



MEETING AGENDA
City Council
REGULAR SESSION CITY COUNCIL
October 12, 2021

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, OCTOBER 12, 2021 at 6:00 p.m.

City Council will hold its regularly scheduled meeting at 6:00 p.m., Tuesday, October 12, 2021, at the City Council Chambers. In lieu of attending the meeting in person, residents will have the opportunity to watch the meeting via live stream on the City's YouTube Channel.

Call to Order

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

Presentations

- Proclamation recognizing Mr. Ken Greenwald former City Councilmember and Planning and Zoning Commissioner. (Mayor)
- Proclamation recognizing Domestic Violence Awareness Month. (Mayor/K. Chandler/Hanna Fisher-Klug)

Employee Recognition

- 20 Year Service Recognition to Mr. Dudley Wait - EMS. (M. Browne)

New Employee Recognition

- EMS - Amber Cockrum - EMS Billing Specialist; Sean Hilla, Miranda Horak, John

- Mays-Thompson, Austin Redman, Nick Romero - EMT's; Darienn Trotter - Paramedic
- Library - Alexsaray Wheeler - Library Clerk
- PD - Krista Chandler - Crime Victim Liaison; Animal Control: Jaralynne Biggs - Animal Services Technician, Ashley Evans - Animal Services Officer
- Public Works - John Woolston - Facilities Manager; Raymond Garcia, Benjimin Rantz, Brandon Eskildsen, Juan Zamarripa, Caleb Fisher - Service Worker I

City Events and Announcements

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

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 of the meeting of September 28, 2021. (B. Dennis)
- 2. Appointments and Resignations to the Various City Boards, Commissions and Committees** - Consideration and/or action accepting the resignations of Mr. Rick Haynes from the Planning and Zoning Commission, and the resignation of Ms. Kimberly Smith from the Parks Advisory Board. (B. Dennis/Interview Committee/Council)
- 3. Resolution 21-R-97** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz Texas authorizing the city staff to enter into purchase negotiations with GBRA for 3.4096 acres of land located at 22330 IH-35 North in Schertz, Comal County, Texas. (C. Kelm/S. Williams/S. Mayfield)

4. **Resolution No. 21-R-81** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing the City Manager to execute a drainage easement with Schertz-Cibolo-Universal City Independent School District for construction of drainage improvements on the Samuel Clemens High School property by the Elbel Storm Drain and Overlay Project. (B. James/K. Woodlee/J. Nowak)
5. **Resolution No. 21-R-113** – Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a contract with Terracon Consultants, Inc. relating to the Aviation Heights Water Line Improvements (Phases 5, 6, & 7) Project Construction Materials Testing and Inspection and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortess)
6. **Resolution No. 21-R-114** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas accepting the Semi-annual report with respect to the progress of the Capital Improvements Plan, and other matters in connection therewith. (B. James/K. Woodlee)
7. **Resolution No. 21-R-112** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing the City Manager to issue a purchase order(s) for the purchase of various Emergency Services Vehicles as part of the 2021-2022 Vehicle/Equipment replacement program. (C. Kelm/S. Williams/C. Hernandez)
8. **Resolution No. 21-R-108** - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a contract with Raba Kistner, Inc., for Construction Materials Observation and Testing Services related to the Woman Hollering Creek Wastewater Project. (B. James/K. Woodlee)

Discussion and Action Items

9. **Ordinance No. 21-T-46** - Consideration and/or action approving an Ordinance by the City Council of the City of Schertz, Texas, authorizing an adjustment to the fiscal year 2021-2022 budget to provide funding for an agreement with M&S Engineering for Design, Bid, and Construction Phase professional services for the Civic Center HVAC Replacement Project and authorizing the execution of the agreement, repealing all ordinances or parts of ordinances in conflict with this ordinance; and providing an effective date. **(First Reading)** (C. Kelm/S. Williams/S. McClelland)
10. **Ordinance No. 21-B-45** - Consideration and approval of an Ordinance by the City Council of the City of Schertz, Texas authorizing the issuance of “City of Schertz, Texas General Obligation and Refunding Bonds, Series 2021”, levying an annual ad valorem tax, within the limitations prescribed by law, for the payment of the bonds; and other matters incident and related thereto, and providing an effective date. **(First and final reading)** (M. Browne/J. Walters/M. McLiney)

Public Hearings

11. **Ordinance No. 21-S-42** - Conduct a public hearing and consider and/or action approving an Ordinance by the City Council of the City of Schertz, Texas on a request to rezone 1.373 acres of land from Pre- Development District (PRE) to Single-Family Residential/ Agricultural District (RA), generally located 750 feet east of the intersection between Trainer Hale Road and FM 1518, 9049 Trainer Hale Road, also known as Bexar County Property Identification Number 310238, City of Schertz, Bexar County, Texas. (**First Reading**) (B. James/L. Wood/M. Harrison)
12. **Ordinance No. 21-S-43** - Conduct a public hearing and consider and/or action approving an Ordinance by the City Council of the City of Schertz, Texas on a request to rezone approximately 45 acres of land from General Business District (GB) to Manufacturing Light District (M-1), generally located approximately 1,300 feet east of Friesenhahn Lane and 450 feet north of IH-35 access road, also known as Comal County Property Identification Numbers 150166 & 81285, City of Schertz, Comal County, Texas. (**First Reading**) (B. James/L. Wood/M. Harrison)
13. **Ordinance No. 21-S-44** - Conduct a public hearing and consideration and or/action to approve an Ordinance by the City Council of the City of Schertz, Texas to amend the Schertz Code of Ordinances, Unified Development Code (UDC), Article 5, Subsection 21.5.8 Permitted Use Table, to add "Aggregate Extraction". (**First Reading**) (B. James/L. Wood/M. Harrison)

Roll Call Vote Confirmation

Requests and Announcements

- Announcements by the City Manager.
- Requests by Mayor and Councilmembers for updates or information from staff.
- Requests by Mayor and Councilmembers that items or presentations 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

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 5th DAY OF OCTOBER 2021 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 _____, 2021. 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 Gutierrez Audit Committee Investment Advisory Committee Main Street Committee	Councilmember Scagliola – Place 5 Cibolo Valley Local Government Corporation - Alternate Hal Baldwin Scholarship Committee Interview Committee for Boards and Commissions - Alternate Schertz-Seguin Local Government Corporation
Councilmember Davis– Place 1 Interview Committee for Boards and Commissions Main Street Committee - Chair Schertz Housing Authority Board TIRZ II Board	Councilmember Scott – Place 2 Interview Committee for Boards and Commissions Schertz Animal Services Advisory Commission
Councilmember Whittaker – Place 3 Audit Committee TIRZ II Board	Councilmember Dahle – Place 4 Cibolo Valley Local Government Corporation Interview Committee for Boards and Commissions TIRZ II Board

Councilmember Heyward – Place 6

Animal Advisory Commission
Audit Committee
Investment Advisory Committee
Main Street Committee

Councilmember Brown – Place 7

Main Street Committee
Schertz-Seguin Local Government Corporation -
Alternate

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: City Secretary
Subject: Minutes – Consideration and/or action regarding the approval of the minutes of the meeting of September 28, 2021. (B. Dennis)

BACKGROUND

The City Council held a Regular City Council meeting on September 28, 2021.

RECOMMENDATION

Recommend Approval.

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: City Secretary
Subject: Appointments and Resignations to the Various City Boards, Commissions and Committees - Consideration and/or action accepting the resignations of Mr. Rick Haynes from the Planning and Zoning Commission, and the resignation of Ms. Kimberly Smith from the Parks Advisory Board. (B. Dennis/Interview Committee/Council)

BACKGROUND

The City Secretary's office received resignations from Mr. Ricky Haynes from the Planning and Zoning Commission and from Ms. Kimberly Smith from the Parks Advisory Board.

Staff recommends approval of the resignations of Mr. Ricky Haynes and Ms. Kimberly Smith.

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: City Secretary
Subject: Resolution 21-R-97 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz Texas authorizing the city staff to enter into purchase negotiations with GBRA for 3.4096 acres of land located at 22330 IH-35 North in Schertz, Comal County, Texas. (C. Kelm/S. Williams/S. Mayfield)

BACKGROUND

GBRA owned and operated a wastewater plant at 22330 IH-35 North and in 2021 GBRA decommissioned this wastewater plant. The City of Schertz owns and operates a lift station located along the back of the property that serves Northcliff and receives all of the flow from Cypress Point, Friesenhahn, Covers Cove, Parklands and the Homestead lift station. Since most of northern Schertz currently flows through this lift station, it would be wise strategically to purchase this property to increase future capacity. GBRA is currently selling this 3.4096 acres of land and it is in a prime location with IH-35 frontage and access. The I-35 access to the property is also the only access we have to the lift station located on the back of the property. Since we only have an utility easment for the part of the property where the lift station sits, purchasing the property will ensure ability and flexibility for design and size of the future capacity. In addition, this property has been appraised at the value GBRA is selling it for, indicating a fair price.

GOAL

To strategically secure property to accommodate infrastructure to ensure safe and reliable services to Schertz and its growing population.

COMMUNITY BENEFIT

This property has the potential of providing numerous benefits to Schertz residents. For example, this location could serve as a convenient storage area for equipment and materials; creating efficiencies by allowing faster response times to emergencies and job sites. By being located nearer to job sites, maintenance costs would be reduced as a result of less wear and tear on equipment and vehicles. In addition, jobs would be completed quicker by eliminating windshield time. For example, equipment, such as the street sweeper, must return to the main Public Works location on Commercial Place to empty material once its bin is full. Then, the street sweeper returns to the area and continues sweeping. By providing an additional site, in Northern Schertz, the street seeper could cover more streets in less time.

The property is also an ideal location for a future large regional lift station providing much needed future sewer capacity to support future growth in the area. There are very large undeveloped parcels of land, both residential and commercial, that will require future sewer service through this location. Since most of northern schertz already flows through the existing lift station increasing flows through this site would require upgrades to the current lift station that would require a larger footprint to construct extra needed capacity in the area. By purchasing the property, Schertz would have space to upsize the lift station, including construction, and have room for storage of materials and equipment. Purchasing

property now and at the current cost is a strategic invement to be able to provide future sewer facilities to serve Northern Schertz.

SUMMARY OF RECOMMENDED ACTION

Staff recommends Council approve Resolution 21-R-97 authorizing the City staff to enter into a purchase negotiation with GBRA for 3.4096 acre tract of land located at 22330 IH-35 north in schertz comal county texas with a cost not to exceed \$698,000 .

FISCAL IMPACT

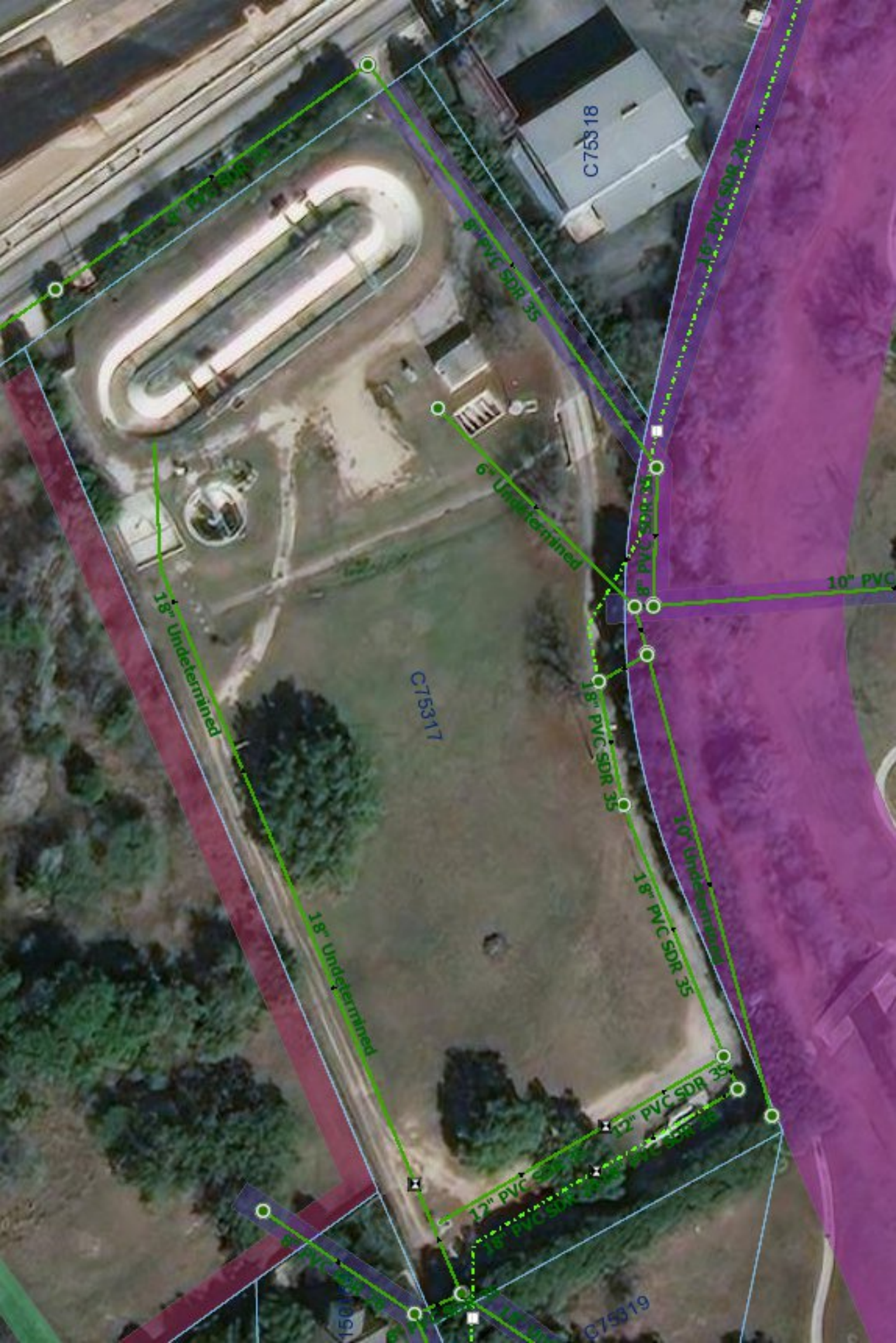
The total not to exceed amount is \$698,000.00. However, City staff will work to negotiate a lower cost for the puchase of the property. This money is in the _____ budget for _____.

RECOMMENDATION

Staff recommends Council approve Resolution 21-R-97 authorizing the City staff to enter into a purchase negotiation with GBRA for 3.4096 acre tract of land located at 22330 IH-35 north in schertz comal county texas with a cost not to exceed \$698,000

Attachments

MAP



CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021

Department: City Secretary

Subject: Resolution No. 21-R-81 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas authorizing the City Manager to execute a drainage easement with Schertz-Cibolo-Universal City Independent School District for construction of drainage improvements on the Samuel Clemens High School property by the Elbel Storm Drain and Overlay Project. (B. James/K. Woodlee/J. Nowak)

BACKGROUND

An existing parking area on the Samuel Clemens High School campus discharges storm water runoff across the ground surface, across the sidewalk, and into Elbel Road. The Elbel Storm Drain and Overlay project will construct drainage improvements in Elbel Road in the vicinity of this discharge. The planned Elbel Road improvements may also hinder the existing surface flow from the parking area, creating a ponding problem in the parking area.

The Elbel Storm Drain and Overlay project includes installation of a storm drain inlet, some curb and gutter modifications, and some piping to connect the inlet to the new storm drain system being constructed in the street. These improvements will essentially take the existing surface discharge and put it directly into the new underground storm drain system, thus maintaining the “status quo” for the parking area. As an added benefit, the existing surface flow from the parking area that runs across the sidewalk will be eliminated.

As these improvements are located outside the public right-of-way, an easement from the property owner must be granted in order for the improvements to be constructed. The Schertz-Cibolo-Universal City Independent School District Board of Trustees will need to approve dedication of the drainage easement to accommodate these drainage improvements and is anticipated to do so later this month. In order for the easement to be binding, the City Council of the City of Schertz must pass a resolution authorizing the easement to be executed by the City Manager. With Council approval, the easement document can be executed and recorded, allowing the drainage improvements to be constructed by the Elbel Storm Drain and Overlay project.

GOAL

To obtain authorization from City Council to execute a drainage easement with Schertz-Cibolo-Universal City Independent School District for construction of some drainage improvements on the Samuel Clemens High School property by the Elbel Storm Drain and Overlay Project.

COMMUNITY BENEFIT

A portion of one of the parking areas on the Samuel Clemens High School campus currently drains across the sidewalk surface onto Elbel. The Elbel Storm Drain and Overlay project is placing underground storm drain pipes in the vicinity to improve drainage for Elbel Road. Placing a storm drain inlet and replacing some of the existing curb and gutter in the parking area will allow the drainage to flow into the new storm drain piping instead of flowing across the surface. This will reduce the amount of water flowing across the sidewalk at this location, improving pedestrian safety.

SUMMARY OF RECOMMENDED ACTION

Approval of Resolution 21-R-81 authorizing the City Manager to execute a drainage easement with Schertz-Cibolo-Universal City Independent School District for construction of some drainage improvements on the Samuel Clemens High School property by the Elbel Storm Drain and Overlay Project.

FISCAL IMPACT

There are no costs associated with the proposed easement.

RECOMMENDATION

Approval of Resolution 21-R-81 authorizing the City Manager to execute a drainage easement with Schertz-Cibolo-Universal City Independent School District for construction of some drainage improvements on the Samuel Clemens High School property by the Elbel Storm Drain and Overlay Project.

Attachments

Resolution 21-R-81
SCUCISD Elbel Easement

RESOLUTION NO. 21-R-81

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A DRAINAGE EASEMENT WITH SCHERTZ-CIBOLO-UNIVERSAL CITY INDEPENDENT SCHOOL DISTRICT FOR CONSTRUCTION OF DRAINAGE IMPROVEMENTS ON THE SAMUEL CLEMENS HIGH SCHOOL PROPERTY BY THE ELBEL STORM DRAIN AND OVERLAY PROJECT

WHEREAS, the City staff of the City of Schertz (the "City") has determined that some drainage improvements needed to be constructed on the Samuel Clemens High School campus as part of the Elbel Storm Drain and overlay project; and

WHEREAS, the Schertz-Cibolo-Universal City Independent School District (SCUCISD), the property owner of Samuel Clemens High School campus, agrees to allow the drainage improvements to be constructed on their property.

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 a drainage easement with SCUCISD for construction of drainage improvements on the Samuel Clemens High School campus in substantially the form attached hereto.

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 12th day of October, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A
DRAINAGE 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.

DRAINAGE MAINTENANCE AND EASEMENT AGREEMENT

THE STATE OF TEXAS §

§

COUNTY OF GUADALUPE §

GRANT OF EASEMENT:

SCHERTZ-CIBOLO-UNIVERSAL CITY INDEPENDENT SCHOOL DISTRICT, a body corporate and political subdivision in the Counties of Guadalupe and Bexar, State of Texas ("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) "Utility" shall mean drainage 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 utility purposes, including placement, construction, and installation of utility facilities and related appurtenances, and for the authorization of Grantee to enforce maintenance obligations including the right of self-help.
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. *Improvement and Maintenance of Easement Property.* Maintenance of the Easement Property and the Facilities will be at the sole expense of Grantor. Holder has the right to enforce that maintenance obligation via self-help remedies if it so elects.
7. *Permitted Improvements.* Notwithstanding any contrary provision, Grantor shall retain the right to improve the easement area. 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.
8. *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.
9. *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.

10. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.
11. *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.
12. *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.
13. *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.
14. *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.
15. *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.
16. *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.
17. *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.
18. *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.

19. *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.
20. *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 ____ day of _____, 2021.

GRANTOR:

(Grantor's Name)

By: _____

(Grantor's Signature)

STATE OF TEXAS

§

§

COUNTY OF GUADALUPE

§

This instrument was acknowledged before me on the ____ day of _____, 2021,
by _____, an individual residing in _____ County, Texas.

Notary Public, State Of Texas

AGREED AND ACCEPTED:

City of Schertz

A Texas home-rule municipality

Dr. Mark Browne

City Manager, City of Schertz

STATE OF TEXAS

§

§

COUNTY OF GUADALUPE

§

This instrument was acknowledged before me on the ____ day of _____, 2021,
by Dr. Mark Browne, City Manager of the City of Schertz, Texas, a Texas home-rule
municipality, on behalf of said municipality.

Notary Public, State of Texas

Exhibit:

“A” Description of Development Tract

EXHIBIT “A”

Description of Easement Area

FORD ENGINEERING, INC.

Date: July 02, 2021
Project No: 1124.9403

DRAINAGE EASEMENT DESCRIPTION 0.017 ACRE (722 square feet) TRACT

A 0.017 of an acre (722 square feet) tract of land, situated in the Genobera Malpaz Survey No. 67, Abstract 221, Guadalupe County, Texas, being a portion of a called 29.379 acre tract described in a deed to Schertz-Cibilo Independent School District, recorded in Volume 346, Page 456, Deed Records Guadalupe County, Texas, being at the at the Samuel E. Clements High School; Said 0.017 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a calculated point on the northwest right-of-way line of Elbel Road (80' R.O.W. width), for the east corner hereof, from which a 1/2 inch iron rod found at the intersection of the northeast boundary line of the Schertz-Cibilo ISD 29.379 acre tract and the northwest right-of-way line of Elbel Road, bears North 59° 37' 48" East (record North 60° East) a distance of 616.40 feet;

THENCE South 59° 37' 48" West, (record South 60° West), along the northwest right-of-way line of Elbel Road, a distance of 37.49 feet, to a calculated point for the south corner hereof;

THENCE leaving the northwest right-of-way line of Elbel Road, crossing through the Schertz-Cibilo ISD 29.379 acre tract, the following three (3) courses and distances:

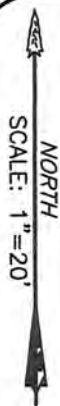
1. North 30° 22' 12" West, a distance of 19.25 feet, to a calculated point for the west corner hereof;
2. North 59° 37' 48" East, a distance of 37.49 feet, to a calculated point for the north corner hereof;
3. South 30° 22' 12" East, a distance of 19.25 feet, to the **POINT OF BEGINNING**, containing 0.017 of an acre of land.

**BEARINGS ARE BASED ON LAMBERT GRID, TEXAS STATE PLANE
COORDINATES, SOUTH CENTRAL ZONE NAD 83/93.**



Robert W. Johnston

Robert W. Johnston, RPLS
Registered Professional Land Surveyor
License Number 5579

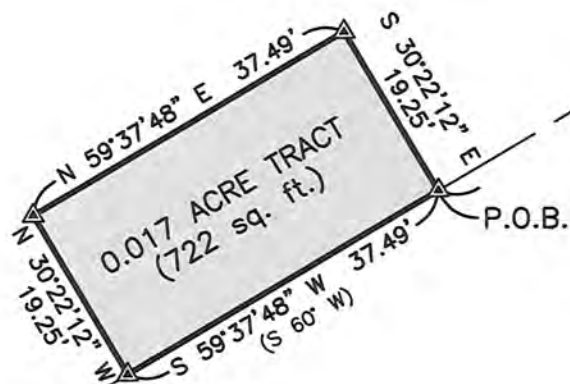


**PLAT SHOWING DRAINAGE EASEMENT:
OUT OF THE GENOBERA MALPAZ SURVEY No. 67
ABSTRACT No. 221
CITY OF SCHERTZ, GUADALUPE COUNTY, TEXAS.**

- LEGEND
- 1/2" IRON ROD FOUND
 - DRGCT DEED RECORDS OF GUADALUPE COUNTY
 - () RECORD INFORMATION
 - P.O.B. POINT OF BEGINNING

GENOBERA MALPAZ SURVEY No. 67
ABSTRACT No. 221

SCHERTZ-CIBILO INDEPENDENT SCHOOL DISTRICT
SAMUEL E. CLEMENTS HIGH SCHOOL
(29.379 ACRES)
VOL. 346, PG. 456
DRGCT



ELBEL ROAD
(80' ROW)

STATE OF TEXAS :
COUNTY OF GUADALUPE:

I, ROBERT W. JOHNSTON, DO HEREBY CERTIFY THAT
THIS PLAT WAS PREPARED FROM AN ACTUAL SURVEY
MADE ON THE GROUND AND UNDER MY SUPERVISION.
ON JUNE 30, 2021

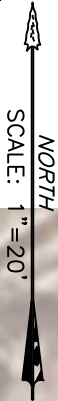
Robert W. Johnston

ROBERT W. JOHNSTON
DATE: 07-02-2021
PROJECT NO.: 1124-9403
DRAWN BY: RWJ

RPLS No. 5579



H:\CIV_PROJ\SCHERTZ\112494 03 Elbel Rd - Storm Ext and Overlay\Drawings\11249403DrainageEasement.dwg, PLAT, 7/2/2021 2:51:52 PM, 1:1



**PLAT SHOWING DRAINAGE EASEMENT:
OUT OF THE GENOBERA MALPAZ SURVEY No. 67
ABSTRACT No. 221
CITY OF SCHERTZ, GUADALUPE COUNTY, TEXAS.**

- LEGEND**
- 1/2" IRON ROD FOUND
 - DRGCT DEED RECORDS OF GUADALUPE COUNTY
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GENOBERA MALPAZ SURVEY No. 67
ABSTRACT No. 221

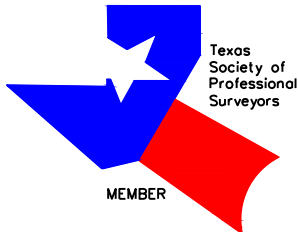


STATE OF TEXAS :
COUNTY OF GUADALUPE:

I, ROBERT W. JOHNSTON, DO HEREBY CERTIFY THAT
THIS PLAT WAS PREPARED FROM AN ACTUAL SURVEY
MADE ON THE GROUND AND UNDER MY SUPERVISION.
ON JUNE 30, 2021

ROBERT W. JOHNSTON
DATE: 07-02-2021
PROJECT NO.: 1124-9403
DRAWN BY: RWJ

RPLS No. 5579



CITY COUNCIL MEMORANDUM

City Council Meeting: **October 12, 2021**

Department: **Engineering**

Subject: **Resolution No. 21-R-113 – Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a contract with Terracon Consultants, Inc. relating to the Aviation Heights Water Line Improvements (Phases 5, 6, & 7) Project Construction Materials Testing and Inspection and authorizing the budget expenditures for the project. (B. James/K. Woodlee/J. Shortess)**

BACKGROUND

Previously, the City authorized construction of the Phases 5, 6, & 7 of the Aviation Heights Water Line Improvements project due to the limited fire protection provided by smaller diameter water mains in the Aviation Heights service area. The City of Schertz has been working to upgrade and replace these smaller diameter water mains which are currently located in alleyways and are difficult to maintain. Construction will include abandonment of 3” and 6” diameter water mains within alleys and replacing with 8” water mains within street rights-of-way.

Pursuant to Texas Government Code, Title 10, Subtitle F, Sec.2269.058, Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

Staff has determined that the proposal from Terracon Consultants, Inc. is acceptable. Terracon Consultants is one of the City's On-Call Materials Testing Firms and was procured via the Request for Qualifications process. The contract will be issued in the form of a Task Order in accordance with the Master Services Agreement.

GOAL

To obtain authorization from Council to execute a contract with Terracon Consultants., Inc. for \$63,000 plus \$6,000 (10% contingency) for a not to exceed amount of \$69,000, for the Aviation Heights Water Line Improvements (Phases 5, 6, & 7) Construction Materials Testing and Inspection.

COMMUNITY BENEFIT

The relocation of the Aviation Heights water mains will improve the service and reliability to the residents in the Aviation Heights service area. By providing construction materials testing and inspection, the City will more efficiently monitor backfill materials to ensure proper compaction under roadways in conformance with the project specifications.

SUMMARY OF RECOMMENDED ACTION

Authorize execution of the construction contract for the Aviation Heights Water Line Improvements (Phases 5, 6, & 7) Construction Materials Testing and Inspection with Terracon Consultants, Inc. for \$63,000 and a not to exceed amount of \$69,000.

FISCAL IMPACT

The cost of the project shall not exceed \$69,000 funding is available from the Water Reserves. The Water Reserves allocated a total of \$1.8 million to Aviation Heights Waterline Improvement projects.

RECOMMENDATION

Staff recommends Council approve Resolution 21-R-113 and authorize award of a contract for the Aviation Heights Water Line Improvements (Phases 5, 6, & 7) Construction Materials Testing and Inspection to Terracon Consultants, Inc. for \$63,000 and a not to exceed amount of \$69,000.

Attachments

21-R-113
Task Order
Contract

RESOLUTION NO. 21-R-113

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING A CONTRACT WITH TERRACON CONSULTANTS, INC. RELATING TO THE AVIATION HEIGHTS WATERLINE IMPROVEMENTS (PHASES 5, 6, & 7) PROJECT CONSTRUCTION MATERIALS TESTING AND INSPECTION AND AUTHORIZING THE BUDGET EXPENDITURES FOR THE PROJECT

WHEREAS, The City staff of the City of Schertz (the "City") has recommended that the City accept the contract with Terracon Consultants, Inc. relating to the Aviation Heights Waterline Improvements (Phases 5, 6, & 7) Project Construction Materials Testing and Inspection and approve the project expenditures; and

WHEREAS, City staff has received qualifications indicating that Terracon Consultants, Inc. is qualified to provide such services for the City; and

WHEREAS, Terracon Consultants, Inc. is an approved On-Call Engineering Firm for the City of Schertz; and

WHEREAS, pursuant to Section 252.022(a)(4) of the Texas Local Government Code, the City is not required to seek bids or proposals with respect to procurement for personal, professional, or planning purposes; and

WHEREAS, the project is a planned project and will be funded from Water Reserves.

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 Terracon Consultants, Inc. for an amount of \$63,000, with an amount not to exceed \$69,000.

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 12th day of October, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated project and the controlling laws and regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

Note: The City of Schertz, Texas has modified this document. The modified language is indicated by ~~strikeout~~ and/or underlining

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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National Society of Professional Engineers

1420 King Street, Alexandria, VA 22314-2794

(703) 684-2882

www.nspe.org

American Council of Engineering Companies

1015 15th Street N.W., Washington, DC 20005

(202) 347-7474

www.acec.org

American Society of Civil Engineers

1801 Alexander Bell Drive, Reston, VA 20191-4400

(800) 548-2723

www.asce.org

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TABLE OF CONTENTS

	Page
ARTICLE 1 – SERVICES OF ENGINEER	1
1.1 Scope	1
1.2 Task Order Procedure	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES	2
2.01 General.....	2
ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES	2
3.1 Term	2
3.2 Times for Rendering Services	2
ARTICLE 4 – INVOICES AND PAYMENTS	3
4.1 Invoices	3
4.2 Payments.....	3
ARTICLE 5 – OPINIONS OF COST	4
5.1 Opinions of Probable Construction Cost	4
5.2 Designing to Construction Cost Limit	4
5.3 Opinions of Total Project Costs	4
ARTICLE 6 – GENERAL CONSIDERATIONS	4
6.1 Standards of Performance.....	4
6.2 Design Without Construction Phase Services	6
6.3 Use of Documents	6
6.4 Electronic Transmittals	7
6.5 Insurance.....	8
6.6 Suspension and Termination	9
6.7 Controlling Law	10
6.8 Successors, Assigns, and Beneficiaries	10
6.9 Dispute Resolution.....	11
6.10 Environmental Condition of Site.....	11
6.11 Indemnification and Mutual Waiver	12
6.12 Records Retention	13
6.13 Miscellaneous Provisions.....	13
ARTICLE 7 – DEFINITIONS	14
7.01 Defined Terms.....	14
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS	17
8.1 Suggested Form of Task Order	17
8.2 Exhibits Included:.....	17
8.3 Total Agreement	18
8.4 Designated Representatives	18
8.5 Engineer's Certifications	19

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

THIS IS AN AGREEMENT effective as of July 1, 2020

(“Effective Date of the Agreement”) between

_____ The City of Schertz _____

(“Owner”) and

_____ (“Engineer”).

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.1 Scope

- A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.2 Task Order Procedure

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer’s services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, “Engineer’s Services for Task Order,” prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, “Engineer’s Services for Task Order,” as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer’s services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer’s services, the Work, the performance of any Constructor, or in Owner’s performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.1 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for three (3) year with the option to renew for two (2) additional terms of one (1) year each from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.2 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer’s services, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.1 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.2 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement

shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 – OPINIONS OF COST

5.1 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, recent bid results for similar work, and general familiarity with the construction industry. The same standards of performance in Section 6.01.A shall apply to the preparation of Engineer's opinions of probable Construction Cost. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.2 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.3 *Opinions of Total Project Costs*

- ~~A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.~~

ARTICLE 6 – GENERAL CONSIDERATIONS

6.1 *Standards of Performance*

- A. The same degree of care, skill, and diligence shall be exercised in the performance of the Services as is ordinarily possessed and exercised by a member of the same profession, currently practicing, under similar circumstances. Engineer warrants and represents that it has the capability, experience, available personnel, and means required to perform the services contemplated by this Agreement. Services will be performed using personnel and equipment qualified and/or suitable to perform the work requested by the Owner. Owner retains the right to report to Engineer any unsatisfactory performance of Engineer personnel for appropriate corrective action. Engineer shall comply with applicable federal, state, and local laws in connection with any work performed hereunder. No other warranty, express or implied, is included in this Agreement or in any Task Order, drawing, specification, report, opinion, or other instrument of service, in any form or media, produced in connection with the Services.~~Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.~~

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures*
1. Engineer and Owner shall comply with applicable Laws and Regulations.
 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee and as modified by the City of Schertz, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws

and Regulations applicable to such Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.2 *Design Without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against Engineer that may be in any way connected to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.3 *Use of Documents*

- ~~A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.~~

B.A. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.

C. B. Upon completion or termination of this Agreement, all documents prepared by the Professional or furnished to the Professional by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE PROFESSIONAL FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE

PROFESSIONAL. Where applicable, Professional shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Professional may, at Professional's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

D.C. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.4 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the

recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.5 Insurance

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project.
- ~~B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.~~
- C.B. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- ~~D.C. Owner and Engineer shall each deliver to the other Owner certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished promptly after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.~~
- E.D. All policies of property insurance relating to a Specific Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F.E. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G.F. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.6 *Suspension and Termination*

A. *Suspension*

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.

B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:

1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.

- D. *Termination for Convenience by Owner:* Owner may terminate a Task Order or this Agreement for Owner's convenience, effective upon Engineer's receipt of notice from Owner.
- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.7 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the ~~state~~ State of Texas ~~in which the Specific Project is located.~~

6.8 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.9 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
 2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
 4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.

6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

A. Professional 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 services or goods performed or provided by Professional – expressly including those arising through strict liability or under the constitutions of the United States or Texas – BUT ONLY TO THE EXTENT ALLOWABLE BY SEC. 271.904(a) OF THE TEXAS LOCAL GOVERNMENT CODE AS APPLICABLE.~~Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~

~~B. Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~

~~C. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.~~

~~D. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.~~

~~E. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or~~

~~damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~

~~F.A. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.~~

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.1 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
 6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 9. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
19. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
21. *Engineer*—The individual or entity named as such in this Agreement.

22. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
24. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
25. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Resident Project Representative*—The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR. The duties and responsibilities of the RPR will be as set forth in each Task Order.
27. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
28. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
29. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
30. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
31. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.
32. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently

complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

- 34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 35. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
- 36. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
- 37. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
- 38. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.1 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.2 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order
- B. Exhibit B, Owner’s Responsibilities. This Exhibit applies to all Task Orders.

- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, "Services of Engineer," and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, "Services of Engineer," of the specific Task Order.
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.
- ~~H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.~~
- ~~I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.~~
- J.H. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.
- ~~K.I.~~ Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.

8.3 *Total Agreement*

- A. This Agreement (together with the Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.4 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.5 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

By: _____
Print Name: Dr. Mark Browne

Title: City Manager
Date Signed:

ENGINEER:

By: _____
Print Name:

Title:
Date Signed:

Engineer License or Firm's Certificate No. (if required):

State of : _____

Address for Owner's receipt of notices:

City of Schertz _____

1400 Schertz Parkway _____

Schertz, Texas 78154 _____

Address for Engineer's receipt of notices:

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Kathryn Woodlee _____

Title: City Engineer _____

Phone Number: 210-619-1823

E-Mail Address: kwoodlee@schertz.com

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Title: _____

Phone Number:

E-Mail Address:

**SUGGESTED FORM OF
TASK ORDER**

This is Task Order No. _____, consisting of _____ pages.
--

Task Order

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

[Select one of the following three options and delete the other two.]

- ☐ set forth in Part 1—Basic Services of Exhibit A, “Engineer’s Services for Task Order,” modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]

- ☐ as follows: [] ***[Note: Insert scope of services here, or incorporate by reference a scope of services set out in a separate document such as a letter or proposal.]***

[or]

- ☐ the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference: ***[Note: If this option is selected, include only those sections below that are part of Basic Services for the specific Task Order, and delete those sections below that do not apply.]***
- Study and Report Services (Exhibit A, Paragraph A1.01)
 - Preliminary Design Phase (Exhibit A, Paragraph A1.02)

Task Order Form

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- Final Design Phase (Exhibit A, Paragraph A1.03)
- Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
- Construction Phase Services (Exhibit A, Paragraph A1.05)
 - including Resident Project Representative (RPR) services (A1.05.A.2)
 - **[or]** [not including Resident Project Representative (RPR) services (A1.05.A.2)]
- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)
- Commissioning Services (Exhibit A, Paragraph A1.07)

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

[1. If RPR services are not in the scope of this Task Order, do not include any references to RPR services in Exhibit A (Paragraph A1.05.A.2) for this Task Order (or state “Does not apply” or similar), or in any other scope of services text or document.

2. If appropriate, modify Exhibit D for this specific Task Order, and attach it, rather than incorporating the Exhibit D that is included with the Agreement.]

C. Designing to a Construction Cost Limit

[If the design under this Task Order will be governed by a Construction Cost limit, then include the following clause, with blanks filled in, and thereby incorporate Exhibit F; if not, then delete the clause or indicate “Does not apply” or similar]]

Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$_____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____percent.

D. Other Services

Engineer shall also provide the following services: ***[Summarize or provide a brief description of other services (if any) that are to be provided by Engineer as Basic Services, but have not been addressed in Paragraphs 2.A through 2.C. If applicable, categorize such other services by phases, such as other Study and Report Phase Services, other Preliminary Design Phase Services, and so on. If all Basic Services have been covered in Paragraphs 2.A through 2.C, then indicate “None” here in 2.D, or delete 2.D in its entirety.]***

- E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

- A. Additional Services that may be authorized or necessary under this Task Order are:

[Select one of the following three options and delete the other two.]

- ☐ set forth as Additional Services in Part 2—Additional Services, of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

[or]

- ☐ as follows: [] ***[Note: Insert list of Additional Services here, or incorporate by reference a list of Additional Services set out in a separate document. Indicate whether advance authorization is needed, and include other governing terms and conditions.]***

[or]

- ☐ those services (and related terms and conditions) set forth in Paragraph A2.01 of Exhibit A, as attached to the Agreement referred to above, such paragraph being hereby incorporated by reference.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: ***[State any additions or modifications to Exhibit B for this Specific Project here.]***

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: ***[Revise and amend for each specific Task Order.]***

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Furnish [] review copies of the Report and other Study and Report Phase deliverables to Owner.	Within [] days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within [] days of the receipt of Report and other Study and Report Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish [] review copies of the Preliminary Design Phase documents,	Within [] days of Owner's authorization to proceed with Preliminary Design Phase

	opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within [] days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish [] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	Within [] days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

[Notes: 1. Delete line items that do not apply to this Task Order. 2. For each line item indicate either "Lump Sum," "Direct Labor," or "Hourly Rates" as the Basis of Compensation. 3. Cross-references are to Exhibit A. Revise if necessary, or

delete cross-references if Exhibit A is not used to establish the scope of services under this Task Order.]

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Part 1 of Exhibit A)	\$[]	[]
a.	Study and Report Phase (A1.01)	\$[]	[]
b.	Preliminary and Final Design Phase (A1.02, A1.03)	\$[]	[]
c.	Bidding or Negotiating Phase (A1.04)	\$[]	[]
d.	Construction Phase (A1.05)*	\$[]	[]
e.	Resident Project Representative Services* (A1.05.A.2).	\$[]	[]
f.	Post-Construction Phase (A1.06)	\$[]	[]
g.	Commissioning Phase (A1.07)	\$[]	[]
h.	Other Services (see A1.08, and 2.D above)	\$[]	[]
TOTAL COMPENSATION (lines 1.a-h)		\$[]	
2.	Additional Services (Part 2 of Exhibit A)	(N/A)	[]

[Many of the line items under Line 1, Basic Services, will frequently be governed by a single Basis of Compensation; however, it is not unusual to have some variation among the services so the table allows the user to establish different bases of compensation for the various Basic Compensation phases (1.a-1.h).]

*Based on a []-month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

8. Other Modifications to Agreement and Exhibits:

[Supplement or modify Agreement and Exhibits, if appropriate.]

9. Attachments:

10. Other Documents Incorporated by Reference:

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER:

ENGINEER:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Engineer License or Firm's
Certificate No. (if required): _____
State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail
Address: _____

E-Mail
Address: _____

Phone: _____

Phone: _____

Engineer's Services for Task Order

[Introductory Note to User:

The following text as published describes a variety of services that may be included, in whole or in part, in a specific Task Order issued under the Agreement. Until this exhibit is customized for inclusion in a specific Task Order, or some or all of the exhibit is incorporated in a specific Task Order by reference, it has no legal or contractual effect.

Not all possible services are included in this exhibit. The user should revise and supplement the descriptions of services provided here for purposes of drafting the scope of Engineer's Services for each specific Task Order. The scope of services will typically include a list of potential Additional Services (see Paragraph A2.01) that may be needed as the Specific Project progresses. The user may choose to categorize some items shown here as Additional Services as Basic Services, or move some tasks listed in the Basic Services categories (Paragraphs A1.01 through A1.08) into Additional Services. Note that for the Additional Services in A2.01.A, Engineer is not authorized to perform and receive compensation for an Additional Service unless authorized by Owner to do so under a written amendment.]

PART 1—BASIC SERVICES

A1.01 Study and Report Phase Services

A. As Basic Services, Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions: ***[List the specific potential solutions here.]***
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.
4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Specific Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Specific Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

Exhibit A – Engineer's Services

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13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
 14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.
 15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

A. As Basic Services, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

Exhibit A – Engineer's Services

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and American Society of Civil Engineers. All rights reserved.**

8. Obtain ~~and review~~ Owner's instructions regarding Owner's procurement of construction services (including ~~instructions regarding advertisements for bids~~, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain ~~and review~~ copies of Owner's design and construction standards, Owner's standard forms, ~~general conditions (if other than modified EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition)~~, supplementary conditions, text, and related documents or content for Engineer to include in the ~~draft~~ bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
 9. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 10. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.

5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the ~~draft~~-bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 *Bidding or Negotiating Phase*

- A. As Basic Services, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.
 5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

A1.05 Construction Phase

- A. As Basic Services, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform

services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selection of Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.
4. *Pre-Construction Conference*: Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols*: If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents*: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective

sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

14. *Change Orders and Work Change Directives*: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions*: Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters*: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
17. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's

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supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

21. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection,

tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair

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of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

A1.07 *Commissioning Phase*

A. As Basic Services, Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 *Other Services:* Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 *Additional Services Requiring an Amendment to Task Order*

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Specific Project.

2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
3. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
5. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. based on the engineering and technical aspects of the Project, the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:

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- a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C or the specific Task Order.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
- 11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
 - 12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 - 13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
 - 14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
 - 15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
 - 16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
 - 17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
 - 18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
 - 19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
 - 20. Preparation of operation, maintenance, and staffing manuals.
 - 21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
 - 22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.

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23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
 24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
 25. Overtime work requiring higher than regular rates.
 26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
 27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
 28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
 29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
 30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

B2.01 Specific Responsibilities

A. Owner shall:

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than modified version of EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - a. Property descriptions.

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- b. Zoning, deed, and other land use restrictions.
 - c. Utility and topographic mapping and surveys.
 - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
 - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- 5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
 - 6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
 - 7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
 - 8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

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20. Perform or provide the following: ***[Here list any additional Owner responsibilities].***

This is **EXHIBIT C**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Payments to Engineer for Services and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 Basis of Compensation

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
 1. Lump Sum (plus any expenses expressly eligible for reimbursement)
 2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
 3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)

C2.02 Explanation of Compensation Methods

A. Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges): [] ***[List any such reimbursable expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]***
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.

C. Direct Labor Costs Times a Factor

1. For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a factor of [] for the services of Engineer's employees engaged on the Specific Project. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, and reimbursable expenses (including Consultant's charges, if any).
4. The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus reimbursable expenses (including Consultant's charges, if any).
5. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of []) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Reimbursable Expenses*

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount **includes** the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of [].
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of [].
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 *Serving as a Witness*

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of [] times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services.

C2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated [].

Reimbursable Expenses Schedule

Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C. Rates and charges for reimbursable expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	_____/page
Copies of Drawings	_____/sq. ft.
Mileage (auto)	_____/mile
Air Transportation	at cost
CAD Charge	_____/hour
Laboratory Testing	at cost
Health and Safety Level D	_____/day
Health and Safety Level C	_____/day
Meals and Lodging	at cost

[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this Specific Project]

This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Standard Hourly Rates Schedule

The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

Billing Class VIII	\$ /hour
Billing Class VII	\$ /hour
Billing Class VI	\$ /hour
Billing Class V	\$ /hour
Billing Class IV	\$ /hour
Billing Class III	\$ /hour
Billing Class II	\$ /hour
Billing Class I	\$ /hour

[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, “Billing Class VI—Assistant Project Manager”), or using the engineering firm’s own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project’s course.]

This is **EXHIBIT D**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, as incorporated in this Task Order, are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor. ,
7. *Shop Drawings and Samples*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work*
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not

compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work; and

- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Specific Project documentation.

- f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion, submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of, Owner, and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

[Notes to User

1. Exhibit A, Paragraph A1.05.A.24 of this Agreement indicates that in connection with recommending final payment of the Construction Contractor with respect to a specific Construction Contract, the Engineer will also provide a notice to Owner and Contractor of the acceptability of the Work, subject to stated limitations. The form for that purpose, "Notice of Acceptability of Work," is attached on the following pages of this Exhibit E. The same form is also available as a construction form, EJCDC® C-626 (2013).

2. The Notice of Acceptability of Work should be served in compliance with the requirements for service of notice under the Construction Contract. See Paragraph 18.01, Giving Notice, of EJCDC® C-700 (2013), Standard General Conditions of the Construction Contract.]



NOTICE OF ACCEPTABILITY OF WORK

SPECIFIC PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the following terms and conditions of this Notice.

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: _____

Title: _____

Dated: _____

This is **EXHIBIT F**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Construction Cost Limit

Paragraph 5.02 of the Agreement is amended and supplemented to include the following when incorporated in the Task Order for a Specific Project:

F5.02 *Designing to Construction Cost Limit*

- A. A Construction Cost limit may be set forth in the Task Order.
- B. If a Construction Cost limit is set forth in a Task Order, then the Task Order will also specify bidding or negotiating contingency to be added to such Construction Cost limit.
- C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- D. Engineer will be permitted to determine what types of materials, equipment and component systems, and the types and quality thereof are to be included in the Drawings and Specifications and to make reasonable adjustments in the scope, extent, and character of a Specific Project to the extent consistent with the project requirements and sound engineering practices to bring the project within the Construction Cost limit.
- E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer, and Owner shall consent to an adjustment in such Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Specific Project within a reasonable time, or (3) cooperate in revising the Specific Project's scope, extent, or character to the extent consistent with the Specific Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Construction Contract Documents as necessary to bring the Construction Cost within the Construction Cost limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of its responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

Exhibit F – Construction Cost Limit

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CITY OF SCHERTZ
REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Schertz accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

1. The City of Schertz shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement.**
2. A waiver of subrogation in favor of The City of Schertz shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement.**
3. All insurance policies shall be endorsed to the effect that The City of Schertz will receive at least thirty (30) days written notice prior to cancellation or non-renewal of the insurance.
4. All insurance policies, which name The City of Schertz as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
5. **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
6. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Schertz of any material change in the insurance coverage.
7. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
8. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
9. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Schertz.
10. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
11. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05). Coverage must be written on an occurrence form.
12. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
13. Upon request, Contractor shall furnish The City of Schertz with certified copies of all insurance policies.
14. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Schertz within ten (10) business days after contract award and prior to starting any work by the successful Contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Schertz, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Schertz. The certificate of insurance and endorsements shall be sent to:

**City of Schertz
Purchasing Department
1400 Schertz Parkway
Schertz, TX 78154**

Emailed to:
jgohlke@schertz.com
Faxed to: 210-619-1169



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/01/1000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ABC Insurance Agency 555 Main Street Tampa, FL 33333-0000	CONTACT NAME: PHONE (Area, No., Ext): FAX (Area, No.): ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Insurance Carrier INSURER B: Insurance Carrier INSURER C: Insurance Carrier INSURER D: Insurance Carrier INSURER E: Insurance Carrier INSURER F: Insurance Carrier	NAIC # 00000 00000 00000 00000 00000 00000
INSURED XYZ Company 123 Apple Street Tampa, FL 22222-0000		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	ADDITIONAL INSURED	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC.	<input type="checkbox"/> Y <input type="checkbox"/> Y	X123456	01/01/1000	01/01/1000	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMMOD AGG \$ 1,000,000
<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS HIRING AUTOS	<input type="checkbox"/> Y <input type="checkbox"/> Y	123456789	01/01/1000	01/01/1000	COVERED SWIFT LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per person) \$ PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> UMBRELLA LIAB EXCESS LIAB DED. RETENTIONS	<input type="checkbox"/> Y <input type="checkbox"/> Y				EACH OCCURRENCE \$ AGGREGATE \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in Ill.) Yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> Y	01234	01/01/1000	01/01/1000	<input checked="" type="checkbox"/> NO STATUTORY LIMITS E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYER \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
<input checked="" type="checkbox"/> Builder's Risk Professional Services	<input type="checkbox"/> Y <input type="checkbox"/> Y	123450	01/01/1000	01/01/1000	100% Insurable Value, replacement cost basis \$1,000,000 each claim / \$1,000,000 aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Effective January 1, 2012 must be compliant with Chapter 1011, Tax. Inv. Code (SB 425 enacted by Texas Legislature 02/09 session in 2011).

CERTIFICATE HOLDER City of Schertz 1400 Schertz Parkway Schertz, Tx 78154 Attn: Purchasing Dept.	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE AUTHORIZED SIGNATURE REQUIRED HERE
--	---

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ACORD 26 (2010/05)

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(Instructions for completing and submitting a certificate to the City of Schertz)

Complete the certificate of insurance with the information listed below:

- A) Certificate of Insurance date
- B) Producer (Insurance Agency) Information – complete name, address, telephone information, & email address.
- C) Insured's (Insurance Policy Holder) Information – complete name & address information
- D) Insurer (name/names of insurance company) **(Remember the city requires all insurance companies to be Authorized to do business in the State of Texas be rated by A.M. Best with a rating of B+ (or better) Class VI (or higher) or otherwise be acceptable to the City if not rated by A.M. Best)
- E) NAIC # (National Association of Insurance Commissioners, a # that is assigned by the State to all insurance companies)
- F) Insurer letter represents which insurance company provides which type of coverage from D
- G) General Liability Insurance Policy – must have an (x) in box. Also, "Occurrence" type policy – must have an (x) in the box (occurrence policy preferred but claims made policy can be accepted with special approval)
- H) This section shall be filled in with "Y" for yes under Additional Insured for all coverages, except for Contractor Liability and Workers' Compensation. There shall also be a "Y" for yes under all coverages for subrogation waived.
- I) Automobile Liability Insurance – must be checked for Any Auto, All Owned Autos, Hired Autos
- J) Umbrella Coverage – must be checked in this section and by occurrence whenever it is required by written contract and in accordance with the contract value.
- K) Worker's Compensation and Employers Liability Insurance – information must be completed in this section of the certificate of insurance form (if applicable).
- L) Builder's Risk Policy – for construction projects as designated by the City of Schertz.
Professional Liability Coverage – for professional services if required by the City of Schertz.
- M) Insurance Policy #'s
- N) Insurance policy effective dates (always check for current dates)
- O) Insurance Policy limits (See Insurance Requirements Checklist)
- P) This section is to list projects, dates of projects, or location of project. Endorsements to the insurance policy(ies) must be provided separately and not in this section. The following endorsements are required by the City of Schertz.
 - (1) Adding the City of Schertz as an additional insured. The "additional insured" endorsement is not required for professional liability and workers compensation insurance; and
 - (2) Waiver of Subrogation
 - (3) Primary and Non-Contributory
 - (4) Cancellation Notice
- Q) City of Schertz's name and address information must be listed in this section
- R) Notice of cancellation, non-renewal, or material change to the insurance policy(ies) must be provided to the City of Schertz in accordance with a cancellation notice endorsement to the policy and/or per the policy provisions based on the endorsement adding the city as an additional insured. (Sec. 1811.155, Tex. Ins. Code)
- S) The certificate must be signed by the Authorized Agent in this section of the certificate form.

This is **EXHIBIT J**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [].

Special Provisions

Paragraph(s)____of the Agreement is/are amended to include the following agreement(s) of the parties:

Exhibit J—Special Provisions

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

This is **EXHIBIT K**, consisting of [] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [].

Amendment To Task Order No. _____

1. Background Data:

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform the following Additional Services: []
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: []
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: []
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: []
- e. The schedule for rendering services under this Task Order is modified as follows: []
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: []

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- | | | |
|----|----------------------------------|-------|
| a. | Original Task Order amount: | \$[] |
| b. | Net change for prior amendments: | \$[] |
| c. | This amendment amount: | \$[] |
| d. | Adjusted Task Order amount: | \$[] |

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is .

OWNER:

By: _____

Title: _____

Date
Signed: _____

ENGINEER:

By: _____

Title: _____

Date
Signed: _____



September 23, 2021

City of Schertz
10 Commercial Place, Building 2
Schertz, TX 78154

Attn: Ms. Jennifer R. Shortess, P.E.
Telephone # 210.619.1826
Email: jshortess@schertz.com

RE: Proposal
Construction Materials Testing and Inspection Services
Aviation Heights Water Line Improvements Phase 5,6 and 7 Project
Schertz, Texas, 78154
Proposal N° P90211400

Dear Ms. Shortess:

Terracon Consultants Inc. appreciates the opportunity to submit this proposal to provide construction materials observation and testing services for the proposed Aviation Heights Waterline Improvements Phase 5,6 and 7 projects. This proposal outlines our understanding of the scope of services to be provided by Terracon and includes unit fees for services we anticipate will be required for this project.

We understand that we have been chosen to provide these services for this publicly funded project. Therefore, by providing cost information we are not in violation of the Texas Professional Services Procurement Act.

We have reviewed the plans prepared by Ford Engineering Inc. dated January 04, 2021.

1. PROJECT INFORMATION

We understand the project is to include construction materials testing and services for water line improvements on Phase 5 – Aero Avenue, Brooks Avenue and Winburn Avenue, Phase 6 – Mitchell Avenue and Phase 7 – Aviation Avenue in Schertz, Texas.

2. SCOPE OF SERVICES

We anticipate providing the requested construction materials observation and testing services for this project on an “as requested” basis during construction. We will rely on the general contractor or his representative to notify us at least 24 hours in advance when the requested services are needed. The technicians assigned to the project will be qualified and equipped to perform the following field services:



- Concrete (*includes Reinforcing Steel Observation*)
- Asphalt Observation/Testing

These services are described in greater detail in Exhibit A “Proposed Scope of Services for Construction Materials Observation and Testing”. Our cost estimate and schedule of fees are included in Exhibit B.

Our proposed scope of services should be reviewed by the design professionals prior to the start of construction. If the design professionals determine that the proposed testing and observation scope is inappropriate, we would be happy to work with you in developing a scope and cost estimate to address the requested change in scope.

2.1 Scheduling

Terracon’s services will be performed on an as-requested basis with scheduling by the Client or the client’s designated representative. Terracon will not be responsible for scheduling our services and will not be responsible for tests or observations that are not performed due to failure to schedule our services on the project. Since our personnel will not be at the site on a resident basis, it will be imperative that we be advised when work is in progress. Services should be scheduled a minimum of 24 hours in advance. Scheduling personnel will be on an as-available basis which may require changes in personnel assigned to the project. For instances of short-notice requests, personnel may have to be utilized which have a higher rate than those normally assigned and this higher cost may be passed on to the client.

All requests for services should be submitted to the San Antonio, Texas office at the following phone number: (210) 714-2121. Services should not be scheduled through our field personnel.

We recommend the scope of services described in this proposal be provided to the person(s) responsible for scheduling our services so they are aware of the services that are proposed.

2.2 Data Collection and Reporting

All field technicians are responsible to provide a daily report identifying what work was found to be in compliance with the project specifications and drawings and report any non-conformances. The field technicians are required to immediately communicate any non-conformances to the site superintendent and our Project Manager. Effective and timely communication is essential for non-conforming items. Our Project Manager will be responsible for reviewing each technician’s reports, keeping non-conformance lists up to date, and communicating test results in a timely manner.

To ensure our Project Manager and Field Personnel meet the goals we have set for report turnaround, we have developed report tracking software to evaluate the status of any test result or report within our system. This allows us to achieve better communication, more consistency, and faster turnaround of reporting on the project. Data, observations, and other testing and

inspection information are easily entered into the system allowing for immediate availability for quality review and electronic distribution of reports.

Terracon will maintain non-conformance logs and lists for all testing types performed by us. The list will be maintained electronically in our database and can be updated and e-mailed or printed at any time.

2.2.1 CMELMS™ Management System

In order to provide our clients with real-time field and laboratory data management and reporting, Terracon developed and maintains an automated application that we call CMELMS. The acronym stands for **Construction Materials Engineering Laboratory Management System** and is utilized by construction materials engineering and testing operations in our offices.

CMELMS is a complete and comprehensive field and laboratory testing data and results management system. It automates the delivery of our testing and inspection information and can be used anywhere with an internet connection or through a wireless device. Data (test results and inspections) can be entered into the application right from the project site so that project managers and engineering staff have real-time access to the field data. Final Client Reports are produced in the same application, which allows us to achieve better communication, more consistency, and faster turnaround of reports on the project.

2.2.2 Report Turnaround Time

Our Project Managers and/or field technicians will report failing tests or non-conformance items immediately to the designated parties and will typically have digitally-signed reports distributed by the end of the next business day. As stated, using our CMELMS software and our field reporting and communication services and capabilities, the test results and inspection information is quickly entered into the system and a report produced. Non-deviation reports will typically be digitally signed and distributed within 3 to 5 business days of service. Laboratory test reports will typically be digitally signed and distributed within 2 business days of the completion of each test. Our reports can be sent digitally via email, posted to our Client Document Website (CDW), or posted to a designated ftp website.

2.3 Terracon's Incident and Injury-Free Culture

Employee safety is a core value of Terracon and we are committed to an Incident and Injury-Free (IIF) workplace. It is our personal and organizational commitment at all levels of the company to everyone going home safe to their family every day. All employees are expected to perform their job assignments with safety as a primary objective. Terracon dedicates the time, resources, and equipment necessary for an IIF environment and no employee will be required to work in unsafe conditions.

3. COMPENSATION

Our scope of services will be determined by your authorization for specific services as requested by your project superintendent or other representative. Charges for our services will be based on the quantities of services provided and the unit rates shown on the attached "Exhibit B." The cost of our services will be determined by the construction schedule and the quantity of services provided. Based on our review of the construction plans and specifications and our experience with similar construction projects, our fee estimate to provide the proposed scope of services for the Comal Avenue and Union Avenue maintenance projects is **\$62,975.00. Contractor's schedule was not provided at the time of this proposal. Our fee estimate is based on an assumed schedule.**

Many factors, including those out of our control, such as weather and the contractor's schedule, responses to requests for information, and how often we are called to the site, will dictate the final fee for our services. Furthermore, all costs associated with deviations, re-testing and re-inspections of failing items, on-site standby time, overtime, and short-notice premiums are not included in our estimated cost. If additional services are required, this fee may be exceeded. We recommend that a budget of \$63,000.00 be established for these services. **Please recognize that this is an estimate. Terracon will only invoice for the actual services and required laboratory services which are required/requested to fulfill the project's needs.**

The applicable field rate will be invoiced for all hours worked, including travel time, report and sample preparation. Technician time will be invoiced on a portal-to-portal basis from our office. Overtime rates of 1.5 times the regular hourly rates will be charged for time worked outside normal workday hours of 8:00 am to 5:00 pm and over eight (8) hours per day, Monday through Friday and all day Saturday. Hours worked on Sunday, or holidays will be invoiced at the rate of 2.0 times the regular hourly rates. A minimum three (3)-hour charge will be invoiced per visit to the project site, Project Management/Clerical services will be invoiced on hours worked, unless other wised noted on the attached Table 1. Hours will be rounded up to the next whole number.

The construction schedule and sequencing will have a major impact on the testing/observation cost. We would be glad to visit with you at the appropriate time and revise the estimated cost presented in this proposal as necessary to meet the project needs.

Proposal for: City of Schertz

Aviation Heights Water Line Improvements Project ■ Schertz, TX

September 23, 2020 ■ Terracon Proposal No. P90211400



4. AUTHORIZATION

This proposal may be accepted by returning a Task Order in accordance with the "Master Service Agreement" between City of New Braunfels and Terracon Consultants, Inc dated July 5th, 2019. This proposal for services and accompanying Exhibits, Schedule of Services and Fees and Agreement for services shall constitute the terms and conditions for our services to be performed for this project. This proposal is valid if authorized within sixty days from our listed proposal date.

We appreciate the opportunity to provide this proposal and look forward to working with you and the rest of the project team.

Sincerely,

Terracon Consultants Inc.

(Firm Registration: TX F3272)

Yash Menaria, EIT
Senior Staff Engineer
Construction Materials Services

A handwritten signature in black ink, appearing to read "Yatish A. Jakatimath". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

Yatish A. Jakatimath, P.E.
Department Manager

YM/YAJ
Attachments
Exhibits A and B
Distribution Sheet

EXHIBIT A
PROPOSED SCOPE OF SERVICES FOR CONSTRUCTION MATERIALS
OBSERVATION AND TESTING
AVIATION HEIGHTS WATER LINE IMPROVEMENTS PROJECT
TERRACON PROPOSAL NO. P90211400

The proposed scope of services provided by Terracon is described below. The purpose of these services is to observe various components of the construction and conduct specific tests to determine whether or not the materials and construction comply with the project requirements.

These services are designed to provide a level of quality assurance (QA) services for the client. Terracon requires a complete set of construction plans and specifications approved for construction and any addenda or revisions approved during the construction process that would affect the construction related to the requested QA services.

If additional services are needed to comply with the construction documents, Terracon should be contacted and requested to modify our proposed scope and estimated cost. The contractor has the responsibility to be familiar with the project requirements and to contact Terracon a minimum of 24 hrs. (one business day) prior to the time our services will be required. Terracon is not responsible for providing specified services if the client does not authorize Terracon to provide the services or if the contractor does not provide adequate notification for our scheduling purposes.

Terracon will provide construction observations and testing services requested by the client as described in our "Scope of Services" in general accordance with the normal standard of care. Our scope of services does not include any design, design review, construction safety, trench safety, construction supervision, or construction management services. Terracon personnel do not have the responsibility or authority to stop the contractor's work, or to accept or reject any construction materials or workmanship, even if they do not comply with the project requirements.

EXHIBIT A (continued)

1. **Concrete** – The Terracon scope of services includes sampling concrete and conducting slump and concrete compressive strength tests. Terracon personnel do not have the authority to accept or reject concrete even if it does not comply with the project specifications. The contractor has the responsibility to reject concrete that does not comply with the specifications or is unsuitable for use. Terracon will typically make 4-inch diameter, 8-inch high cylinders for compressive strength testing whenever the aggregate size allows. When larger aggregate is used in the concrete or when the client requires 6-inch diameter, 12-inch high cylinders, a surcharge will be applied for each cylinder made and tested. We will rely on the contractor or his concrete supplier to provide adequate facilities for initial (and field) curing of test cylinders as required by ASTM C 31 test procedures.

The Terracon scope of services also includes spot observations of the formwork dimensions and the reinforcing steel size, spacing, and configuration on a periodic basis prior to concrete placement.

The Terracon scope of services does not include the following: continuous observation of concrete placement for proper application techniques or periodic observation of the maintenance of specified curing temperatures.

2. **Asphalt** – This is not an IBC special inspection item. The Terracon scope of services includes observation of the asphalt paving operations, sampling asphalt and conducting laboratory tests. These services may be provided on a part-time or full-time basis as authorized by the client.
3. **Soils** – The Terracon scope of services includes sampling and testing of soils, periodic observation of earthwork operations, and moisture-density testing of subgrade and compacted fills. The Terracon scope of services does not include verification of the use of proper materials, densities and lift thicknesses during placement and compaction of compacted fill on a continuous basis. The Terracon scope of services also excludes sampling, testing and evaluation of materials below shallow foundations to determine whether or not they are adequate to achieve the design bearing capacity. The adequacy of shallow footing subgrade soils will be based on recommendations in the geotechnical engineering report (or structural engineer's notes if a geotechnical engineering report is not provided) and visual observations of the foundation excavation bottom.

EXHIBIT B
COST ESTIMATE FOR
CONSTRUCTION MATERIALS TESTING SERVICES
AVIATION HEIGHTS PHASE 5,6 AND 7 Project
Terracon Proposal No. P90211400

Earthwork Observation/Testing				
Service	Quantity	Unit	Unit Rate	Estimate
Moisture/Density Curve (ASTM D698)	3	Each	\$ 300.00	\$ 900.00
Atterberg Limits (ASTM D4318)	3	Each	\$ 85.00	\$ 255.00
Sieve Analyses (ASTM C136 & C117)	3	Each	\$ 95.00	\$ 285.00
Nuclear Gauge Fee	12	Each	\$ 45.00	\$ 540.00
Soil Technician, Regular Rate	48	Hour	\$ 70.00	\$ 3,360.00
Vehicle Trip Charge	12	Per Trip	\$ 50.00	\$ 600.00
Subtotal, Earthwork				\$ 5,940.00

This estimate is based on the estimated construction schedule of 12 days to test fill material.

Concrete and Reinforcement Steel Observation/Testing				
Service	Quantity	Unit	Unit Rate	Estimate
Engineering Technician, Regular Hours	45	Hour	\$ 70.00	\$ 3,150.00
Concrete Cylinders, (ASTM C31 & C39)	75	Each	\$ 22.00	\$ 1,650.00
Vehicle Trip Charge	30	Per Trip	\$ 50.00	\$ 1,500.00
Cylinder Pick-Up	45	Hour	\$ 55.00	\$ 2,475.00
Subtotal, Concrete				\$ 8,775.00

This estimate is based on 45 trips for concrete observation and testing. This estimate also includes trips to the project site to pick up concrete test cylinders cast the previous day.

Proposal for: City of Schertz

Aviation Heights Water Line Improvements Project ■ Schertz, TX

September 23, 2020 ■ Terracon Proposal No. P90211400



Asphalt Concrete Observation/Testing				
Service	Quantity	Unit	Unit Rate	Estimate
Asphalt Lab Series	1	Each	\$ 500.00	\$ 500.00
Asphalt Technician, Regular Rate	450	Hour	\$ 85.00	\$ 38,250.00
Asphalt Cores, each	45	Each	\$ 50.00	\$ 2,250.00
Nuclear Density Gauge	45	Per Day	\$ 50.00	\$ 2,250.00
Vehicle Trip Charge	45	Per Trip	\$ 50.00	\$ 2,250.00
Subtotal, Asphalt Concrete				\$ 45,500.00

This estimate is based on providing full-time laboratory testing and observation during paving with an assumed paving schedule of 45 days mentioned in project schedule. The costs for these services will be quoted upon request.

Project Management	18	Hour	\$ 135.00	\$ 2,430.00
Clerical	6	Hour	\$ 55.00	\$ 330.00

ESTIMATE TOTAL				\$ 62,975.00
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MASTER SERVICES AGREEMENT

TASK ORDER

This **TASK ORDER** is issued under the **MASTER SERVICES AGREEMENT** dated 07/01/2020 between City of Schertz TX ("Client") and Terracon Consultants, Inc. ("Consultant") for Services to be provided by Consultant for Client on the Aviation Heights Waterline Improvements Phase 5,6 and 7 project ("Project"), as described in the Project Information section of the Consultant's Task Order Proposal dated 09/20/2021 ("Task Order Proposal") unless the Project is otherwise described below or in Exhibit A to this Task Order (which section or Exhibit are incorporated into this Task Order). This Task Order is incorporated into and part of the Master Services Agreement.

1. Project Information

Please see attached proposal P90211400

2. Scope of Services

The scope of Services to be provided under this Task Order are described in the Scope of Services section of the Consultant's Task Order Proposal, unless Services are otherwise described below or in Exhibit B to this Task Order.


Please see attached proposal P90211400

3. Compensation

Client shall pay compensation for the Services performed at the fees stated in the Task Order Proposal unless fees are otherwise stated below or in Exhibit C to this Task Order.

Please see attached proposal P90211400

All terms and conditions of the **Master Services Agreement** shall continue in full force and effect. This Task Order is accepted and Consultant is authorized to proceed.

Consultant: **Terracon Consultants, Inc.**
 By:  Date: **9/20/2021**
 Name/Title: **Yatish A. Jakatimath, P.E. / Department Manager**
 Address: **6911 Blanco Rd**
San Antonio, TX 78216-6164
 Phone: **(210) 641-2112** Fax: **(210) 558-7894**
 Email: **Yatish.Jakatimath@terracon.com**

Client: **City of Schertz TX**
 By: _____ Date: _____
 Name/Title: **Jennifer Shortess P.E. / Engineer**
 Address: **10 Commercial PI Bldg 2**
Schertz, TX 78154-1634
 Phone: **(210) 382-9071** Fax: _____
 Email: **jshortess@schertz.com**

DISTRIBUTION SHEET

Thank you for choosing Terracon Consultants, Inc. to provide these services. Please fill out below the pertinent information below so that we may expedite report distribution, project correspondence and invoice(s) to appropriate person (s). If you have any questions please do not hesitate to contact our office.

Project Name:

Client

Copies _____

Firm _____

Address _____

Attn: _____

P () _____

F () _____

Email: _____

Invoice (do not complete if same as client)

Copies _____

Firm _____

Address _____

Attn: _____

P () _____

F () _____

Email: _____

Report Distribution (Clients, Architects, Engineers, Contractors, etc...)

Copies _____

Firm _____

Address _____

Attn: _____

P () _____

F () _____

Email: _____

Copies _____

Firm _____

Address _____

Attn: _____

P () _____

F () _____

Email: _____

Copies _____

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Attn: _____

P () _____

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Email: _____

Copies _____

Firm _____

Address _____

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Email: _____

If you need more room or would like to send other pertinent information please provide on the back of this sheet. Thank you for your time and concern to this matter.

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: Engineering
Subject: Resolution No. 21-R-114 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas accepting the Semi-annual report with respect to the progress of the Capital Improvements Plan, and other matters in connection therewith. (B. James/K. Woodlee)

BACKGROUND

Section 395.058 (c) (4) of the Texas Local Government Code requires the Capital Improvements Advisory Committee (CIAC) to file semi-annual reports with respect to the progress of the capital improvements plan and report to City Council any perceived inequities in implementing the plan or imposing impact fees. Section 90-158 of the City's Code of Ordinance includes this same requirement. The CIAC is a citizen group made up of our current Planning and Zoning Commission, a real estate-type representative and a resident in the Extraterritorial Jurisdiction, all of whom are appointed by the City Council.

Capital Recovery Fees, also known as Impact Fees, can only be charged to new development and used in compliance with a specific adopted plan. Projects in the plan must be designed to increase the capacity of our water and sewer infrastructure to accommodate our growth. General maintenance or replacing old pipes would not be acceptable uses of these funds.

The attached report includes capital recovery balance reports for October 1, 2020 through March 31, 2021 and the CIAC minutes from April 28, 2021, during which the CIAC recommended acceptance of the report.

Revenue activity in all the Impact Fee Funds (water, sewer, and roadway) this period included collection of fees, fund interest earned, and investments income. Expenses were as follows:

Water

- Professional Services related to the City-wide Water Master Plan and Impact Fee Update Study
- Auditor costs
- Project expenses for Water Impact Fee projects were \$172,980.16 for the Corbett Elevated Tank Project.

Sewer

- Professional Services related to the City-wide Wastewater Master Plan and Impact Fee Update Study
- Auditor costs
- Investment management fee

Roadway (the only expense was in Service Area 2)

- Payment to Development Incentive Fund in accordance with agreement to reimburse developer for the extension of Ripps Kreusler Drive

Status of Active Projects (as of March 31, 2021 - subsequent progress will be noted on the next report)

Water

- Corbett Elevated Water Storage Tank: Construction of the tank and associated facilities is substantially complete. The tank is operating on the system as designed. Project closeout activities are underway.

Sewer

- Woman Hollering Creek Wastewater Interceptor Main and Lift Station: Final minor changes to the design and bid documents are underway. Advertisement for bid of the project is imminent.

Roadway

There are currently no active roadway projects funded by capital recovery fees.

GOAL

To accept the Semi-annual Reports on the revenue and expenditures relating to the water, wastewater, and roadway impact fees as filed by the City of Schertz Capital Improvements Advisory Committee (CIAC).

COMMUNITY BENEFIT

To ensure compliance with State Law and the City's Code of Ordinances and to ensure that impact fees are being collected and spent appropriately.

SUMMARY OF RECOMMENDED ACTION

Approval of Resolution 21-R-114 accepting the Semi-annual Report as filed by the Capital Improvements Advisory Committee.

FISCAL IMPACT

The report indicates the amounts collected and spent for water, wastewater, and roadway impact fees.

RECOMMENDATION

Staff recommends approval of Resolution 21-R-114 accepting the Semi-annual Report as filed by the Capital Improvements Advisory Committee.

Attachments

Resolution 21-R-114

Attachment A Semiannual

Attachment B Minutes for April

RESOLUTION NO. 21-R-114

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, ACCEPTING THE SEMIANNUAL REPORTS WITH RESPECT TO THE PROGRESS OF THE CAPITAL IMPROVEMENTS PLANS, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Capital Improvements Advisory Committee has reviewed the revenue and expenditures relating to the established Capital Recovery Fees in accordance with the Capital Improvements Plans for the City of Schertz; and

WHEREAS, the City Council accepts the Semiannual Reports as filed by the Capital Improvements Advisory Committee in accordance with Texas Local Government Code Chapter 395; then

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

Section 1. The City Council hereby accepts the Capital Recovery Balance Report with respect to the progress of the Capital Improvements Plan for the City of Schertz, Texas, for the period of October 1, 2020, through March 31, 2021, as shown in the attached Exhibit A and draft minutes of the April 28, 2021, City of Schertz Capital Improvements Advisory Committee as shown in the attached Exhibit B.

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 12th day of October, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A
AGREEMENT

Resolution 21-R-114 Attachment A

CITY OF SCHERTZ CAPITAL RECOVERY IMPACT FEE REPORT OCTOBER 1, 2020 TO MARCH 31, 2021

Oct 1, 2020 to Mar 31, 2021

	***** IMPACTS FEES *****		
	Water	Sewer	Total
Beginning Allocated Impact Fee Balance ¹	0.00	152,267.99	152,267.99
Net Change in Allocated Impact Fees	0.00	0.00	0.00
Ending Allocated Impact Fee Balance	0.00	152,267.99	152,267.99
Beginning Unallocated Impact Fee Balance	7,725,764.86	7,345,834.06	14,205,940.57
Revenues:			
Impact Fees	737,901.00	384,009.88	1,121,910.88
Transfer In	0.00	0.00	0.00
Interest Earned	140.80	104.03	244.83
Investments Income	6,076.37	3,009.73	9,086.10
Misc Income	0.00	0.00	0.00
Reimbursement	0.00	0.00	0.00
Expenses:			
Advertising	0.00	0.00	0.00
Engineering	0.00	0.00	0.00
Legal Svcs	0.00	0.00	0.00
Professional Services	34,414.11	38,354.83	72,768.94
CCMA-NorthCliffe Impact Fees	0.00	0.00	0.00
Auditor/Accounting Services	1,000.00	1,000.00	2,000.00
Investment Mgt Fee - Sewer	0.00	2,277.31	2,277.31
Transferred Out	0.00	0.00	0.00
Total Revenue Over/(Under) Expense	708,704.06	345,491.50	1,054,195.56
Ending Unallocated Impact Fee Balance	8,434,468.92	7,691,325.56	16,125,794.48
Estimated Cost of Unfunded Projects			
Corbett Ground Storage Tank	5,000,000.00		
Capital Impact Fee Study - Water	92,802.00		
Capital Impact Fee Study - Sewer		118,123.00	
Woman Hollering Trunk Line		9,000,000.00	
Cibolo West Trunk Line		6,000,000.00	
Total Unfunded Project Costs	5,092,802.00	15,118,123.00	20,210,925.00
Unfunded Projects to Ending Unallocated Impact Fee Balance ²	3,341,666.92	(7,426,797.44)	(4,085,130.52)

¹ Allocated Impact Fee Balances only include Capital Recovery funds and not funds from any other source. It also assumes Capital Recovery Funds are used first when allocated.

² Negative Unfunded Projects to Ending Impact Fee Balance to be funded by future revenues or through other sources

Capital Recovery Water Projects

Capital Improvements Program	SE Quad Pump Station	SE Quad GST	SE Quad Elevated Tank	SE Quad Distribution Mains	NE Quad Distribution Mains	IH10 Corridor Distribution Mains
Original Cost Estimate	\$ 1,688,289	\$ 1,100,000	\$ 1,250,000	\$ 1,700,000	\$ 1,600,000	\$ 1,000,000
Current Project Designation	Corbett Ground Storage Tank	Corbett Ground Storage Tank	Corbett Elevated Tank - RL1	Corbett Elevated & Ground Tanks		
Current Cost Estimate	\$	\$ 5,000,000	\$ 5,650,000			

Capital Recovery Funding/Allocation

2011						
2012						
2013			\$ 12,251.14			
2014			\$ 500.00			
2015			\$ 86,166.10			
2016			\$ 3,050,000.00			
2017						
2018						
2019			\$ 1,375,000.00			
2020						

Capital Recovery Funding Balance	\$ -	\$ -	\$ 4,523,917.24	\$ -	\$ -	\$ -
Other Funding Sources	\$ -	\$ -	\$ 1,022,245.46	\$ -	\$ -	\$ -
Total Project Funding Sources	\$ -	\$ -	\$ 5,546,162.70	\$ -	\$ -	\$ -

Project Annual Expenses

First Half 2012						
Second Half 2012						
First Half 2013						
Second Half 2013			\$ 12,251.14			
First Half 2014			\$ 6.77			
Second Half 2014			\$ 2,081.13			
First Half 2015			\$ 980.00			
Second Half 2015			\$ 120,233.32			
First Half 2016			\$ 87,843.28			
Second Half 2016			\$ 22,763.75			
First Half 2017			\$ -			
Second Half 2017			\$ 40,403.20			
First Half 2018			\$ 6,248.00			
Second Half 2018			\$ 7,485.13			
First Half 2019			\$ 50,510.63			
Second Half 2019			\$ 1,994,741.24			
First Half 2020			\$ 1,385,858.48			
Second Half 2020			\$ 1,161,122.42			
First Half 2021			\$ 172,980.16			
Second Half 2021						
Total Expenses	\$ -	\$ -	\$ 5,065,508.65	\$ -	\$ -	\$ -

Allocated Impact Project Fee Balance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Project Balance	\$ -	\$ -	\$ 480,654.05	\$ -	\$ -	\$ -
Project Status	Future	Future	Ongoing	Future	Future	Future

Capital Recovery Sewer Projects

Capital Improvements Program	Final South Sewershed Master Plan	Town Creek Phase III	Town Creek Phase IV	Woman Hollering Creek STP PH II	South Schertz Trunk Lines and Lift Station	South Schertz Trunk Lines and Lift Station
Original Cost Estimate	\$ 15,000	\$ 659,126	\$ 1,000,000	\$ 600,000	\$ 9,600,000	
Current Project Designation		Town Creek Phase III - QA3		Crossvines Batch Plant Expansion - QA4	Woman Hollering Trunk Line - QA2/Q01	Cibolo West Trunk Line
Current Cost Estimate	\$	\$ 931,740		\$ 487,848	\$ 12,000,000	\$ 6,000,000

Capital Recovery Funding/Allocation

2011						
2012						
2013						
2014						
2015						
2016						
2017						
2018				\$ 487,848.00		
2019				\$ -		
2020						

Capital Recovery Funding Balance	\$ -	\$ -	\$ -	\$ 487,848.00	\$ -	\$ -
Other Funding Sources		Bond 2007 \$ 931,739.74			Bond 2013 \$ 3,000,000.00	
Total Project Funding Sources	\$ -	\$ 931,739.74	\$ -	\$ 487,848.00	\$3,000,000.00	\$ -

Project Annual Expenses

First Half 2012						
Second Half 2012					\$ 82,262.17	
First Half 2013					\$ 49,861.30	
Second Half 2013	\$ 980.00				\$ 17,032.55	
First Half 2014	\$ 28,743.00				\$ 61,364.70	
Second Half 2014	\$ 46,690.62				\$ 34,775.84	
First Half 2015	\$ 5,858.72				\$ 5,382.50	
Second Half 2015	\$ 815,683.00				\$ 38,315.41	
First Half 2016	\$ 33,784.40				\$ 121,438.32	
Second Half 2016					\$ 83,983.26	
First Half 2017					\$ 6,220.00	
Second Half 2017					\$ 4,048.18	
First Half 2018					\$ 247,870.62	
Second Half 2018				\$ 68,609.20	\$ 212,479.83	
First Half 2019				\$ 225,595.33	\$ 56,860.59	
Second Half 2019				\$ 41,375.48	\$ 225,106.41	
First Half 2020				\$ -	\$ 98,737.52	
Second Half 2020				\$ -	\$ 135,710.99	
First Half 2021				\$ -	\$ -	
Second Half 2021				\$ -	\$ -	
Total Expenses	\$ -	\$ 931,739.74	\$ -	\$ 335,580.01	\$ 1,481,450.19	\$ -

Allocated Impact Project Fee Balance	\$ -	\$ -	\$ -	\$ 152,267.99	\$ -	\$ -
Project Balance	\$ -	\$ -	\$ -	\$ 152,267.99	\$ 1,518,549.81	\$ -
Project Status	Future	Complete	Future	On Going	On Going	Future

**CITY OF SCHERTZ
ROADWAY IMPACT FEE REPORT
OCTOBER 1, 2020 TO MARCH 31, 2021**

Oct 1, 2020 to Mar 31, 2021

	***** ROADWAY IMPACTS FEES *****				
	Area 1	Area 2	Area 3	Area 4	Total
Beginning Allocated Impact Fee Balance	0.00	0.00	0.00	0.00	0.00
Net Change in Allocated Impact Fees	0.00	0.00	0.00	0.00	0.00
Ending Allocated Impact Fee Balance	0.00	0.00	0.00	0.00	0.00
Beginning Unallocated Impact Fee Balance	337,871.92	145,852.37	447,634.43	6,269.45	937,628.17
Revenues:					
Impact Fees	139,332.08	90,918.55	377,661.20	0.00	607,911.83
Transfer In	0.00	0.00	0.00	0.00	0.00
Interest Earned	189.60	84.97	415.61	3.10	693.28
Investments Income	153.02	61.56	109.71	2.15	326.44
Misc Income	0.00	0.00	0.00	0.00	0.00
Reimbursement	0.00	0.00	0.00	0.00	0.00
Expenses:					
Advertising	0.00	0.00	0.00	0.00	0.00
Engineering	0.00	0.00	0.00	0.00	0.00
Legal Svcs	0.00	0.00	0.00	0.00	0.00
Development Incentive Fund	0.00	39,148.36	0.00	0.00	39,148.36
Professional Services	0.00	0.00	0.00	0.00	0.00
Auditor/Accounting Services	0.00	0.00	0.00	0.00	0.00
Transferred Out	0.00	0.00	0.00	0.00	0.00
Total Revenue Over/(Under) Expense	139,674.70	51,916.72	378,186.52	5.25	569,783.19
Ending Unallocated Impact Fee Balance	477,546.62	197,769.09	825,820.95	6,274.70	1,507,411.36

Resolution 21-R-114 Attachment B

CAPITAL IMPROVEMENTS ADVISORY COMMITTEE MINUTES April 28, 2021

The Schertz Capital Improvement Advisory Committee convened on April 28, 2021 at 6:00 p.m. at the Municipal Complex, Council Chambers, 1400 Schertz Parkway Building #4, Schertz, Texas.

Present: Glen Outlaw, Chairman; Ernie Evans, Vice Chairman; Richard Braud, Commissioner; Ricky Haynes, Commissioner; Ken Greenwald, Commissioner; Gordon Rae, Commissioner; Earl Platt, Commissioner; Jimmy Odom, Commissioner- Not Seated; Mark Penshorn, Member

Absent: Judy Goldick, Commissioner

City Staff: Brian James, Assistant City Manager
Charles Kelm, Assistant City Manager
Lesa Wood, Director of Planning & Community Development
Kathy Woodlee, Engineer
Suzanne Williams, Public Works Director
James Walters, Director of Finance
Emily Delgado, Senior Planner
Nick Koplyay, Planner
Megan Harrison, Planner
James May, Planner
Tiffany Danhof, Administrative Assistant

1. CALL TO ORDER / ROLL CALL THE CAPITAL IMPROVEMENT ADVISORY COMMITTEE MEETING

Chairman Mr. Outlaw called the meeting to order at 6:00 P.M.

2. SEAT ALTERNATE TO ACT IF REQUIRED

No one was seated.

3. HEARING OF RESIDENTS

Residents who choose to watch the meeting via live stream, but who would like to participate in the Hearing of Residents, should email their comments to the Planning Division, at planning@schertz.com by 5:00p.m. on Tuesday, April 27, 2021, so that the Planning Division may read the public comments into the record under the hearing of residents. In the body of the email please include your name, your address, phone number, agenda item number if applicable or subject of discussion, and your comments.

This time is set aside for any person who wishes to address the Capital Improvement Advisory Committee. Each person should fill out the Speaker's register prior to the meeting. Presentations should be limited to no more than three (3) minutes. Discussion by the Committee 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.

No one spoke.

4. PUBLIC HEARING:

- A.** Hold a public hearing, consider and file the semi-annual report evaluating the progress of the city on achieving the capital improvements program and identifying any problems in implementing the plans or administering the capital recovery fees.

Mrs. Woodlee provided a presentation on semi-annual report on the progress of city capital improvements program.

Mr. Outlaw opened the public hearing at 6:11 P.M.

No one spoke.

Mr. Outlaw closed the public hearing at 6:12 P.M.

There was a lengthy discussion between the Capital Improvement Advisory Committee, and City Staff include discussions on the following topics:

- Installment and future land use development
- Roadway impact fees
- Waste water specification
- Schertz-Seguin Local Government Corporation impacts
- Water Conservation

Motioned by Commissioner Ken Greenwald, seconded by Commissioner Earl Platt to approve semi-annual report

Vote: 8 - 0 Passed

**5. ADJOURNMENT OF THE CAPITAL IMPROVEMENT ADVISORY
COMMITTEE MEETING**

Chairman Mr. Outlaw adjourned the Capital Improvements Advisory Committee at 6:29 P.M.

Subject: Resolution No. 21-R-112 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing the City Manager to issue a purchase order(s) for the purchase of various Emergency Services Vehicles as part of the 2021-2022 Vehicle/Equipment replacement program. (C. Kelm/S. Williams/C. Hernandez)

Within each fiscal budget year, the Fleet Department requests to purchase vehicles/equipment to add to or replace aging vehicles to maintain a good working fleet of City owned vehicles/equipment. For the 2021/2022 budget year and in accordance with the Vehicle Replacement Plan previously approved by Council, below are the emergency vehicles to be purchased in FY 21-22.

The following vehicles/equipment will be purchased from various vendors via group purchasing cooperatives and/or sole source vendors. Each group purchasing cooperative contract was competitively bid by the awarding entity. In addition to that level of competition, City staff also obtained multiple contract quotes to ensure the overall best value for the City was obtained.

Previously, the City had an ambulance remount completed and invoiced at \$106,368.75. In an effort to account for current market price increases, market volatility, and unforeseen needs, the remounts of the ambulances have been budgeted at \$150,000 per remount.

1 EMS Supervisor Vehicle
2 EMS Ambulance Remounts
1 Fire Department Brush Truck
1 EMS New Ambulance

GOAL

To authorize the City Manager to execute the purchase orders for the purchase of the vehicles listed in the vehicle replacement program

Having a current and operational Fleet will provide all departments with the necessary vehicles and equipment to perform their assigned duties within the City of Schertz and reduce the maintenance cost of an aging fleet.

Approval of this resolution will allow the purchase of the vehicles listed in the approved vehicle replacement program.

The purchase of the vehicles and equipment will be funded through the city's general fund and emergency services funds. The fiscal impact of this project will be approximately \$749,000.00 with a contingency of 10% added for a total not to exceed \$823,900.00. These funds were approved in the FY 2021-2022 budget.

Staff recommends approval of Resolution No. 21-R-112.

Attachments

Resolution 21-R-112 Backup material
EMS Ambulance Letter of Intent
Resolution 21-R-112 EMS-Fire Vehicle Resolution

Siddons Martin Emergency Group, LLC
3500 Shelby Lane
Denton, TX 76207
GDN P115891
TXDOT MVD No. A115890



August 20, 2021

Kade Long, Fire Chief
SCHERTZ FIRE & RESCUE
1400 SCHERTZ PKWY BLDG 8
SCHERTZ, TX 78154

Proposal For: 2022 Schertz Skeeter

Siddons-Martin Emergency Group, LLC is pleased to provide the following proposal to SCHERTZ FIRE & RESCUE. Unit will comply with all specifications attached and made a part of this proposal. Total price includes delivery FOB SCHERTZ FIRE & RESCUE and training on operation and use of the apparatus.

Description	Amount	
Qty. 1 - 5698 - Skeeter Ford F 550 Type 5 Rescue Side - Non-Lifted		
(Unit Price - \$170,000.00)		
Delivery within 12-13 months of order date		
QUOTE # - SMEG-0002602-2		
	Vehicle Price	\$170,000.00
	5698 - UNIT TOTAL	\$170,000.00
	SUB TOTAL	\$170,000.00
	BuyBoard 570-18	\$800.00
	TOTAL	\$170,800.00

Price guaranteed for 60 days

Taxes: Tax is not included in this proposal. In the event that the purchasing organization is not exempt from sales tax or any other applicable taxes and/or the proposed apparatus does not qualify for exempt status, it is the duty of the purchasing organization to pay any and all taxes due. Balance of sale price is due upon acceptance of the apparatus at the factory.

Late Fee: A late fee of .033% of the sale price will be charged per day for overdue payments beginning ten (10) days after the payment is due for the first 30 days. The late fee increases to .044% per day until the payment is received. In the event a prepayment is received after the due date, the discount will be reduced by the same percentages above increasing the cost of the apparatus.

Cancellation: In the event this proposal is accepted and a purchase order is issued then cancelled or terminated by Customer before completion, Siddons-Martin Emergency Group may charge a cancellation fee. The following charge schedule based on costs incurred may be applied:

- (A) 10% of the Purchase Price after order is accepted and entered by Manufacturer;
- (B) 20% of the Purchase Price after completion of the approval drawings;
- (C) 30% of the Purchase Price upon any material requisition.

The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Siddons-Martin Emergency Group endeavors to mitigate any such costs through the sale of such product to another purchaser; however, the customer shall remain liable for the difference between the purchase price and, if applicable, the sale price obtained by Siddons-Martin Emergency Group upon sale of the product to another purchaser, plus any costs incurred by Siddons-Martin to conduct such sale.

Acceptance: In an effort to ensure the above stated terms and conditions are understood and adhered to, Siddons-Martin Emergency Group, LLC requires an authorized individual from the purchasing organization sign and date this proposal and include it with any purchase order. Upon signing of this proposal, the terms and conditions stated herein will be considered binding and accepted by the Customer. The terms and acceptance of this proposal will be governed by the laws of the state of Texas. No additional terms or conditions will be binding upon Siddons-Martin Emergency Group, LLC unless agreed to in writing and signed by a duly authorized officer of Siddons-Martin Emergency Group, LLC.

Sincerely,



Greg Tatsch

I, _____, the authorized representative of SCHERTZ FIRE & RESCUE, agree to purchase the proposed and agree to the terms of this proposal and the specifications attached hereto.

Signature & Date



Memorandum

MEMO TO: Purchasing & Asset Management
DATE: August 05, 2019
FROM: Fleet & Facility Services - Jon Harshman
SUBJECT: Sole/Single Source Justification for (brief acquisition description)

In accordance with the City of Schertz Purchasing Policies, unless justified and documented for business reasons, all City of Schertz procurements exceeding \$1,000 should be competed between two or more eligible suppliers. Separate, sequential, or component purchase requests to avoid this threshold is prohibited. Consequently, every contracting action for which competition does not occur must have a sole/single-source justification document in the contract file. This applies to all requests/requirements, not just "new" requirements. The fundamental issue is whether the procurement is competed or not. If not, a written document must be developed and filed in the contract file, which justifies or explains why it was not competed.

This procurement cannot reasonably be competed because:

(Check all applicable blocks and completely explain)

☒

1. Only one supplier (include the supplier name) produces or can produce this product or service. (Letter from vendor required).

☐

2. Urgency of need limits the capability to compete the requirement. (Please explain the urgency and negative impact if timeline is extended to compete this requirement).

☐

3. Standardization with existing products or services must be maintained. Use of any other type, brand, or service process would be incompatible or too costly to modify. (Explanation required).

☐

4. Continuity with current or existing processes or services is necessary. (Change to another supplier is not possible for the following reasons).

☐

5. Statutory or regulatory requirements limit competition for the following reasons:

☐

6. Other reasons why competition for this requirement must be limited: (explain in detail)

EXPLANATION:

Siddons-Martin Emergency Vendor # 9780 Only authorized vendor for Pierce fire trucks, ambulances and emergency equipment.

Signed: 

Position/Title: Jon Harshman, F&F Services Director

FOR PURCHASING USE ONLY

Approved: 

Date: August 9, 2019

Pierce Manufacturing Inc.

AN OSHKOSH CORPORATION COMPANY • ISO 9001 CERTIFIED

2600 AMERICAN DRIVE
POST OFFICE BOX 2017
APPLETON, WISCONSIN 54912-2017
920-832-3000
www.piercemfg.com



January 13, 2021

To whom it may concern:

Since 1917, Pierce Manufacturing Inc. ("Pierce") has provided the finest fire apparatus in the industry. The Oshkosh Airport products follows in those footsteps. The quality of our products and services are our number one priority. We demonstrate this through the personalized level of sales, service, and warranty our established dealer network provides throughout the country.

Siddons-Martin Emergency Group is the exclusive dealer for the sale, service, parts, and warranty of custom and commercial fire apparatus manufactured by Pierce in the states of Louisiana, New Mexico and Texas and recently acquired Utah and Nevada. They also are the exclusive dealer for the sale and service of Oshkosh Airport Products in the states of Texas, New Mexico, Louisiana, Oklahoma, Arizona, and southern Nevada. They are extremely qualified to provide you with the support you have come to expect from Pierce and Oshkosh family with several service & warranty facilities located throughout their territory.



Please consider this effective for the year January 1, 2021 thru December 31, 2021. Any additional questions can be directed to Siddons-Martin Emergency directly at toll free 800-784-6806.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristina Spang".

Kristina Spang
Vice President, Aftermarket Product and Support
Pierce Manufacturing Inc.
An Oshkosh Corporation Company * ISO Certified



PRODUCT PRICING SUMMARY

GOODBUY 20 8F000 VEHICLES

VENDOR--Silsbee Ford, 1211 Hwy 96 N., Silsbee TX 77656

End User: CITY OF SCHERTZ

Prepared by: GLEN ANGELLE

Contact: JERRY

Phone: 409-880-9191

Email:

Email: gangelles.cowboyfleet@gmail.com

Product Description: 2022 CHEVROLET TAHOE

Date: August 30, 2021

A. Bid Item: _____

A. Base Price: \$ 35,524.00

B. Factory Options

Code	Options	Bid Price	Code	Options	Bid Price
CK10706	2021 CHEVROLET TAHOE SSV 4X4	\$ 1,195.00		EXT. WHITE	
	5.3L V8			INT. BLACK	
	POWER WINDOWS/LOCKS				
	RUNNING BOARDS			CLOTH 40/20/40 FRONT	
	REAR VIEW CAMERA			BLACK RUBBERIZED VINYL FLOORS	
	BLUETOOTH			REAR PARKING ASSIST	
	REMOTE ENTRY PACKAGE	\$ 75.00		LAN KEEP ASSIST	
	FLASHER SYSTEM	\$ 50.00			
	1 FL SAFETY PACKAGE	\$ 395.00			

Total of B. Published Options: \$ 1,715.00

Published Option Discount (5%) \$ (26.00)

C. Additional Options [not to exceed 25%]

\$= 6.4 %

Options	Bid Price	Options	Bid Price
2022 PRICE ADJUSTMENT	\$ 995.00		
LEATHER SEATS	\$ 1,400.00		

Total of C. Unpublished Options: \$ 2,395.00

D. Floor Plan Interest (for in-stock and/or equipped vehicles):

\$ -

E. Lot Insurance (for in-stock and/or equipped vehicles):

\$ -

F. Contract Price Adjustment:

\$ -

G. Additional Delivery Charge: 283 miles

\$ 495.25

H. Subtotal:

\$ 40,103.25

I. Quantity Ordered 1 x K =

\$ 40,103.25

J. Trade in:

\$ -

K. GOODBUY Administrative Fee (\$300 per purchase order)


\$ 300.00

L. TOTAL PURCHASE PRICE INCLUDING GOODBUY FEE

\$ 40,403.25

CITY MANAGEMENT

Coordination Sheet

<u>FROM:</u>	Julie Gohlke - Purchasing			
<u>DATE:</u> Apr 07, 2021		NAME	INITIALS	DATE
	X	Mr. Charles Kelm Assistant City Manager	CK	7/1/21
		Mr. Brian James Assistant City Manager		
	X	Ms. Sarah Gonzalez Assistant to the City Manager	SG	4/7
	X	Dr. Mark Browne City Manager	B	4/7/21
<u>COMMENTS:</u>	<p style="text-align: center;">Letter of Intent to Sterling McCall Ford for the purchase of a Frazer Generated Powered Module on a 2022 Ford F450. This is not a purchase, but an intent to purchase that is contingent on an approved budget. Approved on resolution 20-R-29 on 4/6/21</p> <p style="text-align: center;">• no CAF requested. </p>			
<u>RETURN TO:</u>	Julie Gohlke - Purchasing			

April 7, 2021

Sterling McCall Ford
6445 Southwest Freeway
Houston, TX 77074

Re: Official Notice of Intent:

To Whom It May Concern:

This letter shall serve as Official Notice of Intent to purchase one (1) Frazer Type I 12'4" Generator Powered Module mounted on a 2022 Ford F-450 Diesel chassis for the City of Schertz EMS.

The total cost of the module including chassis is \$236,225.00 based on quote Q2414-1.

This LOI is contingent upon final approval of the FY 2022 budget by the City Council of Schertz, TX.

Respectfully,



Mark Browne

RESOLUTION NO. 20-R-29

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE CITY MANAGER TO SIGN A LETTER OF INTENT (LOI) WITH STERLING MCCALL FORD FOR THE PURCHASE OF ONE (1) NEW AMBULANCE FOR FISCAL YEAR 2021/2022 AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Schertz EMS Department has chosen Sterling McCall Ford and Frazer, a HGACBuy Purchasing Cooperative vendor, for the purchase of one (1) Ford Ambulance; and

WHEREAS, the total cost of one ambulance will be no more than \$250,000; and

WHEREAS, this purchase will be funded with budgeted operating costs from the FY22 approved budget.

WHEREAS, HGACBuy Purchasing Cooperative is a national online purchasing cooperative, developed to comply with state laws which require government entities to make purchases through a competitive procurement process; and

WHEREAS, HGACBuy Purchasing Cooperative gives public entities the advantage of leveraging the cooperative's ability to obtain bulk discounts, combined with the ease of online, web-based shopping and ordering; and

WHEREAS, purchases under the cooperative programs meet the requirements under the Texas Local Government Purchasing Code rule for cooperative purchases as adopted by the City of Schertz Resolution 11-R-41 on August 30, 2011 amending the City's purchasing policy; 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 sign a Letter of Intent (LOI) with Sterling McCall Ford attached in Exhibit A for one ambulance not to exceed \$250,000.

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.

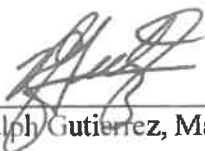
Section 5. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares 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 6th day of April 2021.

CITY OF SCHERTZ, TEXAS

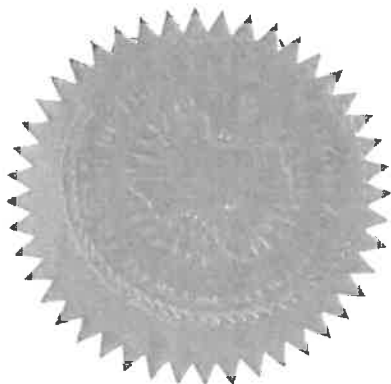


Ralph Gutierrez, Mayor

ATTEST:



Brenda Dennis, City Secretary



RESOLUTION NO. 21-R-112

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING EXPENDITURES IN AN AMOUNT NOT TO EXCEED \$823,900.00 FOR THE FY21-22 VEHICLE/EQUIPMENT REPLACEMENT PROGRAM

WHEREAS, Schertz EMS/Fire Department has a need to purchase vehicles and equipment as part of the Vehicle/Equipment Replacement Program; and

WHEREAS, City Staff has done due diligence in researching what vehicle best fits the needs of the department, to obtain the best pricing and to provide the best quality of vehicles; and

WHEREAS, the City of Schertz has chosen various Group Purchasing Cooperative Vendors, to purchase the vehicles; and

WHEREAS, purchases under the cooperative programs meet the requirements under Subchapter C, Chapter 791.025 of the Texas Government Code, which states that a local government that purchases goods and services under this section satisfies the requirement of the local government to seek competitive bids for the purchase of the goods and services; and

WHEREAS, the City Council has determined that it is in the best interest of the City to authorize the City Manager to issue Purchase Orders to the awarded vendors.

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

Section 1. The City Council hereby authorizes expenditures in a not to exceed amount of EIGHT HUNDRED TWENTY-THREE THOUSAND NINE-HUNDRED DOLLARS (\$823,900.00) for the vehicle/equipment replacement program.

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 12th day of October, 2021

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A

SUPPORTING DOCUMENTATION

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: Engineering
Subject: Resolution No. 21-R-108 - Consideration and/or action approving a Resolution by the City Council of the City of Schertz, Texas, authorizing a contract with Raba Kistner, Inc., for Construction Materials Observation and Testing Services related to the Woman Hollering Creek Wastewater Project. (B. James/K. Woodlee)

BACKGROUND

The Woman Hollering Creek Wastewater Trunk Main and Lift Station Project (WHC WW Project) is part of the City's effort to establish and expand public wastewater collection and conveyance service to the southern portion of Schertz. The project generally consists of 13,000 linear feet (lf) of 30-inch diameter gravity main, 1,500 lf of 18-inch gravity main, 6,000 lf of 14-inch force main, and a wastewater lift station with 16-foot diameter storage and wet wells. Once constructed, the project will provide the backbone to a future system that will serve approximately 4,461 acres and 6,450 dwelling units in an area known as the WHC sewershed. The project will convey wastewater to the newly constructed CCMA water reclamation plant on Trainer Hale Road.

Construction of the WHC WW Project is expected to cost \$11,100,000 and will take 12 to 15 months to be fully complete. To provide for the necessary quality control of construction, the services of a qualified materials testing consultant are needed. Raba Kistner has an existing master agreement to provide on call geotechnical services for the City that was established using the Request for Qualifications procurement process. This task order falls under the scope of the master agreement established and approved by council on resolution 20-R-79.

The costs associated with this task order will be approximately \$90,000. That amount will be covered under the total funding for construction and ancillary tasks associated with the WHC WW Project.

GOAL

The goal of the materials testing contract is to provide the necessary field quality control including observations, sampling, field testing and laboratory testing during installation of the Woman Hollering Creek Wastewater trunk main, lift station, and forcemain.

COMMUNITY BENEFIT

The community benefits from having properly constructed projects. Quality control activities work to ensure that materials and compaction of backfill comply with project specifications. The work that Raba Kistner will perform under this task order will provide that service.

SUMMARY OF RECOMMENDED ACTION

Staff recommends Council approve Resolution 21-R-108.

FISCAL IMPACT

Funding needed for the not to exceed amount of this agreement is \$90,000. That amount will be covered under the total funding for construction and ancillary tasks associated with the WHC WW Project. Total funding for the current construction effort comes from a combination of 2013 Bond Sales, Wastewater Capital Recovery Funds, and planned Future Bond Sales, and totals \$11,783,000.

RECOMMENDATION

Staff recommends Council approve Resolution 21-R-108.

Attachments

Resolution 21-R-108

Task Order Agreement

RESOLUTION NO. 21-R-108

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS, AUTHORIZING A CONTRACT WITH RABA KISTNER, INC., FOR CONSTRUCTION MATERIALS OBSERVATION AND TESTING SERVICES RELATED TO THE WOMAN HOLLERING CREEK WASTEWATER PROJECT, AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the City staff of the City of Schertz (the "City") has determined that the City requires construction materials testing services relating to the construction of the Woman Hollering Creek Wastewater Project; and

WHEREAS, City staff has determined that Raba Kistner, Inc., is an approved geotechnical testing firm with the City, and is qualified to provide such quality control services for the City; and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into an Agreement with Raba Kistner, Inc., for a base amount of \$79,980, pursuant to the task order and proposal attached hereto as Exhibit A ("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 Raba Kistner, Inc., in substantially the form set forth on Exhibit A and in accordance with the task order agreement for geotechnical engineering services in place between the City and Raba Kistner, for an amount of \$79,980 and authorize additional expenditures as needed up to an amount not to exceed \$90,000.

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 12th day of October, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)

EXHIBIT A
AGREEMENT

**SUGGESTED FORM OF
TASK ORDER**

This is Task Order No. <u> 2 </u> ,
--

Task Order

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated July 1, 2020 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: TBD
- b. Owner: The City of Schertz
- c. Engineer: Raba Kistner, Inc.
- d. Specific Project (title): Woman Hollering Creek Wastewater Trunk Main, Lift Station, and Force Main
- e. Specific Project (description): The project will consist of approximately 13,500 linear feet of 30-inch wastewater line installation for the base bid and the installation, 1,500 linear feet of 18-inch wastewater line, 6,000 linear feet of 14-inch force main, Lift Station installation and three additive alternates for Woman Hollering Creek Sanitary Sewer Project in Schertz, Texas

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

Construction Phase Services (Exhibit A, Paragraph A1.05)

- including Resident Project Representative (RPR) services (A1.05.A.2)
 - Add the service for Construction Materials Observation and Testing Services provided as Proposal PND21-022-00 Attachment I

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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 and American Society of Civil Engineers. All rights reserved.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Provide construction materials observation and testing services and accompanying reports, as per Proposal PND21-022-00	On a call-out basis.
Owner	Notice to Proceed	As Coordinated

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

We estimate a budget of \$79,980.00 to perform the construction materials testing and observations outlined in the Cost Estimate Breakdown portion of Proposal PND21-022-00 Attachment II.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

6. Attachments:

EXHIBIT A: Proposal Number PND21-022-00

7. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is to be determined.

OWNER:

By: _____

Print Name: _____

Title: _____

ENGINEER:

By: _____ 

Print Name: T. Ian Perez, P.E.

Title: Associate

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Title: _____

Address: _____

E-Mail
Address: _____

Phone: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Title: _____

Address: _____

E-Mail
Address: _____

Phone: _____

Task Order Form

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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and American Society of Civil Engineers. All rights reserved.

This is **EXHIBIT A**, consisting of 6 pages, referred to in
and part of the **Task Order** date to be determined

Engineer's Services for Task Order

Proposal No.: PND21-022-00 attached.

Ms. Kathryn J. Woodlee, PE, CFM
City of Schertz
10 Commercial Place, Building 2
Schertz, TX 78154

P 830.214.0544
F 830.214.0627
TBPE Firm F-3257

WWW.RKCI.COM

**RE: Construction Materials Observation and Testing Services
Woman Hollering Creek Wastewater Trunk Main, Lift Station, and Force Main
Schertz, Texas**

Dear Ms. Woodlee:

Thank you for selecting Raba Kistner, Inc. (RKI) as your Construction Materials Testing Company on the above referenced project.

Our opinion of probable cost of services for this project is **\$79,980.00.**

As part of our estimate, we assumed the following observations items which constitute a majority of the fee associated with the soils portion of our proposal:

- 15 weeks of 10-hour full time observations for the 30 in. wastewater line;
- 3 weeks of 10-hour full time observations for the 18 in. wastewater line; and
- 5 weeks of 10-hour full time observations for the 14 in. force main.

Our proposed scope of services and estimated item quantities are based upon our interpretation of the project plans and specifications, and are without the aid of the general contractor's schedule. The scope and quantity of services provided will be dependent upon services actually required by you or your representatives. Charges will be assessed only for actual services rendered. All services authorized are requested by you or your representatives in excess of the quantities of observation and testing services shown herein will be charged at the appropriate unit rate for such services. Charges will be invoiced on a monthly basis and will show a summary total of services rendered for each service category.

Invoices will be submitted monthly for work in progress in our standard format. All parties hereby agree that this contract upon acceptance will be performable in **Bexar** County, Texas.



We appreciate the opportunity of submitting this proposal and look forward to working with you in the development of this project, which will be carried out in accordance with this letter and the following attachments:

<u>Attachment</u>	<u>Description</u>
I	Fee Structure and Standard Charges
II	Fee Estimate Breakdown
III	Report Distribution List

Please return one signed copy of this letter contract to provide written authorization for our firm to complete work on the services outlined herein. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Very truly yours,

RABA KISTNER, INC.

Accepted By: _____
(Signature)



Ian Perez, P.E.
Associate

(Typed or Printed Name)

TIP/smb

(Title)

Attachments

(Date)

FEE STRUCTURE AND STANDARD CHARGES

Proposed Materials and Observation Services for
Woman Hollering Creek Wastewater Trunk Main, Lift Station, and Force Main
Schertz, Texas

Basic Charges

1. A vehicle travel charge will be assessed for round trip travel from our office to the project site, material supplier, etc. and back to our office. The charges for travel from our office to the project site and return to our office will be as follows:

Travel Time (Round Trip)	1.0 Hour
Vehicle Travel Charge	\$30.00 /Trip

2. Service charges are based on the hourly rates stated herein and will be assessed from the time the Engineer or Technician leaves our office until he returns from the project.
3. Any engineering and/or technical services provided on Saturday and all work in excess or “normal” work hours, as stated herein, Monday through Friday, will be charged at an overtime rate of 1.3 times the appropriate hourly rate. Our total cost of services is based upon the assumption most services will be provided during “normal” work hours. Providing an excessive amount of services during days and/or hours requiring overtime rates may significantly increase the total cost of services shown herein.
4. “Normal” work hours are between 8:00 a.m. and 5:00 p.m., including travel time to and from the site unless stated otherwise. Overtime charges will be assessed after eight (8) continuous hours of services rendered during “normal” work hours.
5. Minimum 2.0 hours billing per visit to project site.
6. Raba Kistner will utilize the on-site initial field curing facilities provided by the contractor. The cost of providing and maintaining these initial curing facilities is not included in our proposal.

COST ESTIMATE BREAKDOWN		PND21-022-00		Date: September 14, 2021	
Project Name:		Woman Hollering Creek WW Construction			
Project Location:		Schertz, TX 78154			
Contact Name:		Kathryn J. Woodlee, PE, CFM			
Client:		City of Schertz			
Address:		10 Commercial Place, Building 2			
City/State /Zip		Schertz, TX 78154			
Phone Number:		210-619-1823			
E-Mail:		kwoodlee@schertz.com			
TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	COST	
				EXTENSION	
SOILS					
Laboratory Testing					
Preparation Time	\$53.00	hr	4	\$212.00	
Moisture Density Relationship, TxDOT or ASTM	\$260.00	each	4	\$1,040.00	
Lime Series Curve	\$491.00	each	0	\$0.00	
Atterberg Limits	\$83.00	each	4	\$332.00	
Sieve Analysis	\$83.00	each	4	\$332.00	
Field Testing/Observation					
In-Place Nuclear Densities	\$26.00	trip	127	\$3,302.00	
Field Gradations	\$83.00		0	\$0.00	
Materials Technician	\$48.00	hour	949	\$45,552.00	
Materials Technician (overtime)	\$62.40	hour	230	\$14,352.00	
Vehicle Travel Charge	\$30.00	trip	127	\$3,810.00	
Subtotal				\$68,932.00	
REINFORCING STEEL OBSERVATIONS					
Field Observation/Testing					
Materials Technician	\$48.00	hour	20	\$960.00	
Vehicle Travel Charge	\$30.00	trip	8	\$240.00	
Subtotal				\$1,200.00	
CONCRETE					
Laboratory Testing					
Concrete Compressive Strength Cylinders	\$19.00	each	60	\$1,140.00	
Field Testing/Observation					
Materials Technician	\$48.00	hour	68	\$3,264.00	
Materials Technician (overtime)	\$62.40	hour	0	\$0.00	
Vehicle Travel Charge	\$30.00	trip	20	\$600.00	
Subtotal				\$5,004.00	
PIER OBSERVATIONS (Assumed a pier construction production rate of an average of about 6 piers/day)					
Laboratory Testing					
Concrete Compressive Strength Cylinders	\$19.00	each	5	\$95.00	
Field Testing/Observation					
Materials Technician	\$48.00	hour	10	\$480.00	
Materials Technician (overtime)	\$62.40	hour	0	\$0.00	
Geotechnical Engineer	\$179.00	hour		\$0.00	
Vehicle Travel Charge	\$30.00	trip	2	\$60.00	
Subtotal				\$635.00	
ASPHALT					
Laboratory Testing					
Bag Sample (Extraction, Gradation, A/C content, Molding Specimens, Laboratory Density of Molded Specimens, Stability Test, Hveem, Maximum Theoretical Specific Gravity)	\$437.00	each	1	\$437.00	
Density of Asphalt Cores	\$104.00	each	2	\$208.00	
Field Testing/Observation					
Materials Technician	\$48.00	hour	8	\$384.00	
Vehicle Travel Charge	\$30.00	trip	1	\$30.00	
Subtotal				\$1,059.00	
PROJECT ADMINISTRATION					
Project Coordinator	\$68.00	hour	20	\$1,360.00	
Project Engineer	\$179.00	hour	10	\$1,790.00	
Subtotal				\$3,150.00	
GRAND TOTAL				\$79,980.00	

REPORT DISTRIBUTION LIST

Project Name: _____

Client Project No.: _____ **Purchase Order No.:** _____

Invoicing Information: **Company Name:** _____

Address: _____

Attention: _____

Please provide required report distribution (hard copies can be provided upon request):

Contact: _____ **Company:** _____

Phone No.: _____ **Email:** _____

Contact: _____ **Company:** _____

Phone No.: _____ **Email:** _____

Contact: _____ **Company:** _____

Phone No.: _____ **Email:** _____

Contact: _____ **Company:** _____

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Contact: _____ **Company:** _____

Phone No.: _____ **Email:** _____

Contact: _____ **Company:** _____

Phone No.: _____ **Email:** _____

Contact: _____ **Company:** _____

Phone No.: _____ **Email:** _____

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021

Department: Public Works

Subject: Ordinance No. 21-T-46 - Consideration and/or action approving an Ordinance by the City Council of the City of Schertz, Texas, authorizing an adjustment to the fiscal year 2021-2022 budget to provide funding for an agreement with M&S Engineering for Design, Bid, and Construction Phase professional services for the Civic Center HVAC Replacement Project and authorizing the execution of the agreement, repealing all ordinances or parts of ordinances in conflict with this ordinance; and providing an effective date. *(First Reading)* (C. Kelm/S. Williams/S. McClelland)

BACKGROUND

The Schertz Civic Center has been providing outstanding rental space for the community since 2006. Recently, the HVAC system in the facility has begun to experience performance and reliability issues. In addition to having the City's on-staff HVAC Technician diagnose the ongoing issues, the City also entered into a task order with M&S Engineering (one of the City's on-call engineering firms) to do a full assessment of the facility's HVAC system and to make recommendations on how the City should move forward with resolving the deficiencies discovered.

The major factors found to be contributing to the performance and reliability issues within the system were the age of the system and excessive outdoor air within the system. The existing units in the facility are split systems which usually have an industry standard life expectancy of 15 years, which matches the current age of the units. While units can operate beyond their life expectancy, the units at the Civic Center use outdated refrigerant (R-22), which has been phased out by the industry making repairs and replacement parts hard to find and expensive. The original system relied on a demand controlled air damper system to balance the outdoor air being supplied to the units. This system was disabled several years ago by former staff and cannot be easily put back in to service. Without the demand controlled damper system active, the system is experiencing high amounts of outdoor air which exceeds the design parameters of the system. When weighing the deficiencies and age of the current HVAC system, M&S Engineering recommended that the current HVAC system be replaced with a new system. City Staff agrees with the recommendation provided by M&S Engineering.

The new system being proposed for the Civic Center is a system that is more conventional for a facility of this size. New package units will be installed on-grade on the exterior of the building. The variable air volume (VAV) units will be distributed to each zone within the facility by VAV terminal units. A large portion of the existing duct work will be able to remain in place allowing for less disruption within the facility during construction.

M&S Engineering has submitted a proposal for design, bid, and construction phase professional services for the Civic Center HVAC Replacement Project, which is detailed in Exhibit A. The proposal has a not-to-exceed value of \$85,000, but staff is requesting approval not-to-exceed \$93,500 to accommodate any small changes in scope that arise during the project. This ordinance allocates funds from the Hotel Occupancy Tax reserves in order to complete the professional services portion of the project.

GOAL

The goal of this ordinance is to amend the fiscal year 2021-2022 budget to provide funding for the design, bid, and construction phase services for the replacement of the HVAC system at the Civic Center by M&S Engineering and to authorize the execution of the agreement with M&S Engineering.

COMMUNITY BENEFIT

Replacing the existing HVAC system will allow the Civic Center to continue to provide high-end event rental space to the community.

SUMMARY OF RECOMMENDED ACTION

Staff recommends that the City Council approve Ordinance 21-T-46 on first reading authorizing the budget adjustment and authorizing the City Manager to enter into a task order agreement with M&S Engineering in an amount not to exceed \$93,500.00 for Design, Bid, and Construction Phase services for the Civic Center HVAC Replacement Project.

FISCAL IMPACT

Funding for the design and future construction of the project will be paid for using Hotel Occupancy Tax Funds which are permitted to be used on Capital Improvements at the Civic Center. As of September 30, 2021, the balance in the Hotel Occupancy Tax reserves is \$2,246,341.96. After the funding for the professional services contract the balance will be \$2,152,841.96.

RECOMMENDATION

Staff recommends that the City Council approve Ordinance 21-T-46 on first reading authorizing the budget adjustment and authorizing the City Manager to enter into a task order agreement with M&S Engineering in an amount not to exceed \$93,500.00 for Design, Bid, and Construction Phase services for the Civic Center HVAC Replacement Project.

Attachments

21-T-46

Exhibit A

ORDINANCE NO. 21-T-46

A ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN ADJUSTMENT TO THE FISCAL YEAR 2021-2022 BUDGET TO PROVIDE FUNDING FOR AN AGREEMENT WITH M&S ENGINEERING FOR DESIGN, BID, AND CONSTRUCTION PHASE PROFESSIONAL SERVICES FOR THE CIVIC CENTER HVAC REPLACEMENT PROJECT AND AUTHORIZING THE EXECUTION OF THE AGREEMENT, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance 21-T-38, the City Council of Schertz, Texas, (the “City”) adopted the budget for the City for the fiscal year 2021-2022 (the “Budget”), which provides funding for the City’s operations throughout the 2021-2022 fiscal year; and

WHEREAS, the City needs to authorize a budget amount of \$93,500 for the purpose of contracting professional services related to the Civic Center HVAC Replacement Project; and

WHEREAS, City Staff recommends that the City Council of the City adjust the Budget and approve the ordinance; and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City to adjust the Budget and approve the budget transfer for the Civic Center HVAC Replacement Project, as more fully set forth in this Ordinance; and

WHEREAS, the City has identified a need to replace the existing HVAC system at the Civic Center; and

WHEREAS, the replacement of the HVAC system requires an engineered design; and

WHEREAS, the City has Hotel Occupancy Tax Funds available to be used on Capital Projects at the Civic Center; and

WHEREAS, pursuant to Section 252.022(a)(4) of the Texas Local Government Code, the City is not required to seek bids or proposals with respect to a procurement for personal, professional, or planning purposes; and

WHEREAS, M&S Engineering is an approved On-Call Engineering Service for the City of Schertz ; and

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

Section 1. The City shall transfer a budget of \$93,500 from the Hotel Occupancy Tax Fund to the Civic Center HVAC Replacement Project.

Section 2. The City Council hereby authorizes a task order agreement with M&S Engineering, in a total project amount not to exceed \$93,500 for design, bid, and construction phase engineering services for the Civic Center HVAC Replacement Project.

Section 3. 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 4. 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 5. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. 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 7. 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 8. This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND ADOPTED, this 12th day of October, 2021.

CITY OF SCHERTZ, TEXAS

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary

(CITY SEAL)



☎ 0 (830) 629-2988 | F (830) 885-2170
📍 376 LANDA ST., NEW BRAUNFELS, TX 78130
🌐 WWW.MSENGR.COM
🔗 TXENG FIRM #F-1394 | TBPELS FIRM #10169800

September 21, 2021

The City of Schertz
Attn: Scott McClelland, PE
10 Commercial Place, Building 2
Schertz, TX 78154
Office: 210-619-1809
smcclelland@schertz.com

Reference: City of Schertz Civic Center – HVAC Replacement

Mr. McClelland,

Thank you for your interest in the capabilities of M&S Engineering (M&S) and allowing us the opportunity to work with you on this project. This proposal is based on our discussions with you and the following:

Project Description

1. The City of Schertz Civic Center is an existing 19,500 SF facility located at 1400 Schertz Pkwy, Schertz, TX 78154.
2. The building is currently served by split system air conditioning units that are having issues maintaining temperature and/or humidity in the spaces.
3. M&S previously provided an assessment and recommendations outlined in our report dated September 07, 2021 (M&S Project # 2521SCHER.001). Per our recommendations, the scope of the project will include replacement of the existing DX split systems with new packaged units and variable-air-volume (VAV) boxes.

Scope of Work

M&S Engineering will provide professional services to assist you with the engineering for the project as described above. Our proposal includes providing the following services in support of the engineering required for this project:

Construction Documents

1. Develop as-built CAD plans of the existing building suitable to satisfy the scope of this project.
2. Mechanical Design
 - a. Provide basic demolition drawings indicating the intent for removal of the existing HVAC System.
 - b. Show equipment and specify modifications to the existing systems.
 - c. Specify HVAC equipment given heating and cooling loads, anticipated building occupancy/activity, and maintenance.
 - d. Provide a mechanical floor plan showing locations of HVAC equipment and ductwork modifications.
 - e. Structural design for new equipment pads.
 - f. Select and specify HVAC controls to meet Owner and occupancy requirements.
 - g. Coordinate with Structural Engineer on mechanical system placement.



- h. Complete code compliance documentation (COM Check) for mechanical systems.
- 3. Electrical Design
 - a. Analyze and compare the new air conditioning system with the existing electrical infrastructure. Provide modifications to the systems as required to accommodate the installation of the new air conditioning system.
 - b. Provide one-line diagram and applicable panel schedules.
 - i. Conduit (number and size), number of spares, and wireway size.
 - ii. Size secondary feeder cables.
 - c. Provide electrical floor plans of power equipment connections.
- 4. Provide specifications sheet specifications:
 - a. Mechanical (Division 23)
 - b. Electrical (Division 26)

Subsurface Utility Engineering (SUE):

The following services shall be included to locate existing underground utilities and potential conflicts.

- 1. SUE within the limits of construction on the exterior of the building.
- 2. All work described herein is based strictly upon "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data (CI/ASCE 38-02)".
- 3. Sherwood Surveying & SUE shall apply SUE Quality Levels B, C, and D of the area that will have a new equipment platform installed as described in the structural section above to deliver an accurate depiction of as many of the existing underground utilities near the new equipment platform as can be designated within one day's field investigation.
 - a. Utility quality level B: Information obtained through the application of appropriate surface geophysical methods to determine the existence and approximate horizontal position of subsurface utilities. This information is surveyed to applicable tolerances defined by the project and reduced onto plan documents.
 - b. Utility quality level C: Information obtained by surveying and plotting visible above-ground utility features and by using professional judgment in correlating this information to quality level D information.
 - c. Utility quality level D: Information derived from existing records or oral recollections.
- 4. There are limitations for utilities such as water & sewer which consist of non-metallic pipe, and therefore might not be obtainable. For the sewer lines, we can use a steel fish tape to pick up where the line is going, but this will be limited to how far down the line we can get the tape. Thus, we cannot provide any guarantee for locating these utilities.

Project Management (M&S)

- 1. Communicate with the City staff, contractors, and third-party providers as necessary to ensure project goals and scope are understood.
- 2. Monitor the design process and overall project.
- 3. Attend meetings with City.
 - a. Attendance at two (2) City council meetings.
 - b. Four (4) in-person meetings are included and are intended to coincide with interim design reviews. However, these may be utilized for review, coordination, budgeting, or any other design purpose.
 - c. Any additional meetings shall be billed as additional services.
 - d. Teleconferences shall not be limited.



Deliverables

Provide one PDF set of preliminary construction drawings and specifications at 50% progress drawings and 90% construction drawings. A PDF set of the final sealed construction drawings and specifications will be submitted upon completion. Provide Revit or AutoCAD files once the design is complete.

Bidding and Construction Phase Support

1. Assist with jurisdictional reviews and other mitigation issues.
2. Attendance of the pre-bid, pre-construction meeting, and six (6) site observations/construction progress meetings throughout duration of the project.
3. Attendance at City council meeting for bid tabulation/recommendation of award.
4. Bidding
 - a. Assist City with developing request for qualifications (RFQ) to be issued.
 - b. Assist City in preparing advertisement for bidders.
 - c. Participate in procurement, bidding, and RFI process.
 - d. Assist City with evaluation respondents and provide recommendation to City.
5. Construction Support & Administration (in-office)
 - a. Engineer shall perform during the construction period in-office reviews of all material and equipment submittals; respond electronically to RFI's (Request for Information); and prepare and assist with ESI's (Engineering Supplemental Instructions) when necessary.
 - b. Review construction related activities, including pay applications.
6. Construction Support & Administration (on-site)
 - a. Engineer shall perform during the construction period site visits (as previously stated) at the written request of the City whereby Engineer will assess construction progress and performance as compared to the requirements in the construction documents.
 - b. Observations shall be documented in a written Field Report and submitted to the City.
 - c. Visit the construction site at intervals appropriate to the stage of construction to: become generally familiar with and keep the City generally informed about the progress and quality of the portion of the construction completed; make a reasonable effort to identify defects and deficiencies in the construction; determine generally whether the construction is being performed in a manner indicating that the project, when fully completed, will be in accordance with the Plans and Specifications.
 - d. Notify the client in writing of any substantial deviation from the plans and specifications that may prevent the building from being occupied or utilized for its intended use.
 - e. Pre-Construction meeting, substantial completion punch list, final inspections, code-required inspections, meetings, or any visit to the project site by Engineer shall be considered a construction site visit.

Assumptions

Our proposal is based on the following:

1. As-Built drawings (if available) will be provided by the City.
2. All M&S deliverable drawings and specifications will be provided in PDF format.
3. Free access to the site will be provided to M&S Staff.
4. Owner to handle IT requirements beyond dry utility infrastructure.
5. Geotechnical engineering report has been provided by the City.
6. Value engineering after delivery of final plans is not included.



Pricing

M&S Engineering will provide the scope of work as described for the Not-to-Exceed amount of \$85,000 - without prior written authorization from the City. Project to be invoiced hourly per attached M&S billing rates.

Terms of payment are net 30 days from date of invoice for services completed within a 30-day period.

Exclusions

1. M&S Engineering's proposal is exclusive of any federal, county, and city permits required for the project. All submittals of plans for building permits and payment of permits shall be done by others.
2. Engineering activities will be performed from our facilities in New Braunfels, TX. Local presence through the duration of this project will not be required.
3. Construction support and administration does not include Special Inspections, if required.
4. Though the following services could be provided at an additional cost, it is our understanding that the following engineering services would not be provided as part of this base proposal:
 - a. Design services due to a change in scope of Basic Services.
 - b. Design services due to Change Orders requested by the Client during construction.
 - c. Economic analyses, including life cycle cost.
 - d. Design of fire alarm or fire sprinkler systems.
 - e. Engineering studies of alternative systems and equipment locations.
 - f. Value engineering design services after approval of the 50% Preliminary Construction Documents.
 - g. Engineering studies and designs to comply with LEED certifications.
5. Any service not specifically listed in the above scope of work is excluded from this proposal.

Our proposal is based upon work being performed per attached M&S Standard Terms and Conditions. Terms of payment are net 30 days from date of invoice for services completed within a 30-day period. We truly appreciate the opportunity to support you in this project. If there is anything that you would like to discuss about this proposal, please do not hesitate to contact us. Should you find this proposal and terms acceptable, please indicate so by signing and dating this document below.

Sincerely,

(Trey) Thurl D Sims III, PE
MEP Division Manager

Approved:

Date:

Print:

Title:



Terms of Sale

The following terms of sale shall apply except as otherwise stated in written quotations or by written acceptance of an order or contract.

PRICE POLICY – Quotations are valid for 30 days from date of quotation unless otherwise notes. Prices quoted are firm for all services performed within 90 days after the date of quotation. Services performed later than 90 days from the date of quotation or later than the dates established in the quotation will be invoiced at prices in effect at time of performance.

TERMS OF PAYMENT – Terms of payment are net 30 days from date of invoice for services completed within a 30 day period. If payment is not received within 30 days, your project will be placed on hold and a charge of 1.5% per month will be added to the account until such time the account is made current. Reimbursable costs including, but not limited to, plotting, faxes, travel, or other reasonable expenses shall be billed at cost plus 15%.

TERMINATION – Any order or contract may be terminated or delayed by the Purchaser only upon payment of reasonable charges based upon expenses already incurred and commitments made by M&S Engineering. If Purchaser defaults in the performance of any payment obligation under this contract and fails to correct such default within seven (7) days following receipt of written notice thereof from M&S Engineering, LLC. M&S Engineering may, without prejudice to any other rights or remedies it may have, upon twenty-four (24) hour notice to Purchaser, cease performance of the contract and suspend its Work thereunder until such failure to pay is cured. In addition, in the event of Purchaser's and/or Owner's (a) bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors, or (b) evidencing financial or organizational instability, M&S Engineering may, upon twenty-four (24) hour notice to Purchaser, cease performance of the Subcontract and suspend its Work thereunder until M&S Engineering, LLC receives reasonable assurance that its right to payment hereunder shall not be adversely impacted thereby.

INDEMNIFICATION AND LIMITATION OF LIABILITIES – Purchaser shall indemnify and hold harmless M&S Engineering, LLC, its owners, officers, employees, affiliated companies, parents, agents and representatives ("M&S Engineering, LLC Indemnitees") against any and all liabilities, claims, judgments, losses, orders, awards, damages, costs, fines, penalties, costs of defense, and reasonable attorney's fees ("Liabilities") to the extent they arise from or in connection with the willful misconduct or negligence of the Purchaser, its officers, employees, agents and/or representatives. Purchaser shall not be required hereunder to indemnify M&S Engineering, LLC Indemnitees to the extent of their negligence, act or omission, nor that of their invitees, workmen, subcontractors and/or suppliers or any of them. M&S Engineering, LLC shall not indemnify Purchaser, Owner, or any other party to the extent of such party's negligence, act or omission, nor that of their respective parents, affiliates, subsidiaries, agents, their officers, directors, shareholders, employees, agents, invitees, workmen, subcontractors and/or suppliers, (except for M&S Engineering, LLC's and its subcontractors and suppliers) or any of them. Except as expressly provided for herein, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS OR LOSS OF PROFIT; provided, however, there shall be no limitation on a party's liability to the other for any fines or penalties imposed on the other party by any court of competent jurisdiction or federal, state or local administrative agency resulting from the failure of the party to comply with any term or condition of this Contract or any valid and applicable law, rule or regulation; provided further, and notwithstanding anything to the contrary contained in this agreement, M&S Engineering, LLC's total liability with respect to any and all claims, losses or damages shall not exceed the value of the services performed under the terms of this agreement.



2019 Engineering Rate Schedule

The following rate schedule is in effect for the 2019 calendar year and will be reviewed annually for appropriate changes as may be required.

Labor Classification	Base Rate
Technician I	\$ 60.00
Technician II	\$ 65.00
Technician III	\$ 70.00
Technician IV	\$ 75.00
Project Technician I	\$ 80.00
Project Technician II	\$ 85.00
Project Technician III	\$ 90.00
Project Technician IV	\$ 95.00
Project Technician V	\$ 100.00
Senior Technician I	\$ 105.00
Senior Technician II	\$ 110.00
Senior Technician III	\$ 115.00
Senior Technician IV	\$ 120.00
Project Manager I	\$ 150.00
Project Manager II	\$ 160.00
Project Manager III	\$ 170.00
Project Manager IV	\$ 180.00
Project Engineer I	\$ 135.00
Project Engineer II	\$ 145.00
Project Engineer III	\$ 150.00
Project Engineer IV	\$ 155.00
Project Engineer V	\$ 160.00
Administrative I	\$ 65.00
Administrative II	\$ 75.00
Administrative III	\$ 80.00

Labor Classification	Base Rate
Technical Specialist I	\$ 125.00
Technical Specialist II	\$ 135.00
Technical Specialist III	\$ 145.00
Technical Specialist IV	\$ 155.00
Graduate Engineer/SIT I	\$ 100.00
Graduate Engineer/SIT II	\$ 110.00
Graduate Engineer/SIT III	\$ 120.00
Graduate Engineer/SIT IV	\$ 130.00
CAD Operator I	\$ 70.00
CAD Operator II	\$ 75.00
Senior CAD Operator I	\$ 80.00
Senior CAD Operator II	\$ 85.00
Senior Engineer I/RPLS I	\$ 165.00
Senior Engineer II/RPLS II	\$ 170.00
Senior Engineer III/RPLS III	\$ 175.00
Senior Engineer IV/RPLS IV	\$ 180.00
Principal Engineer I	\$ 190.00
Principal Engineer II	\$ 200.00
Principal Engineer III	\$ 210.00
1 Man Survey Crew	\$ 110.00
2 Man Survey Crew	\$ 155.00
3 Man Survey Crew	\$ 175.00
Software Level I ¹	\$ 10.00
Software Level II ²	\$ 20.00

¹ Includes AutoCAD, MicroStation, L-Pile, SAG10 and other common licensed software packages

² Includes PLS-CADD, Bentley Systems, e-tap and other premium licensed software packages

³ Rates are inclusive of all surveying equipment, including stakes, marking paints, and other consumable items required. Special request items such as T-posts, 36" Laths, concrete monuments, etc. will be billed on a cost plus 15% basis.

⁴ Overtime Rates shall be 1.35 times the base rate.



2019 Reimbursable & Miscellaneous Pricing

The following reimbursable schedule is in effect for the 2019 calendar year and will be reviewed annually for appropriate changes as may be required.

Deliverable/Printing Pricing Schedule

DESCRIPTION	COST
Small job books (1" to 1 1/2" binder)	\$25.00
Medium job books (2" to 2 1/2" binder)	\$45.00
Large job books (3" and above binder)	\$65.00
Plots - "C" size (18x 24) Black & White	\$1.50
Plots - "C" size (18x 24) Color	\$2.50
Plots - "D" size (22X34) Black & White	\$2.50
Plots - "D" size (22X34) Color	\$3.50

*Any additional reimbursable items shall be billed at cost plus 15%.

- Shipping
 - All shipping of drawings, job books, and other deliverables will be invoiced based on actual cost plus 15%.

Additional Equipment

For site specific requirements that do not allow for access via 4x4 trucks, M&S will provide use of various all-terrain vehicles to facilitate field work. Reimbursement for usage of such equipment will be billed at the following rates:

Equipment	Rate
4 Wheeler	\$100/day
Utility Vehicle (Mule)	\$150/day

Travel Reimbursement Rates

- Hotel charges for overnight accommodations will be invoiced based upon actual cost plus 15%.
- Meals for traveling personnel will be invoiced based upon actual cost plus 15%.
- Air Travel
 - Air travel will be invoiced based on actual cost plus 15%.
 - Approval
 - Air travel costs in excess of \$500 per individual will require prior approval by client personnel requesting travel.
 - Air travel less than \$500 per individual will be considered pre-approved by client personnel requesting travel.
- Rental Car
 - Auto rentals (including fuel) will be invoiced based upon actual cost plus 15%.
- Mileage
 - Vehicle mileage will be invoiced based upon current IRS standard rates (plus \$0.05 per mile for 4x4 vehicles)

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: Finance
Subject: Ordinance No. 21-B-45 - Consideration and approval of an Ordinance by the City Council of the City of Schertz, Texas authorizing the issuance of “City of Schertz, Texas General Obligation and Refunding Bonds, Series 2021”, levying an annual ad valorem tax, within the limitations prescribed by law, for the payment of the bonds; and other matters incident and related thereto, and providing an effective date. *(First and final reading)* (M. Browne/J. Walters/M. McLiney)

BACKGROUND

The City has two outstanding Bonds (\$4,435,000 of the GO Bond Series 2012 and \$2,120,000 CO’s Series 2013) that will become callable on February 1, 2022. As in the past, when the City has callable bonds that can be refunded for interest rate savings, the City has replaced the bonds with higher interest rates with lower interest rate bonds. In this instance we expect the savings will be approximately \$475,000. Savings generated from the refunding will benefit both the I&S Fund and the Utility Fund since the GO Bonds, Series 2012 are paid from Taxes and the CO’s Series 2013 are paid from the Utility System.

GOAL

To refinance existing city debt to gain annual interest savings.

COMMUNITY BENEFIT

The lower the annual debt payments are, the lower the required tax rate or the higher bonding capacity available for new projects and maintenance.

SUMMARY OF RECOMMENDED ACTION

Staff recommends authorizing City Staff and Consultants to accept the low bid as presented and lock in interest rates that generate the savings as described by SAMCO Capital in their presentation to be made at the October 12, 2021 regular meeting of the City Council.

FISCAL IMPACT

The City can expect to save roughly \$47,000 per year (net of all costs) for 11 years at today’s interest rates. Total Savings are estimated in excess of \$475,000.

RECOMMENDATION

Staff recommends approval of Ordinance 21-B-45 on first and final reading with the following motion:

I MOVE TO ADOPT AN ORDINANCE AUTHORIZING THE ISSUANCE OF "CITY OF SCHERTZ, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021"

ORDINANCE NO.

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING THE ISSUANCE OF “CITY OF SCHERTZ, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021”; LEVYING AN ANNUAL AD VALOREM TAX, WITHIN THE LIMITATIONS PRESCRIBED BY LAW, FOR THE PAYMENT OF THE BONDS; PRESCRIBING THE FORM, TERMS, CONDITIONS, AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, AND DELIVERY OF THE BONDS, INCLUDING THE APPROVAL AND DISTRIBUTION OF AN OFFICIAL STATEMENT PERTAINING THERETO; AUTHORIZING THE EXECUTION OF A PAYING AGENT/REGISTRAR AGREEMENT, AN OFFICIAL BID FORM, AND AN ESCROW DEPOSIT LETTER; COMPLYING WITH THE LETTER OF REPRESENTATIONS ON FILE WITH THE DEPOSITORY TRUST COMPANY; AUTHORIZING THE EXECUTION OF ANY NECESSARY ENGAGEMENT AGREEMENT WITH THE CITY’S FINANCIAL ADVISORS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council (the *City Council*) of the City of Schertz, Texas (the *City*) has heretofore issued, sold, and delivered, and there are currently outstanding obligations in the aggregate original principal amount of \$6,465,000, being the obligations set forth on Schedule I hereto which is incorporated by reference for all purposes to this ordinance (the *Refunded Obligations*); and

WHEREAS, the City Council intends to issue an aggregate principal amount of \$_____ in general obligation refunding bonds the proceeds of which will be utilized to provide for the (i) discharge and final payment of the Refunded Obligations and (ii) payment of the costs of issuance of the general obligation refunding bonds; and

WHEREAS, pursuant to the provisions of Chapter 1207, as amended, Texas Government Code (the *Act*), the City Council is authorized to issue refunding bonds and deposit the proceeds of sale under an escrow agreement to provide for the payment of the Refunded Obligations, and such deposit, when made in accordance with the Act, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations; and

WHEREAS, the Act permits that the deposit of the proceeds from the sale of the refunding bonds be deposited directly with any designated escrow agent which is not the depository bank of the City; and

WHEREAS, when firm banking arrangements have been made for the payment of principal of and interest to the stated maturity or redemption dates of the Refunded Obligations, then the Refunded Obligations shall no longer be regarded as outstanding except for the purpose of receiving payment from the funds provided for such purpose and may not be included in or

considered to be an indebtedness of the City for the purpose of a limitation on outstanding indebtedness or taxation or for any other purpose; and

WHEREAS, BOKF, NA, Dallas, Texas, currently serves as the paying agent for the Refunded Obligations; and

WHEREAS, UMB Bank, N.A., Austin, Texas, which is not a depository bank of the City, is hereby appointed as the Escrow Agent (hereinafter defined) and Paying Agent/Registrar (hereinafter defined) for the general obligation refunding bonds; and

WHEREAS, the City Council also hereby finds and determines that the Refunded Obligations are scheduled to mature or are subject to being redeemed, not more than twenty (20) years from the date of the general obligation refunding bonds herein authorized and being issued to realize debt service savings, and such refunding will result in a net present value savings of \$ _____ and a gross savings of \$ _____, taking into account the City's cash contribution of \$ _____; and

WHEREAS, the City Council hereby finds and determines that the issuance of the general obligation refunding bonds for the purpose of refunding the Refunded Obligations is in the best interests of the residents of the City, now, therefore,

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

SECTION 1. Authorization - Designation - Principal Amount - Purpose. General obligation refunding bonds of the City shall be and are hereby authorized to be issued in the aggregate principal amount _____ AND NO/100 DOLLARS (\$ _____), to be designated and bear the title of "CITY OF SCHERTZ, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021" (the *Bonds*), for the purpose of providing funds for the (i) discharge and final payment of the Refunded Obligations and (ii) payment of the costs of issuance of the Bonds, all in conformity with the laws of the State of Texas, particularly Chapter 1207, as amended, Texas Government Code, this ordinance adopted by the City Council on October 12, 2021, and the City's Home Rule Charter.

SECTION 2. Fully Registered Obligations - Authorized Denominations - Stated Maturities - Interest Rates - Dated Date. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated November 1, 2021 (the *Dated Date*), and shall be in denominations of \$5,000 or any integral multiple thereof, and the Bonds shall be lettered "R" and numbered consecutively from One (1) upward, and principal shall become due and payable on February 1 in each of the years and in principal amounts (the *Stated Maturities*) and bear interest on the unpaid principal amounts from the Dated Date (hereinafter defined) or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, to Stated Maturity, at the per annum rates, while Outstanding (hereinafter defined), in accordance with the following schedule:

<u>Years of Stated Maturity</u>	<u>Principal Amounts (\$)</u>	<u>Interest Rates (%)</u>
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		
2033		

The Bonds shall bear interest on the unpaid principal amounts from the Dated Date, or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for to Stated Maturity or prior redemption, while Outstanding, at the rates per annum shown in the above schedule (calculated on the basis of a 360-day year of twelve 30-day months). Interest on the Bonds shall be payable on February 1 and August 1 (each, an *Interest Payment Date*) of each year, commencing August 1, 2022, while the Bonds are Outstanding.

SECTION 3. Payment of Bonds - Paying Agent/Registrar.

The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and such payment of principal of, premium, if any, and interest on the Bonds shall be without exchange or collection charges to the Holder (as hereinafter defined) of the Bonds.

The selection and appointment of UMB Bank, N.A., Austin, Texas (the *Paying Agent/Registrar*), to serve as the initial Paying Agent/Registrar for the Bonds is hereby approved and confirmed, and the City agrees and covenants to cause to be kept and maintained at the corporate trust office of the Paying Agent/Registrar books and records (the *Security Register*) for the registration, payment, and transfer of the Bonds, all as provided herein, in accordance with the terms and provisions of a Paying Agent/Registrar Agreement, attached, in substantially final form, as Exhibit A hereto, and such reasonable rules and regulations as the Paying Agent/Registrar and the City may prescribe. The City covenants to maintain and provide a Paying Agent/Registrar at all times while the Bonds are Outstanding, and any successor Paying Agent/Registrar shall be (i) a national or state banking institution or (ii) an association or a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers. Such Paying Agent/Registrar shall be subject to supervision or examination by federal or state authority and authorized by law to serve as a Paying Agent/Registrar.

The City reserves the right to appoint a successor Paying Agent/Registrar upon providing the previous Paying Agent/Registrar with a certified copy of a resolution or ordinance terminating such agency. Additionally, the City agrees to promptly cause a written notice of this substitution to be sent to each Holder of the Bonds by United States mail, first-class postage prepaid, which notice shall also give the address of the corporate office of the successor Paying Agent/Registrar.

Principal of, premium, if any, and interest on the Bonds, due and payable by reason of Stated Maturity, redemption, or otherwise, shall be payable only to the registered owner of the Bonds appearing on the Security Register (the *Holder* or *Holders*) maintained on behalf of the City by the Paying Agent/Registrar as hereinafter provided (i) on the Record Date (hereinafter defined) for purposes of payment of interest on the Bonds, (ii) on the date of surrender of the Bonds for purposes of receiving payment of principal thereof upon redemption of the Bonds or at the Bonds' Stated Maturity, and (iii) on any other date for any other purpose. The City and the Paying Agent/Registrar, and any agent of either, shall treat the Holder as the owner of a Bond for purposes of receiving payment and all other purposes whatsoever, and neither the City nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary.

Principal of and premium, if any, on the Bonds shall be payable only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its corporate trust office. Interest on the Bonds shall be paid to the Holder whose name appears in the Security Register at the close of business on the fifteenth day of the month next preceding an Interest Payment Date for the Bonds (the *Record Date*) and shall be paid (i) by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, by the Paying Agent/Registrar, to the address of the Holder appearing in the Security Register or (ii) by such other method, acceptable to the Paying Agent/Registrar, requested in writing by the Holder at the Holder's risk and expense.

If the date for the payment of the principal of, premium, if any, or interest on the Bonds shall be a Saturday, a Sunday, a legal holiday, or a day on which banking institutions in the city where the corporate trust office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a day. The payment on such date shall have the same force and effect as if made on the original date any such payment on the Bonds was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a *Special Record Date*) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder of a Bond appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

SECTION 4. Redemption.

A. Mandatory Redemption of Bonds. The Bonds stated to mature on February 1, 20__ are referred to herein as the "Term Bonds". The Term Bonds are subject to mandatory sinking

fund redemption prior to their stated maturities from money required to be deposited in the Bond Fund for such purpose and shall be redeemed in part, by lot or other customary method, at the principal amount thereof plus accrued interest to the date of redemption in the following principal amounts on February 1 in each of the years as set forth below:

Term Bonds
Stated to Mature
February 1, 20__

<u>Year</u>	<u>Principal Amount (\$)</u>
20__	
20__	
20__	
20__*	

*Payable at Stated Maturity.

The principal amount of a Term Bond required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the Issuer, by the principal amount of any Term Bonds of such Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date (1) shall have been defeased or acquired by the Issuer and delivered to the Paying Agent/Registrar for cancellation, or (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the Issuer with money in the Bond Fund.

B. Optional Redemption of Bonds. The Bonds having Stated Maturities on and after February 1, 20__ shall be subject to redemption prior to Stated Maturity, at the option of the Issuer, on February 1, 20__, or on any date thereafter, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par plus accrued interest to the date of redemption.

C. Exercise of Redemption Option. At least forty-five (45) days prior to a date set for the redemption of the Bonds (unless a shorter notification period shall be satisfactory to the Paying Agent/Registrar), the Issuer shall notify the Paying Agent/Registrar of its decision to exercise the right to redeem the Bonds, the principal amount of each Stated Maturity to be redeemed, and the date set for the redemption thereof. The decision of the Issuer to exercise the right to redeem the Bonds shall be entered in the minutes of the governing body of the Issuer.

D. Selection of Bonds for Redemption. If less than all Outstanding Bonds of the same Stated Maturity are to be redeemed on a redemption date, the Paying Agent/Registrar shall select at random and by lot the Bonds to be redeemed, provided that if less than the entire principal amount of a Bond is to be redeemed, the Paying Agent/Registrar shall treat such Bond then subject to redemption as representing the number of Bonds Outstanding which is obtained by dividing the principal amount of such Bond by \$5,000.

E. Notice of Redemption. Not less than thirty (30) days prior to a redemption date for the Bonds, the Paying Agent/Registrar shall cause a notice of redemption to be sent by United

States mail, first-class postage prepaid, in the name of the Issuer and at the Issuer's expense, by the Paying Agent/Registrar to each Holder of a Bond to be redeemed in whole or in part at the address of the Holder appearing on the Security Register at the close of business on the business day next preceding the date of mailing such notice, and any notice of redemption so mailed shall be conclusively presumed to have been duly given irrespective of whether received by the Holder. This notice may also be published once in a financial publication, journal, or reporter of general circulation among securities dealers in the City of New York, New York (including, but not limited to, *The Bond Buyer* and *The Wall Street Journal*), or in the State of Texas (including, but not limited to, *The Texas Bond Reporter*).

All notices of redemption shall (i) specify the date of redemption for the Bonds, (ii) identify the Bonds to be redeemed and, in the case of a portion of the principal amount to be redeemed, the principal amount thereof to be redeemed, (iii) state the redemption price, (iv) state that the Bonds, or the portion of the principal amount thereof to be redeemed, shall become due and payable on the redemption date specified, and the interest thereon, or on the portion of the principal amount thereof to be redeemed, shall cease to accrue from and after the redemption date, and (v) specify that payment of the redemption price for the Bonds, or the principal amount thereof to be redeemed, shall be made at the corporate trust office of the Paying Agent/Registrar only upon presentation and surrender thereof by the Holder.

If a Bond is subject by its terms to redemption and has been called for redemption and notice of redemption thereof has been duly given or waived as herein provided, such Bond (or the principal amount thereof to be redeemed) so called for redemption shall become due and payable, and if money sufficient for the payment of such Bonds (or of the principal amount thereof to be redeemed) at the then applicable redemption price is held for the purpose of such payment by the Paying Agent/Registrar, then on the redemption date designated in such notice, interest on the Bonds (or the principal amount thereof to be redeemed) called for redemption shall cease to accrue, and such Bonds shall not be deemed to be Outstanding in accordance with the provisions of this Ordinance.

F. Transfer/Exchange of Bonds. Neither the Issuer nor the Paying Agent/Registrar shall be required (1) to transfer or exchange any Bond during a period beginning forty-five (45) days prior to the date fixed for redemption of the Bonds or (2) to transfer or exchange any Bond selected for redemption, provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond which is subject to redemption in part.

SECTION 5. Execution - Registration. The Bonds shall be executed on behalf of the City by its Mayor or Mayor Pro Tem under the seal of the City reproduced or impressed thereon and attested by its City Secretary. The signature of any of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who were, at the time of the Dated Date, the proper officers of the City shall bind the City, notwithstanding that such individuals or either of them shall cease to hold such offices prior to the delivery of the Bonds to the Purchasers (hereinafter defined), all as authorized and provided in Chapter 1201, as amended, Texas Government Code.

No Bond shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 8C, executed by the Comptroller of Public Accounts of the State of Texas or his duly authorized agent by manual signature, or a certificate of registration substantially in the form provided in Section 8D, executed by the Paying Agent/Registrar by manual signature, and either such certificate upon any Bond shall be conclusive evidence, and the only evidence, that such Bond has been duly certified or registered and delivered.

SECTION 6. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. A Security Register relating to the registration, payment, transfer, or exchange of the Bonds shall at all times be kept and maintained by the City at the corporate trust office of the Paying Agent/Registrar, and the Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of every owner of the Bonds, or, if appropriate, the nominee thereof. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of any Bond at the corporate trust office of the Paying Agent/Registrar, the City shall execute and the Paying Agent/Registrar shall register and deliver, in the name of the designated transferee or transferees, one or more new Bonds of authorized denomination and having the same Stated Maturity and of a like interest rate and aggregate principal amount as the Bond or Bonds surrendered for transfer.

At the option of the Holder, Bonds may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange upon surrender of the Bonds to be exchanged at the corporate trust office of the Paying Agent/Registrar. Whenever any Bonds are so surrendered for exchange, the City shall execute, and the Paying Agent/Registrar shall register and deliver, the Bonds to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the corporate trust office of the Paying Agent/Registrar, or be sent by United States registered mail to the Holder at his request, risk, and expense, and upon the delivery thereof, the same shall be the valid and binding obligations of the City, evidencing the same obligation to pay, and entitled to the same benefits under this Ordinance, as the Bonds surrendered upon such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any fee, tax or other governmental charges required to be paid with respect to such transfer or exchange.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be Predecessor Bonds, evidencing all or a portion, as the case may be, of the

same debt evidenced by the new Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term Predecessor Bonds shall include any Bond registered and delivered pursuant to Section 17 in lieu of a mutilated, lost, destroyed, or stolen Bond which shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

SECTION 7. Initial Bond. The Bonds herein authorized shall be initially issued as either (i) a single fully registered Bond in the aggregate principal amount of \$_____ with principal installments to become due and payable as provided in Section 2 hereof and numbered T-1, or (ii) as one (1) fully registered Bond for each year of Stated Maturity in the applicable principal amount and denomination and to be numbered consecutively from T-1 and upward (the *Initial Bond*), and the Initial Bond shall be registered in the name of the Purchasers or the designee thereof. The Initial Bond shall be the Bonds submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the Purchasers. Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the Purchasers, or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of like kind and of authorized denominations, Stated Maturities, principal amounts bearing applicable interest rates, and shall be lettered "R" and numbered consecutively from one (1) upward for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the Purchasers, or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

SECTION 8. Forms.

A. Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas, the Registration Certificate of Paying Agent/Registrar, and the form of Assignment to be printed on each of the Bonds shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends in the event the Bonds, or any Stated Maturities thereof, are insured, and any reproduction of an opinion of Bond Counsel (hereinafter referenced)) thereon as may, consistent herewith, be established by the City or determined by the officers executing the Bonds as evidenced by their execution thereof. Any portion of the text of any Bond may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The definitive Bonds shall be printed, lithographed, or engraved, produced by any combination of these methods, or produced in any other similar manner, all as determined by the officers executing the Bonds as evidenced by their execution thereof, but the Initial Bond submitted to the Attorney General of the State of Texas may be typewritten or photocopied or otherwise reproduced.

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B. Form of Definitive Bond.

REGISTERED
NO. _____

REGISTERED
PRINCIPAL AMOUNT
\$ _____

United States of America
State of Texas
Counties of Guadalupe, Comal, and Bexar
CITY OF SCHERTZ, TEXAS
GENERAL OBLIGATION REFUNDING BONDS,
SERIES 2021

Dated Date: November 1, 2021
Interest Rate:
Stated Maturity:
CUSIP NO:

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ AND NO/100 DOLLARS

The City of Schertz, Texas (the *City*), a body corporate and a municipal corporation in the Counties of Guadalupe, Comal, and Bexar, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner specified above, or the registered assigns thereof, on the Stated Maturity date specified above, the Principal Amount specified above (or so much thereof as shall not have been paid upon prior redemption) and to pay interest on the unpaid Principal Amount hereof from the Dated Date or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for, until such Principal Amount has become due and payment thereof has been made or duly provided for, to the earlier of redemption or Stated Maturity, while Outstanding, at the per annum rate of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 1 and August 1 (each, an *Interest Payment Date*) of each year, commencing August 1, 2022.

Principal of and premium, if any, on this Bond shall be payable to the Registered Owner hereof (the *Holder*), upon presentation and surrender at the corporate trust office of the Paying Agent/Registrar executing the registration certificate appearing hereon or a successor thereof. Interest shall be payable to the Holder of this Bond (or one or more Predecessor Bonds, as defined in the Ordinance hereinafter referenced) whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the fifteenth day of the month next preceding each Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by the Holder hereof at the Holder's risk and expense.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$_____ (the *Bonds*) pursuant to an ordinance adopted by the governing body of the City (the *Ordinance*), for the purpose of providing funds for the (i) discharge and final payment of the Refunded Obligations and (ii) payment of the costs of issuance of the Bonds, under and in strict conformity with the laws of the State of Texas, including Chapter 1207, as amended, Texas Government Code, and the City's Home Rule Charter.

The Bonds stated to mature on February 1, 20__ are referred to herein as the "Term Bonds". The Term Bonds are subject to mandatory sinking fund redemption prior to their stated maturities from money required to be deposited in the Bond Fund for such purpose and shall be redeemed in part, by lot or other customary method, at the principal amount thereof plus accrued interest to the date of redemption in the following principal amounts on February 1 in each of the years as set forth below:

Term Bonds
Stated to Mature
February 1, 20__

<u>Year</u>	<u>Principal Amount (\$)</u>
20__	
20__	
20__	
20__ *	

*Payable at Stated Maturity.

The principal amount of a Term Bond required to be redeemed pursuant to the operation of such mandatory redemption provisions shall be reduced, at the option of the Issuer, by the principal amount of any Term Bonds of such Stated Maturity which, at least fifty (50) days prior to the mandatory redemption date (1) shall have been defeased or acquired by the Issuer and delivered to the Paying Agent/Registrar for cancellation, or (2) shall have been purchased and canceled by the Paying Agent/Registrar at the request of the Issuer with money in the Bond Fund.

As specified in the Ordinance, the Bonds having Stated Maturities on and after February 1, 20__ shall be subject to redemption prior to Stated Maturity, at the option of the City, on February 1, 20__, or on any date thereafter, in whole or in part in principal amounts of \$5,000 or any integral multiple thereof (and if within a Stated Maturity selected at random and by lot by the Paying Agent/Registrar) at the redemption price of par plus accrued interest to the date of redemption, and upon thirty (30) days prior written notice being given by United States mail, first-class postage prepaid, to Holders of the Bonds to be redeemed, and subject to the terms and provisions relating thereto contained in the Ordinance. If this Bond is subject to redemption prior to Stated Maturity and is in a denomination in excess of \$5,000, portions of the principal sum hereof in installments of \$5,000 or any integral multiple thereof may be redeemed, and, if less than all of the principal sum hereof is to be redeemed, there shall be issued, without charge therefor, to

the Holder hereof, upon the surrender of this Bond to the Paying Agent/Registrar at its corporate trust office, a new Bond or Bonds of like Stated Maturity and interest rate in any authorized denominations provided in the Ordinance for the then unredeemed balance of the principal sum hereof.

If this Bond (or any portion of the principal sum hereof) shall have been duly called for redemption and notice of such redemption has been duly given, then upon such redemption date this Bond (or the portion of the principal sum hereof to be redeemed) shall become due and payable, and, if money for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption is held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable hereon from and after the redemption date on the principal amount hereof to be redeemed. If this Bond is called for redemption, in whole or in part, the Issuer or the Paying Agent/Registrar shall not be required to issue, transfer, or exchange this Bond within forty-five (45) days of the date fixed for redemption; provided, however, such limitation of transfer shall not be applicable to an exchange by the Holder of the unredeemed balance hereof in the event of its redemption in part.

The Bonds of this series are payable from the proceeds of an annual ad valorem tax levied upon all taxable property within the City within the limitations prescribed by law.

Reference is hereby made to the Ordinance, a copy of which is on file in the corporate trust office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by his acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the tax levied for the payment of the Bonds; the terms and conditions relating to the transfer or exchange of the Bonds; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the City and the Paying Agent/Registrar; the terms and provisions upon which this Bond may be redeemed or discharged at or prior to the Stated Maturity thereof, and deemed to be no longer Outstanding thereunder; and for the other terms and provisions specified in the Ordinance. Capitalized terms used herein have the same meanings assigned in the Ordinance.

This Bond, subject to certain limitations contained in the Ordinance, may be transferred on the Security Register upon presentation and surrender at the corporate trust office of the Paying Agent/Registrar, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by the Holder hereof, or his duly authorized agent, and thereupon one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued to the designated transferee or transferees.

The City and the Paying Agent/Registrar, and any agent of either, shall treat the Holder hereof whose name appears on the Security Register (i) on the Record Date as the owner hereof for purposes of receiving payment of interest hereon, (ii) on the date of surrender of this Bond as the owner hereof for purposes of receiving payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner hereof for all other purposes, and neither the City nor the Paying Agent/Registrar, or any such agent of either, shall be affected by notice to the contrary. In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a

Special Record Date) will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest (the *Special Payment Date* - which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, covenanted, and represented that all acts, conditions, and things required to be performed, exist, and be done precedent to or in the issuance of this Bond in order to render the same a legal, valid, and binding obligation of the City have been performed, exist, and have been done, in regular and due time, form, and manner, as required by the laws of the State of Texas and the Ordinance, and that the issuance of the Bonds does not exceed any constitutional or statutory limitation; and that due provision has been made for the payment of the principal of, premium if any, and interest on the Bonds by the levy of a tax as aforesated. In case any provision in this Bond or any application thereof shall be deemed invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

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IN WITNESS WHEREOF, the City has caused this Bond to be duly executed under its official seal.

CITY OF SCHERTZ, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)

[The remainder of this page intentionally left blank.]

C. *Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Bond Only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER OF	§	
PUBLIC ACCOUNTS	§	
	§	REGISTER NO. _____
THE STATE OF TEXAS	§	

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____.

Comptroller of Public Accounts
of the State of Texas

(SEAL)

* Note to Printer: Do Not Print on Definitive Bonds

D. *Form of Certificate of Paying Agent/Registrar to Appear on Definitive Bonds Only.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued under the provisions of the within-mentioned Ordinance; the Bond or Bonds of the above-entitled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

Registered this date: UMB BANK, N.A., Austin, Texas, as Paying
Agent/Registrar

_____ By: _____
Authorized Signature

* Note to Printer: Print on Definitive Bonds

E. Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee): _____

(Social Security or other identifying number): _____
the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED: _____

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Signature guaranteed:

F. Form of Initial Bond. The Initial Bond shall be in the form set forth in paragraph B of this Section, except that the form of a single fully registered Initial Bond shall be modified as follows:

- (i) immediately under the name of the Bond the headings "Interest Rate" and "Stated Maturity" shall both be completed "as shown below";
- (ii) the first two paragraphs shall read as follows:

REGISTERED OWNER: _____

PRINCIPAL AMOUNT: _____ AND NO/100 DOLLARS

The City of Schertz, Texas (the *City*), a body corporate and municipal corporation in the Counties of Guadalupe, Comal, and Bexar, State of Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the order of the Registered Owner named above, or the registered assigns thereof, the Principal Amount specified above stated to mature on the first day of February in each of the years and in principal amounts and bearing interest at per annum rates in accordance with the following schedule:

Years of
Stated Maturity

Principal
Amounts (\$)

Interest
Rates (%)

(Information to be inserted from
schedule in Section 2 hereof).

and to pay interest on the unpaid Principal Amount hereof from the Dated Date or from the most recent Interest Payment Date (hereinafter defined) to which interest has been paid or duly provided for until the Principal Amount has become due and payment thereof has been made or duly provided for, to Stated Maturity, while Outstanding, at the per annum rates of interest specified above computed on the basis of a 360-day year of twelve 30-day months; such interest being payable on February 1 and August 1 (each, an *Interest Payment Date*) of each year, commencing August 1, 2022.

Principal of this Bond shall be payable to the Registered Owner hereof (the *Holder*), upon its presentation and surrender to Stated Maturity, while Outstanding, at the corporate trust office of UMB Bank, N.A., Austin, Texas (the *Paying Agent/Registrar*). Interest shall be payable to the Holder of this Bond whose name appears on the Security Register maintained by the Paying Agent/Registrar at the close of business on the Record Date, which is the last business day of the month next preceding each Interest Payment Date. All payments of principal of, premium, if any, and interest on this Bond shall be in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. Interest shall be paid by the Paying Agent/Registrar by check sent on or prior to the appropriate date of payment by United States mail, first-class postage prepaid, to the Holder hereof at the address appearing in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the Holder hereof.

[END OF FORMS]

G. Insurance Legend. If bond insurance is obtained by the City or the Purchasers for the Bonds, the Definitive Bonds and the Initial Bond shall bear an appropriate legend as provided by the bond insurer to appear under the following header:

[BOND INSURANCE] or [STATEMENT OF INSURANCE]

SECTION 9. Definitions. For all purposes of this Ordinance (as defined below), except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined in this Section have the meanings assigned to them in this Section, and certain terms used in Sections 21 and 38 of this Ordinance have the meanings assigned to them in such Sections, and all such terms include the plural as well as the singular; (ii) all references in this Ordinance to designated “Sections” and other subdivisions are to the designated Sections and other subdivisions of this Ordinance as originally adopted; and (iii) the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular Section or other subdivision.

A. The term *Authorized Officials* shall mean the Mayor, Mayor Pro Tem, City Manager, Director of Finance, and/or City Secretary.

B. The term *Bond Fund* shall mean the special fund created and established by the provisions of Section 10 of this Ordinance.

C. The term *Bonds* shall mean the \$_____ “CITY OF SCHERTZ, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021” authorized by this Ordinance.

D. The term *City* or the *Issuer* shall mean City of Schertz, located in the Counties of Guadalupe, Comal, and Bexar, Texas and, where appropriate, the City Council of the City.

E. The term *Closing Date* shall mean the date of physical delivery of the Initial Bonds in exchange for the payment in full by the Purchasers.

F. The term *Debt Service Requirements* shall mean, as of any particular date of computation, with respect to any obligations and with respect to any period, the aggregate of the amounts to be paid or set aside by the City as of such date or in such period for the payment of the principal of, premium, if any, and interest (to the extent not capitalized) on such obligations; assuming, in the case of obligations without a fixed numerical rate, that such obligations bear interest at the maximum rate permitted by the terms thereof and further assuming in the case of obligations required to be redeemed or prepaid as to principal prior to Stated Maturity, the principal amounts thereof will be redeemed prior to Stated Maturity in accordance with the mandatory redemption provisions applicable thereto.

G. The term *Depository* shall mean an official depository bank of the City.

H. The term *Government Securities*, as used herein, shall mean (i) direct noncallable obligations of the United States, including obligations that are unconditionally guaranteed by, the United States of America; (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the issuer adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, or (iv) any additional securities and obligations hereafter authorized by the laws of the State of Texas as eligible for use to accomplish the discharge of obligations such as the Bonds.

I. The term *Holder* or *Holder*s shall mean the registered owner, whose name appears in the Security Register, for any Bond.

J. The term *Interest Payment Date* shall mean the date interest is payable on the Bonds, being February 1 and August 1 of each year, commencing August 1, 2022, while any of the Bonds remain Outstanding.

K. The term *Ordinance* shall mean this ordinance adopted by the City Council of the City on October 12, 2021.

L. The term *Outstanding* when used in this Ordinance with respect to Bonds shall mean, as of the date of determination, all Bonds issued and delivered under this Ordinance, except:

(1) those Bonds canceled by the Paying Agent/Registrar or delivered to the Paying Agent/Registrar for cancellation;

(2) those Bonds for which payment has been duly provided by the City in accordance with the provisions of Section 23 of this Ordinance; and

(3) those Bonds that have been mutilated, destroyed, lost, or stolen and replacement Bonds have been registered and delivered in lieu thereof as provided in Section 17 of this Ordinance.

M. The term *Purchasers* shall mean the initial purchasers of the Bonds named in Section 18 of this Ordinance.

N. The term *Stated Maturity* shall mean the annual principal payments of the Bonds payable on February 1 of each year the Bonds are Outstanding, as set forth in Section 2 of this Ordinance.

SECTION 10. Bond Fund; Investments. For the purpose of paying the interest on and to provide a sinking fund for the payment, redemption and retirement of the Bonds, there shall be and is hereby created a special fund to be designated "CITY OF SCHERTZ, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021 INTEREST AND SINKING FUND" (the *Bond Fund*), which fund shall be kept and maintained at the Depository, and money deposited in such fund shall be used for no other purpose and shall be maintained as provided in Section 21. Authorized Officials of the City are hereby authorized and directed to make withdrawals from the Bond Fund sufficient to pay the purchase price or amount of principal of, premium, if any, and interest on the Bonds as the same become due and payable and shall cause to be transferred to the Paying Agent/Registrar from money on deposit in the Bond Fund an amount sufficient to pay the amount of principal and/or interest stated to mature on the Bonds, such transfer of funds to the Paying Agent/Registrar to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar on or before the business day next preceding each interest and principal payment date for the Bonds.

Pending the transfer of funds to the Paying Agent/Registrar, money deposited in any fund created and established pursuant to the provisions of this Ordinance, at the option of the City, may be placed in time deposits, certificates of deposit, guaranteed investment contracts, or similar contractual agreements as permitted by the provisions of the Public Funds Investment Act, as amended, Chapter 2256, Texas Government Code, secured (to the extent not insured by the Federal Deposit Insurance Corporation) by obligations of the type hereinafter described, or be invested, as authorized by any law, including investments held in book-entry form, in securities including, but not limited to, direct obligations of the United States of America, obligations guaranteed or insured by the United States of America, which, in the opinion of the Attorney General of the United States, are backed by its full faith and credit or represent its general obligations, or invested in indirect obligations of the United States of America, including, but not limited to, evidences of indebtedness issued, insured or guaranteed by such governmental agencies as the Federal Land

Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Banks, Government National Mortgage Association, Farmers Home Administration, Federal Home Loan Mortgage Association, Small Business Administration, or Federal Housing Association; provided that all such deposits and investments shall be made in such a manner that the money required to be expended from such fund will be available at the proper time or times. All interest and income derived from deposits and investments in such fund shall be credited to, and any losses debited to, such fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Bonds.

SECTION 11. Tax Levy. To provide for the payment of the Debt Service Requirements on the Bonds being (i) the interest on the Bonds and (ii) a sinking fund for their redemption at Stated Maturity or a sinking fund of 2% (whichever amount shall be the greater), there shall be and there is hereby levied for the current year and each succeeding year thereafter while the Bonds or any interest thereon shall remain Outstanding, a sufficient tax, within the limitations prescribed by law, on each one hundred dollars' valuation of taxable property in the City, adequate to pay such Debt Service Requirements, full allowance being made for delinquencies and costs of collection; said tax shall be assessed and collected each year and applied to the payment of the Debt Service Requirements, and the same shall not be diverted to any other purpose. The taxes so levied and collected shall be paid into the Bond Fund and are thereafter pledged to the payment of the Bonds. The City Council hereby declares its purpose and intent to provide and levy a tax legally and fully sufficient to pay such Debt Service Requirements, it having been determined that the existing and available taxing authority of the City for such purpose is adequate to permit a legally sufficient tax in consideration of all other outstanding indebtedness and other obligations of the City.

SECTION 12. Deposits to Bond Fund; Surplus Bond Proceeds. The City hereby covenants and agrees to cause to be deposited in the Bond Fund prior to a principal and interest payment date for the Bonds, from the annual levy of an ad valorem tax or from other lawfully available funds, amounts sufficient to fully pay and discharge promptly each installment of interest and principal of the Bonds as the same accrues or matures or comes due by reason of Stated Maturity.

Accrued interest received from the Purchasers of the Bonds, along with any taxes collected pertaining to the Refunded Obligations, after the Closing Date, shall be deposited to the Bond Fund. In addition, any surplus proceeds from the sale of the Bonds, including investment income thereon, not expended for authorized purposes shall be deposited in the Bond Fund, and such amounts so deposited shall reduce the sums otherwise required to be deposited in said fund from ad valorem taxes.

SECTION 13. Security of Funds. All money on deposit in the funds for which this Ordinance makes provision (except any portion thereof as may be at any time properly invested as provided herein) shall be secured in the manner and to the fullest extent required by the laws of the State of Texas for the security of public funds, and money on deposit in such funds shall be used only for the purposes permitted by this Ordinance.

SECTION 14. Remedies in Event of Default. In addition to all the rights and remedies provided by the laws of the State of Texas, the City covenants and agrees particularly that in the event the City (a) defaults in the payments to be made to the Bond Fund or (b) defaults in the

observance or performance of any other of the covenants, conditions, or obligations set forth in this Ordinance, the Holders of any of the Bonds shall be entitled to seek a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the City and other officers of the City to observe and perform any covenant, condition, or obligation prescribed in this Ordinance.

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

SECTION 15. Notices to Holders; Waiver. Wherever this Ordinance provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first-class postage prepaid, to the address of each Holder appearing in the Security Register at the close of business on the business day next preceding the mailing of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Holders. Where this Ordinance provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 16. Cancellation. All Bonds surrendered for payment, redemption, transfer, exchange, or replacement, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the City, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The City may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the City may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held by the Paying Agent/Registrar shall be destroyed as directed by the City.

SECTION 17. Mutilated, Destroyed, Lost, and Stolen Bonds. If (1) any mutilated Bond is surrendered to the Paying Agent/Registrar, or the City and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss, or theft of any Bond, and (2) there is delivered to the City and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the City or the Paying Agent/Registrar that such Bond has been acquired by a bona fide purchaser, the City shall execute and, upon the City's request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Bond, a new Bond of the same Stated Maturity and interest rate and of like tenor and principal amount, bearing a number not contemporaneously Outstanding.

In case any such mutilated, destroyed, lost, or stolen Bond has become or is about to become due and payable, the City in its discretion may, instead of issuing a new Bond, pay such Bond.

Upon the issuance of any new Bond or payment in lieu thereof, under this Section, the City may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses and charges (including attorney's fees and the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the City, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other Outstanding Bonds.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds.

SECTION 18. Sale of Bonds – Authorization of Official Bid Form – Approval of the Official Statement – Use of Bond Proceeds. The Bonds authorized by this Ordinance are hereby sold by the City to _____, _____, _____ as the authorized representative of a group of purchasers at a competitive sale (the *Purchasers*, having all the rights, benefits, and obligations of a Holder), in accordance with the provisions of an Official Bid Form (the *Official Bid Form*), dated October 12, 2021, attached hereto as Exhibit B and incorporated herein by reference as a part of this Ordinance for all purposes, at the price of par, plus a reoffering premium of \$ _____ (including the Purchasers' compensation of \$ _____), and accrued interest of \$ _____ and is hereby approved and confirmed. The Initial Bond shall be registered in the name of _____. It is hereby officially found, determined, and declared that the Purchasers are the highest bidder for the Bonds whose bid, received as a result of invitations for competitive bids in compliance with applicable law, produced the lowest true interest cost to the City. The pricing and terms of the sale of the Bonds are hereby found and determined to be the most advantageous reasonably obtainable by the City. Any Authorized Official is hereby authorized and directed to execute the Official Bid Form for and on behalf of the City and as the act and deed of this City Council, and in regard to the approval and execution of the Official Bid Form, the City Council hereby finds, determines and declares that the representations, warranties, and agreements of the City contained in the Official Bid Form are true and correct in all material respects and shall be honored and performed by the City. Delivery of the Bonds to the Purchasers shall occur as soon as practicable after the adoption of this Ordinance, upon payment therefor in accordance with the terms of the Official Bid Form.

Furthermore, the City hereby ratifies, confirms, and approves in all respects (i) the City's prior determination that the Preliminary Official Statement was, as of its date, "deemed final" in accordance with the Rule (hereinafter defined) and (ii) the use and distribution of the Official Notice of Sale, Official Bid Form, and Preliminary Official Statement by the Purchasers in connection with the public offering and sale of the Bonds. The final Official Statement, being a modification and amendment of the Preliminary Official Statement to reflect the terms of sale referenced in the Official Bid Form (together with such changes approved by any Authorized Official, any one or more of said officials), shall be and is hereby in all respects approved and the

Purchasers are hereby authorized to use and distribute the final Official Statement, dated October 12, 2021 in the reoffering, sale and delivery of the Bonds to the public. The Mayor, Mayor Pro Tem, and/or City Secretary are further authorized and directed to manually execute and deliver for and on behalf of the City copies of the Official Statement in final form as may be required by the Purchasers, and such final Official Statement in the form and content manually executed by said officials shall be deemed to be approved by the City Council and constitute the Official Statement authorized for distribution and use by the Purchasers. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to such Official Statement as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

SECTION 19. Escrow Agreement Approval and Execution; Proceeds of Sale; Contribution by City. The Escrow Deposit Letter dated as of October 12, 2021 to be effective upon the initial delivery of the Bonds to the Purchasers (the *Agreement*) between the City and UMB Bank, N.A., Austin, Texas (the *Escrow Agent*), attached hereto as Exhibit C and incorporated herein by reference as a part of this Ordinance for all purposes, is hereby approved as to form and content, and such Agreement in substantially the form and substance attached hereto, together with such changes or revisions as may be necessary to accomplish the refunding or benefit the City, is hereby authorized to be executed by any Authorized Official on behalf of the City and as the act and deed of this City Council; and such Agreement as executed by said officials shall be deemed approved by the City Council and constitute the Agreement herein approved.

Furthermore, any Authorized Official, or any one or more of said officials, and Bond Counsel in cooperation with the Escrow Agent are hereby authorized and directed to make the necessary arrangements for the purchase of the Escrowed Securities, if any, referenced in the Agreement and the initial delivery thereof to the Escrow Agent on the day of delivery of the Bonds to the Purchasers for deposit to the credit of the “CITY OF SCHERTZ, TEXAS GENERAL OBLIGATION REFUNDING BONDS, SERIES 2021 ESCROW FUND” (the *Escrow Fund*), including the execution of the subscription forms for the purchase and issuance of the “United States Treasury Securities - State and Local Government Series”, if any, for deposit to the Escrow Fund; all as contemplated and provided by the provisions of the Act, this Ordinance, and the Agreement.

Immediately following the delivery of the Bonds, the proceeds of sale along with a cash contribution, if any, from the City (less certain costs of issuance, and accrued interest received from the Purchasers of the Bonds) shall be deposited with the Escrow Agent for application and disbursement in accordance with the provisions of the Agreement. The proceeds of sale of the Bonds not so deposited with the Escrow Agent for the refunding of the Refunded Obligations shall be disbursed for payment of costs of issuance and deposited with the place of payment (of the Refunded Obligations) in an account in the name of the City and applied for the purposes of providing for the payment of the costs and expenses incurred in connection therewith or deposited in the Bond Fund for the Bonds, all in accordance with written instructions from the Authorized Officials.

SECTION 20. Redemption of Refunded Obligations. The Refunded Obligations referenced in the preamble hereof become subject to redemption prior to their stated maturities at the price of par, premium, if any, and accrued interest to the date of redemption. The Mayor or

the City Secretary shall give written notice to the paying agent/registrars for the Refunded Obligations and the Escrow Agent that the Refunded Obligations have been called for redemption, and the City Council orders that such obligations are called for redemption on the date set forth on Schedule I attached to this Ordinance, and such order to redeem the Refunded Obligations on such date shall be irrevocable upon the delivery of the Bonds. Copies of the notices of redemption pertaining to the Refunded Obligations are attached to this Ordinance as Exhibit D and are incorporated herein by reference for all purposes. The paying agent for the Refunded Obligations is authorized and instructed to provide notice of these redemptions to the holders of the Refunded Obligations in the form and manner described in the ordinances authorizing the issuance of the Refunded Obligations.

SECTION 21. Covenants to Maintain Tax-Exempt Status.

A. Definitions. When used in this Section, the following terms have the following meanings:

Closing Date means the date of physical delivery of the Initial Bonds in exchange for the payment in full by the Purchasers.

Code means the Internal Revenue Code of 1986, as amended by all legislation, if any, effective on or before the Closing Date.

Computation Date has the meaning set forth in Section 1.148-1(b) of the Regulations.

Gross Proceeds means any proceeds as defined in Section 1.148-1(b) of the Regulations, and any replacement proceeds as defined in Section 1.148-1(c) of the Regulations, of the Bonds.

Investment has the meaning set forth in Section 1.148-1(b) of the Regulations.

Nonpurpose Investment means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and which is not acquired to carry out the governmental purposes of the Bonds.

Rebate Amount has the meaning set forth in Section 1.148-1(b) of the Regulations.

Regulations means any proposed, temporary, or final Income Tax Regulations issued pursuant to sections 103 and 141 through 150 of the Code, and 103 of the Internal Revenue Code of 1954, which are applicable to the Bonds. Any reference to any specific Regulation shall also mean, as appropriate, any proposed, temporary or final Income Tax Regulation designed to supplement, amend or replace the specific Regulation referenced.

Yield of

(1) any Investment has the meaning set forth in Section 1.148-5 of the Regulations; and

(2) the Bonds has the meaning set forth in Section 1.148-4 of the Regulations.

B. Not to Cause Interest to Become Taxable. The City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which if made or omitted, respectively, would cause the interest on any Bond to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the City receives a written opinion of counsel nationally recognized in the field of municipal bond law to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the City shall comply with each of the specific covenants in this Section.

C. No Private Use or Private Payments. Except to the extent it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall at all times prior to the last Stated Maturity of Bonds:

(1) exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations), and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(2) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds (including property financed with Gross Proceeds of the Refunded Obligations) or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds (including property financed with Gross Proceeds of the Refunded Obligations), other than taxes of general application within the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

D. No Private Loan. Except to the extent it will not cause the Bonds to become “private activity bonds” within the meaning of section 141 of the Code and the Regulations and rulings thereunder, the City shall not use Gross Proceeds of the Bonds to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be “loaned” to a person or entity if: (1) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction which creates a debt for federal income tax purposes; (2) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (3) indirect benefits, or burdens and benefits of ownership, of

such Gross Proceeds or any property acquired, constructed or improved with such Gross Proceeds are otherwise transferred in a transaction which is the economic equivalent of a loan.

E. Not to Invest at Higher Yield. Except to the extent it will not cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code and the Regulations and rulings thereunder, the City shall not at any time prior to the final Stated Maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds (or with money replaced thereby), whether then held or previously disposed of, materially exceeds the Yield of the Bonds.

F. Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Regulations and rulings thereunder, the City shall not take or omit to take any action which would cause the Bonds to be federally guaranteed within the meaning of section 149(b) of the Code and the Regulations and rulings thereunder.

G. Information Report. The City shall timely file the information required by section 149(e) of the Code with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

H. Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Regulations and rulings thereunder:

(1) The City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Outstanding Bond is discharged. However, to the extent permitted by law, the City may commingle Gross Proceeds of the Bonds with other money of the City, provided that the City separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(2) Not less frequently than each Computation Date, the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Regulations and rulings thereunder. The City shall maintain such calculations with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(3) As additional consideration for the purchase of the Bonds by the Purchasers and the loan of the money represented thereby and in order to induce such purchase by measures designed to insure the excludability of the interest thereon from the gross income of the owners thereof for federal income tax purposes, the City shall pay to the United States out of the Bond Fund or its general fund, as permitted by applicable Texas statute, regulation or opinion of the Attorney General of the State of Texas, the amount that when added to the future value of previous rebate payments made for the Bonds equals (i) in the case of a Final Computation Date as defined in Section 1.148-3(e)(2) of the Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (ii) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all

cases, the rebate payments shall be made at the times, in the installments, to the place and in the manner as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Regulations and rulings thereunder.

(4) The City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (2) and (3), and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under Section 1.148-3(h) of the Regulations.

I. Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Regulations and rulings thereunder, the City shall not, at any time prior to the earlier of the Stated Maturity or final payment of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to Subsection H of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield of the Bonds not been relevant to either party.

J. Bonds Not Hedge Bonds.

(1) At the time the original bonds refunded by the Bonds were issued, the City reasonably expected to spend at least 85% of the spendable proceeds of such bonds within three years after such bonds were issued.

(2) Not more than 50% of the proceeds of the original bonds refunded by the Bonds were invested in Nonpurpose Investments having a substantially guaranteed Yield for a period of 4 years or more.

K. Qualified Current Refunding. The Bonds are issued, in part, to refund the Refunded Obligations, and the Bonds will be issued, and certain proceeds thereof used, within 90 days after the Closing Date for the redemption of the Refunded Obligations. In the issuance of the Bonds, the City has employed no "device" to obtain a material financial advantage (based on arbitrage), within the meaning of section 149(d)(4) of the Code, apart from savings attributable to lower interest rates. The City has complied with the covenants, representations, and warranties contained in the documents executed in connection with the issuance of the Refunded Obligations. Accordingly, the City expects to invest the Bond proceeds to be used to refund the Refunded Obligations without regard to Yield restrictions.

L. Elections. The City hereby directs and authorizes any Authorized Official, either or any combination of the foregoing, to make such elections in the Certificate as to Tax Exemption or similar or other appropriate certificate, form, or document permitted or required pursuant to the provisions of the Code or the Regulations, as they deem necessary or appropriate in connection with the Bonds. Such elections shall be deemed to be made on the Closing Date.

M. Qualified Tax-Exempt Obligations. The City hereby designates the Bonds as *qualified tax-exempt obligations* for purposes of section 265(b) of the Code. In furtherance of such designation, the City represents, covenants and warrants the following: (a) during the calendar year in which the Bonds are issued, the City (including any subordinate entities) has not designated nor will designate obligations, which when aggregated with the Bonds, will result in more than \$10,000,000 of “qualified tax-exempt obligations” being issued; (b) the City reasonably anticipates that the amount of tax-exempt obligations issued during the calendar year 2021 by the City (including any subordinate entities) will not exceed \$10,000,000; and (c) the City will take such action or refrain from such action as is necessary in order that the Bonds will not be considered “private activity bonds” within the meaning of section 141 of the Code.

SECTION 22. Control and Custody of Bonds. The Mayor shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas and shall take and have charge and control of the Bonds pending their approval by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery of the Bonds to the Purchasers.

Furthermore, any Authorized Official, either or all, are hereby authorized and directed to furnish and execute such documents relating to the City and its financial affairs as may be necessary for the issuance of the Bonds, the approval of the Attorney General and their registration by the Comptroller of Public Accounts and, together with the City’s financial advisors, Bond Counsel, and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bonds to the Purchasers and the initial exchange thereof for definitive Bonds.

SECTION 23. Satisfaction of Obligation of City. If the City shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Ordinance, then the pledge of taxes levied under this Ordinance and all covenants, agreements, and other obligations of the City to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds, or any principal amount(s) thereof, shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds or the principal amount(s) thereof on or prior to Stated Maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, and/or (ii) Government Securities shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Securities will mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money, together with any money deposited therewith, if any, to pay when due the principal of and interest on such Bonds, or the principal amount(s) thereof, on and prior to the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor acceptable to the Paying Agent/Registrar have been made) the redemption date thereof for the Bonds. In the event of a defeasance of the Bonds, the City shall deliver a certificate from its financial advisor, the Paying Agent/Registrar, an independent accounting firm, or another qualified third party concerning the deposit of cash and/or Government Securities to pay, when due, the principal of, redemption premium (if any), and interest due on any defeased Bonds. To the extent applicable, if at all, the City covenants that no deposit of money or

Government Securities will be made under this Section and no use made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of section 148 of the Code (as defined in Section 21 hereof).

Any money so deposited with the Paying Agent/Registrar, and all income from Government Securities held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section which is not required for the payment of the Bonds, or any principal amount(s) thereof, or interest thereon with respect to which such money has been so deposited shall be remitted to the City or deposited as directed by the City. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity of the Bonds or applicable redemption date, such money was deposited and is held in trust to pay shall upon the request of the City be remitted to the City against a written receipt therefor, subject to the unclaimed property laws of the State of Texas.

Notwithstanding any other provision of this Ordinance to the contrary, it is hereby provided that any determination not to redeem defeased Bonds that is made in conjunction with the payment arrangements specified in subsection (i) or (ii) above shall not be irrevocable, provided that: (1) in the proceedings providing for such defeasance, the Issuer expressly reserves the right to call the defeased Bonds for redemption; (2) gives notice of the reservation of that right to the owners of the defeased Bonds immediately following the defeasance; (3) directs that notice of the reservation be included in any redemption notices that it authorizes; and (4) at the time of the redemption, satisfies the conditions of (i) or (ii) above with respect to such defeased debt as though it was being defeased at the time of the exercise of the option to redeem the defeased Bonds, after taking the redemption into account in determining the sufficiency of the provisions made for the payment of the defeased Bonds.

SECTION 24. Printed Opinion. The Purchasers' obligation to accept delivery of the Bonds is subject to its being furnished a final opinion of Norton Rose Fulbright US LLP, San Antonio, Texas, as Bond Counsel, approving certain legal matters as to the Bonds, said opinion to be dated and delivered as of the date of initial delivery and payment for such Bonds. Printing of a true and correct copy of said opinion on the reverse side of each of the Bonds, with appropriate certificate pertaining thereto executed by facsimile signature of the City Secretary of the City is hereby approved and authorized.

SECTION 25. CUSIP Numbers. CUSIP numbers may be printed or typed on the definitive Bonds. It is expressly provided, however, that the presence or absence of CUSIP numbers on the definitive Bonds shall be of no significance or effect as regards the legality thereof, and neither the City nor attorneys approving said Bonds as to legality are to be held responsible for CUSIP numbers incorrectly printed or typed on the definitive Bonds.

SECTION 26. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 27. Ordinance a Contract; Amendments - Outstanding Bonds. The City acknowledges that the covenants and obligations of the City herein contained are a material inducement to the purchase of the Bonds. This Ordinance shall constitute a contract with the

Holders from time to time, shall be binding on the City and its successors and assigns, and shall not be amended or repealed by the City so long as any Bond remains Outstanding except as permitted in this Section. The City may, without the consent of or notice to any Holders, from time to time and at any time, amend this Ordinance in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the City may, with the written consent of Holders holding a majority in aggregate principal amount of the Bonds then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Ordinance; provided; however, that, without the consent of all Holders of Outstanding Bonds, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price thereof, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, or (3) reduce the aggregate principal amount of Bonds required for consent to any such amendment, addition, or rescission.

SECTION 28. Benefits of Ordinance. Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, Bond Counsel, Paying Agent/Registrar, and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of the City, Bond Counsel, the Paying Agent/Registrar, and the Holders.

SECTION 29. Inconsistent Provisions. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters ordained herein.

SECTION 30. Construction of Terms. If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.

SECTION 31. Governing Law. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

SECTION 32. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

SECTION 33. Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

SECTION 34. Authorization of Paying Agent/Registrar Agreement. The City Council of the City hereby finds and determines that it is in the best interest of the City to authorize the

execution of a Paying Agent/Registrar Agreement concerning the payment, exchange, registration, and transferability of the Bonds. A copy of the Paying Agent/Registrar Agreement is attached hereto, in substantially final form, as Exhibit A and is incorporated by reference to the provisions of this Ordinance.

SECTION 35. Public Meeting. It is officially found, determined, and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

SECTION 36. Unavailability of Authorized Publication. If, because of the temporary or permanent suspension of any newspaper, journal, or other publication, or, for any reason, publication of notice cannot be made meeting any requirements herein established, any notice required to be published by the provisions of this Ordinance shall be given in such other manner and at such time or times as in the judgment of the City or of the Paying Agent/Registrar shall most effectively approximate such required publication and the giving of such notice in such manner shall for all purposes of this Ordinance be deemed to be in compliance with the requirements for publication thereof.

SECTION 37. No Recourse Against City Officials. No recourse shall be had for the payment of principal of, premium, if any, or interest on any Bond or for any claim based thereon or on this Ordinance against any official of the City or any person executing any Bond.

SECTION 38. Continuing Disclosure Undertaking.

A. Definitions.

As used in this Section, the following terms have the meanings ascribed to such terms below:

EMMA means the MSRB's Electronic Municipal Market Access system, accessible by the general public, without charge, on the internet through the uniform resource locator (URL) <http://www.emma.msrb.org>.

Financial Obligation means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that "financial obligation" shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

MSRB means the Municipal Securities Rulemaking Board.

Rule means SEC Rule 15c2-12, as amended from time to time.

SEC means the United States Securities and Exchange Commission.

Undertaking means the City's continuing disclosure undertaking, described in Subsections B through F below, hereunder accepted and entered into by the City for the purpose of compliance with the Rule.

B. Annual Reports.

The City shall file annually with the MSRB, (1) within six months after the end of each fiscal year of the City ending in or after 2021, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 18 of this Ordinance, being the information described in Exhibit E hereto, and (2) if not provided as part of such financial information and operating data, audited financial statements of the City, when and if available. Any financial statements so to be provided shall be (i) prepared in accordance with the accounting principles described in Exhibit E hereto, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (ii) audited, if the City commissions an audit of such financial statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall file unaudited financial statements within such period and audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such financial statements becomes available. Under current Texas law, including, but not limited to, Chapter 103, as amended, Texas Local Government Code, the City must have its records and accounts audited annually and shall have an annual financial statement prepared based on the audit. The annual financial statement, including the auditor's opinion on the statement, shall be filed in the office of the City Secretary within 180 days after the last day of the City's fiscal year. Additionally, upon the filing of this financial statement and the annual audit, these documents are subject to the Texas Open Records Act, as amended, Texas Government Code, Chapter 552.

If the City changes its fiscal year, it will file notice of such change (and of the date of the new fiscal year end) with the MSRB prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section.

C. Notice of Certain Events.

The City shall file notice of any of the following events with respect to the Bonds to the MSRB in a timely manner and not more than 10 business days after occurrence of the event:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-

TEB), or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;

- (7) Modifications to rights of Holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the City, which shall occur as described below;
- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into of a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional paying agent/registrar or the change of name of a paying agent/registrar, if material;
- (15) Incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

For these purposes, (a) any event described in the immediately preceding paragraph (12) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City, and (b) the City intends the words used in the immediately preceding paragraphs (15) and (16) and the definition of Financial Obligation in this Section to have the same meanings as when they are used in the Rule, as evidenced by SEC Release No. 34-83885, dated August 20, 2018.

The City shall file notice with the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with this Section by the time required by this Section.

D. Limitations, Disclaimers, and Amendments.

The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an “obligated person” with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit that causes the Bonds to be no longer Outstanding.

The provisions of this Section are for the sole benefit of the Holders and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City’s financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

UNDER NO CIRCUMSTANCES SHALL THE CITY BE LIABLE TO THE HOLDER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITH OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR *MANDAMUS* OR SPECIFIC PERFORMANCE.

No default by the City in observing or performing its obligations under this Section shall constitute a breach of or default under this Ordinance for purposes of any other provision of this Ordinance.

Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule to the date of such amendment, as well as such changed circumstances, and (2) either (a) the Holders of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the Outstanding Bonds consent to such amendment or (b) a person that is

unaffiliated with the City (such as nationally recognized bond counsel) determines that such amendment will not materially impair the interests of the Holders and beneficial owners of the Bonds. The City may also repeal or amend the provisions of this Section if the SEC amends or repeals the applicable provisions of the Rule or any court of final jurisdiction enters judgment that such provisions of the Rule are invalid, and the City also may amend the provisions of this Section in its discretion in any other manner or circumstance, but in either case only if and to the extent that the provisions of this sentence would not have prevented an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds, giving effect to (a) such provisions as so amended and (b) any amendments or interpretations of the Rule. If the City so amends the provisions of this Section, the City shall include with any amended financial information or operating data next provided in accordance with this Section an explanation, in narrative form, of the reasons for the amendment and of the impact of any change in the type of financial information or operating data so provided.

E. Information Format – Incorporation by Reference.

The City information required under this Section shall be filed with the MSRB through EMMA in such format and accompanied by such identifying information as may be specified from time to time thereby. Under the current rules of the MSRB, continuing disclosure documents submitted to EMMA must be in word-searchable portable document format (PDF) files that permit the document to be saved, viewed, printed, and retransmitted by electronic means and the series of obligations to which such continuing disclosure documents relate must be identified by CUSIP number or numbers.

Financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document (including an official statement or other offering document) available to the public through EMMA or filed with the SEC.

F. General Policies and Procedures Concerning Compliance with the Rule.

Because the issuance of the Bonds is subject to the provisions of the Rule and because the potential “underwriters” in a negotiated sale of the Bonds or the initial purchasers in a competitive sale of the Bonds may be subject to MSRB rules and regulations with respect to such sale (including certain due diligence and suitability requirements, among others), the City hereby adopts the General Policies and Procedures Concerning Compliance with the Rule (the “Policies and Procedures”), attached hereto as Exhibit G, with which the City shall follow to assure compliance with the Undertaking. The City has developed these Policies and Procedures for the purpose of meeting its requirements of the Undertaking and, in connection therewith, has sought the guidance from its internal staff charged with administering the City’s financial affairs, its municipal or financial advisors, its legal counsel (including its Bond Counsel), and its independent accountants (to the extent determined to be necessary or advisable). The Policies and Procedures can be amended at the sole discretion of the City and any such amendment will not be deemed to be an amendment to the Undertaking. Each Authorized Official is hereby authorized to amend the Policies and Procedures as a result of a change in law, a future issuance of indebtedness subject to the Rule, or another purpose determined by the Authorized Official to be necessary or desirable for or with respect to future compliance with the Undertaking.

SECTION 39. Book-Entry Only System.

The Bonds initially shall be registered so as to participate in a securities depository system (the *DTC System*) with the Depository Trust Company, New York, New York, or any successor entity thereto (*DTC*), as set forth herein. Each Stated Maturity of the Bonds shall be issued (following cancellation of the Initial Bonds described in Section 7) in the form of a separate single definitive Bond. Upon issuance, the ownership of each such Bond shall be registered in the name of Cede & Co., as the nominee of DTC, and all of the Outstanding Bonds shall be registered in the name of Cede & Co., as the nominee of DTC. The City and the Paying Agent/Registrar are authorized to execute, deliver, and take the actions set forth in such letters to or agreements with DTC as shall be necessary to effectuate the DTC System, including the Letter of Representations attached hereto as Exhibit F (the *Representation Letter*).

With respect to the Bonds registered in the name of Cede & Co., as nominee of DTC, the City and the Paying Agent/Registrar shall have no responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds the Bonds from time to time as securities depository (a *Depository Participant*) or to any person on behalf of whom such a Depository Participant holds an interest in the Bonds (an *Indirect Participant*). Without limiting the immediately preceding sentence, the City and the Paying Agent/Registrar shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any Depository Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository Participant or any other person, other than a registered owner of the Bonds, as shown on the Security Register, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the delivery to any Depository Participant or any Indirect Participant or any other Person, other than a Holder of a Bond, of any amount with respect to principal of, premium, if any, or interest on the Bonds. While in the DTC System, no person other than Cede & Co., or any successor thereto, as nominee for DTC, shall receive a bond certificate evidencing the obligation of the City to make payments of principal, premium, if any, and interest pursuant to this Ordinance. Upon delivery by DTC to the Paying Agent/Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Ordinance with respect to interest checks or drafts being mailed to the Holder, the word "Cede & Co." in this Ordinance shall refer to such new nominee of DTC.

In the event that (a) the City determines that DTC is incapable of discharging its responsibilities described herein and in the Representation Letter, (b) the Representation Letter shall be terminated for any reason, or (c) DTC or the City determines that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the City shall notify the Paying Agent/Registrar, DTC, and the Depository Participants of the availability within a reasonable period of time through DTC of bond certificates, and the Bonds shall no longer be restricted to being registered in the name of Cede & Co., as nominee of DTC. At that time, the City may determine that the Bonds shall be registered in the name of and deposited with a successor depository operating a securities depository system, as may be acceptable to the City, or such depository's agent or designee, and if the City and the Paying Agent/Registrar do not select such alternate securities depository system then the Bonds may be registered in whatever name or names the Holders of Bonds transferring or exchanging the Bonds shall designate, in accordance with the provisions hereof.

Notwithstanding any other provision of this Ordinance to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

SECTION 40. Further Procedures. The officers and employees of the City are hereby authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the initial sale and delivery of the Bonds, the Paying Agent/Registrar Agreement, the Official Bid Form, the Agreement, and the Official Statement. In addition, prior to the initial delivery of the Bonds, any Authorized Official and Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Ordinance or to any of the instruments authorized and approved by this Ordinance necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance and as described in the Official Statement, (ii) obtain a rating from any of the national bond rating agencies, or (iii) obtain the approval of the Bonds by the Texas Attorney General's office. In case any officer of the City whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 41. City's Consent to Provide Information and Documentation to the Texas MAC. The Municipal Advisory Council of Texas (the *Texas MAC*), a non-profit membership corporation organized exclusively for non-profit purposes described in section 501(c)(6) of the Internal Revenue Code and which serves as a comprehensive financial information repository regarding municipal debt issuers in Texas, requires provision of written documentation regarding the issuance of municipal debt by the issuers thereof. In support of the purpose of the Texas MAC and in compliance with applicable law, the City hereby consents to and authorizes any Authorized Official, Bond Counsel to the City, and/or Financial Advisor to the City to provide to the Texas MAC information and documentation requested by the Texas MAC relating to the Bonds; provided, however, that no such information and documentation shall be provided prior to the Closing Date. This consent and authorization relates only to information and documentation that is a part of the public record concerning the issuance of the Bonds.

SECTION 42. Contract with Financial Advisor. The City Council authorized any Authorized Official, or their designee thereof, to take all actions necessary to execute any necessary financial advisory contract with SAMCO Capital Markets, Inc., as the financial advisor to the City (the *Financial Advisor*). The City understands that under applicable federal securities laws and regulations that the City must have a contractual arrangement with its Financial Advisor relating to the sale, issuance, and delivery of the Bonds.

SECTION 43. Effective Date. Pursuant to the provisions of Section 1201.028, as amended, Texas Government Code, this Ordinance shall be effective immediately upon adoption, notwithstanding any provision in the City's Home Rule Charter to the contrary concerning a multiple reading requirement for the adoption of ordinances.

PASSED, APPROVED AND ADOPTED on the 12th day of October, 2021.

CITY OF SCHERTZ, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)

INDEX TO SCHEDULE AND EXHIBITS

Schedule I.....	Table of Refunded Obligations
Exhibit A.....	Paying Agent/Registrar Agreement
Exhibit B.....	Official Bid Form
Exhibit C.....	Escrow Deposit Letter
Exhibit D.....	Notices of Redemption
Exhibit E.....	Description of Annual Financial Information
Exhibit F.....	DTC Letter of Representations
Exhibit G.....	General Policies and Procedures Concerning Compliance with the Rule

SCHEDULE I

Refunded Obligations

1. City of Schertz, Texas General Obligation Bonds, Series 2012, dated August 1, 2012, in the original principal amount of \$7,625,000 stated to mature on February 1 in each of the years 2023 through 2026, February 1, 2028, February 1, 2030, and February 1, 2032, in the aggregate principal amount of \$4,345,000, to be redeemed on February 1, 2022 (*2012 Refunded Obligations*)
2. City of Schertz, Texas Combination Tax and Limited Pledge Revenue Certificates of Obligation, Series 2013, dated September 1, 2013, in the original principal amount of \$4,965,000 stated to mature on February 1 in each of the years 2023 through 2026, February 1, 2028, February 1, 2030 and February 1, 2033, in the aggregate principal amount of \$2,120,000, to be redeemed on February 1, 2022 (*2013 Refunded Obligations*)

EXHIBIT A

Paying Agent/Registrar Agreement

See Tab No. 3

EXHIBIT B
Official Bid Form

See Tab No. 8

EXHIBIT C

Escrow Deposit Letter

See Tab No. 4

EXHIBIT D

Notices of Redemption

See Tab No. 23

EXHIBIT E

Description of Annual Financial Information

The following information is referred to in Section 38 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified (and included in the Appendix or under the headings of the Official Statement referred to) below:

(1) The City's audited financial statements for the most recently concluded fiscal year or to the extent these audited financial statements are not available, the portions of the unaudited financial statements of the City attached to the Official Statement as Appendix D, but for the most recently concluded fiscal year.

(2) The information of the type included in Table 1 of the Official Statement and Tables 1 through 20 of Appendix A to the Official Statement.

Accounting Principles

The accounting principles referred to in such Section are generally accepted accounting principles for governmental units as prescribed by the Government Accounting Standards Board from time to time.

EXHIBIT F

DTC Letter of Representations

See Tab No. 5

EXHIBIT G

General Policies and Procedures Concerning Compliance with the Rule

I. Capitalized terms used in this Exhibit have the meanings ascribed thereto in Section 38 of the Ordinance. “Bonds” refer to the Bonds that are the subject of the Ordinance to which this Exhibit is attached.

II. As a capital markets participant, the City is aware of its continuing disclosure requirements and obligations existing under the Rule prior to February 27, 2019, the effective date of the most recent amendment to the Rule (the “Effective Date”), and has implemented and maintained internal policies, processes, and procedures to ensure compliance therewith. Adherence to these internal policies, processes, and procedures has enabled underwriters in non-exempt negotiated sales and initial purchasers in non-exempt competitive sales to comply with their obligations arising under various MSRB rules and regulations concerning due diligence and findings of suitability, among other matters, regarding the City’s compliance with the Rule.

III. The City is aware that the Rule was amended as of the Effective Date (the “Rule Amendment”) and has accommodated this amendment by adding paragraphs (15) and (16) to Section 38C of the Ordinance, which provisions are a part of the Undertaking.

IV. The City is aware that “participating underwriters” (as such term is defined in the Rule) of the Bonds must make inquiry and reasonably believe that the City is likely to comply with the Undertaking and that the standards for determining compliance have increased over time as a result of, among others, the United States Securities and Exchange Commission’s Municipalities Continuing Disclosure Cooperation Initiative and regulatory commentary relating to the effectiveness of the Rule Amendment.

V. The City now establishes the following general policies and procedures (the “Policies and Procedures”) for satisfying its obligations pursuant to the Undertaking, which policies and procedures have been developed based on the City’s informal policies, procedures, and processes utilized prior to the Effective Date for compliance with the City’s obligations under the Rule, the advice from and discussions with the City’s internal senior staff (including staff charged with administering the City’s financial affairs), its municipal or financial advisors, its legal counsel (including Bond Counsel), and its independent accountants, to the extent determined to be necessary or advisable (collectively, the “Compliance Team”):

1. the City Manager and the Director of Finance of the City (each, a “Compliance Officer”) shall be responsible for satisfying the City’s obligations pursuant to the Undertaking through adherence to these Policies and Procedures;
2. the Compliance Officer shall establish reminder or “tickler” systems to identify and timely report to the MSRB, in the format thereby prescribed from time to time, the City’s information of the type described in Section 38B of the Ordinance;
3. the Compliance Officer shall promptly determine the occurrence of any of the events described in Section 38C of the Ordinance;

4. the Compliance Officer shall work with external consultants of the City, as and to the extent necessary, to timely prepare and file with the MSRB the annual information of the City and notice of the occurrence of any of the events referenced in Clauses 2 and 3 above, respectively, the foregoing being required to satisfy the terms of the Undertaking;
5. the Compliance Officer shall establish a system for identifying and monitoring any Financial Obligations, whether now existing or hereafter entered into by the City, and (upon identification) determining if such Financial Obligation has the potential to materially impact the security or source of repayment of the Bonds;
6. upon identification of any Financial Obligation meeting the materiality standard identified in Clause 5 above, the Compliance Officer shall establish a process for identifying and monitoring any City agreement to covenants, events of default, remedies, priority rights, or other similar terms under such Financial Obligation;
7. the Compliance Officer shall establish a process for identifying the occurrence of any default, event of acceleration, termination event, modification of terms, or other similar events under the terms of any Financial Obligation, the occurrence of any of which reflect financial difficulties of the City; and
8. the Compliance Officer shall annually review these Policies and Procedures with the remainder of the Compliance Team, make any modifications on an internal document retained by the Compliance Officer and available to any “participating underwriter” (as defined in the Rule), if requested, and on the basis of this annual review (to the extent determined to be necessary or desirable), seek additional training for herself or himself, as well as other members of the City’s internal staff identified by the Compliance Officer to assist with the City’s satisfaction of the terms and provisions of the Undertaking.

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: Planning & Community Development
Subject: Ordinance No. 21-S-42 - Conduct a public hearing and consider and/or action approving an Ordinance by the City Council of the City of Schertz, Texas on a request to rezone 1.373 acres of land from Pre- Development District (PRE) to Single-Family Residential/ Agricultural District (RA), generally located 750 feet east of the intersection between Trainer Hale Road and FM 1518, 9049 Trainer Hale Road, also known as Bexar County Property Identification Number 310238, City of Schertz, Bexar County, Texas. (*First Reading*) (B. James/L. Wood/M. Harrison)

BACKGROUND

The applicant is proposing to rezone approximately 1.373 acres of land from Pre-Development District (PRE) to Single-Family Residential/Agricultural District (RA). The property is generally located 750 feet east of the intersection between Trainer Hale Road and FM 1518, 9049 Trainer Hale Road.

Seven (7) public hearing notices were mailed to the surrounding property owners within two hundred feet (200') of the subject property on August 27, 2021, with a public hearing notice published in the "San Antonio Express" on September 27, prior to the City Council public hearing. At the time of this report Staff has received zero (0) responses in favor and one (1) responses opposed to the zoning request.

One resident spoke during the public hearing, Richard Bassett, 9058 Trainer Hale Road. He was concerned with the effects of the rezone and the surrounding properties and their uses.

GOAL

The project goal is to rezone the subject property from Pre-Development District (PRE) to Single-Family Residential/Agricultural District (RA) in order to allow the owner to add accessory structures and/or build a new home.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

The Comprehensive Land Use Plan (CLUP), through the Future Land Use Plan and the Southern Schertz Sector Plan, designates this subject property as Estate Neighborhood. The objective of the Estate Neighborhood land use designation is intended to address residential development patterns within the RA zoned property within South Schertz. The goal within this Land Use/Character area is to incentivize an alternative development outcome with more flexibility in lot size.

- Comprehensive Plan Goals and Objectives: The proposed rezoning of the property to Single-Family Residential/ Agricultural District (RA) is in conformance with the goals and

objectives of the Comprehensive Plan; the proposed zone change supports the large lot and character of the Estate Neighborhood land use designation.

- **Impact of Infrastructure:** The proposed rezoning should have minimal impact on the existing water system, there is a City of Schertz water line that runs along the frontage of the property. The property currently does not have sanitary sewer infrastructure in place. There is an active OSSF system in place.
- **Impact of Public Facilities/Services:** The proposed rezoning should have minimal impact on public services, such as schools, fire, police, parks, and sanitation services.
- **Compatibility with Existing and Potential Adjacent Land Uses:** The subject property is surrounded by several parcels of equal size that are zoned Pre-Development District (PRE). The rezoning of this property is compatible with the Comprehensive Land Use Plan of Estate Neighborhood as it maintains the large lot and character of the land use designation.

FISCAL IMPACT

None

RECOMMENDATION

The Planning and Zoning Commission conducted a public hearing on September 8, 2021 and offered a recommendation of approval with a 7-0 vote for the rezone of the 1.373 acres of land from Pre-Development District (PRE) to Single-Family Residential/Agricultural District (RA).

Staff recommends approval of Ordinance No. 21-S-42 on first reading for the rezone of 1.373 acres of land from Pre-Development District (PRE) to Single-Family Residential/Agricultural District (RA).

Attachments

Ord. No. 21-S-42
Aerial Map
Zoning Exhibit
Citizen Response

ORDINANCE NO. 21-S-42

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AMENDING THE OFFICIAL ZONING MAP BY REZONING APPROXIMATELY 1.373 ACRES OF LAND TO SINGLE-FAMILY RESIDENTIAL/AGRICULTURAL DISTRICT GENERALLY LOCATED 750 FEET EAST OF THE INTERSECTION OF TRAINER HALE ROAD AND FM 1518, 9049 TRAINER HALE ROAD, ALSO KNOWN AS BEXAR COUNTY PROPERTY IDENTIFICATION NUMBER 310238, BEXAR COUNTY, TEXAS.

WHEREAS, an application to rezone approximately 1.373 acres of land located 750 feet east from the intersection of Trainer Hale Road and FM 1518, also known as Bexar County Property Identification Number 310238, and more specifically described in the Exhibit A attached herein (herein, the “Property”) has been filed with the City; and

WHEREAS, the City’s Unified Development Code Section 21.5.4.D. provides for certain criteria to be considered by the Planning and Zoning Commission in making recommendations to City Council and by City Council in considering final action on a requested zone change (the “Criteria”); and

WHEREAS, on September 8, 2021, the Planning and Zoning Commission conducted a public hearing and, after considering the Criteria, made a recommendation to City Council to approve the requested rezoning; and

WHEREAS, on October 12, 2021, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the requested zoning be approved as provided for herein.

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

Section 1. The Property as shown and more particularly described in the attached Exhibit A, is hereby zoned Single-Family Residential/Agricultural District.

Section 2. The Official Zoning Map of the City of Schertz, described and referred to in Article 2 of the Unified Development Code, shall be revised to reflect the above amendment.

Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 4. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 5. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 8. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

Section 9. This Ordinance shall be cumulative of all other ordinances of the City of Schertz, and this Ordinance shall not operate to repeal or affect any other ordinances of the City of Schertz except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Approved on first reading the 12th day of October, 2021.

PASSED, APPROVED AND ADOPTED on final reading the 26th day of October, 2021.

Ralph Gutierrez, Mayor

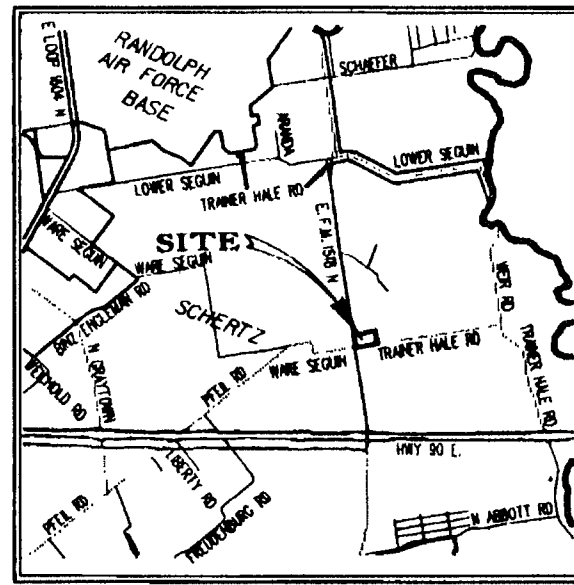
ATTEST:

Brenda Dennis, City Secretary
(SEAL OF THE CITY)

RECORDS INFORMATION
At time of recording this instrument was found to be
correctly indexed and photostatic reproduction made to
determine if any other instrument was recorded
therein, and if so, the instrument was recorded.

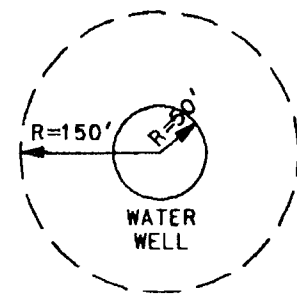
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99-0190033



LOCATION MAP
NOT TO SCALE

- 1.) NINE (9) SINGLE FAMILY RESIDENTIAL LOTS ESTABLISHED.
- 2.) MONUMENTATION FOUND OR SET AT ALL PROPERTY CORNERS.
- 3.) RIGHT OF WAY STREET DEDICATION. (0.278 ACS.)



SANITARY SEWER EASEMENT

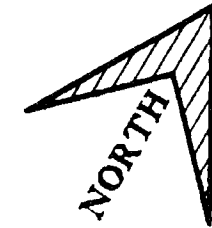
A PERMIT FROM BEXAR COUNTY PUBLIC
WORKS MUST BE OBTAINED PRIOR TO
INSTALLING ANY SEPTIC TANK.

BOENIG SUBDIVISION
(VOL. 9100, PG. 98)

LEGEND:

EXIST. ELEC. --- EXISTING ELECTRIC
TEL. --- TELEPHONE
CATV --- CABLE TELEVISION
SAN. SWR. --- SANITARY SEWER
ESMT. --- EASEMENT
R.O.W. --- RIGHT-OF-WAY
BLDG. --- BUILDING
N.C.B. --- NEW CITY BLOCK
BLK. --- BLOCK
E.T. & CATV ESMT. --- ELECTRIC, TELEPHONE, & CABLE TELEVISION EASEMENT
IRON ROD FOUND --- IRON ROD FOUND
IRON ROD SET --- IRON ROD SET
FOUND CONCRETE MONUMENT --- FOUND CONCRETE MONUMENT

Filed for Record in
BEXAR COUNTY, TEXAS
GERRY RICHARDS, COUNTY CLERK
On Oct 07 1999
At 2:46PM
Receipt #: 270465
Recording: 25.00
Doc/Sheet: 6.00
Doc/Num: 99-0190033
Deputy: Betty Semulveda



SCALE: 1" = 100'

BEARINGS BASED ON THE NORTH
RIGHT-OF-WAY LINE OF TRAINER
HALE RD.

- NOTES:
1. ROTATE BEARINGS 00°40'46" CLOCKWISE TO OBTAIN STATE PLANE COORDINATE BEARING SYSTEM.
 2. STATE PLANE COORDINATES AS SHOWN HEREON WERE DERIVED FROM G.P.S. OBSERVATION AS OBTAINED FROM GEODETIC, INC.

Exhibit A

SUBDIVISION PLAT ESTABLISHING TRAINER HALE SUBDIVISION

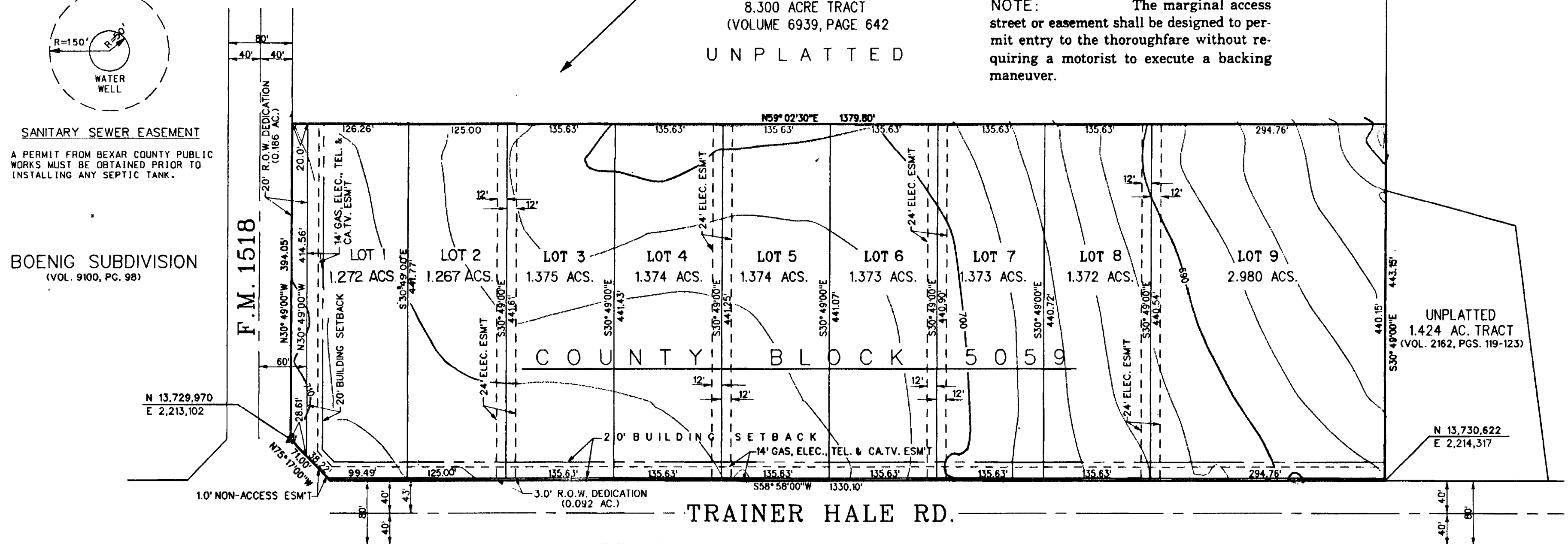
990204

BEING A 14.037 ACRE TRACT OF LAND OUT OF THE JULIAN DIAZ SURVEY NO. 66, BEXAR COUNTY, TEXAS, AND BEING OUT OF THAT CERTAIN 112.59 ACRE TRACT RECORDED IN VOLUME 2162, PAGES 119-123, DEED RECORDS OF BEXAR COUNTY, TEXAS.

- NOTES:
- 1.) For residential development directly adjacent to State right of way, the Developer shall be responsible for adequate set-back and/or sound abatement measures for future noise mitigation.
 - 2.) Owner/Developer is responsible for preventing any adverse impact to the existing drainage system within the highway right of way.
 - 3.) Maximum access points to State highway from this property will be regulated as directed by "Regulations For Access Driveways To State Highways". This property is eligible for a maximum combined total of TWO access points, based on overall platted accessible highway frontage of 324.05.
 - 4.) IF SIDEWALKS ARE REQUIRED BY APPROPRIATE CITY ORDINANCE, A SIDEWALK PERMIT MUST BE APPROVED BY TxDOT, PRIOR TO CONSTRUCTION WITHIN STATE RIGHT OF WAY. LOCATIONS OF SIDEWALKS WITHIN STATE RIGHT OF WAY SHALL BE AS DIRECTED BY TxDOT.

JULIAN DIAZ SURVEY NO. 66
ABSTRACT 187
COUNTY BLOCK 5059
8.300 ACRE TRACT
(VOLUME 6939, PAGE 642
UNPLATTED

NOTE: The marginal access street or easement shall be designed to permit entry to the thoroughfare without requiring a motorist to execute a backing maneuver.



CERTIFICATE OF APPROVAL

THE UNDERSIGNED, COUNTY JUDGE OF BEXAR COUNTY, TEXAS AND PRESIDING OFFICER OF THE COMMISSIONERS COURT OF BEXAR COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE ATTACHED PLAT WAS FILED WITH THE COMMISSIONERS COURT OF BEXAR COUNTY, TEXAS, AND THAT AFTER EXAMINATION IT APPEARS THAT SAID PLAT IS IN CONFORMITY WITH THE STATUTES, RULES AND REGULATIONS GOVERNING SAME, AND THAT THIS PLAT HAS BEEN APPROVED BY THE SAID COMMISSIONERS COURT.

ON THIS 06th DAY OF Sept. 1999
ATTEST:
[Signature]
COUNTY CLERK
BEXAR COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF BEXAR
THE OWNER OF THE LAND SHOWN ON THIS PLAT IN PERSON OR THROUGH A duly authorized agent, dedicates to the use of the public forever all streets, alleys, parks, water courses, drains, easements and public places thereon shown for the purpose and consideration therein expressed.

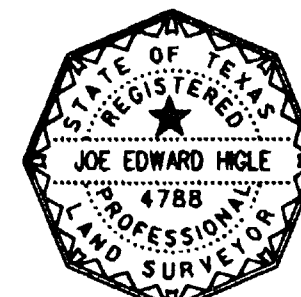
STATE OF TEXAS
COUNTY OF BEXAR
BEFORE ME THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED
ROBERT W. BARNES known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 6th DAY OF Sept. 1999
A.D. 1999
JOSE L. CARMONA
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

STATE OF TEXAS
COUNTY OF BEXAR
I HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT TO THE MATTERS OF STREETS, LOTS, AND DRAINAGE LAYOUT AND TO THE BEST OF MY KNOWLEDGE THIS PLAT CONFORMS TO ALL REQUIREMENTS OF THE UNIFIED DEVELOPMENT CODE, EXCEPT FOR THOSE VARIANCES GRANTED BY THE PLANNING COMMISSION OF THE CITY.

JOSE L. CARMONA
Notary Public, State of Texas
My Comm. Exp. 05/20/2007

JOSE L. CARMONA
Notary Public, State of Texas
My Comm. Exp. 05/20/2007



STATE OF TEXAS
COUNTY OF BEXAR
I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE ON THE GROUND UNDER MY SUPERVISION.

LUIS P. LOPEZ
Notary Public, State of Texas
My Comm. Exp. 04/06/03

THIS PLAT OF TRAINER HALE SUBDIVISION HAS BEEN
SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF SAN ANTONIO,
TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION.
DATED THIS 06th DAY OF Sept. 1999
BY *[Signature]* CHAIRMAN

NOTE:
THE CITY OF SAN ANTONIO AS A PART OF ITS ELECTRIC AND GAS SYSTEM (CITY PUBLIC SERVICE BOARD) IS HEREBY DEDICATING THE EASEMENTS AND RIGHT-OF-WAY FOR ELECTRIC AND GAS DISTRIBUTION AND SERVICE FACILITIES IN THE AREAS DESIGNATED ON THIS PLAT AS "ELECTRIC EASEMENT", "GAS EASEMENT", "ANCHOR EASEMENT", "SERVICE EASEMENT", "OVERHANG EASEMENT", "UTILITY EASEMENT", AND "TRANSFORMER EASEMENT" FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, RECONSTRUCTING, MAINTAINING, REMOVING, INSPECTING, PATROLLING, AND ERECTING POLES, HANDLING OR BUYING WIRES, CABLES, CONDUITS, PIPELINES OR TRANSFORMERS, EACH WITH ITS NECESSARY APPURTENANCES, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS OVER GRANTOR'S ADJACENT LAND, THE RIGHT TO RELOCATE SAID FACILITIES WITHIN SAID EASEMENT AND RIGHT-OF-WAY AREAS, AND THE RIGHT TO REMOVE FROM SAID LANDS ALL TREES OR PARTS THEREOF, OR OTHER OBSTRUCTIONS WHICH ENHANCE OR MAY INTERFERE WITH THE EFFICIENCY OF SAID LINES OR APPURTENANCES THEREON. IT IS AGREED AND UNDERSTOOD THAT NO BUILDINGS, CONCRETE SLABS, OR WALLS WILL BE PLACED WITHIN SAID EASEMENT AREAS.
ANY CPS NONVARIANT LOSS RESULTING FROM MODIFICATIONS REQUIRED OF CPS EQUIPMENT, LOCATED WITHIN SAID EASEMENT DUE TO GRADE CHANGES OR GROUND ELEVATION ALTERATIONS SHALL BE CHARGED TO THE PERSON OR PERSONS DEEMED RESPONSIBLE FOR SAID GRADE CHANGES OR GROUND ELEVATION ALTERATION. THIS PLAT DOES NOT AMEND, ALTER, RELEASE OR OTHERWISE AFFECT ANY EXISTING ELECTRIC, GAS, WATER, SEWER, DRAINAGE, TELEPHONE, CABLE EASEMENTS OR ANY OTHER EASEMENTS FOR UTILITIES UNLESS THE CHANGES TO SUCH EASEMENTS ARE DESCRIBED BELOW.

DEVELOPER/OWNER:
ROBERT W. BARNES
1900 NATIONALS BANK PLAZA
300 CONVENT ST.
(210)225-1000

MACINA, BOSE, COPELAND & ASSOCIATES, INC.
CONSULTING ENGINEERS AND LAND SURVEYORS
415 Breesport Drive, San Antonio, Texas 78216
27469

STATE OF TEXAS
COUNTY OF BEXAR
I, GERRY RICHARDS, COUNTY CLERK OF SAID COUNTY, DO HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON THE 7th DAY OF Oct. 1999 AT 2:46 P.M. AND WAS RECORDED IN THE RECORDS OF DEEDS & PLATS, A.D. 1999 AT 2:46 P.M. IN THE RECORDS OF DEEDS & PLATS, ON PAGE 20 OF SAID COUNTY, IN BOOK VOLUME 9545. IN TESTIMONY WHEREOF, WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, THIS 06th DAY OF Oct. 1999.

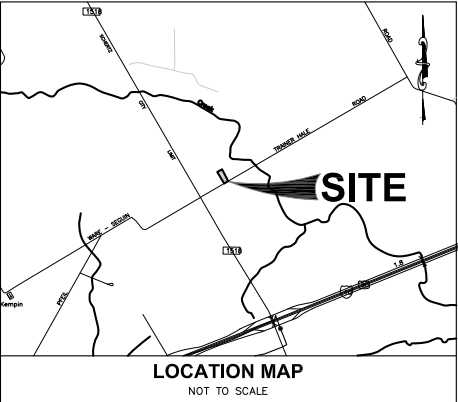
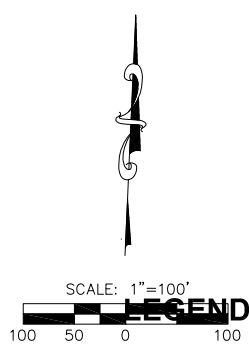
COUNTY CLERK, BEXAR COUNTY, TEXAS
BY *[Signature]* DEPUTY



EXISTING ZONING



PROPOSED ZONING



LEGEND

---	EXISTING ZONING (PRE DEVELOPMENT)
---	PROPOSED ZONING (RESIDENTIAL AGRICULTURAL)
---	200-FT NOTIFICATION BOUNDARY
⑦	PROPERTY # SEE TABLE FOR ADDITIONAL INFORMATION

200-FT NOTIFICATION AREA PROPERTY INFORMATION							
PROPERTY #	LAND USE	ZONING	SUBDIVISION NAME	OWNER NAME	PROPERTY ADDRESS	PROPERTY ID#	RECORDING INFORMATION
1	RESIDENTIAL	PRE-DEVELOPMNT	TRAINER HALE SUBDIVISION	GARCIA LUCIA	9114 TRAINER HALE RD SCHERTZ, TX 78154	310236	VOL. 9545 PG. 20
2	RESIDENTIAL	PRE-DEVELOPMNT	TRAINER HALE SUBDIVISION	SHAW BRIAN EDWARD	9102 TRAINER HALE RD SCHERTZ, TX 78154	310237	VOL. 9545 PG. 21
3	INDUSTRIAL	DEVELOPMENT AGREEMENT (DELAYED ANNEXATION)	N/A	OBEARLE GARY RICHARD	7530 E FM 1518 N SCHERTZ, TX 78154	310070	VOL. 4154 PG. 0516
4	RESIDENTIAL	PRE-DEVELOPMNT	TRAINER HALE SUBDIVISION	BASSETT RICHARD E JR	9058 TRAINER HALE RD SCHERTZ, TX 78154	310239	VOL. 9545 PG. 21
5	RESIDENTIAL	PRE-DEVELOPMNT	TRAINER HALE SUBDIVISION	SKINNER DELBERT L &	9033 TRAINER HALE RD SCHERTZ, TX 78154	310240	VOL. 9545 PG. 21
6	ROAD	UNZONED RIGHT OF WAY	N/A	N/A	N/A	N/A	N/A
7	LAND (POTENTIAL DEVELOPMENT LAND)	DEVELOPMENT AGREEMENT (DELAYED ANNEXATION)	N/A	LUENSMANN HENRRY W FAMILY TR &	8841 TRAINER HALE RD SCHERTZ, TX 78154	339274	VOL. 13294 PG. 1417 & 1425

ACREAGE SUMMARY
EXISTING 1.373 AC PRE-DEVELOPMENT ZONING
NOTE:
NO 100 YR FLOODPLAIN EXISTS ON THE PROPERTY AS DEFINED BY BEXAR COUNTY, TEXAS COMMUNITY PANEL NUMBER 48029C0315F, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, EFFECTIVE DATE SEPTEMBER 29, 2010.

OWNER/DEVELOPER:
ROLLAUER BOGUSLAW J & BARABARA
9049 TRAINER HALE RD
SCHERTZ, TX 78154-4517

ENGINEER:
KLOVE ENGINEERING
KEVIN W. LOVE, P.E.
22610 US HWY 281 N STE 204
SAN ANTONIO, TX 78258
210-485-5683

9049 TRAINER HALE RD

9049 TRAINER HALE RD
SCHERTZ, TX 78154

ZONING EXHIBIT

Klove ENGINEERING
Site Development Engineering Services
Firm No. 11042
www.kloveengineering.com (210) 485-5683

PROJECT NO.	
FILENAME:	TRAINER HALE
DESIGNED BY:	JC
DRAWN BY:	JC
SCALE:	1"=200'
DATE:	08/02/21
SHEET NO.	1 OF 1

NOTICE OF PUBLIC HEARING

August 27, 2021

Dear Property Owner,

The Schertz Planning and Zoning Commission will conduct a public hearing on **Wednesday, September 8, 2021** at **6:00 p.m.** located at the Municipal Complex Council Chambers, 1400 Schertz Parkway, Building #4, Schertz, Texas to consider and make recommendation on the following item:

ZC2021-011 – A request to rezone 1.373 acres of land from Pre-Development District (PRE) to Single-Family Residential/ Agricultural District, generally located approximately 750 feet east of the intersection between Trainer Hale Road and FM 1518, 9049 Trainer Hale Road, also known as Bexar County Property Identification Number 310238, City of Schertz, Bexar County, Texas.

The Planning and Zoning Commission would like to hear how you feel about this request and invites you to attend the public hearing. *This form is used to calculate the percentage of landowners that support and oppose the request.* You may return the reply form below prior to the first public hearing date by mail or personal delivery to mharrison@schertz.com. If you have any questions please feel free to call Megan Harrison, Planner directly at (210) 619-1781.

Sincerely,



Megan Harrison
Planner

Reply Form

I am: in favor of ☐ opposed to ☒ neutral to ☐ the request for **ZC2021-011**

COMMENTS: One Main - Seven Suffer - This would stop any Commercial progress/benefits for seven -

NAME: Richard F Bassett Jr. SIGNATURE 
(PLEASE PRINT)

STREET ADDRESS: 9058 Trainer Hale Rd. Schertz TX 78154

DATE: Sept 8 2021

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: Planning & Community Development
Subject: Ordinance No. 21-S-43 - Conduct a public hearing and consider and/or action approving an Ordinance by the City Council of the City of Schertz, Texas on a request to rezone approximately 45 acres of land from General Business District (GB) to Manufacturing Light District (M-1), generally located approximately 1,300 feet east of Friesenhahn Lane and 450 feet north of IH-35 access road, also known as Comal County Property Identification Numbers 150166 & 81285, City of Schertz, Comal County, Texas. (*First Reading*) (B. James/L. Wood/M. Harrison)

BACKGROUND

The overall property is approximately 45 acres of land including 6.011 acres which is currently General Business District (GB) and the remaining 36.474 acres is Manufacturing Light District (M-1). The proposed rezone from General Business District (GB) to Manufacturing Light District is only for the 6.011 acre portion. There will be a remaining 2.565 acre tract of land that abuts IH-35 that will remain zoned General Business District (GB). The notice that was published was for the entire 45 acre tract of land to be rezoned to Manufacturing Light District (M-1). However, after further review and discussion it was determined that only 6.011 acres of land needed to be rezoned from General Business District (GB) to Manufacturing Light District (M-1) as the rest of the acreage exists as Manufacturing Light District (M-1). If approved then this would result in the entire tract of land being under one zoning district.

Four (4) public hearing notices were mailed to the surrounding property owners within two hundred (200) feet of the subject property on August 10, 2021, with a public hearing notice published in the "San Antonio Express" on September 27, prior to the City Council public hearing. At the time of this staff report Staff has received zero (0) responses in favor or opposed to the zoning request.

GOAL

The project goal is to rezone the subject property from General Business District (GB) to Manufacturing Light District (M-1) in order to allow the owner to develop the property with an office/warehouse type development.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision for future growth.

SUMMARY OF RECOMMENDED ACTION

The Sector Plan amendment to the Comprehensive Land Use Plan (CLUP) designates the subject property as part of the Commercial Campus land use designation. The objective of the Commercial Campus land use designation is to accommodate light manufacturing or flex office uses set in a campus like environment located at mid-block locations. Due to the location of the property the rezone is taking place 450 feet north of the frontage of 35. Therefore, the acreage that remains adjacent to IH 35 will maintain the General Business District (GB) zoning. The rezone captures the intent of the land use

designation of keeping the office retail along the highway and placing the industrial uses in the rear of the property.

- Comprehensive Plan Goals and Objectives: The proposed rezoning of this property to Manufacturing Light District (M-1) is consistent with the Comprehensive Land Use Plan as the industrial use is being maintained at the rear of the property and they are preserving the General Business District (GB) zoning on the frontage of 35.
- Impact of Infrastructure: The proposed rezoning should have minimal impact on the existing water system. The property will be serviced by an 8 inch water line that will stubbed for future development. The property currently does not have sanitary sewer infrastructure in place; however, there is sewer to the north of the property that would be closet to tap into. If the proposed zone change is approved, the applicant would be required during the development process to make any infrastructure improvements deemed necessary.
- Impact of Public Facilities/Services: The proposed rezoning should have minimal impact on the public services, such as schools, fire, police, parks, and sanitation services.
- Compatibility with Existing and Potential Adjacent Land Uses: The subject property is currently surrounded by several parcels such as Sysco, Amazon Distribution Center, and undeveloped lots that are zoned General Business District (GB) or Manufacturing Light District (M-1) which is compatible with the proposed rezone of this site.

FISCAL IMPACT

None

RECOMMENDATION

The Planning and Zoning Commission conducted a public hearing on September 22, 2021, and offered a recommendation of approval with a 6-0 vote for the rezone of the 6.011 acres to Manufacturing Light District (M-1). As mentioned in the background after the Planning and Zoning Commission meeting, staff determined that the rezone was only needed for the 6.011 acres. Therefore, 42.485 acres of land will be zoned Manufacturing Light District (M-1) and then there will be 2.565 acres that abut IH-35 that will remain General Business District (GB), which consists of the total 45 acres.

Staff recommends approval of Ordinance No. 21-S-43 on first reading to rezone the 6.011 acres of land to Manufacturing Light District (M-1).

Attachments

Ord. No. 21-S-43

Aerial Map

Zoning Exhibit

Rezone Exhibit

Draft Exhibit SAOne

ORDINANCE NO. 21-S-43

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AMENDING THE OFFICIAL ZONING MAP BY REZONING APPROXIMATELY 6.011 ACRES OF LAND TO MANUFACTURING LIGHT DISTRICT, GENERALLY LOCATED 1,300 FEET EAST OF FRISENHAHN LANE AND 450 FEET NORTH OF IH-35, ALSO KNOWN AS COMAL COUNTY PROPERTY IDENTIFICATION NUMBERS, 150166 AND 81285, BEXAR COUNTY, TEXAS.

WHEREAS, an application to rezone approximately 6.011 acres of land located 1,300 feet east of Friesenhahn Road and 450 feet north of IH-35, also known as Comal County Property Identification Numbers 150166 and 81285, and more specifically described in the Exhibit A and Exhibit B attached herein (herein, the “Property”) has been filed with the City; and

WHEREAS, the City’s Unified Development Code Section 21.5.4.D. provides for certain criteria to be considered by the Planning and Zoning Commission in making recommendations to City Council and by City Council in considering final action on a requested zone change (the “Criteria”); and

WHEREAS, on September 22, 2021, the Planning and Zoning Commission conducted a public hearing and, after considering the Criteria, made a recommendation to City Council to approve the requested rezoning; and

WHEREAS, on October 12, 2021, the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the requested zoning be approved as provided for herein.

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

Section 1. The Property as shown and more particularly described in the attached Exhibit A, is hereby zoned Manufacturing Light District (M-1).

Section 2. The Official Zoning Map of the City of Schertz, described and referred to in Article 2 of the Unified Development Code, shall be revised to reflect the above amendment.

Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section 4. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 5. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 8. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

Section 9. This Ordinance shall be cumulative of all other ordinances of the City of Schertz, and this Ordinance shall not operate to repeal or affect any other ordinances of the City of Schertz except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Ordinance, in which event such conflicting provisions, if any, are hereby repealed.

Approved on first reading the 12th day of October, 2021.

PASSED, APPROVED AND ADOPTED on final reading the 26th day of October, 2021.

Ralph Gutierrez, Mayor

ATTEST:

Brenda Dennis, City Secretary
(SEAL OF THE CITY)

PROPOSED ZONING CHANGE

Part of San Antonio One Limited Partnership,
Juan Francisco Zepeda Survey, Abstract No. 685
City of Schertz, Comal County, Texas

DESCRIPTION, of a 6.011 acre (261,818 square foot) tract of land situated in the Juan Francisco Zepeda Survey, Abstract No. 685, City of Schertz, Comal County, Texas; said tract being part of that certain tract of land described in Warranty Deed to San Antonio One Limited Partnership, recorded in Volume 803, Page 777 of the Deed Records of Comal County, Texas; said 6.011 acre tract of land being more particularly described as follows (bearing system for this survey is based on the State Plane Coordinate System, North American Datum of 1983 (2011), Texas Central Zone 4203. Distances reported have been scaled by applying a computed scale factor of 1.0001557372):

BEGINNING, at a point for the southernmost southwest corner of said San Antonio One Limited Partnership tract; said point also being the northwest corner of that certain tract of land described Special Warranty Deed to DTLC Investment, LLC, recorded Document Number 202006013466, the northwest corner of Lot 1, Block 1, Lack's Subdivision, an addition to the City of Schertz, Texas according to the plat recorded in Document Number 200706013878 and being in the southeast line of that certain tract of land described in Warranty Deed with Vendor's Lien to Marcantonio Enterprises, LLC, recorded in Document Number 201106034921 all of the Official Public Records of Comal County, Texas;

THENCE, North 16 degrees, 44 minutes, 22 seconds West, along the northwest line of said San Antonio One Limited Partnership tract and the said southeast line of Marcantonio Enterprises, LLC tract, a distance of 264.67 feet;

THENCE, departing the said northwest line of San Antonio One Limited Partnership tract and the said southeast line of Marcantonio Enterprises, LLC tract, and into and across the said San Antonio One Limited Partnership tract, the following three (3) calls;

North 59 degrees, 21 minutes, 59 seconds East, a distance of 986.54 feet;

South 29 degrees, 54 minutes, 29 seconds East, a distance of 261.02 feet;

South 60 degrees, 05 minutes, 31 seconds West, a distance of 333.46 feet; said point being the north corner of said Lot 1; said point also being a south corner of said San Antonio One Limited Partnership tract;

THENCE, South 59 degrees, 21 minutes, 16 seconds West, along the northwest line of said Lack's Subdivision and a north line of said San Antonio One Limited Partnership, a distance of 713.36 feet to the **POINT OF BEGINNING**;

CONTAINING, 6.011 acres or 261,818 square feet of land, more or less.

Luis M. Gonzalez

08/18/2021

Luis M. Gonzalez
Registered Professional Land Survey No. 6793
Pacheco Koch Consulting Engineers, Inc.
7557 Rambler Road, Suite 1400, Dallas, Texas 75231
(972) 235-3031
TX Reg. Surveying Firm LS-10008000



4924-21.138-Proposed Zoning Description.doc
4924-21.138-Zoning Exhibit.dwg

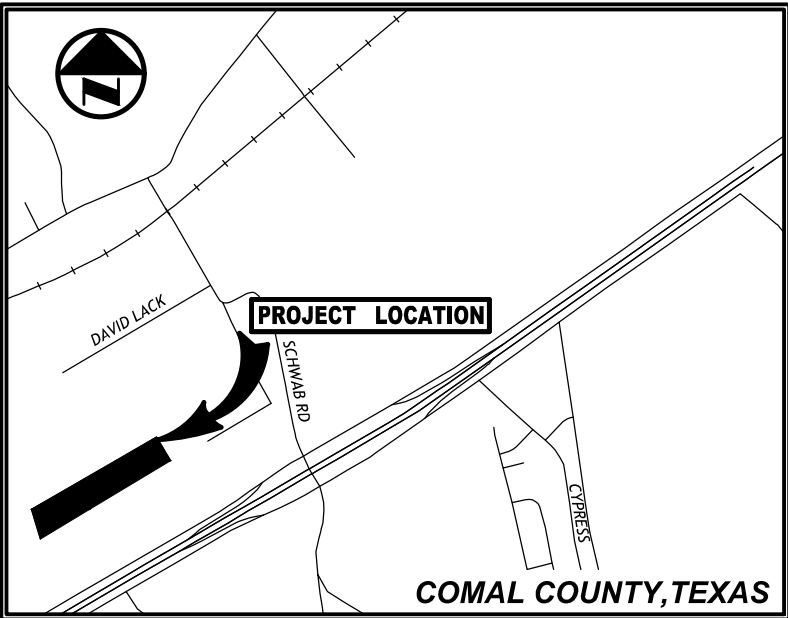
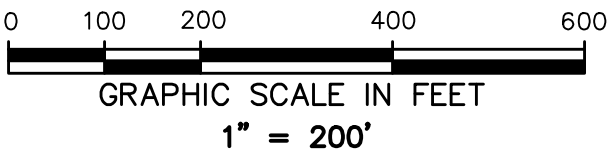
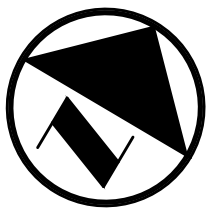
ACREAGE SUMMARY

PROPERTY NO. 4 EXISTING: 36.474 AC M-1
ZONING, 8.576 AC GB ZONING

PROPERTY NO. 4 PROPOSED: 42.485 AC M-1
ZONING, 2.565 AC GB ZONING

NOTE:
NO 100-YEAR FLOOD PLANE EXISTS ON THE
PROPERTY AS DEFINED BY THE COMAL
COUNTY, TEXAS COMMUNITY PANEL NUMBER
48091C0440F, AS PREPARED BY THE FEDERAL
EMERGENCY MANAGEMENT AGENCY, EFFECTIVE
DATE: SEPTEMBER 2, 2009

Exhibit A



VICINITY MAP
(1"=2,000')

LEGEND

- SUBJECT PROPERTY LINE
- EXISTING ZONING LINE
- 200' NOTIFICATION BOUNDARY

AREA TO BE CHANGED
FROM GB TO M-1 (6.011 ACRES)

1 PROPERTY NUMBER (SEE TABLE FOR
ADDITIONAL INFORMATION)

OWNER:
SAN ANTONIO ONE LIMITED PARTNERSHIP
2111 WOODWARD SUITE 910
DETROIT, MICHIGAN 48201
PH: 469-877-4165
CONTACT: ALYN THOMAS

ENGINEER:
PACHECO KOCH, INC.
8701 N. MOPAC EXPRESSWAY, SUITE 320
AUSTIN, TEXAS 78759
PH: 512-485-0831
CONTACT: CLAYTON STROLLE

SURVEYOR:
PACHECO KOCH, INC.
7557 RAMBLER ROAD, SUITE 1400
DALLAS, TEXAS 75231
PH: 972-235-3031
CONTACT: LUIS M. GONZALEZ

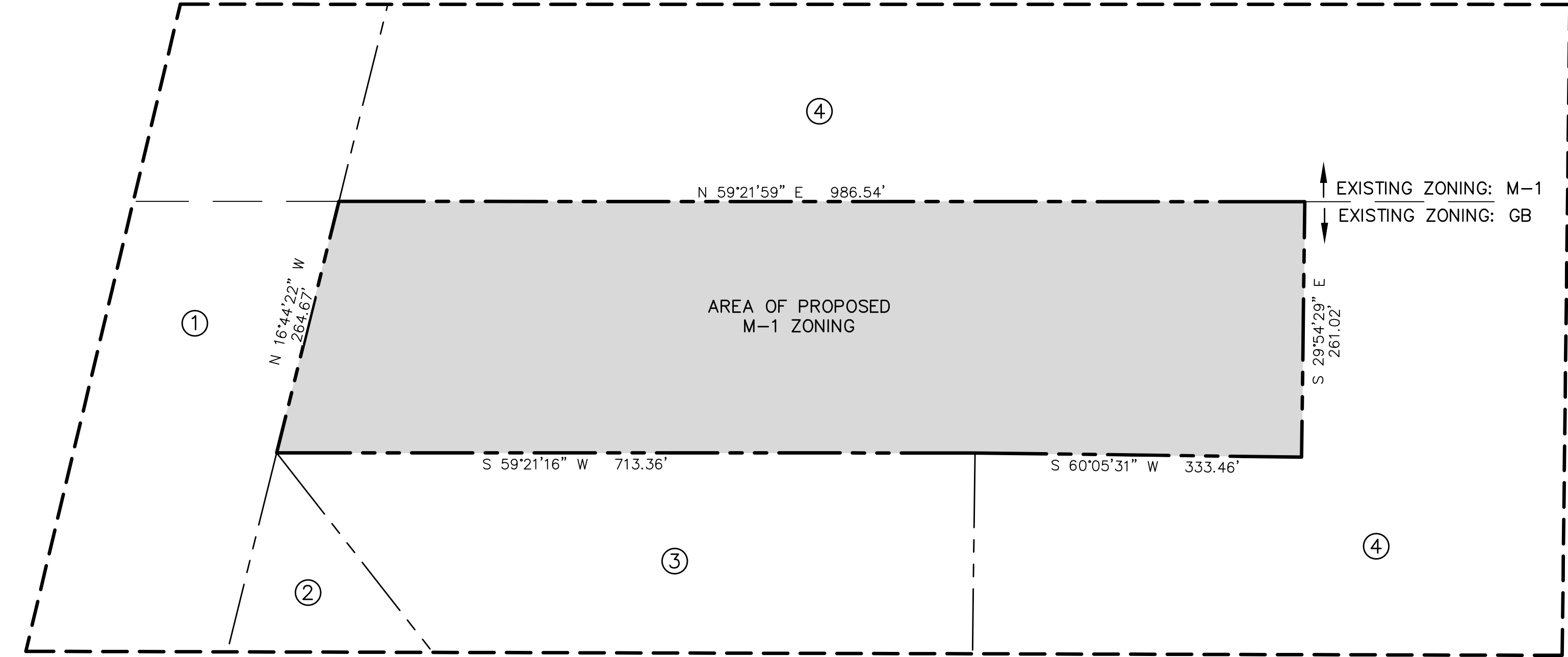
PROPOSED ZONE CHANGE EXHIBIT

J.F. ZEPEDA SURVEY-
ABSTRACT NO. 685

PREPARED: JULY 13, 2021



DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
JAN	LMG	1"=200'	JULY 2021	4924-21.138



200-FOOT NOTIFICATION AREA PROPERTY INFORMATION							
PROPERTY #	LAND USE	ZONING	SUBDIVISION NAME	OWNER NAME	PROPERTY ADDRESS	PROPERTY ID	RECORDING INFORMATION
1	VACANT	M-1	N/A	MARCANRONIO ENTERPRISE, LLC	181 FRIESENHAHN SCHERTZ, TEXAS	398729	DOC. NO. 201106034921
2	VACANT	GB	N/A	DTLC INVESTMENTS, LLC	23201 IH 35 N SCHERTZ, TEXAS	81275	DOC. NO. 202006013466
3	VACANT	GB	LACK'S SUBDIVISION	PAYEZ LLC	23755 IH 35 N SCHERTZ, TEXAS	150166	DOC. NO. 201906032650
4	ACCESS ROAD & UNDEVELOPED LAND	GB	N/A	SAN ANTONIO ONE LIMITED PARTNERSHIP	NOT POSTED	81285	VOL. 803, PG. 781



SCHIERTZ

COMMUNITY • SERVICE • OPPORTUNITY

SAN ANTONIO ONE LTD PTNSHP

23331 IH 35

JF ZEPEDA 40.562 AC

<all other values>	60' Expansion	86' Extension	120' Proposed	1", 1 1/2"	8"	20"	Unknown	Schertz Gravity	Hydrant	200' Buffer
Highways	60' Proposed	86' Proposed	Abandoned	2", 2 1/2"	10"	24"	Neighboring Main	Schertz Pressure	Manholes	Schertz Municipal Boundary
Major Roads	60' Extension	86' Extension	Future TxDOT	3"	12"	30"	Private Main	Neighboring Gravity	County Boundaries	
Minor Roads	86' Expansion	120' Extension	Highway	4"	16"	36"	Private Pressure			
Other Cities				6"	18"					

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

1 Inch = 200 Feet

0

100

200

400

600

Feet

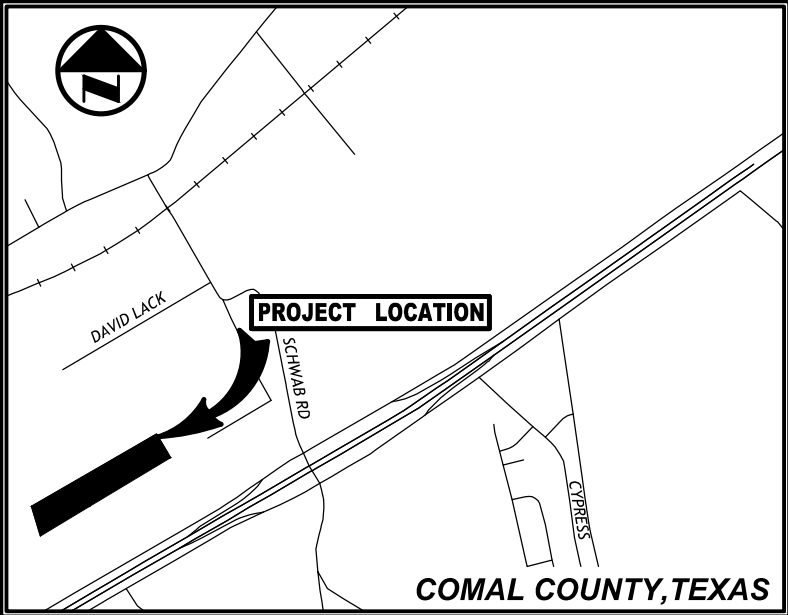
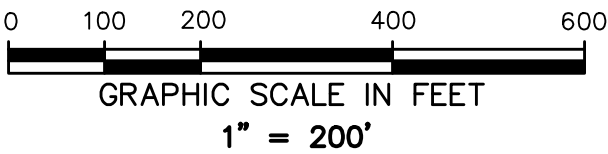
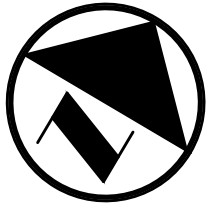
ACREAGE SUMMARY

PROPERTY NO. 4 EXISTING: 36.474 AC M-1
ZONING, 6.011 AC GB ZONING

PROPERTY NO. 4 PROPOSED: 42.485 AC M-1
ZONING, 2.565 AC GB ZONING

NOTE:
NO 100-YEAR FLOOD PLANE EXISTS ON THE
PROPERTY AS DEFINED BY THE COMAL
COUNTY, TEXAS COMMUNITY PANEL NUMBER
48091C0440F, AS PREPARED BY THE FEDERAL
EMERGENCY MANAGEMENT AGENCY, EFFECTIVE
DATE: SEPTEMBER 2, 2009

Exhibit A



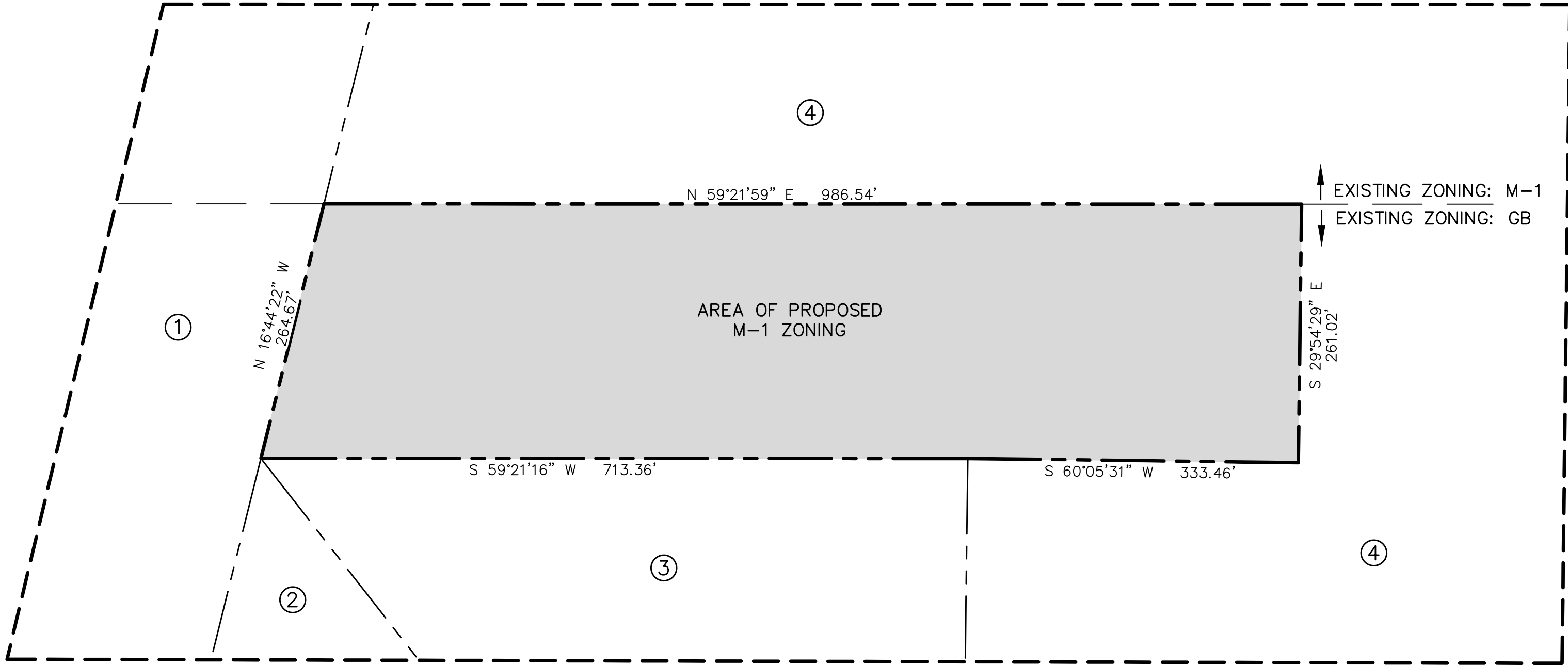
VICINITY MAP
(1"=2,000')

LEGEND

- SUBJECT PROPERTY LINE
- EXISTING ZONING LINE
- 200' NOTIFICATION BOUNDARY

AREA TO BE CHANGED
FROM GB TO M-1 (6.011 ACRES)

1 PROPERTY NUMBER (SEE TABLE FOR
ADDITIONAL INFORMATION)



OWNER:
SAN ANTONIO ONE LIMITED PARTNERSHIP
2111 WOODWARD SUITE 910
DETROIT, MICHIGAN 48201
PH: 469-877-4165
CONTACT: ALYN THOMAS

ENGINEER:
PACHECO KOCH, INC.
8701 N. MOPAC EXPRESSWAY, SUITE 320
AUSTIN, TEXAS 78759
PH: 512-485-0831
CONTACT: CLAYTON STROLLE

SURVEYOR:
PACHECO KOCH, INC.
7557 RAMBLER ROAD, SUITE 1400
DALLAS, TEXAS 75231
PH: 972-235-3031
CONTACT: LUIS M. GONZALEZ

200-FOOT NOTIFICATION AREA PROPERTY INFORMATION

PROPERTY #	LAND USE	ZONING	SUBDIVISION NAME	OWNER NAME	PROPERTY ADDRESS	PROPERTY ID	RECORDING INFORMATION
1	VACANT	M-1	N/A	MARCANRONIO ENTERPRISE, LLC	181 FRIESENHAHN SCHERTZ, TEXAS	398729	DOC. NO. 201106034921
2	VACANT	GB	N/A	DTLC INVESTMENTS, LLC	23201 IH 35 N SCHERTZ, TEXAS	81275	DOC. NO. 202006013466
3	VACANT	GB	LACK'S SUBDIVISION	PAYEZ LLC	23755 IH 35 N SCHERTZ, TEXAS	150166	DOC. NO. 201906032650
4	ACCESS ROAD & UNDEVELOPED LAND	GB	N/A	SAN ANTONIO ONE LIMITED PARTNERSHIP	NOT POSTED	81285	VOL. 803, PG. 781

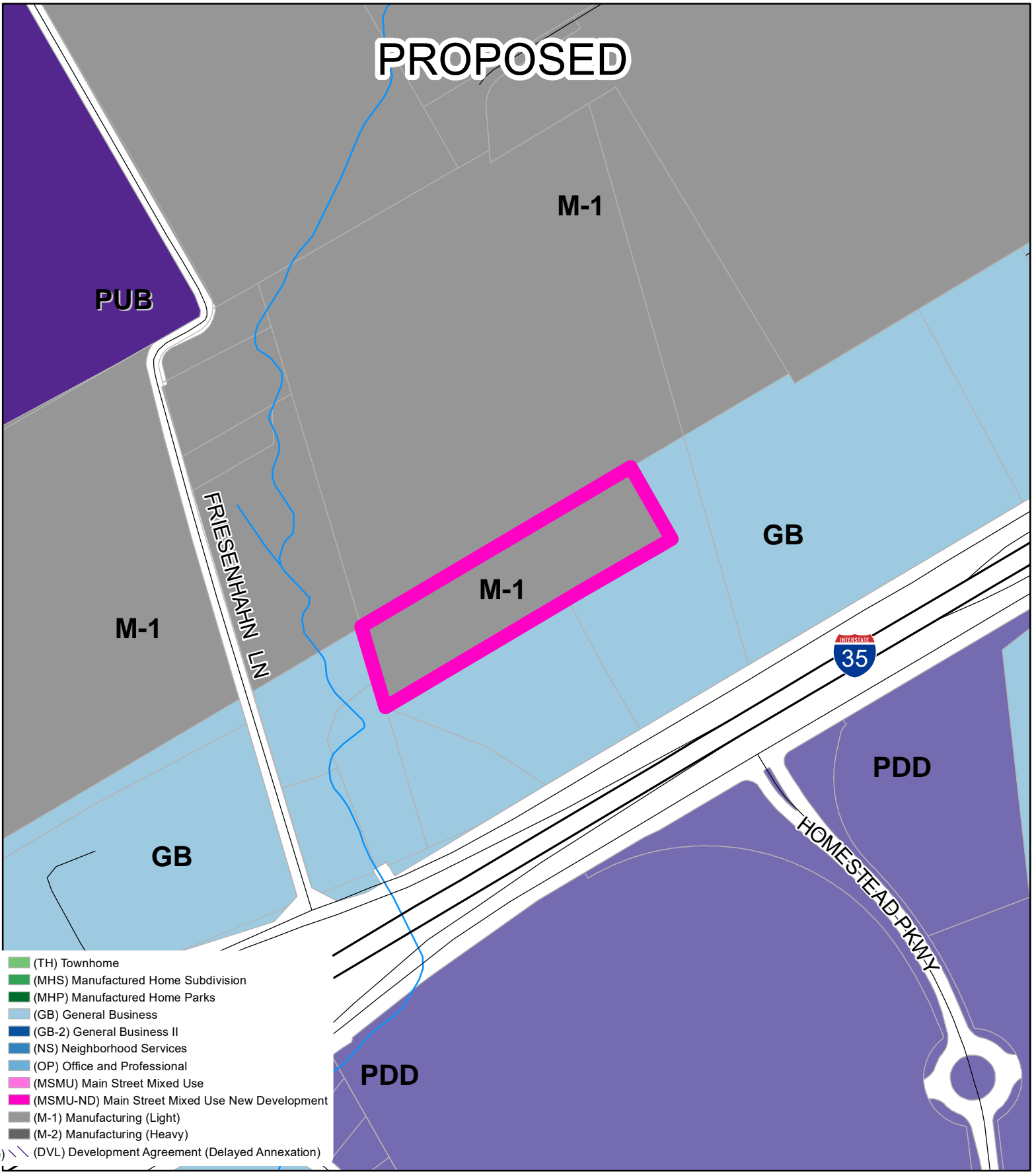
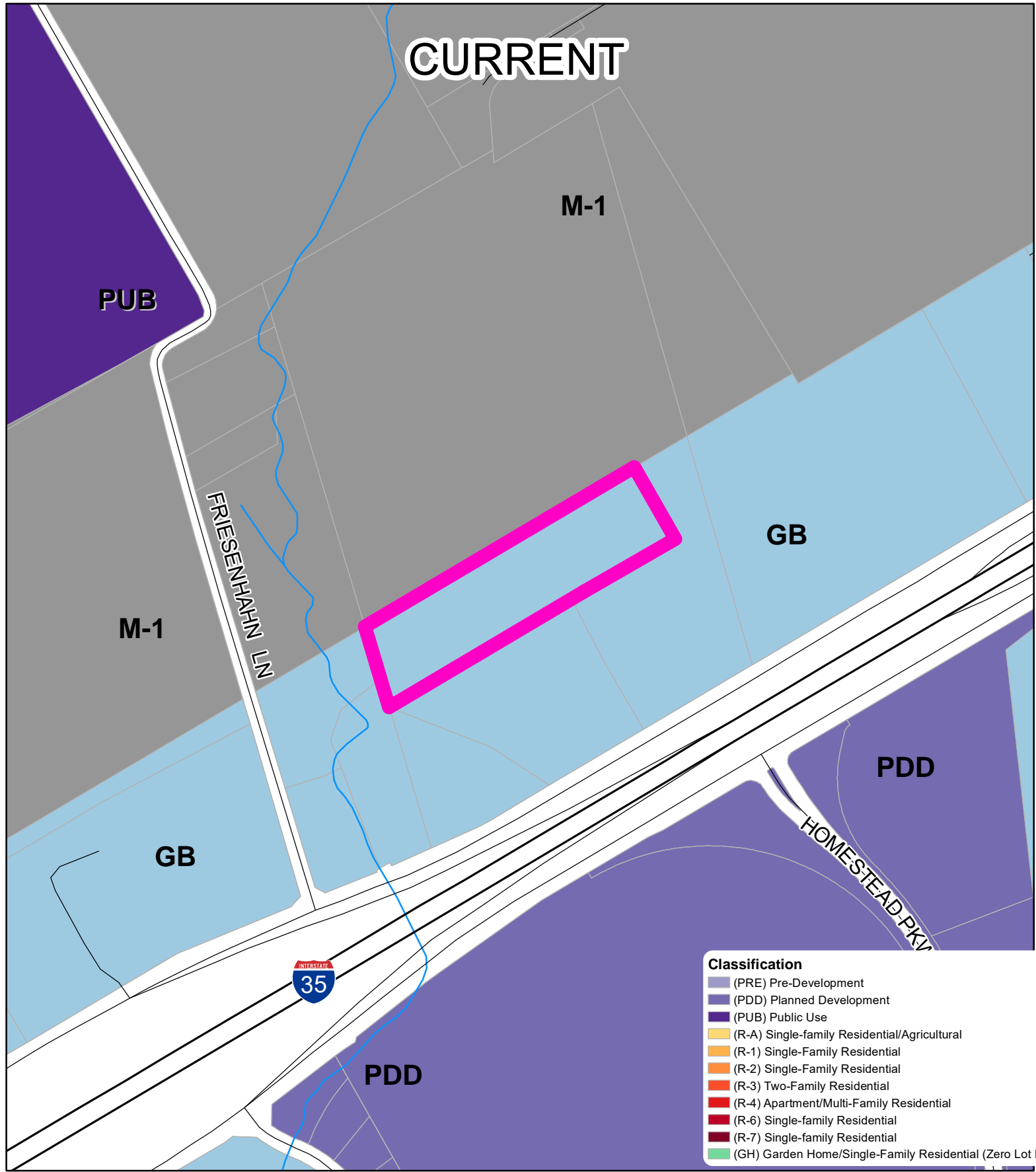
PROPOSED ZONE CHANGE EXHIBIT

J.F. ZEPEDA SURVEY-
ABSTRACT NO. 685

PREPARED: JULY 13, 2021



DRAWN BY	CHECKED BY	SCALE	DATE	JOB NUMBER
JAN	LMG	1"=200'	JULY 2021	4924-21.138



Proposed Zoning Change

SAN ANTONIO TWO LTD PTNSHP
23331 IH 35
ORD 21-S-xx

[illegible]

CITY COUNCIL MEMORANDUM

City Council Meeting: October 12, 2021
Department: Planning & Community Development
Subject: Ordinance No. 21-S-44 - Conduct a public hearing and consideration and or/action to approve an Ordinance by the City Council of the City of Schertz, Texas to amend the Schertz Code of Ordinances, Unified Development Code (UDC), Article 5, Subsection 21.5.8 Permitted Use Table, to add "Aggregate Extraction". (*First Reading*) (B. James/L. Wood/M. Harrison)

BACKGROUND

Per Section 21.5.8.C.3 of the Unified Development Code (UDC), "It is recognized that the permitted use chart may require amendment, from time to time, to allow for uses that were otherwise not permitted. In the event an amendment to the permitted use chart is required, the procedure for the amendment shall be the same as required for an amendment to the text of the UDC in accordance with section 21.4.7 of this UDC." Staff was approached by a property owner about a use that involved removing significant amounts of soil from a property and taking in additional soil on the property. Essentially, selling dirt that is desirable for construction and taking soil that is not desirable for construction. The use is not listed in the UDC, so staff is proposing an amendment to the table of uses to add this use and indicate in which districts it is allowed. Although not directly addressing the proposed UDC amendment, the property owner who prompted this has provided materials they have asked to be included in the packet to explain how this type of operation might work.

Aggregates are any commonly recognized as construction material such as stone, crushed and broken limestone, crushed and broken granite, other types of crushed and broken stone, construction sand and gravel, industrial sand, dirt, soil, or caliche.

Staff would define Aggregate Extraction as, the removal of stone, sand, gravel, dirt, soil or caliche or the addition of those materials.

GOAL

The project goal is to add, Aggregate Extraction, to the list of uses within the permitted use table, 21.5.8 and determine in which districts it is permitted by right, with a Specific Use Permit (SUP) or not allowed.

COMMUNITY BENEFIT

It is the City's desire to promote safe, orderly, efficient development and ensure compliance with the City's vision of future growth.

SUMMARY OF RECOMMENDED ACTION

In making a recommendation as to which districts should allow Aggregate Extraction, staff considers similar uses in the UDC, in particular those where dust and noise would be created by the heavy equipment such as at a Concrete/Asphalt Batching Plant, which is only allowed in the Manufacturing Heavy District (M-2) and it requires an SUP. This type of business, Aggregate Extraction, would have the same concerns such as the dust created with the removal of all natural vegetation and topsoil, as well as the noise from the heavy equipment that is used on site. Aggregate Extraction would be

different in that there will not be equipment to crush rock or materials or manufacture cement or asphalt which is noisy.

FISCAL IMPACT

None

RECOMMENDATION

The Planning and Zoning Commission conducted a public hearing on September 22, 2021, at this meeting the Planning and Zoning Commission felt that the Aggregate Extraction should be allowed within the Manufacturing Light District (M-1) and Manufacturing Heavy District (M-2) with the approval of a Specific Use Permit (SUP). In doing this it would allow the Commission and City Council the opportunity to see the proposed layouts, plans, and decide if the location is compatible with the surrounding land uses.

After the discussion the Planning and Zoning Commission offered a recommendation of approval with a 6-0 vote to amend the permitted use table to allow Aggregate Extraction with an SUP. Staff recommends approval of Ordinance No. 21-S-44 on first reading.

Attachments

Ord. No. 21-S-44

Property Owner Request

ORDINANCE NO. 21-S-44

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS TO AMENDING PART III, SCHERTZ CODE OF ORDINANCES, THE UNIFIED DEVELOPMENT CODE (UDC) ARTICLE 5, SECTION 21.5.8 PERMITTED USE TABLE; SPECIFICALLY TO ADD AGGREGATE EXTRACTION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, pursuant to Ordinance No. 10-S-06, the City of Schertz, Texas (the “City”) adopted as Amended and Restated Unified Development Code on April 13, 2010, as further amended (the “Current UDC”); and

WHEREAS, City Staff has reviewed the Current UDC and have recommended certain revision and updates to, and reorganization of, the Current UDC;

WHEREAS, on September 22, 2021, the Planning and Zoning Commission conducted a public hearing and thereafter recommended approval; and

WHEREAS, on October 12, 2021 the City Council conducted a public hearing and after considering the Criteria and recommendation by the Planning and Zoning Commission, determined that the proposed amendments are appropriate and in the interest of the public safety, health and welfare;

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

Section 1. The current UDC is hereby amended as set forth on Exhibit A hereto.

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 Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

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

Section 4. This Ordinance 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 Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 6. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance 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 Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 8. This Ordinance shall be effective upon the date of final adoption hereof and any publication required by law.

Approved on first reading the 12th day of October, 2021.

PASSED, APPROVED AND ADOPTED on final reading the 26th day of October, 2021.

Ralph Gutierrez, Mayor

ATTEST:

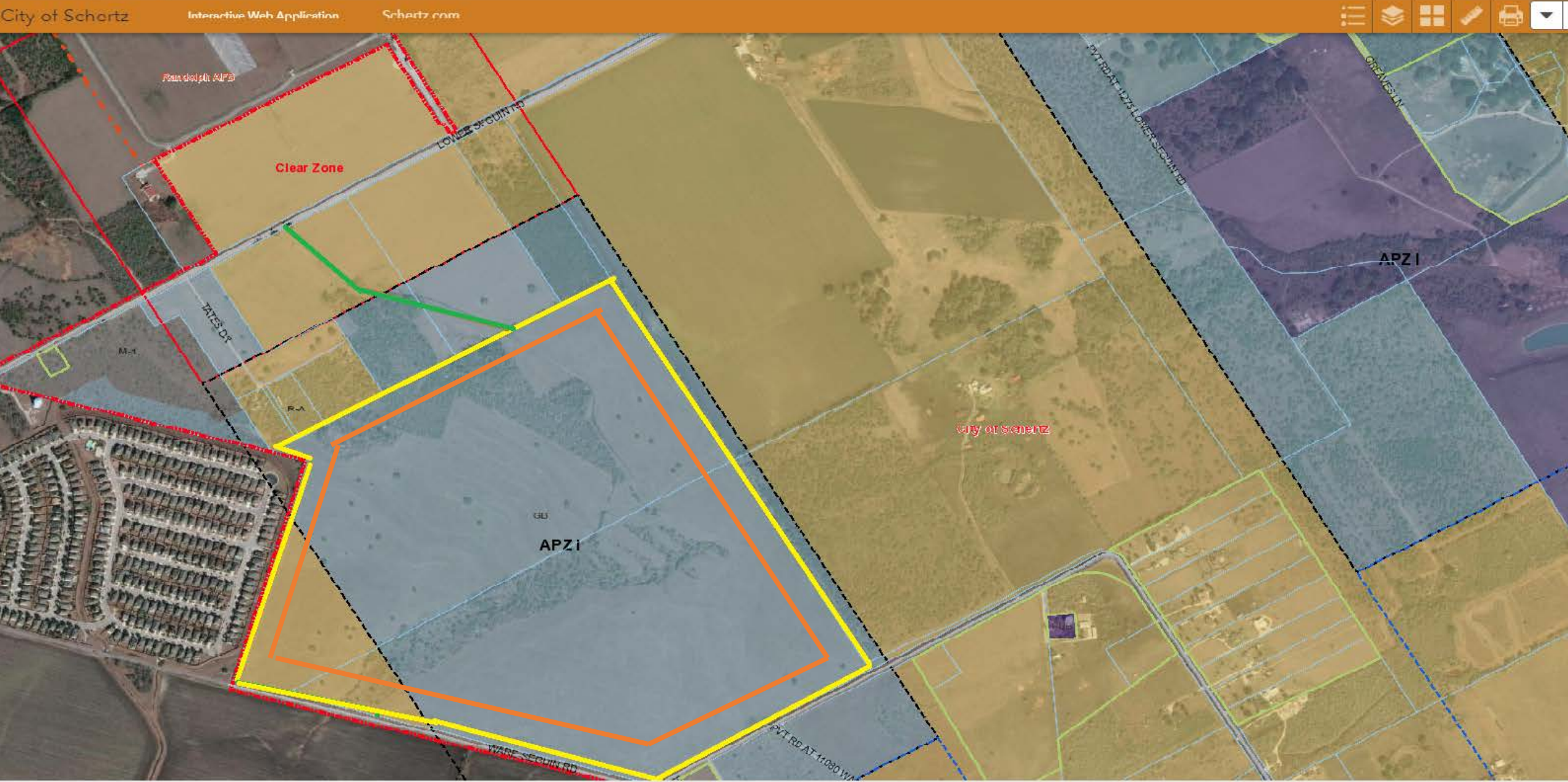
Brenda Dennis, City Secretary
(SEAL OF THE CITY)

Proposed UDC Amendment:

Article 5, Section 21.5.8, - Permitted Use Table

Proposed changes to the Permitted Use Table to add Aggregate Extraction:

Zoning District	P=Permitted/ S= Specific Use Permit	Permitted Uses
Manufacturing Light District (M-1)	S	Aggregate Extraction
Manufacturing Heavy District (M-2)	S	Aggregate Extraction





DEPARTMENT OF THE AIR FORCE
502D AIR BASE WING
JOINT BASE SAN ANTONIO



9 July 2021

MEMORANDUM FOR CITY OF SCHERTZ

FROM: 502 ABW/CI
JBSA Installation Encroachment Management
2080 Wilson Way
Fort Sam Houston, TX 78234

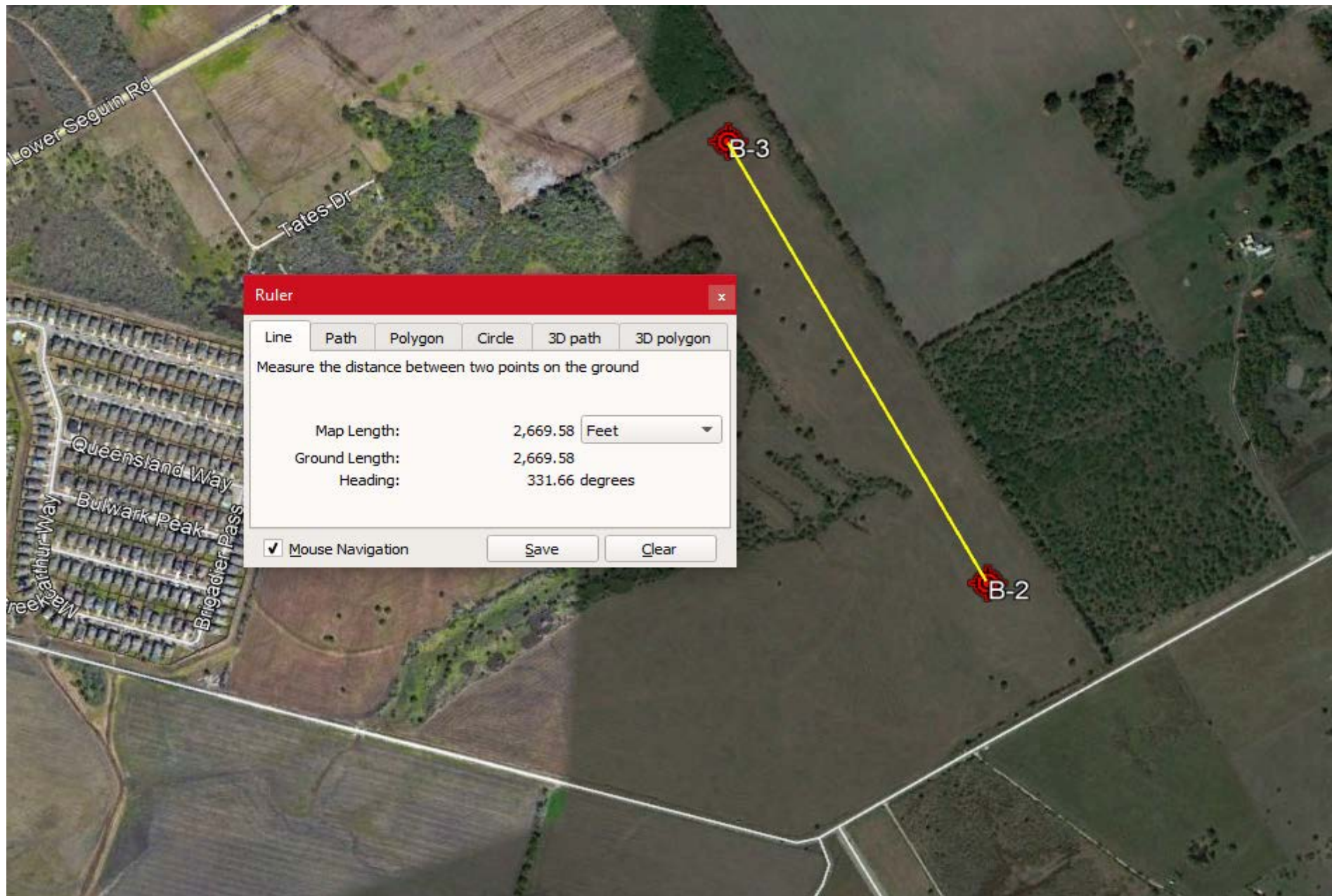
SUBJECT: Joint Base San Antonio review of Buchholtz Property 244 Acre Dirt Excavation Project, Schertz TX.

1. Buchholtz Property 244 Acre Dirt Excavation Project, Schertz TX, has been reviewed by JBSA-RND organizations. JBSA does not object, however, there are additional comments for consideration in planning and development.
 - a. In accordance with SLUCM No. 89, as long as no surface mining operations create retention ponds that may attract waterfowl and present a bird/wildlife aircraft strike hazard (BASH), or operations that produce dust or light emissions that could affect pilot vision are not compatible.
 - b. Additionally, the 5 foot berm does not encroach into any portion of the Clear Zone, and no structures or equipment penetrates the imaginary surfaces of the airfield.
 - c. Any equipment and structures for excavation will need to be evaluated.
 - d. In order to mitigate potential interference with existing JBSA operational systems, please coordinate with 502 CS Spectrum Manager prior to use of any Spectrum dependent systems (i.e.: two-way radio communications, or any type of wireless technologies) during construction. If applicable, coordination is also requested by facility user prior to installation/use of any Spectrum dependent commercial or manufacturing equipment.
2. The items presented above are efforts to enhance the safety of the community and minimize impacts due to the proximity of low flying aircraft. Improperly managed development may create unnecessary risk to both the community and flight operations as well as affect the overall capability of the military at this location.

Buchholtz Property

General Nature and Scope of Proposed Dirt Excavation Project

- There will be a 5 ft. dirt berm built around the entire excavation site. “No Trespassing, Open Excavation” signs will be posted around the excavation site.
- There will be a 50 ft. buffer zone around the perimeter of the property. This zone will hold the 5 ft. dirt berm and contain native grasses to assist in handling storm water runoff.
- At any given time, there should be no more than 5-10 people onsite.
- Excavation would begin on the eastern side of the property roughly following the highlighted yellow line on the insert below.



Buchholtz Property

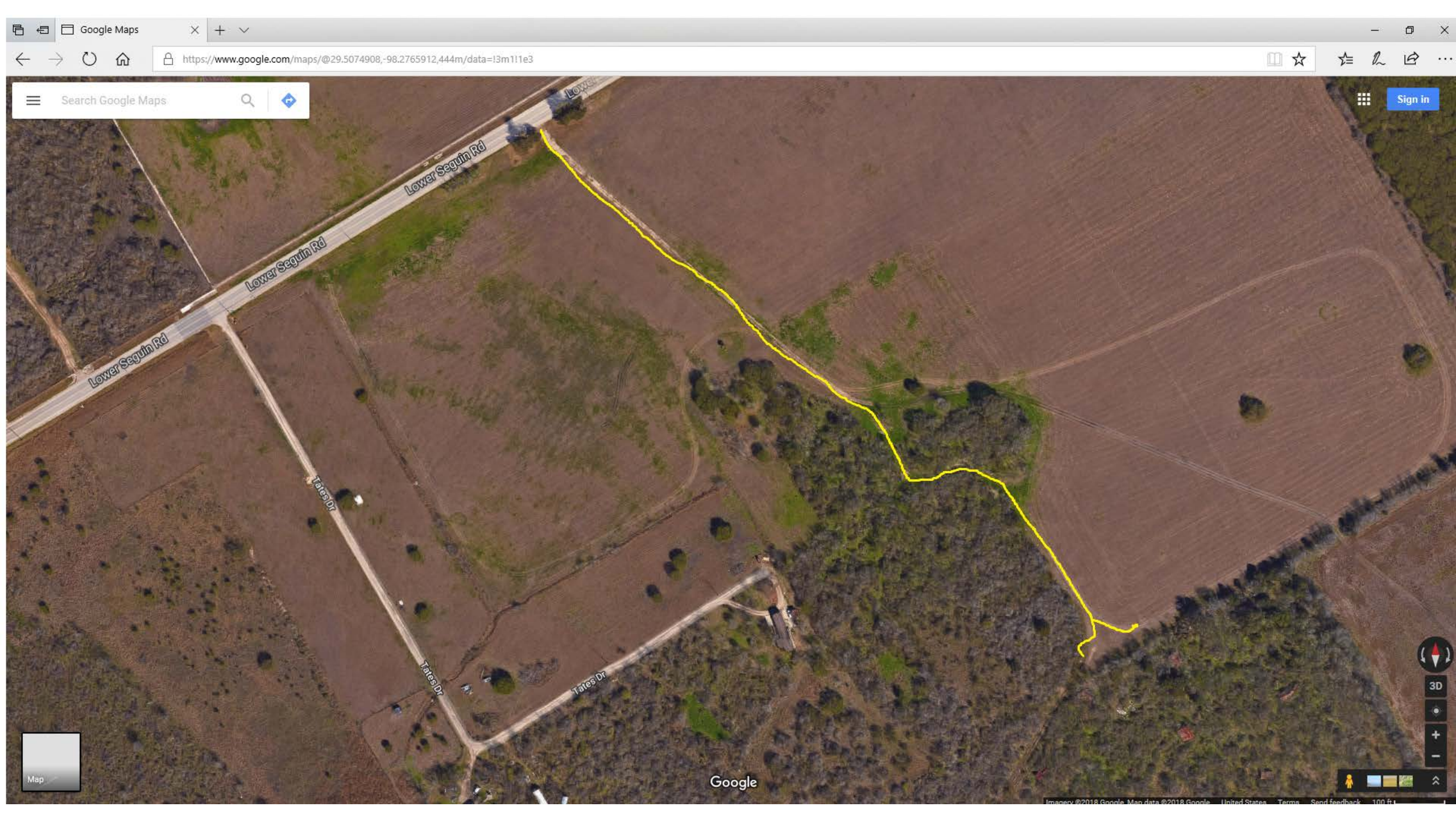
General Nature and Scope of Proposed Dirt Excavation Project

- The initial excavation pit would be roughly 2,500-3,000 feet long and 300 feet wide beginning at location B-3 and working toward location B-2 (B-2 and B-3 indicate test drilling sites to 50 feet). The depth of the material excavated from the pits would be roughly 12-25 feet deep depending on the makeup of the soil.
- After all suitable material has been excavated from the pit, then the pit area is “reclaimed” by filling the pit with good dump material (only dirt...no construction debris such as concrete, trees, steel rebar, etc. will be allowed). The pit is then compacted and graded. Native grasses will begin to grow on the reclaimed areas.
- There may be several excavation pits in different stages of excavating/filling. The plan is to start around the yellow line on the previous insert and work westward across the property.

Buchholtz Property

General Nature and Scope of Proposed Dirt Excavation Project

- Brush and old structures will be removed to enable additional excavation as well as providing additional safety in the event of an aircraft mishap. Brush removal should also minimize issues with birds in the area.
- Our intent is to also reduce the slope of the property as it slopes downward towards Ware-Seguin Road. This should increase pilot safety.
- Some stockpiles of material may exist onsite waiting to be loaded into dump trucks.
- Possible screening machines onsite to divide the material into different piles based upon composition.
- TCEQ large construction NOI will be posted onsite.
- We plan on utilizing our Lower Seguin Road easement for a majority of truck traffic.
- Normal working hours M-Sa



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