. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.
15. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

16. *Integration.* This agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.
17. *Exceptions to Warranty.* This grant is subject to any and all encumbrances and easements of record, to the extent the same are valid and enforceable.
18. *Legal Construction.* Any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.
19. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
20. *Recitals/Exhibits.* Any recitals in this agreement are represented by the parties to be accurate, and constitute a part of the substantive agreement. All exhibits referenced herein are attached hereto and incorporated by reference herein for all purposes.
21. *Entire Agreement.* This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modification concerning this instrument shall be of no force and effect except for any subsequent modification in writing, signed by the party to be charged.

IN WITNESS WHEREOF, this instrument is executed this 20 day of May, 2019.

GRANTOR:

[Signature]
(Grantor's Name)

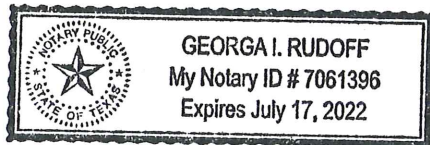
By: Beau EVANS
(Grantor's Signature)

THE STATE OF TEXAS §
 §
COUNTY OF Ft. Bend §

This instrument was acknowledged before me on May 20, 2019, by Beau Evans, an individual residing in Ft. Bend County, Texas.

Georgia J. Rudoff
Notary Public Signature

(seal)



GRANTEE:

AGREED AND ACCEPTED:

CITY OF SCHERTZ, TEXAS,
a Texas home-rule municipality

By: _____
Dr. Mark Browne, City Manager

THE STATE OF TEXAS §
 §
COUNTY OF GUADALUPE §

This instrument was acknowledged before me on _____, 2019, by
Dr. Mark Browne, City Manager of the City of Schertz, Texas, a Texas home-rule municipality,
on behalf of said municipality.

Notary Public Signature

(seal)

EXHIBIT "A"

EASEMENT TRACT

**A METES AND BOUNDS
DESCRIPTION OF A
0.007 ACRE TRACT OF LAND**

BEING a 0.007 acre (315 square feet, 15 feet by 21 feet) tract of land situated in the Genobrera Malpaz Survey No. 67, Abstract No. 221, City of Schertz, Guadalupe County, Texas; being a portion of Lot 3, Block 1 of Schertz 3009 Subdivision II, plat of which recorded in Volume 7, Page 638 of the Plat Records of Guadalupe County; and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod with a plastic cap stamped "KHA" found on the southwesterly right-of-way line of Roy Richards Drive (F.M. 3009 - 110 feet wide) marking the northern-most corner of said Lot 3, same being the eastern-most southeast corner of Lot 5 of said Schertz 3009 Subdivision II; from which a 1/2-inch iron rod with a plastic cap stamped "KHA" found marking the western-most corner of said Lot 3 bears South 59°35'23" West, 240.00 feet;

THENCE, South 30°24'16" East, 17.50 feet along the southwesterly right-of-way line of said Roy Rogers Drive to the **POINT OF BEGINNING** of the herein described tract;

THENCE, South 30°24'16" East, 15.00 feet, continuing along the southwesterly right-of-way line of said Roy Rogers Drive to a point for corner;

THENCE, departing the southeasterly right-of-way line of said Roy Rogers Drive and crossing said Lot 3, the following three (3) courses and distances:

1. South 59°35'24" West, 21.00 feet to a point for corner;
2. North 30°24'16" West, 15.00 feet to a point for corner;
3. North 59°35'24" East, 21.00 feet to the **POINT OF BEGINNING**, and containing 0.007 acre of land in Guadalupe County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid, South Central Zone (FIPS 4204) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.

JOHN G. MOSIER
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 6330
601 NW LOOP 410, SUITE 350
SAN ANTONIO, TEXAS 78216
PH. 210-541-9166
greg.mosier@kimley-horn.com



John G. Mosier
4-16-2019

15'X21' WATER EASEMENT
GENOBRERA MALPAZ SURVEY NO. 67,
ABSTRACT NO. 221
CITY OF SCHERTZ
GUADALUPE COUNTY, TEXAS

Kimley»Horn

601 NW Loop 410, Suite 350
San Antonio, Texas 78216

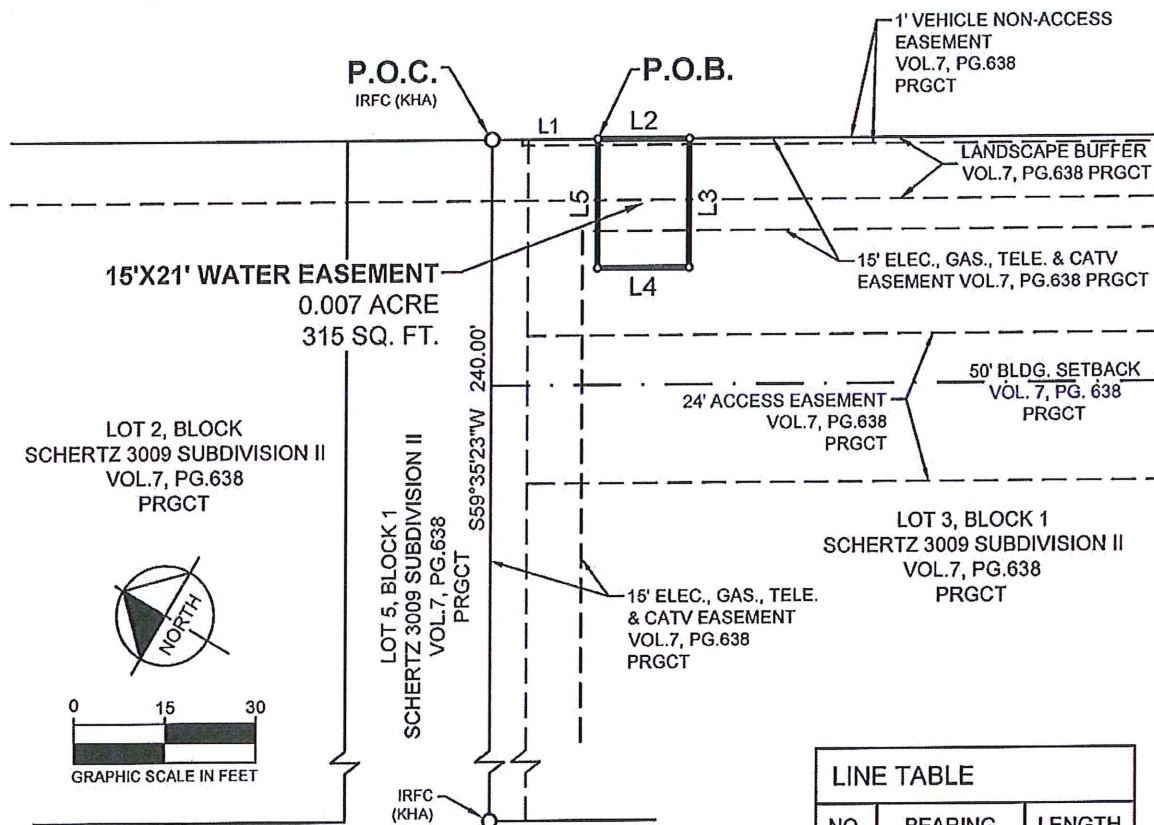
FIRM # 10193973

Tel. No. (210) 541-9166
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	APS	JGM	4/16/2019	068711100	1 OF 2

ROY RICHARDS DRIVE

(F.M. 3009 - 110' R.O.W.)



LEGEND:

P.O.C. = POINT OF COMMENCING

P.O.B. = POINT OF BEGINNING

IRFC = IRON ROD W/CAP FOUND

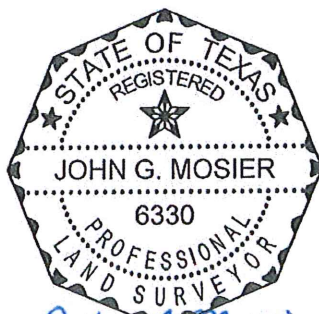
PRGCT = PLAT RECORDS OF GUADALUPE COUNTY

NOTES:

The bearings, distances, areas and coordinates shown hereon are Texas State Coordinate System GRID, South Central Zone (FIPS 4204) (NAD'83), as determined by the Global Positioning System (GPS). The unit of linear measurement is U.S. Survey Feet.

LINE TABLE

NO.	BEARING	LENGTH
L1	N30°24'16"W	17.50'
L2	S30°24'16"E	15.00'
L3	S59°35'24"W	21.00'
L4	N30°24'36"W	15.00'
L5	N59°35'24"E	21.00'



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LAND SURVEYOR NO. 6330
601 NW LOOP 410, SUITE 350
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15'X21' WATER EASEMENT
GENOBRERA MALPAZ SURVEY NO. 67,
ABSTRACT NO. 221
CITY OF SCHERTZ
GUADALUPE COUNTY, TEXAS

Kimley»Horn

601 NW Loop 410, Suite 350
San Antonio, Texas 78216

FIRM # 10193973

Tel. No. (210) 541-9166
www.kimley-horn.com

Scale

1" = 30'

Drawn by

APS

Checked by

JGM

Date

4/16/2019

Project No.

068711100

Sheet No.

2 OF 2

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019

Department: Executive Team

Subject: Resolution 19-R-64 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing the City Manager to enter into an Interlocal Agreement with the City of Cibolo regarding cost sharing for improvements to Wiederstein Road. (B. James)

BACKGROUND

On April 23, 2019, the Schertz City Council approved Resolution 19-R-53 authorizing an interlocal agreement (ILA) with the City of Cibolo for the improvement of Wiederstein Road. On May 14, the Cibolo City council considered the ILA and added a condition that the City of Schertz be responsible for the maintenance of Wiederstein Road as part of their approval. While staff had anticipated that Schertz would be responsible for maintenance, Cibolo included it in the agreement. Although the majority of the road will be in Schertz, approximately one lane will be in the City of Cibolo. As such, staff is seeking Council approval of the revised ILA. All other aspects of the ILA are the same.

The attached draft agreement obligates the City of Schertz to provide \$1,300,000 towards the project. The City is required to provide a surety in this amount and will pay upon completion of the project. Cibolo will be responsible for constructing or causing to be constructed all the improvements. Construction plans must be approved by the City of Schertz and the project will be inspected by the City of Schertz. There is a deadline of 18 months for construction to occur. Cibolo will also be responsible for posting surety in the event they default on the agreement, this would allow the City of Schertz to use those funds to finish the project. As noted above, Schertz would be responsible for maintenance of the road once complete.

The City of Cibolo is also requesting that this section of Wiederstein Road (from Old Wiederstein Road to IH-35) be renamed Cibolo Valley Drive. Staff is supportive of this request to avoid confusion for drivers and provide the City of Cibolo with signage on IH-35 referencing their community's name. Staff feels this gesture is appropriate given the cooperation and mutual support shown by both communities. The City of Schertz would still be allowed to name the extension of Wiederstein Road on the opposite side of IH-35 something else and Schertz could reserve the right to an honorary name of the segment being renamed (like FM 3009 is Roy Richard Drive). The City cannot approve the name change with this resolution, so staff is processing an ordinance to change the name as a separate item. Per the City's name change policy, street name changes must be considered by the Planning and Zoning Commission before coming to City Council. Staff anticipates having the name change to Council in July. If council has a reluctance to change the name, they should not approve this resolution at this time, as this is an important issue for the City of Cibolo.

The agreement also obligates both communities to pledge \$500,000 towards making improvements to the intersections of the north and southbound frontage roads. The goal is to get TxDOT to utilize these funds to make the improvements to the intersection and overpass. If agreement cannot be reached with TxDOT by the end of 2019, the Cities are no longer obligated to pledge these funds.

GOAL

To partner with the City of Cibolo to bring about the improvement of Wiederstein Road.

COMMUNITY BENEFIT

This will bring about the improvement of Wiederstein Road sooner than if the cities did not work together on the project.

SUMMARY OF RECOMMENDED ACTION

Staff recommends approval of Resolution 19-R-64 authorizing the revised interlocal agreement with the City of Cibolo.

FISCAL IMPACT

Funding for this project of \$1,300,000 and potentially and additional \$500,000 for improvements to the intersection and overpass of IH-35 and Wiederstein Road are anticipated to come from CO bonds. Additionally, the City of Schertz will be responsible for maintenance of the road.

RECOMMENDATION

Staff recommends Council approve Resolution 19-R-64

Attachments

Resolution

Revised ILA Wiederstein

RESOLUTION NO. 19-R-64

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CITY OF CIBOLO REGARDING COST SHARING FOR IMPROVEMENTS TO WIEDERSTEIN ROAD.

WHEREAS, the City of Schertz and the City of Cibolo desire to work together to make improvements to Wiederstein Road; and

WHEREAS, Wiederstein Road serves the transportation needs of both communities; and

WHEREAS, development activity that is occurring in the vicinity will only add additional traffic to Wiederstein Road; and

WHEREAS, future construction to FM 1103 and Interstate Highway 35 will likely increase the amount of traffic on Wiederstein Road; now therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council hereby authorizes the City Manager to enter into the Interlocal Agreement for the improvement of Wiederstein Road with the City of Cibolo as set forth in Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 28th day of May, 2019.

CITY OF SCHERTZ, TEXAS

Michael R. Carpenter, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A

Attached

THE STATE OF TEXAS	§	INTERLOCAL AGREEMENT BETWEEN
	§	THE CITY OF SCHERTZ AND THE
	§	CITY OF CIBOLO
COUNTY OF GUADALUPE	§	

PREAMBLE:

The Parties to this Agreement (“Agreement”) are the City of Cibolo and the City of Schertz (collectively referred to as the “Parties”). The Parties enter into this Agreement under the general provisions of the Interlocal Cooperation Act, Texas Government Code Chapter 791, under the specific authority of §791.026 and Texas Education Code §44.031(a)(5). This Agreement is made for the purpose of efficient and effective use of resources and is in the best economic interests of the Parties. The City of Cibolo and the City of Schertz are political subdivisions of the State of Texas.

RECITALS

WHEREAS, the Parties have identified certain common, legitimate public purposes in entering into this Agreement; and

WHEREAS, the governing bodies of the City of Cibolo and the City of Schertz each met in legally convened open meetings and authorized their respective representatives to enter into this Agreement; and

WHEREAS, the Parties intend to enter into a new agreement whereby the City of Cibolo will construct or cause to be constructed Wiederstein Road generally from Cibolo Valley Drive through the intersection of the northbound frontage road of Interstate Highway 35, the full right-of-way which is located in the corporate boundaries of Cibolo and Schertz, as shown on Exhibit “A” and the City of Schertz contribute funds toward that construction; and

WHEREAS, the City of Schertz desires to provide up to \$1,300,000 towards the cost of the construction; and

WHEREAS, the City Council of the City of Schertz has indicated a willingness to change the name of Wiederstein Road from Cibolo Valley Drive to the northbound frontage road of Interstate Highway 35 in support of working in partnership with the City of Cibolo on areas of mutual interest and has approved Ordinance XX-X-19 changing the name; and

WHEREAS, the City of Cibolo and City of Schertz desire to make additional roadway improvements to the intersections of both the north and south bound frontage road of Interstate Highway 35 and Wiederstein Road; and

WHEREAS, the City of Cibolo and the City of Schertz will each contribute an additional \$500,000 towards the cost of improving the bridge at Interstate 35 @ Wiederstein Road to

include the feeder road intersections to their full anticipated design, including traffic signalization; and

WHEREAS, the Texas Department of Transportation (TxDOT) controls the right-of-way of the intersection of the frontage roads of Interstate Highway 35 and Wiederstein Road, and their approval is required to make improvements to the intersections, both cities will petition and support request to TxDOT for approval and additional funding contributions to make intersection improvements.

NOW THEREFORE, the Parties, for and in consideration of the covenants and agreements herein set forth to be kept and performed by them respectively, have agreed to and do hereby agree together as follows:

I. DEFINITIONS

A. "Breach" occurs when any of the Parties fails or refuses to perform one or more of the duties set forth in this Agreement.

B. "Force Majeure" means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, and lockouts.

C. "Notice" occurs upon written communication by one party to the other as specifically defined in this Agreement. Notice to the Parties is satisfied by written communication to the address designated in Paragraph 6.

D. Use of the singular shall include the plural, and vice versa, where the usage permits reasonable construction of this Agreement.

II. TERM OF AGREEMENT

The term of this Agreement will begin June 1, 2019. The term of this Agreement will end in eighteen months or less unless extended or terminated before that time as provided in this Agreement.

III. MUTUAL PROMISES AND COVENANTS OF THE PARTIES

The Parties, in consideration of the mutual promises and covenants contained in this Agreement, agree as follows:

A. The recitals set out in the preamble are hereby incorporated herein, for all purposes.

B. The City of Cibolo shall construct or cause to be constructed, roadway, traffic signals and associated improvements more particularly shown on the “Construction Plans” approved on (Month, Year) by the City of Schertz for improvement to Wiederstein Road between Interstate 35 to Old Wiederstein Road (approximately 3,100 feet) the “Project”.

C. Construction Plans for the Project shall be prepared by or caused to be prepared by the City of Cibolo using the design standards of the City of Schertz. The plans shall be submitted to the City of Schertz for review and approval By July 1, 2019. The City of Schertz will have thirty (30) days to review and submit comments back to the City of Cibolo. Revisions to comments from the City of Schertz shall be resubmitted within 30 days.

D. The improvements shall be built and completed in accordance with the City of Schertz design standards within eighteen months, unless extended by force majeure, of the approval of the construction plans by the City of Schertz.

E. The City of Cibolo shall procure or cause to be procured, a construction company to construct the Project. The City of Schertz shall provide inspections throughout the project to insure the Project is being constructed in accordance with the approved plans. Changes made in the plans during construction shall be approved by both Cities.

F. The cost of the Wiederstein Road improvements are estimated to be Four Million Eight Hundred Twenty Five Thousand Dollars (\$4,825,000) (the “cost estimate”), as more particularly shown on Exhibit “B” attached hereto and made a part hereof for all purposes.

G. The City of Schertz shall provide a surety in a form agreeable to the City of Cibolo in the amount of One Million Three Hundred Thousand (\$1,300,000) for the City of Schertz’s contribution to the cost of construction of Wiederstein Road to be paid upon completion and acceptance of the Wiederstein Road Improvements by the City of Schertz. Upon the completion of the Wiederstein Road Improvements and acceptance by the City of Schertz, the City of Schertz shall be responsible for all maintenance of the Wiederstein Road Improvements.

H. The cost of improvements are subject to review by the City of Schertz and shall be standard reasonable costs.

I. The City of Cibolo will provide monthly updates on the status of construction of the Wiederstein Road Improvements and shall meet the schedule attached as Exhibit “C”. Should the City of Cibolo fail to meet the construction schedule in Exhibit “C”, they are considered to be in default of the agreement. The City of Cibolo will have Sixty (60) working days to address the default. The City of Schertz shall have the right, but not the obligation, to assume responsibility for the construction of Wiederstein Road. If the City of Schertz provide notice of default, within Sixty (60) days, the City of Cibolo shall provide the balance of funding for the Wiederstein Road Construction to the City of Schertz to be used to complete the construction.

J. The City of Schertz and the City of Cibolo agree to approach TxDOT with an offer of providing Five Hundred Thousand Dollars (\$500,000) from each City to be used to

design and construct improvements to the intersections of both the north and south bound frontage roads of Interstate Highway 35 and Wiederstein Road. If the Cities cannot reach agreement from TxDOT by December 31, 2019, the cities are no longer obligated to commit funds for the intersection of both the north and south bound frontage roads of Interstate Highway 35 and Wiederstein Road per this section.

IV. MISCELLANEOUS

A. Notice and Addresses. All notices required hereunder must be given by certified mail or registered mail, addressed to the proper Party, at the following addresses:

To City of Schertz: City of Schertz, Texas
Attn: Dr. Mark Browne, City Manager
1400 Schertz Parkway
Schertz, TX 78154

With a copy to: City of Cibolo, Texas
Attn: Robert T. Herrera, City Manager
200 S. Main Street
Cibolo, TX 78108

Either Party may change the address to which notices are to be sent by giving the other Party notice of the new address in the manner provided in this section. Notices shall be deemed to have been received three (3) days after deposit in the mail.

For ease of administration of this contract, a main contact person has been designated for each of the Parties as follows:

For the City of Cibolo: Robert T. Herrera, City Manager
For the City of Schertz: Mark Browne, City Manager

B. Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the Parties of this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

C. Prior Agreement Superseded. This Agreement constitutes the sole and only agreement of the Parties regarding their responsibilities to each other concerning the work noted herein on the Project and supersedes any prior understandings or written or oral agreements between the Parties respecting the Project. This Agreement in no way modifies or supersedes any document executed by the Parties prior to this Agreement which does not involve the Project.

D. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

E. Hold Harmless. The City of Cibolo will hold the City of Schertz harmless from any claims contemplated by this Agreement (e.g., contract claims between the City and any contractors and/or injury or property damage claims) to the extent permitted by Texas law. The City of Cibolo is solely responsible and liable for ensuring all requirements for procurement and bidding are followed.

F. Violation of Law. The City of Cibolo and the City of Schertz shall not knowingly violate any Federal, State or local laws, regulations, or ordinances in the performance of this Agreement.

G. Enforceability. If any provision of this Agreement proves unlawful or unenforceable by a court having jurisdiction over the Parties or the subject matter, such provision shall be severable from the other provision of this Agreement, and all remaining provision shall be fully enforceable. The City of Cibolo will provide or cause to be provided a surety in a form agreeable to the City of Schertz in the amount of Three Million Five Hundred Twenty Five Thousand (\$3,525,000) that can be used by the City of Schertz to construct the Project in the event of a default by the City of Cibolo per Section I.

H. Governing Law and Place for Performance. This Agreement shall be governed by the laws of Texas, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business and Parties. In the event of litigation pertaining to the Agreement, the exclusive forum, venue, and place of jurisdiction shall also be the County of Guadalupe and the State of Texas unless otherwise agreed in writing by the Parties. The Parties acknowledge that each has had the unfettered opportunity to review, revise, and negotiate the terms of this Agreement and that if in the future there is a dispute as to the meaning of any provision herein, then no such provision shall be construed against the drafter of the Agreement.

I. Exhibits Incorporated. All exhibits to this Agreement are incorporated by reference as if completely set out herein.

J. Signature Warranty Clause. The signatories to this Agreement represent and warrant that they have the authority to execute this Agreement on behalf of the City of Cibolo and the City of Schertz, respectively.

K. No Waiver of Immunities. Nothing in the Agreement shall be construed to waive any immunities from suit or liability enjoyed by the City of Cibolo, the City of Schertz, their past or present officers, employees, or agents of employees.

L. No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

M. No Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto.

N. Approval by Governing Bodies. This Agreement has been approved by the Governing bodies of the City of Cibolo and the City of Schertz.

O. Payment from Current Revenues. Each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party.

P. Assignment. Neither Party may assign their interests in this Agreement except upon receiving the written consent of the other Party.

EXECUTED TO BE EFFECTIVE this _____ day of _____, 2019

CITY OF CIBOLO

By: _____
Robert T. Herrera, City Manager

ATTEST:

By: _____
Peggy Cimics, City Secretary

CITY OF SCHERTZ

By: _____
Mark Browne, City Manager

ATTEST:

By: _____
Brenda Dennis, City Secretary

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019
Department: Planning & Community Development
Subject: Resolution No. 19-R-66 -Consideration and/or action approving a Resolution amending the building permit fees to comply with House Bill (HB) 852 and updating the City of Schertz fee schedule for FY 2018-19. (B.James/L. Wood)

BACKGROUND

City Departments collect a wide variety of fees for permits, services, fines and other charges that are all part of everyday operations of municipal government. Since September 2008, the fees have been incorporated into a single fee schedule. Ordinance 08-M-43 established the consolidated fee schedule and allows for the modification of existing fees to be done by resolution.

The Fee Schedule for FY 2018-19 is being updated to comply with House Bill (HB) 852 which prohibits cities from assessing their residential building permit fees on the value of a residential dwelling or the cost of constructing or improving a residential dwelling.

GOAL

Gain compliance HB 852 associated with the assessment of building permit fees that was signed by the Governor on May 21, 2019.

COMMUNITY BENEFIT

Fees are collected as an everyday operation of municipal government to support services.

SUMMARY OF RECOMMENDED ACTION

In an effort to gain compliance with HB 852, as quickly as possible, the FY 2018-19 fee schedule is being updated to reflect a change to the method that building permit fees are assessed. The schedule has been updated to assess new single family residential dwellings based on the square footage of the dwelling. Additionally, the fees for residential permits associated with improvements (i.e. additions, remodels, alterations, etc) to a dwelling have been updated to a flat fee. Staff recommends approval of the resolution.

FISCAL IMPACT

There is no intended fiscal impact with this update of the fee schedule. The change in fees is intended to meet the requirements of HB 852 and remain consistent with current residential permit fees.

RECOMMENDATION

Staff recommends that City Council approve Resolution No. 19-R-66, updated the FY 2018-19 Fee Schedule.

Attachments

Resolution 19-R-66

Updated fee schedule

TML Letter

HB 852

RESOLUTION NO. 19-R-66

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS UPDATING THE FEE SCHEDULE FOR FY 2018-19, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City of Schertz (the “City”) has established by ordinances and resolutions for fees for licenses, permits, and services provided by the City; and

WHEREAS, due to the need for periodic modification of said fees and for the purposes of efficiency, the City Council desires to adopt future fee changes by resolution rather than by ordinance; and

WHEREAS, the Schedule of Fees attached as Exhibit A reflects revisions to certain fees, a restatement of certain fees not revised, and a consolidation of all such fees; and

WHEREAS, due to House Bill 852 signed by the Governor of the State of Texas on May 21, 2019 an update to the fee schedule was required; and

WHEREAS, the City Council has determined that it is in the best interest of the City to update the fee schedule.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:

Section 1. The City Council amends the FY 2018-19 Fee Schedule to update Permit Fees as reflected in Exhibit A.

Section 2. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the City Council.

Section 3. All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 4. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Resolution would have been enacted without such invalid provision.

Section 6. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

Section 7. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 28th day of May, 2019.

CITY OF SCHERTZ, TEXAS

Michael R. Carpenter, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

Inspections	2018-19
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Residential Building Permit Fees

Minimum permit fee	\$50.00
New Single Family Residential (one & two family dwellings) per square foot	\$0.50
New Assessory structures per square foot	\$0.50
A plan check fee of 50% of the building permit fee is assessed to all permits for the review of residential construction documents and plans associated with a permit.	50%
Flatwork/Deck	\$225.00
Patio/Patio Cover	\$225.00
Roof Replacement	\$200.00
Window Replacement	\$150.00
Swimming Pools	\$500.00
Foundation Repair	\$225.00

See trade permit fees associated with residential permits below.

Commercial Building Permit Fees

Building Permit Fees

New Construction - Commercial (see Cost table below)	Cost
Review of Projects and Construction Plans with a cost of \$5,000 or greater, as % of Permit Fee	50%

Permit Fees:

Cost of Construction (Cost)

\$0.00 to \$1,000.00	\$ 50.00
\$1,001.00 to \$15,000.00, for each additional \$1,000 and fraction thereof	\$ 8.00
\$15,001.00 to \$50,000.00, for each additional \$1,000 and fraction thereof	\$ 7.00
\$50,001 and up, for each additional \$1,000 and fraction thereof	\$ 6.00

Following Use The Cost of Construction (Cost) Table above:

Non - residential Flatwork/Deck	Cost
Non - residential Accessory Buildings	Cost
Non - residential Patio/Patio Cover	Cost
Non - residential Roof Replacement	Cost
Non - residential Window Replacement	Cost
Non - residential Swimming Pools in Ground	Cost
Non - residential Foundation Repair	Cost
Sign	Cost

All other permit fees (Residential & Commercial):

Fence (New and Replacement)	\$ 50.00
Siding/Fascia	\$ 75.00
Gutters	\$ 50.00
Temporary Building or Structure	\$ 50.00
Moving Permit Fee	\$ 100.00
Demolition Permit Fee	\$ 60.00
Mobile Home Permit Fee (plus sub-trades as necessary)	\$ 25.00
Certificate of Occupancy	\$ 50.00
Pre Certificate of Occupancy Inspection	\$ 200.00
Failure to Obtain Certificate of Occupancy	\$ 200.00
Compliance Inspection, each trade	\$ 50.00
Temporary Sign	\$ 30.00
Development Sign	\$ 100.00
Banner	\$ 25.00

Street Span Banner	\$ 25.00
Home Occupation Permit (annually)	\$ 35.00

All plan review fees that follow are subject to a 15% administrative fee

Drainage Plan Review, per hour (2 hour minimum)	\$ 100.00
Preliminary Plan Review, per hour (2 hour minimum)	\$ 100.00
Irrigation Plan Review, per hour (2 hour minimum)	\$ 100.00
Additional Plan Review (ie Revised), per hour (1 hour minimum)	\$ 100.00
Commercial/Civil Express Plan Review, per hour (2 hour minimum)*	TBD
Commercial/Civil Outsource Plan Review*	Actual

*Deposit Required

Construction beginning without permit, pay additional:	\$ 200.00
Failure to Request Inspection, per trade	\$ 100.00
Failure to Obtain Contractors License/Provide Insurance	\$ 100.00

Electrical Permit Fees

Electrical Repair/Replacement	\$ 60.00
New Construction per building/unit	\$ 100.00

Mechanical Permit Fees

Mechanical Repair/Replacement	\$ 60.00
New Construction per building/unit	\$ 100.00

Plumbing Permit Fees

Plumbing Repair/Replacement	\$ 60.00
New Construction per building/unit	\$ 100.00
Lead Solder Test	\$ 15.00

Irrigation Permit Fees

Permit Fee	\$ 60.00
plus per sprinkler head	\$ 1.00
plus per backflow or RPZ	\$ 3.00
subsequent to the installation of the piping or equipment served, each	

Re-Inspection Fees

Each re-inspection, per trade	\$ 75.00
Re-inspections after first, per trade	\$ 100.00

NOTE: if re-inspection has been called for and the second inspection revealed the original turn down items have not been corrected in part or whole, in addition to the above fees, a seventy-two (72) hour notice of inspection shall be required before another re-inspection will be conducted

No permit fees will be charged for sites located on Main St. (All departments)

No permit fees will be charged to the Schertz Housing Authority (All departments)

Licenses/Registrations:

General Contractor (Initial)	\$ 150.00
General Contractor (Renewal)	\$ 100.00
Master Electrician (Initial) State of Texas Issued	N/C
Journeyman Electrician (Annually) State of Texas Issued	N/C
Apprentice/Wireman Electrician (Annually) State of Texas Issued	N/C
Mechanical Contractor (Annually) State of Texas Issued	N/C
Plumbing Contractor (Annually)* State of Texas Issued	N/C
Irrigation (Annually) State of Texas Issued	N/C

Backflow Tester - State of Texas Issued	N/C
Sign Contractor (Initial)	\$ 50.00
Sign Contractor (Renewal)	\$ 40.00
Electrical Sign Contractor (Initial) State of Texas Issued	N/C
Electric Sign Journeyman Electrician (Annually) State of Texas Issued	N/C
Electric Sign Apprentice/Wireman Electrician (Annually) State of Texas Issued	N/C
Utility Contractor (Annually)	\$ 50.00
Mobile Home Park (Annually)	\$ 40.00

*N/C - No Charge for license per state law

Miscellaneous Fees

Street Name Change on Permit	\$ 30.00
Address Corrections	\$ 30.00
Notary Public	\$ 6.00

For any item not specifically included in the preceding schedule, the Development Services Department shall establish a fee consistent with the level of work and necessary inspections established by the schedule and the applicant shall be advised accordingly.



Legislative UPDATE

May 24, 2019
Number 21

Action Required: **Building Permit Fees**

City officials should immediately review the process by which residential building permit fees are calculated. Many cities currently base their building permit fees on the cost of a proposed structure or improvement. [H.B. 852](#) now prohibits that practice.

Specifically, the bill provides that: (1) in determining the amount of a building permit or inspection fee required in connection with the construction or improvement of a residential dwelling, a city may not consider: (a) the value of the dwelling; or (b) the cost of constructing or improving the dwelling; and (2) a city may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling as a condition of obtaining a building permit except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

The bill was signed by the governor on May 21, and it is effective immediately. No grace period applies, so affected cities should change their system as soon as possible. Options include square footage-based fees, a flat fee schedule, or any other non-cost-based and reasonable calculation.

Please contact Scott Houston, TML general counsel, at shouston@tml.org with questions.

TML member cities may use the material herein for any purpose. No other person or entity may reproduce, duplicate, or distribute any part of this document without the written authorization of the Texas Municipal League.

AN ACT

relating to information a municipality may consider in determining the amount of certain building permit and inspection fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 214, Local Government Code, is amended by adding Section 214.907 to read as follows:

Sec. 214.907. PROHIBITION ON CERTAIN VALUE-BASED BUILDING PERMIT AND INSPECTION FEES. (a) In determining the amount of a building permit or inspection fee required in connection with the construction or improvement of a residential dwelling, a municipality may not consider:

(1) the value of the dwelling; or

(2) the cost of constructing or improving the dwelling.

(b) A municipality may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling as a condition of obtaining a building permit except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

SECTION 2. Section 214.907(a), Local Government Code, as added by this Act, applies only to a building permit or inspection fee assessed by a municipality on or after the effective date of this Act in connection with the construction or improvement of a

1 residential dwelling.

2 SECTION 3. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 852 was passed by the House on April 16, 2019, by the following vote: Yeas 126, Nays 9, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 852 was passed by the Senate on May 8, 2019, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019

Department: Executive Team

Subject: Discussion and update on the Employee Engagement Survey (S. Gonzalez/L. Cox)

Attachments

CCM Update on Employee Engagement Survey

power point employee engagement

CITY COUNCIL MEMORANDUM

City Council Meeting:	May 28, 2019
Department:	Executive Team
Subject:	Discussion and update on the Employee Engagement Survey

BACKGROUND

At the November 27, 2018 City Council meeting, staff presented the results of the 2018 Employee Engagement Survey. Staff also discussed the “Best Practice Workshops”, an idea developed out of looking for practical ways to take next steps with the survey results.

The Best Practice Workshops are groups that are comprised of Facilitators, or those Department Heads that scored higher in a survey construct and Attendees, or those Department Heads who scored lower in a survey construct. Led by the Facilitators, these workshops were planned to take place over a five-month period, beginning in January 2019.

The ultimate goal of these workshops is for departments to learn from one another, to develop SMART (specific, measurable, achievable, realistic and timely) goals with defined action plans tied to them, and to communicate and involve all staff through the process.


Staff is here tonight to provide Council an update on the completion of the workshops.




Employee Engagement Survey

May 28, 2019 City Council Meeting

SMART Goals & Communication Plans

 SharePoint
















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 Employee Engagement

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Documents > 2018 SMART Goals and Communication Plans

 Name	Modified	Modified By	+ Add column
 City Manager	May 8	Sarah Gonzalez	
 EMS	May 8	Sarah Gonzalez	
 Engineering	May 8	Sarah Gonzalez	
 Finance, Court, Utility Billing	May 8	Sarah Gonzalez	
 Fire	May 8	Sarah Gonzalez	
 Fleet and Facility Services	May 8	Sarah Gonzalez	
 HR	May 8	Sarah Gonzalez	
 IT	May 8	Sarah Gonzalez	
 Library	May 8	Sarah Gonzalez	
 Parks	May 8	Sarah Gonzalez	
 Planning and Community Development	May 8	Sarah Gonzalez	
 Police	May 8	Sarah Gonzalez	
 Public Affairs	May 8	Sarah Gonzalez	
 Public Works	May 8	Sarah Gonzalez	

SMART Goals & Communication Plans

Respondent #3 ▾

◀ ▶

COMPLETE

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24.243.37.139

Page 1

Q1

Name:

Q2

Department:

Police

Q3

My Supervisor quickly integrated me into the team.

Agree

Q4

I received initial training to help me understand internal systems, general operating practices, and other information needed to perform my job.

Agree

SMART Goals & Communication Plans

■ Other Goals

- Training Plans: Dedicated by position
- Internal Communications: Microsoft SharePoint, TEAMS
- Recognition Programs: Schertz Short

Communication to Staff

- Department communication
- City-wide communication (email, SchertzShort, etc.)
- Department Heads will be expected to provide regular updates to their Assistant City Manager to ensure the action plans for the established goals are being followed

SMART Goals & Communication Plans

■ Follow-Up

- Workshop groups will reconvene after budget to review the progress of their SMART goals

Discussion/Questions

CITY COUNCIL MEMORANDUM

City Council Meeting: May 28, 2019
Department: Executive Team
Subject: 2019 Hal Baldwin Scholarship Update (S. Gonzalez)

Attachments

HB Attachment

CITY COUNCIL MEMORANDUM

City Council Meeting:	May 28, 2019
Department:	City Manager
Subject:	2019 Hal Baldwin Scholarship

On May 14, 2019 the seven-member Hal Baldwin Scholarship Committee met to review the applications received for this year's scholarship.

There were only three applicants and unfortunately, they did not meet the criteria that was set forth in the application. After careful review and much discussion, the Committee unanimously recommended that they do not award a scholarship this year and the money will go back into the scholarship fund for next year.

The Committee plans to meet in the summer to review/revise the current application and discuss ways to increase participation for the following year.